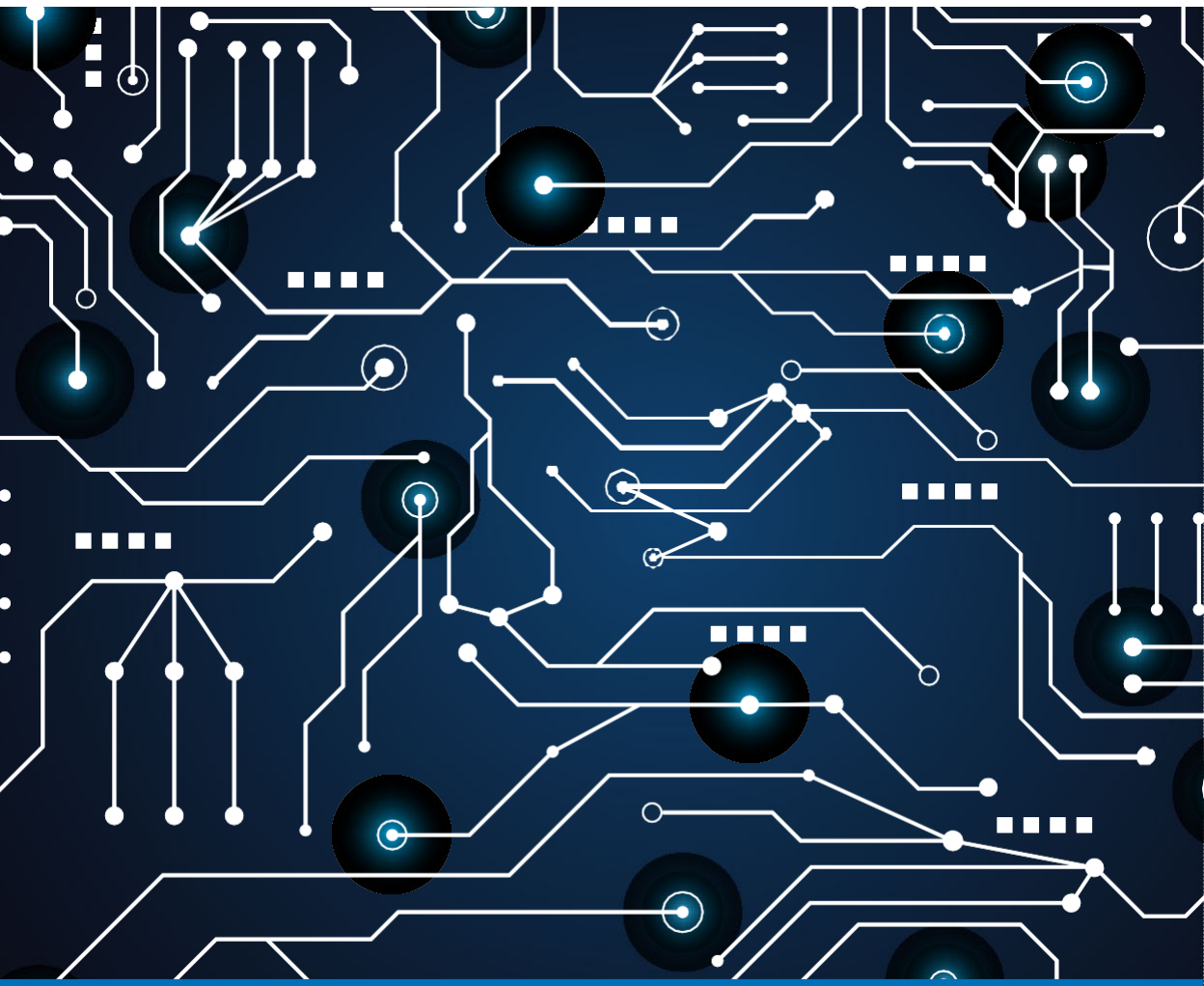
English summary of Brå report 2019:17



Money laundering offences

A follow-up of the application of the law

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The Swedish National Council for Crime Prevention (Brå) – centre for knowledge about crime and crime prevention measures

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Summary

The Swedish National Council for Crime Prevention (Brå) has conducted a study of how the Act on Penalties for Money Laundering Offences has been applied within the criminal justice system during the period 2015-2017. The report is primarily based on reports of criminal statistics and extracts from records, as well as on a review of almost 400 rulings (both convictions and acquittals) of district courts, all of which apply to the same period. We have also conducted interviews with 35 police officers, prosecutors, judges and other officials from within the criminal justice system.

