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A European Money Laundering Curiosity: Self-Laundering in Finland

Abstract

Third-party money laundering has been comprehensively criminalised in the European Union member states. In contrast, many states have traditionally had a more negative attitude towards the punishability of self-laundering. Then again, under international pressure, member states have agreed to also criminalise self-laundering either completely or partly in recent years.

Finland has also struggled with the criminalisation of self-laundering. So far, the main rule in Finland is the non-punishability of self-laundering. However, according to the valid "exceptional rule", self-laundering can be punished if the money laundering offence, with consideration to the continuous and planned nature of the acts forms the most essential and blameworthy part of the totality of offences (Finnish Penal Code, Chapter 32, Section 11). This article critically examines the unique legislative solution of Finland and demonstrates that the punishability of self-laundering has remained a dead letter. Relying on international comparative material and supranational criminal policy, the article also suggests that the Finnish legislator should consider more comprehensive criminalisation of self-laundering.

I Introduction

Let us begin with a definition: Self-laundering means that a person commits an offence with economic profit and launders themselves the dirty money from the offence. In criminal law theory terms, self-laundering is a case of a secondary offence after a predicate offence, i.e. a situation in which the person committing an offence with economic profit aims at ensuring enjoyment of the benefit from the committed offence. For example, if a person receives bitcoins worth of 10,000 EUR from narcotics sales (predicate offence) and thereafter they hide the illegal origin of the virtual currency, they are guilty of self-laundering (secondary offence).[1]

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1 For principal and secondary acts, see *J. Tapani – M. Tolvanen*, Rikosoikeuden yleinen osa. Vastuuoppi. Toinen, uudistettu painos, 2013, pp. 473–474.

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Self-laundering has been comprehensively criminalised in the legislation of European countries. In recent years, the tendency has been that those countries that first had a sceptical approach towards criminalising self-laundering have also criminalised it either fully or in part. For instance, as a few European examples, we can observe that in the North, Sweden[2] criminalised self-laundering in 2014, in Central Europe, Germany[3] criminalised it in 2015 and in Southern Europe, Italy[4] criminalised it in 2015.

One central reason for the tendency of the countries to criminalise self-laundering is that the Financial Action Task Force[5] (hereafter FATF) has required – and requires – extensive criminalisation of self-laundering.[6]However, in Finland, the Criminal Code has a primary rule that self-laundering is not penalised. According to the Criminal Code, a person who is party to the crime which has produced economic benefit is not guilty of money laundering.[7]According to the preparatory works, self-laundering has been considered problematic criminalisation in light of Finnish criminal law system.[8]

The main rule concerning non-penalisation of self-laundering was, however, "relaxed" in 2012 so that it is possible for one to be guilty ofself-laundering in case of aggravated money laundering if money laundering, with consideration to the continuous and planned nature of the acts, forms the most essential and blameworthy part of the totality of offences.[9] It was a compromise aimed at fulfilling the international money laundering criminalisation obligations while complying with the national criminal law principle of "no separate punishment for secondary offence".[10] According to the principle, blameworthy secondary offences closely related to the predicate offence can be

2 See Lag om straff för penningtvättsbrott (2014:307). See also Penningtvätt. Utvecklingscentrum Stockholm och
Ekobrottsmyndigheten (RättsPM 2015:2) 2015, especially p. 13.

3 In Germany, self-laundering was extensively criminalised in connection with the entry of into force of a new anti-corruption act "Gesetz zur Bekämpfung der Korruption" in November 2015.

4 In Italy, the new self-laundering criminalisation entered into force in the beginning of 2015. See Legge del 15 dicembre 2014 n. 186.

5 FATF is an intergovernmental organisation established in 1989 that follows and monitors the acts of different countries in the fight against money laundering and terrorism. See website of the organisation (www.fatf-gafi.org/). FATF can, for example, suggest that an individual country change its criminal regulation of money laundering, if these criminalisation acts are considered against its recommendations. Internationally viewed, FATF statements have a considerable weight.

6 See e.g. FATF; Mutual Evaluation of Finland: 9th Follow-up report 2013, p. 11; The FATF Recommendations: International standards on combating money laundering and the financing of terrorism & proliferation, 2012/updated 2016, p. 12.

7 Criminal Code of Finland: Chapter 32 Section 11.

8 HE 285/2010 vp laeiksi rikoslain 32 luvun 6 ja 14 §:n sekä kansainvälisestä oikeusavusta rikosoikeusasioissa annetun lain 15 §:n muuttamisesta, pp. 1, 9. See also FATF: Mutual Evaluation of Finland: 9th Follow-up report 2013, p. 11.

9 Criminal Code of Finland: Chapter 32 Section 11.

10 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, pp. 3, 5–7; *D. Frände*: Yleinen rikosoikeus. 2. uudistettu painos, 2012, p. 279.

considered when measuring the punishment, but they are not typically regarded as the perpetrator's fault.[11] The said can be illustrated with the following example:

Let us assume that a person receives economic profit from punishable pandering, which he does not declare to the tax officer. Once the person is caught, they are not condemned, in addition to pandering (predicate offence), of tax fraud (secondary offence), but the punishment for pandering is considered sufficient. In such situation, tax fraud can be punishable in Finland as an additional offence, i.e. it impacts the punishment sentenced for the predicate offence, pandering.[12]Likewise, we can imagine a situation where a person that has received economic profit from pandering aims at disguising the origin of the dirty money they received. Also, in this kind of situation, the system of the Finnish criminal law is unlikely to condemn the person committing pandering (predicate offence) also for the money laundering (secondary offence). Rather, the criminal law system requires in Finland that self-laundering is not punished as a separate offence, even though the blameworthiness of self-laundering can be considered when measuring the punishment for the pandering offence.

The compromise made by Finland, which criminalised self-laundering minimalistically, did not satisfy FATF. In the 2013 country report concerning Finland, FATF stated that the Finnish decision to criminalise self-laundering in aggravated and systematic money laundering suggests that criminalisation of self-laundering would not in fact be contrary to the central principles of the Finnish criminal law.[13] Therefore, the Finnish decision not to fully criminalise self-laundering – by appealing to national criminal law core principles – was shot down in international fora.

In this paper, I examine the punishability of self-laundering in Finland.There are only few studies on this subject, and these studies are also written in Finnish.[14]However, I assume that this theme also raises wider European interest. The reasons are the following: Firstly, Finland – like many other European Union (EU) Member States – has faced challenges in the 2010s with self-laundering criminalisation. Then again, as many other countries have been prepared to criminalise self-laundering, Finland has held non-punishability of self-laundering as the main rule. Therefore, the challenges for Finland can be considered particularly severe. It is illustrative that during the last ten years, two different official working groups have reviewed how self-laundering should be approached in Finland. The result has been a very particular legal solution in European terms, as there is nothing like it in any other EU Member State.

11 *Tapani – Tolvanen* (fn. 9), pp. 473–477; *M. Ulväng*: Brottslighetskonkurrens. Om relationer mellan regler och fall. Skrifter från juridiska fakulteten (SJFU) 2013, pp. 536–537; *Frände* (fn. 10), p. 279.

12 *Tapani – Tolvanen* (fn. 1), p. 473.

13 FATF: Mutual Evaluation of Finland: 9th Follow-up report 2013, p. 11.

14 See especially *T. Hyttinen*, Kansallinen rikoslaki kansainvälisessä paineessa – itsepesun rangaistavuus Suomessa. Lakimies 3-4/2017, pp. 355–383; J. Tapani: Rahanpesu, in: D. Frände/J. Matikkala/J. Tapani/M. Tolvanen/P. Viljanen/M. Wahlberg, Keskeiset rikokset, 2014, pp. 722–732, pp. 731–732; *R. Sahavirta*, Rahanpesu rangaistavana tekona, 2008, passim.

Secondly, just as the discussion on the punishability of self-laundering seemed to calm down in Finland, the European Commission provided a directive proposal in December 2016 (COM(2016) 826 final[15]), with one aim to further harmonise money laundering legislation and to obligate the Member States to criminalise self-laundering in a comprehensive manner. The Legal Affairs Committee of the Finnish Parliament issued a statement in March 2017, according to which the proposed directive would mean that the punishability of self-laundering would be considerably extended.[16] In the manner described by the Legal Affairs Committee, the proposal could mean a thorough change in the Finnish criminal law system, such as in the prevailing concurrence practice.[17]

Thirdly, it should be noted that supranational discussion on the specificities of national criminal law systems is necessary if (and when) the aim is to harmonise the money laundering criminalisation of different countries. In practice, the question is that criminal law harmonisation requires knowledge of the nuances of other states' criminal codes, which cannot be achieved if discussion on the national specificities is not also internationally held. It is not insignificant that the discussion on the valid criminal code is held in a language that opens up the criminal code of the linguistically smaller countries for a wider audience. These sorts of views are emphasised in criminal law texts, which are traditionally held in the language of each country.

