

The role of legal professionals in the European and international legal and regulatory framework against money laundering

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Abstract

Purpose – The aim of the present study is to shed light on the role of legal practitioners, namely, lawyers and notaries, in the fight against money laundering: Are they considered as facilitators or obstacles against money laundering? How does the global and the EU legal framework deal with the legal professionals?

Design/methodology/approach – The research follows a deductive approach attempting to respond to questions such as: How do the lawyers' and notaries' societies react in front of the anti-money laundering measures that concern them and why? What are the discrepancies between the lawyers' professional secrecy and the obligations that EU anti-money laundering legislation assigns them?

Findings – This study discloses the response of the European union and international legal and regulatory framework as well as the reflexes of the international and European legal professionals' associations to this danger. It also demonstrates the reaction of lawyers against European union anti-money laundering legislation, to the point that it limits not only the confidentiality principle but also the position of the European judicial systems to the contradiction between this principle and the lawyers' obligation to report their suspicions to the authorities.

Research limitations/implications – To fulfil the study goals, it was necessary to overcome some obstacles, like the limitation of existing sources. Indeed, transnational empirical research considering the professionals who facilitate money laundering is narrow. Besides, policymakers and academics only recently expressed more interest in money laundering and its facilitators.



Originality/value – This paper fulfils an identified need to study the legal professionals' role not only in money laundering practices but also in anti-money laundering policies.

Keywords Money laundering facilitators, Principle of secrecy, Gatekeepers, Professionals and money laundering, Money-laundering, European and international legal and regulatory framework, Legal professionals

Paper type Research paper

Introduction

There is a common element among all kinds of criminal activities, which aim to generate a profit for the individual or group that carries out the act. It is well-known as “dirty money,” which means the proceeds that criminals such as illegal arm sellers, drug dealers, human traffickers, smugglers, mobsters, blackmailers, insider traders, bribers and those who commit computer fraud acquire by such kind of activities [1]. Even big companies such as pharmaceutical, betting, credit companies and investment banks may gain illegal profits from obscure unlawful activities. So how can all this money be used without being identified and without betraying its owners? This is the only common question that torments all the abovementioned actors of both legal and illegal market. The answer to that question is simply known as money laundering.

According to international organizations, money laundering may account for 2%–5% of global Gross Domestic Product on an annual basis [2]. As it can be easily assumed, legalization of incomes that come from illegal actions is implemented using as a channel the financial system, while the globalization that has led to markets' conjugation in parallel with the technological progress offers even better conditions for profit concealment methods. As a result, money laundering constitutes a danger for the integrity and the reputation of the financial system. But not only for that domain. Since more and more complex types of financial instruments and legal entities emerge and considering the differences between national laws, criminals need the assistance of specialists to obtain the safest and most profitable “place” to put their money. Therefore, it also signifies a danger for the lawful operation of the professionals who can be approached by organizational crime groups due to their scientific skills.

As a result, money laundering has been a major concern for the last three decades, especially for governments of all countries and various international organizations. Additionally, following the globalization and liberalization of trade and economics, the fight against money laundering has justifiably been announced as an international threat if a researcher follows the next specific syllogism: Due to money laundering practices, manipulative mechanisms are constructed against public order; increasing power of organized criminals and organizational crime results in the erosion of institutions of pivotal value for the society. Besides, considering the market forces the vice chain of more and more illegal practices for profits/monetary gains will damage the healthy competition within sectors such as the pharmaceutical market and the banking system, disorienting professionals from the general principle that science exists for the benefit of the human.

Taking all these facts into consideration, both the academic world and the law enforcement officials turn their interest to the role of legal practitioners in dealing with money laundering procedures. The principal research question of the present dissertation revolves around the role of legal practitioners, namely lawyers and notaries, in the fight against money laundering: Are they considered as facilitators or obstacles against money laundering? To respond to this question, the research will follow a constructive approach attempting to respond to subsequent questions such as: How the global and the EU legal

framework deals with them? How do the lawyers' and notaries' societies react in front of this threat and why? What are the discrepancies between the lawyers' professional secrecy and the obligations that EU anti-money laundering legislation assigns them? The present study aims to a critical analysis of existing knowledge through an overview about the causal relationship between the legal profession and the legalization of proceeds of criminal activity. By combining the description, analysis and interpretation of that phenomenon, the study provides answers to the abovementioned questions, reflects the difficulties to eliminate money laundering despite the ongoing regulatory efforts and highlights the contradictions between the corresponding anti-money legislation and the principle of confidentiality of solicitors.

However, to fulfil these study goals, it was necessary to overcome some obstacles, like the limitation of existing sources. Indeed, transnational empirical research considering the professionals who facilitate money laundering is narrow. Besides, policymakers and academics only recently expressed more interest about money laundering and its facilitators. Through a deductive approach, it is pursued to confirm the abovementioned principal question. In particular, beginning with the established theory of the double role of lawyers and notaries in the money laundering world, the present study is oriented to explore this under-researched topic through qualitative data based on secondary sources such as academic studies, books, official legal databases such as indicatively: the Council of Bars and Law Societies of Europe (CCBE) official website (www.ccbe.eu), the International Bar Association (IBA) Anti-Money Laundering Forum (www.anti-money.laundering.org), the International Union of Notaries official website (www.uinl.org) and the website of the Case law of the European Court of Human Rights (www.hudoc.echr.coe.nt).

Other sources used for the purposes of the present study are: the official website of the European Union (www.europa.eu), the official website of the Financial Action Task Force (FATF; www.fatf-gafi.org), the United Nations Office on Drugs and Crime official website (<https://www.unodc.org/LSS/Country/Details/GR>), the official website of the Greek Ministry of Finance (www.minfin.gr) and corresponding policymakers' reports, academic articles and scientific journals such as, among else, the *International Journal of Business and Management Studies* (www.sobiad.org/), the *Journal of Money Laundering Control* (www.emerald.com) and the journal *Crime, Law and Social Change* (www.springer.com). Among keywords that were used for that research are: money laundering-facilitators, principle of secrecy, lawyers' code of conduct, gatekeepers, professionals and money laundering, anti-money laundering regulators, lawyers, notaries, global legal framework against money-laundering and EU anti-money laundering policy.

The current thesis has been structured as follows: The first chapter focuses on the question of what is considered as money laundering. In this chapter, the numerous definitions of that issue are elaborated, so that the reader can sufficiently understand the difficulty to approach money laundering already by its definition due to the variety of practices that it encompasses. At the same time, some examples of revenue laundering are presented for a more vivid picture of the issue. The second chapter distinguishes the stages of money laundering as they have been generally admitted by the academic society as a whole. The third chapter attempts to illustrate questions such as which professions are considered as facilitators of money laundering, while examples of methods used by them and the risk factors for professionals' involvement are being further developed. In the fourth chapter, the study describes the way that the legal instruments and regulatory bodies in international and EU level evolve by providing a brief record about the institutions and the legal instruments.

