

# Legalization of criminally obtained property committed by organized criminal groups: European and Ukrainian standards

## Legalización de bienes obtenidos de forma delictiva cometidos por grupos criminales organizados: Regulaciones Europeas y Ucranianas

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### Abstract

The phenomenon of money laundering as a result of the actions of criminal groups is a negative factor in the global development of the international community. The need for this study is due to the increase in the scale of such criminal acts that negatively affect the development of the state, threatening the rule of law and security of the state in general and society in particular; lack of legislative and practical basis for combating this phenomenon. Therefore, the purpose of the study is to define the concept and the essence of money laundering by organized criminal groups and elaborate scientifically sound measures to combat this phenomenon in terms of European and Ukrainian dimensions. Several methods were used in the study, in particular: dialectical, system-structural, historical-legal and formal-logical. Leading research method was comparative method, which helped to characterize the specifics of criminal law protection of public relations arising from money laundering in Ukraine, Western European countries, and the United States. The authors determine the national policy of Ukraine against crimes committed by organized groups is characterized by the obsolescence of the regulatory and legal framework, gaps in the organization of combating such types of crimes, reduction of special units in the police, and insufficient level of cooperation of state bodies. The collected original empirical material will allow theorists in this field to continue their research and effectively counteract this negative phenomenon.

**Keywords:** Crime legalization; criminal proceeds; corruption; legal circulation; money laundering; organized crime

### Resumen

El fenómeno del blanqueo de capitales como consecuencia de la actuación de grupos criminales constituye un factor negativo que retrasa el desarrollo global de la comunidad internacional. La necesidad de este estudio se debe al aumento de la escala de tales actos delictivos que afectan negativamente al desarrollo de la nación, y amenazan directamente a la seguridad del Estado de Derecho, lo que evidencia falta de base regulativa para combatir este flagelo. Por lo tanto, como propósito del estudio se definió el concepto y alcance del lavado de activos por parte de grupos de crimen organizado, así como el estudio de las medidas y políticas para combatir este fenómeno en lo que respecta a las relaciones europea y ucraniana. Se utilizaron métodos en el estudio, en particular: dialéctico, histórico-legal y el formal-lógico. Se utilizó también el método comparativo, que ayudó a caracterizar las especificidades del derecho penal frente a la protección de las relaciones públicas derivadas del lavado de dinero en Ucrania, los países de Europa Occidental y los Estados Unidos. Los autores concluyen que la política pública de Ucrania contra los delitos cometidos por grupos de crimen organizados se caracteriza por la obsolescencia del marco normativo y jurídico; por tanto, las lagunas en la organización de la lucha contra ese tipo de delitos, la reducción de las unidades especiales de la policía y el insuficiente nivel de cooperación de los órganos estatales constituyen las razones principales del aumento que presenta el blanqueo de capitales. El material empírico original recopilado permitirá a los teóricos de este campo continuar sus investigaciones y contrarrestar eficazmente este fenómeno negativo.

**Palabras clave:** Legalización del delito; procedimientos penales; corrupción; circulación legal; blanqueo de dinero; delincuencia organizada



## INTRODUCTION

Reforming the economic system often leads to both the growth of the state's economy and the emergence of various threats in this area and their prevention. Among the main threats are complex and dangerous socio-economic phenomena: the shadow economy and especially its criminal component, organized crime with its penetration into the system of economic relations, corruption at all levels of government, capital flight abroad with a shortage of investment resources, money laundering. It is not the number of criminal acts, but the consequences and the real threat underlie the danger of group crime. It encroaches on government and power, infects them with corruption, and affects the state of society, its growing scale harms the economic process of state development, and democratization of public life. Modern group crime, which is growing into organized crime and is prone to endless growth, is using new opportunities to generate extra profits, which could eventually lead to power and cause significant damage to the international community (Shevtsiv, 2022).

The problem of money laundering has become international over the past few decades. The problem of the legalization of property obtained by criminal means has reached the international level. The Organization United Nations (ONU, 2011) estimates that worldwide criminalized income has been legalized in recent years, ranging from 2% to 5% of the world gross domestic product each year, or between \$800 billion. USA is up to 2 trillion USD. Of these, according to the World Bank, about 1-1.6 trillion USD (ONU, 2011). The United States is being transformed into foreign jurisdictions, which are offshore zones and large financial centers, to conceal them, criminalize them, and further put them into legal economic circulation. Most of the assets legalized through corruption offenses will never be returned to the affected countries due to the inability to locate them. The international community must work together to tackle such a negative phenomenon as money laundering, as money laundering poses a threat to the global economy, not just to individual nations (Toropchyn, 2020).

Open financial space with mobile funds and high technology of payment circulation transforms the financial system into a transnational one. Therefore, it is assumed that the problem of money laundering is relevant to our country. Organized crime is no longer limited to the forced distribution of material goods and spheres of influence. By infiltrating state power and bribing power, it seeks to gain a foothold with the help of corrupt officials. Money laundering contributes to the development of international corruption, terrorism, fraud, drug and arms trafficking, smuggling, human trafficking, and more (Yevgenivna & Savelieva, 2021).

Legalization, in essence, is the activity of removing dirty money from the shadow economy and integrating them into the legal sphere through financial transactions and instruments, namely: contracts of sale, loans or credit, legal business, or the shadow economy; activities (opening and use of fictitious companies), etc. Such criminal activity has no national borders. The development of integration ties between states in the field of banking and the reduction of interstate barriers to the movement of funds in the international community contributes to the laundering of money obtained by illegal activities of criminal groups (Yevgenivna & Savelieva, 2021).

