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PROPERTY SECURITY IN FIGHTING AND COUNTERACTING ECONOMIC CRIMES

Introduction

In order to ensure internal security in Poland, measures have been taken to fight effectively against economic crimes that cause the greatest losses to the state budget and the private sector. The development of the grey economy area and economic crime threaten the economic security of the state. Economic subjects conducting illegal activities, which are accompanied by tax evasion, money laundering and often corruption, adversely affect the condition of the entire economy, undermining the profitability of fair entrepreneurs and the security of doing business, which directly translates into a reduction in state budget revenues.

Effective reduction of economic crime directly depends on the effectiveness of law enforcement authorities in depriving perpetrators of illegally obtained income and affects:
— reducing the profitability of practices prohibited by applicable law,
— preventing the financing of crime and thus limiting its development,
— minimising losses to the state budget by, for example, preventing undue tax refunds and extorting subsidies,
— recovery of lost property by, e.g. ensuring enforcement of court decisions regarding payment of public law liabilities resulting from excise duty reduction,

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2 Annex to Resolution No. 181 of the Council of Ministers of October 6, 2015 regarding the “Programme for preventing and fighting economic crimes for 2015–2020” (Official Gazette of the Republic of Poland, 2015, item 1069).
restoring the balance disturbed by crime, and the social sense of justice.

Economic crimes are often accompanied by crime involving the falsification of documents used in business transactions, as well as corruption and illegal activities aimed at legalising money obtained as a result of the crime. Money laundering is accompanied by economic crime by disguising the criminal origin of property. The changing methods of economic crimes necessitate constant updating and improvement of ways of reducing such forms of crime. This confirms that the measures taken to preserve the economic security of the state are a continuous process. This is also reflected in the evolution of security tools.

The difficulty of fighting the economic crime is a consequence of its nature. The methods of perpetrators are adapted to the economic situation and applicable national and European Community regulations. Legal loopholes are exploited and criminals are recruited from various social backgrounds. The perpetrators are individuals as well as organised crime groups. Criminal proceedings often coexist alongside legal business activity, which makes detection difficult. Sometimes a legally prospering company is used to commit economic crime. Additionally, its cross-border nature is a factor hindering the fight against this type of crime, as well as the diversification of tax and excise regulations between the Member States of the European Union and other countries. Counteracting economic crime also applies to cyberspace, where online fraud is committed. Usually, these are not new crimes, but the perpetrators use additional means adequate to the development of modern technologies. New tools make the perpetrators seem to feel more anonymous, which increases the share of this crime.

Fighting economic crime requires a high level of investigative activity by law enforcement authorities, since the initiation of preparatory proceedings in the event of serious economic crime is mostly based on information obtained in-house. The recorded size of this crime mainly depends on the effectiveness of actions taken by the services appointed to control it. Due to changes in the law and greater effectiveness of investigators in prosecution, more and more economic crimes involving VAT fraud, excise duty in connection with trade in fuels, production and trade of tobacco products and electronics are being detected every year. The number of crimes related to the extortion of not only EU subsidies is growing, even under the pretext of conducting various types of training by companies whose activity is fictitious. The dynamic development of broadly understood cybercrime is being recorded. Most organised crime groups are involved in drug and economic fraud, and tax evasion activities. Law enforcement agencies use specialised measures to fight this type of crime, but the prospect of high profits emboldens criminals.

In connection with the observed development of economic crime in the country, actions have been taken to seal the tax system, aggravate penalties for crimes and change the regulations by introducing extended confiscation, which enables, for example, the seizure of an enterprise acquired
from the proceeds of crime. Fighting economic crime, understood as prosecution of crimes and their perpetrators, is not enough. It is necessary to prevent it, and this is implemented by changes in the law eliminating conditions conducive to committing crimes and the implementation of such legal regulations that contribute to the effective deprivation of the benefits of crime, which reduces the profitability of illegal activities.

