Money Laundering. Aspects of Legal and Criminal Issues

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Abstract: This study aims at analyzing objectively various techniques and methods of money laundering, both in classical and modern ways, by presenting case studies from the legal practice in Romania, in an attempt to clarify a number of issues related to the complexity of this crime, current and future tendencies of financial criminals for laundering proceeds of crime. Also, according to the analysis of comparative law performed in the last chapter, we highlighted a number of similarities and differences between the Romanian legislation and the legislative laws of other states, surprising the forms and effects of money laundering on the studied national systems as well as highlighting the measures for preventing and fighting against these crimes adopted by the analyzed legal systems. The comparative approach of the criminal and legal framework of preventing and combating money laundering is essential for the Romanian legal system efficiency in this matter.

Keywords: money laundering techniques; tax evasion; offshore centers; extended confiscation

1. Argument

Money laundering, the process by which the proceeds of criminal activity are filtered through a multitude of transactions in order to give an appearance of legality, is one of the most complex problems that the international community is facing. We note that, although lately there are many monographs and studies dedicated to the analysis of money laundering, the depletion of this topic seems to be unattainable. Hence also the necessity and timeliness of this investigation of this crime; the research must be comprehensive, detailed and well reasoned.

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2. The Theoretical and Practical Importance

The theoretical and practical importance of this scientific approach is shaped by the destabilizing effects that this crime has on the society, on the financial, economic, banking, and commercial system. Identifying the methods, techniques and money laundering typologies is particularly important in order to adopt the most appropriate policies and strategies in order to combat financial crime and to identify new methods and trends and other areas vulnerable to money laundering infiltration. (Bogdan, 2010, p. 90)

Equally relevant is also the understanding of the evolution over time of these tendencies, the context that determined that, in a certain period of time, they are used by specifically by financial criminals. Also, according to the comparative law analysis performed in the last chapter, we highlighted a number of similarities and differences between the Romanian legislation and legislative laws of other states, by underlining the forms and effects of money laundering on the studied national systems as well as highlighting measures of preventing and combating this crime adopted by the analyzed legal systems. The comparative approach of the legal and criminal framework of prevention and fight against money laundering is essential for the Romanian legal system efficiency in this matter.

3. Research Objectives

This study aims at objectively analyze and describe various techniques and methods of money laundering, both classical and modern ways by presenting case studies of legal practice in Romania, in an attempt to clarify a series of complex aspects of this crime, of current and future trends of financial criminals for laundering proceeds of crime.

4. Specific Research Methods

In carrying out this scientific approach, there were involved various methods specific to the scientific research. Thus, documentation, bibliographic research, comparative study of laws of other states in matters of money laundering, the analysis of judicial practice in both Romania and other EU countries are the used methods in order to achieve the mentioned above research objectives.

5. Summary of Theoretical Content of the Thesis

From the structural point of view, the paper contains **six chapters** and **conclusions and proposals for *lege ferenda*.**

In the first chapter, entitled *Money laundering. Concept and stages*, there were analyzed the various definitions of money laundering from foreign and national specialized literature and doctrine. In our opinion, according to the analysis of the presented definitions in this chapter, by money laundering we understand the achievement of the complex change of shares or transfer of certain goods having the purpose of *hiding or concealing their illicit origin*, the acquisition, possession or use of goods and any act of participation or support in any way to the actions described above.

Another research direction of this chapter is focused on the stages, money laundering basically being achieved in three stages: *placement* in banks, funds, insurance companies, division of illicit funds of small fraction that does not attract full attention. *Layering*, respectively, the empowerment of this money by stratification, separation, by making fake documents, financial transactions, the creation of phantom companies, through which there are achieved wide transfer services or other fake export operations of money from one bank to another. The process is concluded by integrating the money; it is collected only to return to the legal financial, banking or shopping circuit. It is the moment when the money is washed, physically transferred abroad or contain other financial banking circuits. (Stroe, 2004, p. 307)

In Chapter II called ***Techniques and instruments used in money laundering schemes***, we present the techniques used by money launderers to simulate the illicit origin and / or disguise the illicit origin of funds, through cash transactions, bank accounts, wire transfers to bank , foreign operations and credit operations as well as through investment related to transactions. In this study there are also presented a series of examples laundering schemes that capture the analyzed techniques, examples from NOPCML, DIICOT practice, but also the practice of the courts in Romania and other states.

