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FINANCIAL ANALYSIS OF INNOVATIVE FORMS OF MONEY*

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Abstract. The identification and financial analysis of property suspected to constitute proceeds of crime is a difficult activity that must be carried out before such assets can be frozen, seized or confiscated. The lawful seizure of assets as the enforcement of a sentence or a protective measure, or for satisfaction of a claim for damages, requires that the assets be secured in a way that prevents them being placed outside the public authorities' control and limits the potential for the laundering of funds and their use in further crimes. Effective identification and analysis depends on the active and effective detection and documentation of both the direct proceeds and indirect benefits of crime, their location, character, status and value, the prevention of changes in the persons who have ownership or disposal rights to the assets as well as determination of the total assets of the accused (suspect). The aim of the present paper is to focus attention on the financial analysis of selected assets related to financial markets and new forms of money. It should be emphasised that as technology evolves, it is mirrored by innovation in financial markets and equal development of financial analysis focusing on innovative forms of money. The basic indicator with the greatest significance for financial analysis is regulation and especially whether it covers the relevant forms of money. If they are subject to regulation (in this case by the central bank), they are easier to identify and secure. Things are different if they are not directly regulated by legislation or if they not subject to supervision.

Keywords: financial analysis; property; seizure; confiscation; freezing; financial market; innovative forms of money

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1. Introduction

Finding out the extent of the assets of suspects and accused persons, including those in innovative forms, is one of the basic preconditions for successful organized crime suppression. Organized crime as phenomenon affects significantly security of society and is among threats to sustainable development processes (e.g. Luzgina, 2017; Kuril 2018; Čentéš et al. 2018; Jurkevičius, Pokhodun 2018; Osipov et al. 2018; Mikhaylov et al. 2018; Tvaronavičienė 2018; Finogentova et al. 2018).

The assets of an accused person (suspect) can vary in their character, form, location, origin etc. Every identification procedure is unique and depends on the individual facts of the case (crime), the person of the accused (suspect) and so on. The approach to identification is pragmatic because its purpose is to facilitate steps for the freezing, seizure and confiscation of assets as security in case of a sentence or a protective measure or for their enforcement, or to pay compensation for damages (Čentéš et al. 2013). Measures to identify the origin of assets also investigation its links to the perpetrated crime.

An important tool in this regard is the property profile, which is a set of information on tangible and intangible assets owned by a given natural person or legal entity. The property profile is one of the outputs of financial analysis. The procedure for determining the property profile follows the logical procedure presented by regulatory conditions and the available evidence. This means that checks focus on all available record systems from which it possible to identify any right to property. The main general types of assets are recorded in the following systems:

1. real estate – registered by the cadastral authorities, specifically the Geodesy, Cartography and Cadastre Authority of the Slovak Republic and the district offices (Sections 2, 68 and 69 of Act No. 162/1995 on the real estate cadastre and on registration of ownership and other rights over real estate (the Cadastral Act), as amended),
2. relations under financial law and the law of commercial obligations
    - with banks based in the Slovak Republic, with branches of foreign banks, with building savings banks – registered in the banking system, subject to regulation - current accounts, payment cards, loans, safe deposit boxes, bank contracts etc. (Sections 38a(4), 91(4)(g) and (b) of Act No. 486/2001 on banks and amending certain acts, as amended, Act No. 310/1992 on building savings, as amended),
    - insurance relationships – registered by insurance companies: life insurance – investment life insurance, extraordinary life insurance deposits, single instalment life insurance, non-life insurance (Sections 72(3), 166 of Act No. 39/2015 on insurance and amending certain acts, as amended),
    - with leasing companies,
    - within the context of collective investments managed by fund management companies: mutual fund administration, mutual funds – open, closed, special (Section 162(3) of Act No. 203/2011 on collective investment, as amended),
    - dealing in securities and ownership of securities: registered securities, order securities, bearer securities etc. – the Central Securities Depository, a member and a dealer in securities (Sections 110(1), 134(3) of Act No. 566/2001 on securities and investment services and amending certain acts, as amended, section 17(3) of Act No. 429/2002 on the stock exchange, as amended),
3. ownership relations
    - ownership share in commercial companies and cooperatives – companies register,
    - motor vehicles, boats and aeroplanes – vehicle register
    - firearms – firearms register
    - items of historical, archaeological, collectible and artistic significance,
    - precious metals, precious stones,
    - other movable assets,
    - assets involving intellectual property rights,
    - receivables,
4. income and fulfilment of tax and levy obligations,

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5. cash and the like.