To put it briefly, my aim in this article is to answer three interconnected questions : (1) How extensively has self-laundering been criminalised in the EU? (2) What sort of money-laundering can be currently punished as self-laundering in Finland? (3) Should Finland criminalise self-laundering in a more extensive manner? Even though I examine self-laundering criminalisation from a Finnish perspective, I have to take into account the international obligations related to money laundering criminalisation, European criminal policy and the legal situation of the other EU Member States.

II Method and structure

Typically, criminal legal writings are classified as practical or theoretical criminal law dogmatics. This methodological classification can be considered informative to begin with. It indicates if the author's interests are more practical or theoretical. Then again, talking about practical or theoretical criminal law dogmatics is too categorical.[18] This is based on the fact that many criminal law writings have both practical and theoretical aims. For example, in a *de legeferenda* type of study, the author can deeply discuss criminal law's theoretical and social philosophy commitments in order to be able to

15 Proposal for a directive of the European Parliament and of the Council on countering money laundering by criminal law (21.12.2016, COM(2016) 826 final).

16 Statement of the Legal Affairs Committee LaVM 4/2017 vp concerning U letter U 1/2017 vp.

17 Statement of the Legal Affairs Committee LaVM 4/2017 vp concerning U letter U 1/2017 vp.

18 See e.g. *J. Tapani*: Petos liikesuhteessa. Talousrikosoikeudellinentutkimus, 2004, p. 10.

justify even very practical procedural recommendations. Similarly, practical criminal law research serving the interests of legal praxis can include very strong theoretical commitments, even though the author would not explicitly state this.

This contribution also moves methodically in the middleway between practical and theoretical criminal law dogmatics. My aim is not to explicate my criminal law theoretical or social philosophical commitments. Instead, my aim is to produce criminal law knowledge that, on one hand increases the awareness of the international audience of the Finnish self-laundering regulation and on the other, increases the harmonisation possibilities of self-laundering in the EU. Related to the latter-mentioned aim, the article has a clear criminal policy flavour.

To begin with, I will review the seriousness of the problem discussed and how this problem has been addressed internationally (Section 3). After this, I will shortly examine how the punishability of self-laundering has been approached in the EU Member States (Section 4). After the international review, I will examine the punishability of self-laundering in Finland (Section 5) and present my views on the legislation concerning self-laundering in Finland (Section 6). Finally, I will present my core conclusions (Section 7).

III Money laundering and international criminal policy

Many crimes produce economic benefit. It is, however, difficult to utilise dirty money. Therefore, it is of primary importance, for example, for white-collar criminals, traffickers, procurers and drug dealers to make the illegally acquired money appear legal. This requires money laundering, that is, dispelling the origin of the money obtained through crime.[19] The United Nations Office on Drugs and Crime (UNODC) has estimated that the annual amount of the laundered money acquired through criminal means is 2.7 % of world GDP.[20] According to the World Bank, the annual amount of

19 On the definition of money laundering, see J. *S. Sharman*: The Money Laundering. Regulating Criminal Finance in the Global Economy, 2011, pp. 15–20; *M. Kimpimäki*: Kansainvälinenrikosoikeus, 2015, p. 337. On the definition problems of dirty money, see *V. Mitsilegas*: Countering the chameleon threat of dirty money. "Hard" and "Soft" law in the emergence of a global regime against money laundering and terrorist finance, in: A. Edwards/P. Gill (eds.) Transnational Organised Crime. Perspectives on Global Security, 2005, pp. 193–211, p. 208.

20 UNODC: Research Report: Estimating illicit financial flows resulting from drug trafficking and other
transnational organized crimes, 2011, particularly p. 7. On the assessment of money laundering volume and problems in assessment, see *J. Walker – B. Unger*: Measuring Global Money Laundering: The 'Walker Gravity Model', in: B. Unger/D. V. R. Linde (eds.): Research Book on Money Laundering, 2013, pp. 159–171; *A. Buehn- S. Friedrich*: A Preliminary Attempt to Estimate the Financial Flows of Transnational Crime Using the MIMIC Method, in: B. Unger/D. V. R. Linde (eds.): Research Book on Money Laundering, 2013, pp. 172–189; *M. Bagella- Francesco B. – A. Argentiero*: Using Dynamic Macroeconomics for Estimating Money Laundering: A Simulation for the EU, Italy and the United States, in: B. Unger/D. V. R. Linde (eds.): Research Book on Money Laundering, 2013, p. 207–223; *P. Reuter*: Are Esti-

dirty money is even larger, a total of 3.6 % of world GDP.[21] If we assume the milder assessment of UNODC on the amount of dirty money, we can state that the global economic circuit includes funds based on criminality worth of approximately EUR 2,000 billion.[22]

In the international discussion, bleak images of the consequences of money laundering have been painted. Firstly, money laundering is considered a serious issue, enabling the systematic activities of criminal organisations. Secondly, money laundering has also been found to skew financial markets and competition, and to pose a threat to the entire public order.[23] Even though the concerns and objects of legal protection behind money laundering criminalisation can seem exaggerated at least in the Nordic countries, internationally money laundering endangers regional stability, even entire national economies. An example of problems induced by money laundering is provided by the overheated housing market in London, claimed to be partly caused by money laundering.[24]

It is typical to transfer criminally acquired money from one country to another in money laundering. For example, a person may act as a trafficker in Sweden, save the acquired money in small depos-its on British bank accounts (so-called smurfing), change the cash into Russian stock shares, and exchange the shares into the shares of a housing corporation situated in Finland.[25] Because the shares of the housing corporation are bought with assets originally acquired through criminal means, it is a question of money laundering. After 2010, the so-called cyber-laundering has become more common, i.e. transferring dirty money into virtual currency or laundering money in online auctions or betting companies.[26]

mates of the Volume of Money Laundering Either Feasible or Useful?, in: B. Unger/D. V. R. Linde (eds.): Research Book on Money Laundering, 2013, pp. 224–231.

21 UNODC: Research Report: Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes, 2011, p. 7.

22 According to the statistics of the World Bank, the combined GDP of different countries in 2016 was a total of USD 76,124 trillion. See World Bank statistics (http://data.worldbank.org/data-catalog/GDP-ranking-table).

23 E.g. *K. J. McCarthy*: Why do some states tolerate money laundering? On the competition illegal money, in: U. Brigitte/V. D. L. Daan (eds.): Research Book on Money Laundering, 2013, p. 127–142; Oikeusministeriön mietintöjä ja lausuntoja 27/2010: Rahanpesukriminalisointienmuutostarpeet, p. 17; *Sahavirta* (ft. 14), pp. 43–54.

24 See the statement of the representative of National Crime Agency in the UK, *Donald Toon* in The Times, The Times/S. O'Neill 25.7.2015.

25 Comprehensively on the current modes and measures of money laundering, see *A. Diergarten – S. B. da Rosa*: Praxiswissen Geldwäscheprävention. Aktuelle Anforderungen und Umsetzung in der Praxis, 2015, pp. 6–43. See also *J. Simser*: Money Laundering: Emerging threatsandtrends. Journal of money laundering control vol. 16 (2012), pp. 41–54; FATF: Global Money Laundering and Terrorist Financing Threat Assessment (http://www.fatf-gafi.org/media/fatf/documents/reports/Global%20Threat%20assessment.pdf).

26 E.g. *Diergarten- da Rosa* (ft. 25), pp. 37–41; *S. Summers – C. Schwarzenegger – G. Ege- F. Young*: The Emergence on EU Criminal Law. Cybercrime and the Regulation on the Information Society, 2014, pp. 256–257;
A. S. M. Irwin – J. Slay – K.-K. R. Choo – L. Lui: Money laundering and terrorism financing in virtual environments: a feasibility study. Journal of Money Laundering Control vol. 17

As a border-crossing crime, money laundering has been in the focus of international discussion on Criminal Law after the financial markets were liberalized at the end of the millennium.[27] A tipping point is considered to be the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988.[28] It is the first international convention defining the modes of money laundering and obligating the parties to criminalise money laundering.[29]

Another tipping point can be considered the G7 summit in 1989, when the leading industrial countries established the Financial Action Task Force on Money Laundering (FATF). The objective of FATF is to prevent money laundering by requiring states e.g. to stipulate effective legislation against money laundering. FATF also coordinates international cooperation and monitors how different states have succeeded in their actions against money laundering.[30] In practice, the country-specific money laundering recommendations strongly obligate the legislators of different countries to legislate against money laundering, even though criticism can be targeted at FATF activities.