For Ukraine, the problems of combating the laundering of “dirty” money and capital, and countering offshore business are extremely important, as much of the domestic capital flows out of the country through the banking system. In many cases, these capitals are returned to the homeland in the form of foreign investment with appropriate “preferential” conditions. The existence of organized crime in Ukraine and further Ukraine’s movement towards free economic activity in the international community make it necessary to counteract the issues of the legalization of criminal proceeds (Toropchyn, 2020).

For domestic legal science, clarification of European and Ukrainian standards for the legalization of property obtained by criminal means, committed by organized criminal groups, in today’s conditions is to a large extent a new direction of scientific research. At one time, several scientists, such as Reznik and Bondarenko (2020),

Tyutyunnyk and Zarubei (2021), Kashpur (2018), Leonov et al. (2018) and Baker (2005). Thus, Reznik and Bondarenko (2020) investigated the issue of objective signs of money laundering. In the course of the study, the researchers came to the conclusion that in conditions of constant development, especially information relations, specific forms of legalization of criminal income can be transformed, which significantly complicates the qualification process and, as a result, brings the perpetrators to criminal responsibility. justice. Therefore, proposed changes and additions to the current Criminal Code of Ukraine-KKV (Verkhovna Rada, 2001).

The researchers concluded that the objective signs of the legalization of income obtained through criminal means are laid out quite clearly by the legislator. At the same time, in the conditions of constant development, especially information relations, the specific forms of this act can be transformed, which significantly complicates the process of qualification, and therefore, brings the guilty to criminal responsibility. Therefore, the provision and Note 1 to Article 209 of the Criminal Code of Ukraine-KKV require some changes and additions (Verkhovna Rada, 2001).

Such researchers as Tyutyunnyk and Zarubei (2021) investigated the criminological characteristics of illegal activities related to the legalization of money obtained through crime and the peculiarities of pre-trial investigation. In the course of their research, it was proved that the commission of such a type of criminal offense as the legalization of money or property obtained by criminal means is not enough just to establish the illegal origin of the seized money. More important is the presence of a set of proper, reliable, and sufficient evidence in criminal proceedings regarding the legalization of “dirty” money. The existence of mere suspicion of the illegal origin of funds or property is not proof of guilt.

Kashpur (2018) explained the challenges of combating money laundering and the need to control financial flows to prevent money laundering or terrorist financing. An attempt was made to analyze the main directions of combating money laundering in Ukraine. In the course of this study, it was established that the method of crime

prevention in the banking sector requires new scientific approaches and modern knowledge about the methods of committing these acts. Since the banking sphere ensures the vital activity of enterprises, organizations, and the entire state as a whole, the need to fight against illegal transactions is a primary task for the normal functioning of the economy.

The forms and consequences of the hidden withdrawal of capital are studied in the work of [Baker \(2005\)](#), who distinguishes between criminal, corrupt, and commercial forms of “dirty” money. Based on the analysis of the scope and threats of the spread of hidden capital outflow in all its forms, the researcher concludes that in the absence of decisive and coordinated actions by national governments to combat hidden capital outflow from developing countries and countries with economies in transition, international efforts to combat useless by poverty. [Leonov et al. \(2018\)](#) determined the role and significance of the national anti-money laundering system in modern conditions of the financial market of Ukraine. The main problems in the fight against money laundering have been determined, and the list of the most influential organizations in the field of financial monitoring and the goals of their activities have been determined.

The need to define strategic guidelines for economic and social development and to constantly improve and apply measures to prevent fraud in the financial markets has been proven. The importance of information support and transparency in improving the effectiveness of the system for countering the legalization of criminal proceeds is outlined. However, special studies in the field of European and Ukrainian standards for the prevention of money laundering were not conducted. Legalization of proceeds obtained through crime as a type of criminal activity of organized crime is insufficiently researched by the legal sciences of Ukraine and Europe, therefore there is a need for this research.

The general importance of the study is that the legalization of proceeds of crime in the global sense threatens the economic and national security of each country. In the conditions of armed

aggression against Ukraine, the creation of terrorist organizations, a significant increase in the illegal circulation of weapons, and the level of illegal actions of organized criminal groups is increasing. This creates new threats and challenges both to the country's national security and causes the growth and spread of such a phenomenon as the legalization of proceeds obtained through crime. The questions posed by the research are: to define the concept, the essence of the legalization of proceeds of crime by organized criminal groups, the analysis of the international experience of countering this negative phenomenon, the study of the current state of countering the legalization of criminal proceeds and the development of scientifically based measures to combat this phenomenon.

The study is based on special and generally scientific methods that have contributed to a comprehensive analysis of the subject. To achieve the goals and objectives of the study, the following methods were used: *Dialectical*— used to form the basic legal concepts necessary for a full and comprehensive study of money laundering. *System-structural*— to analyze the content of legalization of property obtained by criminal means and counteract it as a holistic theoretical and applied problem throughout the study. *Historical*— in the process of revealing the stages of formation and development of the studied phenomena, the current state of research, and normative and practical regulation of counteraction to money laundering. *Formal-logical*— during the study of the concept, content, types, and methods of legalization of property acquired by criminal acts of organized crime.