Most of the states, including Romania, have taken a restrictive regulatory policy in the field of **online gambling** within the meaning of prohibition established for gambling operators form other Member States of the European Union, within which it lawfully provides these services, to

propose online gambling games in the territory of that State.[1] Online gambling industry brings huge profits to the states that have adopted permissive policy, in terms of licensing foreign operators and the possibility for them to conduct such activities on their territory.

The experience of states that have legalized online gambling industry (UK, Germany, Italy,[2] Malta) by licensing games to a great number of operators, monitoring suspicious transactions and the establishment of strict customer identification measures (both before opening the user account and along the conducted activities throughout the gambling site), collaboration for the exchange of information, both between the State authority where the operator is established (identity verification through the exchange of information between the banking institution to which the user has the account, online gambling operator and authorities monitoring the transactions carried by the user) and also between these entities from different states, it demonstrates that there was an increase of the money laundering phenomenon.

The online auctions, due to the appearance of legality that it grants to the washing operation, represent an effective tool for financial criminals. The procedure followed by money launderers when using the electronic auctions is to register as user on auction site and buying and selling virtual goods with real-world correspondent. Thus, the money is transferred to bank account of the auction company, which, if there is no problem on the property bought or sold, the money is transferred to the buyer. Money launderers use online games because the virtual products can be purchased and transferred anywhere, and since the virtual withdrawal of funds from the account are considered legal, their source cannot be identified.

The contemporary peculiarities of money laundering, namely: the economic magnitude of the phenomenon, the distinguishable transnational feature, its links with organized crime, money launderers, professionalism etc. represent the reason that justifies our interest to turn our attention also to the connections that exist between economic and financial crime and tax havens.

[1] According to article 25, letter k) of Law no. 246/2010 for approving GEO no. 77/2009 on the organization and operation of gambling, represents a crime the participation in Romania in gambling activities which are not authorized in Romania, organized through communication systems such as Internet, mobile or fixed systems or any assimilated means.

[2] We exemplify the case of Italy, the legalization of online gambling increased the turnover in this state at an estimation of 3.7 billion euros in 2009 and almost double in 2010.

The theoretical premises and the case studies presented in this chapter lead us to the conclusion that tax havens are "useful" to money launderers in all three stages of the process: *placement, layering and integration.* Thus, placing the illicit money can be achieved by private aircraft or by courier, then for layering, there are achieved consecutive transactions in order to insure the loss of any trace that connects the money and its illicit origin and the third stage of integration is achieved by creating an appearance of legality of revenue - by using front companies registered in tax havens providing fake loans through indirect payments for the benefit of the taxpayer's family or through personal accounts, the amounts being sent under the panel which is reported in open accounts at different banks in different jurisdictions.

We conclude with a remark that the use of different economic and financial sectors for laundering the proceeds of crime and the national and transnational transactions do not represent a tight compartment for financial criminals, but instead they are combined, systematically, in order to engage some successive stages necessary for money laundering process.

In the **third chapter** called *Strategies to prevent and combat money laundering adopted at international level*, we bring in the center of the research the development of international standards that fulfill a key role in the states' efforts to fight against money laundering.

In this chapter it is discussed the process of developing the international standards on money laundering, as a result of the initiatives proposed by the international powers. The study follows the chronological development of international and European regulations in matters on and assessing the impact of international standards upon the laws of various states.