Firstly, severe criticism can be targeted at the fact that FATF aims at promoting anti-money laundering measures regardless of eventual negative consequences of its procedural demands. This has led, at an international scale, to the expansion of anti-money laundering legislation and also the increase of authority competences. In contrast, according to my observations, FATF has paid little attention to extent the anti-money laundering obligations endanger e.g. the realisation of fundamental and human rights. For example, while demanding effective self-laundering criminalisation, FATF has paid little attention to the extent that self-laundering criminalisation can be in contradiction with *ne bis in idem rule* or protection against self-criminalisation.[31]

Secondly, criticism can be targeted at the fact that the country reports and recommendations of FATF do not consider the legal historical and cultural traditions of different countries. For example, the sufficiency of money laundering criminalisation of each country is examined by FATF according to fixed supranational standards, as if it was blind to the criminal law systems and traditions of different countries.[32] Even though there is only little space for country-specific sensitivity in international har-

(2014), pp. 50–75; *A. Lavorgna*: Organised crime goes online: realities and challenges. Journal of Money Laundering Control vol. 18 (2015), pp. 153–168.

27 See *B. Unger*: Money laundering regulation: from Al Capone to Al Qaeda, in: B. Unger/D. V. D. Linde (eds.): Research Book on Money Laundering, 2013, pp. 19–32, particularly p. 19. On the development of money laundering regulation since 1980s, see *Mitsilegas* (fn. 19), pp. 195–211.

28 See *Marco Tolla*: Principali trattati internazionali multilaterali, in: P. Grasso (ed.): Elementi normativi internazionali e nazionali in materia di riciclaggio, 2010, pp. 67–138.

29 See Article 3. See also *Kimpimäki* (fn. 19), p. 338. Since then, the definition of money laundering and the obligation to criminalise money laundering has also been included in the United Nations Convention against Transnational Organized Crime (2000), the so-called Palermo convention (Section 6).

30 See FATF website (www.fatf-gafi.org/); *Mitsilegas* (fn. 19), pp. 208-209.

31 See also *Sahavirta* (fn. 14), pp. 293–294.

32 On this topic, see *B. Unger*: Summary and Conclusion, in B. Unger/J. Ferwerda/M. V. D Broek/I. Deleanu: The Economic and Legal Effectiveness of the European Union's Anti-

monisation efforts, FATF should keep in mind that the harmonisation efforts for national Criminal Codes need to have sufficient national leeway. For example, the criminalisation of money laundering has turned out to be challenging even among EU Member States – and at the larger international scale, harmonisation has turned out to be almost impossible. This is because when we step down from the superficial layer of criminal legislation towards the general doctrines of criminal law, country-specific differences are significant and deeply rooted.[33]

In addition to FATF, the EU has also been active in anti-money laundering actions.[34] Money laundering was first addressed in 1991, when the Council Directive 91/308/EEC obligated Member States to ensure that their financing systems cannot be used for money laundering purposes.[35] Ten years later, in 2001, the Directive 2001/97/EC of the European Parliament and of the Council introduced further obligations for Member States in actions against money laundering.[36]

Money laundering provisions were also tightened roughly ten years ago with the Directive 2005/60/EC[37] of the European Parliament and of the Council and the Commission Directive 2006/70/EC[38]. Latest administrative measures against money laundering to be taken by the Member States of the EU were provided in May 2015 with the Directive (EU) 2015/849.[39]

Money Laundering Policy, 2014, pp. 235–241. See *also I. Deleanu – J. Ferwerda*: Effectiveness: threat and corresponding policy response, in B. Unger/J Ferwerda/M. V. D. Broek/I. Deleanu: The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy, 2014, p. 204. Deleanu and Ferweda criticise FATF for that it does not pay attention in its country-specific recommendations on how serious problem money laundering actually is in each country.

33 Comprehensively on the criticism targeted at anti-money laundering efforts, see *Sahavirta* (fn. 14), pp. 54–59.

34 See e.g. *V. Mitsilegas*: EU Criminal Law, 2009 pp. 65–67. After the entry into force of the Lisbon Treaty (1 Dec 2019), money laundering has been explicitly mentioned as one of the border-crossing and serious EU offence that may need addressing through directives. See Article 83 of the Treaty on the Functioning of the European Union (TFEU).

35 Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

36 Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

37 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

38 European Parliament and Council Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

39 Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

The most recent anti-money laundering provisions for the Member States of the EU were included in the Commission Directive proposal (COM(2016) 826 final) issued in December 2016.[40] The main purpose of the directive is the harmonisation of national money laundering criminalisation, and one of the objectives is the comprehensive and uniform criminalisation of self-laundering. In the EU, organised crime and money laundering are considered serious issues that are necessary to address with criminal law measures.

Due to the pressure of international conventions, FATF recommendations and the EU, several European countries have criminalised money laundering in recent years or modified the existing money laundering provisions.[41] Although there may be internal tensions between the anti-money laundering requirements set by different actors – such as FATF and the EU –,[42] the general national trend has been that the criminal liability extends constantly to cover different potential forms of money laundering such as self-laundering.[43]

Let us take a closer look at how the criminalisation of self-laundering has been internationally approached. I will review the punishability of self-laundering in the EU Member States. My aim is not to comprehensively analyse the valid self-laundering criminalisations in different countries but to mechanically illustrate how extensively self-laundering has been criminalised in the EU

IV Punishability of self-laundering in European Union Member States

Traditionally, nation-states have been able to decide which sort of actions are considered offences in each country. Then again, the sovereignty of a national criminal law legislator has been limited by cross-border criminality, such as money laundering. If money laundering would be tackled, it must be criminalised effectively and uniformly in different countries. Otherwise, there is a danger that some countries become money laundering paradises, i.e. countries where money laundering is possible without a real threat of a punishment.

Harmonisation is particularly important with regard to money laundering criminalisation, since transferring money from one country to another is easy today. Hence,

40 Proposal for a directive of the European parliament and of the council on countering money laundering by criminal law (21.12.2016, COM(2016) 826 final).

41 For a review on what the money laundering criminalisation state is in European countries (Denmark, Iceland, Norway, Belgium, France, Great Britain, Germany) in early 2010s, see Swedish Committee Report on money laundering SOU 2012:12: Penningtvätt- kriminalisering, förverkandeochdispositionsförbud, pp. 119–140. Fundamental and critical assessment of the money laundering criminalisation in different countries, see Mutual Evaluations at FATF website.

42 Tensions have been visible e.g. in that the EU Member States that have followed a "money laundering directive" concerning certain topic strictly, may have received criticism from FATF concerning the insufficiency of its anti-money laundering legislation (modified based on the directive). See *Unger* (ft. 32), pp. 238-239.

43 See also *Sahavirta* (fn.14), p. 149.

even one "safe haven" for money laundering, can make money laundering criminalisation in other countries useless. For example, if in country C_1 self-laundering is criminalised and not in C_2, it is rational for a person who has conducted drug dealing in C_1 to pack the dirty money in their car and drive to country C_2 to disguise the dirty origin of the money. Simply put, in country C_1 the person could be condemned to punishment for self-laundering, but in country C_2 it is permitted to disguise the origin if the money is derived from drug dealing conducted by the person themselves. Against this background, it is understandable that FATF – and nowadays also the EU – has required comprehensive criminalisation of self-laundering.[44]

Technically, self-laundering can be criminalised in two ways: either an act directly states that self-laundering is criminalised or it does not state anything about the non-punishability of self-laundering. Out of the countries that have recently criminalised self-laundering, Italy chose the first technical option. From 1 Jan 2015, the Italian Criminal Code has included a section where self-laundering is explicitly criminalised.[45] However, the decision was different in Sweden. Once the new money laundering criminalisation in Sweden entered into force in July 2014,[46] self-laundering was not mentioned in the criminalisation.[47] In contrast, according to the Swedish law, anyone can be guilty of money laundering and the criminalisation does not include a limiting provision where those persons that are party to the predicate offence where the money originates would be excluded from punishability.[48] In practice, this means that money laundering is punishable regardless of who the money launderer is, i.e. money laundering can be committed by a person who launders the economic benefit received by themselves with the predicate offence – however, assumingly, Swedish concurrence rules have *de facto* excluded certain minor forms of self-laundering from being punished.