*Comparative*— to characterize the specifics of criminal law protection of public relations arising from money laundering in Ukraine, Western European countries, and the United States, as well as to assess the possibility of introducing foreign experience in domestic law. *Content analysis*— during the processing of the content of Ukrainian and international regulations. *Dogmatic*— in interpreting the category of money laundering by organized criminal groups, research of doctrinal definition of concepts that are the subject of research.

*Logical and normative*— for the analysis of the legislative basis in the field of combating organized crime and money laundering. *Theoretical analysis and synthesis* (induction, deduction, analogy, abstraction)— analyzed scientific views on the problem of money laundering of transnational organized crime, studied current legislation governing the fight against it, and identified and analyzed the main ways of money laundering. *System analysis*— in determining the effectiveness of certain legal and organizational actions to combat the legalization of criminal property at the legislative level.

This research can be categorized as exploratory research. The purpose of this is to try to solve a problem that has not yet been solved by a similar method, namely the study of the current state of combating the legalization of criminal income and the search for ways to combat this criminal phenomenon. Among the qualitative data collection tools used in this study, it is worth highlighting the document analysis, on which this study is based. This method consists of examining the data available in existing documents such as databases, records, reports, attendance records, etc. Therefore, the most important thing for this method is the ability to find, select and analyze the available information.

During the research, the authors analysed 28 articles and 5 books. When choosing a study, we paid attention to the relevance of the data provided by the authors, the novelty of the information, and the relevance of the data to the topic of our study. In particular, such articles on money laundering by criminal groups as: “Priorities of economic development of Ukraine in the context of European integration” (Yunin et al., 2018), “Psycho-Pedagogical Training of Operating Unit Workers of National Police of Ukraine” (Mohilevskiy et al., 2017), “Theoretical and legal analysis of foreign experience on illegal amber production: Environmental and economic aspects” (Drozd et al., 2019), “The concept and essence of ethnicity crime” (Sevruk, 2018), “Counteracting the legalization of proceeds from crime as part of ensuring Ukraine’s economic security” (Grabowski, 2018), “Anti-money laundering: European standards and the Criminal Code of Ukraine” (Dudorov & Tertichenko,

2015), “Some aspects of the international mechanism for detecting, searching, seizing and confiscating criminally legalized assets” (Kramar, 2021), “Criminological characteristics of the personality of members transnational organized criminal groups economic orientation” (Polyanska, 2018), “Fight against transnational organized crime in Ukraine: the concept of national policy” (Zharovskaya, 2018).

## RESULTS AND DISCUSSION

Most countries around the world have faced the problem of “dirty” money at various times. At the same time, money laundering is one of the clearest examples of how quickly criminals navigate the gaps in the legislation of different countries. The lack of adequate response from national jurisdictions and the insufficient development of international cooperation led at an early stage to the impunity of members of organized crime groups that legalized proceeds from the criminal business, especially drug trafficking.

Money laundering cannot be called one of the new manifestations of globalization or other world processes, as the crime that leads to the legalization of illicit income has already been widely studied by legal scholars. However, as an issue to be decided by the state, it has been officially considered at the official level relatively recently —since 1989, when the Paris G7 summit decided to organize an international body to coordinate the efforts of all interested states’ money (ONU, 1989). Since then, the contractual and institutional field of international cooperation has expanded, with support for global initiatives expressed by several influential international organizations such as the ONU, International Monetary Fund, and World Bank Group, which resulted in special programs, recommendations, various commissions, and committees.

Attracting the attention of scientists, politicians, and journalists to the new world processes in combating money laundering was carried out in parallel with a kind of broadening of the guidelines in the study of phenomena about international economic security.



This was due to the phenomenon of globalization and its consequences, the end of the Cold War, and the bipolar world, which had a certain impact on the security environment, adjusting the traditionally accepted postulates. The broad interpretation of security has highlighted as influential security factors those phenomena that would not have attracted close attention a few decades ago — including the process of money laundering. Taking into account the above, the mechanisms, institutions, and technologies of counteraction to the specified phenomenon, and also those aspects based on which the estimation of efficiency of the applied measures is possible to acquire special value (Sliusar et al., 2019; Kniazieva et al., 2021).

The term “money laundering” appeared in the world media in 1973, when the Watergate scandal broke out. But regardless of when this phenomenon appeared and how it is interpreted in the world, the purpose of legalization of illegally obtained income is either to eliminate the risks of arrest or confiscation or to reduce them —to achieve the ultimate goal —the basis of organized crime —at all costs spend criminal proceeds (Yunin et al., 2018).

According to experts from the Organization for Economic Cooperation and Development-OECD, money laundering is a process in which measures are taken to ensure that property of illegal origin gives the impression that it has been acquired legally. Similar is the definition given in the documents of the International Monetary Fund-FMI, according to which the laundering of proceeds of crime is a process of concealing the links between assets acquired as a result of crimes and related crimes.

Similarly, representatives of the scientific community have expressed their commitment to the above understanding of the essence of money laundering. Thus, according to Chaikin and Sherman (2009), in the course of money laundering, the illegal origin of assets acquired as a result of a crime is hidden, or, in other words, “dirty” money or other property is “cleaned” to appear to be legally acquired. A similar view of the essence of this phenomenon is reflected in the scientific works of Hinteseer (2002), who noted

that the legalization of proceeds from crime is to create a veil of illegality over assets of illegal origin, which blurs the relationship of such assets with criminal activity. At the same time, according to [Madinger's \(2002\)](#) apt remark, assets only appear to be legally acquired (they look legitimate) because, regardless of how they are laundered, “dirty” assets will never become “clean”.