In the second part of this chapter, were analyzed the *measures for the prevention of money laundering and financing terrorism acts adopted at international level*. Thus, there were outlined the advantages based on risk based by the entities obliged to establish the costumer's profile. Prior to adopting this approach, the money laundering prevention strategies were characterized by determining the risks and the measures that were to be taken by the bank, by bank supervisors. Secondly, we notice the progressive inclusion of new liberal professions and economic activities in the list of reporting entities, and an *extension of the diligence obligations*. Thirdly, we notice the increase of regulations on reporting the suspicious transactions, an obligation that regards the reporting entities. The last part of this chapter

deals with the *implementation of international measures of preventing money laundering in the Romanian legislation.*

The incrimination and sanctioning of money laundering in the Romanian legislation represents the subject of research of the ***fourth chapter*** of the thesis.

The evolution of international concerns to extend the scope of predicate offenses from drug trafficking to all serious crimes and then to all criminal activities, has determined the Romanian legislator to return to the incrimination of money laundering and to eliminate the limitation of this crime. Thus, the next legal step after the adoption of Law no. 21/1999 on preventing and sanctioning money laundering was the adoption of Law no. 656/2002 on preventing and sanctioning money laundering and the establishment of preventive measures against terrorism financing, a law which refers to all crimes that can generate goods liable to laundering.[1]

The research undertaken in Chapter V of the paper, entitled ***Aspects of Procedural Law - Criminal in Money Laundering Matters*** is focused on aspects of criminal procedural law of money laundering crime. The offense of money laundering requires financial and judicial investigations carried out in parallel. The financial investigation is usually conducted by the Police[2] (specialized units of judiciary police) and, rarely, especially the special and national prosecution. The prosecution coordinates or leads the pre-trial investigative phase and the financial investigation as part of it. The purpose of judicial investigation is to identify the crime and the criminals, obtaining evidence for prosecution.

Law no. 202/2010 regarding some measures to accelerate the settlement of process has not made changes in the Law no 656/2002 on preventing and

[1] According to article 23 of Law no. 656/2002 on preventing and sanctioning money laundering and to establish measures to prevent and combat terrorism financing through money laundering means: *"(1) Represents the offense of money laundering and shall be punished with imprisonment from 3 to 12 years: a) the exchange or transfer of assets, **knowing that come from committing crime** in order to conceal or disguise the **illicit origin** of such assets or in order to help the person who committed the crime from where the assets come, to evade prosecution, trial and execution of the sentence; b) the concealment or disguise the true nature of the origin, location, disposition, movement or ownership or rights over their property, knowing that the goods come from committing crimes; c) the acquisition, possession or use of property, **knowing that they come from committing crimes**."*

[2] Investigative activities conducted by the police are: gathering evidence on the existence of the offense, of the offender and the incomes coming from the criminal activities. Also, the police can seize the means (property used in committing a crime), the goods covered by the offense and any other evidence. The police may propose (to prosecutor) temporary sequestration measure of goods which can be confiscated.

sanctioning money laundering and has not established measures to prevent and combat terrorism financing, in order to allow the authorities of criminal investigation to receive complaints from the National Office for Preventing and Combating Money Laundering when it is found that there are solid indications of money laundering. (Udroiu, 2010, pp. 24-25)[1]

Special investigative measures, namely, ***the access and*** *surveillance* ***of telecommunications or computer systems, the controlled delivery of the money and use of undercover investigators*** used for money laundering are particularly useful for providing information on the money trail, origin and destination of the illicit transfer and change of proceeds of crime. Also, by using these tactics to investigate, there are obtained data and information that lead to the identification of the composition, structure, resources and activities of organized crime.

A new legislation on safety measures is the adoption of the Law Draft to supplement the Criminal Code and Law no. 286 / 2009 on the Criminal Code by which it is inserted **the safety measure of extended confiscation**. By adopting this law there are transposed into Romanian legislation the depositions on the confiscation provisions of the European Union for money laundering, the Framework Decision no. 2005 / 212/JHA on confiscating property, instruments and property derived from criminal offenses.[2] This Decision provides for the extension of confiscating prerogatives in the case of money laundering and the various forms of trafficking (smuggling, human trafficking, currency, drugs), in order to facilitate the confiscation measure for alternative situations. The confiscation measure is provided also ***in cases where it is established that the property value is disproportionate to the illicit income of the convicted person, and a national court, based on specific facts, it is fully convinced that the property in question came from a criminal activity of the convicted person***[3]**.** Under the draft of the new law the extended confiscation operate in the case where the person is convicted of an offense for which the law provides for imprisonment of more than 5 years and it is likely to procure a material benefit, the court being able to order the confiscation of other assets besides the ones referred to in article 118, if the following conditions are fulfilled: a) the assets acquired by the person convicted to a period of five years before and, if it is