Out of EU countries, the German criminal liability in money laundering has recently extended to cover self-laundering. Whereas previously the approach towards self-laundering as an individual offence was hesitant,[49] the new anti-corruption legislative package (Gesetz zur Bekämpfung der Korruption) that entered into force in November 2015 criminalised self-laundering rather comprehensively.[50] For example, if the person who commits the predicate offence saves criminal benefit on their spouse's account or buys a new car with the criminal profit, they can be condemned for self-laundering.

44 The FATF Recommendations: International standards on combating money laundering and the financing of terrorism & proliferation, 2012/updated 2016, p. 12.
45 Italian Criminal Code (Codice Penale), Article 648 ter. 1/Autoriciclaggio.
46 On the new Swedish money laundering criminalisation, see Swedish Government Proposal Prop 2013/14:121 – En effektivare kriminalisering av penningtvätt.
47 Lag om straff för penningtvättsbrott [2014:307].
48 See also Penningtvätt. Utvecklingscentrum Stockholm och Ekobrottsmyndigheten (RättsPM 2015:2) 2015, particularly p. 13.
49 *Unger* (ft 32) p. 236.
50 German Criminal Code (StBG) 261 §.

In addition to Sweden, Italy and Germany, EU countries that have criminalised self-laundering comprehensively include all Benelux countries, i.e. the Netherlands, Luxembourg and Belgium, where most of the money laundering cases ending up in court are self-laundering cases.[51] In the Baltic countries, self-laundering has also been comprehensively criminalised: In Latvia[52] and Lithuania[53] self-laundering has been explicitly criminalised and in Estonia, the prosecutors and judges have interpreted in the legal praxis that money laundering criminalisation in Estonia also covers self-laundering.[54]

Self-laundering is punishable also in the core of Europe, France, and in the United Kingdom that is about to exit from the EU. In the UK neighbour, Ireland, self-laundering is also punishable. However, charges are almost never raised.[55] The insignificance of self-laundering in Ireland is based on the fact that it does not impact the condemned sentence whether the person is found guilty of self-laundering in addition to the predicate offence. Hence, prosecutors have not considered it relevant to complicate the judicial proceedings by accusing the defendant of self-laundering in addition to the predicate offence, but, rather, emphasis is put on the trial for the predicate offence. Prosecutors have justified this pragmatic attitude in the Ireland with the claim that the predicate offence is typically easier to prove in court than self-laundering.[56] In a similar vein, it can be easier to examine the predicate offence in the criminal investigation than to verify money laundering – possibly based on elegant economic arrangements. It should be noted, however, that the Irish manner of focusing official resources on clarifying the predicate offence is not a continental European phenomenon. For example, in the Netherlands self-laundering is typically considered more easily proven than the predicate offence behind money laundering; hence prosecutors in the Netherlands press charges rather on self-laundering than on the predicate offence that produced the dirty money.[57]

In addition, in Eastern EU Member States, self-laundering is typically criminalised. For example, in Romania, self-laundering is not only criminalised but also exceptionally extensively applied criminal law provision in the legal praxis.[58] The common nature of the application practice is not, however, only based on the activity of the authorities but on the fact that organised crime and money laundering is more common in Romania than in many other EU Member States.[59]

51 FATF. Mutual Evaluation Report. Belgium 2015, p 57.
52 LatvianCriminal Code, Article 195.
53 LithuanianCriminal Code, Article 216.
54 Moneyval (2008) 32. Third Round Detailed Assessment Report on Estonia, pp. 41–42.
55 On this topic, see *J. Ferwerda:* Definition of money laundering in practice, in: B. Unger/J. Ferwerda/M. V. D. Broek/I. Deleanu: The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy, 2014, p. 88.
56 *Ferwerda* (ft. 55), p. 88.
57 *Ferwerda*(ft. 55), pp. 92–93.
58 Moneyval (2014) 4. Report on Fourth Assessment Visit of Romania, p. 57.
59 Moneyval (2014) 4. Report on Fourth Assessment Visit of Romania, pp. 25–28.

In addition to Romania, self-laundering is punishable in Bulgaria, Croatia, Poland and Czech Republic, where a condition was abolished from money laundering criminalisation in the early 2000s, according to which one cannot be guilty of money laundering by laundering criminal profit based on one's own offence. In practice, the criminalisation of self-laundering was realised in Czech Republic by deleting the clause of the constituent elements of money laundering that states that an act fulfilling the constituent elements requires that a person is laundering criminal profit based on an offence of another person.[60]

Austria adopted a similar solution to that of Czech Republic in 2010 when it deleted the demand from the money laundering criminalisation[61] that required that money laundering can only be committed by laundering the economic profit of another person's offence. Hence, self-laundering is punishable also in today's Austria, although differently from "regular money laundering", self-laundering can only be committed in Austria by concealing or disguising the origin based on one's own offence.[62] Therefore, acts constituting self-laundering are less extensive in Austria when compared to actual third-party-type money laundering[63]– i.e. in Austria one cannot commit self-laundering by e.g. converting criminal profit based on one's own offence in another form, if the perpetrator does not have a clear intention to conceal or disguise its origin.

Hungary has also decided to limit the criminalisation of self-laundering,[64] but there – as well as in many other EU counties – has been a debate over whether a person can be punished for self-laundering that should be considered secondary offence related to the predicate offence, in light of the criminal system.[65] In Hungary, a view that has also been considered relevant maintains that the criminalisation of certain forms of self-laundering – such as minor use of dirty money based on one's own offence – could become problematic in light of ne bis in idem rule,[66] i.e. when punishing the person for the predicate offence and for the minor use of the criminal profit based on the predicate offence, the person would in fact be punished twice for the same act[67]– and the n*e bis in idem rule* is known to be a core part of international human rights conventions and constitutions of different countries. In its criminalisation solution, Hungary has come to the conclusion that money laundering is mainly punishable only when the person is laundering money based on another person's offence, and self-laundering is punishable only in exceptional cases. Therefore, the essential elements of self-launder-

60 See Moneyval (2011) 1. Report on Fourth Assessment Visit. Czech Republic, particularly p. 26.
61 Austrian Criminal Code (StBG) 165 §.
62 FATF: Mutual Evaluation Report. Austria 2016, p. 115.
63 Third-party-type money laundering refers to "traditional" money laundering, whereby a person launders criminal profit originating from an offence conducted by another person.
64 Section 303(3), Hungarian Criminal Code.
65 Moneyval (2010) 26. Report on Fourth Assessment Visit. Hungary, pp. 28–29; Moneyval (2016) 13. Fifth Round Mutual Evaluation. Hungary, p. 144
66 Moneyval (2010) 26. Report on Fourth Assessment Visit. Hungary, pp. 28–29.
67 The same problem has been discussed in connection with self-laundering criminalisation also in other European Union Member States such as in Germany.

ing[68] constitute reduced elements compared to regular money laundering elements. In practice, this means that in Hungary it is only punishable that a person operating in business or through financial arrangements and services aims at concealing or disguising the origin of the dirty money received through an offence.[69]

In Hungary's neighbouring countries, Slovenia and Slovakia, self-laundering has not been explicitly criminalised. Then again, in Slovenia the Supreme Court has stated that self-laundering can be punished on the basis of the Slovenian Criminal Code,[70] thus in practice self-laundering is also punishable in Slovenia. Similarly, according to Slovakian authorities, Slovakian Criminal Code enables punishing for self-laundering.[71] To my knowledge, Slovakia does not have legal praxis supporting the punishability of self-laundering.

In Southern Europe, self-laundering has been criminalised in Italy, Cyprus, Portugal, Spain and Malta. In Spain and Malta, self-laundering criminalisation has also been effectively applied in the legal praxis.[72] In contrast, in Greece the legal situation of the punishability of self-laundering is vaguer.[73] On the other hand, since the Greek Supreme Court has found a person guilty based on money laundering criminalisation also in self-laundering cases, self-laundering can be *de facto* considered to be also punishable in Greece in accordance with the valid Criminal Code.[74]

As an interim conclusion, we can state that among the above-mentioned countries, in 26 EU Member States (in alphabetical order: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom) self-laundering is punishable, even though the punishability has varied with regard to legal techniques. In some countries, self-laundering has not been explicitly criminalised, but has been punished in the legal praxis. In these sort of cases, the self-laundering prohibition is included in the general criminalisation of money laundering, i.e. no differentiation is made between self-laundering and regular – third-party-type – money laundering. Instead, in other countries self-laundering may have been separately criminalised by stating this explicitly in the Criminal Code.