Thus, scientific papers on this issue state that money laundering allows the anonymous use of assets in the official economy without fear of being subject to criminal and civil liability or other similar measures, as well as with a significantly reduced likelihood of adverse interference. by competing criminal groups. Similarly, [Dudorov and Tertichenko \(2015\)](#) points out that the legalization of proceeds of crime is the commission of actions with property obtained as a result of the crime, aimed at giving it the appearance of legal origin for further use in economic or other legal activities. Instead, the circulation of proceeds from crime outside the formal economy (within the sector of the economy), according to a fair statement by [Zakharov \(2014\)](#), is not their laundering.

Thus, the essence of money laundering is considered to be the concealment of links between assets acquired as a result of crimes and relevant crimes to increase opportunities for the safest, most open, and productive use of assets acquired as a result of crimes with the least possible the risk of criminal consequences associated with the commission of a predicate offense and the use of proceeds from it.

The definition of “legalization of funds” in the regulations of Ukraine directly follows from the consolidation of this term in ONU international conventions. International documents stipulate that such illegal acts are committed in the financial sphere and consist of the implementation of financial transactions using funds and property of criminal origin ([Yaroshenko, Moskalenko et al., 2019](#)).

The main purpose of strengthening criminal groups and increasing revenues is to obtain excess profits and avoid taxation. However, having received money, criminals have a problem —illegally

obtained money must be somehow legalized, and give them a legitimate appearance, that is, we need to emphasize the opinion of Mr. Raymond W. Kelly, Deputy Secretary of the [Treasury Department of the United States \(1997\)](#) that “Hiding and laundering dirty money are different concepts because by hiding illegally obtained money, the criminal cannot get it until he legalizes it” (pár. 1). Detection and development of organized crime in the economy is very difficult, and in the West’s experience —organized crime leads to money laundering, so legalization hides the danger of undermining legitimate economic activity, destabilizing existing financial and monetary systems, and reducing welfare ([Dudorov & Tertichenko, 2015](#)).

In the context of armed aggression against Ukraine, the creation of terrorist organizations, a significant increase in the illicit trafficking of weapons is increasing the level of illegal actions of organized criminal groups, including firearms and explosives, uncompetitive financial methods, merging with corruption and crime, which pose new threats and challenges against the background of intensified cooperation of the Ukrainian criminal world with organized criminal groups from foreign countries. Legislative and institutional changes declared in the Concept of State Policy in the Field of Combating Organized Crime ([Decree of the President of Ukraine No. 1000/2011, Verkhovna Rada, 2011](#)) have not been implemented. Obsolescence of regulations, gaps in the organization of the counteraction to crimes committed by criminal groups, reduction of special units in the police (National Police), insufficient level of interaction between government agencies, imperfect monitoring of the crime situation and its inadequacy. results of the fight against organized crime, indicate the failure to achieve certain goals. According to official data from the Ministry of Internal Affairs and the Prosecutor General’s Office of Ukraine, 912 organized groups and criminal organizations have been identified in Ukraine over the past five years. In reality, transnational organized crime has much higher rates, which are difficult to detect due to its high latency ([Mohilevskyi et al., 2017](#)).

The mechanism of legalization of criminal proceeds should be considered as the introduction of criminal money into legal circulation through banking and financial institutions, business, and other economic activities. Organized criminal groups and criminal organizations legalize criminal proceeds through banking, financial and economic, foreign economic, and other economic operations, acquisition of movable and immovable property, legal documents, and other documents that act as a monetary equivalent. Of course, for legalization, ie the introduction of criminal proceeds into legal circulation, criminals use a variety of methods. The way to legalize criminal proceeds is a system of actions, techniques, operations, and methods of influence aimed at achieving the criminal goal —the introduction of criminal proceeds into legal circulation (Gnatenko, Yaroshenko, Anisimova et al., 2020; Tatsyi et al., 2010).

Analysis of operational information and materials of investigative practice in Ukraine allows to identify of four main groups of ways of legalization of criminal proceeds by organized groups, criminal organizations, and communities, namely: 1) ways of money laundering; 2) methods of legalization of illegally obtained income; 3) ways of legalization of documents that perform the role of monetary equivalent; 4) methods of legalization of legal documents confirming the right to own movable or immovable (both movable and immovable) property, or part thereof, obtained as a result of criminal activity or participation in it.

The effectiveness and danger of a method of money laundering depend on a carefully thought-out and pre-planned system of actions, techniques, operations, and methods of influencing business entities, officials of banking, financial and credit institutions, and government officials. In particular, these may be excessive, fictitious, illegal actions of business entities, foreign economic and other economic activities; operations of banking and credit, and financial institutions (Kramar, 2021).

Organizers of criminal business plan and use in advance the methods of influencing officials of banking, financial and credit

institutions, government agencies, and business entities (regardless of ownership). This is a bribe; direct bribery, not a separate service, but directly to a civil servant, i.e., his reliability for the constant support, threats, blackmail, extortion, and other coercive (physical and mental) methods against individuals and legal entities. Cash and other movable and immovable property are organized by criminal organizations. At the same time, the organizers of the criminal business use various basic and intermediate active illegal actions to ensure the effective and safe legalization of movable and immovable property (Drozd et al., 2019).