Last but not least, in the fifth chapter, a critical approach of the concept of confidentiality principle of the legal profession and its contradictions with EU law about money laundering is pursued. In this chapter, not only the importance of the confidentiality principle in the legal world and the subsequent reaction of lawyers against EU anti-money laundering legislation, to the point that it limits the confidentiality principle, but also the position of the European judicial systems to this contradiction are demonstrated. In an attempt to clarify the effectiveness of the global criminalization of the involvement of lawyers in the criminal phenomenon under discussion, the results of a study conducted in the UK are also presented. The present study was selected taking into account the country's excessive zeal for compliance with the global regulatory requirements.

Interestingly, there are risks for a lawyer if he discloses information about his suspicions against his client, if later on they are found to be wrong. In fact, the sanctions imposed by the lawyers' unions themselves in case of violation of the confidentiality principle vary considerably between the states. A typical example of a milder punishment is Sweden and a more severe one is Italy. In the same framework regarding the way that legal practitioners confront with the role that is given to them by the EU and global regulatory authorities, the reactions of legal community in the UK are set as an example, while Swedish and Italian disciplinary law is considered as a representative example of what is going on in case of wrongful suspicions that a lawyer has about his/her client.

Finally, the conclusion summarizes the main steps and the most important issues of the thesis, having as a purpose to stress the role of lawyers and notaries as facilitators of money laundering, and critically presents the significance of their role as gatekeepers of the transactional manners and the rule of law. Then, it comes up with a brief overview of the practical difficulties that arise considering the sensitive position that a lawyer has to confront with, as he is restricted on the one hand by his duty of confidentiality toward his client and on the other hand by the obligation to not get involved in illegal practices and consequently to money laundering services.

1. Exploring meaning and practices of money laundering

1.1 *Defining money laundering*

Money laundering is a well-known term that is used not only by the law enforcement mechanisms and researchers but also by the entire society. It is a metaphorical way to describe something more technical that takes place in the sphere of property, transactions and investments. However, there is not only one definition given to this connotation. This chapter presents the different definitions, which have been supported by both regulatory institutions and the academic society and elaborates the two different theoretical perspectives through which the subject has been comprehensively signified.

Money laundering has been explained with the shortest way as "the transfer of illegal assets into economic systems" (McDonell, 1998). On the other hand, in the most detail formulation, according to the first definitional approach of the EU Council Directive of June 10, 1991, on prevention of the use of the financial system for the purpose of money laundering, the term included the following intentional acts:

- the conversion or transfer of property, knowing that it originates from an illegal activity or from an act of participation in an illegal activity, to conceal that property or conceal its illegal origin or to assist anyone involved in that activity, to avoid the legal consequences of his actions;
- the concealment or disguise of the nature, origin, disposition or movement of property or the place where it is situated; or ownership of property or related rights,

knowing that it originates from an illegal activity or from act of participation in an illegal activity;

- the acquisition, possession or use of property knowingly, at the time of acquisition, of the fact that the property arises from an illegal activity or from an act of participation in an illegal activity; and
- participation in one of the acts mentioned in the previous three points, the establishment of an organization for its commission, the attempted commission, the assistance, the incitement, the advice to a third party for its commission or the facilitation of the commission of the transaction ([Council Directive, 1991](#)). This definition is still binding for the Member States, since it has been transposed in the last amendment of the abovementioned Directive, which is the Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ([Council and European Parliament, 2015](#)).

Another laconic but widely used definition is the one provided by the US President's Commission on Organized Crime. It describes money laundering as the process by which the existence, illicit source or illicit use of proceeds is concealed and then disguised in such a way that their source appears to be lawful ([Katsios, 1998](#)). As a prevalent interpretation of the subject under examination must be recognized, the one given by the FATF, namely, the global intergovernmental body that safeguards the states from money laundering and terrorist financing. FATF explains money laundering as the process that aims to conceal the origins of the proceeds of crime with the ultimate goal to legitimize these proceeds [[3](#)].

The United Nations Office on Drugs and Crime has formulated the following definition: "Money-laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence." Additionally, as for terrorists, it clarifies that they are not interested in the disguise of their money but rather for the concealment of their destination and their purpose [[4](#)]. Obviously, all these definitions share some common elements, id est, that the legitimization of criminal proceeds is a procedure that aims to conceal and modify the "dirty money" to legally obtained proceeds.

For the present dissertation, the first definitional approach of the EU Council Directive of June 10, 1991, is the most appropriate, since it is the most detailed description of the subject. After all, this definition is the only one that uses the concept of facilitation of money laundering transactions. It is thus the harbinger of the inclusion of the connotation of "facilitators" by the FATF Report of 2018. Although, within the global regulatory framework, awareness concerning the role of various professionals in money laundering practices has been raised earlier, by the 1996 Recommendation of FATF, while already since the late 1990's, lawyers', notaries' accountants' and other professionals' involvement was noticed to have been steadily increased ([He, 2006](#)).

From a criminological viewpoint, the object of that process can be any kind of assets, varying from cash, electronic bank transfers as well as their surrogates to moveable goods and real estates that come from illegal actions or are going to serve a criminal purpose ([Schneider and Windischbauer, 2008](#)). Technically, the scope of money laundering includes three elements: first, a sum of money, which has been generated from unlawful activities; second, the need to present it as legal to avoid the money from being seized or the criminal

from being prosecuted; and third, the fact that this can be done through three stages; placement, layering and integration (Amrani, 2020).

1.2 Examples of money laundering practices

Casinos are a popular field of money laundering. The interested party goes there and exchanges the cash with chips. He bets some of them on various short gambling games. He then exchanges the rest again with the cash he had deposited in his credit account or closes his credit account by asking for the corresponding amount in the form of a check with the beneficiary himself. So, he deposits the check or the money in a bank, presenting them as winnings from the casino (Unger and Busuioc, 2020).

Another old method is the currency smuggling. This term refers to the transfer of coins and monetary instruments to another country through cash couriers, cargo and mail [5]. It is similar to the method of smurfing/structuring. This is a usual tactic for people involved in money laundering. According to this tactic, “dirty” money is channeled into the financial system through the fragmentation of the volume of money, in many transactions below the reference or recognition threshold. Applying this method requires a large number of people, the so-called “runners/smurfers” (Welling, 1989), who are people who do not raise suspicions or attention in the banking environment. The “envoys” make direct deposits in bank accounts or convert the amounts into postal and bank checks. Then, they deliver the postal and bank checks to intermediaries and they in turn deposit them in the accounts of the “beneficiaries” (Katsios, 1998).

Front companies constitute another vehicle to launder money. In that case, the criminals who are owners of legal cash intensive businesses, such as restaurants, casinos and night clubs, show a fictitious number of receipts, higher than the real one to justify their illegal income (Chen and Anderson, 2020). Apart from that, the revenues from property crimes are often used for the purchase of high value goods (luxury vehicles and jewelry), while some of them are also invested in the real estate market [6]. The transaction through “loan back” is the most well-known and common method of money laundering. In this case, the criminal borrows his own money. This is usually done by concluding a contract between the criminal and a third party. The third party is usually a shell company such as a trust or an offshore company abroad, which has an account in a credit institution in a country where strict rules on banking secrecy apply. The criminal deposits the money he has in cash in several accounts, in amounts that will not arouse suspicion. Then, all these amounts are transferred to a foreign bank, consolidated into one account owned by the trust or the offshore company. Finally, the offshore company, which is managed by third parties appointed and controlled by the criminal, lends money to the domestic company of the criminal and in this way legitimizes them (Unger, 2017; Tragakis, 1996).