It should also be noted that in several countries – such as in Austria and Hungary – the account of the criminal act charged is more limited compared to third-party-type money laundering, but neither is self-laundering permitted in these countries. It is typical of different countries that self-laundering is not *de facto* punished if the person on-

68 Section 303(3), Hungarian Criminal Code.
69 See also Moneyval (2016) 13. Fifth Round Mutual Evaluation. Hungary, p. 144
70 Moneyval (2013) 4th Round Mutual Evalution of Slovenia, pp. 13–14.
71 Moneyval (2011) 21. Report on Fourth Assesment Visit of Slovak Republic, p 26.
72 On the situation of Spain, see FATF: Spain Mutual Evaluation Report. Spain 2014, e.g. p. 58. On Maltese legal praxis, see e.g. Ir-Repubblika ta' Malta v. Stiano Agius, Criminal Court, 26 January 2015. In this case, a person was found guilty of money laundering when they were trying to conceal or disguise the origin of dirty money received from drug offence.
73 FATF: Mutual Evaluation Tenth Follow-Up Report. Creece 2011, p. 8.
74 FATF: Mutual Evaluation Tenth Follow-Up Report. Creece 2011, p. 8.

ly holds such possession that is based on their own offence – i.e. it is not typically considered self-laundering if a person has in his home desk cash from drug trafficking or other criminal activities. Exceptions include Luxembourg and the Netherlands where persons have been condemned for self-laundering even in cases of normal possession of dirty money derived from an offence.[75]

On the basis of my review, it seems that the only EU Member State where self-laundering has not been criminalised at all is Denmark.[76] In Denmark, the Criminal Code does not include specific title-level criminalisation of money laundering, but the punishability of money laundering has been included in concealment (hæleri). According to the essential elements of concealment, a person who conceals, holds, transfers, assigns or in other similar manner promotes the concealment of criminal profit can be condemned for a sentence for concealment – in practice, money laundering.[77] The essential elements suggest that a person can only be condemned for money laundering if the dirty funds are based on an offence that has been conducted by another party than the person aiming at laundering the criminal profit.[78]

Why Denmark has been particularly averse towards self-laundering is based on the same reasons as in Finland – i.e. also Denmark has started off from the premise that self-laundering does not fit the criminal law system – and self-laundering is in a serious conflict with the basic principles of the Danish (criminal) legal system. The main argument that has been put forward is that it is not rational to punish separately for the secondary offence (self-laundering) if the perpetrator is punished for the actual predicate offence such as drug trafficking.[79] Hence, the idea of the criminal legal system of

75 *Ferwerda* (ft. 52), p. 96.

76 FATF has strongly criticised Denmark for not criminalising self-laundering. Against this background, it is interesting that in an extensive international ECOLEF (Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy) research project, concluded that despite of FATF's self-laundering criticism, Denmark seems to be one of the best in Europe in preventing money laundering. See *I. Deleanu- J. Ferwerda* (ft. 32), particularly p. 204.

77 Section 290 of the Danish Criminal Code states that: For hæleri straffes med bøde eller fængsel indtil 1 årog 6 måneder den, som uberettiget modtager eller skaffer sig eller andre del iudbytte, der er opnået ved en strafbar lovovertrædelse, og den, der uberettiget ved at skjule, opbevare, transportere, hjælpe til afhændelse eller på lignende made efterfølgende virker til at sikre en anden udbyttet af en strafbar lovovertrædelse. The following can be considered interesting: Even though the Danish Criminal Code does not include money laundering criminalisation at title level, according to statistics, there seems to be a lot of sentences for money laundering. In fact, when reviewing the number of money laundering charges and sentences in European Union Member States, we can observe that Denmark is one of the statistical tops; however, the different statistical numbers can be explained not only by statistical practices but also by the definiation given for "money laundering offence" in different countries. See *J. Ferwerda*: Collection of statistics, in: B. Unger/J. Ferwerda/M. V. D. Broek/I. Deleanu: The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy, 2014, pp. 172–173, p. 174.

78 See also Statens offentliga utredningar SOU 2012:2: Penningtvätt – kriminalisering, förverkande och dispositionsförbud, p. 194.

79 FATF: Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism. Kingdom of Denmark 2006, pp. 46–47

Denmark is similar to the Finnish view: self-laundering can be considered when meting out a punishment for the principal act (predicate offence), but self-laundering should not be criminalised as a separate offence.[80]

We can conclude as a main rule that the EU countries are inclined to punish for self-laundering. Out of the 28 Member States of the Union, an exceptionally reversed approach towards self-laundering criminalisation can only be found in Denmark and Finland. In Denmark, self-laundering is not punishable at all and the Finnish Criminal Code includes a limiting rule stating that a person party to the offence that has obtained the funds from another or that has created the benefit will not be condemned for money laundering.[81] Then again, unlike in Denmark, Finland has aimed at responding to the international demands related to self-laundering by including an exceptional clause in the Criminal Code, stating that self-laundering can be punishable if it is considered aggravated and if money laundering, with consideration to the continuous and planned nature of the acts, forms the most essential and blameworthy part of the totality of offences.[82]

Based on European comparison, the Finnish criminalisation solution can be considered exceptional. In light of international obligations, the solution can also be considered unsatisfactory; I am not aware of any sentences condemned for self-laundering in Finland – and this is probably based on the fact that the limit for a punishable self-laundering is fairly high in Finland.[83] This, in turn, likely relates to the aim of the legislator to fulfil the obligations of international criminal policy with the self-laundering criminalisation, without genuine will to criminalise self-laundering. Let us take a closer look atthe kinds of situations in which self-laundering could currently be punished in Finland.

V Punishability of self-laundering in Finland: legal dogmatics view

According to the Finnish Criminal Code, a person who is party to the crime which has produced economic benefit is not committed to money laundering.[84] As we can observe, according to the wording of the Criminal Code, those "party" to the predicate offence are not condemned for money laundering. The non-punishability of self-laundering does not, however, only concern those party to the crime, i.e. instigators and accessory to the predicate offence. In a similar vein, non-punishability concerns the actual perpetrators of the predicate offence, i.e. alone perpetrators, accomplices and those committing an offence through an agent. Hence, the limiting rule concerning the non-

80 On this topic, see also Statens offentliga utredningar SOU 2012:2: Penningtvätt – kriminalisering, förverkande och dispositionsförbud, p. 194.
81 Criminal Code of Finland: Chapter 32 Section 11.
82 Criminal Code of Finland: Chapter 32 Section 11.
83 Also, the Report of the Legal Affairs Committee LaVM 4/2017 vp concerning U letter U 1/2017 vp, p. 5 has noticed that the current self-laundering criminalisation does not appear to have much practical relevance.
84 Criminal Code of Finland: Chapter 32 Section 11.

punishability of self-laundering is relatively extensive in Finland; according to the main rule, the perpetrators of the predicate offence or those party to the predicate offence are not condemned for self-laundering.[85]

In 2012, the legislator made an exceptional legislative decision on an international scale. The Criminal Code maintained the limiting rule concerning the non-punishability of self-laundering as the main rule, but the limiting rule was limited by including the essential elements of self-laundering into the limiting rule, thus limiting the non-punishability of self-laundering. In other words, until May 2012, the limiting rule in Section 11, Title 32 of the Criminal Code, stated that self-laundering is categorically non-punishable, but according to the essential elements limiting the non-punishability of self-laundering, self-laundering can be punishable in exceptional cases.

The preconditions for the punishability of self-laundering are very strict. The question is of the fulfilment of two rules. According to the first rule, those party to the predicate offence can only be punished if the amount of dirty money is significant or if money laundering has been conducted in a particularly systematic manner. In addition, it is required that the act is aggravated in its entirety. These requirements are based on the fact that self-laundering can only be condemned if the act fulfils the essential elements of aggravated money laundering.

