

## MONEY LAUNDERING ON THE BACKGROUND OF THE FINANCIAL CRISIS - A ROMANIAN REALITY

Iulian Gheorghe Ioniță \*

### Abstract

*The purpose of most illegal activities (especially those in the economic field), whether illegal as specific to organized crime networks (cigarette smuggling, alcohol; traffic of weapons, nuclear material, drugs, human beings; trade in protected species of animals and plants, with human tissues and organs; forgery of currency or other values etc.) or other illegal activities developed more or less in organized manner (such as embezzlement, corruption, tax evasion, fraud, informatics fraud), is to generate funds for the organized criminality group or individual that develops them.*

*As these illegal activities generate substantial funds, the organized criminality group or individual (launderer) involved have to find a way to control these funds without attracting attention to the activity which generates them or to the persons concerned. Through the process of money laundering one tries and succeeds (in most cases) to hide the real origin and possession of these funds.*

*In the context of the current financial crisis, the phenomenon of money laundering experiences an extension and a specialization without precedent. This situation demands a concerted reaction by the authorities who enforce the law in preventing and fighting money laundering and no only.*

**Keywords:** underground economy, tax evasion, fraud, money laundering.

**JEL Classification:** E26, G01, G20, H20, H26, K14, K20, K42

### 1. Introduction

This paper explores the Romanian particularities of the money laundering process and its implications in the current financial crisis.

Currently, a strong specialization and professionalization of organized criminality individuals or groups who develop illegal activities specific to the underground economy is manifested.

These activities become more and more numerous, complex and difficult to be tracked by the authorities who enforce the law in preventing and fighting money laundering.

Unfortunately, one can notice (and so did money launderers) an insufficient specialization of the authorities who apply the law in preventing and fighting money laundering, an insufficient specialization which affects rapid collection of evidence and especially finding some solutions so as to make activities more efficient.

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\* Iulian Gheorghe Ioniță is Associate Professor of Law at the Romanian American University in Bucharest. E-mail: [ionita.gheorghe.iulian@profesor.rau.ro](mailto:ionita.gheorghe.iulian@profesor.rau.ro)

## 2. The concept of money laundering

Money laundering is considered the financial *de facto* part of all infractions which result in profit (NOPCML, 2005, p.8).

Money laundering is a typical American expression used initially in the structures of organized crime so as to designate reinvestment in legal business of money obtained from illegal business, using complicated internal and international financial circuits for this purpose (Sandu et al, 2001, p.317).

According to Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw 2005 (CE 2005 Convention, art. 9 par. 1),

„Laundering offences ... offences ... when committed intentionally:

a. 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;

b. 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;

and, subject to its constitutional principles and the basic concepts of its legal system;

c. the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

d. participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article”.

According to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC), 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 (2001/97/EC) and 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 (2005/60/EC, art. 1, par. 2),

„... the following conduct, when committed intentionally, shall be regarded as money laundering:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, 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 such activity to evade the legal consequences of his action;

(b) 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 criminal activity or from an act of participation in such activity;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the actions mentioned in the foregoing points”.

According to Romanian Law no. 656 of 7 December 2002 on prevention and sanctioning money laundering, as well as for setting up some measures for prevention and combating terrorism financing (Law 656/2002, art. 23, par. 1)

„The following deeds represent offence of money laundering and it is punished with prison from 3 to 12 years:

a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of property or of assisting any person who is involved in the committing of such activity to evade the prosecution, trial and punishment execution;

b) 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 criminal activity;

c) the acquisition, possession or use of property, knowing, that such property is derived from any criminal activity”.

### **3. Stages and methods of money laundering**

Through the process of money laundering, an appearance of legality is given to some profits obtained illegally by delinquents who subsequently benefit from the obtained sums without being compromised (NOPCML, 2004, p.6).

Money laundering consists in masking through various methods and techniques the origin of the obtained illegal funds, masking which conditions the possibility of certain (unpunished) introduction of these funds in the legal financial and economic circuits (Sandu and Ioniță, 2005, p. 224).

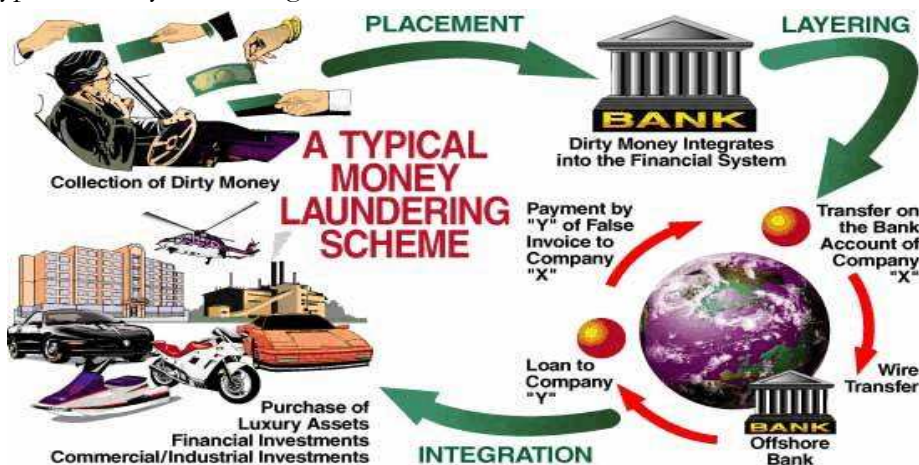
There are several methods and techniques of money laundering, which may vary from a simple conversion of sums, transferring them outside the country, mixing with other legal funds, buying and selling luxury objects, to the transfer of the sums through shell companies and complex international business networks.

In the case of infringements specific to organized crime (such as traffic of weapons, drugs, human beings, etc.) or other crimes (such as smuggling, theft, blackmail) which generate dirty money, the resulted funds are under the form of money in cash, money which has to be introduced in the financial system by any means.

Despite the imagination of the launderers and the variety of methods used, the process of money laundering is performed in three stages: placement, layering and integration.

