THE CHANGES OF THE HUNGARIAN MONEY-LAUNDERING LEGISLATION IN THE LIGHT OF THE INTERNATIONAL AND EU TENDENCIES[1]

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Abstract

In this article, the authors argue that the Hungarian money laundering legislation, in its current form, is a result of intensive international and EU legislation and was highly influenced by soft law. This extensively legislated crime was introduced into the Hungarian Criminal Code in 1994 and has undergone numerous amendments since then, primarily to comply with the requirements of international and EU law. For a long time, Hungary has not included money laundering as an independent crime in the Hungarian Criminal Code. Meanwhile, money laundering is considered a serious transnational criminal act, a form of organised crime that found its way to international instruments and the "European criminal law." However, the implementation of EU law in this manner has affected the Hungarian criminal legislation in force and introduced new legal instruments that were unknown in Hungarian law. These changes resulted in proportionality and applicability issues in criminal law. The central research aspects concern the effects of soft law programmes of advisory and expert bodies of intergovernmental organisations, with particular regard to the FATF recommendations, the legislation of the European Union and the international instruments enshrined in Hungarian criminal law.

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The focus of this paper is broad, including international, EU and national legislation, highlighting the countereffects of such legislative regimes. Also, the authors aim to form a strong opinion on the current money laundering legislation as a conclusion of the article. The study highlights the interrelationships between different levels of legislation in a specific regulatory issue of criminal law, pointing out the difficulties in the application of the law arising from the interlocking regulation.

Keywords: *money laundering, organised crime, transnational crime, Hungarian legislation, international law*

1. Introduction and research scope, methodology

"*Money laundering is giving oxygen to organised crime*"[4]

Money laundering has been around for centuries, and it is a well-known fact that the notorious Al Capone used money laundering to hide the illegal profits from the sale of contraband (Unger, 2013, pp. 19-32). According to most authors, it is the process of converting the proceeds of crime into money, which is mixed with legal funds to make the illegal money appear legal. As a result, it becomes difficult to distinguish legal from illegal money (Korejo, Rajamanickam, & Md. Said, 2021, pp. 725-736). The common feature of the definitions of money laundering described by numerous authors is that almost all involve the concealment, movement or investment of incriminated assets (Teichmann, 2020, pp. 237-247). No institution or country is "immune" to money laundering, which facilitates criminals' protection of their assets from crimes such as corruption, drug trafficking, or other financial crimes. The criminals exploit the same globally connected financial system that benefits companies and people (Bardin, Bouveret, Jackson, & Markevych, 2023). According to some older sources, money laundering is a global issue estimated to reach USD 2.85 billion (Walker, 1999, pp. 25-37). EUROPOL's website, citing the United Nations Office on Drugs and Crime, states that between 2 and 5 per cent of global GDP is laundered yearly. This translates to a staggering €715 billion to €1.87 trillion per year, roughly between USD 772.2 million and USD 2.0196 trillion (Europol, 2021). Money laundering, a means for criminals to enjoy the profits of their illegal activities without revealing their source, is a significant challenge. Given that almost all crimes are committed for profit, the need for effective action against money laundering is a pressing priority (Europol Financial Intelligence Group, 2015).

[4] Enrique Peña Nieto, former President of Mexico, in June 2012.

International instruments, including multilateral treaties and extensive soft law, were accepted in the international sphere to combat money laundering as a financial crime and demolish tax havens. International organisations, such as the Council of Europe and the Organisation of Economic Cooperation and Development, have established committees and advisory bodies to support the member states' activities in the fight against money laundering and to provide reliable data on the financial risks of these countries. This information benefits companies and persons who want to invest significant financial resources and the states in improving the legislation and policies concerning institutions, the bank sector, and financial operations. The European Union has also intensively improved the framework to fight money laundering and terrorist financing. Member States must implement the AML Directives[5] that have also influenced criminal law. Although several binding acts are in force in Hungary to combat money laundering (Hungarian National Bank, 2024), in this paper, the authors emphasise the role of the "*ultima ratio*" legislation in that criminal law. Hungary did not penalise money laundering as a separate act for a long time. However, the European Union membership and the ratification of relevant international instruments have resulted in severe changes in legislation.

Based on those mentioned above, the authors of this article formulated related research questions. Firstly, how do non-binding sources influence money-laundering legislation in nation-states since many of the accepted instruments are accepted in this form? Furthermore, as an EU Member State, Hungary has to fulfil the obligations arising from EU law, so the paper will summarise the cornerstones and baselines of the EU money laundering regulation concerning Hungarian legislation. The intersections of the EU and international money laundering regulations are identified when possible. Moreover, the main scope of the article is to detail how the Hungarian money laundering regulation has changed with time as a result of the international and European norms. In order to answer the research questions, the authors of the study used mainly qualitative tools to analyse relevant international and EU legal sources. Furthermore, they cite Hungarian authors on the subject, given that the uncertainties in the application of the law arising from the new legislation have found their way into the Hungarian legal literature. However, no exploratory study on the international, EU and domestic scene has yet been published on the topic, so in the authors' view, this article can be considered niche in this context. Given that the authors have taken a comprehensive approach and that, as indicated, there is a wide range of resources available in domestic law to prevent money laundering, this study has focused exclusively on developments in criminal law and some of the enforcement challenges of the new legislation.

2. The effect and importance of international money laundering regulation and soft law on Hungarian legislation

[5] AMLDs: EU Anti-Money Laundering Directives.