[1] Available at www.inm-lex.ro.
[2] Framework Decision no. 2005 / 212 / JHA of 24 February 2005 of European Council, published in J.O.L 68 of 15.03.2005.
[3] Article 3, line 2, letter. c) of Framework Decision no. 2005 / 212 / JHA.

the case, by the time the offense was committed before the date of the criminal action, clearly exceeding the revenues obtained illicitly; b) the court is convinced that these goods come from activities of the kind that drew the condemnation.

Chapter VI of the thesis, entitled ***Money laundering in the laws of various European countries***, represent the area of analysis of the peculiarities of the European countries' laws, in relation to money laundering, in order to analyze similarities and differences and the degree of homogeneity between the national systems of preventing and combating money laundering implemented in these countries in order to highlight different legislative solutions and judicial practice recorded in various studied countries.

The differences in national legislation are outlined from the very *reason of incriminating money laundering offense*. Thus, while France incriminated money laundering, being concerned with the ineffective results from control policy of illicit trafficking of narcotics, which, essentially gets down to punishing the petty, street traffickers without being able to reach those who obtained significant profits from this kind of trafficking. Switzerland adopted a legislation on money laundering and regulations on criminal organizations, not because the country had been affected by domestic violence but, rather, because it abused of its financial centers and bank secrecy rules to hide the assets of criminal groups, and Italy adopted the anti-laundering legislation particularly to counter the criminal activities of mafia-type groups (Guillermo, 2007, p. 22).[1]

Although we are in the presence of a variety of definitions of this crime, we see a series of common characteristics: First, the offense is a **process**, a complex of operations involving a multitude of activities in order to achieve the aims of the perpetrator. Secondly, the **financial object** of the offense, no matter the name is given in the definitions of goods, money, income, profit, assets, etc. it comes from an offense, and thus **illicit origin** (so there must be a *predicate offense* from where the good of money laundering is originating). Also, in most considered definitions, it is always stated the ***purpose*** of financial criminal, namely, *the concealment or disguising the illicit origin of the goods and their integration in the legal economic and financial circuit.*

Most analyzed states by this study have adopted the instruments and strategies to cover all **offenses that generate dirty money**: in Romania

[1] http://apps.americanbar.org/rol/publications/romania_illicit_enrichment_report_07_07_rom.pdf.

(article 23 of Law no. 656/2002 on preventing and sanctioning laundering and to establish measures to prevent and combat financing terrorism acts), as **France** (Article 324-1 of the Penal Code.), **Britain** (Section 340 of the Proceeds of Crime Act), **Ireland** (article 31 of the Criminal Justice Act of 2001) and **Switzerland** predicate offenses covering all crimes that can generate goods which are subject to money laundering. **Spain** (article 305 of the Penal Code) and **Austria** (article 165 paragraph 1 of the Penal Code.) limit the scope of predicate offenses only to those that are considered serious offenses for which imprisonment is set higher than 3 years.[1] **Italy** covers only those crimes committed intentionally as predicate offenses.[2] **Germany** (article 261 of the Penal Code) and Portugal (article 368-A of the Penal Code) expressly provide for offenses whose products can be washed.

Knowledge of the perpetrator that the goods subject to washing operations come from an offense is an essential condition of the subjective side of this offense for most studied countries. In France, according to article 324-1, line 1 of the Criminal Code, the launderer of money must know the illegal nature of the provenance of the goods submitted to laundering, in the version provided by article 324-1, line 1 of the Penal Code, or, if it commits the act in the manner provided for in article 324-1 line 2, to be aware that the goods that have been placed, concealed or converted come from direct or indirect proceeds of crime. **Spain**, by Law no. 5 / 2010 concerning the prevention and combating money laundering provided also the reckless fault as a form of guilt of the perpetrator.