In practice, these stages can appear distinctly but can also lap over, depending on the available opportunities for laundering and on the requirements of the organized criminality individual or group which develops them.

A typical money laundering scheme



Source: UNODC

## I. Placement

The purpose of this initial stage is „literally getting rid” of cash obtained from illegal activities, in order to separate funds from illegal sources, which could be monitored by law enforcement agencies. In this placement stage of money laundering, the money launderer introduces his illegal profits into the financial system through financial institutions, casinos, exchange offices and other businesses. The placement stage can be carried out through many methods, including

- *currency smuggling*: the money launderer illegally moves cash obtained from illegal activities out of the country through various methods of transport; this method is used because large sums in cash do not occupy a large space and can be hidden in various locations;

- *currency exchanges*: the money launderer purchases with cash obtained from illegal activities, another country currency; this method is favored by the fact that in transition economies the liberalized foreign exchange markets creates lapses for currency movements which are beyond the control of law enforcement authorities;

- *blending of funds*: the money launderer mix the lawful funds with the cash obtained from illegal activities; this method is used because the best place to hide cash is with a lot of other cash;

- *financial institution complicity*: the money launderer uses persons who hold or control financial institutions; this method is preferred because these people can facilitate the process of laundering the cash obtained from illegal activities through structuring in a way that disguises the original source of the funds.

## II. Layering

The purpose of this second stage is that of making the activities for money laundering more difficult to be determined by the reporting entities and discovered by the authorities who apply the law in preventing and fighting money laundering. Separation from their source in view of ensuring anonymity is done through creating some complex financial transactions schemes, especially conceived to mislead the reporting entities and the authorities for the application of the law. Thus, the launderer uses the funds so as to buy investment instruments, transfers them in a series of different bank accounts worldwide or disguises transfers as being payments for goods and services. The placement stage can be carried out through many methods, including

- *cash transfers to other countries*: the money launderer uses multiple geographically distant accounts to transfer the cash obtained from illegal activities; this method is used especially in such jurisdictions which do not cooperate in investigations aiming at fighting money laundering.

- *cash converted into investment instruments*: the money launderer converts the cash obtained from illegal activities into investment instruments by way of a bank or other financial institution; this method is favored by the fact that the cash obtained from illegal activities was successfully placed within the financial system, with people who own or control financial institutions.

- *disguise the transfers into payments for goods and services*: the money launderer disguises the transfers of the cash obtained from illegal activities into payments for goods and services; this method is preferred as providing an appearance of legitimate actions.

## III. Integration

If the previous stratification process is successful, the money launderer will introduce luxury goods or business, the previously laundered money in the economic circuit investing on the real estate market; only, this time, cash obtained from illegal activities will appear as "clean" funds, obtained from legal commercial activities. The integration stage can be carried out through many methods, including:

- *property dealing*: the money launderer sells properties acquired through shell companies; this method is used because the proceeds from the sale would be considered legitimate.

- *false loans*: the money launderer recovers „loans” that were credited to their companies; this method is preferred because it allows to recover their own laundered money in an apparently legitimate transaction.

- *false import/export invoices*: the money launderer uses false invoices by import/export companies, overvaluation of entry documents to justify the funds later deposited in domestic banks and/or the value of funds received from exports; this method is used because it has proven to be a very effective way of integrating illicit proceeds back into the economy.

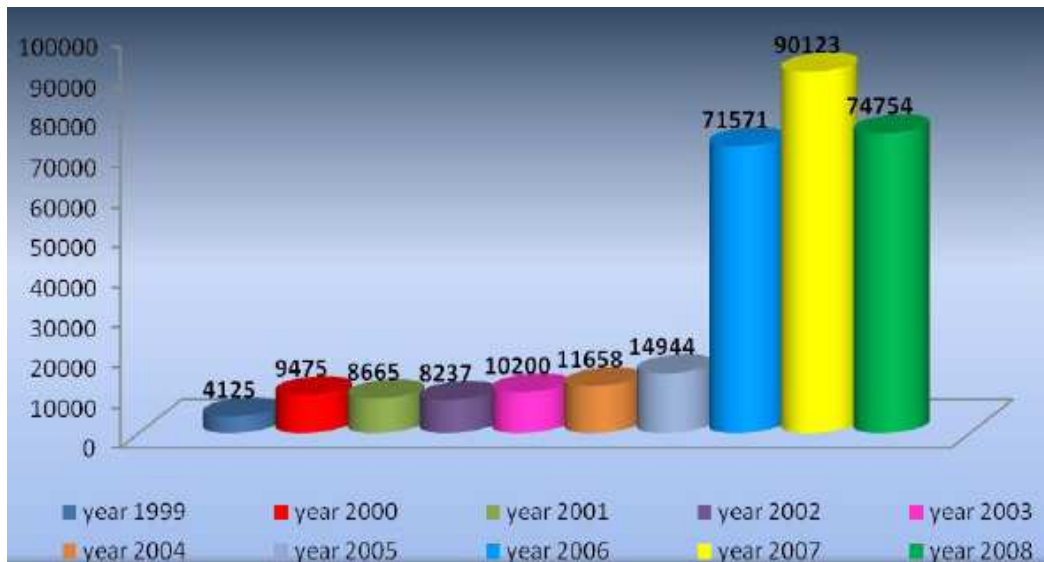
- *foreign bank complicity*: the money launderer uses persons who hold or control foreign banks; this method is preferred because using known foreign banks presents a very difficult target for law enforcement.

#### 4. The characteristics of money laundering in Romania

Even if one cannot assert that money laundering is „specifically” a Romanian phenomenon, it attained in time some particular characteristics.

