Money laundering, new technologies, FATF and Spanish penal reform

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Abstract
Purpose – This paper attempts to examine new technologies, typologies, FATF recommendations and the last Spanish penal reform on money laundering.
Design/methodology/approach – The paper describes the potential provided via internet and electronic transfers, prepaid cards and payment services with mobile phones for executing money laundering, and comments on the Spanish penal reform on this crime.
Findings – The study finds that the new payment systems facilitate money launderers’ criminal activity. However, the development of technologies, including the internet, has unquestionable advantages involved, and even provides verification of identity or other duty of surveillance for the prevention of money laundering. Also, this paper analyzes the amendments made recently in the Spanish Criminal Code regarding money laundering.
Originality/value – This paper would be beneficial to the legislature. Future development of measures for the prevention of money laundering should take into account all potential threats that arise from the use of new technologies. Moreover, the long list of modifications on laundering undermines the legal certainty and the consideration of criminal law as ultima ratio, within the framework of a globalized crime policy.

Keywords Money laundering, New technologies, FATF, Spanish penal reform, Spain

Paper type Research paper

New technologies and money laundering
Money laundering is a “crime of globalization” (Levi, 2012, p. 107). Its importance nowadays is transcendental because of the economic crisis we are suffering. As criminal organizations, characterized by growing transnational nature, weaken the economy further (Finklea, 2009, pp. 9-40) with their illegal activities and enter the financial system, public finances or customs because of their vulnerability (Fisher, 2012, pp. 153-161).

Indeed, it was noted that “an offense that has benefited most from the internet is money laundering” (Velasco San Martin, 2012, p. 75), “generalised and radicalized” (Sandywell, 2010, p. 46) by the new electronic media, with a “spectacular” (Pérez Estrada, 2010, p. 306) development thanks to the potential provided via internet and electronic transfers (Fernández Teruelo, 2011, pp. 231 and 234) for executing this crime.

The increasing use of new payment methods, such as transactions and movements of funds, resulted in an increase in the detection of cases of money laundering.

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committed using telematic media (Financial Action Task Force – FATF, 2010b, p. 7). These new technologies are appealing to money launderers mainly because of the anonymity (Mata Barranco, 2010, p. 19; Miró Llinares, 2011, pp. 12-13 and 25-26) provided, high marketability and usefulness of funds and global access to ATM network (FATF, 2010a, p. 7). To these factors one should add the problems of persecution (Gless, 2012, pp. 3-22), which requires new investigation methods that can maintain the delicate balance between security and fundamental rights (Pérez Estrada, 2010, pp. 307, 309 and 311-317).

In any case, to avoid misuse of legal insufficiencies in new technologies by organized crime (Angelini and Gibson, 2007, pp. 65-73), internet cannot be an “area outside the law” (Gless, 2012, p. 22), but must be regulated (Gómez Tomillo, 2006, p. 189).

Undoubtedly, the new payment systems facilitate money launderers’ criminal activity. These systems are better than cash for moving large sums of money, non-face to face business relationships favour the use of straw buyers and false identities, the absence of credit risk, as there is usually a prepaid, discourages service providers from obtaining a complete and accurate customer information, and the nature of the trade and the speed of transactions make it difficult to control property or freezing (FATF, 2010a, p. 21).

However, the development of technologies, including the internet, has unquestionable advantages involved, “a real change in the administrative, educational, labour or social forms of relationship” (Mata Barranco, 2010, p. 16) and even provides, through online resources, verification of identity or other duty of surveillance for the prevention of money laundering (The Money Laundering, 2011, pp. 37-39 and 54). The new payment methods are the result of the need to both offer commercial alternatives to traditional financial services and to include everyone in the system irrespective of poor credit rating, age or residence in areas of low bank offer. These methods can also have a positive effect on the economy, given their efficiency in terms of speed of transactions, technological security, low costs compared to payment instruments based on paper, and accessibility, especially for prepaid cards and payment services with mobile phones, identified as a possible tool to integrate excluded individuals because of poverty (FATF, 2010a, p. 12).

As an example, a total of four million people in the USA receive social security benefits without actually being bank accounts holders. To reduce their dependence on cheques, which force translates in them spending between $50 and $60 a month in check cashing, bill payment or sending money to their families, benefits were provided with prepaid cards with which could buy goods or get cash. Moreover, in 2009, the war displaced in Pakistan more than a million people, and their government distributed prepaid cards with a maximum value of 25,000 rupees, about $300, for the immediate assistance of 300,000 families. Similarly, in Afghanistan, the police salary is paid via mobile phones, so that policemen do not have to leave their job in order to collect their salary. This also reduces the possibility of corruption or bribery (FATF, 2010a, pp. 12-13, 15 and 20).