On the **active subject** of crime in comparative law there are states where money laundering is a common law crime that can be committed by anyone who may be without of the need for any special quality of the active subject. On the other hand there are laws that limit the scope of money laundering active subjects. The limitation of active subjects' category of money laundering generally refers to the fact that the predicate offender can not be also the offender of the money laundering offense. **In Germany**, prior to reform legislation on money laundering it was provided that the assets of illicit origin must come from an offense committed by another person.[3] **In Italy**, article 648 bis. and third provides money laundering as a special form

[1] Articles 301 and 308 of the Spanish Criminal Code.
[2] Article 648 bis, Italian Criminal Code.
[3] In the current German Criminal Code, the article 261 provides the incrimination of the person who hides the objects coming from one of the committed acts provided by law, that is all crimes and certain misdemeanors, concealing the source or origin jeopardizing the finding out, confiscation, seizure of such asset.

of offense concealment and the person who participated in committing the crime of money or assets previously recycled cannot be an active subject of offenses covered by the two legal texts. (Antony, 1997, pp. 40 - 50) Unlike these states, there are laws, like in **Spain and Switzerland**, which do not provide any limitation category of active subjects of money laundering offense, any person can be the perpetrators of these crimes. British law generally deals with money laundering offense, but limiting its subject, which is expressed by the low number of convictions in the **UK**.

Sanctioning system applied to money laundering has also significant differences in the laws of the states covered in this study. Thus, while some states apply harsh punishment in the case the money laundering is committed by organized criminal groups or people taking advantage of their functions as well as by those who commit the act as occupation (Germany, France, Italy), other states do not cover all crimes related to high risk drugs seizures as crime generators of dirty money, thus remaining certain sides of organized crime outside the prosecution (Austria).

The safety measure for **special confiscation** in case of the money laundering offense is required by all studied laws. Some states, like Britain and Switzerland have established, in addition to the special confiscation also the **extended confiscation**, this measure proved its practical utility by recovering some large sums of money and values which caused a prejudice to the state budget. **UK** provided the special confiscation procedure on proceeds of crime (*Proceeds of Crime Act 2002*). In certain circumstances, the court may use the presumption of the provenance of the assets of the convicted in committing an illicit activity, on a prior period of 6 years (Hoffman, 2008, p. 115). In **Swiss** law, in case of a person prosecuted for supporting or participating in a criminal organization, the court shall order the confiscation of all assets belonging to this person.[1]

We conclude with a remark that although both at international and European level there have been adopted guidelines for a coherent global model of preventing and combating money laundering, real legislative instruments, if states will implement them uniformly, without achieving an harmonization

[1] According to article 72 of the Swiss Criminal Code, the criminal organization controls the assets of its members, being established as a presumption of illegal character of the assets of members of such organizations, the burden of the evidence of the illicit origin is distributed to the defense department, the defendant having the possibility of demonstrating either that the goods are not under the control of organized criminal organization or that they have lawful origin.

of national laws, the criminals will continue to benefit from these legislative differences.

The last part of our scientific endeavor outlines a series of ***conclusions and proposals de lege ferenda***, as follows:

1. We believe that the prohibition of ***online gambling*** is not the best way to prevent crimes that can penetrate in this industry. De *lege ferenda,* we propose to maintain the provisions of Law no. 246/2010 for approving G.E.O. no. 77/2009 on the organization and operation of gambling, which allows the development of such activities in Romania, conditioned by the approval of this activity. Of course, this law must be constantly adjusted depending on consumer preferences and the services offered by the online gambling operators.