Investment in derivatives such as Credit Default Swaps can be another way to legitimize the illegal profits. In this way, a broker on behalf of a launderer may use “dirty money” to buy junk bonds and Credit default swaps so that the criminal will lose the dirty money and win them back through the collection of premiums. The same can be done with all kinds of derivatives, since they are financial assets that bet in stocks, currencies, interest rates, energy, third party’s or instrument’s credit quality, commodities, the weather, macroeconomic data and mortality rates (Unger, 2017). It is also interesting to examine the way that electronic payment systems are used to launder money; the launderer makes large payments, which exceed the amount owed so that a credit balance that is paid in cash will be developed (Sarıgül, 2012). In this way, the illegal incomes are spent and return in the form of not only commercial products but also through the liquidation of the credit balance.

After providing an idea about the different definitions of money laundering and the variety of money laundering practices, it is useful to further the explanation of that criminal phenomenon by discussing the steps that it encloses. Therefore, the next chapter presents the process of legalization of criminal money. Specifically, it identifies the stages by which the illegal proceeds return to the legal financial system.

2. Money laundering as multilayered process

2.1 Which are stages of money laundering?

After the previous indicative presentation of money laundering techniques, the researcher realizes the huge amount of such methods that take place in the background of the financial economy. However, all these methods can be separated and each of them according to its characteristics can be integrated into one or more of the three technical stages which have prevailed within the entire academic and regulatory community in the framework of anti-money laundering discussion. These stages/phases that are not always easily distinguished, but may take place in sequence or simultaneously [7], are the following:

- *Placement*: Dirty money accumulates in large quantities of banknotes, which are extremely difficult to transport physically. After all, while dirty money is still liquid, it is exposed to the risk of “theft” or “embezzlement.” For these reasons, the immediate priority of the interested parties is to channel the dirty money into the legal financial system of the country or abroad by converting it into the usual forms of financial values. In the first stage, criminals try to place illicit funds inside the financial system. This is achieved by “breaking up the large amounts of cash into less conspicuous and smaller sums” that are inserted into the banking system through deposits and wire transfers (Sarıgül, 2012).

Besides that method, which is known as smurfing, placement of illicit funds is also pursued through bribery of bank employees or through blackmail. The sub-banking sector (e.g. foreign exchange offices) is also used to launder money. Additionally, for the same purpose, many times “dirty cash” is transferred to offshore financial centers (Symeonovich, 1995). Placement of illicit proceeds in the real market through endless methods like the purchase of expensive goods which are then sold again or through other means such as the abovementioned deposits in casinos is also probable (Sultzer, 1995; Boles, 2015).

- *Layering*: The second step involves the transfer of funds throughout more than one financial system across jurisdictions, usually through complex trades. This is the case of wiring funds to offshore “shell” companies that has been explained in the previous section. That step aims to conceal the owner of the illicit funds through the inherent complexity and secrecy that these kinds of legal entities offer to their controlling parties (Lyden, 2003).
- *Integration*: This is the last step in the process of money laundering. In this stage, “dirty money” returns to the country of origin, to take the form of legal funds and investments. The real owner of the money can appear as such since the money cannot be detected as illegal. Consequently, he spends it in new criminal activity or investments in legitimate businesses that support organized crime (Lyden, 2003).

This three-step process is not so easy to implement due to the controls carried out in the financial system and the supervision of the private property by the tax authorities. As a result, money laundering often requires more special methods to fool the authorities. For

example, for the establishment and management of a limited company or a trust in the name of which bank accounts will be opened and thus assets will be transferred (Shaxson, 2011), specialization in scientific domains like the finance, the tax law and the accounting is a prerequisite. The next chapter explores the professions which are more susceptible to involvement in money laundering activities.

3. Facilitators of money laundering

3.1 Professions considered as facilitators of money laundering. Examples of methods used by them

Through the identification of some methods of legalizing ill-gotten income mentioned in the previous section, two factors that enhance the dynamics of this criminal activity can be easily identified. These are on the one hand the advancements of technology and on the other hand the constant professional specialization. In this section, the thesis deals with the professional money laundering as the main topic of the FATF research in 2018. The corresponding report discusses the types of professionals who are approached by the world of organized crime. Besides, it explains how professionals contribute to money laundering, which are the risk factors assisting in their involvement, and it prescribes practical advices for the prevention, spotting and prosecution of the offenders by the authorities (FATF, 2018).

It clarifies that the term “professional money launderers” does not refer to people who are implicated only to money laundering as their profession, but rather to those professionals that even though they do have a legal job and life, in parallel they offer their expertise to criminals. They exploit legal loopholes for the benefit of their clients. The report also elucidates that by the term “professional money launderers” it means those who are third parties in the process of money laundering since they are not familiar with organized crimes such as the crime from which the proceeds derive and may not even know what the predicate crime was, but they knowingly provide their specialized knowledge on purpose to help the criminals to create a distance with their criminal profits. That being so, also, professionals who passively or unwittingly help criminals to launder their dirty money are not considered as professional money launderers.

Considering the criteria on which organized criminal groups choose their professional accomplices, the report mentions that family members and close contacts are preferred. The report under examination contains a list of professions that are considered as probable money laundering facilitators. The concern about professionals’ conduct as facilitators of money laundering is not restricted in this discussion of FATF. Already from the second half of the 1990s, the FATF’s reports have underlined the new trends in money laundering techniques and the subsequent rising threats of the abuse of the gatekeepers’ services (Gilmore, 2020). Interestingly, the reflection on this subject was so intense that was transmitted to other policymakers such as the European Commission and the G-7 finance ministers (Gilmore, 2020). It was during the same period that specific professions were placed in the spotlight, since accountants, financial advisors, notaries, secretarial companies and other fiduciaries and lawyers were found to be involved in such illegal activities (Gilmore, 2020). It is worth noting that one of the most usual methods discovered and disclosed by the authorities was the exploitation of solicitors’ or attorneys’ clients’ accounts for the placement and layering of funds, to take advantage of the solicitor–client privilege that provides the desirable anonymity to the criminal launderer (Gilmore, 2020).

The FATF Report of June 2019 substantiates some key factors about legal professionals’ role in money laundering practices (FATF, 2019). The term “legal professionals”

encompasses barristers, solicitors and other specialist advocates and notaries, excluding common law notaries when those notaries perform merely administrative acts such as witnessing or authenticating documents, as these acts are not specified activities. Furthermore, it clarifies the following legal professionals' services as vulnerable to money laundering misuse:

- advising on the purchase, sale, leasing and financing of real property;
- tax advice;
- advocacy before courts and tribunals;
- representing clients in disputes and mediations;
- advice in relation to divorce and custody proceedings;
- advice on the structuring of transactions;
- advisory services on regulations and compliance;
- advisory services related to insolvency/receiver-managers/bankruptcy;
- administration of estates and trusts;
- assisting in the formation of entities and trusts;
- trust and company services;
- acting as intermediaries in the trade of citizenship and residency or acting as advisors in residence and citizenship planning;
- providing escrow services and token custody services in connection with legal transactions involving an initial coin offering or virtual assets;
- legitimizing signatures by confirming the identity of the signatory (in the case of notaries); and
- overseeing the purchase of shares or other participations (also in the case of notaries) (FATF, 2019).