The most common are: the formation of commercial structures (banks, firms) in Ukraine and abroad; acquisition of privatization objects, another real estate for fictitious persons; use of e-mail when transferring funds in foreign currency to the account of a front company or to pay for a business transaction outside Ukraine; fictitious delivery of goods, as if ordered for state needs, for which suppliers do not receive payment, etc. There are many views in the domestic legal literature on what is money laundering. It is indisputable and common for the considerations expressed at different times that laundering is first of all a way (a mechanism) of giving legitimacy to criminally obtained profits and surplus profits (Yaroshenko, Sliusar et al., 2021; Gnatenko, Yaroshenko, Inshyn et al., 2020).

The peculiarity of the current situation is the use of the banking system of Ukraine by criminal groups, which is actively adapted to maintain the level of the shadow economy and legalize illegally obtained funds. Particularly dangerous in the economic system are intermediary firms and so-called “conversion centers,” whose activities are inextricably linked with banking institutions, which are directly used as a tool in banking operations to transfer non-cash money supply from the legal economy to the shadow economy and vice versa (Mordan et al., 2021).

Organized criminal groups increase their level of activity by monopolizing the economy, working for dominance in the field of distribution, and hindering the adoption of laws and decisions in the economic sphere. Many researchers are convinced that money

laundering has become the most profitable and profitable business in the world. Organizers of criminal groups involve highly qualified financial advisers and analysts, lawyers, auditors, etc. to assist in money laundering. Some scholars and practitioners emphasize that “dirty” money enters the legal economy with the subsequent establishment of financial control over the activities of business structures. This leads to further criminalization of the economy and society, subordination of economic levers, and political power to criminal groups (Zharovskaya, 2018).

The activities of organized criminal groups are organically and gradually associated with the laundering of “dirty” money, with the legalization of criminally obtained funds. To launder money outside the countries of origin, criminals usually choose those countries whose financial and credit system has the following characteristics: relatively low level of taxation of financial and economic activities; lack of requirements for registration of sources of origin of start-up capital of business entities (declaration); regulation of secrecy of commercial and/or banking operations; the existence of anonymous bank accounts in domestic and foreign currencies; no restrictions on the freedom of foreign corporations and individuals (Sevruk, 2018).

It is well known that countries with growing economic potential and developing financial centers, but lacking adequate controls, are particularly vulnerable, as countries with long-established financial centers have strict anti-money laundering regimes. If countermeasures are ineffective and investment in financial institutions and gaining control of large sectors of the economy through investment takes an uncontrolled and uncontrolled process, money laundering can have serious social and political consequences for society as a whole. In this regard, the problem of combating the criminalization of the economy is becoming one of the keys (Polyanska, 2018).

It should be noted that the positive processes in the development of international relations also contribute to increasing the level of such negative phenomena as the legalization of illegally obtained

income, namely: the introduction of a visa-free regime and increase migration processes; strengthening political and economic ties in the international community; development of international trade, electronic banking networks and acceleration of international financial transactions (this significantly complicates the control over the movement of funds and facilitates the legalization of criminal proceeds); distinctive features of criminal law in different countries, as well as judicial procedures; increasing the number of varieties of consumer goods and services; increasing the importance of the phenomenon of commercialization in the international community (Grabowski, 2018).

The problem of combating money laundering is one of the unresolved issues in Ukraine and other industrialized countries. Therefore, the fight against this particularly dangerous criminal encroachment has been and remains the focus of international organizations like the ONU, the Council of Europe-CE, and the Group for the Development of Financial Measures to Combat Money Laundering and others. Several international laws support this. In particular, the Vienna Convention for the Suppression of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ONU, 1988), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CE, 1990) and others. To determine the state's counteraction to these crimes, the experience of international bodies must be taken into account.

The mechanism developed at the international level in the field of combating money laundering contains several important steps in tracking assets, such as due diligence by financial institutions and non-financial commercial entities and individuals in certain professions. Each of these elements, fully covered in this publication, should be duly taken into account to establish the ability of investigators to use them to track stolen funds. International cooperation covers three aspects relevant to this topic: mutual assistance in the legal field; extradition; repatriation of illegally obtained funds and property (Tykhonova et al., 2019). Each of these aspects is accompanied by the following problems: banking secrecy; the requirement

of some countries for mutual recognition of the relevant act as a crime; the slow pace of information exchange between countries, in particular, due to differences in procedural systems between countries (Steblyanko, 2020).

The Financial Action Task Force on Financial Laundering-FATF was established at the G7 summit in Paris in 1989 due to the spread of the problem of money laundering (FATF, 2022). It is an intergovernmental body whose main goal is to counter money laundering, it consists of 29 member countries and two regional organizations: the European Commission and the Gulf Cooperation Council. Ukraine is not among the 29 member countries of this group but has already been on the organization's "blacklist," demonstrating non-compliance with the recommendations developed by this group. The FATF works with other international organizations working in this field, such as the United Nations Office on Drugs and Crime, the Council of Europe, the Asia-Pacific Anti-Money Laundering Group, and the Caribbean Financial Action Task Force. The FATF Secretariat is located in the Organization for Economic Co-operation and Development-OECD.

The activities of the FATF are aimed at the following tasks: dissemination of information on measures to combat money laundering on all continents and in all regions of the world; monitoring the implementation of forty recommendations in FATF member countries; review of trends in money laundering and relevant counter-measures ("typological research" to identify new money laundering schemes), etc. (Chao et al., 2019).