In 1996, the FATF was specifically concerned in the recommendation number 13 with new technologies and the danger they pose for potential money laundering by allowing the realization of huge transactions instantly from remote locations, while keeping the anonymity of the transgressor and without the involvement of traditional financial institutions. The absence of financial intermediation makes it difficult to identify customers and to keep a record of relevant information. In addition, traditional investigation techniques become ineffective or obsolete to new technologies: the problem
of physical volume of money posed for launderers – to the point of leaving the paper money because of slow movement – is minimized with “electronic money”, its rapid mobility, especially on the internet, difficult to trace the funds transferred and the unusual volume of data to analyze make it almost impossible to detect any suspicious activity.

Please note that 30 years ago there was no internet. However, a decade and a half later the closure of the “European Union Bank” (Schudelaro, 2006, pp. 47-72) was agreed in Antigua, the bank that became famous for being the first bank to operate through the internet and for advertising explicitly on the web that this was the right bank for tax evaders and money launderers (Blum et al. (1999, pp. 52-57) with reproduction of the advertisements that the “European Union Bank” made available in internet; Martin, 1997, pp. 38-39). Today nearly three-quarters of households in the European Union have internet access, over a third of the population makes banking online (Gaceta Informativa, Lex Nova, 2012, p. 1; Comisión Europea, 2012, p. 1) and in the world have reached 2,267,000,000 internet users (Fundación Orange, 2012, p. 9).

Precisely for this reason the FATF developed, in October 2010, a report regarding the use of new payment methods for money laundering (Baldwin, 2004, pp. 125-158) which focused on prepaid cards, payment services on the internet (Philippsohn, 2001, pp. 485-490; Ping, 2004, pp. 48-55; Yan et al., 2011, pp. 93-101), steady growth, and its misuse for the implementation of the so-called “cyber laundering” (Filipkowski, 2008, pp. 15-27) – a phenomenon also linked to terrorist financing (Hummel, 2008, pp. 117-130; Souza, 2012) – as well as on payments with mobile phones. Notably, with regard to his latter issue, it is estimated that 1,400,000,000 people will use payments via mobile phones for their financial transactions in 2015 (FATF, 2010a, p. 18).

Finally, the FATF has provided revised recommendations on 16 February 2012, of which recommendation number 15 indicates that countries and financial institutions should identify and assess the risks for money laundering relating to new technologies, while recommendation number 16 discusses about electronic transfers and identifying both their originators as beneficiaries (FATF, 2010a, p. 17).

To conclude, future development of measures for the prevention of money laundering should take into account all potential threats against the administration of justice and legal trade economic and financial (Abel Souto, 2005b, pp. 21-89) that arise from the use of new technologies. It is hoped that the creation of the European Cybercrime Centre, linked to Europol, that will start its operations in January 2013 (Gaceta Informativa, Lex Nova, 2012, p. 1; Comisión Europea, 2012, p. 1), will effectively address these new challenges.

**Typologies and FATF recommendations**

It has now become a classic statement that the methods and techniques used for money laundering “are in constant evolution” (FATF, 2011a, p. 16). There have also been arguments in favour of a “balloon effect”, a term that has been coined to describe the fact that whenever authorities hinder some laundering mechanisms, criminals respond in other forms. That is, when the national and international prevention and prosecution systems strangle certain methods of money laundering the “globe” becomes smaller in that crowded place, but expands to other parts (Zagaris, 2010, p. 68). No doubt, “ease of adaptation to new situations and speed the development of new methods” (Blanco Cordero, 2012, p. 61) is a fundamental characteristic of money laundering.
However, money launderers have not completely abandoned traditional typologies, classic and personal (Núñez Paz, 2011, p. 217). What seems to be the case is that these traditional typologies are now being combined with more sophisticated methods used to overcome the legal obstacles posed for the prevention of money laundering (Blanco Cordero, 2012, p. 61).