There is a variety of roles that professionals perform within the hierarchy of money laundering organization (FATF, 2018). They may be appointed as leaders who organize the collection and delivery of the funds. They may be used to promote the communication with other individual professionals or organizations of professional money launderers. Another probable job is that of the "maintenance of the infrastructure" (FATF, 2018). In this case, the professional is charged with one or more of the following duties: to open bank accounts, to acquaint credit cards, to set up companies and to recruit nominees who will appear as managers of a shell company or will become the fictitious beneficiaries of bank accounts or will provide money transfer services.

Apart from these operations, obviously professionals are able to provide more specialized services such as producing fraudulent documents like "fake identification, bank statements and annual account statements, invoices for goods or services, consultancy arrangements, promissory notes and loans, false resumes and reference letters" (FATF, 2018). In the same context, their other probable job is to manage the transportation of the criminal products by arranging the communication with the custom servants and by providing the corresponding documents (FATF, 2018). Contribution in purchasing of luxury goods and in the layering of shell companies which are useful in investments of huge funds as well as helping in the collection and placement of funds in the financial system or performing currency exchange transactions and cash withdrawals is another possible method of involvement of professionals in the legitimization of criminal funds (FATF, 2018).

3.2 Risk factors for legal professionals' involvement in money laundering practices

Globalization has influenced bilaterally the professional ethics. On the one hand, the need to survive among numerically more specialized competitors has led legal professionals to broaden their services from traditional advocacy, legal advice and drafting of traditional types of contracts to legal services facilitating the creation and management of corporate and trust entities, as well as to perform banking and financial transactions on behalf of their clients [8]. However, the combination of the law-abiding profile and the privilege of not disclosure combined with the strict forces of competition produces better conditions for professionals' wrongdoing. Apart from globalization, the IBA depicts a key risk factor that makes lawyers vulnerable to be approached by money launderers. Accordingly, the profile of legitimacy that surrounds a lawyer, since he is considered adept at the rule of law, is an element which attracts money launderers [9]. In other words, appointing a lawyer confers prestige and a semblance of legality to money launderers' practices.

Another risk factor derives from the internationalization of the market. Having as clients larger and more complex companies, legal practitioners are charged with the provision of more specialized and time-consuming legal services, so their clientele is limited, and they are economically dependent from few clients. That fact entices professionals to combine legal and illegal practices to mitigate the risk of potential financial losses in case of financial difficulties of their clients [10]. Besides, the internationalized operation of the legal entities, combined with their labyrinthine hierarchy and the different legal jurisdictions involved, diminishes the transparency of the transactions between legal professionals and their clients. As a result, the same applies for internationalized law firms [11].

On the other hand, the globalization has rendered the Anglo-Saxon countries to constitute a good example of state's stronger interventions against the professionals' corruption in a way that they raised awareness of other countries such as France, Italy and the Netherlands to the same direction [12]. So, higher bureaucratic standards including more reliable checks and probably stricter punishments upscale the level of prevention. Additionally, in the microlevel, the transformation of individual legal professionals into multimember legal entities increases the insight control since the compliance with the rules is supervised not only by external factors but also by the colleagues [13].

A more thorough insight in the risk factors that jeopardize the integrity of legal professions, id est, the professions of notaries and lawyers, demonstrates the prevalence of the recognized privilege of nondisclosure which seals the confidentiality in the relationship between legal professionals and their clients [14]. "Clients do not need to worry about that their criminal activities will be revealed by these professionals and these professionals may take advantage of the privilege to aid criminals to launder money" (He, 2006). Furthermore, money laundering requires complicated legal and financial knowledge both national and international, while legal professionals are highly regulated by professional ethics and discipline, so they do not easily attract the suspicions for illegal activities. Their social status is, therefore, preferred by criminals who use them to perform economic activities (He, 2006).

3.3 Legal professionals as gatekeepers: defense of international legal society against risk factors

The first reference to legal professionals – among other professionals – as gatekeepers is made by the Moscow Communique/Conference of the G-8 countries in 1999 (Cummings and Stepnowski, 2011). In 2002, the FATF Consultation Paper highlighted its "increasing concern" about the ascending misuse of gatekeeping professionals' advice and about their contribution to money laundering operations as financial intermediaries. As gatekeeping

professionals, it refers to lawyers, accountants and financial advisers. In 2003, through the revised 40 + 3 Recommendations, FATF extended those subject to regulatory measures (id est, customer due diligence, record keeping and reporting requirements) to lawyers when they “prepare for or carry out transactions for their clients during the following five services:

- (1) buying and selling of real estate;
- (2) managing of client money, securities or other assets;
- (3) management of bank, savings or security accounts;
- (4) organization of contributions for the creation, operation or management of companies; and
- (5) creation, operation or management of legal persons or arrangements and buying and selling of business entities” (Cummings and Stepnowski, 2011).

FATF concern about lawyers went one step further toward the *Lawyer Guidance*: a document which categorizes the risk criteria as follows: geographic risk, client risk and risk linked with the type of transaction, while it introduces a risk-based approach to customer due diligence (Cummings and Stepnowski, 2011). According to the later, lawyers must implement elevated customer due diligence measures, in case of present risk factors and lesser customer due diligence measures when there are no risk factors (Cummings and Stepnowski, 2011).

The previously substantiated risk factors can tarnish the entire legal professional industry. As a result, the International Union of Notaries has adopted the measures suggested by the FATF in 2001 and continues to underpin the significance of the issue in its last activity report legislature of 2017–2019. In fact, as the FATF mentioned in its report in 2010 (FATF, 2011), legal professionals as well as financial professionals are potential gatekeepers against money laundering “since they protect the gates to the financial system through which potential users of the system, including launderers, must pass in order to be successful.” Therefore, notaries have expressed their interest to preserve this role by adopting the FATF’s recommendations “that notaries shall be subject to the obligations of (a) customer due diligence, (b) record keeping, (c) identification of Politically Exposed Persons, (d) implementation of internal control measures and (e) reporting of suspicious transactions when they prepare to carry out transactions or are conducting transactions for a client concerning the following activities: buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling of business entities” (International Union of Notaries, 2018).