This chapter describes the international organisations that have established expert bodies on money laundering over the last two decades. Furthermore, the authors analyse the significance of the blacklists adopted by these bodies and their impact. Finally, they identify the international conventions that Hungary has ratified, which have had an impact on Hungarian criminal law.

2.1. Expert bodies on money laundering fostering national legislation and the relevant international treaties

The fight against organised crime is a priority of the international community, and to support this goal, a wide range of soft laws[6] (Blutman, 2010, pp. 605-624) and hard laws were accepted. If a state becomes a party to a convention, it has to harmonise the national law with the obligations arising from the convention because the internal law cannot be contradictory with international law. Based on the general principles of international law, the state cannot invoke national law to justify non-compliance with international obligations: "*a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.*"[7]

The United Nations (UN), more precisely the UNODC,[8] are essential actors in fighting money laundering. UNODC encourages States to develop policies to counter money laundering and the financing of terrorism, monitors and analyses related problems and responses, raises public awareness about money laundering and the financing of terrorism and acts as a coordinator of initiatives carried out jointly by the United Nations and other international organisations. Among the international treaties accepted within the frames of the UN, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[9] must be mentioned. The Convention was announced in Hungary by Act L of 1998. Based on Art. 3, the parties must accept measures to establish criminal offences in domestic law when the acts listed in the given article are committed intentionally. These acts include "*the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance.*" Furthermore, the most comprehensive international instrument concerning organised crime is the

[6] Soft law has several meanings in public international law. Generally, it is a collective term for non-binding instruments, but the definition also refers to unspecified treaty clauses.
[7] Vienna Convention on the Law of Treaties, 1969 (1980). UNTS Vol. 1155, p. 331. Art. 46.
[8] United Nations Office on Drugs and Crime.
[9] 1988 (1990). UNTS Vol. 1582, p. 95.

Palermo Convention,[10] which encourages the State Parties to adopt necessary legislative and other measures to criminalise the laundering of proceeds of crime.[11] The Convention was adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations.[12]

Since its establishment in 1949, the Council of Europe has been instrumental in protecting human rights and the rights of minorities, as well as supporting democratic values and the "rule of law." The intergovernmental organisation is considered a regional organisation with specific competence, consisting of 46 member states in 2024.[13] The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) is a permanent monitoring body of the Council of Europe. MONEYVAL is responsible for evaluating compliance with the most important international instruments combating money laundering and terrorist financing. The monitoring body also provides expert opinion on the effectiveness of such regulations. In this manner, another crucial role of the Committee is to articulate recommendations towards national authorities about the necessary improvement of regulation and enforcement. The aim of MONEYVAL, through mutual and expert reports and regular inspection, is to improve the national authorities' capacity to combat money laundering and terrorism financing (Council of Europe, 2010). The forerunner of the MONEYVAL is the PC-R-EV, established in 1997. Since 2001, the PC-R-EV and MONEYVAL have evaluated Hungary on several occasions. As a result of the monitoring, critical observations were articulated regarding Hungarian criminal law and law enforcement. These comments have greatly influenced the relevant legislation. Hungary's mutual evaluation report (MER) was adopted in September 2016, and since then, it has been placed in enhanced follow-up.[14]

In 1990, the Council of Europe accepted the "Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime,"[15] announced by Act CI of 2000 in Hungary, the so-called "Strasbourg" Convention. In 2005, another instrument was adopted, the "Warshaw Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the

[10] United Nations Convention on Transnational Organised Crime (Palermo Convention). The Convention was announced by Act CI of 2006.
[11] Art. 6.
[12] 2000 (2003). UNTS Vol. 2225, p. 209.
[13] The Russian Federation was excluded from the Council of Europe in the spring of 2022 (15 March), based on the opinion of the Parliamentary Assembly. *See* Opinion 300 (2022) Consequences of the Russian Federation's aggression against Ukraine.
[14] The last follow-up was accepted in May 2024 and is available at https://www.coe.int/en/web/moneyval/jurisdictions/hungary.
[15] Council of Europe Treaty Series - No. 141. (1990).

Financing of Terrorism," that influenced Act C of 2012.[16] Based on Art 9 para 1 a) the parties to the Warshaw Convention must accept offences under their domestic law when the following acts are committed intentionally: "*the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions"* and *"the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds*."

The OECD[17] is an economic analytical and statistical organisation, but its activity includes the liquidation of tax havens and the legality of financial operations. First published in 2009, the "Money Laundering and Terrorist Financing Awareness Handbook for Tax Inspectors and Tax Auditors" complements national policies rather than replacing them. Financial crime, including tax evasion, money laundering and terrorist financing, undermines the political and economic interests of states and other entities and poses a severe threat to national security. Tax crime is a significant source of dirty money, and as such, tax authorities play a central role in detecting and reporting money laundering and terrorist financing. The OECD-based FATF[18] helps to fight money laundering by adopting recommendations. The most recent guidelines were adopted in 2003 in response to the following challenges: defining the list of offences that form the basis for the crime of money laundering; extending the customer due diligence process for financial institutions; enhanced measures for higher risk customers and transactions, including correspondent banking and politically exposed persons; extending anti-money laundering measures to designated non-financial businesses and professions (casinos; real estate agents; precious metals/stone dealers; accountants; lawyers, notaries and independent legal professions; trust and company service providers); the inclusion of critical institutional measures, in particular with regard to international cooperation; the improvement of transparency requirements through adequate and timely disclosure of beneficial ownership rights of legal entities such as companies or arrangements such as trusts; the extension of a number of anti-money laundering requirements to terrorist financing; and the prohibition of front banks (FATF, 2003, pp. 1-3).