In recent years, the FATF has paid special attention to the trusts and company service providers (FATF, 2010c, pp. 1-101). Their important role as mediators between financial institutions and their customers, knowingly or not, has frequently been used in money laundering activities. Trusts and company service providers can also play an important role in detecting, preventing and prosecuting (FATF, 2011a, p. 17) all persons and entities involved in the creation, administration and management of funds, as also suggested by letter e of the 22nd revised recommendation of FATF in 2012 (FATF, 2012a, p. 20). The creation of the trust has made it possible for money launderers to hide their identity by setting up a fund, so that it is shown that the trust company is seemingly the one performing the operations (Collado Medina, 2010, p. 485). Money launderers can also utilize an NGO, association, foundation or non-profit organization to channel criminal assets by leveraging its tax-exempt, non-profit donations anonymity and greater laxity in controls due to charitable reasons (Collado Medina, 2010, p. 486).

FATF was also worried by the cash flows involved in organized maritime piracy and kidnapping with ransom request (FATF, 2011d, pp. 1-47), both of which have achieved a dramatic increase lately, especially off the coast of Somalia (FATF, 2011a, p. 18). FATF has studied links between corruption and money laundering (FATF, 2011b, pp. 1-53, 2012b, pp. 1-46), based on real cases in which corrupt officials have moved the money in secret, as well as problems of recovering the proceeds of corruption once discovered (FATF, 2011a, p. 18). FATF has also focused on inhuman trafficking and illegal immigration (FATF, 2011c, pp. 1-84), one of the most lucrative criminal phenomena (FATF, 2011a, p. 19) obviously connected with money laundering, and has even shown interest in football, where economic growth has become exponential as a sector attractive to money launderers (FATF, 2009a, pp. 1-41).

Also, the FATF discussed free trade areas, which have reached 3,000 across a total of 135 countries. The same characteristics that make these areas attractive free trade zones for legitimate businesses with relaxation of trade and financial controls, represent an opportunity for money launderers (FATF, 2010d, p. 4).

Moreover, from the very beginning, the FATF was interested in its recommendations being applied “not only to banks but also to non-bank financial institutions” (FATF, 1990, p. 17, recommendation 9th), such as exchange offices and insurance, and this concern has not diminished with the passage of time. Specifically, the sector of foreign exchange and money remittance devoted a special report in 2010, which demonstrated with the use of various examples, voluntary or unconscious, laundering activities and warned the detection at low compared to the volume of suppliers (FATF, 2010a, p. 7), among which there are several alternative delivery systems such as hawala or hundi, informal funds transfer without moving based on a trust relationship, voucher systems in China and East Asia, in decreasing use, or changing the black market peso used by immigrants to send money to their countries (Collado Medina, 2010, pp. 480-481). FATF also held the insurance sector in 2009 with the aim of encouraging communication about the prevention of money laundering.
between authorities, insurers and intermediaries through an effective system based on the identification of risks and problems (FATF, 2009b, pp. 5-6).

Likewise, the FATF expanded, in its 2012 recommendation number 22, in certain situations, the demands of due diligence on customers and information record of the recommendations 10th, 11th, 12th, 15th and 17th to the following professions and no financial businesses: casinos, real estate, dealers precious metals and stones, lawyers, notaries, other independent legal professionals, accountants and trustees.

Regarding the casinos, they are only required when customers engage in transactions worth at least 3,000 euros or dollars, although for several other transactions, and identification at the entrance of the casino could not be considered sufficient (FATF, 2012a, pp. 19-20 and 81-82). The FATF in 2008 developed guidance on dangers involving casinos (FATF, 2008a, pp. 1-39) and in 2009 made a full report on vulnerabilities related to the gaming industry and casinos. The FATF emphasized in this report the activities of currency exchange and structuring, the complicity of employees, chips, checks or casino accounts and provided indicators that can help with detecting and deterring money laundering (FATF, 2009c, pp. 7 and 25-46). These guidance lines aim to tackle money laundering activities via casinos, examples of which are evident as early as the 1920s. Notably, in the 1920s Al Capone operated between Americans and Cubans casinos. Money laundering can be completed by simply purchasing some chips that are not used in the game (Chinchilla, 2011, pp. 146-147) and which can then be exchanged for cash or a check that appear to be legal (Souza, 2012, p. 87). The system is one of the “most common mechanisms” (Jurado and García, 2011, p. 171) to launder money and takes advantage of the lack of control in the casinos on the chips that are bought and play (Ferro Veiga, 2011, p. 108). For example, as noted by the 2009 FATF Report, millions of pounds were washed between the UK and Dubai through a casino (FATF, 2009c, p. 37).

The 2009 report does not deal with either illegal gambling (Shehu, 2004, pp. 254-260) or online gambling (Hugel and Kelly, 2002, pp. 57-65, comparing the US and UK governmental policies internet gambling), but in future further attention should be paid to their development because of the relationship between money laundering and regulated online gambling (Brooks, 2012, pp. 304-315). Ways to balance between individual privacy and the needs of law enforcement (Mills, 2001, pp. 365-383) should also be considerer.