There is no commonly established definition of money laundering, but, in simple terms, it refers to actions taken with the purpose of concealing or converting profits derived from criminal activity.
In other words, money laundering can be said to involve the conversion of money from illegal activities into assets that can be openly accounted, usually by means of various forms of transactions. At the same time, the Act on Penalties for Money Laundering Offences has a broad scope, and essentially covers *all handling* of illegally gained proceeds. Among other things, this means that illegally gained proceeds do not need to be converted into assets that can be openly accounted in order to be regarded as money laundering. The report shows that, in many cases, the aim of the processing of illegally gained proceeds is to *impede tracking* rather than to *launder the money*. A conviction for money laundering requires proof that the property in question has been acquired as a result of a crime or of criminal activity, such as narcotics crime or fraud. All types of crime that can result in illegally gained proceeds may constitute an initial offence that results in money laundering that is punishable by law.

The Act on Penalties for Money Laundering Offences was introduced on 1 July 2014, and this can be regarded as one element of a wider political strategy concerning asset-based anti-crime measures that builds upon making it more difficult to handle illegal money or property, as well as punishing such actions. The introduction of the legislation can also be considered in the context of the international commitments that Sweden has undertaken in order to combat money laundering.

The adoption of the new legislation replaced the regulations on receiving illegal money with the new offence of money laundering. The purpose of this offence classification is to clarify that money laundering is a crime.

The Act on Penalties for Money Laundering Offences includes, for example, that:

- Any person who launders proceeds gained from their own criminal activities (self-laundering) – e.g. from selling drugs or from theft – may be convicted of money laundering offences.
- Any person who permits their business to be used for such processing that may be suspected as money laundering now has criminal liability (corporate money laundering).
- The linking to the crime that resulted in the proceeds (the initial offence) has been broadened. This means that it is sufficient that the illegally gained proceeds come from "criminal activity".
- There are increased opportunities for the seizing and forfeiting of property that has been the subject of money laundering.

Increase in the number of reported money laundering offences

Suspected money laundering can be detected in a variety of ways – for example, by an injured party reporting an act of fraud, by a bank reporting suspicious transactions to the Financial Intelligence Unit within the Swedish Police (FIU), or by the discovery of cash in the course of an arrest or police search. The detection of money laundering offences is therefore dependent on an individual suspecting that money laundering has taken place at the point at which a crime is reported or during the course of an investigation.

Crime statistics show that there has been a significant increase in the number of money laundering offences reported since the introduction of the Act on Penalties for Money Laundering Offences. During the period 2010-2013, the average number of reported offences in accordance with the previous legislation concerning receiving illegal money was around 500 cases per year, which compares to the almost 7,000 cases reported in 2018. The main explanation for the increase in the number of reported cases of money laundering is probably that the new legislation has proved to be appropriate for the investigation of certain types of fraud, in combination with an increased number of reported cases of fraud. The number of money laundering cases reported is also influenced by whether or not money laundering is identified as a possible suspected crime by the investigating authorities at the point at which the crime is reported.

Predominance of cases of simple fraud

During the period 2015-2017, the majority of court judgements (74 percent) involved money laundering offences that were preceded by some kind of fraud.

The report shows that the new legislation has, above all, been suitable for the investigation of certain types of fraud.

This mainly involves fraud of a relatively simple nature, where it can be seen from which account number a transfer has been made, or where there is access to account numbers that are connected to certain account holders. If these criteria are fulfilled, it is usually possible to prove that the money has been acquired as a result of criminal activity. In particular, this applies to so-called ad fraud, where the victim has transferred money to a bank account in exchange for a product that has never been delivered. In other words, many of the cases that have reached the courts have involved an identified initial offence, which is usually fraud. This is the kind of crime that can be investigated without the need for major personnel resources or financial expertise. In addition, the course of events is usually relatively simple to present during a trial.