##### 4.1. Evolution of money laundering

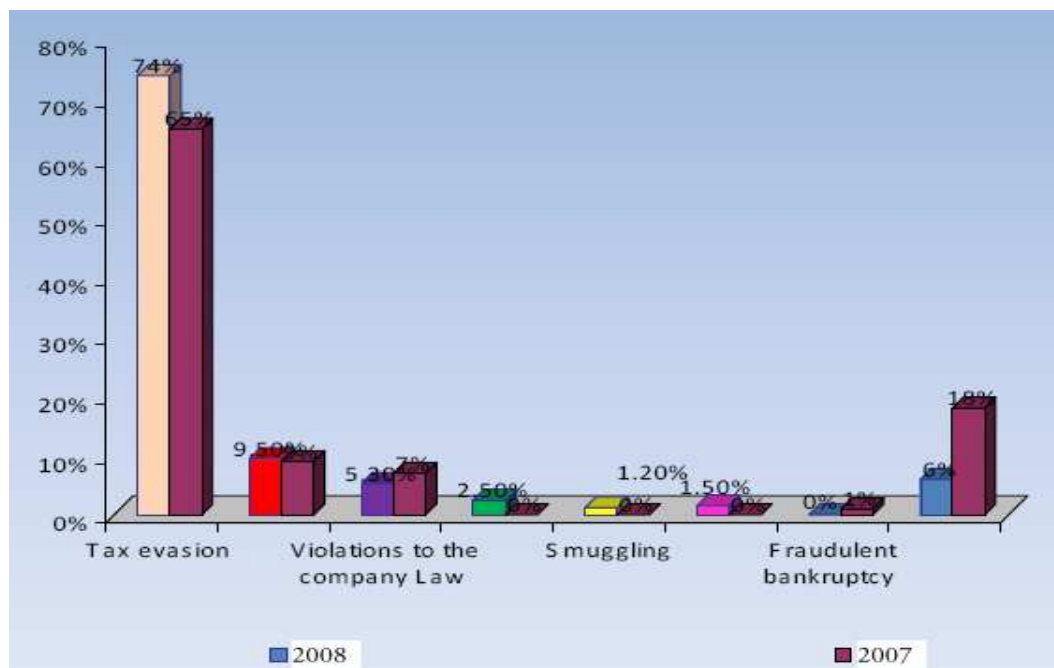
According to the data supplied by the National Office for Prevention and Control of Money Laundering (NOPCML, 2009), the phenomenon of money laundering revealed an ascending trend, experiencing a true „explosion” in the past three years when the number of cash transaction reports which exceeded 15.000/10.000 EUR increased.



Source: NOPCML, 2009, p. 71

In the year 2008, from the total notifications which signaled indications related to committing the infringement of money laundering, sent by NOPCML to the Prosecuting magistracy under the High Court of Cassation and Justice, it resulted that main infraction which generated dirty money was tax evasion (74 % of the cases).

The following crimes which generated dirty money were deceit (9.50% of the cases), crimes relating to the law of trade companies (5.30% of the cases), transnational infringements (2.50% of the cases), procuring, prostitution, human traffic (1.50% of the cases), smuggling (1.20% of the cases) forgery and use of forgery, narcotic drug traffic, etc. (6% of the cases).



Source: NOPCML, 2009, p. 16

In these transactions approximately 1,500 natural persons were involved and the sums subjected to recycling were of approximately 400 mil. EUR.

As far as the origin sources of these sums are concerned, from the financial analyses completed in the year 2008, it resulted that main vulnerable domains of activity were domestic trade (53%), foreign trade (15%), real estate (8%), services (6%), and the financial field (4%), organized crime (3%) and so on.



Source: NOPCML, 2009, p. 17

#### 4.2. Registered and investigated casuistry in Romania during recent years

According to the Directorate for Investigating Organized Crime and Terrorism of the Prosecutor's Office attached to the High Court of Cassation and Justice, following the criminal prosecution activities undertaken by prosecutors within the Macro Economically-Financial Crime Fighting Service, in 2007 (DIOCT 2008, p. 15-16) 432 cases related to money laundering were solved; in 2008 (DIOCT 2009, p. 25-26) 977 cases related to money laundering were solved, while at the end of the year prosecutors were still dealing with 613 cases.

Out of the investigated cases (DIOCT 2008, p 16-18 and DIOCT 2009 p 31-35), we present the following as examples:

**I.** Under public prosecutor's charge no. xxx/D/P/2006 (7<sup>th</sup> of Aug. 2007) the arraignment of defendant T.F.L. and others was ruled, on account of money laundering, tax evasion and association with third parties with the intent of committing crimes. It has been taken into account that this group had carried out several under evaluated merchandise imports, creating several commercial circuits with the help of „ghost companies”, to the detriment of the state's budget in the amount of ROL 28 billion.

**II.** Under public prosecutor's charge no. xxx/D/P/2004 the arraignment of defendants O.R., M.K.A.N., K.J.M.K., M.A.A.T., T.T., G.I. and C.O. was ruled. It has been taken into account that the Guidance and Control Department within the Ministry of Finance notified the Department for Fraud Investigation, within the I.G.P.R., about the fact that, after the legal and real investigation of the commercial operations undertaken by S.C. „AD” S.R.L. Bucharest with S.C. „M.I.” S.R.L. Oradea, it was made clear that, even though merchandise in excess of ROL 668 billion had been traded, S.C. „AD” S.R.L. Bucharest did not run its activities from the stated headquarters, therefore meeting all constitutive elements of tax evasion. In completion of the notification, on 2<sup>nd</sup> of Nov. 2003, the Ministry of Finance, through



the same Department of Guidance and Control, brought forth documents which indicated that 3 companies: S.C. „B.P.” S.R.L. Craiova, S.C. „M.P.” S.R.L. Timisoara and S.C. „Y.S.” S.R.L. Prahova, asked for reimbursement of the V.A.T, following the export of the same merchandise (insulating frames which were produced by S.C. „A” S.A. Botosani) for the same company S.C. „N.I.” L.L.C. at prices that were 1000 times over the normal ones.