Besides the clarification of the due diligence obligations, the International Union of Notaries has illustrated the risk factors of misuse of notarial expertise by criminals for money laundering and terrorist financing. These are vigilance variables, which must be taken into account by the notaries during the operation of their professional duties. They are categorized as follows:

- the risk inherent to the customer, if he is a politically exposed person or if there is an unusual/unconventional business framework or request of notarial services. Also, the same risk exists in case of legal entities when it is difficult to understand the real beneficiary of the transaction. In the same category of the cases, in which the risk is inherent to the customer, are classified cash-intensive businesses or non-profit organizations not supervised by external or self-regulatory bodies and clients who do not have a precise address or ask implausible services. Additionally, clients with

inconsistencies in their physical and financial profile and “shell” companies fall into the same category;

- the geographic/country risk, in case that the country which concerns the client or the transaction is subject to sanctions imposed by international regulatory bodies like the United Nations or is considered by the supranational competent authorities as financier or aider of terrorist organizations. Also, when the country is not a member in the anti-money laundering and anti-terrorist financing mechanisms or in case of jurisdictions with high levels of political instability or criminality or with low level of transparency of shareholders, etc. all these cases are considered as risk factors; and
- the risk of service offered, when the notary is requested to act as intermediary to the transmission of funds or in case of contracts with unusual time limit. In the same category are included cases in which unknown persons pay for the services as well as cases of clients who possess unjustifiable financial assets, etc. ([International Union of Notaries, 2018](#)).

Moreover, in line with the FATF Recommendations, the report dictates the duty of the notaries to report any suspicions “to the Competent Authority determined by local regulations (the Financial Intelligence Unit (FIU) or similar)” ([International Union of Notaries, 2018](#)). States are responsible to define a competent authority.

Since the FATF has noted that these risk factors are the same for lawyers, by its side, the IBA underlines that each state must impose to its lawyers the obligation to conduct due diligence checks or to report any suspicions about their clients probable involvement in money laundering. This has been done in most of the FATF’s states’ jurisdictions [15]. The IBA’s role in the anti-money laundering policy implementation is valuable since it informs the lawyers about the relevant legal instruments, their amendments and their direct or indirect applicability to lawyers that practice their duties in at least one of over 160 countries. Also, it keeps its members updated about the trends of money laundering and its implications on lawyers, while in collaboration with the Anti-money Laundering Legislation Implementation working group, it conducts relevant research within the jurisdiction of its members ([Freshfields Bruckhaus Deringer Limited Liability Partnership, 2009](#)). As for the types of professionals’ liability for involvement in money laundering operations, the Global Agenda Council on Organized Crime, published by the World Economic Forum (WEF) depicts two ways of participation: in the first manner, the report refers to the cases when the professional, knowing that the assets are criminally obtained, has the intention to assist in their legitimization, while in the second modus, he is unaware of the illegal proceeds, and consequently, he is inadvertently exploited by the criminal/the criminal organization ([WEF, 2012](#)). Moving one step further, [Lankhorst and Nelen \(2004\)](#) distinguish between on the one part professionals’ culpable involvement, which requires either negligent or purposeful participation and on the other part professionals’ blameless involvement meaning either oblivious or forced assistance.

Barring the cases of culpable involvement [16] of lawyers and notaries, it must be emphasized that these cases consist only a small number among these professionals and not the majority [17]. After all, lawyers and notaries do not always find out the culprit origin of the property and are not authorized to make such investigation if the criminals have managed to disguise their illicit past leaving no margin of suspicions [18]. Nevertheless, it is widely supported that there is an increasing involvement of the legal and financial professions in the facilitation of money laundering ([He, 2005](#); [Ali, 2006](#)).

4. How do legal instruments and regulatory bodies in international and EU level evolve?

4.1 Brief record of global anti-money laundering strategy

Anti-money laundering strategy has passed through four main phases [19]: The first phase is placed in 1970s with the regulatory and preventive measures of record keeping and suspicious transaction reporting by banks to be enshrined for the first time. In the 1980s, the anti-money laundering measures proceeded one step further by the classification of money laundering as an international crime. At the next stage, in 1989, the foundation of the FATF led to the supra-nationalization of the anti-money laundering policies with the FATF becoming the main supranational institutional center coordinating the efforts and defining new ways to combat it by tracing the money flows to confiscate illegal profits. The terrorist attacks on September 11, 2001, led to the fourth stage, which is the extension of FATF's competence to confront the relevant threat of terrorist financing.

The strategy against money laundering (ML) consists of both preventive and repressive measures which are the following in chronological order:

- (1) criminalization of money laundering;
- (2) strengthening the methods of tracing, freezing and confiscating the proceeds of illegal activity;
- (3) implementing regulatory tools to prevent the use of the financial system for the purpose of ML;
- (4) improving international cooperation; and
- (5) introduction of soft law measures meaning 40 Recommendations drafted by the FAFT in February 1990, amended first in 1996, in 2003 and finally in 2012.

Focusing on the last point (5) in 2012, the Recommendations were expanded to confront new threats such as the financing of proliferation of weapons of mass destruction and also to better safeguard transparency on the ownership of legal persons and arrangements and be harder in the fight against corruption [20]. Precisely, the preventive strategy consists of Codes of Conduct on Anti-money Laundering like customer due diligence measures, (accounts monitoring, record keeping etc.) and supervisory practices (e.g. domestic banking supervision and transnational banking supervision) (Pillai and Julian, 2015).

4.2 Concise review of global anti-money laundering legal and institutional regime

The 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, known as the Vienna Convention, is the first text of international criminal law that imposed on the States the criminalization of money laundering, but it referred exclusively to the money which comes from drug trade [21]. A key innovation of this Convention is the authorization of the courts to order the disposal of banking, financial and commercial records to law enforcement authorities, regardless of the applicable banking secrecy [21]. Article 3 of the Vienna Convention contains the first universally accepted detailed definition of the crime of money laundering, as well as the provision for the extradition of the perpetrator of this act (UNODC, 1988). The legal forms of money laundering have remained almost identical to all subsequent international texts of the UN, the Council of Europe and the European Union, except that the concept of previous criminal activity (basic crime) has been broadened to include more crimes from which the property to be legalized may originate [22]. The Vienna Convention was signed by 67 states and entered into force on November 11, 1990 (Kaiafa Gbadi, 2007).

Based on the Vienna Convention, the UN Assembly adopted the United Nations Convention against Transnational Organized Crime (2000) also known as the Palermo Convention ([UNODC, 1999](#)). The specific nature of money laundering referred to in Article 6 is similar to that referred to in the Vienna Convention. It is characteristic, however, that in the description of the legal form of the crime of money laundering, there is no reference to the transnational or cross-border money laundering or its commission by an organized criminal group. On the contrary, it is explicitly stated in Article 34 par. 2 of the Convention that money laundering must be considered as a crime regardless of its transnational nature or the involvement of an organized criminal group in it. At the same time, Member States are encouraged to consider as “basic crimes” of money laundering as many crimes as possible [Article 6 (2) (a)], while being obliged to include in the basic crimes all “serious crimes” [meaning those that shall be punished by imprisonment for a term not exceeding four years (Article 2 (b))], as well as those enshrined in the Convention, which include membership in an organized crime group (Article 5) and obstruction of justice (Article 23). This Convention was entered into force on September 29, 2003, after being signed by 147 countries and ratified by 82 countries.