Moving on to real estate agents, and to the extent that they represent a danger to money laundering (FATF, 2008c, pp. 1-32), they are subject to the recordkeeping requirements and diligence when participating in the sale of properties to their clients and must comply with the requirements of 10th recommendation both for buyers and sellers of goods (FATF, 2012a, pp. 19 and 82, recommendation 22nd).

As for traders of precious stones and metals, these have to keep due diligence on customers and record cash transactions when they reach at least the threshold of 15,000 euros or dollars, in one or more related transactions (FATF, 2012a, pp. 19 and 81). They are also required to report, following the recommendations 18th-21st, suspicious transactions for cash made by amounts equal to or above this threshold (recommendation 23rd). Gold, precious stones and metals however are not included in recommendation 32th on cash couriers, despite its high liquidity and use in certain situations as a means of exchange or transfer value, and despite the fact that states, before the discovery of unusual movements of these goods, should notify the authorities of both the origin and destination of the shipment and to cooperate in state the purpose.
of the movement of such goods and in the adoption of measures (FATF, 2012a, p. 101). Concern about this sector is more than justified (FATF, 2008b, pp. 1-36), because among the most common mechanisms of money laundering is the use of traders precious stones and metals (Jurado and García, 2011, pp. 171), as evident in the case of gold being found in investigations of money laundering on the Russian mafia in Italy (Varese, 2012, p. 242).

With respect to the beneficiaries of accounts or transactions, the FATF encouraged from the beginning financial institutions to take rational measures to investigate the true identity, duty from February 2012 stated in recommendation 10th, since usually the money launderers go to banks for deposits with subsequent transfers (Chinchilla, 2011, pp. 154-155; Jurado and García, 2011, pp. 167 and 169). There is evidence that even a strong system of identification and verification can be avoided through the use of third parties, such as straw men (FATF, 2010a, pp. 7, 36-37 and 39).

As for the detection and monitoring of transboundary movements of cash, and despite being one of the oldest techniques of money laundering, it still continues to increase its volume significantly (FATF, 2010a, pp. 46-47). Thus, the study of the framework of the Mafia recently published by VARESE criminal goods arrived in Italy by a large network of individuals who traveled from Russia with cash (Varese, 2012, p. 242). There are also new “money mules” recruited by email with the excuse of having an opportunities to work at home through internet, which is sometimes the only payment they receive is criminal prosecution for money laundering (Clough, 2010, pp. 187-188).

Finally the 32nd recommendation urges countries to ensure that their authorities impede or restrict the movement of cash which is potentially related to money laundering (FATF, 2012a, pp. 25 and 99-102). It has been said that the cash is the common medium of exchange in criminal transactions (Jurado and García, 2011, p. 172). In similar vein, the Spanish Government, having more closely in mind its tax collection purposes, approved in the council of ministers of 22 June 2012 a bill to combat tax fraud, given the legislative experience of other EU countries like France and Italy, limited to 2,500 euros cash payments for operations involving businessmen or professionals (Ley 7/2012, 2012, article 7). However, in order to escape the Charybdis of paper money we will find the Scylla of “electronic money”, as new payment technologies, as seen in the previous section, are not without risks that may thwart prevention and repression of money laundering. Furthermore, behind the apparent dogma of the “criminogenic character of cash” hides a program that exceeds the fight against crime, further marginalizing those who earn less, allows control of the private sphere (Pieth, 1992, p. 27).

**The last Spanish penal reform on money laundering**

Due to media campaigns on money laundering, which accompanied the increasing intensity of police operations in Spain, there was no option but to make an appeal for moderation to the prosecution (Abel Souto, 2009, pp. 245-246) who frequently added the tagline “and money laundering” to the indictment of several misdemeanors to agree on temporary imprisonment. This fashion reminded one of the last sentences of *Casablanca* (Muñoz Conde, 2009, p. 174), as prosecutors were not lacking, taking advantage of the limited warranties involved exceptional laundering regulation, Humphrey Bogart acted as saying “we will always have [...] money laundering”.