**III.** Under public prosecutor’s charge no. xxx/D/P/2006 (5<sup>th</sup> of May 2007) the arraignments of 3 defendants were ruled, for economic crimes and money laundering. It was taken into account that during 2003-2004, the defendants had prejudiced the consolidated state budget with ROL 33,374,186,198 (EUR 873,190), by hiding the chargeable source when selling the 17.934 square meter plot of land belonging to S.C. „L” S.A. Pitesti to the company S.C. „T.I.” S.R.L. Sibiu, using for this purpose the method of ‘interposing a new owner in the process of selling and buying. For dissimulating the origin of the illegal sum of money obtained by undertaking economic crimes, the defendants drew up two fake contracts: one concerned a loan and one real estate in Columbia, both of which ensued that the money had been legally obtained. Subsequently the sum of money was gradually transferred to a bank account until it reached S.C. „L” S.A. Pitesti, as a loan, the money being used for supporting a SAPARD project.

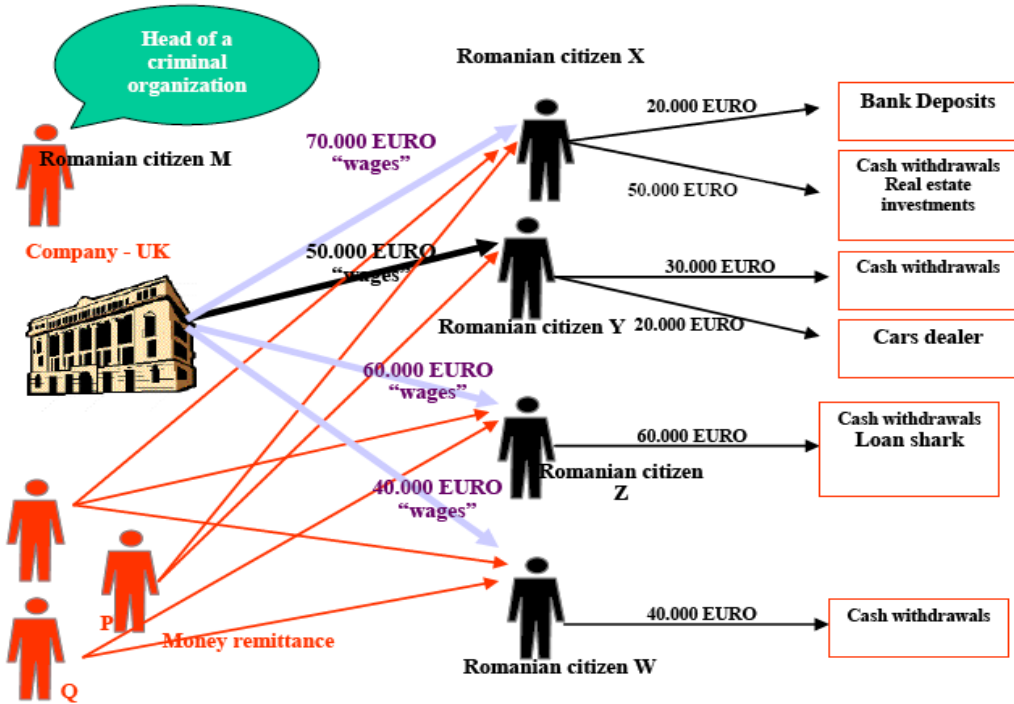
**IV.** Under public prosecutor’s charge no. xxx/D/P/2004 (6<sup>th</sup> of June 2007) the arraignments of four defendants were ruled, under the charge of setting up an organized crime group for purposes of committing economic crimes. During a one year period (2003-2004) the defendants set up an organized crime group with the purpose of not keeping track of papers belonging to the firms they administrated, in order to avoid tax payment to the state budget. The defendants bought merchandise of lower quality, free of taxes in order to sell it as high quality taxable merchandise and acquire for themselves the value of the latter, in the amount of EUR 900,789.18.

**V.** Under public prosecutor’s charge no. xxx/D/P/2004 (2<sup>nd</sup> of December 2008) the arraignments of several defendants were ruled under the charge of associating for the purpose of committing economic crimes such as tax evasion, money laundering etc. The evidence showed that defendant A.K., helped by his nephews Z.R. and Z.O. set up a well organized criminal group which was specialized in under evaluated imports, tax evasion and money laundering. It was established that during 2001-2004, in Romania, several organized criminal groups operated, composed mostly of Turkish citizens, the majority of which were from the Sanliurfa area (Kurdish area). They were specialized in financial and economic crimes and did not hesitate to cooperate with each other if there was a profit to be gained by these criminal activities. One of the most important group was the one that dealt with bringing poor people from Turkey to Romania and then setting up several ghost companies (under these peoples’ names), which did not operate at the headquarters they had declared, in order to avoid state taxes. The companies thus set up were ultimately used by other criminal groups for committing financial and economic crimes. After their visa would expire (2 months), the persons who were associated

with the mentioned companies would have to sign a proxy that gave the right of management to the next person who was to be brought to Romania for the same purpose. Companies would be created under this person's name as well and were used either immediately or subsequently, depending on the activity undertaken by the organized groups. After taking part in a certain number of criminal activities for these groups, the ghost companies would be handed over to people with fake identities or abandoned. The sums of money obtained were transferred, through the accounts of the ghost companies for the purpose of hiding their true origin, or were picked up in cash, under false documents (usually slips from natural persons), or exchanged in foreign currency and transferred in accounts outside Romania. Iraqi citizens were sometimes also used in carrying out activities for these ghost companies, or firms set up in their names. Based on notifications received from the National Office for Fighting Money Laundering, the arraignment of 43 defendants was ruled, on account of suspicious money laundering activities undertaken through the accounts of 21 social firms which did not operate at the stated headquarters. The financial examination and audit found that the afore-mentioned companies prejudiced the state budget by ROL 58,737,894,396, consisting in VAT of ROL 25,355,493,952 and profit tax of ROL 33,382,400,444.