According to the second rule, self-laundering must also form the most essential and blameworthy act, with consideration to the continuous and planned nature of the acts, i.e. the predicate and principal acts together. It is unclear what this latter requirement means specifically. The requirements for punishability can, however, be systematised as follows: First of all, we can start from the premise that self-laundering has to be more blameworthy in *abstracto* than the predicate offence from which the dirty money originates. For example, if a person is guilty of aggravated human trafficking and did not launder the criminal profit from trafficking, they cannot be condemned for money laundering in addition to aggravated human trafficking. This is based on the fact that in Finland the maximum sentence for aggravated human trafficking is ten years of imprisonment and the maximum sentence for aggravated money laundering is six years of imprisonment. Hence, aggravated money laundering cannot be considered more blameworthy than aggravated human trafficking, even though money laundering had been systematic and planned.

Secondly, it is justified to start from the premise that a punishment can only be condemned for self-laundering if self-laundering would in *concreto* require more severe punishment than the predicate offence.[86] In practice, this significantly limits the application area of self-laundering criminalisation. This is based on the following, briefly put: Typically, money laundering can only become aggravated in Finland, if the object of money laundering constitutes at least EUR 15,000.[87] On one hand, it is typical of other offence types producing economic benefit that the pursuit of significant econo-

85 *Tapani* (ft. 14), p. 731.
86 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, p. 12.
87 *Tapani* (ft. 14), p. 730.

mic profit is a qualification basis for the essential elements. As in money laundering, in many other offence types, it is exactly EUR 15,000–20,000 that seems to have become the boundary mark in the Finnish legal praxis; surpassing the limit often qualifies the act, such as tax evasion, as aggravated.[88] When we now consider that in Finland relatively severe sentences are condemned for offences producing economic benefit, such as aggravated economic offences and aggravated narcotics offences, money laundering can only in very exceptional situations become more blameworthy act in *concreto.*

My claim is also supported by the statistics of the Financial Intelligence Unit of the National Bureau of Investigation, according to which in 2014, the average time of sentences condemned for aggravated money laundering was 8.8 months of imprisonment.[89] Since the penal scale of aggravated money laundering in Finland is at least four months and maximum six years of imprisonment, the sentencing practice can be considered relatively mild. For example, the courts of first instances have sentenced on average almost three years of imprisonment for aggravated narcotics offence.[90]Hence, a person committing aggravated narcotics offence cannot be easily condemned for laundering the profit from the narcotics offence in light of the valid sentencing practice. This can seem paradoxical, since money laundering was criminalised originally indeed to prevent drug criminality.

Now, we still have to answer what the requirement for the exceptional continuity and systematic nature of the acts actually means. The relevance of this question is based on the fact that the law allows condemning for self-laundering if the money laundering offence forms the most essential and blameworthy part of the criminal complexity, with consideration to the *continuous and planned* nature of the acts.[91]

Let us begin answering this question with the continuity requirement, which I deem more easily approachable. The starting point is clear: an individual money laundering act, such as transferring dirty money from a Finnish bank account to a foreign bank account, does not represent continuity of "money laundering acts" in the legislation. As such, a couple of simple money laundering acts, such as saving cash in a bank account and transferring money from one bank account to another does not fulfil the requirement of continuity. Rather, the requirement of continuity presupposes that the perpetrator of the predicate offence conducts several money laundering acts in order to conceal or disguise the origin of the dirty money. In addition, according to the preparatory works of the Act, the essential elements emphasising continuity refer not only to several money laundering acts but to the active pursuit of the perpetrator of

88 Rangaistuksen määrääminen talousrikoksissa. Helsingin hovioikeuden laatuhanke 2015, p. 31.

89 National Bureau of Investigation: Financial Intelligence Unit: Rahanpesurikokset oikeuskäytännössä, p. 44 (original authors: Taina Neira, Juha Perämää and Pekka Vasara 2003; revised by Viivi Jantunen 2014 and Olli Lehtilä 2016).

90 Suomen virallinen tilasto (SVT): Syytetyt, tuomitut ja rangaistukset [verkkojulkaisu]. Katsaus rangaistuksiin, Helsinki 2015.

91 Criminal Code of Finland: Chapter 32 Section 11.

the predicate offence to conceal the traits of the committed offence.[92] Hence, not even the purposive act in order to conceal the profit based on crime does not fulfil the requirement of continuity, if money laundering is passive in nature and does not include several acts to conceal criminal profit. For example, transferring criminal profit from a bank account in stock shares for several years is illustrative of the continuity of money laundering activities, but the question is not of the continuity according to law, if the case is of a single money laundering act – i.e. the acquisition of shares with criminal profit on a bank account.

And, what does the requirement of the Act according to which condemning for self-laundering also requires exceptional planned nature? First, it must be admitted that the requirement of a planned nature is not only unclear but also an extraordinary and essential element. The extraordinary nature is based on the fact that the planned nature also constitutes a definitional element in aggravated money laundering.[93] Hence, the planned nature is kind of a double definitional element of self-laundering: If an act is exceptionally planned, it can fulfil the essential elements of aggravated money laundering (first requirement for the punishability of self-laundering). At the same time, the money laundering offence should also form, "with consideration to the continuous and planned nature of the acts, forms the most essential and blameworthy part of the totality of offences" (second requirement for the punishability of self-laundering).

In the preparatory works, this dilemma has been solved so that the requirement for the planned nature has been considered to refer to another plan than the planned nature of the actual money laundering.[94] What this actually means does not become clear in the preparatory works. The Government Proposal only laconically states that the planned nature refers to the fact that "the predicate offence and the related money laundering acts have to be tightly interconnected".[95] I interpret this to mean two issues. First of all, the perpetrator of the predicate offence has had to plan, already when making the predicate offence, how they can utilise money laundering acts to not only conceal the predicate offence but also to enjoy the profit from the predicate offence. Secondly, in the totality composed of the predicate offence and money laundering, money laundering should be considered more planned than the predicate offence. The latter interpretation rule, however, challenges the punishability of self-laundering for many offence types producing economic profit. This is because (predicate) offences producing economic profit – such as economic and drug offences – are typically offences requiring planning, i.e. it may be difficult to state with regard to different types of acts that it is money laundering that constitutes the more planned part of the totality.

What can we deduce from above? We need to begin the conclusions by emphasising that not only the legislative technique concerning the punishability of self-laundering

92 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, p. 11.
93 Criminal Code of Finland: Chapter 32 Section 7.
94 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, p. 11.
95 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, p. 11.

but also the preparatory works leading to the provision of the Act highlight that self-laundering can be condemned only exceptionally in Finland.[96] Hence, technical legislative procedure and preparatory works support the interpretation rules presented above, according to which the requirements for the punishability of self-laundering are rather strict. In the manner stated – and demonstrated – above, this means that on the basis of the current self-laundering criminalisation, the perpetrator of the predicate offence cannot be sentenced for laundering the profit from the predicate offence. From this, we can conclude that the relevance of self-laundering criminalisation can actualise mainly in cases of minor complicity, i.e. when the money launderer has had a minor role in committing the predicate offence producing economic benefit.[97]

The exceptional nature of the punishability of self-laundering is also supported by the fact that when criminalising self-laundering, the legislator in Finland justified the necessity of the criminalisation specifically with the challenge posed by organised crime. The background thought was that the criminal groups pursuing economic profit with their internal division of work have challenged the general responsibility models of the criminal law, which have traditionally been based on the idea of a "lone wolf", i.e. on an offence committed by an individual that can be easily identified.[98] Although I have a critical approach towards tailoring the general requirements for criminal responsibility and discharge from it in a context-bound manner towards "general doctrines concerning organised crime" or "general doctrines concerning economic offences", the aim of the legislator is clearly put: the current self-laundering criminalisation enables that the threat of punishment can be primarily targeted towards such persons belonging to organised criminal groups whose main task in the group is to launder dirty money – i.e. committing (predicate) offences producing economic profit, even though the money launderer of the criminal group can have a minor role in committing the predicate offences.[99] For example, if a professional money launderer hired by a criminal group specialised in human trafficking loans their car for human trafficking, they can be sentenced for aiding and abetting in human trafficking. At the same time, loaning the car can be considered so minor act that this minor aid in human trafficking does not eliminate liability from money laundering.