Spanish penal reform
The call for moderation went unheeded, given that, in the framework of an international campaign – so in Germany there has been a 23 per cent increase in 2009 of registered cases of money laundering, which amounted to 9,046, and only in the first half of 2010 were identified almost 5,000 new cases due to the tightening of controls; similarly, in US fines for deficiencies laundering prevention systems increased 67 per cent in 2011 (Boletı´n, 2010, pp. 14-15, 2012, p. 37) – contrary to criminological studies on local activity of criminal organizations (Varese, 2012, pp. 235-253, which against the description of outposts of the Sicilian Mafia in Germany, Chinese triads in Holland and Colombian cartels in Galicia – Castells (2000, p. 201) – states that the core of the criminal activities of criminal organizations are located in the territory of origin, while only abroad investments are held in the legal economy), fraud labels on the justification of punishment (Ferna´ndez Steinko, 2012, pp. 908-931) and impact of media scandals in the criminal treatment more rigorous (Slyke and Bales, 2012, pp. 217-246), in 2010 research related money laundering in Spain have increased by 31 per cent compared to 2009 (Ministerio de Interior, 2010, p. 2). In 2012 the prosecution continues to serve the criminal typus laundering for everything, especially when there are cameras, even to charge the holder of the Codex Calixtinus and their relatives.

Also, another call was made to the legislature, likewise unattended, to moderate its intervention in money laundering (Abel Souto, 2009, pp. 243-244), which has preferred to add, with the Organic Law 5/2010, another reform more to the already long list of modifications on laundering (Abel Souto, 2005a, pp. 5-26; Zaragoza Aguado, 2011, pp. 1154-1155), that undermines the legal certainty and the consideration of criminal law as ultima ratio, within the framework of a “globalized crime policy” (Pleé, 2010, pp. 431 and 432) and “emergency issues” (Terradillos Basoco, 2008, p. 215). This criminal policy goes to a “breakneck speed” and continues to accelerate, despite being reported a long time ago (Hassemer, 1994, p. 1369, 1998, p. 217), because when it is still warm corpse of the last reform, another change of regressive sign threatens to introduce a special probation in article 304 bis for money launderers.

In this section the amendments made recently in the Spanish Criminal Code regarding money laundering will be analysed in particular.

First, the reform of 22 June 2010 alters, in title XIII of book II, the heading of chapter XIV, which leads the articles 298-304 of the Criminal Code. In this way, the above labeled “From the receiving and other similar conduct” (Muñoz Conde, 2010, p. 549) is replaced by the last three words “capital laundering” (“blanqueo de capitales”), a wording that constitutes a hybrid antithetical imprecision and accuracy, as it represents a contrast between legal technician laxity involved in the first term and the precision intended by the second. Moreover, the reference to “money” (“dinero”) in laundering case, has a wide circulation both in Spain and in the countries of our legal environment. So, in Belgium and France the wording is blanchiment of l’argent and in francophone Switzerland is blanchissage of l’argent, in South American countries the phrase lavado de dinero dominates, in Germany the wording is Geldwäscherei and Austrians and Swiss speaks German, adding the particle iteratively -erei, prefer to refer to Geldwäscher. Also, there is a reference in the Anglophone countries about money laundering and in Italy and in the Italian-speaking Swiss it is accustomed to name this phenomenon as riciclaggio di denaro. Even appears in the headings of some penal codes, v. gr., the head of the German StGB § 261 (Geldwäsche), was without preclude German doctrine maintained that not only could launder money, then, for example, in the words of Ruß (1994, p. 325, 1997, p. 183),
“against the wording of the appointment of typus the object of the money laundering is not limited to monetary resources”, but take into consideration all the values or patrimonial objects (Arzt, 1993, p. 913; Bottke, 1995a, p. 90; Cebulla, 1999, p. 286; Häcker, 2006, p. 1486; Helmers, 2009, p. 511; Hetzer, 1993, p. 3299; Knorz, 1996, p. 31; Körner and Dach, 1994, p. 15; Lackner and Kuhl, 2007, p. 1134; Stree, 2006, p. 2168; Tröndle and Fischer, 2010, p. 1754). In sum, it would have been much more appropriate than the June 2010 reform unite the term “laundering” (“blanqueo”) the word “money” (“dinero”), because this term is the least antithetical and the most widespread among those used to describe the material object (Abel Souto, 2002, pp. 23-40 and 270).

Second, the Organic Law 5/2010, in the initial clause contained in article 301.1, regarding the requirement for the knowledge that the goods have their origin “in a crime”, changes these words by the formula “in an activity criminal”, “without being clear the objective pursued” (Manjón-Cabeza Olmeda, 2010, p. 340) with the replacement, speech which is attributed expansion effort and, in principle, wider than the previous noun “crime” (Fernández Teruelo, 2010, pp. 318-319 and 324), it seems to allow the inclusion of the petty offenses made in preceding facts of money laundering, which would mean “an enormous enlargement of the field of this crime” (Muñoz Conde, 2010, p. 557). But the petty offenses should be excluded from previous facts on the basis of a literal, historical and systematic interpretation.