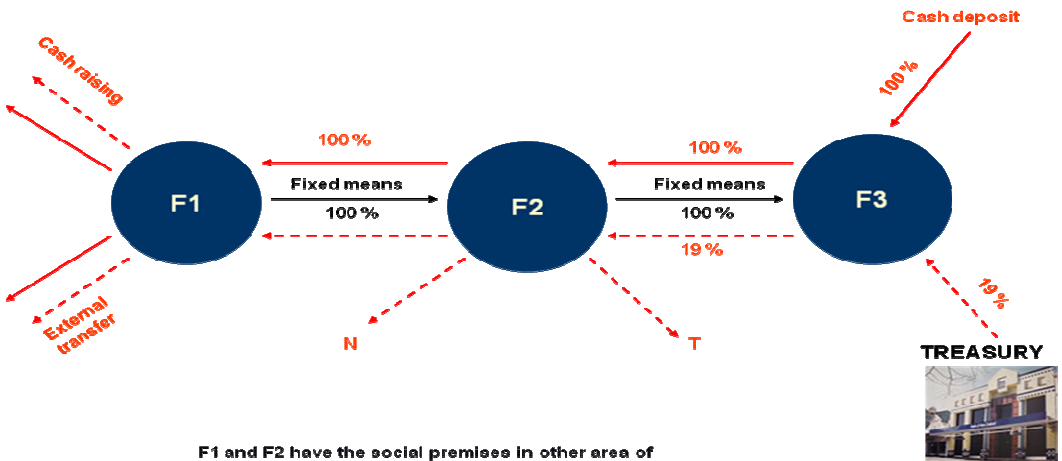
**VI.** Under public prosecutor's charge no. xxx/D/P/2006 (24<sup>th</sup> of March 2008) the arraignment of defendants S.T, T.C.E., M.G., P.C. was ruled on the account of: tax evasion, constituting/belonging to an organized crime group for the purpose of committing infractions, deceit with regard to the quality of the merchandise, forging of aliments and other products and money laundering. It was taken into consideration that during 2004-2007 in Romania, several groups consisting of natural persons and companies undertook criminal activities for the purpose of gaining significant financial resources, through money laundering, tax evasion and the forging of goods. Evidence showed that, in order to succeed in creating networks for capitalizing on forged alcoholic and wine products without paying taxes, and in order to keep a legal appearance for its activities during 2006-2007, the defendant S.T. accompanied by several Romanian and Moldavian citizens, as head coordinator and decision maker for S.C. „A” S.R.L. and S.C. „N&K” S.R.L., decided to acquire several companies that would operate as ghost firms in the fields of producing and commercializing alcoholic drinks and wines. Also, the same companies were used in banking operations that had a double role: to create the illusion that payment for commercial activities was taking place, for which they would issue account invoices, and on the other hand, in order to create the possibility of laundering important sums of money, under the appearance of cash outflow or of successive circulating of notes of hand issued with receipts, which were reintroduced in the mentioned companies' patrimony or in the patrimony of the defendants. Therefore it was shown that by prejudicing the state budget with RON 6 million, as an aftermath of influencing the taxable mass and introducing illegal merchandise in the commercial cycle, it was necessary to launder these illegal funds.





Source: NOPCML, 2008, p. 57

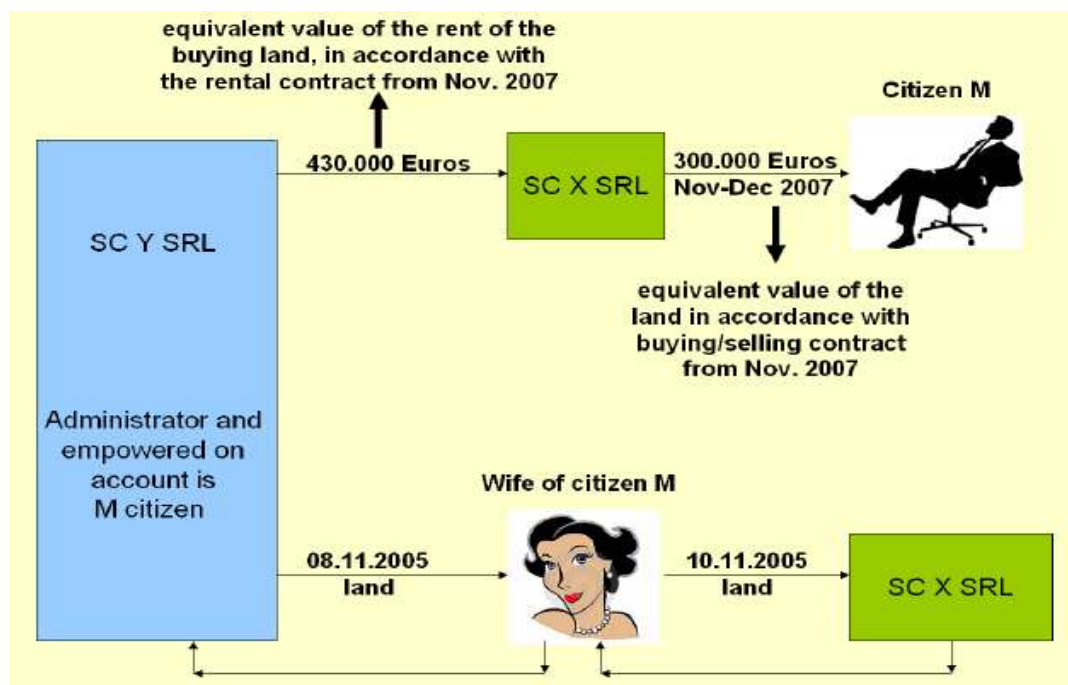
III. Setting up fictional financial and commercial circuits by using shell companies in order to gain illegal VAT deductions.