It should be underlined that sentencing for self-laundering in Finland does not require that a person is part of an organised criminal group. For example, if a person aids an indebted entrepreneur to transfer company funds to other countries where the creditors cannot reach them, they can be sentenced for aid in dishonesty by a debtor or aggravated dishonesty by a debtor. This does not, however, prevent the judge from sentencing them also for aggravated money laundering if the person aims at concealing or disguising the origin of the illegally transferred funds to other countries. The requirement is, however, that the money laundering can be considered aggravated and

96 See also Tapani (ft. 14) p. 731; HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, p. 12; LaVM 2/2012 vp.
97 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, p. 10; LaVM 2/2012 vp.
98 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, particularly pp. 5–7.
99 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, pp. 5–7.

that the money laundering offence can be considered more blameworthy act than aid in dishonesty by a debtor, considering the continuity and planned nature of the acts.

The possibility to punish for self-laundering mainly in situations of minor complicity has also been the primary aim of the legislator.[100] As stated above, the legislator was between a rock and a hard place when making the self-laundering criminalisation. On the one hand, the international pressure required criminalisation, but on the other hand, the punishability was not considered to fit the system of the criminal law or to comply with the Finnish central principles of criminal law. Hence, the legislator ended up with Salomon's judgment; self-laundering cannot be said to be permitted in Finland, but it was not necessary to compromise the central principles of criminal law. Now we still have to answer whether we can consider the Finnish Salomon's judgment justified. We need to answer the question in reverse.

VI International criminal policy and the need for revise self-laundering criminalisation

In criminal policy term, Finland has for a long relied on the general principles of Nordic criminal policy. In practice, this has meant that e.g. social policy innovations in Finland have been considered better measures to react to social problems than criminal provisions. Economic crime crossing the borders of nation-states has, however, challenged the Nordic criminal policy based on refraining in criminal law.[101] There are two reasons; practical and theoretical.

The practical reason traces back to the pressure of international criminal policy. If and when we want to be part of international criminal law cooperation – preventing supranational economic criminality – we need to be prepared to extend the limits of criminal liability. In the money laundering context, this means that we need to be ready to harmonise our money laundering criminalisation in Europe with the legislations of other countries, even though this may mean challenges for the national tradition of criminal law, the central national principles of criminal law and the national system of criminal law.[102]

We can find comfort, however, from the theoretical reason, i.e. that economic criminality is rational criminality by nature. With this, I mean the following: The assumption of a rational actor is included in the modern criminal law systems – the assump-

100 HE 138/2011 vp laiksi rikoslain 32 luvun 11 ja 12 §:n muuttamisesta, p. 10; LaVM 2/2012 vp.

101 On Scandinavian and European criminal policy, see *K. Nuotio*: Euroopan unioni kriminaalipolitiikan tekijänä – järkevän kriminaalipolitiikan päätepiste. Lakimies (LM) 7–8/2003, pp. 1213–1235; See also *D. Frände*: EU och finsk kriminalpolitik, in: V. Hinkkanen/L. Mäkipää (eds.), Suomalainen kriminaalipolitiikka – näkökulmia teoriaan ja käytäntöön. Tapio Lappi-Seppälän juhlakirja, 2013, pp. 78–92.

102 An idea similar to this is reflected in the report of the Legal Affairs Committee LaVM 4/2017 vp on U letter U 1/2017 vp, in which the approach towards extending the criminal law liability of money laundering is positive to begin with, however acknowledging that the extension of criminal liability (especially more extensive self-laundering criminalisation) may require compromising the tradition of the Finnish criminal law system.

tion of the criminal law legislator is that the acts of individuals can be guided by crimes and punishments, as long as individuals are rational actors.[103] The acts of individuals are not, however, as strongly guided by reason in all situations. Rather, "reason" is a mathematics factor of sorts, which materialises in different manners in different contexts.[104] For example, economic offences such as money laundering can typically be considered a more rational offence type than e.g. offences related to health and life. Hence, if we trust that criminal law has any preventive effect, the threat of punishment could be assumed to function in rational economic offence context. Against this background, compromising Nordic criminal policy is likely to be easier in the criminal law context; if ever, in economic crime context crimes and punishment can be assumed to serve as guidance for people's behaviour.[105] Therefore, the extending liability seems to be easier to justify in economic crime context than with regard to other types of offences, whose grounds can be understood as circumstantial rather than as results of rational deliberation. This does not mean, however, that in economic crime context, one could compromise the national central principles of criminal law such as criminalisation principles.[106] In a similar way, in economic crime context, one has to ensure that the extensions to the liability are compatible for example with the dogmatics of fundamental and human rights.[107]

After theoretical consideration, I still need to answer the question presented above, i.e. if Finland should in fact consider more extensive money laundering criminalisation. My aim is to raise such views that are in favour of a more extensive self-laundering criminalisation. I will consider national criminal law theory more closely in the conclusions.

The starting point cannot be denied. Even though Finnish criminal law tradition and system support the aim of the legislator to restrict the punishability of self-laundering to cases of minor complicity, criticism can also be presented towards the solution of the legislator. First of all, it is questionable in criminal policy terms that the legislator in Finland has not explicitly sanctioned the aim of the perpetrator of the predicate offence to benefit from the profit from the offence. In practice, this can be seen in certain cases to encourage the perpetrator of the predicate offence to launder the money themselves, i.e. the current situation can be seen to incite self-laundering.

As an example, we can mention the course of events in Finnish Supreme Court decision KKO 2009:59. In the case, the spouse of the person committing aggravated drug offence had participated in receiving, utilising and spending the criminal profit in dif-

103 See *R. A. Duff*: Answering for Crime. Responsibility and Liability in the Criminal Law, 2009, p. 39.

104 Critically on the concept of a rational actor, see *R. Matthews*: Realist Criminology, 2014, chapter 4 (Rational Choice, Routine Activities and Situational Crime Prevention).

105 On rational choice in economic crime law context, see *Tapani* (ft. 18), pp. 35-38.

106 On criminalisation principles, see *S. Melander*: Kriminalisointiteoria: Rangaistavaksi säätämisen oikeudelliset rajoitukset, 2008, passim.

107 On the restriction requirements for fundamental rights, see *V.-P. Viljanen*: Perusoikeuksienrajoitusedellytykset, 2001, passim.

ferent manners without a planned aim to conceal or disguise the origin of the dirty money. According to the Supreme Court, spending the funds received as criminal profit from the spouse in normal consumption can be understood as an aim to conceal or disguise the illegal origin of the funds.[108] Hence, the spouse was condemned for money laundering. Since the criminal profit had been used for the family's joint consumption, such as car instalments or family invoices, in the name of the overall interest of the family, it would have been rational for the perpetrator of the predicate offence to pay the family expenses themselves with the funds from the predicate offence. In this alternative course of action, the family would have gained the same potential benefit for consuming the dirty money, self-laundering would not have in practice impacted the sentence that the perpetrator of the predicate offence received for aggravated drug offence and the spouse of the perpetrator of the predicate offence would have evaded criminal liability.

Secondly, the technical legislative procedure of the current self-laundering criminalisation is unsatisfactory. This is based on the fact that by reading the Criminal Code and the preparatory works, it is difficult to find out what type of self-laundering is illegal in Finland. The problematic nature of the legislation is illustrated in the fact that sentences for money laundering[109], aggravated money laundering[110]and negligent money laundering[111]are currently common in Finnish courts of first instance,[112] but I am not aware of any sentences for self-laundering, even though self-laundering provision has been valid for over five years.[113] It needs to be specifically mentioned that I am neither aware of any self-laundering sentences in cases of minor complicity, i.e. a situation where an accessory would have been sentenced for aggravated money laundering in addition to complicity. Since it can be assumed, based on European comparison, that also in Finland the perpetrators and accessories of the predicate offence participate in concealing and disguising the origin of the criminal profit, the non-existence of legal praxis can be considered to reflect the fact that the Finnish self-laundering is difficult to conceive by the police, the prosecutors and the judges.[114]

Thirdly, based on European comparison, the restricted criminalisation of self-laundering can be considered problematic. The depth of the problem is reflected in the fact that in the countries with similar criminal law culture such as Sweden and Germany,

108 KKO 2009:59, paragraph 14.
109 Criminal Code of Finland: Chapter 32 Section 6.
110 Criminal Code of Finland: Chapter 32 Section 7.
111 Criminal Code of Finland: Chapter 32 Section 9.
112 According to the Financial Intelligence Unit of the National Bureau of Investigation e.g in 2014, Finnish courts of first instance processed a total of 151 money laundering cases. See National Bureau of Investigation: Rahanpesurikoksetoikeuskäytännössä, p. 42 (original authors: TainaNeira, JuhaPerämää and PekkaVasara 2003; revised by ViiviJantunen 2014 and Olli Lehtilä 2016).
113 See also the Report of the Legal Affairs Committee LaVM 4/2017 vp concerning U letter U 1/2017 vp, p. 5.
114 It needs to be stated that according to the statement of the Legal Affairs Committee (LaVM 4/2017 vp on U letter U 1/2017 vp, p 5), it could be justified to review why the current self-laundering criminalisation does not have significant practical relevance.

extensive criminalisation of self-laundering has recently been seen as fitting in the local criminal law system and its central principles, even though the criminalisation of self-laundering has not been too easy in these countries.