2. In our view, ***tax havens*** can be defined as that *jurisdiction that creates intentionally its own legislation intended to facilitate economic and financial transactions undertaken by non-residents on its territory, in order to avoid taxation and the application of certain rules of law or regulations specific to other jurisdictions through a mechanism that creates a legal wall that the beneficiaries use for these transactions.*

Analyzing the Romania's legislation we find that there is no definition or set of criteria to determine the defining characteristics of tax havens, though in practice, there were numerous cases of companies (offshore) registered in such jurisdictions involved often enough in money laundering schemes or criminal activities; they introduced their illegal incomes in the state of their "headquarters" either through fictitious contracts of loan or by selling intangible assets. De *lege ferenda*, we propose, for a better integration in the international system of combating the economic and financial crime to establish an objective definition of tax havens also by the Romanian legislator, a concept that is based on tax rates, a legal system of guaranteeing confidentiality of the financial and economic information on the entities that can sustain economic and financial operations by their means.

3. One of the issues on which we insisted on this study is the category of politically exposed persons who pose a high risk of money laundering and terrorism acts financing. Thus, according to Community legislation (Recommendation no. 6 FATF and the provisions of Directive 2005/60/EC), reporting entities must *implement additional measures of diligence in case of transactions or business relationships with politically exposed persons*

who are resident in another Member State of the European Union or European Economic Area or in a third country. According to article 21, line 1 of Law no. 656 / 2002, as amended and supplemented, ***the politically exposed persons*** are individuals who work or have worked in prominent public functions, their immediate family members and persons publicly known to be close associates of individuals exerting important public functions. The Romanian legislation, the status of politically exposed person requiring the *appliance of enhanced diligence measures*, stop after reaching a period of one year from the date on which he ceased to occupy important public function provided by article 2.

In our opinion, the *distinction* between resident and non-resident politically exposed persons, in terms of the high-risk money laundering and terrorism financing, *should be eliminated*. We reason this view by sustaining that, whether politically exposed person is resident or not of the state, it is subject to the same pressures and corrupt inducements, the treatment of these categories, in terms of risk assessment should be the same. Secondly, we do not consider that, by applying the enhanced diligence measures and to customers - politically exposed persons that are residents, the activity of reporting entities would be more difficult, at least in terms of identifying the politically exposed persons that are residents. Thirdly, the reporting entity's reputation is also affected in case the transactions or business relationships are suspected of money laundering or terrorist financing which are connected to a resident politically exposed person, so the reputational risk remains the same regardless of the residency of politically exposed person involved in the transaction or business relationship. In this respect, we propose de *lege ferenda* the inclusion in the legal text on enhanced diligence measures, article 12^1 letter c of Law no. 656 / 2002, and of resident politically exposed persons, as defined under article 21.

4. Another aspect that we wanted to submit for discussion covers *the period to be considered by the reporting entities at establishing the quality of the politically exposed person and implicitly the implementation based on risk, of additional diligence measures*. The international standards have not imposed any time limit or period in which the client is considered to act as a politically exposed person after the important public function is no longer occupied by him. We believe that in certain situations it is no longer necessary to set a deadline after which the customer would not act as a politically exposed person, such as the Heads of State or Government. At the same time, establishing indefinite period for all persons considered

politically exposed is not correct, given that most of the times, the exercise of official public office is short. In our opinion, in order to be effective the establishment of the level of risk of money laundering or terrorism financing, a person who has held important public position, but not exercised such function, it needs to be reported at the level of each professional entity a specialized body with responsibilities in client situation analysis, in order to determine regardless of the time elapsed since the termination of that position, so far as these people continue to experience increased risk of money laundering or terrorism financing. De *lege ferenda* law, we propose in a future regulation, an increase of 1 year term provided by article 2^1 line 6 to 5 years.

5. Also, given the conclusions of MONEYVAL experts on the sanctioning regime applicable for Romania in case of breaching the measures to prevent and combat money laundering, they *are calling into doubt the effectiveness of global sanctioning regime in this area*. (Moneyval, 2008, p. 198)[1], we consider that that the non-compliance of the obligations referred to in article 4 of Law no 656/2002, to be provided as an offense by the Romanian legislator. In this respect, we propose de *lege ferenda*, amending article 24 of Law no. 656 / 2002, with the following content: *Failure to comply with the obligations provided in article 4 and 18 is an offense and it is punishable with imprisonment for 2-7 years*.