The programme for preventing and fighting economic crimes adopted for the years 2015–2020 aptly puts emphasis on intensifying actions resulting in depriving perpetrators of income from illegal activities. The services and bodies involved in fighting against economic crime include, among others: The General Inspector of Financial Information and the Prosecution Service, supervising the course of preparatory proceedings during which security proceedings are conducted in parallel.

**Prosecution Service and other services responsible for conducting security proceedings**


Law enforcement agencies protect public safety and order, pursuing, within the limits of the law, the objectives of the criminal trial process set out in Article 2(1) of the Code of Criminal Procedure so that:

1) the perpetrator of the crime will be found and held criminally responsible, and an innocent person will not bear this responsibility,
2) the measures provided for in criminal law can be correctly applied and circumstances favourable to the commission of crime disclosed, but also prevented, and the respect for the law and principles of social coexistence can be strengthened,
3) the interests of the victim will be legally protected and their dignity respected,
4) the matter will be resolved within a reasonable time.

Criminal law emphasises the inevitability of criminal liability. The guilty person bears criminal liability adequate to the crime committed, and the innocent person is not liable. The role of the law focusses not only on bringing the perpetrator to justice, but also on preventing crime, guaranteeing respect for the law and principles of social coexistence. The

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3 Dz.U., 2016, item 177 as amended.
4 Unified text, Dz.U., 2020, item 30 and 413 as amended: hereinafter: the code of criminal procedure.
envisaged system of penalties is a means of combatting crime, as it should have a discouraging effect on anyone who intends to commit a crime. The guarantee function of criminal law consists of an elaborated catalogue of penalties provided for criminal offenses, defining these acts and determining the principles of criminal liability that will be implemented when the rules are exceeded. Pursuant to the warranty function, anyone who has committed a criminal act will be held liable. In implementing the justice function, criminal law serves to satisfy the sense of justice of the victim, his/her relatives and the general public by punishing the perpetrator.

The protective function of the law means the protection of significant values related to life and health, freedom and security. The prosecutor’s task is to conduct proceedings in such a way that the functions of criminal law are fulfilled. The role of criminal law is to prevent and fight economic crime. In the preparatory proceedings, the aim is to collect the evidence necessary to punish the perpetrator, severely enough to make crime unprofitable, and, in addition, by seizing illegally generated income, prevents further financing of crime, and thus limits its development. The prosecutor in the preparatory proceedings issues a decision on security of property, which, pursuant to Article 291(1) of the Code of Criminal Procedure, may occur if the accused is charged with an offense for which a fine or cash benefit may be ordered, or in connection with which a forfeiture or compensatory measure may be ordered.

Pursuant to § 137(1 and 2) of the Regulation of the Minister of Justice of 7 April 2016, regulations of the internal office of common organisational units of the prosecution service\(^5\) – the issuing of a decision on the presentation of charges shall include its preparation, immediate announcement and interview of the suspect. Preparation of a decision on the presentation of charges shall be deemed to be issued when it is not possible to declare the order or interview the suspect due to him/her hiding or their absence in the country\(^6\). Therefore, if a decision to inform the suspect of the charges against him/her is made but not announced because of the suspect’s hiding or staying abroad, the proceedings are conducted in personam and it is possible to issue a decision on property security.

The condition for applying property security is a realistic prognosis that property penalties and penalty measures will be imposed, and claims for damages awarded\(^7\).

Decisions taken by the prosecutor at the pre-trial stage are key to safeguarding the proceedings, at least because it ultimately depends on him or her to assess the procedural prerequisites for issuing a decision on property security, but to fight and prevent the economic crime, cooperation is necessary between the prosecutor’s office and specialised services capable of determining criminal assets or law enforcement authorities.