Detailed information is obtained on the given ownership rights. For example, a financial institution could provide the precise identification of a financial instrument, the type of financial institution, its identification data, the number of the instrument, the relationship of the suspect (owner, co-owner, co-signer), the status and value of the asset.

The investigation must differentiate between assets acquired legally (e.g. income from employment, inheritance etc.) and assets that are proceeds of crime.

Financial analysis of assets does not consider only the aforementioned financial identification but also acquires and documents information on the circumstances and lifestyle of the natural person (family relationships, place of residence etc.) and information on whether their assets are proceeds of crime or whether they are related to money laundering (Section 2 of Act No 297/2008 on prevention of the legalisation of proceeds of crime and protection against terrorist financing, and amending certain acts, as amended). This primary activity is especially important and makes a substantial contribution to the decisions on further actions of law enforcement authorities and the courts in criminal proceedings. Financial analysis can therefore be understood as the process of tracing and documenting all assets and all proceeds of crime for the preparation of a property profile of a natural person or legal entity using the available databases, information systems, open sources and the operational activities of public authorities. Common indicators include crime reports, information from media and internet monitoring and information acquired based on personal and local knowledge.

2. Financial analysis in the context of European Union legislation

A fundamental issue for the subject-matter of the present paper is cross-border organised crime for financial gain. This financial gain is a stimulus for committing further crime for additional profit. Law enforcement services must have the necessary skills and information for the documentation of such crimes if they are to be successfully traced and investigated. To combat organised crime effectively, information that can lead to the tracing, identification and seizure of proceeds from crime and other property belonging to criminals has to be exchanged between the Member States of the European Union with no delay. These trends towards cooperation are part of the gradual harmonisation of both procedural and substantive criminal law of EU member states, which is one of the basic objectives laid down by the founding treaty (Streinz et al., 2018) - under Article 82(2) of the Treaty on the Functioning of the European Union, directives establish minimum rules to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension.

The development of the legislative framework also built upon the Hague Programme (Ten priorities for the next five years) of 2004, in which the Commission advocated strengthening the tools for addressing financial aspects of organised crime, including support for the establishment of criminal asset intelligence units in EU Member States.

Financial analysis has a transnational dimension. Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime provided for the establishment of Asset Recovery Offices on the national level. Every Member State would set up or designate a national entity to act as an Asset Recovery Office (ARO) for the purposes of the facilitation of the tracing and identification of proceeds of crime and other crime related property which may become the object of a freezing, seizure or confiscation order made by a competent judicial authority in the course of criminal proceedings. The office would exchange information not only on request but could also do so spontaneously. Alongside the basic purpose of the AROs, a secondary purpose is to use the platform to exchange best practices concerning ways to improve the effectiveness of Member States' efforts in tracing and

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identifying proceeds from, and other property related to, crime in specific cases. Cooperation between the offices in EU Member States in tracing such proceeds and property can also be supported by the amendment of national legislation.

The ARO is the executive (operational) unit for functions resulting from Council Decision 2007/845/JHA in accordance with the procedures and time limits provided for in Council Framework Decision 2006/960/JHA, which lays down rules for the execution and provision of documentation and information for the needs of the members of the international network of agencies concerned with the cross-border identification, freezing, seizure and confiscation of the proceeds of crime and other crime related property. Implementation of this framework decision is one of the means of compensating for the absence of controls on persons at the internal borders between Member States (see the Opinion of the Advocate General Ján Mazák of 07 June 2010 in Melki and Abdeli, C 188/10 and C 189/10, ECLI:EU:C:2010:319, point 38). It has a broader scope however: it contributes to the investigation of any crime with a cross-border element for which standard physical border checks would not be applicable.

The basic functions performed by the asset analysis department in accordance with the procedures laid down in Council Framework Decision 2006/960/JHA include cooperation and exchange of information and intelligence with partner AROs in other EU Member States. The provision of information is limited to what is deemed relevant and necessary for the successful detection, prevention or investigation of the crime or criminal activity in question.