International cooperation on money laundering is based on the exchange of information between states, national authorities, international organisations and their various monitoring groups. In recent decades, several international conventions have been adopted, some of which cover the fight against

[16] Council of Europe Treaty Series - No. 198. (2005) Act LXIII of 2006 announced the Convention in Hungary.
[17] Organisation of Economic Cooperation and Development.
[18] The Financial Action Task Force.

organised crime comprehensively and others which deal specifically with the issue of criminalisation of certain offences. Evaluations of monitoring and advisory systems such as MONEYVAL and FATF allow states to improve relevant legislation and fight against crime based on independent, expert feedback. At the same time, cooperation between national authorities and states, effective information exchange and the definition of common objectives are important elements in the fight against organised crime and money laundering.

The role of soft law norms and other policies accepted in money laundering is questionable. Based on practical experience, regional entities are trying to ensure compliance with the FATF Recommendations, which is visible in the case of the European Union. Also, regional FATF-style regional bodies, including The Eurasian Group on Combating Money Laundering and Financing of Terrorism, necessarily aim to provide assistance with the enforcement of international standards (EAG, 2003). Money laundering is not an international crime but an illegal activity that can be considered transnational in nature, and the international community includes it in the area of organised crime. So, money laundering is covered by international law, but enforcement and prosecution of perpetrators remain a national jurisdiction. The FATF statements on "high-risk and non-cooperative jurisdictions" can result in *"reputational damage and can be economically devastating*" (Keesoony, 2016, p. 147). The blacklist was not without any precedent since the International Monetary Fund introduced the first list of tax havens in 1999 (IMF, 1990). Later, the OECD and the FATF joined the "black listers," but since 2005, no European Country can be found on the FATF blacklist. The role of the FATF blacklist serves several purposes: transparency, publication strategy and public warning (Unger & Ferwerda, 2008, pp. 14-15).

3. How the European Union regulate money laundering

Over time, the connection between the EU and international law has become "*more diverse*" and robust due to the EU's growing international role (Molnár & Wessel, 2024, p. 2). This phenomenon resulted in more complex legal situations since the European Union can negotiate and sign international treaties within its external competence. In this manner, in money laundering, the EU considered international instruments, such as the FATF recommendations, in further developing money laundering regulations. The relevant framework decision on the money laundering offence was adopted in 2001, with requirements for the qualification of the offence.[19] The Framework Decision draws heavily on the 1990 Council of Europe Convention. However, the decision was not considered sufficiently detailed in defining the constituent

[19] 2001/500/JHA: Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime. OJ L 182, 5.7.2001, p. 1–2 CELEX-32001F0500.

elements and penalties for money laundering, and further legislation was needed. Previously, in the context of the fight against organised crime, the Council had already adopted a Joint Action on money laundering, the identification, tracing, freezing, seizing, and confiscation of instrumentalities and the proceeds from crime on 3 December 1998.[20]

The European Union adopted six directives to combat money laundering and terrorist financing so far. In 1991, Council Directive 91/308/EEC[21] defined money laundering in terms of drug offences and imposed obligations in relation to the financial sector. Later on, Directive 2001/97/EC of the European Parliament and of the Council[22] extended the scope of the previous legislation regarding the crimes and the range of professions and activities covered. In June 2003, the FATF revised its Recommendations "*to cover terrorist financing and provided more detailed requirements concerning customer identification and verification, the situations where a higher risk of money laundering or terrorist financing may justify enhanced measures and also the situations where a reduced risk may justify less rigorous controls*." Those changes were reflected in Directive 2005/60/EC of the European Parliament and of the Council[23] and in Commission Directive 2006/70/EC (Directive (EU) 2015/849, 2015). In 2015, the 4th AMLD was adopted and later modified by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018[24] (AMLD V). Directive 2018/1673/EU of the European Parliament and of the Council on combating money laundering by criminal law was adopted in 2018. The Directive entered into force on 2 December 2018 and had to be implemented into national law by 3 December 2020. Hungary has adopted sixteen different measures to harmonise Hungarian law with the rules of the Directive. These include amendments to Act XC of 2017 on Criminal Procedure and Act CIV of 2001 on Criminal Measures against Legal Persons (EURLEX, 2020). The Directive is part of a legislative package. The Directive 2015/849/EU on preventing the use of the financial system for money

[20] 98/699/IB.

[21] Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering OJ L 166, 28.6.1991, p. 77–82.

[22] Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration OJ L 344, 28.12.2001, p. 76–82.

[23] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing OJ L 309, 25.11.2005, p. 15–36.