F1 and F2 have the social premises in other area of competence than the fiscal organism that gives the VAT deduction, to make difficult the investigations, taking into account the 30 days deadline for solving the VAT request

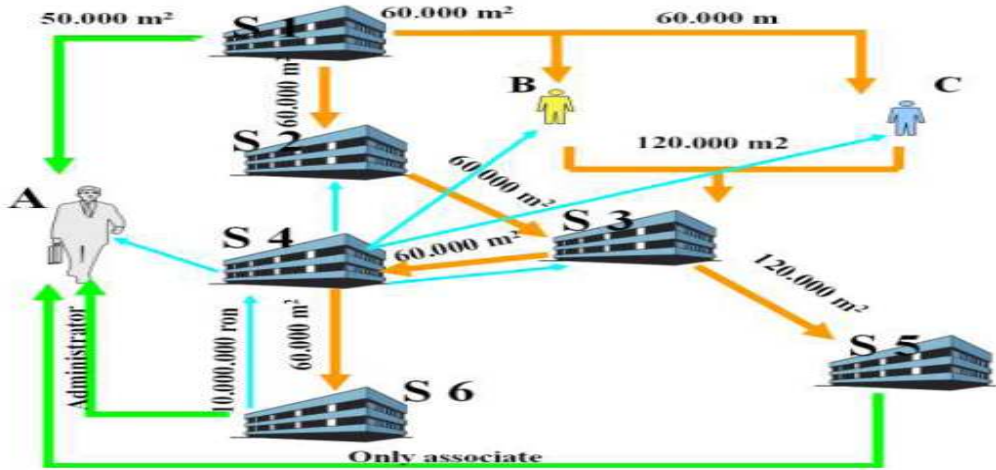
Source: Sandu, 2005, p. 15

IV. Distorting economic results performed by the company and avoiding budgetary obligations by concluding false sale-purchase contracts and real estate leasing.



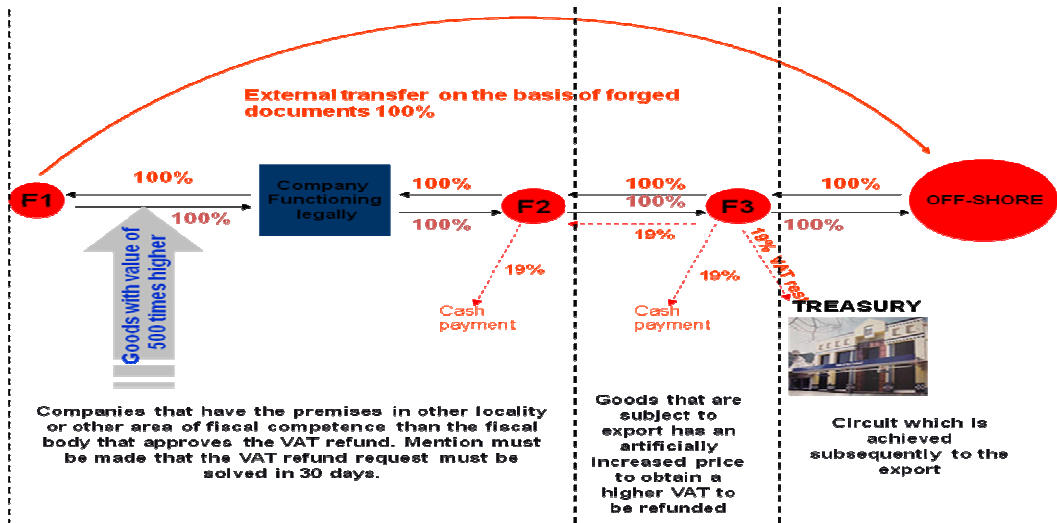
Source: NOPCML, 2009, p. 87

V. Organization and coordination of a group of firms with the purpose of totally or partially avoiding the payment of tax obligations by non-declaring taxable incomes or by hiding the taxable object or source or by diminishing the incomes under the justification of fictional operations of successive sale-purchase of lands between members and non-registration of the obtained sums.



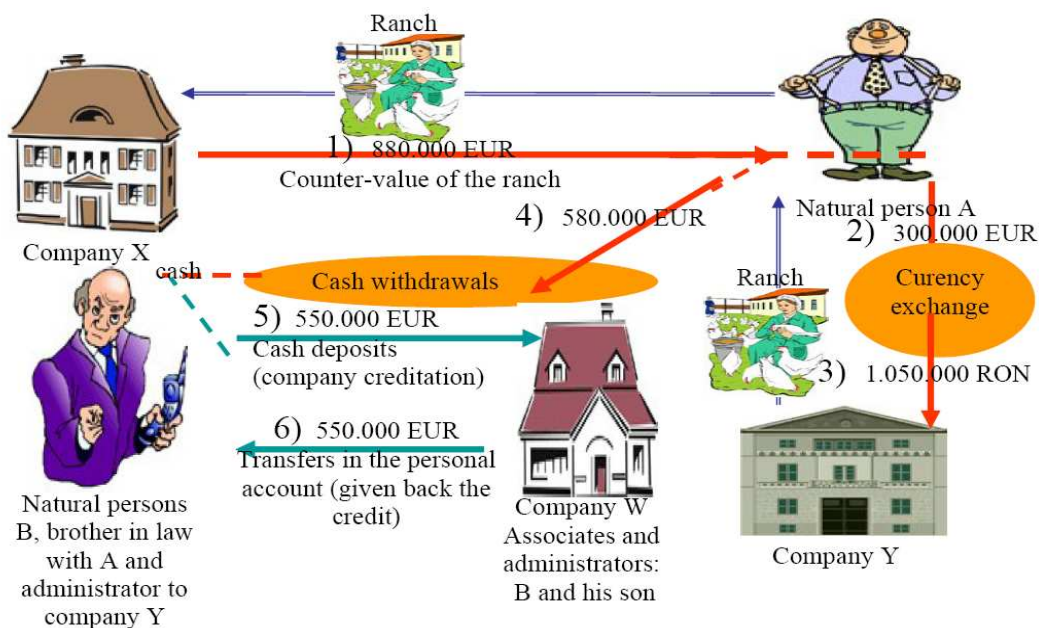
Source: Source: NOPCML, 2008, p. 58

VI. Successive transfer of large amounts of money from the current accounts of the companies that carry out apparently legal activities to shell companies based on fictitious commercial operations, thus diminishing the taxable basis and fictitiously generating inferential VAT.