Fourthly, FATF has noted, while monitoring Finland, that the self-laundering criminalisation which entered into force in 2012 is not a sufficient legal solution in anti-money laundering measures.[115] In practice, this means that there is constant pressure towards Finland to extend the criminal liability of self-laundering, particularly in comparison with countries which have already criminalised self-laundering comprehensively.[116] This pressure is not decreased by the recent Directive proposal of the European Commission (COM(2016) 826 final), which would obligate the Member States to criminalise self-laundering in a comprehensive manner.

We can conclude that the legislator should – and possibly must in the future along with the recent Directive proposal – consider more extensive criminalisation of self-laundering. This does not mean that all forms of "regular" money laundering should be sanctioned also in self-laundering cases. As I have stated earlier in this paper, out of EU Member States, only Luxembourg and the Netherlands have punished extensively for self-laundering – even in cases where the perpetrator of the predicate offence has only held the profit from the committed offence.[117] Neither would the recent European Commission Directive proposal (COM(2016) 826 final) require that self-laundering would have to be criminalised identically with third-party type money laundering but one could exclude from self-laundering criminalisation indeed – and especially – e.g. regular possession of the criminal profit from a predicate offence.

However, one should consider the following: even though in European comparison it seems that typically self-laundering is not punished with the same criteria as third-party type money laundering, the comparative material should not lead to the conclusion that in Finland, self-laundering was satisfactorily criminalised. As stated above, the Finnish legislative solution is too strict in an international scale. As I have demonstrated, the actual perpetrators of the predicate offence, cannot be sentenced for money laundering in Finland – and in light of the legal praxis it also seems that on the basis of the provision sentences are not provided either in cases of minor complicity. The fact that the significance of the self-laundering criminalisation has remained marginal in the legal praxis increases the international pressure to extend the criminal liability for self-laundering. For the international fora – such as FATF and the EU – the small number of self-laundering offences does not mean low criminality but that self-laundering has not been criminalised in Finland in a satisfactory manner.

115 FATF: Mutual Evaluation of Finland: 9th Follow-up report 2013, p. 11.
116 See also *Unger* (ft. 32), p. 236.
117 *Ferwerda* (ft. 55), p. 96.

VII Conclusions

In the introduction, I stated that in the past 10 years Finland has been struggling with how to approach the punishability of self-laundering. In 2010, the Ministry of Justice published a report of a working group on the revision needs for money laundering criminalisation.[118] Despite of international obligations and criminal policy pressure, the working group concluded that self-laundering should not be punished in Finland. The view was based on the claim that self-laundering punished as a secondary offence does not fit the Finnish criminal law system. The working group legitimated its refrained claim with the so-called safeguard clauses that are included in the international obligations related to money laundering criminalisation such as the Vienna Convention against drugs and Strasbourg Confiscation Convention. According to the safeguard clause, the criminalisation obligation can be derogated if the criminalisation would be against principles of national constitution or problematic with regard to the basic concepts of the legal system.[119]

What is meant by the principles of the constitution and the basic concepts of the legal system is relatively unclear. We can, however, start from the premise that when talking about money laundering, the basic principles of the constitution and the basic concepts of the legal system should be understood specifically to each field of law. Hence, the implementation of supranational criminalisation obligations should be compatible with national central principles of criminal law. In practice, this means that when implementing international criminalisation obligations, it needs to be ensured that they are compatible with national criminalisation principles and other central principles of criminal law.[120] Against this background, the critical approach of the Ministry of Justice working group in 2010 was – and is – completely understandable.

Subject to international pressure, the Ministry of Justice only took limited advice from the working group and established another working group entitled as "self-laundering working group".[121] The work of this group led to the limited criminalisation of self-laundering in Finland in 2012.

In this article, I have demonstrated that unlike in Finland, in most EU Member States, self-laundering has been relatively comprehensively criminalised. In the article, I have also illustrated that self-laundering criminalisation can be applied in Finland only in very limited situations. In addition, I have been in favour of the view according to

118 Rahanpesukriminalisointien muutostarpeet. Oikeusministeriön mietintöjä ja lausuntoja 27/2010.

119 For example, in the Vienna Convention on drugs – i.e. in the United Nations Convention against Illicit Traffic in Narcotic Drugs (44/1994) provides that each party should take the necessary actions to enact the following (money laundering) acts as offences, when being guilty of the acts is deliberate, considering the principles of each constitution and the basic concepts of the legal system (Article 3).

120 See also the Report of the Legal Affairs Committee LaVM 4/2017 vp concerning U letter U 1/2017 vp, particularly pp. 4–5.

121 See the memo of the working group reviewing self-laundering criminalisation, 31.5.2011 (OM 7/41/2009).

which the legislator should consider more comprehensive self-laundering criminalisation also in Finland. Criticism can be targeted at this last conclusion, however.

First of all, extending criminal liability should not be made on light grounds. With regard to the self-laundering criminalisation, this requirement is emphasised by the fact that the Finnish legislator has recently concluded that self-laundering should only be punishable in exceptional cases.

Secondly, self-laundering is a problematic criminalisation with regard to the criminal law system and the central principles of criminal law – such as *ne bis in idem* – rule. It can be assumed that more comprehensive criminalisation of self-laundering would have a significant impact on Finnish criminal law liability such as the concurrence doctrine – or on how to see the relation between predicate and secondary offences. According to the recent statement of the Legal Affairs Committee, more comprehensive criminalisation of self-laundering could require that the essential elements of the potential predicate offences of money laundering would be opened for reassessment, as if reviewing in which types of situations the blameworthiness of the predicate offence could also cover the blameworthiness of self-laundering – and in which types of situations self-laundering could also include such a blameworthiness element that would deserve to be punished as a separate offence.[122] This alone would be demanding for the legislator, and it is not the last problem.

When considering more extensive money laundering criminalisation, the legislator should also solve more principled issues such as how to approach minor self-laundering such as buying a bottle of wine with a stolen note. The relevance of this question is based on the aims and "objects of legal protection" behind money laundering criminalisation, i.e. the aim to prevent serious organised crime and to protect free competition and the international financial system from dirty money. In light of this sort of criminalisation aims, the punishments for minor self-laundering acts may not be easy to see legitimate, even though the same legitimacy problem concerns normal "minor money laundering" such as buying a wine bottle with a note stolen by a friend. In any case, with more comprehensive criminalisation of self-laundering, one should thoroughly consider whether the list of predicate offences for self-laundering should be limited – i.e. should the punishability of self-laundering be excluded in cases where the person has been guilty of a (predicate) offence, which typically only produces minor economic profit.[123] Currently in Finland – as in many other EU Member States – the list of predicate offences for money laundering is unlimited, i.e. one can be guilty of money laundering by concealing or disguising funds based on petty theft.

Finally, we should stop and present a contra argument to the contra argument. First of all, the doctrine on the non-punishability of the secondary offence is not a com-

122 Report of the Legal Affairs Committee LaVM 4/2017 vp koskien U-kirjelmää U 1/2017 vp, particularly p. 3.

123 See also statement of the Legal Affairs Committee LaVM 4/2017 vp concerning U letter U 1/2017 vp, pp. 4–5, which states that negotiations concerning "money laundering directive" should aim at finding criteria which can restrict the criminalisation obligation of self-laundering into acts with a more blameworthy nature.

pletely unconditional rule either in Finland. For example, a person guilty of manslaughter can be sentenced also for disturbing the sanctity of the grave if they treat the dead body in an offensive manner. In such a situation, disturbing the sanctity of the grave can be well considered as a punishable secondary act. In addition, as I have demonstrated in my writing, many comparison countries such as Sweden and Germany have criminalised self-laundering quite comprehensively, although in these countries the criminalisation has meant struggling with the criminal law system. Hence, it seems that based on European comparison, more comprehensive criminalisation of self-laundering would be – despite its challenges – not only possible but also justified also in Finland, just as FATF has noted to Finland – and just as the Commission proposal for a "money laundering directive" would require.