\(^5\) Dz.U., 2017, item 1206 as amended.
\(^6\) Kowalska V (Ed.), Methodology of property security. Warsaw, 2018, p. 81.
Exchange of information between the relevant services and authorities is necessary. One of the pillars of the property recovery system is the Police Headquarters, in which the Property Recapture Department has been established within the Criminal Bureau. Specialised police officers perform tasks in terms of profiling property of suspects and targeted individuals. The field units have a network of coordinators actively supporting ongoing asset arrangements, the information of which, after being forwarded to the prosecutor’s office, forms the basis for issuing a decision on property security. Pursuant to the Act of 16 September 2011 on the exchange of information with law enforcement authorities of the Member States of the European Union, the entities authorised to exchange information through the Property Recapture Office are: Police, Internal Security Agency, Central Anti-Corruption Bureau, Border Guard, Military Police, Prosecution Service, National Tax Administration, Internal Surveillance Office and the State Protection Service.

Effective prevention of economic crimes is related to the use of appropriate security measures by authorised services and bodies. Entities responsible for fighting economic crimes use applicable legal regulations to disclose the assets of persons committing crimes. In the 1990s, attention was drawn to the difficulty in identifying the owners of assets or parts of assets resulting from illegal activities. This state of affairs continued until the entry into force of the Act of June 13, 2003 amending the Penal Code Act and some other acts, in which in Article 45(2) of the Penal Code and 45(3) of the Penal Code and in Article 33(2) of the Tax Penal Code and Article 33(3) of the Tax and Penal Code, the so-called rebuttable legal presumptions regarding the determination of the conditions for recognising property as a financial gain in relation to a committed crime without the authorities having to prove the direct or indirect relationship with the offense and determining the conditions for recognising the ownership of such property if it is transferred to third parties.

The adoption of legal presumptions resulted in the reversal of the burden of proof regarding the demonstration of the legal origin of property. Lowering the standard of proof by introducing the presumption of criminal origin of benefits is to be an effective tool to minimise the risk of the perpetrator retaining any benefits derived from the crime. In the scope of the legal presumptions implemented, the burden of proof of the legality of property that can be ordered against the forfeiture lies with the suspect or the person directly concerned. The perpetrator of the crime or other interested person may rebut the legal presumption by providing evidence that the property was acquired legally. The procedural authorities against property collateral against which legal presumptions can be ordered carry

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out checks to determine the likelihood of the perpetrator demonstrating the legality of the purchase or sale to a third party\textsuperscript{10}.

An amendment to the Penal Code, which entered into force on April 27, 2017, introduced an extended confiscation allowing for seizure of property carried out against the suspect and third parties, including assets from crime as, well as ones whose legal origin the person concerned cannot prove.

**New regulations regarding the confiscation of assets and property of offenders**

The purpose of the Act of 23 March 2017 amending the Act – Criminal Code and some other priority acts was to fight economic and fiscal crimes and to implement Directive 2014/42 / EU of the European Parliament and of the Council of April 3, 2014 on security and confiscating tools to commit crimes and the benefits of crime in the European Union\textsuperscript{11}. The provisions had existed in their current form since 2003 and were not adapted to European directives, and they did not allow law enforcement authorities to effectively carry out activities leading to property security.

On the one hand, extended confiscation hits economic criminals who do not comply with the principles of fair competition, on the other hand, it provides protection to fair entrepreneurs.

Changes have been introduced in Article 44a(1) of the Penal Code, according to which, in the case of serious crimes, especially economic crimes, when the perpetrator has obtained a financial advantage of significant value, the court may order the forfeiture of an enterprise belonging to the perpetrator or its equivalent, provided that the enterprise has been used to commit the crime or to hide the benefit derived from it. The key to the application of the provision is the conviction of the perpetrator for the crime from which he has obtained the benefit of considerable value, *i.e.* Article 115(5) of the Criminal Code defines this as property with a value exceeding PLN 200,000 at the time of the offense being committed. To apply the forfeiture, it is sufficient for the conviction to be handed down, even if the court waives the penalty. The provision is to enable the forfeiture of money laundering offenses, tax offenses, economic fraud, economic corruption, and in the case of offenses defined in the Act of 30 June 2000, the Industrial Property Law, *e.g.* the production of goods bearing a counterfeit trademark. The legislator included in the provision a subjective limitation indicating that forfeiture can be imposed on the enterprise belonging to the perpetrator, *i.e.* on the natural person being the enterprise owner.