The abovementioned basic international legal instruments were followed by the FATF Forty Recommendations, which became the universal model for an effective anti-money laundering framework. The first three of them provided the scope of the criminal offence of money laundering, provisional measures and confiscation, while the 4th–25th Recommendations enshrined the measures that should be taken by financial institutions and nonfinancial businesses and professions to prevent money laundering and terrorist financing, *id est*, customer due diligence and record-keeping, reporting of suspicious transactions and compliance, other measures to deter money laundering and terrorist financing, measures to be taken with respect to countries that do not or insufficiently comply with the FAFT Recommendations and regulation and supervision of the compliance with these provisions [23]. The 26th to 40th Recommendations described institutional and other measures necessary in systems for combating money laundering and terrorist financing, namely, competent authorities, their powers and resources, transparency of legal persons and arrangements, international co-operation, mutual legal assistance and extradition and other forms of cooperation [24].

Apart from the United Nations and the FATF, there are numerous global institutions that have contributed to the fight against money laundering. Notably, in 2001 the International Monetary Fund (IMF) and the World Bank (WB) became the main responsible authorities for assessments because their global membership was deemed really useful to obtain a more uniform and widespread application of the Recommendations, unlike the FAFT with its voluntary membership [25]. In 2005, the United Nations Security Council impelled all member States to implement the Recommendations to deal with the problem ([Borlini and Montanaro, 2017](#)). Apart from the FATF in terms of banking and financial sectors’ supervision, other regulatory bodies drafting codes of conduct and introducing measures against money laundering are as follows:

- (1) the Basel Committee on Banking Supervision (BCBS);
- (2) the Offshore Group of Banking Supervisors;
- (3) the Wolfsburg Group of Banks;
- (4) the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO); and
- (5) the Joint Forum, which includes the BCBS, the IAIS and the IOSCO ([Pillai and Julian, 2015](#)).

In early 2002, the IMF and the WB, in collaboration with the FAFT, launched a joint program: the Anti-Money Laundering and Combating the Financing of Terrorism, whereby assessments of countries' anti-money laundering (AML) framework – thus far undertaken by the FAFT and a host of FAFT-style regional bodies (FSRBs) – determined to be carried out additionally by other institutions [26]. These are the IMF and the WB with the support of external expert, possibly affiliated to FAFT/FSRBs (e.g. Asia/Pacific Group on Money Laundering, Caribbean Financial Action Task Force, Eurasian Group (EAG), Eastern and Southern Africa Anti-Money Laundering Group, Latin America Anti-Money Laundering Group, Middle East and North Africa Financial Action Task Force and Council of Europe Anti-Money Laundering Group (MONEYVAL)) [27].

Besides, the Egmont Group of Financial Intelligent Units is a global network helping in the flow of information between many states worldwide to enhance the coordination in money laundering investigation among numerous countries [28]. For a more thorough but also concise approach of the global regulatory mechanisms follows a charter which depicts the prominent institutions that participate in the global anti-money laundering regime (Figure 1) [29].

Considering regional initiatives, the first step was the “Convention on Laundering, Investigation, Seizure and Confiscation of the Proceeds from Crime,” which was introduced by the Council of Europe in Strasbourg in November 1990. Under the Convention, parties undertook the obligation: “to criminalize the laundering of the proceeds of crime and to confiscate instrumentalities and proceeds (or property the value of which corresponds to such proceeds)” (Council of Europe, 1990). The Convention initiated the cooperation in investigative measures, in provisional measures (like the seizure of assets) and in measures regarding the confiscation of the proceeds of crime between two states (Council of Europe, 1990). To update this Convention and to align it with the revised FATF Recommendations (2003), the Council of Europe (2005) drafted a new Convention. This Convention also included the financing of terrorism in the fight against money laundering (Council of

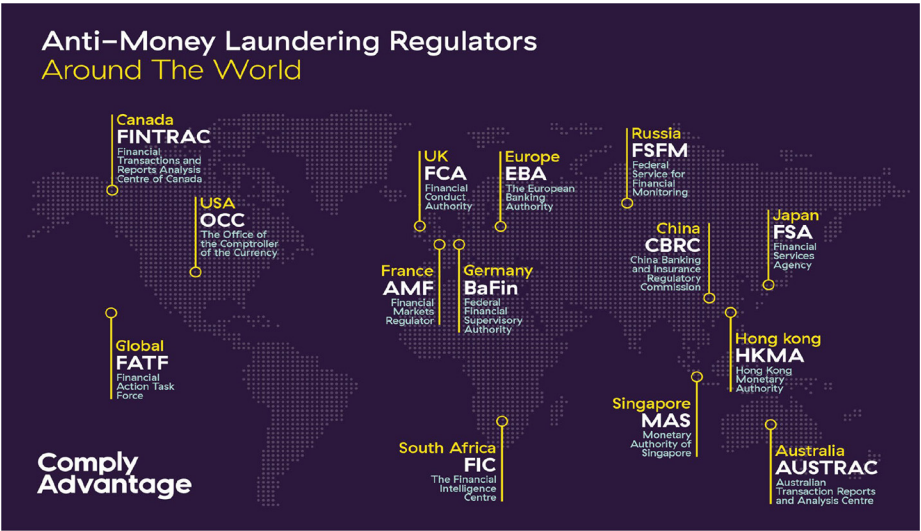


Figure 1.
Comply Advantage,
Global AML
Regulations: What
You Need To Know

Source: Available at: <https://complyadvantage.com/insights/amlregulations/>

Europe, 2005). Consequently, a new expanded list of criminal acts considering, e.g. terrorist financing was also introduced (Council of Europe, 2005).

4.3 Brief overview of EU anti-money laundering legal framework

With the Council Directive 91/308/EEC for the prevention of the use of the financial system to launder proceeds of illicit activities, another step has been taken toward harmonizing anti-money laundering legislation of several European countries, this time within the EEC. The Directive was based mainly on the 40 Recommendations of the FATF. The main goal of the member states was to tackle the rising of money laundering in a uniform way, by defining unanimously what is money laundering. Otherwise, even if each state had taken individually and separately the necessary measures that it believed, it would be very difficult to fulfil the goal of a single market (The Council of the European Union, 1991). The second directive (2001/97/EC) was subsequently adopted in 2001. A decade after the first directive, it came to fill the gaps identified, to meet the anti-crime needs that arose and to adapt anti-money laundering legislation to contemporary economic and social developments (The European Parliament and of the Council, 2001).

It is a Directive of major significance since it extended the concept of criminal conduct to a wider range of serious offenses and not only to money laundering from drug trafficking and related acts (Article 1). In addition, it extended anti-money laundering obligations to more professional categories and activities than the First Directive (Article 2a). Now, in addition to the financial sector, auditors, external accountants, notaries, lawyers, casinos and real estate agents are enclosed by this directive (The European Parliament and of the Council, 2001). It is noteworthy in particular that the extension of the duty of reporting suspicious transactions to lawyers resulted in a two-year delay in the negotiations, due to the European Parliament's objections to the possible consequences of the above provisions in the areas of fair trial and confidentiality in the attorney–client relationship (The European Parliament and of the Council, 2001).