Grammatically “criminal activity” is only the activity relating to the crime, and is a terminology that, strictly speaking, does not include petty offenses.

Historically, the draft 2008 still contained the word “crime” (Diego Díaz-Santos, 2009a, p. 27), that the Fiscal Council proposed, in its report (Manjón-Cabeza Olmeda, 2010, p. 340; Martínez-Buján Pérez, 2011, p. 485), replacing with the phrase “criminal activity” (Diego Díaz-Santos, 2009b, p. 198), in order to highlight that “the existence or the formal record of previous convictions” (Queralt Jiménez, 2010, p. 1295) by the base offense of property deriving to money laundering (Vives Antón and González Cussac, 2010, CD, 6.5.11), is not necessary, which was already evident to doctrine and jurisprudence (Abel Souto, 2011a, pp. 12-13, b, pp. 72-73).

Similarly, international legislative history, the considerably expanded (Ambos, 2008, p. 436), Directives 2001/97 and 2005/60, which use the same terms “criminal activity”, now incorporated in the Code (Manjón-Cabeza Olmeda, 2010, pp. 341-342; Martínez-Buján Pérez, 2011, p. 486), cover “substantially all the crimes” (Castro Moreno, 2009, p. 4), but still do not mention petty offenses in their catalogues of infractions.

Systematically the “origin in a criminal activity” has to be the same “illicit origin” that is mentioned in the article 301.1 concerning indeterminate conducts to conceal or disguise, which are, in accordance with international background (Vogel, 1997, p. 340), specific attempts whose consumption is punishable in article 301.2 (Abel Souto, 2002, pp. 91-92, 95, 165-169, 245-246, 2009, pp. 213, 233-234 and 236; Diez Ripollés, 1994, pp. 603-604; González Rus, 2000, p. 536; Martínez-Buján Pérez, 2005, pp. 233-234, 2011, pp. 491-492; Quintero Olivares, 1996, p. 708, 2009, p. 945). This article refers to the previous facts with “crimes set out in the preceding paragraph” and the 301.4 punishes laundering although the “crime of which the property is derived”, referred to in the previous paragraphs, is committed abroad.

On the other hand, the petty offences should be excluded from the previous facts to the crime of money laundering because otherwise it would violate the consideration of criminal law as ultima ratio (Manacorda, 1999, p. 258). This is because the law against

Finally, the petty offences cannot be included in the previous facts to the crime of money laundering because it limits the effectiveness of the norm (Flick, 1992, p. 1293; Terradillos Basoco, 2008, p. 261), and increases social costs (Flick, 1990, p. 1264) so intolerable and contrary to the principle of proportionality (Fernández Teruelo, 2010, p. 324; Manjong-Cabeza Olmeda, 2010, p. 341).

Third, the Organic Law 5/2010, after the reference of the article 301.1 to the “criminal activity”, which integrates the previous fact, added “committed by him or by any third person”, which punishes “expressly” (Diego Díaz-Santos, 2009b, p. 198) laundering committed by the responsible for previous fact in the way the majority interpreted the crime (Fernández Teruelo, 2010, p. 319) and “ditch one of the most controversial issues” (González Cussac and Viales Rodríguez, 2009, p. 195). In this sense there was already a plenary agreement no jurisdictional of the Supreme Court of 18 July 2006 (Gómez Rivero, 2010, p. 540) admitting the self-laundering (Abel Souto, 2011a, pp. 15-16, b, pp. 78-80, with references of various sentences).

But the punishment of self-laundering combined with new behaviours of possession or use, to the Criminal Code incorporated by the Organic Law 5/2010, produces “strange consequences” (Quintero Olivares, 2010b, p. 13, a, p. 109), even absurd (Castro Moreno, 2009, pp. 1 and 4), because this would imply that the person who has a painting or a jewel which he has stolen would now commit a new crime and the same applies to the individual using someone else’s car without permission (Quintero Olivares, 2010b, p. 13, a, p. 109).