A review of court judgements shows that 88 percent of prosecutions resulted in a conviction in cases where the initial offence was fraud. In cases where the previous crime involved ad fraud, the conviction rate was 93 percent.

There were also a small number of court judgements where the initial offences involved a crime other than fraud. These cases involved crimes such as tax and accounting offences, as well as other crimes such as theft and extortion. Here, too, the initial offences were also clearly defined. A small proportion of cases and prosecutions involved more advanced forms of crime or were such that it was possible to deduce that organised crime was involved.

Those cases where there was no recognised initial offence were often complex and resource-intensive, had uncertain outcomes, or required a comprehensive financial investigation. In other words, these were the kind of cases that usually require not only knowledge of the financial aspects of crime, but also resources and perseverance. In cases where either the initial crime or the criminal activity involved a form of crime other than fraud, the proportion of convictions amounted to 53 percent. This illustrates the difficulty of proving money laundering offences in cases that are not connected to an instance of fraud. There is no evidence to indicate that the legislator's objective of bringing legal proceedings for offenders who have accumulated illegally gained proceeds over time has been achieved in any real sense.

Certain prosecutors also contend that, among certain judges, there is a lack of either the knowledge or the desire necessary to pass judgements in cases where the initial offence or the timeline of events has not been clearly

established, and there is also a perception that, in this regard, the law is not in accordance with Swedish legal tradition.

The majority of money laundering measures comprise transactions

A review of court judgements shows that 77 percent of money laundering measures can be linked to measures or handling that have taken place in relation to a bank account (transactions, cash withdrawals or conversions), whilst 13 percent of the measures comprised the handling of cash. At the same time, it is also important to emphasise that several different forms may feature in the same case.

Making a bank account available for the depositing of money that is derived from a crime or criminal activity, or performing transactions to other accounts, are examples of commonly occurring money laundering measures. This could, for example, involve the accused providing the account number of an existing account, or creating a new account for the same purpose. It is not uncommon for sums to be divided into smaller amounts by means of transactions to different bank accounts, thereby making it more difficult to trace the origins of the money.

The number of suspected persons has more than doubled

In total, the number of persons suspected of money laundering more than doubled between 2015 and 2018, from around 800 to around 2,000 individuals. On average, each individual is suspected of 2.5 instances of crime, which represents a slight increase from previous years. A large majority of those suspected of committing money laundering offences are men (76 percent), and the median age is 32 years. Of those who were suspected of money laundering in 2017, 5 percent were aged between 15 and 20 years. This represents a significantly lower proportion than for all suspects of crimes, where the corresponding proportion is around 21 percent.

People suspected of money laundering offences often have very low levels of income. More than one third of suspects have an income that is typically regarded as minimum subsistence level, and only three percent have incomes that are categorised as being high. Based on the court judgements, there are also indications that those accused with low incomes and meagre assets are considered more likely to be convicted of money laundering offences than those who are more affluent.

Around 17 percent have debts registered with the Swedish Enforcement Authority, which compares to just 4 percent of Sweden's population as a whole. In total, suspected individuals have sent more than SEK 151 million out of Sweden, and have received barely SEK 128 million from other countries.

More than 80 percent of those who have conducted international

transactions feature in the FIU's money laundering register.[1]

Around 37 percent of those suspected of money laundering offences during 2015-2017 also feature in the money laundering register. It can also be established that only around a couple of percent of all persons included in the register were suspected of committing money laundering offences during 2015-2017. The FIU has written intelligence reports concerning around 40 percent of the suspects who are included in the register. This means that, for the other 60 percent, there were reported cases of suspicious transactions for which no intelligence report has been written. This makes it very unlikely that those suspicious transactions will be examined in the context of a preliminary investigation. This suggests that the potential of the money laundering register is not being fully exploited.