6. According to the analysis of solutions given in the legal practice in the field of money laundering offense independently of the existence of a prior or simultaneous conviction for the predicate offense, we found that case law is inconsistent in the interpretation of article 23 of Law no. 656/2002, some courts released the defendants for the offense of money laundering in cases where they could not incriminate them for committing generating crimes of dirty money.[2] In our view, given that Romania has ratified the Warsaw Convention (2005), according to which *each party shall ensure that a prior or simultaneous conviction for a predicate offense is not a prerequisite for a conviction for money laundering, by* conditioning the conviction for money laundering of the existence of a conviction for the generating offense of dirty money; the authorities will be unable to act against members of organized crime groups whose assets of illicit origin cannot be confiscated or taxed, unless there is a conviction for committing a predicate offense. In this respect, in order to avoid the dilemmas of interpretation of the law and

[1] Available at http://www.coe.int
[2] Î.C.C.J., S. Pen., Dec. no. 5685 / 2005, www.scj.ro.

to ensure a uniform interpretation in the judicial practice of article 23 of Law no. 656/2002, we suggest the replacement of the **offense** with **criminal activity** in the phrase knowing that they come from offenses.

7. On the measure of ***access and*** *surveillance* ***of telecommunications or computer systems,*** covered by Procedural Penal Code, in article 91^1-91^6 and in article 57 of Law no. 161 / 19 April 2003 on some measures to ensure transparency in exercising the public dignities, public functions and in business environment, the prevention and punishment of corruption, the Romanian legislator provides for the *reasoned authorization of the judge of this measure at the request of the prosecutor who performs or supervises the prosecution, under the law, if there are given data or solid clues for the preparation or commission of an offense for which the prosecution is performed ex officio, and the interception and the recording are required to establish the facts or that the identification or location of the participants cannot be achieved by other means or the investigation would be much delayed.* Regarding the duration of the authorization, it shall not exceed 30 days, with the possibility of being extended with no more than 4 months. We propose de *lege ferenda*, that the term of 120 days to be extended to180 days, following the example of the German law, which provides in the Criminal Procedure Code to Section 100d the duration of the permit of 30 days with the possibility of extension, and in case the total duration of the permit has exceeded six months, the Federal Supreme Court must rule on a possible extension. This period should be sufficient to ensure the effectiveness of this measure.

8. In order to improve the special studied investigative measures, the law enforcement authorities charged with these measures must be trained and qualified to do so. We consider, de lege ferenda, that at the level of our legislation it should be expressly provided the requirement of *qualification and perfecting* of both the bodies applying the measure, as well as those who coordinate and supervise the investigated crimes by using these measures. (Hotcă & Dobrinoiu, 2008, pp. 329-335)[1]

[1] We mention in this regard that in some countries (Germany and France) the police units in order to collect the necessary information proving such complex crime, they have access to all databases under the supervision of the prosecutor. In Romania, the access to bank data is only possible under a court decision and is conditioned by the existence of some evidence. By analyzing the payments and bank transfers it is established the financial flow of the offender and of other persons associated with him. Under these laws, the police, which investigates the money laundering acts are specialists in financial and economic analysis and in informatics.