Especially, the Directive explained that legal professionals, are subject to its provisions when they provide financial or corporate transactions, including the provision of tax advice, the misuse of which has a greater risk. Interestingly, the legal instrument under investigation made some exemptions on the obligation to report any suspicions of money laundering owing to the duty of confidentiality of “independent members of the legal profession, recognized by law and subject to scrutiny, such as lawyers, when they verify a client’s legal position or represent the client in a lawsuit.” Accordingly, “these exceptions should be provided to the obligation to disclose information obtained before, during or after the trial, or during the verification of the client’s legal position.” The Directive stipulates that legal advice must be given in accordance with the duty of confidentiality, unless the legal adviser himself is involved in money laundering activities, if the legal advice is provided for the purpose of money laundering or if the lawyer knows that his client is asking for legal advice to launder proceeds of illicit activities.

Later on the Framework Decision 2001/500/JHA of the Council in 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime emphasized the special importance of the convergence of criminal law and criminal procedure’s rules in the field of prevention and suppression of money laundering (The Council of The European Union, 2001).

Some further measures for the protection of the financial institutions were taken with the third Directive. More precisely, according to the third Directive (2005/60/EK), in cases where the individual beneficiaries of a legal person or legal entity, such as a trust

institution or company, have not yet been identified, and it is therefore impossible to identify a person as a beneficial owner, managers were considered to be the beneficiaries of the institution or trust management company ([The European Parliament and the Council, 2005](#)). Besides, the specific legal instrument underlines the competence of the member states to constitute stricter provisions than that of EU law, to adequately address the risk posed by payment of large amounts in cash ([The European Parliament and the Council, 2005](#)). Additionally, what is really interesting in the framework of the present research is that the Directive at issue read that notaries and other independent legal professionals need to verify the identity of the beneficiaries on behalf of whom they keep grouped accounts.

Some main contributions to the fight against money laundering were prescribed later in the fourth Directive (EU 2015/849). For instance, in this regulatory context due diligence measures were extended to electronic money products as well as gambling services ([The European Parliament and the Council, 2015](#)). The European Parliament adopted the fifth Anti-Money Laundering Directive (EU 2018/843) on April 19, 2017, focused, among else, on the information exchange from banking supervisors to AML authorities explaining that professional secrecy obligations under Capital Requirements Directive (Article 56) shall not preclude the exchange of information with AML competent authorities ([The European Parliament, 2019](#)). The last one is the sixth Directive (EU 2018/1673). It was published on October 23, 2018, and the member states must transpose it into national law until December 3, 2020, ([Planet Compliance, 2020](#)), while it must be implemented by financial institutions by June 3, 2021 ([Planet Compliance, 2020](#)). Its importance lies in the fact that it harmonizes the laws of the member states with the recording of a list of 22 predicate money laundering offenses, including tax offenses, environmental crime and cybercrime [30]. Besides, it extends the culpable offences by penalizing all kinds of contribution in money laundering, like aiding and abetting, inciting and attempting money laundering operations [30].

Another considerable aspect of the sixth Directive is that it broadens the scope of criminal liability to more subjects, id est, to legal persons, such as companies and partnerships, for failure “to prevent a ‘directing mind’ within the company from carrying out the illegal activity” [30]. That Directive provides also stricter punishments such as higher minimum prison sentence and fines for individuals, but also exclusion of legal entities from public financing [30]. For the completeness of the present summary report, it must be noted that there is a variety of institutional mechanisms supervising the compliance with AML rules. These are national competent authorities that may include; the European Central Bank and the Single Supervisory Mechanism as prudential supervisors; and iii) the European Supervisory Authorities authorized with supervisory convergence ([The European Parliament, 2019](#)).

5. Lawyers in difficult position

5.1 Role of lawyers in society

The law, which is more complex than ever, is also ubiquitous than ever. It has penetrated deeply into companies, the society and generally in our lives. New rules are constantly in force, new obligations are imposed on citizens, forcing them to review their practices and improve them. It is often difficult to have a complete picture of the effects of these rules and to identify the opportunities that new rules open up. Lawyers provide legal advice toward which the distance between the legislation and the citizens decreases.

By protecting the rights of citizens, sometimes against the authorities, lawyers play a vital role in upholding the rule of law. To do this, lawyers must be independent of any influence, such as political, judicial and governmental. Lawyers are the custodians of the

legal process, enforcing procedural rules and restricting arbitrary actions whenever possible. In each process, they maintain and provide legal certainty and therefore trust. They represent and afford access to justice for all.

5.2 Concept of confidentiality principle of legal profession and its contradictions with EU law about money laundering

Article 12 of the first Directive (91/308/EC) has already provided for certain obligations to legal professionals, taking into consideration that the legal professions should be subject to the provisions on money laundering, in the event that they carry out some kind of financial mediation in financial transactions. Additionally, the wide extension of the “*ratione personae*” scope of the Second Directive (2001/97 EC), concerning the obligation to inform the authorities about suspicious activities that may be linked to money laundering, has undermined legal secrecy, despite the fact that there have been two exceptions to the relevant obligation of lawyers (either when representing their client in a lawsuit or when verifying the legal position of their client). Also, it has limited the scope of lawyer’s criminal liability to the extent of intentional facilitation of money laundering.

These measures, on the one hand, prevent the involvement of the legal professionals in the legalization of “dirty money” but, on the other hand, they raise extreme risks to the smooth practice of legal professions since they require that the professionals hand their client over to the authorities, whenever they have suspicions. Potential customers may not trust a lawyer if it is known that in the past he has reported one or more of his clients to the authorities as suspicious for money laundering activities. Lawyer’s reputation is further damaged when after such a report the suspicions prove to be false. The confidentiality principle is the corner stone for the relationship between the lawyer and the client. Especially, in the case of lawyers who litigate their clients, confidentiality principle guarantees the protection of defense rights and, accordingly, safeguards the principle of fair trial (Mitsilegas, 2020). Consequently, the lawyer is confronted with a conflict of interests; on the one hand, he has to report his suspicions to the authorities of the State and, on the other hand, to keep the information concerning his client, secret, so that he is able to defend him appropriately (Council of Europe, 1995). Apart from that, if the report of suspicions is wrong, the lawyer may be found guilty of violation of confidentiality and professional secret, which in some countries like Italy brandishes censure as disciplinary sanction or suspension of the professional practice from one to three years [31], while in other countries like Sweden, it is punished with fine (Herlin-Karnell, 2020).

Confidentiality is an inherent element of the legal profession. It is established by all codes of conduct, such as the Code of Conduct for European Lawyers established by the CCBE, which states in Article 2.3 on professional secrecy that *by the nature of his mission, the lawyer is aware of secrets of his client and recipient of his confidential information. Without the guarantee of confidentiality, there can be no trust. Therefore, professional secrecy is recognized as a fundamental and primary right, but also an obligation, of the lawyer* (Case C-305/05, 2006). The rule of professional secrecy can be understood, in this respect, as an obligation of confidentiality, which is a moral imperative associated with the legal profession. It encloses the need of privacy in the communication between the lawyer and the client, since otherwise the client will conceal information from his lawyer, and thus, the lawyer will not provide him with all the suitable legal advice. The violation of legal professional privilege in some jurisdictions is punished as a criminal offence, while in others it appears a constitutional character closer to that enshrined by the European Convention on Human Rights,

safeguarding fundamental rights such as fundamental right to privacy, right to secrecy of communications, right to defense rights and fair trial.