15 percent of suspects feature in cases showing signs of organised crime

The study's network analysis (for more information, see Appendix 2) explores the links between money laundering suspects and suspects of other types of crime in connection with money laundering cases, in order to see which type of groupings emerge. The network analysis shows that there are 450 groupings where there is a link between three or more persons. The analysis also shows that around 15 percent of suspects are connected to groupings with indications of organised crime. Of these individuals, the FIU has written intelligence reports on about one third. This suggests that the FIU has had a certain amount of focus on individuals for whom, according to our analyses, there are indications of connections to organised crime.

The largest grouping in the network analysis contains 269 main suspects of money laundering offences and 16 associated suspects. Analysis of the information provided as free text in conjunction with the reporting of crimes shows that fraud is involved in at least 72 percent of cases. International connections are identified in 40 percent of the cases, and the total sum of suspected proceeds of illegal activity amounts to SEK 64,135,000.

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[1] The Financial intelligence Unit within the Swedish Police receives reports of suspicious or abnormal transactions from business operators. This information is entered into a money laundering register. The reports from business operators are not criminal reports,which means that the level of suspicion for such reports can be very low. Reports in the money laundering register are purged after five years if no suspicion of serious crime has been registered for the person who is the subject of the report. If a new report that concerns a connection to criminal activity is received, a new five year period will begin.
The information was extracted from the money laundering register in 2018. Featuring in the money laundering register does not mean that a person is suspected of committing a money laundering offence. References in the report to persons who are 'suspected of money laundering' only refer to those persons who have formally been suspected of committing money laundering offences. In other words, featuring in the money laundering register is not what is meant when we talk about being suspected of money laundering. However, we do state in the report the proportion of persons suspected of money laundering offences who are included in the money laundering register as a result of at least one report of suspicious transactions.

Clear-up rate of almost 50% for all handled cases of money laundering offences

During the years 2015-2018, the criminal investigation services handled more than 12,000 cases of money laundering offences. Although the number of crimes being handled has increased over time, the clear-up rate for these crimes has remained stable, which suggests that the greater workload has not compromised the ability to clear up crimes. Investigations were conducted in 97 percent of crimes, whilst the remaining 3 percent were completed prior to investigation for such reasons as that the action was not deemed to have constituted a crime or that there was no basis for investigation.

In total, around half (49 percent) of handled crimes concerning money laundering were cleared up – i.e. resulting in prosecution, an order of summary punishment or a decision not to prosecute. This can be compared to a clear-up rate of 43 percent for all handled crimes, with at least one suspected individual, in 2018.

Complex money laundering investigations

In the course of money laundering investigations of a more complex and advanced nature, several of the people interviewed for this study highlight the importance of having specialists and people with the right skills participate in the investigations. This is something that is also likely to influence the number of cases of this type that it is possible to pursue. Money laundering investigations therefore risk becoming unnecessarily extensive in cases where no initial offence has been established.

In such cases, there is a need for more investigative resources and greater processing of evidential material in order to be able to account for amounts, courses of events and suspicions, thereby being able to establish proof that the criminal activity has been involved in money laundering.

Investigations with a large number of suspects

According to several of the people interviewed, it is not possible to investigate all the different elements of investigations that feature several suspects and several different types of crime; this is due to a lack of perseverance, resources and skills. These respondents state that it therefore often becomes necessary to make cuts at an early stage, which means that many investigations become concentrated on suspects on the periphery of larger cases, or on intermediaries in the criminal chain. This may result in both the principal protagonists and the illegally gained proceeds slipping through the grasp of the criminal justice system.

Many of the respondents also state that elements that concern money laundering risk either being deprioritised or completely dropped in order to

concentrate resources on investigating the initial offence. The interviewees state that this mainly happens in those cases where the penalty for the initial offence is greater than for the money laundering, and where the money laundering offence does not influence the degree of the penalty.

Marked increase in the number of legal proceedings brought for money laundering

The number of legal proceedings brought for cases of money laundering increased from 200 in 2015 to around 1,000 in 2018, which represents an increase of 400 percent. The number of legal proceedings brought for individuals, however, did not increase to the same extent. In 2015, legal proceedings were brought for 100 persons, compared to 301 in 2018, which represents an increase of 200 percent. This means that the number of legal proceedings per person has increased, and that the increase is primarily due to each prosecuted individual being (on average) prosecuted for multiple cases.