[24] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU OJ L 156, 19.6.2018, p. 43–74.

laundering or terrorist financing[25] is considered comprehensive legislation. It lays down reinforcing and complementary provisions to Regulation (EU) No 2018/1672 on controls of cash entering or leaving the Union. Directive 2018/1673/EU also defines the criminal offence of money laundering and sets out the penalties to facilitate police and judicial cooperation between Member States. The aim is to prevent criminals from taking advantage of more lenient legal systems. The key concept in the legislation is "property."[26] The main points of the Directive are the primary offence, the offences, the aggravating circumstances, the other elements of criminal liability and the penalties and sanctions. The Directive establishes a basic definition of the criminal offence and declares twenty-two different categories reflecting other legal sources that must be penalised.[27]

In 2024 the new AMLD VI was adopted, Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024[28] on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 that still must be implemented by the EU Member States. Besides the directives, in 2024, the EU accepted two regulations that have a direct effect, and they are directly applicable in member states. The first is the Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.[29] The second is the Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.[30] These new instruments strongly refer to the FATF Recommendations, highlighting that the EU strongly follows

[25] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) OJ L 141, 5.6.2015, p. 73–117 CELEX-32015L0849.

[26] Art 2. 2. "*means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets*."

[27] Directive 2018/1673 Art. 2. para 1) (a)-(v).

[28] Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive(EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 OJ L, 2024/1640, 19.6.2024.

[29] OJ L, 2024/1624, 19.6.2024.

[30] OJ L, 2024/1620, 19.6.2024.

international policies to establish a coherent and well usable system to combat financial crimes.

The Member States of the European Union are in a complicated situation since internal law must comply with international obligations arising from conventions and the law of the European Union. It is interesting to question whether there is any EU competence to accept criminal law measures and on which ground the EU can accept legislation as part of "European criminal law." The common legislation can be accepted because of the area of freedom, security and justice, in which legislation is accepted to support the security of EU citizens. EU criminal law, in a broader sense, "*may also include the appropriate interpretation and application of the relevant provisions of national criminal law*" (Karsai, 2023). Based on Art 67, paragraph 3, of the Treaty on the Functioning of the European Union (TFEU): "*the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws*."

A minimum level of regulation has been set at the EU level for certain offences, resulting in the harmonisation of criminal law in the Member States for certain offences. The minimum rules cover both the constituent elements and the penalties (Blaskó & Budaházi, 2019, p. 80). Under Article 83 TFEU, minimum rules have been set for the following offences: terrorism; trafficking in human beings and sexual exploitation of women and children; illicit drug trafficking; illicit arms trafficking; money laundering; corruption; counterfeiting of currency and other means of payment; cybercrime and organised crime. In EU law, the nature of the source of the legislation adopted is an indication of the purpose of the legislation. If the EU adopts a directive, its purpose is to provide a framework of harmonisation that sets out the objectives to be achieved but leaves it to the Member State to choose the precise instrument. Directives must be implemented by the Member States or the Member State to which they are addressed, i.e. transposed into national law. A Regulation, conversely, is an instrument of unification that is directly applicable. A Regulation is adopted in cases where Member States need to act in a uniform way (Blutman, Az Európai Unió joga a gyakorlatban [The Law of the European Union in practice], 2013, pp. 277-278).

4. Be or not to be? – the history and changes of money laundering legislation in Hungary

In the following, the authors concentrate on Hungarian legislation and how it has changed over time due to international standards and EU regulations. The different happenings appear in chronological order to provide an approach that

can be followed. For a long time, money laundering was a "*tabula rasa*" in the Hungarian legislation that has changed as a result of EU membership.

4.1. Early history of money laundering legislation in Hungarian law

Money laundering has not existed as a specific crime in Hungarian criminal law for a long time, although before the regime change in 1990, it was not a typical offence at all. Organised crime did exist, but the banking system was underdeveloped and one-tiered, and the HUF[31] was not convertible (Tóth & Gál, 2005, p. 186). Nevertheless, money laundering should have been criminalised back in the 1980s. Prior to the change of regime in Hungary, organised crime and related money laundering were already closely related phenomena in the 1980s. On the one hand, certain criminal groups committed crimes against property (burglaries) and on the other hand, international smugglers appeared in Hungary. The former laundered the proceeds of their crimes by buying and running small commercial and catering establishments. Already in the 1990s, it would have been possible to curb organised crime if the legislator had regulated the financial and economic situation of money laundering, not only utilising criminal law instruments with higher penalties but also by confiscating the assets of criminal organisations (Dános, 2023, pp. 779-795).

Banking services were available only through a few savings and loan associations and were limited to deposit and loan applications. There was no stock exchange or foreign exchange transactions, and only Hungarian citizens could have deposits (Molnár C., 2003, pp. 252-255). After the regime change in 1990, the economic and social transformation and privatisation were accompanied by the emergence of new economic crimes. In addition, the single-tier banking system was replaced by a two-tier system, and the overly broad interpretation of banking secrecy provided a fertile ground for money laundering. All this contributed to Hungary's emergence as an area for money laundering by 1993-94 (Tóth & Gál, 2005, p. 186).

Other reasons that should have induced money laundering legislation included the lack of legislation to protect the financial sector, the absence of identification and reporting requirements, the over-extension of banking secrecy in investigative requests, the spread of organised crime to a degree that law enforcement agencies were unable to keep up with, the opening of borders, the rapid development of a two-tier banking system and the rapid entry into international markets that attracted both legal and illegal capital (Molnár C., 2003).

In these circumstances, Hungary signed the Accession Treaty to the European Union. Article 86 explicitly commits Hungary to combat money laundering

[31] Hungarian forint.

(introduced in Hungary by Act I of 1994). In the Treaty, Hungary committed itself to making every effort to prevent money laundering and to introduce appropriate legislation equivalent to that adopted by the Community and other international fora in this field, including the Financial Action Task Force (FATF).