A prior request for information or intelligence (Articles 3, 4 and 5 of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union) is not always needed for the exchange of information, and information may be provided spontaneously via existing communication channels for international cooperation. Spontaneous provision of information and intelligence from a competent body in one EU Member State to a competent body in another EU Member State without a prior request shall be restricted to cases where there are factual reasons to believe that the information and intelligence could assist in the detection, prevention or investigation of offences referred to in Article 2(2) of Framework Decision 2002/584/JHA. For the purposes of criminal proceedings, if information is exchanged based on a request, the requesting EU Member State must request the information through legal assistance channels (in the Slovak Republic, this means via the Prosecutor General of the Slovak Republic)

Information exchange and cooperation with third countries is conducted via the Camden Assets Recovery Inter-Agency Network (CARIN) established at The Hague on 22-23 September 2004 by Austria, Belgium, Germany, Ireland, Netherlands and the United Kingdom. CARIN is a global network of practitioners and experts with the intention of enhancing mutual knowledge on methods and techniques in the area of cross-border identification, freezing, seizure and confiscation of the proceeds from, and other property related to, crime.

The ARO uses the initiative under the Framework Decision for the rapid and effective exchange of information and intelligence that can be used as evidence in criminal proceedings though only with the consent of the competent authority in the state that provided it. Otherwise, it must be treated only as intelligence and used only for intelligence purposes. Such consent is not required if the requested Member State has already given its consent for the use of information / intelligence as evidence at the time of sending.

Information and intelligence include:
- any type of information or data which is held by law enforcement authorities and
- any type of information or data which is held by public authorities or by private entities and which is available to law enforcement authorities without the taking of coercive measures (Article 2(d) of Council Framework

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Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union).

The ARO, as part of the property analysis department provides for and implements service tasks for the financial police and criminal police. Its main function in the context set out above is to search and collect information for law enforcement authorities, other parts of the Police Force and foreign partner units, primarily in the economic and financial areas important for the identification of the proceeds of a given crime. This information is as a rule exclusively of an intelligence nature and used in further proceedings for the confiscation of property, or in an order issued by a competent judicial authority for the freezing, seizure or confiscation of the property during criminal proceedings. International cooperation and exchange of information between national AROs is carried out in accordance with the Council Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (Council Framework Decision 2006/960/JHA).

The Commission implementation reports on Framework Decisions 2003/577/JHA, 2005/212/JHA and 2006/783/JHA show that existing regimes for extended confiscation and for the mutual recognition of freezing and confiscation orders are not fully effective. Negative aspects in practical application in the past gave rise to difference in the national law of EU Member States. The problem of deficiencies in proceedings against money laundering (especially inadequacies in the confiscation of assets during criminal proceedings, inadequate application of procedural aspects) was also negatively perceived in the wider context of OECD countries (Gray et al. 2014). In response, the European Union adopted Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (hereinafter, Directive 2014/42/EU). This directive was transposed by providing for the mutual execution of decisions on property in criminal proceedings in EU Member States (Act No. 316/2016 on the recognition and execution in the European Union of decisions on property and amending certain acts).

The proceeds of crime include not only direct proceeds but also any indirect benefits, including subsequent reinvestment or transformation of direct proceeds. Thus, proceeds can include any property including that which has been transformed or converted, fully or in part, into other property, and that which has been intermingled with property acquired from legitimate sources. The directive in question extends the understanding of property that may be subject to seizure or confiscation. Confiscation can take standard and extended forms and confiscation may also apply to property that has already been transferred to a third party or directly acquired by a third party who could ascertain that it is a proceed of crime.

For the topic of the present paper, a key provision is Article 5 of Directive 2014/42/EU, which regulates the use of extended confiscation of property, and which states that to fight effectively against organised crime it is sometimes appropriate that a person convicted of a criminal offence should be deprived not only of the property associated with the crime in question but also of other property that probably constitutes the proceeds of other crimes. Directive 2014/42/EU builds on the earlier Council Framework Decision 2006/783/JHA of 06 October 2006 on the application of the principle of mutual recognition to confiscation orders, whose text it supplements and clarifies based on the experience of Member States in applying this framework decision, and strengthens the harmonisation of national arrangements to eliminate obstacles to effective international cooperation.

Article 5 of Directive 2014/42/EU establishes an obligation for EU Member States to adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct. Extended confiscation could be imposed in cases where, on the basis of all the

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facts of the case in question, the court is satisfied that the property or a part thereof constitutes the proceeds of an undetected crime.

