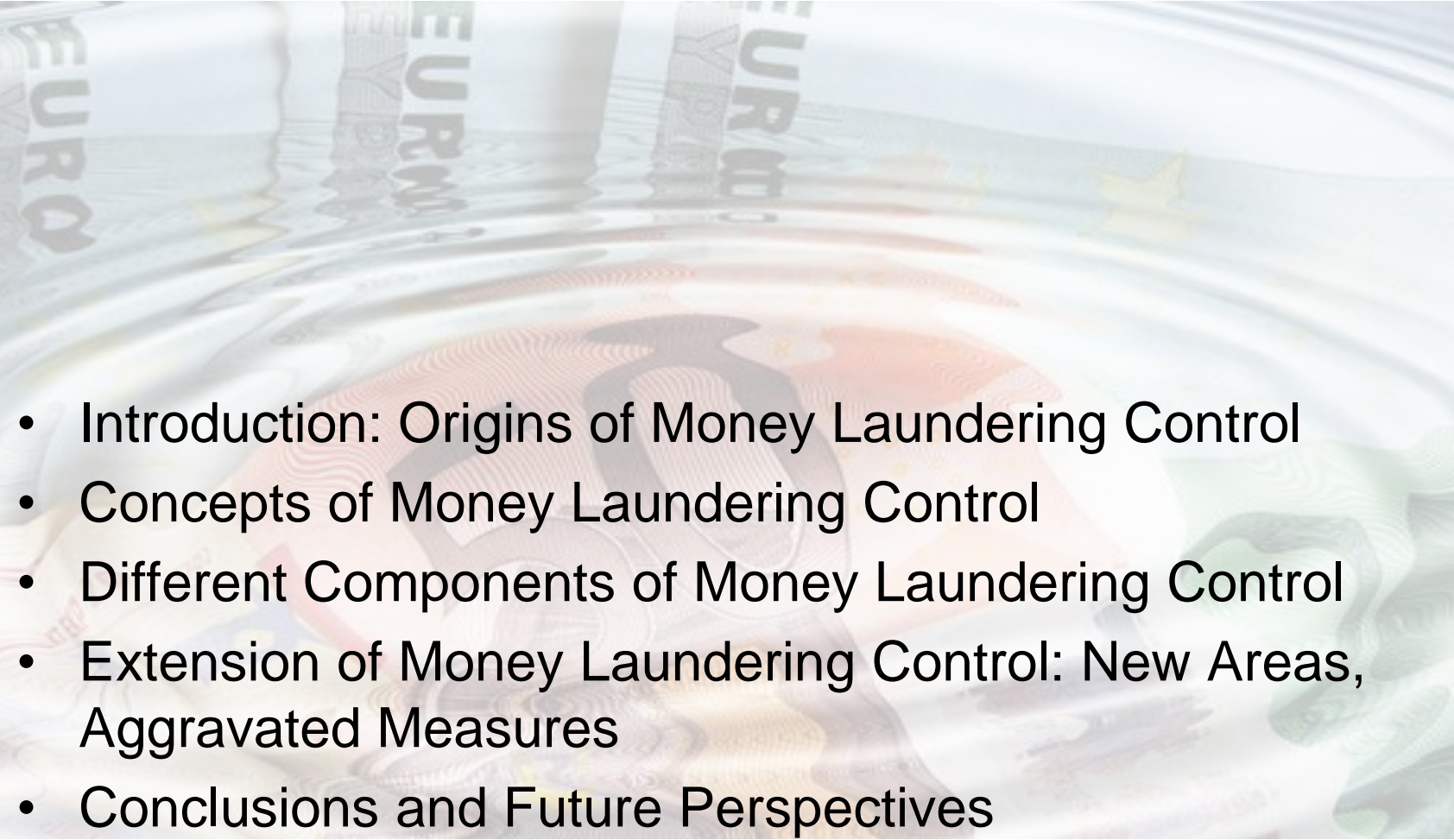




# Money Laundering Control:

*From organized crime control to universal surveillance*

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- Introduction: Origins of Money Laundering Control
  - Concepts of Money Laundering Control
  - Different Components of Money Laundering Control
  - Extension of Money Laundering Control: New Areas, Aggravated Measures
  - Conclusions and Future Perspectives