Finally, the emergence of organised crime, Hungary's bad reputation in the field of money laundering and the commitment undertaken in Article 86 of the Accession Treaty led to the amendment of the Hungarian Criminal Code with Act IX of 1994, which criminalised money laundering, and the amendment of Act LXIX of 1991 on financial institutions and financial institution activities, which was in force at the time. These modifications of the Hungarian legislation made it possible to impose penalties for failure to notify (Tóth & Gál, 2005, p. 187). The act adopted at the time − the practice followed by the current law − made money laundering an accessory offence. On the one hand, it specified the predicate offences. It had to be an offence punishable by at least five years' imprisonment committed by another person, or it could be committed on property derived from smuggling of human beings, drug trafficking or breach of an international legal obligation. The offence was committed by concealing the property in the following ways: concealing or disguising the origin of the property, or providing false information to the authorities about it. Similarly, the law made it a criminal offence to acquire or use the property resulting from such acts for one's benefit and to keep, sell or carry out a financial transaction. It also penalised breaches of other statutory reporting obligations concerning money laundering, which typically affected financial institution employees and accountants. At the time, a qualifying case was defined in the law as a person who committed money laundering on a commercial basis, in the framework of a money laundering organisation, or, as a special subject, an officer or employee of a financial institution, a securities dealer, an investment fund manager, an insurance company or an organisation for the organisation of gambling, an official, or a lawyer.[32]

4.2. The effect of the international instruments adopted by relevant organisations

The year of the millennium has impacted the regulation of money laundering in Hungarian domestic law. On the one hand, Hungary incorporated the "Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime," the Strasbourg Convention. On the other hand, Hungary was included in the FATF blacklist as a country at risk from the point of view of money laundering. This was because, at that time, there was still a so-called

[32] Art. 303, Act IX of 1994 on the modification of criminal law.

"*book of savings deposits for presentation*" or "*book of savings deposits with a sign*" available in Hungary (FATF-GAFI/OECD, 2001).

As a result of the FATF report, a new law was introduced in Hungarian domestic law, and the wording of the money laundering offence was amended in the Hungarian Criminal Code. The new legislation was introduced by Act LXXXIII of 2001 on tightening provisions to prevent money laundering and imposed specific restrictive measures. The law abolished anonymous deposits, and securities could only be issued in registered form. As most of the money was in cash then, persons crossing the state border were legally obliged to declare to the competent customs authority any cash exceeding one million HUF. Furthermore, the activity of money changers has been tightened, according to which only credit institutions or their agents may carry out such activities.

Although the Strasbourg Convention did not expressly impose a legislative obligation on the States Parties in this respect, the Hungarian legislator has, by the amendment mentioned above to the Criminal Code, ultimately extended the scope of the previously limited predicate offences: not only the previously mentioned offences of more than five years imprisonment or the listed offences[33] may be predicate offences, but any other punishable act. The other noteworthy change introduced by the Hungarian legislator in paragraph 3 is that money laundering can be committed not only on the property derived from the offence committed by another person but also on the offender's assets. The latter act reflects the fact when the perpetrator commits a profit-making offence and tries to hide the assets derived from it, he could also be held liable for money laundering. The latter was introduced into the Hungarian Criminal Code as a result of the Strasbourg Convention, which has already been invoked. Article 6(1) contains a reference to it: *"Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally: the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions."* Although the Convention concedes in Article 6, paragraph 2 (b) that *"For the purposes of implementing or applying paragraph 1 of this article: it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence,"* but the Hungarian legislator did not use this option and made the self-money laundering a criminal offence. As a result of the amendments introduced, the FATF removed Hungary from the "blacklist."

[33] The explicit list of drug trafficking, smuggling of human beings, and property is derived from the breach of an international legal obligation.

4.3. The result of EU Directives on Hungarian legislation

The definition of money laundering in the Hungarian Criminal Code was amended again on 1 July 2007, and a new Act on the Prevention and Suppression of Money Laundering and Terrorist Financing was accepted.[34] These amendments were made in response to the publication of the third EU Money Laundering Directive. As Hungary became a member of the EU on 1 May 2004, the EU directives had to be implemented. The legislator has extended the scope of the conduct in the new text.

For this concealment, money laundering could be committed not only by using the object of money laundering in the course of economic activity but also by transforming or transferring the object. The amendment was introduced by Article I(1)(a) of the Directive. The concealment or disguise of the whereabouts of a right or a change in a right in an object, also to disclose the origin of the object, has been made an offence, which was amended based on Article I(2)(b) of the Directive. This latter amendment has made it possible to criminalise certain stewards or even lawyers who assist in laundering money. It has been made punishable conduct to obtain property derived from a criminal offence (the offender may have obtained it for himself or for another) or to handle, use, exploit or obtain new property in exchange for it, provided that he knew that the property was derived from a criminal offence. The Directive introduced the latter into the Hungarian Criminal Code by Article I(2)(c). The latter also made it possible to criminalise a ”strawman” involved in the concealment of money laundering. Criminal law and new legislation on preventing and combating money laundering and terrorist financing were drafted in response to the directive. For example, the introduction of the concept of “public figure” in the legislation (Article 3(8)) is a change compared to the previous legislation.

The incorrect implementation of EU law can also lead to proportionality issues. For example, money laundering has resulted in the annulment of the crime “dealing in stolen goods,” which has a centuries-old past and practice. Money laundering is now more seriously punishable than the underlying act of theft or embezzlement. Based on the literature, this is a “*side effect*” of the improper implementation of EU legislative obligations to Hungarian criminal law (Bartkó & Szomora, 2023, p. 9).