The confiscation of such a part of the property is necessary to protect society from further crime. In this sense, extended confiscation has a preventive and protective character. This follows from the fact that the state is entitled to confiscate any property that has been acquired through crime to protect against recidivism of the offenders while also deterring potential offenders.

Member States are obliged to implement extended confiscation for crimes involving corruption (This means active and passive corruption in the private sector, as provided for in Article 2 of Framework Decision 2003/568/JHA, as well as active and passive corruption involving officials of institutions of the Union or of the Member States, as provided for in Articles 2 and 3 respectively of the Convention on the fight against corruption involving officials), participation in a criminal organisation (Offences relating to participation in a criminal organisation, as provided for in Article 2 of Framework Decision 2008/841/JHA, at least in cases where the offence has led to economic benefit), crimes related to child pornography (Causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes if the child is over the age of sexual consent, as provided for in Article 4(2) of Directive 2011/93/EU; distribution, dissemination or transmission of child pornography, as provided for in Article 5(4) of that Directive; offering, supplying or making available child pornography, as provided for in Article 5(5) of that Directive; production of child pornography, as provided for in Article 5(6) of that Directive), computer crimes (Illegal system interference and illegal data interference, as provided for in Articles 4 and 5 respectively of Directive 2013/40/EU, where a significant number of information systems have been affected through the use of a tool, as provided for in Article 7 of that Directive, designed or adapted primarily for that purpose; the intentional production, sale, procurement for use, import, distribution or otherwise making available of tools used for committing offences, at least for cases which are not minor, as provided for in Article 7 of that Directive) and criminal offences punishable in accordance with Article 3 of Directive 2014/42/EU or, if the instrument in question does not contain a penalty threshold, in accordance with the relevant national law, by a custodial sentence of a maximum of at least four years.

These offences constitute the minimum scope in which extended confiscation can be applied when complying with the legal basis on the European Union level and EU Member States are encouraged to consider adopting wider application.

It is noteworthy that EU Member States have incorporated the provisions of Article 5 of Directive 2014/42/EU into their legal systems in various ways. Most EU Member States have incorporated the extended confiscation of property into the Criminal Code and the Code of Criminal Procedure (e.g. Sweden, the Netherlands, Hungary, Lithuania, Austria, Romania, Denmark, Estonia), or into the Criminal Code and related tax regulations (Poland) so that a court decides on its application when passing sentence, e.g. imposing a sentence of forfeiture of property or a penal measure, or in a subsequent decision issued in criminal proceedings. In this type of arrangement, conviction of the accused for a criminal offence is a necessary condition for the imposition of extended confiscation. In this sense, it is impossible to separate its imposition from the criminal proceedings on guilt and punishment.

A smaller number of EU Member States has implemented extended confiscation in non-criminal (civil) law authorising the confiscation of property probably derived from illegal activity (including the Slovak Republic). This means that confiscation is no longer dependent on a conviction if the property is probably derived from illegitimate sources and there are indications of illegal activity such as criminal conduct or tax violations.

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Another significant provision of Directive 2014/42/EU is Article 2(2), which defines "property" as any property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property. Directive 2014/42/EU thus understands property to include legal documents and instruments demonstrating ownership or other rights in relation to, for example, financial instruments, or other documents that that may give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures. This influences the issue of ownership of so-called financial innovations.

Another important legal document is Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Directive 2015/849/EU). This directive is known as the fourth directive and addresses the threat of money laundering. The directive has been transposed into Act No 297/2008 on prevention of the legalisation of proceeds of crime and protection against terrorist financing, and amending certain acts, as amended.

In the context of financial analysis, the important factors are the stability of the financial system, the level of the financial sector and the security of the European Union's internal market. The primary aim of the directive is to prevent the misuse of the financial system to channel money to illegal activity or money derived from illegal activities. Despite the directive's limitation to the area of money laundering and terrorist financing, the document itself highlights its potential impact on tax crimes. It is necessary to allow the greatest possible extent of the exchange of information or provision of assistance between EU Financial Intelligence Units (FIUs).

A benefit of the directive is the highlighting of other types of financial operations that have a suspicious or unusual character, to which it could be argued that several innovative forms of money should be assigned from a practical point of view. It is not unusual for some of them to be linked to money laundering, terrorist financing or other illegal criminal activity.