In Article 44a(2) of the Penal Code, the legislator clarified that the forfeiture of an enterprise not constituting the property of the perpetrator

\textsuperscript{10} Kowalska V (Ed.). Methodology of property security. Warsaw, 2018, p. 121.

can be ordered if its owner willingly allowed the enterprise to be used to commit a crime or to hide the benefit derived from it, or providing for such a possibility, he agreed to thereof. The legislator predicted that perpetrators who commit serious economic crimes do not use their companies for illegal activities. Usually, they do not have any assets, and they intend to hide or launder illegal income by using third-party enterprises. The provision provides for the liability of the owner who acts with a direct or conceivable intent when he or she agrees to use his or her company.

In Article 44a(3) of the Penal Code, there is a regulation regarding the forfeiture in the situation of joint ownership of an enterprise, according to which the forfeiture is decided taking into account the will and awareness of each of the co-owners and within their limits. In the case of joint co-ownership, e.g. in a marriage, when the reprehensibility of conduct can be attributed to only one of the spouses, the forfeiture of all or part of the enterprise will not be possible\(^\text{12}\). In the absence of awareness and will of one of the co-owners, and thus their inadvertence, it will not be possible to order the forfeiture of the enterprise on the basis of the said provision.

The legislator in Article 44a of the Penal Code also provided for the exclusion of the possibility of a mandatory forfeiture decision if:
— in accordance with Article 44a(4) of the Penal Code, it would be disproportionate to the seriousness of the crime committed, the level of fault on the part of the accused or the motivation and behaviour of the business owner,
— in accordance with Article 44a(5) of the Criminal Code, the damage caused by the crime or the value of the hidden benefit is not significant in relation to the size of the enterprise’s activity.

In turn, the optional case of excluding the possibility of a forfeiture decision results from Article 44a(6) of the Penal Code and especially refers to Article 44a(2) of the Penal Code, specifying that the court may waive the forfeiture order when it is disproportionately distressing to the owner of the enterprise. However, the legislator left the courts Article 47(2a) of the Criminal Code, saying that in the cases referred to in Article 44a(4-6) of the Penal Code, \textit{i.e.} in situations where the forfeiture is not adjudicated or in the event of withdrawal from the forfeiture order, the court may order interest in the amount of up to PLN 1,000,000 to the victim or the Victim Aid Fund and Post-Penitentiary Assistance. If the confiscation cannot be ordered, the court will be able to order the interest. The construction of the provision of Article 45(1a) of the Penal Code seems to be crucial, as it defines the financial gain obtained from committing a crime. A material benefit derived from a crime is also considered to be the benefits of the things or rights constituting that benefit. This understanding of the fruit of crime seems perfectly logical and justified. A financial advantage is any contribution to property and may come from a crime directly or indirectly.

The financial advantage is not only the profit obtained from illegal activities.

In accordance with Article 45(2) of the Penal Code, being in the form in force until 26 April 2017, the application of the presumption consisting in recognising the perpetrator’s property as a benefit from the crime was conditioned by the following requirements:
— the perpetrator was convicted of an offense from which he had at least indirectly gained a financial advantage,
— the advantage obtained by the perpetrator had to be of considerable value,
— the presumption applies to property which the perpetrator took possession of or for which he/she obtained the title during or after the commission of the offense, until such time as a final judgement is issued.