4.4. The new Criminal Code and its money laundering legislation

Irrespective of international and EU legislation, a new Criminal Code was codified in Hungary in 2012.[35] The new law changed the definition of money laundering compared to the previous legislation of 2007 in that the legislator

[34] Act CXXXVI of 2007.
[35] Act C of 2012 on the Criminal Code.

has added to the purpose of money laundering that the offence can also be committed to "frustrate" criminal proceedings. It has extended the scope of the offence to cover up, i.e. if the offender converts, transfers or performs any financial activity in connection with the property derived from the offence in order to conceal the origin of the property. The previous wording of the offence only included the term "concealing," but the Hungarian legislator was made aware by MONEYVAL that the international conventions include both "concealing" and "disguising," so that both terms had to be included. Some authors have also pointed out differences between the two concepts. While concealment is passive conduct, under which the offender can only be punished if the perpetrator has a legal duty to disclose the information, disguising is active conduct, whereby the offender deliberately tries to obscure the link between the object of the offence and the perpetrator of the underlying offence (Jacsó & Udvarhelyi, 2019, pp. 295-309).

The European Union's Anti-Money Laundering Directive V[36] resulted in major changes to Hungarian criminal law in 2020. With the Hungarian Criminal Code amendment,[37] the legislator established very complex law. The new legislation is also enshrined in literature, and based on relevant sources, money laundering can be utilised in five clusters.

According to Gál, based on the current Hungarian criminal law, money laundering has five basic forms. The first type is "*substantive static money laundering,*" in which the offender conceals the origin of the property derived from the offence, the right to it, or the property's location. This type of offence is effectively "*self-money laundering*." It is "*static*" because it does not result in a transformation of wealth in economic terms. If the offender commits a wealth-generating offence (e.g. theft, fraud) and conceals or disguises the benefit derived from it, he or she may be charged with money laundering.[38] These two offences (concealment and disguise) raise interpretation questions about self-money laundering, which will be discussed afterwards (Gál, 2021, p. 28).

The second type is "*purposeful dynamic money laundering.*" Section 399 (2) defines this form as the following: "*A person who receives from another person, hides, transforms, transfers, participates in alienating, uses, or performs a financial activity or utilises a financial service regarding, or disposes of, property originating from a punishable act for the purpose of concealing or disguising its origin, location or a right on it, or any changes to such origin, location or right also commits money laundering*." It is called "*dynamic,*" since the vast majority of offences result in a transformation of wealth in economic terms (Gál, 2021, p. 28). For example, a painting is turned into cash, or stolen

[36] Directive 2018/1673

[37] Act XLIII of 2020 amending the Criminal Procedure Act and other related acts.

[38] Section 399 (1) "*A person who conceals or disguises the origin or location of, or a right on, property originating from a punishable act, or any changes to such origin, location or right is guilty of money laundering*."

goods are incorporated into something else. In the transfer of criminal property, the property is taken out of the offender's possession, and another person acquires possession by contract or deed. Contribution in the transfer means any assistance by active conduct. "Use" means that the offender transforms the property of criminal origin for his own or another purpose, for example, by using some or all of the stolen money to buy property and engaging in financial activities or using financial services in connection with criminal property. In this context, the legislation may raise concerns in relation to the criminal law principle "*ne bis in idem*." The concerns raised are somewhat allayed by the justification for the relevant phrase: "*The principle of criminalisation is based on the fact that the presentation of the proceeds of crime as assets derived from a legal source through operations in the financial and economic sphere carries a danger to society in its own right that is beyond the scope of the basic offence. This danger, which goes beyond the damage to property caused by the predicate offence, means that, although it is limited in scope, the subsequent acts of the perpetrator of the predicate offence, which are intended to disguise the origin of the offence, are punishable. […] only conduct which is not necessarily ancillary to the commission of the predicate offence may be subject to separate criminal law assessment, under the prohibition of double assessment* (Assistant Attorney General for Criminal Law, 2017, p. 1)."

The third type is "*dynamic money laundering of an abetting nature*." With material aiding and abetting, that is, the form of aiding and abetting in which the perpetrator "contributes to securing the benefit of the crime," there is a relationship of speciality. Only money laundering will be declared if both crimes can be established, except in one case. If the offender seeks solely to avoid criminal liability by destroying property derived from the commission of an offence and constituting material evidence (Gál, 2021, p. 29). Based on Section 399 (3), "*A person who a) participates in preventing forfeiture of assets or asset recovery against another person, or b) seeks to prevent forfeiture of assets or asset recovery against another person by receiving from another person, hiding, transforming, transferring, participating in alienating, using, or performing a financial activity or utilising a financial service regarding, or disposing of, property originating from a punishable act also commits money laundering*."

The fourth type is "*dealing in stolen goods-type static money laundering*." In this type of offence, the offender acquires, retains, conceals, manages, uses, exploits, transforms, transfers or assists in the disposal of property derived from the criminal offence committed by another person.[39] It is important to note that this latter offence existed separately in Hungarian criminal law since the first

[39] Section 399 (4) "*A person who a) acquires, or acquires a right of disposal over, or b) safeguards, hides, manages, uses, utilises, transforms, transfers or participates in alienating property originating from a punishable act committed by another person also commits money laundering*."