In the context of this directive, it is worth highlighting Section 29a of Act No. 171/1993 on the Police Force, as amended, under which a police officer serving in the financial police or the criminal investigation police is entitled to send a written request to banks or branches of foreign banks for a report on a client of the bank or branch of a foreign bank including information subject to bank secrecy, although only in an exhaustively defined set of conditions (Section 91(4)(g) of Act No 483/2001 on banks and amending certain acts, as amended) indicating that such a report is necessary for the investigation of tax evasion, illegal financial operations or money laundering and related crimes and their perpetrators under Section 2(1)(b) and (c) of the Act on the Police Force. In pre-trial proceedings such information can also be requested by a prosecutor or a police office, subject to the prosecutor's consent, and during judicial proceedings it can be requested by the presiding judge based on Section 3(5) of Act No. 301/2005, the Code of Criminal Procedure, as amended (Čentéš et al. 2016).

A deficiency of this system is that although Directive 2015/849/EU lays down an obligation to set up a central register of accounts, no such central register of bank accounts exists in the Slovak Republic and the current procedure for obtaining information subject to bank secrecy is inefficient and time-consuming because written requests must be sent to every bank and branch of a foreign bank. It should be noted that the delay in the delivery of such information does not facilitate the immediate seizure of the proceeds of crime. Furthermore, there is no way to monitor movements on accounts in banks and branches of foreign banks online. The current system is bureaucratic and costly, wastes human resources by requiring staff involvement and imposes similar burdens on the banks. For completeness, it should be noted that Article 67 of Directive 2015/849/EU gives Member States until 26 July 2017 to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive.

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The staff of the ARO make written requests for information to institutions outside the competence of the Ministry of Interior of the Slovak Republic including financial institutions such as banks, insurance companies and fund management companies. If these institutions do not comply with the deadlines for providing information, staff can, in addition to sending reminders by letter or e-mail, impose a penalty in the form of a civil fine.

In the legal systems of other countries, this issue is usually dealt with by the FIU and in the Slovak Republic such activities are primarily carried out by the Financial Intelligence Unit, whose achievements have been publicised and reported in the media (e. g. Final report on the National Risk Assessment for Money Laundering and Terrorist Financing, 2017). It is also the national body for tracing the proceeds of crime and other crime related property that could be subject to a freezing or confiscation order. Timely access to accurate and up-to-date information and intelligence is vital for the successful detection, financial analysis, prevention and investigation of crimes.

3. Innovative forms of money and their financial analysis

Turning to the financial analysis of financial market instruments (Kohajda, 2015) or innovative forms of money (Babčák 2012), one feature that stands out is the high level of sophistication involved. The basic principle for the detection is whether they are subject to regulation and therefore whether they are directly or indirectly recorded. If evidence is obtained in the form of records of the acquisition of title to such assets, the analytical activity of the competent authorities will adapt to it. The significance and purpose of financial analysis nevertheless also requires the acquisition of information on so-called unsupervised financial innovations which, as their name suggests, are outside the scope of regulation. In this case, it is essential to identify and locate them, to determine their value and, if possible, to determine if they are the proceeds of legal, illegal or borderline legal activity. Subjects naturally try to make them appear legal and it can therefore be difficult to detect their legal method of acquisition and/or their connection to other activities. It is a difficult challenge for the financial analysis of innovative forms of money and instruments to trace such assets in the global system of financial operations and financial markets.

The implementation of digitalisation and innovative technologies in the financial market to provide new services and instruments is referred to as fintech, which is short for financial technologies. This new industry has created many innovative methods for providing financial services, mainly via the internet, which can be described as financial innovations or innovative forms of money. Logically not all of them exist only in online form. This area of interest includes not only new instruments but also payment systems such as mobile cash payment systems. Two phenomena that authorities are still getting to grips with are crowdfunding (Pichler and Tezza 2016) and the use of cryptocurrencies. Čunderlík (2017) defines crowdfunding as the deliberate collection of funds via online platforms from a large number of usually non-expert investors and subdivides the phenomenon into the following known sub-types:

- Reward-based crowdfunding,
- Gift-based crowdfunding,
- Ownership-based crowdfunding,
- Debt crowdfunding
- Debt crowdfunding with profit sharing,
- Peer-to-peer debt crowdfunding.