# Introduction: Origins of Money Laundering Control

- Why "money laundering" ?
- Originally a U.S. approach
- Since mid / late 1980s
- Rapidly adopted in most parts of the world
- *"A new international law enforcement model"*  
(Stessens, 2000)
- Organized crime control

# Origins of Money Laundering Control

- Reaction on the liberalization of the capital markets
- Reaction on the globalization of the capital markets
- Reaction on the development in technology and communication

# Concepts of Money Laundering Control

- Identification of suspicious assets
- Tracing back of suspicious money flows
- Gathering of evidence on crime commission
- Gathering of evidence on interpersonal relations/connections (group structure)
- Identification of further, unknown co-offenders or individuals involved

- Investigating into financial background of suspected persons (individuals, legal entities)
- Seizure
- Confiscation



# Concepts of Money Laundering Control

- Economic / business-oriented strategy of crime control
- Patrimonial strategy of crime control
- Based on criminological theories of rational choice

- Problem: the concept of money laundering can be considered as a breach of the traditional concept of money and its classification in private law
  - » The concept of fungible assets
  - » Money as a neutral value
  - » Money as such cannot be 'criminal', nor 'infected' by criminal behavior
  - » Towards the abolititon of cash?

- Catchy metaphor – but what is the criminal substance of money laundering
  - Property crime?
  - Crime against (legal) economy?
  - Crime against the values / 'legal good' violated by the predicate crime(s)?
  - Crime against justice / public order?
    - » Maintaining of illegal enrichment?
    - » Obstruction of justice?
  - Artificial, technical, 'strategic' crime?
    - » Legal starting point for applying the special investigative powers provided by the money laundering control regime?

- Function of money laundering in the model of organized crime
  - *Primary crimes:*  
crimes by which profit is generated
  - *Secondary crimes:*  
'organizational' crimes in the context of logictics, production of influence (corruption, threatening), obstruction of justice, profit management (maintenance, sheltering and re-investment of illegal profits → money laundering)
  - *Tertiary crimes:*  
'internal' crimes, crimes against competitors (violence)

- *"Crime should not pay"*
- Elimination of the main incentive to commit or to engage in organized crime, i.e., the quest for profit
- Destruction of investment basis for future crimes
- Prevention of primary (and tertiary) crime through the tackling of a secondary crime ('Al Capone' approach)

# Different Components of Money Laundering Control

1. Control of cash flows and money transfers
  - Administrative money laundering control
  - NYC, CDD, permanent monitoring, record keeping (data retention, without suspicion), suspicion-based reports
  - Information exchange and data transfer (national, international)
  - Police intervention
  - Seizure (freezing) of suspicious assets
2. Prosecution of criminally relevant money laundering activities
  - Penal intervention
  - Criminalization and punishment of money laundering
  - Confiscation of illicit proceeds (laundered moneys, other suspicious assets)

# Different Components of Money Laundering Control

Two  
double strategies:



1. Control of cash flows and money transfers
  - Administrative money laundering control
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  - Information exchange and data transfer (national, international)
  - Police intervention
  - Seizure (freezing) of suspicious assets
2. Prosecution of criminally relevant money laundering activities
  - Penal intervention
  - Punishment of money laundering → *in personam*
  - Confiscation of illicit proceeds → *in rem*  
(laundered moneys, other suspicious assets)

# Definitions of Money Laundering

- Standard definition: "cleaning" of money or other assets which derive from criminal activity, through, e.g.:
  - acquisition
  - transfer
  - removal
  - conversion
  - concealment
  - disguise
  - use
  - possession
- *Extended approach: money involved in criminal activity*

- The standard definition requires (at least) two – separate – crimes
  - » the predicate crime  
(all crime principle, threshold principle, catalogue principle)
  - » the laundering crime
- Money laundering defined as a particularly serious crime
  - » for which EU law requires a minimum maximum penalty of no less than 4 years of imprisonment
  - » which allows application of special measures of investigation

# **Extension of Money Laundering Control: New Areas, New Addressees, Aggravated Measures**

- International instruments promoting money laundering control (original approach)
  - UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances – 'Vienna Convention' (1988)
  - CoE: European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)
  - UN Convention Against Transnational Organised Crime – 'Palermo Convention' (2000)
  - OECD: 40 Recommendations by FATF (1990, 1996)
  - EU: Money Laundering Directives (1991, 2001)