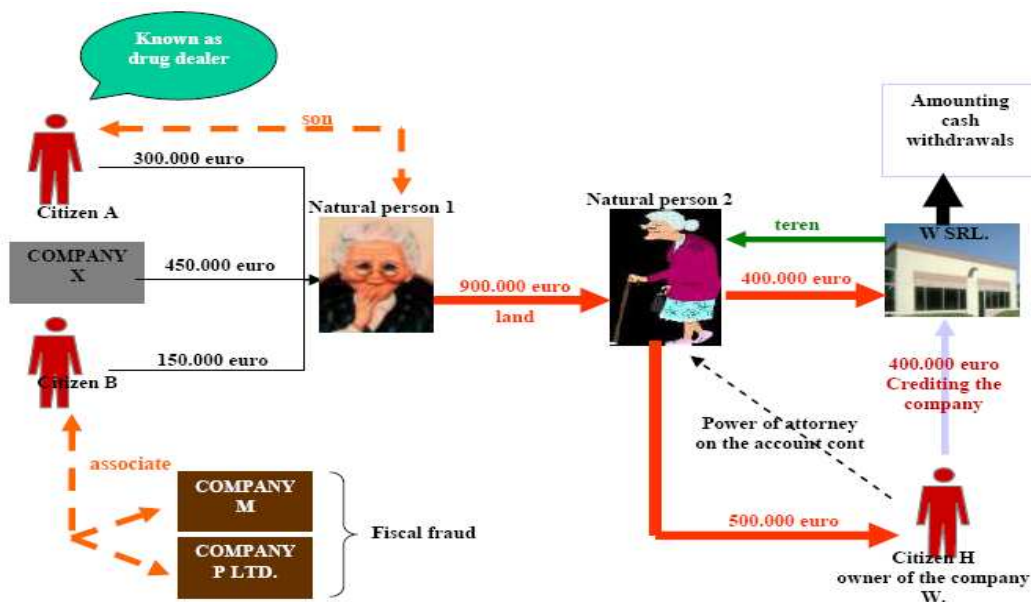
Source: Sandu, 2005, p.16

VII. The use dishonestly the goods of the company for a purpose contrary to its interests or for his own use, deceived and obtained sums of money through interposed persons.



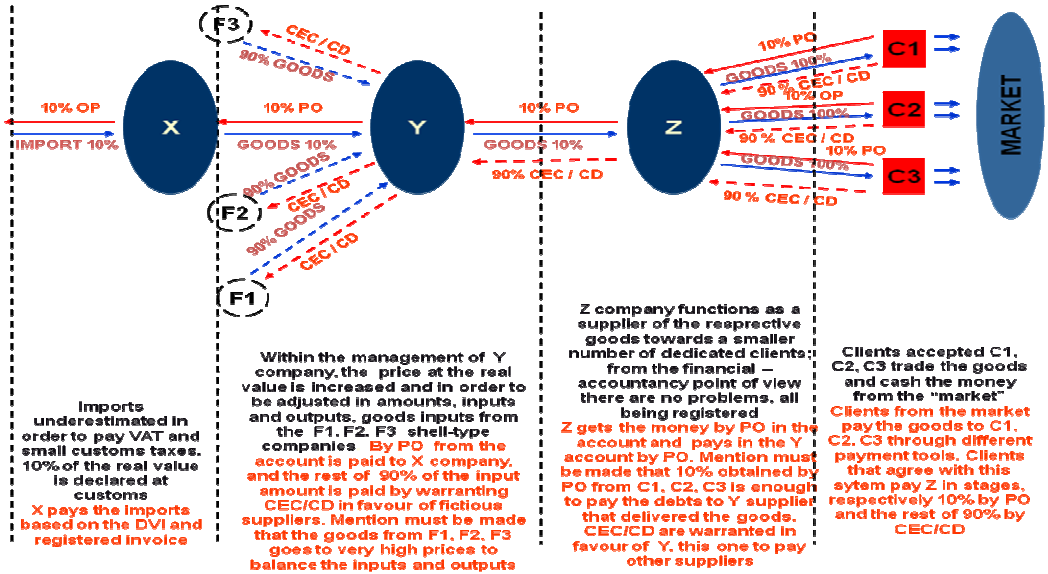
Source: NOPCML, 2009, p.78

**VIII.** The use of elderly persons as interposed individuals for fictitiously concluding sale-purchase contracts for some real estate properties using sums obtained from drug traffic and tax evasion.