Hungarian Penal Code of 1878, under "*dealing in stolen goods*." Still, this amendment removed the autonomy of the crime.

The fifth type is "*negligent money laundering*." The offences are the same as the static dealing in stolen goods offences and the dynamic, purposeful money laundering offences. However, it is essential to note that in this case, the offender is negligent in not knowing the origin of the property (Gál, 2021, p. 29).

With the amendment, the object of the offence has been changed to assets instead of the former "*thing*." The notion of thing was also to be interpreted broadly since, in addition to corporeal objects which can be taken into possession, the interpretative provision of the Criminal Code extended it to include deeds of title and dematerialised securities. However, the definition of assets can also include new types of assets (e.g. cryptocurrencies) and is therefore in line with the 4th Money Laundering Directive. The legislator maintained the "*all crime*" approach since it did not limit predicate offences. (Jacsó, 2021, pp. 207-220). The definition of "*punishable offence*" applies as explained above. On the one hand, the offence does not have to have been finally adjudicated by a court or be committed in the territory under the jurisdiction of Hungary.

4.5. The practical challenges of legislation in application with particular regard to self-money laundering

From an enforcement perspective, self-money laundering, as defined under point 11 of Directive 2018/1673, may create uncertainty in enforcement in that a person who launders one's own money may commit the offence by concealment and disguise. Relevant sources mention that making self-money laundering a criminal offence is dogmatically questionable since a person who commits an offence against property, e.g., theft, by concealing the stolen property and not reporting it can be held liable for money laundering (Polt, 2023, pp. 765-778). Other sources mention that it is against the prohibition of double counting (*ne bis in idem*) to punish an offender who launders his own money by covering it up, even though this was a requirement of Directive 2018/1673 (Gál, 2023, pp. 741-763). In this context, judicial practice implies that offences of "concealment" and "covering up" involve more than merely the passive retention or use for the intended purpose of the criminal property (Mezei, 2023, p. 524). Based on the literature, "concealing" or "disguising" is not just a passive retention of assets of criminal origin or the proper use. In this context, the assets lose their "*original characteristics and appear to the outside world as if the incriminated assets were not derived from a criminal offence*" (Ambrus & Mezei, 2023, p. 259).

The origin of the wealth becomes hidden from the outside world, and its origin from crime disappears. It should be stressed that the intention to conceal the

origin must be proven. If the offender exchanges the stolen cash for foreign currency, this does not constitute money laundering unless the intention to conceal the origin can be proven. Based on a decision of the Regional Court of Appeal of Szeged, the offence of money laundering by the offender himself is only a factual offence, for example, if he uses the property to disguise its origin during an economic activity. Without such a purpose, depositing unpaid tax in a bank account in one's name would also be a criminal offence since one has already carried out a banking operation with the money from tax evasion. It would then be inappropriate (and unfair) to prosecute separately for money laundering (BH.2006.5.143). The Court emphasised: "*the legal interpretation by the prosecution that considers the crime of money laundering to be established even without the purpose of detecting the origin of the money could even lead to the situation that, for example, if someone steals cash in the course of a crime against property and later exchanges it for foreign currency, which he intends to spend during a trip abroad, he would commit the crime of money laundering by this behaviour, which would definitely be contrary to the original legislative intention.*" Dealing with stolen goods also has practical problems, such as money laundering. The inclusion of dealing in stolen goods in the offence of money laundering, with a sentence of up to five years imprisonment, may mean that a perpetrator of dealing in stolen goods who takes something of lesser value from theft may face this penalty. In comparison, a perpetrator of the basic offence of theft may face only two years imprisonment (Gál, 2023.). This also emphasises the previously mentioned proportionality issues.

Specific provisions of international treaties and European Union directives on interpreting the predicate offence assist the practical application of the law. For example, the Strasbourg Convention states that "*it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party*." This gives guidance to law enforcement officials. In cross-border money laundering cases, there should be no obstacle to prosecution if the predicate offence and the money laundering are committed in different countries. The provision in Directive 2018/1673, explaining that the "*punishable acts*" in the Directive do not need to be acts that a court has finally adjudicated and that they do not need to be committed in the territory under the jurisdiction of Hungary may also be helpful. These provisions also serve as an aid to interpretation for those applying the law.

The following table summarises the most significant changes in Hungarian money laundering legislation based on international or EU law.

Most significant changes in money laundering legislation induced by international or EU Law

Date	*Influencing legislation*	*Result in Hungarian money-laundering legislation*
1994	Act IX of 1994 Later modifications aimed to comply with international standards of the CoE, FATF and MONEYVAL	The criminalisation of money laundering, a new crime in Act 4 of 1978 on the Criminal Code.
2001	ACT CXXI of 2001 Recommendation of the PC-R-EV in 1998	The possibility of sanctioning the self-money laundering. Money laundering is defined as a separate offence (in Articles 303 and 303/A of the former Criminal Code), on the one hand, and failure to report money laundering on the other. The new regulation has also broadened the scope of criminal liability by defining the offence of negligent money laundering, which was not previously penalised, as a separate offence.
2001 FATF puts Hungary on the list of non-complying states till 2005.		
Following the entry into force of the Treaty of Lisbon in 2009, money laundering is one of the ten offences with a severe transboundary dimension for which the European Union has the power of legislative harmonisation under Article 83(1) TFEU.		
2012	Based on Art 9 of the Warshaw Treaty, with regards to Art 3 of the Vienna Convention of 1988 and Art 3 of the Palermo Convention (UNTOC).	Acceptance of the new Criminal Code (Act C of 2012) that redefined the crime of money laundering.
2017	Act XXXIX of 2017 § 66 d) and e)	modification of § 399 para (3) modification of § 400 para (1)
2017	Act CXLIV of 2017 § 60 g)	modification of § 399 para (4) c) modification of § 400 para (2) b)