# Areas of Money Laundering Control

- Originally a clear and exclusive focus on
  - Drug crime
  - Organized crime

- Subsequently expanded to additional areas
  - Economic and financial crime
  - Tax crime
  - Corruption
  - Financing of terrorism
  - Proliferation



- Originally addressed to financial institutions
  - Banks / credit institutes
  - Life insurance / investment-related insurance companies / agents / brokers
  - Investment firms
  - Brokerage firms
  - Consumer credit firms
  - Credit and debit card firms
  - Leasing and finance firms
  - Currency exchange bureaus
  - Money transmitters

- Extended to non-financial businesses and professions
  - Casinos (including internet casinos)
  - Real estate agents
  - Dealers in precious metals
  - Dealers in precious stones
  - Dealers in any other high value goods
  - Auctioneers in art and other high value goods

- Extended to lawyers, notaries and other independent legal professions, independent accountants, independent auditors, independent tax advisors if they engage in transactions for their clients such as
  - managing client money, securities and other assets
  - buying/selling of real estate
  - managing bank, savings or securities accounts
  - organization of the creation, operation or management of companies
  - management of legal persons
  - buying and selling of business entities

- Extended to trust and company service providers if they provide or arrange, on a commercial basis, services for third parties such as
  - acting as director or secretary of a company or as partner of a partnership, etc.
  - providing a registered office, business address or accomodation, correspondence or administrative address for a company
  - acting as a nominee shareholder for another person
  - acting as a trustee for an express trust managing client money, securities and other assets
  - acting as an agent of a legal person

- Using the money laundering control regime for uncovering, investigating and prosecuting of tax evasion
  - introduction of tax evasion as a further – mandatory – predicate crime
  - facilitation of mutual data exchange between prosecution agencies and tax authorities
  - extended criminal responsibility
    - » any fraudulent, irregular or just 'tricky' activity with tax relevance (e.g., wrongful entry in the book-keeping system) can establish a money laundering offence / money laundering chain
    - » such suspicion can initiate m.l. investigations
  - extended confiscation powers

- Enhanced supervision for the purpose of corruption control
  - targeting "politically exposed persons" (PEPs), i.e., persons who are or have been entrusted with prominent public functions, their immediate family members, and persons known to be close associates of such persons
  - originally limited to foreign PEPs, recently extended to domestic PEPs
  - further extended to persons who are or have been entrusted with a prominent function by an international organisation (e.g., UN, IOC, UEFA, FIFA, etc.)
  - consequence: life-long supervision of all financial transactions of these persons

- Preventive asset freezing, based on information gathered through the money laundering control regime
  - targeting persons, groups and entities who are suspected to be related to terrorist groups or activities
  - based on officially published name lists
  - non-penal measures ("smart / targeted sanctions")
  - global reach
  - indefinite duration
  - raises serious fundamental rights issues
  - two regimes
    - » UN Security Council resolutions 1373 (2001) and 1390 (2002)
    - » EU instruments, e.g., Council Regulation (EC) 881/2002 with its (current) 207 amendments

- International instruments promoting extended money laundering control
  - UN: International Convention for the Suppression of the Financing of Terrorism (1999)
  - CoE: European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism – 'Warsaw Convention' (2005)
  - OECD: 40 Recommendations by FATF (2003, 2004, 2012)
  - OECD: 8 / 9 Special Recommendations by FATF (2001, 2004)
  - EU: (Third) Money Laundering Directive (2005)



## Conclusions and Future Perspectives

- From a special instrument targeting international drug trafficking (and other kinds of organized crime) to a universal instrument of (crime) control
- EU has taken advantage of money laundering as an opportunity for generating its own legislation power in the area of criminal law
- The money laundering control system is based on the exploitation of private parties for the purpose of criminal control
- Related administrative rules have created a new sector of extensive and permanent surveillance

- Further extensions to be expected
  - » EU: (Forth) Money Laundering Directive forthcoming
  - » EU: a further related directive introducing more extended confiscation powers (non-conviction based confiscation, reversal of the burden of proof) under preparation
- Constant expansions make escape from the system more and more difficult
- Towards the total abolition of cash?
  - » Denmark, Italy, France have taken first steps

# Ευχαριστώ πολύ!

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