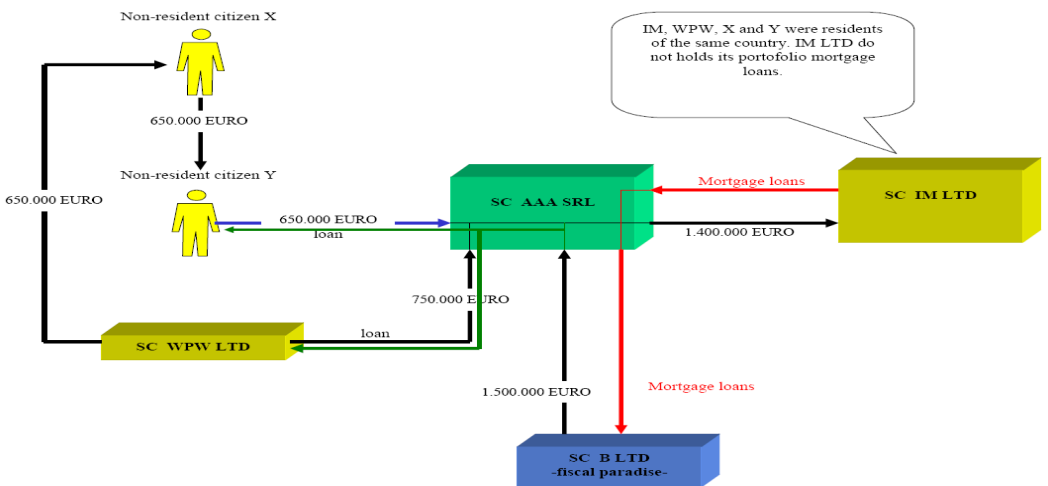
Source: NOPCML, 2008, p.56

IX. The use of bank system for successive transferring of sums obtained from smuggling and tax evasion.



Source: Sandu, 2005, p. 17

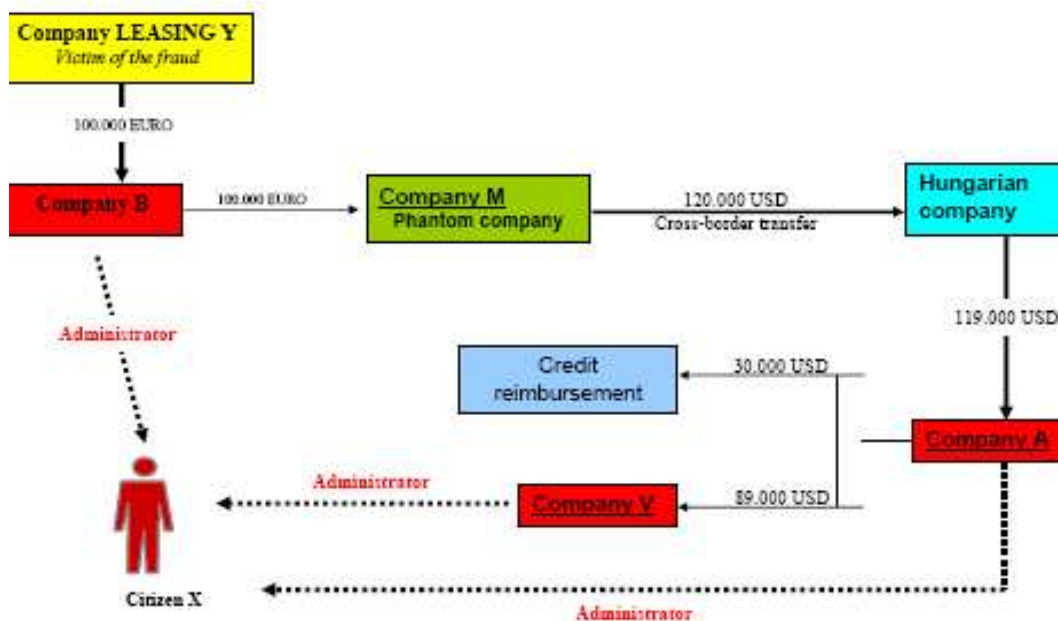
X. Interposing of natural persons and trade companies for successive transfers, using various justifications of the sums obtained from committing tax evasion, deceit, forgery, corruption infringements, etc.



Source: NOPCML, 2009, p. 85

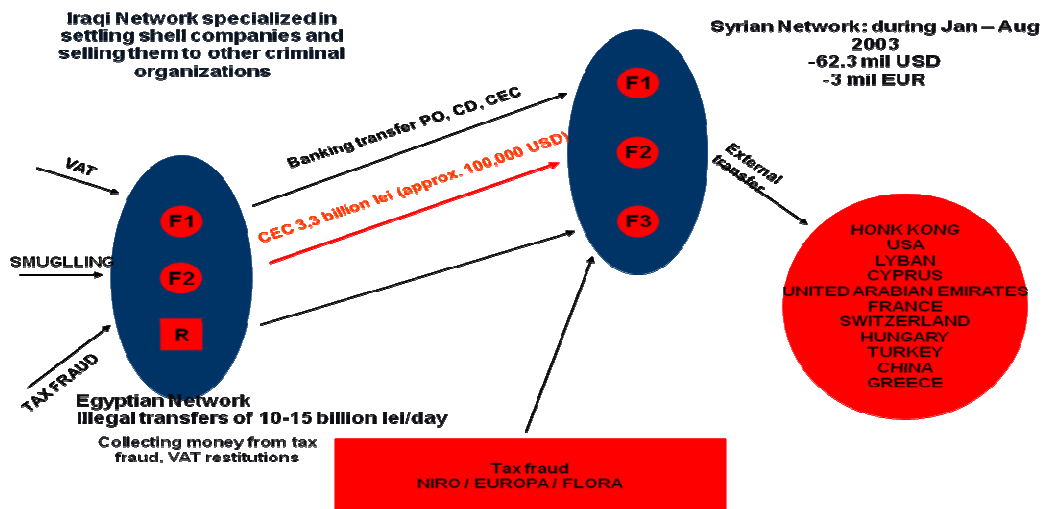


XI. Fictitious delivery and reception of equipments which are the object of leasing contracts for the purpose of embezzling leasing companies, exchanging the sums into other currency and their transfer through other companies.



Source: NOPCML, 2008, p. 55

XII. Cooperation of specialized organized crime networks in creating ghost companies with those specialized in collecting dirty money and transfer abroad of the sums from the underground economy.



Source: Sandu, 2005, p. 18

## Conclusion

The process of money laundering is of critical importance because if it is successful it will allow the launderer to have control over the funds generated by the developed infringing activities and will also offer (which is the most important) a lawful coverage for their source.

The increased social danger of money laundering infringement and of misdemeanors which generate dirty money consists in the fact that this dirty money, laundered through various methods, is subsequently used for repeating infringing activities and finally obtaining (in fact) economic and political power.

In Romania as well as in other countries, money laundering has become a „national sport”. As expected in this period of crisis, the phenomenon of money laundering experienced an expansion and a specialization without precedent. This situation demands a concerted reaction by the authorities who enforce the law in preventing and fighting money laundering and no only.

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