The Penal Code (amended by the Act of March 23, 2017) states that: “in the event of a conviction for an offense from which the perpetrator reached, albeit indirectly, the benefit of substantial value, or an offense from which a financial benefit was or could have been achieved, albeit indirectly, carrying a penalty of imprisonment, the upper limit of which is not less than 5 years, or committed in an organised group or association aimed at committing a crime, the financial benefit derived from the crime is believed to be the property which the perpetrator took possession of or to which he/she acquired any title in the period of 5 years before the commission until the issue of even an invalid appeal, unless the perpetrator or other interested person shall submit proof to the contrary”.

The amended Article 45(2) of the Penal Code points out that the forfeiture is not limited to assets and rights conferring property on the offense. There is no need to prove the relationship that a given financial benefit comes from a given crime. The current regulations constitute a kind of ID for reviewing the legality of acquiring the perpetrator’s assets. The benefit obtained from the crime determined in the course of the proceedings does not specify, as it was the case until 26 April 2017, the amount of the forfeiture. Forfeiture may be imposed on property whose criminal origin has not been proven, and it is sufficient that the perpetrator has not demonstrated the legality of the origin of the property forfeiture.

Property subject to forfeiture or subject to property security in accordance with the above stated principle is the property which the perpetrator possessed or to which he/she obtained any title. Exclusions to this rule are set out in Article 45(3) of the Penal Code, according to which, if the property constituting the benefit obtained from the offense referred to in Article 45(2) of the Penal Code has been transferred to a natural or legal person or an organisational unit without legal personality, actually or under any legal title, it is considered that the things being in the personal possession of that person or entity and its property rights belong to the perpetrator. In this case, the property constituting the benefit of the crime

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13 Article 45(2) of the Penal Code.
is forfeited to the Treasury. The rebuttal of the presumption referred to in Article 45(3) of the Criminal Code requires demonstration that, on the basis of the circumstances related to the acquisition of the assets or property rights, it could not be presumed that the property, even indirectly, was derived from a criminal act. In accordance with Article 29b(2) of the Criminal Code, if in order to rebut the presumption, the organisational unit or person refers to a paid acquisition, he/she should indicate the sources of the purchase and prove the origin of the funds which financed the purchase. The obligation to take this evidence does not belong to the authority conducting the proceedings, but to the perpetrator or the person concerned.

The legal presumption referred to in Article 45(2) of the Penal Code and Article 45(3) of the Penal Code applies in accordance with Article 291(2) of the Code of Criminal Procedure to secure the forfeiture and reimbursement of the injured person or other entity of the material benefit that the perpetrator obtained from the committed crime or its equivalent. It is therefore unacceptable to secure property using the presumption of Article 45(2 and 3) of the Penal Code for a fine, cash charge, compensatory measures, legal and court expenses or other types of forfeiture, for example forfeiture of an enterprise pursuant to Article 44a of the Penal Code.

The forfeiture provided for in Article 45a of the Penal Code is a one-time and irreversible act, and items subject to forfeiture are not refundable, even if its premises cease to exist.

The forfeiture has a protective role, prevents further use of goods brought from committing crimes, and prevents the production, storage, transport, and placing on the market of illegal goods, e.g. tobacco, and alcohol products without Polish excise duty stamps.

Undoubtedly, such a forfeiture is an effective tool in fighting and preventing economic crimes, including eliminating and minimising the effects of the grey market, violating the foundations of economic security of the state. The forfeiture order is optional and the court may order forfeiture even if:
— the social harmfulness of the act is negligible,
— the criminal proceedings have been conditionally discontinued,
— the offender committed the offense in a state of insanity,
— there is a circumstance excluding punishment of the perpetrator.

The extended confiscation, as follows from its name, is not limited to the perpetrator’s and his/ her own assets, and its basis is the use of a set of legal presumptions, which results in the burden of proof of the legal origin of the property threatened with forfeiture being transferred to the accused or the persons concerned. The provisions governing extended confiscation, i.e. certain types of forfeiture, have an impact on increasing the effectiveness of security proceedings, as they may be applied during the preparatory proceedings, before a court decision is issued.