To avoid jeopardy (Martínez-Buján Pérez, 2011, pp. 493-494) the _typus_ should be interpreted as meaning that the possession by the authors or participants in the preceding fact as laundering is punishable only when this is not possible to sanction them for the previous crime (Quintero Olivares, 2010b, p. 20, a, p. 110). The above was highlighted by the General Council of the Judiciary to the authors or accomplices of patrimonial and socio-economic crimes in order to save the constitutional proscription of jeopardy, although the argument is only for the possession – because the possession is part of the consummation in these crimes (Diego Díaz-Santos, 2009c, p. 104) – but not for the use of property (for an opposing opinion Castro Moreno, 2009, p. 5), causing two crimes (Diego Díaz-Santos, 2009c, p. 104; Fernández Teruelo, 2010, p. 322). However, it should exclude from the _typus_ both the use and another kind of possessions
other than those indicated on the basis of the principle of insignificance and teleological interpretation, taking into consideration the legally protected interest, requiring a significant impairment of the socio-economic order and appropriateness of behaviours to incorporate illegal capital to trade.

Fourth, the reform of 22 June 2010 incorporated in the initial paragraph of article 301.1 of the Criminal Code the possession and use of criminal property as new forms of money laundering (Abel Souto, 2011a, pp. 17-27, b, pp. 81-98). The possession and use behaviours were already covered, from the Criminal Code in 1995, through the formula:

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... \text{perform any other act to conceal or disguise the illicit origin, or to help the person who has participated in the infringement or infringements to evade the legal consequences of their actions.}
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Now, however, they are also explicitly included in the Code (Muñoz Conde, 2010, pp. 554 and 556). For those who think that article 301.1 criminalizes acts exclusively directed to conceal, disguise or aid, the reform would change nothing, but to those who think that article 301.1 covers, in light of the grammatical (Terradillos Basoco, 2008, p. 237) and teleological interpretation, and according to international documents, not only indeterminate acts with the purpose to conceal, disguise or aid, but also covers the bare acquisition, conversion and transfer of property, with the knowledge that the good derive from a crime, but regardless of the purpose that guides a money launderer (Abel Souto, 2005b, pp. 93-102 and 290-291, 2009, pp. 177-187 and 235; Blanco Cordero, 2011, p. 42, 2012, p. 437), the Organic Law 5/2010 equates objective possession and use for the last three behaviours. In fact, the legislator follows this second interpretation, because otherwise the need for a change would not have been felt.

However, now the Spanish laundering offense includes, in principle, the carrier that moves the things of a famous drug dealer, a garage worker who guards the drug dealer’s vehicle and the person who takes care of the drug dealer’s coat in the cloakroom of an establishment, because article 301.1 punishes, since the reform of 22 June 2010, the mere possession of goods with knowledge that stem from a crime. All the above considered turns money laundering into a permanent offense with a responsibility that does not go away with the time (Sánchez Stewart, 2010, p. 2). But these behaviours should be excluded of the typus through a restrictive interpretation requiring, under the principle of insignificance, a relevant entity in the value of assets and the compensation and teleological limiting behaviours, which have to be suitable for incorporating capital illicit in trade.

Therefore, unlike the previous regulation that did not incriminate the mere use of property from a crime (Molina Mansilla and Molina Mansilla, 2008, p. 23), in principle, article 301.1of the Spanish Penal Code includes, as § 261 II, number 2 StGB German, which write a text on a computer that comes from a theft (critically Lampe, 1994, p. 130). However, the Spanish offense of money laundering, as well as the German, should be “teleologically restricted” (Vogel, 1997, p. 356), which excludes of the article 301 of the Criminal Code, by reason of lack of typus, all material objects of insignificant quantity, as the “amount of cents” (Bottke, 1998, p. 11), under the principle of insignificance (Aránguez Sánchez, 2000, pp. 184-185 and 248; Palma Herrera, 2000, pp. 350-351; Ragués i Vallès, 2001, p. 625; Terradillos Basoco, 2008, pp. 240 and 263) or of “minimal intervention” (Martínez-Buján Pérez, 2005, p 220, 2011, p. 481).
The same principle of insignificance applies to basic consumer acts, services or merchandise sales in everyday vital business (Aránguez Sánchez, 2000, pp. 184 and 247-248), given how important it is for individuals to be able to transmit the money received and to use purchased goods (Lampe, 1997, pp. 131-132). The previous author who only has money originating from a crime “would prohibit almost the satisfaction of vital needs” (Barton, 1993, p. 161) and thus, his own survival (Blanco Cordero, 1997, p. 272), if behaviours directed to sustain life are not excluded from typus. Furthermore, it would be forcing any potential provider of goods or services “now to waive the settlement of accounts with uncontrolled money now to refrain traffic” (Bottke, 1995b, p. 122), which limits so much economic rights of the citizen raising serious questions of constitutionality (Blanco Cordero, 1997, p. 290).