Facilitating the implementation by financial centers of international standards in the field of anti-money laundering is a priority of the FATF. To this end, *Forty Recommendations* have been developed, which are the basis of an international system for detecting, preventing, and prosecuting money laundering (FATF, 2022). The Recommendations are not a universally binding international convention, but many countries have committed themselves to adhere to the anti-money laundering principles set out in the Recommendations. These recommendations are currently widely used



by the international community and include the criminalization of criminal liability for money laundering, litigation, and international cooperation in this area. The recommendations emphasize the importance of establishing measures in the field of combating money laundering, increasing the role of the financial and banking system, and international cooperation in this area ([Shevchenko et al., 2020](#)).

The FATF may issue warnings to individual countries, and blacklist countries with high levels of money laundering and low anti-money laundering activities. The FATF may make recommendations to limit cooperation with such violating countries, leading to the suspension of accounts, financial transactions, blocking or closing of accounts, and so on. The FATF Recommendations, as one of the basic documents that guide countries and financial institutions around the world in implementing measures to prevent money laundering, including principles; introduction of rules for customer identification and information monitoring; creation of authorized bodies in the countries responsible for combating the legalization of “dirty” funds; close cooperation of financial institutions with the competent authorities on combating money laundering, etc. Each country, using these recommendations, develops and implements its state mechanisms in counteracting the legalization of criminal proceeds.

It is worth considering counteracting the legalization of criminal proceeds in the example of individual countries. Thus, the recommendations of the US Treasury Department suggest that all available facts regarding transactions in the amount of 10 thousand US dollars be carefully investigated for “suspicion”. Particular care should be taken about transactions and banking relationships if there are doubts about the identification of customers, transactions involving third countries, etc. According to foreign periodicals, major US banks have significantly increased the cost of technology to analyze data on remittances to capture suspicious activity ([Steblyanko, 2019](#)). In total, the laws of 33 US states recognize money laundering as a criminal offense. Many of

these states' laws reflect, albeit to varying degrees, the same or similar provisions in federal anti-money laundering laws, including long prison terms for these crimes (mostly 10 to 20 years) and large fines (for example, the amount of the fine is three times the value of the property that is the object of the criminal operation) (Steblyanko, 2019).

To prevent attempts to launder money in Italy, banks and other financial institutions must keep detailed records of foreign exchange transactions. Criminal liability for money laundering was established by the Gamma Vassal Act of 1990. This normative act also for the first time established the definition of the term “mafia-type criminal organization”. Imprisonment from 7 to 12 years and a fine and even more if these actions are committed by officials for money laundering is provided by Italian criminal law. There is also a statutory obligation of the state to detect and combat money laundering, so when transferring money abroad should immediately provide a declaration of income (Dobrowolski & Sułkowski, 2020).

Spanish criminal law provides penalties for money laundering and provides for imprisonment for more than three years. There is also a law on money laundering, which stipulates the need to combat money laundering by criminal organizations of proceeds from crime, terrorist acts, or drug trafficking. Money laundering is also considered a serious crime, and in the UK it is placed alongside such serious crimes as drug trafficking, terrorism, fraud, robbery, extortion, and more. A specialized Joint Working Group has been set up in the country to coordinate money-laundering activities, consisting of leading figures in the financial sector of the economy. The UK's National Financial Investigation Service (National Crime Agency-NCA, UKFIU, 2022), which includes the Bureau of Foreign Exchange Investigation, is operational.

In almost all countries, special organizations have been set up to combat the legalization of criminal proceeds. In the United States, it is the Department for Enhancing the Fight Against Financial Crime, established under the US Treasury Department;

in Canada, the Center for Financial Operations Analysis, in Japan, the Japanese Financial Intelligence Agency, in Greece, the Special Anti-Money Laundering Committee, in Argentina, the Financial Information Committee, and in Brazil, the Financial Supervisory Board. In Mexico, there are two institutions —the Directorate General for Transaction Investigation and the Anti-Money Laundering Agency. The problem of legalization of criminal proceeds in Belgian economic institutions is addressed by the Financial Information Processing Sector set up by the Ministry of Finance and Justice, which analyzes suspicious transactions and notifications from police, customs, and other public authorities and suspends unusual cash flows if necessary.

As far as Ukraine is concerned, financial transactions amounting to or exceeding UAH 150 000 and having several defining characteristics enshrined in the Law of Ukraine “On Preventing and Counteracting Money Laundering” (Verkhovna Rada, 2019). In addition, according to the Law of Ukraine “On Banks and Banking” (Verkhovna Rada, 2000), cash transactions in Ukraine for more than UAH 150 000 without opening a bank account are subject to the identification of customers who carry out such transactions. In Ukraine, liability for money laundering is enshrined in the Criminal Code of Ukraine (Verkhovna Rada, 2001) and is punishable by 3 to 15 years in prison with confiscation of property, additional sanctions, etc. Thus, in Ukraine, the responsibility for money laundering and non-reporting or illegal disclosure of information about persons carrying out suspicious transactions is one of the most severe in the world (Reznik & Bondarenko, 2020).

A qualitatively new state of society can be achieved through effective management of social spheres of life, continuous improvement of objective processes of development, changes, and shifts in society that occur with the country’s accession to the European Union. These processes should not take place spontaneously, and a system of precautionary measures must be established and operate effectively to combat organized crime. Certain types of social

relations are organically interconnected and only together ensure the functioning and development of social governance. Therefore, it is important to pay attention to the public and scientific opinion that the fight against organized crime, and its functioning is a fundamental process that requires considerable effort, and time, and therefore to solve problems should not forget about the urgent problems of combating organized crime to legalize illegal proceeds. If they are neglected, the strategic goals of the fight against organized crime will not be achieved (Reznik & Bondarenko, 2020; Horobets et al., 2021).