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Legal solutions may be used by the prosecutor in the form of securing assets covered by extended confiscation. In practice, you can secure the company’s shares or establish a compulsory management board. Then the shareholders are deprived of the opportunity to sell the shares of the business entity or part of it. If a compulsory management board is established, the company’s bodies cannot manage the company. The provisions of extended confiscation significantly facilitate the fight against economic crimes and incline managers to introduce appropriate internal procedures in companies, whose purpose is to minimise the risk of using the enterprise for illegal activities. Of course, the final decision on forfeiture is made by the court giving a judgement in criminal proceedings. The regulations amended in 2017 significantly facilitate the possibility of forfeiture of property of perpetrators and third parties, to whom the perpetrator transferred the property free of charge, or of disposing thereof at a significantly reduced value in order to effectively hide it, and thus constitute an effective tool in the fight against money laundering.

The legislator also provided for the forfeiture of an enterprise belonging to a legal person or an organisational unit without legal personality. In relation to such entities, forfeiture may occur pursuant to Article 8 of the Act of 28 October 2002 on the liability of collective entities for offenses under threat of punishment\(^\text{17}\). This provision provides for a declaration of forfeiture of a collective entity against:
— items originating even indirectly from a criminal act or which served or were intended to commit a criminal act,
— financial advantage derived even indirectly from a criminal act,
— the equivalent of objects or financial benefits derived even indirectly from a criminal act.

A collective entity has been defined as a legal entity and an organisational unit without legal personality, to which separate provisions grant legal capacity, with the exclusion of the State Treasury, local government units and their associations. A collective entity is also a commercial company with the participation of the Treasury, local government unit or association of such units, a capital company in organisation, an entity in liquidation, as well as an entrepreneur who is not a natural person, and a foreign organisational unit.

A collective entity is liable for a criminal act committed by a natural person, if the behaviour of that person has brought or could have brought the entity even a non-pecuniary advantage, and the perpetrator acted on behalf or in the interest of the collective entity or is an entrepreneur who directly cooperates with the collective entity in pursuit of a legally permissible purpose.

A collective entity is liable if the fact of committing a criminal act is confirmed:
— a final conviction of the perpetrator,
— conditional discontinuance of proceedings,

\(^{17}\) Unified text, Dz.U., 2020, item 358.
in cases of tax offenses, permission to voluntarily submit to liability,  
a court ruling to discontinue the proceedings against due to circumstances excluding punishment of the perpetrator.

Collateral for a collective entity is made by a court, but it should be applied only if the circumstances of the case provide reasonable grounds to believe that it will not be possible to enforce any financial penalty or forfeiture without collateral on the assets of the collective entity.

Three conditions must be met in order to hold a collective entity liable:  
— there is a relationship between a natural person who is the perpetrator of a crime and the collective entity,  
— confirmation of the commission of an offense by a natural person functionally related to the activities of the collective entity,  
— the offense was committed as a result of a lack of due diligence in the selection of the natural person or a lack of proper supervision over that person by the body or a representative of the collective entity.

The legislator has indicated that a collective entity may be held liable for offenses against economic turnover, against trading in money and securities, bribery and paid protection, against intellectual property, and against the credibility of documents. The list of crimes is not exhaustive. The perpetrators calculate the risk of illegal activities being revealed by law enforcement authorities, therefore, apart from investing in the further development of their criminal activities, they legalise at least part of the acquired funds, e.g. by purchasing real estate for third parties. This behaviour is penalised as money laundering, and the phenomenon itself is one of the most serious threats to the modern economy.