The Order of Francophone and Germanophone Barriers, the French Order of Advocates of the Brussels Bar, the Order of the Flemish Barriers and the Dutch Order of Advocates of Brussels brought an action before the Arbitration Court (Belgium) against the transposition into Belgian law of the restriction of the duty of confidentiality provided for in Directive 2001/97. According to them, this regulation violates the principles of professional secrecy and the independence of lawyers, which are protected by the rights enshrined in the Constitution and the ECHR. In its judgment, the Arbitration Court states that professional secrecy is a “fundamental element of the rights of the defense,” but considers that it can be lifted “in case of necessity or when it comes into conflict with a superior legal good,” provided that there is an imperative reason for this and the principle of proportionality is strictly observed.

Precisely, according to the European Court of Human Rights, *an accused's right to communicate with his advocate out of hearing of a third person is part of the basic requirements of a fair trial in a democratic society and follows from Article 6 para. 3 (c) of the Convention* (Case C-305/05, 2006) and the relationship of trust between the lawyer and the client constitutes a prerequisite for a fair trial (Case C-305/05, 2006). The Court has also emphasized the connection of the confidentiality principle with Article 8 of the Convention since the Article *affords strengthened protection to exchanges between lawyers and their clients* (Case C-305/05, 2006) since otherwise lawyers are deprived from their fundamental role of the defense. Apart from the Court's case law, the lawyer's legal privilege is enshrined in EU law. Article 4 of the Right of Access to a Lawyer Directive (Directive 2013/48/EU) reads that “Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law” (Case C-305/05, 2006). It must be also noted that the European Court of Justice (ECJ) has elaborated the criteria of protection of that confidentiality. In the case AM&S, it established that the lawyer-client's communications must be *made for the purposes and in the interests of the client's rights of defense; and emanate from independent lawyers who are qualified to practice in an EEA country*, explaining also that legal advice is just a preparatory step for the proceedings of the defense (Case C-305/05, 2006) and that a relationship of employment between the lawyer and the client does not fall within the scope of confidentiality principle (Case C-305/05, 2006).

The European Court of Human Rights has used one of these conditions but also it has held one more requirement under which the obligation to report suspicions does not infringe Article 8 of the Convention. Specifically, in the case *Michaud v. France*, the Court elucidated that the obligation serves a legitimate aim, and it highlighted the necessity of that measure to prevent crime and disorder. Additionally, the Court opined that the transposition of the obligation into the French legislation and its implementation was proportionate with the legitimate aim, “since lawyers were not subject to the above requirement when defending litigants -as the ECJ has set- and the legislation had put in place a filter to protect professional privilege, thus ensuring that lawyers did not submit their reports directly to the authorities, but to the president of their Bar association” (European Court of Human Rights Press Unit, 2019).

5.3 Examples about implementation and effectiveness of global anti-money laundering measures

Finally, it is interesting for the present research to have a look at the results of the international law fight against money laundering. The UK is an example of very high

implementation of FATF provisions against money laundering, while also the provided penalties against money laundering exceed those obliged by EU law (Herlin-Karnell, 2020). Precisely, the UK includes administrative, criminal and civil sanctions on offenders (Herlin-Karnell, 2020). As for the increased diligence required by the lawyers, according to a research conducted in 2005 in the UK, the vast majority of regulated firms complied with the anti-money laundering measures just due to the threat of sanctions (Ryder, 2008). However, lawyers exclude potential clients too easily (Ryder, 2008). Consequently, they turn to the illegal market. Besides, it is generally perceived that *the anti-money laundering measures have made moving money from the criminal world into the clean world more costly*, leading to the expansion of the criminal world toward more services and more members, while the money remains in the shadow economy (Geiger and Wuensch, 2007). Among EU member states, according to interviewees, Italy and Germany impose very low fines for anti-money laundering violations, whereas France is somewhere in between (Kirschenbaum and Véron, 2019). However, a more comprehensive comparison of anti-money laundering enforcement and effectiveness among EU member states is considered implausible due to the limited data provided by FATF and MONEYVAL (Kirschenbaum and Véron, 2019; Pol, 2020).

6. Conclusion

The research paper aims at shedding light to the legal professionals' role not only in money laundering practices but also in anti-money laundering policies. To this end, the following steps have been taken toward a deductive approach of the subject. At first, the predominant definitions of money laundering and examples of money-laundering activities were presented. For a comprehensive approach of money laundering, the study also demonstrates the different steps of money laundering. What is really important for the central subject of the present thesis is to substantiate why legal professionals are considered by the global institutional regulatory regime as facilitators of money laundering. FATF as the predominant international anti-money laundering mechanism has introduced that connotation, explaining the link between the legal services and the money laundering trends, due to the complicated legal and financial character of money laundering operations. As it has already been clarified, there is a variety of risk factors which contribute to that fact, while international and European legal professionals' associations remain in collaboration with anti-money laundering mechanisms and raise awareness to their members concerning the vulnerabilities of their professional framework.

Money laundering is considered as an international criminal phenomenon. Therefore, the present dissertation proceeded to the brief charting of the supranational regulators and their legal arsenal to combat money laundering since according to Bolini's apt observation: *money laundering law could be interpreted as a specific response to the governance vacuum that globalization creates in the area of crime control*. Taking into account that the legal framework of (organized) crimes is always established at first within the national regulatory framework of each country and later on by transnational covenants and conventions, while the international legislative initiatives are institutionalized usually as the last step of regulatory response against them, it is concluded that money laundering has been evolved from a transnational offence to an international crime facilitated by the globalization. At a regional level, the EU six Directives came to harmonize the regulatory differences among the member states, by making binding for its member states the provisions of the FATF [32].

Money launderers mostly prefer lawyers due to the elevated duty of confidentiality and secrecy. This specific professional attribute has been limited by the lawyers' obligation to report their suspicions to the authorities, in accordance with the requirements of the abovementioned legal regime as a response to criminals' tactic. With this respect, the

research illustrated toward a brief overview, the points of legal professionals' regulation by the corresponding legal instruments. At a later stage, the present research underpinned the role of lawyers as gatekeepers of the democratic principles and the human rights, one of which is the right to a fair trial. Accordingly, the ECtHR and the ECJ analyzed the criteria under which the defense rights, the right to a fair trial and the right of privacy as fundamental European rights are not violated by obligations as such.

Finally, the reader can better comprehend the difficult position of lawyer, by remembering the sanctions that the violation of his professional duties may entail not only under the criminalization of his intervention in money laundering activities but also by the infringement of the legal duty of secrecy, in case that he discloses information about his client due to wrongful suspicions of money laundering. This threat may lead to the excessive customer avoidance, resulting in criminals' recourse to further illegal services. Taking everything under consideration, it must be emphasized that policymakers are called to combat money laundering, but with attention both to the danger of practical infringement of overarching societal principles and to the twofold role of legal practitioners and mainly lawyers, who in cases as such are in difficulty of keeping the contradictory spirit of the law.

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