The use of the financial technologies mentioned above is also associated with a new type of database called a blockchain (which is being considered for use in other sectors), with virtual “currencies” and payment systems such as bitcoin and other cryptocurrencies. It must be emphasised that not all activities can automatically be considered suspicious and when creating a property profile, all the above factors must be considered. An example is the IronX virtual exchange, which is licensed by the Estonian FIU and is the first institution of its type to gain such a licence and the full confidence of a regulator.

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On the other hand, there is a significant factor that links some forms of financial technology to crime: their ability to increase anonymity. This factor is augmented by certain networks that negate the ability to link an IP address and cryptocurrency transactions. It is not unusual to use third parties to open accounts so that criminal organisations can misuse a cryptocurrency. These techniques can be used to launder illegally acquired money (E.g. the investigation of a money laundering operation in Moldova that laundered around 22 billion USD), do business on the darknet, buy drugs and so on. For example, the Estonian Supreme Court handed down a judgement stipulating that bitcoin brokerages must be subject to anti-money-laundering supervision by the FIU.

For completeness, another connection that should be mentioned has been noted by the monitoring authority in Canada, which has begun an investigation of a crowdfunding platform with a link to terrorists and it highlights the need to verify and identify such transactions because the obligatory reports that financial institutions submit do not provide relevant information about this operation type. Their volume is below the statutory limit for the transfer of information (and could thus be said to "fly below the radar"), and they thus create a higher level of risk.
There is often a lack of regulatory oversight for financial innovations, which means that they often lack a mechanism for the clear measurement of risk in their operations, for the detection of links to specific criminal activity, for the financial analysis of such property and so on. As undesirable activities increase, the financial systems are undermined and there are greater flows on the illegal level. In the present context, new online platforms are emerging that can contribute to a loss of clarity in financial analysis and the preparation of property profiles. It must be emphasised that the FIU is undoubtedly paying attention to financial innovations and modifications can be made to platform procedures to allow make these innovations more legible. These suspicious financial operations are usually considered when there are links to serious crimes, with priority being given to money laundering and terrorist financing.

4. Conclusion

The stability of credit and financial institutions could be put at risk, with dangerous consequences for confidence in the financial system, by the efforts of criminals to conceal the source of the proceeds of crime and other crime related property to prevent its detection and their consequent freezing, seizure and confiscation by public authorities. The authorities' actions are intended to deter crime and to prevent further laundering of the proceeds of crime, the commission of further crime and the use of proceeds of crime for terrorist financing. The severity of such crimes is highlighted by the fact that the perpetrators are misusing the free movement of capital and the free provision of financial services, which are pillars of the European Union's single financial market. The harmonisation of procedural criminal law in EU Member States is intended to suppress such criminal activity. To maintain balance, it is necessary to obtain more information on unsupervised financial innovations while providing a regulatory environment that permits companies to develop their own businesses without disproportionate compliance costs in the given area.

The effective prosecution of criminals who have profited from crime requires that EU Member States fully transpose the relevant EU directives into national law. A current issue is the transposition of Article 5 of Directive 2014/42/EU on extended confiscation of property that allows a convicted person to be deprived not only of the property acquired through the crime in question but also of other property that probably derives from criminal activity. Such provisions are needed in law and practice to prevent additional crimes from being committed.

It is also necessary to increase the attention paid to the identification of financial innovations – the innovative forms of financing now appearing in financial markets – many of which fall outside the remit of standard forms of regulation and are therefore de jure and de facto impossible for traditional procedures to identify, detect and, most importantly, link to their owners. The space created by the absence of regulatory instruments for detection can be used to commit further illegal and unlawful activities that will be difficult to investigate because of the lack of

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clear connections. The innovative forms of money and operations that we consider most relevant are cryptocurrencies and crowdfunding, along with other fintech instruments. Digitalisation is an incredibly dynamic process in financial markets and actors exploit not only the absence of control mechanisms but also the existence of loopholes in legislation. In many cases, as set out above, partial identification depends on European and international police platforms that are incomplete and not available to all relevant actors. For this reason, the FIU is currently dedicating more resources to the identification of financial innovations, procedures for exchanging information and the detection of suspicious financial operations. An important step for the future, also with reference to the MONEYVAL evaluation, is to focus attention on the detection and identification of innovative forms of money that are open to misuse in sophisticated criminal activity.