9. Regarding the *duration of the detention in cases of money laundering*, we consider the term set out in article 144 Procedural Criminal Code[1] of at least 24 hours is insufficient for prosecutors to prepare all necessary documents for starting the prosecution. We argue this view by pointing out that often enough, in these cases there is an organized crime group involved in complex money laundering scheme, which means retaining more people who are not in the same locality, conducting house searches, collecting data and deduction of the case to court, all actions of the investigation cannot be achieved within 24 hours. De ***lege ferenda***, we propose to increase the term from 24 to 72 hours. We exemplify in this sense the legislation that expressly provides in article 17 line 2 of the Constitution as well as in article 520 of the Criminal Procedure Law, the maximum detention of 72 hours. For suspects in crimes of terrorism and other facts also, the article 520 bis of the Criminal Procedure Law of Spain provides a duration of 5 days detention. (Savedra, 2010, p. 356)

10. Regarding the moment when the studied evidence means can be used, we propose de ***lege ferenda***, that the legislator regulates the possibility of their application also during the *preliminary acts of the prosecution* necessary to start the criminal investigation. By the possibility of requesting information of the reporting entities whose bank and professional secrecy is not unperfected to the investigating bodies of criminal prosecution in the phase of prior acts for starting a prosecution investigation is conferred on the effectiveness of investigative bodies.[2] We proposes de lege ferenda the modification of these provisions in the sense of removing the unperfected the banking and professional secrecy during the phase of preliminary acts necessary to start the prosecution investigation.

11. Regarding the terminology used in the current Procedural Penal Code as that used in the new Procedural Penal Code[3] on the execution of special confiscation measure, we consider, de lege ferenda, that it should be

[1] According to article 144 of Procedural Criminal Code detention measure may take up to 24 hours.

[2] For example, under the current regulation article 114 GEO no. 99/2006 on credit institutions and capital adequacy published in the Official Monitor no. 1027 to 1027. 12. 2006, the credit institutions are obliged to provide information on the nature of banking secrecy, after starting the prosecution investigation against a client, at the written request of the prosecutor or of the court or, where appropriate, criminal investigation bodies, with the authorization of the prosecutor.

[3] According to article 574 of the new Procedural Criminal Code, the *security measures of special confiscation taken by court decision runs as follows: a) if the confiscated **things** are guarded by the police or other institutions, the enforcement court sends a copy of the judgment body to where they are. After receiving a copy of the device, the confiscated things are given or asserted under the provisions of the law.*

replaced with the terminology of assets as laid down in the legislation relating to special confiscation measure contained in article 118 of the Criminal Code. The term of things was used before changing article 118 of the Criminal Code[1] by article I, section 42 of Law no. 278 / 2006 to amend and supplement the Criminal Code and for amending and supplementing other laws. In support of this proposal, we emphasize that the concept of things and assets are not synonymous, although they have common meaning of the material objects of ownership right belonging to a natural person or legal entity. Unlike things, assets have the ability to be appropriated, that is to become material objects of ownership right, having an economic value. (Hungarian, 2005)

12. De ***lege ferenda***, we propose the Romanian legislator regulate the possibility of unavailability of the suspected persons for committing money laundering of assets which are subject to confiscation even from the preceding acts phase, because in this phase and until starting the criminal prosecution the money launderer may dispose of assets or other values obtained illicitly which is the subject of safety measures that are applied after starting the prosecution investigation.

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[1] The text of article 118 had the following content: there are submitted the special confiscation to the following: a) the things produced by act under the criminal law; b) the things that have served or were intended to serve to commit a crime if they belong to the offender; c) things that were given to determine the commitment of the crime or to reward the offender; d) things clearly acquired by committing the offense, if not returned to the injured person and to the extent that it does not serve to compensate him; e) things held against the laws.

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*** Law no. 135/2010 on the Criminal Procedure Code, published in the Official Monitor, Part I, no. 486 of 15 July 2010.

*** Law no. 286/2009 on the Criminal Code, published in Official Monitor of Romania, no. 510 of 24 July 2009.

*** Law no. 420 / 2006 ratifying the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of crime PRODUCT and financing terrorism, adopted in Warsaw on May 16, 2005.

*** Law no. 656 / 2002 for the prevention and punishment of money laundering and to establish measures to prevent and combat terrorist financing, published in Official monitor of Romania no. 904 of 12. 12. 2002 and republished in the Official Monitor under the provisions of article IV of GEO no 53 of 21 April 2008.

*** GEO no. 99/2006 on credit institutions and capital adequacy published in the Official Monitor no. 1027 to 1027.12.2006.