**Counteracting money laundering**

Economic, organised and fiscal crimes generate large profits. Financial resources obtained from illegal sources are introduced to economic circulation and have a destructive impact on economic security. This procedure has been described in the Republic of Poland for almost 30 years as money laundering. Its impact on the economy of the state has not been clearly proven, which is associated with the lack of reliable data on this phenomenon. The difficulty in estimating the scale of money laundering results, among other things, from the perpetrators’ frequent transfers of legalised funds. Although calculations of specialists sometimes differ significantly, they can be useful in determining measures to counteract this phenomenon, facilitate understanding of this crime, are helpful in estimating the scale of organised crime, and are also used to calculate the macroeconomic effects of such “laundering”\(^{18}\). The value of laundered money worldwide may reach up to 5 per cent of global GDP. The relationship between money laundering and the state’s economic condition

\(^{18}\) Jasiński W, Przeciw szarej strefie. Nowe zasady zapobiegania praniu pieniędzy. Warsaw, 2001, Publisher Poltex, p. 34.
is shown. To sum up, money laundering has a negative impact on GDP, which means a slowdown in economic growth.

Non-restrictive laws are associated with easier and cheaper legalisation of the benefits of crime. There is a positive relationship between money laundering and criminal activity. The simpler the legalisation of profits, the more profitable the perpetrators’ activities become. Counteracting and fighting money laundering is not only the domain of law enforcement agencies. This issue is multifaceted and requires the involvement of entities operating on the financial and non-financial markets. The threat of money laundering to economic security has been recognised worldwide, and in response, regulations are created to increase supervision over the flow of capital. The definition of the crime of money laundering, together with sanctions under Polish law, was first defined in the Act of October 12, 1994 on the protection of business transactions and amendments to certain provisions of criminal law. At that time, the catalogue of underlying crimes from which liable benefits may be derived, was indicated. The anti-money laundering system has been created since the late 1990s. First, the Act of 16 January 2000 on counteracting money laundering and terrorist financing was adopted, which has undergone many changes.

The currently binding legal act is the Act of 1 March 2018 on counteracting money laundering and financing of terrorism, which was amended in 2019. The legislator has defined the tasks and powers of the General Inspector of Financial Information (GIFI), as well as the functioning of the Financial Security Committee, the principles of cooperation of the GIFI with cooperating units and the obligations of the obligated institutions. The Act implements the provisions of the Directive of the European Parliament and of the Council of Europe (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for money laundering and terrorist financing. Coherence of law in countries belonging to the European Union facilitates counteracting money laundering, as this phenomenon is related to the activities of international criminal groups. In Poland, works are ongoing on the implementation into the Polish legal order of the provisions of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018. The changes are to include, among others clarifying the list of obligated entities and expanding the catalogue of sanctions imposed for violation by the obligated institutions of the provisions arising from the Act on counteracting money laundering and terrorist financing. Counteracting money laundering is associated with ongoing supervision over financial transactions, revealing gaps used by perpetrators of crime and eliminating thereof by implementing appropriately shaped legal regulations.

The proceeds of crime are partly used to develop illegal activities and are legalised in part. One of the functions of the Act of 1 March 2018 on counteracting money laundering and terrorist financing is to create conditions that prevent money laundering by sealing the financial market against assets from illegal or undisclosed sources. The Act indicates obliged entities that can be used to legalise property values derived from crime or undisclosed sources, defines their obligations and thus engages them in counteracting money laundering. The indicated institutions, if they suspect that property values may be related to money laundering, are obliged to provide information on transfers to the General Inspector of Financial Information responsible for their analysis.

The Act of 1 March 2018 on counteracting money laundering and terrorist financing involving obliged entities participating in business transactions to seal the market against capital from illegal sources is part of the set of provisions regarding the recovery of property. Laundered assets are subject to property security for compensation for damage caused to a victim of a base crime or forfeiture.

The purpose of money laundering is to hide its origin, and thus to prevent property security if criminal activity is discovered. Financial market supervision is to ensure the seizure of those assets against which legalisation has been undertaken.