During the period 2015-2018, a total of 646 decisions concerning the bringing of legal proceedings were made in cases where money laundering represented the main offence. The most common outcome was a suspended sentence, which was the main outcome in almost half of the prosecutions. A prison sentence was the main outcome in 20 percent of legal proceedings. Women are more often the subject of legal proceedings than men for money laundering misdemeanours, but less often for serious money laundering offences. The women who were the subject of legal proceedings were significantly more often sentenced to pay a fine, and somewhat more often given a suspended sentence. The men were significantly more often given a prison sentence, and somewhat more often put on probation.

Difficult to assess to what extent the legislation concerning self-laundering is used

It is difficult to say anything about the extent to which self-laundering occurs. Court judgements only state that there has been a suspicion of money laundering, and never mention that self-laundering may have been suspected. However, this must not be interpreted as meaning that self-laundering never takes place. Narcotics-related cases or other cash-intensive types of crime often involve the handling of one's own illegally gained proceeds. Self-laundering also occurs in certain cases of fraud, where the person who is prosecuted for a money laundering offence has also committed fraud.

In other words, the criminalisation of self-laundering means that, during the course of an investigation or during a trial, there is no need to establish whether the accused has, for example, committed fraud. Under the previous legislation concerning receiving illegal money, this would have represented

an obstacle, as it was then necessary to prove that the accused had performed actions with another's property. The lack of explicit reasoning in the court judgements concerning who had committed the initial offence can therefore be interpreted as meaning that, in this aspect, the legislation is being applied in accordance with the purpose of the law.

Few court judgements concerning corporate money laundering

Up until 2017, there were 17 court judgements concerning corporate money laundering offences. Of these, 11 resulted in a conviction and 6 resulted in acquittal. Despite the relatively small number of judgements, the interview respondents stated that the provision concerning corporate money laundering has brought new opportunities. Above all, it is reprehensible risk-taking that is acclaimed as being positive, because this has broadened the scope regarding which acts can be covered by the money laundering legislation.

Difficult to draw lines between the different clauses of the legal text

As mentioned above, cases of money laundering can be very complex, can include a large number of suspected individuals, and can extend across several different stages and types of crime. Accordingly, the Act on Penalties for Money Laundering Offences encompasses several complex criteria, which creates a lot of room for interpretation for agents within the criminal justice system. Among other things, this has had consequences for the consistency of the legal judgements, because, in certain cases, this room for interpretation is believed to have resulted in unpredictable judgements. Above all, this is believed to affect the assessment of what constitutes a money laundering action and what is required in order to prove the intent to launder money.

Both in the interviews and in the review of court judgements, a picture emerges that suggests it is difficult to draw lines between the different clauses of the legal text, which can result in confusion as to which section of the law shall be invoked and how the description of the act shall be worded in order to ensure the acts are covered by criminal liability. There are two main areas that are highlighted as being problematic in relation to how the law is to be construed: partly when improper promotion (Clause 4) is to be used, and partly how the level of intent or negligence is to be assessed. This concerns which clause is to be applied – normal level of money laundering (Clause 3), money laundering misdemeanours (Clause 6), or petty money laundering (Clause 7, third paragraph).

A lack of clarity regarding the section of the law that shall be invoked may have consequences for the accused, as the penalty scales and the outcomes will differ from case to case.

Need for precedents and clarifications

According to several respondents, the lack of precedents and relevant clarifications is problematic, because these are necessary if prosecutors are to be able to pursue complex cases involving significant complications. Several of the respondents therefore request that charges should be tried in the Supreme Court – among other things, in order to establish to what extent the criminal act preceding the money laundering shall be specified.