The main recommendations to the participating states are: to declare money laundering a “crime”; take several effective measures to detect, seize, and confiscate legalized money; implement an effective system for identifying clients and implement accounting procedures for financial institutions; to introduce the practice of notifying the competent authorities of the facts of dubious agreements in case of suspicion that criminal funds are in circulation; to maintain close cooperation between states in carrying out law enforcement operations in the counteracting the legalization of criminal funds, etc. In modern conditions, one of the ways to counteract the legalization of criminal funds, the destruction of the financial base of crime, as well as the recovery of the economy, is to exclude the possibility of disposing of illegally obtained income.

Thus, the whole world agreed that the fight against the legalization of criminal funds is a matter of exceptional importance. The national policy of the countries is directed at the development and acceptance of the corresponding laws and by-laws, directives of the international economic communities; Leading world banks establish special rules, and the executive implements appropriate control systems, provides recommendations on specific areas of combating this phenomenon, and so on.

Summarizing and analyzing all the above statements, we can come to common statements in the following. Legalization of proceeds of crime in the global sense threatens the economic and national security of every country, therefore the inter-

national community must join forces to overcome such a negative phenomenon both at the national and international levels. Most of the world's countries at different times faced the problem of "dirty" money, and money laundering has become the most profitable and profitable business in the world. Therefore, the fight against this particularly dangerous criminal offense was and remains the focus of attention of many international organizations. "Dirty" money enters the legal economy with the subsequent establishment of financial control over the activities of business structures. This leads to further criminalization of the economy and society, subordination of economic levers and political power to criminal groups.

The lack of an adequate reaction on the part of national jurisdictions and insufficient development of international cooperation led at an early stage to impunity for members of organized criminal groups who legalized income from a criminal business. So now it is important to pay attention to this issue and take appropriate measures. If anti-money laundering countermeasures are ineffective and investment in financial institutions and gaining control over large sectors of the economy through investment is an uncontrolled and uncontrolled process, money laundering can have serious social and political consequences for society as a whole. In terms of the experience of Ukraine, we can summarize and note the following. Unfortunately, the legislative and institutional changes declared by the state have not been implemented. The obsolescence of the regulatory and legal framework, gaps in the organization of combating crimes committed by criminal groups, reduction of special units in the police, insufficient level of cooperation of state bodies, imperfection, and inadequacy of monitoring of the criminogenic situation can be observed.

Organized crime is becoming a reality of modern life in Ukraine, one of the most negative factors affecting the efficiency and intensity of the process of reforming public relations. There is a situation when the state requires compliance with certain procedures for financial transactions, but cannot properly control the mechanisms

and guarantees of their implementation. The main directions of national opposition to the existence and activities of organized criminal groups are not only the establishment of control over organized crime, its localization, neutralization, and elimination but also the elimination of the reasons for the existence of organized criminal groups. To combat crime in Ukraine, more than 100 regulatory bodies have been established for various purposes, and their number, unfortunately, does not properly provide control in the financial sphere.

The modern legal mechanism of the state policy in the field of combating money laundering is based on principles: the introduction of special preventive measures that complicate the legalization of criminal proceeds; providing public authorities with the necessary information concerning money laundering; establishing responsibility (administrative and criminal) for the money laundering; definition of participation in international cooperation (Lytvyn et al., 2021). As a consequence of clarifying the structural and functional aspects of the organizational mechanism of national counteraction with the legalization of illegally obtained income, it is established that a special functional role in its structure is played by the Ministry of Finance of Ukraine as the state body dealing with issues in the field of preventing and combating money laundering, and State Financial Monitoring Service of Ukraine as a state body engaged in preventing and counteracting the legalization of illegally obtained funds by criminals.

A study of the experience of foreign countries that are members of the FATF in combating money laundering, and terrorist financing, led to the conclusion that today's domestic legislation largely meets the modern requirements of international organizations to combat money laundering and terrorist financing. However, there are reserves for further legal, methodological organizational, and tactical support for the implementation of the Law of Ukraine "On Prevention and Counteraction to Money Laundering, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" to better ensure economic security. That is why the

law enforcement agencies of Ukraine must always be one step ahead of any kind of crime (Zharovskaya, 2018).

The new version of the Law of Ukraine “On Prevention of Legalization of Proceeds from Crime” does not fully comply with international practice, which does not allow Ukraine to fully fulfil its obligations to the world community; bring the Ukrainian financial system closer to international legal standards of transparency; increase the level of investment in Ukraine’s economy from abroad; reduce the share of the shadow sector in the economy; increase the ability of Ukraine’s financial system in particular and public administration in general to resist legalization of illegally obtained income. Today it is expedient to add the Law of Ukraine with provisions on subjects of control over primary financial monitoring and the procedure for its implementation, the mechanism of internal financial control, as well as the procedure for the cooperation of subjects of combating money laundering.