Such punishment of “violation of economic excommunication” (Salditt, 1992, p. 121), both of criminal property and of the people, which is intended to isolate the perpetrator of the previous crime, dangerously close us to an “enemy criminal law” (Barton, 1993, p. 163). For example, such a punishment forces the family members of a drug dealer to abandon him, because they know that their income is the result of drug trafficking. They cannot live with him in a flat which was paid with criminal property or get into the car, or use the phone or electrical appliances. Such an “enemy criminal law” also deters offender’s friends from visiting him, advises lawyers not to accept the case for defence in the courtroom, unless they were officially appointed, and recommends citizens not have the slightest contact with him unless they want to be subjected to the risk of criminal prosecution.

Fifth, regarding the new aggravations laundering of profits from certain crimes against public administration, contained in articles 419-445 of the Penal Code, against land planning and urbanism (Abel Souto, 2011a, pp. 27-31, b, pp. 98-103), the penalty is aggravated despite such increases gravity “do not have relevant general preventive effect” (Silva Sánchez, 2010a, p. 5).

The criminal political blunder of the aggravated typus of laundering drug money (Abel Souto, 2005b, pp. 279-287), which existed until now, is, a fortiori, in the new aggravations when goods originate in certain crimes against the public administration and urban planning, because it cannot be presumed that the amount of money laundered from these offenses exceeds the amount derived from other crimes. Neither are these aggravations justified by the legally protected interests (Berdugo Gómez De La Torre and Fabián Caparrós, 2010, p. 13), because they are the same values protected by the basic typus, since the Administration of Justice is interested in punishing any crime and the socio-economic order is not more damaged by the laundering of the proceeds of such crimes. Truly the laundered value determines a higher content of unfairness and it should aggravate the penalty (Palma Herrera, 2000, pp. 787-788), so the qualified typus would focus on the characteristics of the material object, the “magnitude” (Díaz y García Conledo, 2002, p. 209) or obvious importance of the amount laundered, but not in the irrelevant nature of the predicate offense (Aránguez Sánchez, 2000, p. 316), since the foundation of the aggravation would reside in the greater flow of illicit goods (Faralado Cabana, 1998, p. 150; Vidales Rodríguez, 1997, p. 142) put into circulation. From a technical standpoint, it is also unacceptable to increase the penalties for laundering according to the origin of goods, given that the autonomy of this crime would deny to attend the previous offense (Álvarez Pastor and Eguidazu Palacios, 2007, p. 356). The criminalization of money laundering would be deprived of independent material
content and would simply be a reinforcement of the legally protected interest through the crime of which capital derives (Fabián Caparrós, 1998, p. 194). Similarly, if the Criminal Code of 1995 wanted to punish “especially” (Nuñez Paz, 1997, p. 426) money laundering from drug trafficking and a disappointing jurisprudential application, despite the extension of previous facts, continues to focus almost exclusively on drug trafficking (Abel Souto, 2009, pp. 244-245), to which two new aggravations are added, “the area of operation of the basic typus is reduced (Martínez-Buján Pérez, 2011, p. 499), “substantially in favour of aggravation” (Manjón-Cabeza Olmeda, 2010, p. 345), so that the basic typus is almost never applicable, which transforms the rule into an exception through a strange technique of normative formulation which articulates the basic typus of reference which is scarcely used. Finally, the foundation of the aggravation underlies neither greater reproach, since the person who converts property linked to crimes against the public administration and urban planning is not guiltier than money launderers derived from other crimes (Palma Herrera, 2000, p. 785), nor international pressure, since no supranational instrument forces a heavier penalty of money laundering in these cases.

Finally, the reform of 22 June 2010 incorporates money laundering to the innovative model of criminal liability of legal persons (Fernández Teruelo, 2010, p. 319) Article 31 bis of the Penal Code (Abel Souto, 2011a, pp. 31-32, b, pp. 105-108). However, this model of responsibility was not forced, because the conventions normally only require sanctions “effective, proportionate and dissuasive”, which include administrative sanctions, security measures and other legal consequences different from those strictly penalties (Silva Sánchez, 2010a, p. 3); in addition, under the reform, with the company will respond directors and administrators who have not adopted an effective compliance program, because now everyone acts “as police officers” (Silva Sánchez, 2010b, p. 9).

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