2021	Act XLIII of 2020 § 53 In 2018, the European Parliament and the Council adopted a new directive on the fight against money laundering by criminal law, which is an important milestone in the EU's anti-money laundering legislation. It complements the Anti-Money Laundering Directive IV (which basically regulates preventive instruments) and its amendment (Money Laundering Directive V).	Comprehensively redefined the offence of money laundering, including extending the catalogue of basic acts. Moreover, any additional offence shall be regarded as a predicate offence of money laundering for which the maximum penalty is imprisonment or a detention order for a term exceeding one year or, for those Member States whose legal system provides for a minimum penalty, the minimum penalty is imprisonment or a detention order for a term exceeding six months.[40]

1. Table Changes in Hungarian Money Laundering Legislation[41]

5. Conclusions and closing remarks

This study shows how international and EU legislation has influenced Hungarian domestic legislation on money laundering. Furthermore, it shows how the findings of international bodies have influenced EU law and the Hungarian money laundering regulation. As can be seen, they have had a major impact on both criminal and administrative legislation (anti-money laundering and anti-terrorist financing laws) and have also influenced the application of the law. Money laundering affects all states and all banking systems, and the need for international action is undeniable. This is confirmed by the international instruments and treaties adopted and the significant prevalence of international soft law in this area. From an international law perspective, a sharp distinction must be made between international crimes giving rise to individual criminal liability under international law and transnational crimes that attract the international community's attention, where the legal basis for liability and the determination of liability is also a matter for national authorities. Money laundering falls within the scope of the latter category. In addition to international action, the European Union has been legislating for over two decades as part of the fight against money laundering, which will also involve

[40] The current legislation on the Criminal Code of Hungary, as it was in force on 1 March 2024, is available at https://njt.hu/jogszabaly/en/2012-100-00-00.
[41] Authors own. Source (Molnár G. , 2024).

a common institutional response from 2024. However, the disadvantage of harmonisation is that Member States are obliged to introduce legal instruments that were previously "alien" to national law, which could lead to severe problems of interpretation. A similar problem regarding self-money laundering has been encountered in Hungarian legislation and law enforcement.

Money laundering was not a criminal offence in Hungary until 1994. The only circumstance to be examined is whether a given historical fact has constituted the disposition of an act punishable under our domestic Criminal Code. However, the Strasbourg Convention and the MONEYVAL reports introduced the new offence in the Criminal Code in force at the time. The country became a full member of the EU in 2004, and at the same time, the text of the money laundering law underwent numerous amendments, mainly due to the EU directives on money laundering and partly due to the MONEYVAL country reports. The last significant amendment, which criminalised "concealment" and "disguise" in self-money laundering money, may have caused some uncertainty in the application of the law. However, the case law of the courts has provided adequate answers to the questions raised. At the same time, the directives also set out a way forward for law enforcement: on the one hand, the priority of international cooperation for authorities, the rapid exchange of information, and on the other hand, they also answered questions of interpretation such as whether a final court judgment is required for a predicate offence or whether proceedings can be brought for offences committed in the jurisdiction of another state. This shows that the directives issued can cause problems of interpretation in the domestic law of some states, which court judgments can subsequently remedy, but that the directives themselves also help in the application of the law.

The existing money laundering offence has been significantly extended; five types of offences have been introduced. In doing so, the definition of the money laundering offence has met international and EU requirements, but the concerns mentioned above of the legal practitioners also arise. In addition, in the authors' view, this broadening of the scope of the offence has made the text somewhat opaque, which may make interpretation difficult for law enforcement officials. The crime "Failure to comply with the obligation to report money laundering" under § 401 of the Criminal Code is punishable by imprisonment for only two years, which does not have a significant deterrent effect. The Hungarian FIU statistics for 2021-2023 reveal this issue. It is visible that those service providers (including accountants, lawyers, auditors, real estate dealers, precious metal dealers) who are subject to the reporting obligation do not necessarily comply with this obligation. In the period 2021-23, accountants provided 30-120 reports, lawyers provided 6-13 reports, auditors provided 5-9 reports, real estate traders provided 3-16 reports, precious metals traders provided 0-5reports, and commodity traders provided 0-2 reports, while financial institutions make thousands of reports, often over ten thousand (National Tax

and Customs Admonistration Hungarian Financial Intelligence Unit, 2023). Of course, the authors recognise that it is not the high level of the penalty alone that may deter a crime but the number of cases detected. However, the authors believe that an increase in the penalty could encourage more cooperation with the authorities by certain professions. In the same way, legislators should also find a way to make the representatives of these professions more interested in the matter, in addition to a heavier penalty.

In conclusion, the crime of money laundering has been an intensively modified criminal offence over its three-decade history in Hungarian law, which, while ensuring compliance with international requirements, has led to enforcement problems. In the present study, the authors have examined a small segment of the fight against money laundering, representing the highest level of criminal action. Overall, Hungarian courts and law enforcement agencies have been able to overcome the applicability issues, but further international cooperation is needed on detection and reporting to support effective prosecution.

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