References:

Act No 171/1993 on the police Force, as amended.

Act No 297/2008 on prevention of the legalisation of proceeds of crime and protection against terrorist financing, and amending certain acts, as amended.

Act No 483/2001 on banks and amending certain acts, as amended.

Act No. 300/2005, the Criminal Code, as amended.

Act No. 301/2005, the Criminal Procedure Code, as amended.

Babčák, V. et al. 2013. Finančné právo na Slovensku a v Európskej únii. [Financial law in Slovakia and the European Union] Bratislava: Eurokódex, s.r.o. 2012, 832 p.

Čentéš, J. et al. 2013. Trestný zákon – Veľký Komentár. [Criminal Code - Great Commentary] Žilina: Eurokódex, 1008 p.

Čentéš, J.; Mrva, M.; Krajčovič, M. 2018. The process of individualisation of punishment in insolvency crimes, *Entrepreneurship and Sustainability Issues* 6(2): 603-619. http://doi.org/10.9770/jesi.2018.6.2(10)

Čentéš, Jozef a kol. 2016. Trestné právo procesné. [Criminal procedural law] Heuréka, 496 p.

Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union

Čunderlík, Ľ. et al. 2017. Právo finančného trhu. [Financial market law] Bratislava: Wolters Kluwer, 260 p.

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 05/06/2015).

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127. 29/04/2014).

Final report on the National Risk Assessment for Money Laundering and Terrorist Financing issued in 2017. Available at: https://www.minv.sk/swift_data/source/policia/fsj/SNV.pdf accessed on: 10 May 2019

Finogentova, O.; Tokarev, V.; Petrenko, M.; Primak, T. 2018. Acceptance criterion of state coercion in contemporary society, *Entrepreneurship and Sustainability Issues* 6(2): 820-829. http://doi.org/10.9770/jesi.2018.6.2(23)

Grey, L.; Hansen, K.; Recica-Kirkbride, P.; Mills, L. 2014. Few and Far. The Hard Facts on Stolen Asset Recovery. International Bank for Reconstruction and Development / The World Bank and the OECD http://documents.worldbank.org/curated/en/379871468146375164/Few-and-far-the-hard-facts-on-stolen-asset-recovery accessed on 10 May 2019

Hard to identify crowdfunding platforms financing terrorism, https://www.thestar.com/business/2017/05/18/hard-to-identify-crowdfunding-platforms-financing-terrorism.html , accessed on 10 May 2019

Jurkevičius, V.; Pokhodun, Y. 2018. The doctrine of apparent authority as a precondition for sustainable business, *Entrepreneurship and Sustainability Issues* 6(2): 649-661. http://doi.org/10.9770/jesi.2018.6.2(13)

Kohajda, M. 2015. Finanční trh a postavení klienta v rámci finančních služeb. Vybrané instituty finančního práva v roce 2014. [Financial market and client position in financial services. Selected Financial Law Institutes in 2014] Olomouc: Iuridicium Olomoucense

Luzgina, A. 2017. Problems of corruption and tax evasion in construction sector in Belarus, *Entrepreneurship and Sustainability Issues* 5(2): 263-282. https://doi.org/10.9770/jesi.2017.5.2(8)

Mikhaylov, A.S.; Mikhaylova A. A.; Savchina, O.V. 2018. Innovation security of cross-border innovative milieus, *Entrepreneurship and Sustainability Issues* 6(2): 754-766. http://doi.org/10.9770/jesi.2018.6.2(19)

Pichler, F., Tezza, I. 2016, Crowdfunding as a New Phenomenon: Origins, Features and Literature Review. Crowdfunding for SMEs. A European Perspective. Palgrave Macmillan Studies in Banking and Financial Institutions, 235 p.

Streinz Rudolf a kol. 2018 Vertrag über die Europäische Union, Vertrag über die Arbeitsweise der Europäischen Union, Charta der Grundrechte. München: C. H. Beck, 2873 p.

Tvaronavičienė, M. 2018. Toward efficient policy making: forecasts of vulnerability to external global threats, *Journal of Security and Sustainability Issues* 7(3): 591-600. https://doi.org/10.9770/jssi.2018.7.3(18)

World Drug report, https://www.unodc.org/wdr2016/ accessed on: 10 May 2019.

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