The intention of the legislator amending the law constituting an effective instrument of counteracting money laundering is to eliminate the conditions facilitating this phenomenon by streamlining the exchange of information, covering all obligations under the Act that can be used to legalise property. Guarantees of effective performance of obligations can be provided by obliged entities meeting the criteria of competence and reputation, reporting to the GIFI information on transactions above thresholds, verified by services with high analytical potential, equipped with IT tools. Despite the lack of reliable and confirmed data between anti-money laundering and the recovery of property from crime, there is theoretically a positive relationship. The higher the level of effectiveness in preventing the legalisation of the proceeds of crime, the higher the value of recovered property from illegal activity may be.

The legislator enabled the prosecution of perpetrators of money laundering by penalising this act in Article 299 of the Act of June 6, 1997 – Penal Code. In the event of a conviction of an accused person of an offense under Article 299(1 or 2) of the Penal Code, provided for in Article 299(7) of the Criminal Code, an obligatory basis for a judgement of forfeiture involves items directly or indirectly derived from the crime of money laundering and the benefits of the crime or their equivalent, even if they are not the property of the perpetrator. Forfeiture shall not be made performed if the object, benefit or its equivalent is refundable to an authorised entity. Forfeiture within the meaning of Article 299(7) of the Criminal

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Code concerns only the benefits of money laundering, rather than the fruit of the underlying crime. For criminals, a severe method of fighting economic crimes is effective deprivation of their property in terms of funds intended to finance further criminal activity as well as those whose origin they are trying to hide in order to use them as “clean” money.

Summary

Property security plays an important role in criminal law. It is implemented by the public prosecutor by way of a resolution to secure the execution of a court decision in terms of a fine and property penalties, compensatory measures or forfeiture of a suspect, ancillary entity and a collective entity. The property security function is also to deprive the perpetrator of income obtained from illegal activities so that the commission of the offense is not profitable. In this meaning, the recapture of the suspect’s assets and then the imposition of a criminal measure, e.g. in the form of forfeiture, is to discourage criminal activities.

Economic crimes hit financial institutions, cause losses to the Treasury and the private sector, reduce the competitiveness of legally prosperous economic entities, undermine confidence in the entire economic system, and compromise the economic security of the state. Counteracting economic crimes through the use of property security consists in limiting the financing of the development of illegal activities using “dirty” money and preventing the introduction of these funds into economic circulation. Money laundering belongs to the group of the most frequently performed practices both by organised criminal groups supported by specialists in the financial sector and individuals. The effective detection of money laundering depends on the reliable exchange of information between the obliged entities indicated in the Act of 1 March 2018 on counteracting money laundering and terrorist financing and, as a consequence, contributes to initiating security proceedings in which property items are subject to direct seizure or indirectly from the crime of money laundering and the benefits of those or their equivalent. The property security institution with a wide practical application enables fighting against economic, organised and fiscal crimes as well as repairing their effects. Effective use of security tools is facilitated by amendments implementing the European Union directives and adapting national provisions to international law. The effect of such harmonisation is also the cooperation of the EU member states in the field of detecting and identifying the benefits of crime. An example of these are amendments to the penal code regarding so-called extended confiscation and supplementing the system of property seizure of the Act of 1 March 2018 on counteracting money laundering and financing of terrorism. Security proceedings fulfilling the service function for preparatory proceedings minimise the negative impact of economic and organised crime on the economic security of the state.
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Other sources


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Summary: The article presents the function of property security in fighting against economic, organised and fiscal crimes. Attention is paid to the services and authorities forming the three pillars of the asset recovery system, the unit responsible, among others for collecting and processing information about assets constituting benefits from illegal or undisclosed sources included in the structures of the General Police Headquarters, the Prosecution Service and the General Inspector of Financial Information. The changes introduced by the Act of 23 March 2017 amending the Act – Penal Code relate to so-called extended confiscation. The essence of the new legal regulations and the importance of extended confiscation based on legal presumptions have been presented. The Act of March 1, 2018 on counteracting money laundering and financing terrorism and its importance for the recovery of property and preventing crimes detrimental to the economic security of the state has also been interpreted.