A lack of systematic monitoring of the reclamation of illegally gained proceeds

Several of the respondents indicate that the introduction of the prohibition of disposal and the seizure of money have increased the opportunity to, at an early stage, safeguard suspicious property. However, there is no systematic monitoring of how much has been forfeited according to the rules of the Act on Penalties for Money Laundering Offences or of the Penal Code, how much has been confiscated in accordance with the Act on Certain Stolen Goods, or how much has been allocated in damages in conjunction with money laundering offences.

In other words, there is an absence of any collated information about how much the state 'took back' in the form of reclaimed profits from money laundering during the period 2015-2017. The information that does exist refers to the number of decisions concerning confiscation, seizure of money, holding, sequestration and forfeiture for each respective authority.

The seizure of money is considered to work particularly well in cases where there is no injured party. In these cases, the money can usually be forfeited following a conviction. On the other hand, however, cases where there is an injured party are considered to involve additional issues, perhaps mainly among prosecutors. Above all, this concerns the complicated administrative process that can arise when the plaintiff submits a claim for damages (often in conjunction with a case of fraud) at the same time as there is a parallel claim for forfeiture (where the reclaimed proceeds shall go to the state). The legislator is not therefore considered to have been able to predict the large number of cases involving plaintiffs in conjunction with money laundering offences, which suggests that there was no prior realisation of the extent to which the law would come to be applied in cases of fraud.

The Swedish National Council for Crime Prevention's assessment

The assessment of the Swedish National Council for Crime Prevention (Brå) is that it is important to take action in five areas:

Developed, strategic work to combat more advanced cases of money laundering. A relatively small proportion of cases and judgements are considered to involve advanced forms of money laundering. At the same time, the study's network analysis (for more information, see Appendix 2) shows that this type of case and the individuals involved are being caught by the justice system and suspected of committing money laundering offences, even if this only applies to a relatively small number. Around half of these individuals also feature in the money laundering register. In order to bring legal proceedings against them, there is a need for a more strategic coordination of cases and offences.

The money laundering register should be able to play more of a central role in this work. For example, it should be probable that a work procedure, whereby those suspected of money laundering are closely checked against the money laundering register, will bring about greater utilisation of the register's potential. This could also provide opportunities for the improved detection and understanding of more advanced cases of money laundering in various forms.

General reinforcements. One precondition for the ability to prioritise the financial aspects of a money laundering investigation is access to resources with the right skills. For this to be possible, there is a need for more people with financial expertise – particularly within the Police Authority. Accordingly, there is a need for a more strategic way of communicating where financial expertise is to be found within the legal chain, in order to be able to utilise it to greater effect.

Need for clarifications. There is a need for the continuation of legal development, whereby more cases are tried at a higher court. The purpose of this is to force the establishment of precedents and clarification, in order to reduce the uncertainty surrounding certain aspects of the legislation. These aspects include the extent to which the criminal act preceding the money laundering needs to be specified, what is included in the concept of corporate activity, and what constitutes habitual behaviour or doing something to a greater extent. There is also a need for clarification regarding drawing lines between the different legislative clauses, and what distinguishes a criminal act of intent from a criminal act of negligence.

Monitoring of reclaimed criminal proceeds. With regard to the Government's policy of reclaiming illegally gained proceeds from criminals, there is reason to consider the introduction of systematic monitoring of how much has been 'taken back'. Systematic monitoring serves the purpose of measuring whether the tools and measures that have been applied for the reclaiming of criminal proceeds in connection with money laundering are

having the desired effect.

Preventive approach. Suspected money laundering offences always feature in conjunction with profit-driven crime – usually in the form of fraud. A targeted preventive approach would therefore be likely to be more effective than a crime-fighting approach, because the large number of money laundering offences cannot be eliminated by police investigations. A preventive approach to fraud – for example, by means of public information campaigns concerning the importance of scepticism in relation to dubious requests and securing the confidentiality of account details – would also be likely to have an impact on the number of suspected cases of money laundering.

Which suspected cases of money laundering are detected or are not detected is largely determined by the verification resources and orientation of the various authorities and business operators. Today's rapid technological developments, such as digital payment solutions, also make it easier for money to be quickly transferred between different accounts. There is therefore a need for effective and well-developed checking mechanisms in order to detect suspected cases of money laundering at an early stage.