The priority areas should be the improvement of state policy to overcome the phenomenon of money laundering, namely: improving legislation in field of preventing money laundering (development and adoption of relevant laws); strengthening the country’s financial monitoring system and the mechanism of interaction of its participants (improving the quality of information and analytical support of the financial monitoring system, detailing the procedure for providing information to public financial monitoring entities, strengthening cooperation of state bodies —participants of the state financial monitoring system; establishing a mechanism of interdepartmental cooperation (between the State Financial Monitoring Service of Ukraine and law enforcement agencies, law enforcement agencies and the judiciary, domestic and international law enforcement agencies); optimization of risk-oriented approach for efficient allocation of resources in the national overcoming system of legalization promotion of illegally obtained funds (national risk assessment for certain sectors of the financial system, expanding the risk criteria for the implementation of the process of legalization of proceeds from crime); introduction of indicators that characterize

the effectiveness of the anti-legalization system of financial monitoring; creation of a single electronic register of “bank customer accounts”; identification and structuring of guiding documents in the field of counteracting the legalization of illegally obtained funds (Yaroshenko et al., 2018).

Strengthening preventive measures is due to various circumstances, and social rehabilitation, prevention, awareness-raising, and coercive measures to combat crime can only become effective measures to combat organized crime, when harmoniously linked legal measures to combat it —prevention, prevention, cessation of crime, as well as prosecution for it. It is necessary to fight interconnectedly against organized criminal groups and corruption with the help and use of various measures of security, first of all, measures of primary financial monitoring. Compromises are inadmissible neither by the state power nor by society.

Among the important conclusions of the study, it is worth noting in particular the experience of other countries. The international experience has many positive aspects in combating the legalization of criminal income, in particular: the obligation of banks and other financial institutions to keep detailed records of currency transactions; the state’s legal obligation to detect and combat money laundering, therefore, when transferring money abroad, it is mandatory to provide a declaration of income; paying special attention to transactions and banking relations, if, for example, there are doubts about the identification of customers, transactions involving third countries; the activity of a specially authorized body in this area, which ensures comprehensive control and fights against the legalization of criminal income. Among the main results of the study, it is worth noting the recommendations for combating the legalization of criminal income, namely: declare money laundering a “crime”; take several effective measures to identify, withdraw, and confiscate legalized money; implement an effective customer identification system and introduce accounting procedures for financial institutions; introduce the practice of notifying the competent authorities about the facts of dubious transactions in case of suspicion of the



circulation of criminal funds; support close cooperation of states in the implementation of law enforcement operations in the fight against the legalization of criminal funds, etc.

As a result, this study answered such questions as the clarification of the concept and content of the legalization of proceeds of crime by organized criminal groups, the study of international experience in countering this phenomenon, outlined the state and problematic issues of countering the legalization of criminal proceeds and the legislative framework in this area. It is worth noting that this study differs from others in the proposed proposals for improving state regulation in this area, particularly in the example of foreign countries.

It is worth noting that this study also confirms the work of [Leonov et al. \(2018\)](#), where the researchers also focused their attention on the role and importance of the national system of combating the legalization of proceeds of crime, and the relevance of this issue in Ukraine was established. The list of the most influential organizations in the field of financial monitoring and the goals of their activities was studied. The legal framework for combating the legalization of illegal income has been determined. Also, the findings were confirmed in the study of [Kashpur \(2018\)](#), where the current situation in the field of prevention and countermeasures against the legalization (laundering) of criminal proceeds in Ukraine was investigated. Proposals have been made for the introduction of urgent organizational and practical measures at the state level to dramatically improve the efficiency of public administration in the specified area.

## CONCLUSIONS

Today, a significant part of the shadow funds is obtained by committing offenses, including criminal, in the most vulnerable in this regard economic spheres: financial and credit, production, and commercial. Until recently, this situation was considered natural because, in the transition period of market relations, law-making

lagged behind the dynamics of real economic processes, and existing mechanisms of legal responsibility and control, aimed at preventing and stopping any form of manifestation or implementation of illegal behavior using the proceeds of crime and other illegal activities, did not provide an effective fight against such a dangerous antisocial phenomenon. Organized criminal groups and criminal organizations legalize criminal proceeds through banking, financial and economic, foreign economic, and other economic operations, acquisition of movable and immovable property, legal documents, and other documents that perform the role of monetary equivalent.

Recently, the problem of counteracting the legalization of proceeds from criminal activities of organized criminal groups has been raised at the international level. After all, this issue in the global sense threatens the economic and national security of each country, so the international community must join forces to overcome such a negative phenomenon at both national and international levels. The term “money laundering” has appeared in the scientific community relatively recently. However, the world community has already demonstrated the seriousness of its intentions to combat this evil. The 1988 Vienna Convention gave a comprehensive definition of the term, and in 1989 the Financial Action Task Force was set up at the G7 (ONU, 1988; FATF, 2022). And the United States has the richest experience in combating money laundering because in 1970 it was in this country that the active fight against the legalization of illegally obtained funds began.

The use of international experience of state mechanisms to prevent and combat money laundering allows us to identify effective ways to combat this type of criminal activity. The legal mechanism for the fight against the legalization of illegally obtained funds should be improved; improve the organization of the national system of financial monitoring and the mechanism of interaction of its participants; establish a mechanism of interdepartmental cooperation; create a single electronic register of “bank customer accounts”, etc.

It can be considered important for practice that the findings and conclusions based on the results of the study are used and can be used in research—in the course of further research and solving problems related to combating money laundering by organized crime; legislative activity—to improve the current legislation of Ukraine on the implementation of measures to provide legal support to combat transnational organized crime and legalization of property obtained by criminal means; educational process—for the preparation and conduct of lectures, seminars and practical classes in the training of specialists in higher educational institutions; practical activities—for organizational and legal, methodological, informational support of government agencies involved in the fight against of illegally obtained funds by organized criminal groups.

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