



Illegal Use of Electronic Money Transfer - Money Laundering as An Example –

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Summary:

Electronic transactions are new to the times and their prominent feature. Modern technologies have invaded all sectors, including the banking sector and the economic sector. Just as this tremendous technological development has had its positive effects, it has also had dire negative effects. It has helped commit financial and economic crimes in ways that institutions for the prevention and control of these crimes are unable to address Among them is the crime of money laundering, which is now carried out through electronic payment methods, especially electronic transfers.

Our study aims to clarify how money transfers are used in the crime of bleaching water, as it is the most serious financial and economic crime, and the necessity of the banking system's intervention in order to confront it.

We have reached several legal conclusions, including the complexity of this crime, which has become electronic, the need to strengthen the banking sector with a highly efficient human element, both technically and legally, and to tighten oversight of the electronic money transfer process and verify the sources of suspicious funds.

Keywords: Electronic financial transfer, money laundering, banking system, suspicion notification, financial inquiry processing cell.

Introduction:

Money is the backbone of the economy, and it is one of the criteria used to measure the development and economic prosperity of countries. This justifies the intense competition for it and the quest to earn it, which has become easy in light of the changes that the world is witnessing in the current era, marked by the era of digitization, which is the product of scientific and technological development that has affected various aspects of life, including the economic and financial aspects of countries and groups The World Wide Web has facilitated the increase of trade exchange and the flow of capital without geographical borders and time periods standing in the way of it, so that the world has become a unified



environment for international financial and trade movement, in which banking activity plays an important role, as it is an effective element in it thanks to the various services it provides, especially the settlement of financial transactions by providing electronic payment methods for economic operators.

The importance of money has made the desire to access it a controlling obsession for souls, which has led them to commit many financial and economic crimes, in which the crime of money laundering is at the forefront, especially in view of its perpetrators, as most of them are businessmen, economic pioneers, and people with political influence, who obtain revenues from illegal sources such as bribery, slave and arms trafficking...etc., then they legitimize it by cleaning it up through banks using the modern payment methods they provide, such as electronic financial transfers, and then integrating it into domestic and foreign economic activities through commercial and investment projects.

Hence, we see criminal thought benefiting from modern technologies and keeping pace with the developments taking place in the economic and banking sectors in view of their close interconnection, and harnessing all of this to whitewash criminal proceeds in an organized and precise manner that hinders the authorities from reaching to discover them, in order to evade criminal responsibility.

Since the banking sector was a gateway for whitewashing dirty money by white-collar workers, the Algerian legislator saw the need to include it in the field of supervision and combating this crime.

From this standpoint, we can raise the following problem:

Have the obligations placed on the Algerian banking system made it possible to contain the crime of money laundering using electronic money transfers

From this standpoint, we can raise the following problem:

Have the obligations imposed on the Algerian banking system enabled it to contain the crime of money laundering using electronic money transfers?

The goal we hope for from our study is to define the crime of money laundering and the different stages of its implementation, while highlighting the role of electronic financial transfers with their various systems in committing this crime.

We also seek to clarify and clarify the role played by the Algerian banking system in this regard, in order to avoid its dire effects.

In order to cover the main aspects of the previous problem, we relied on the descriptive approach as well as the analytical approach in our study of the various legal texts related to the subject.

We divided our study into two sections, the first entitled What is the crime of money laundering using electronic financial transfer, and the second entitled The role of banks in confronting money laundering using electronic transfer.

Section One: What is the crime of money laundering using electronic financial transfer



Determining the nature of the crime of money laundering using electronic money transfer requires defining its concept (the first requirement), then defining its pillars and implementation stages (the second requirement).

The first requirement: The concept of the crime of money laundering using electronic financial transfer

We have devoted this section to defining the concept of the crime of money laundering (Section One), and then the concept of electronic financial transfer (Section Two).

Section One: The concept of the crime of money laundering

Defining the concept of the crime of money laundering requires us to define it (first), and then determine its distinctive characteristics (second).

First: Definition of the crime of money laundering

The definition of the crime of money laundering has been of interest to international agreements, national legislation, and legal scholars.

A- Definition of the crime of money laundering in international agreements:

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances defined the crime of money laundering as: "the process of transferring, transferring, concealing or disguising money."**(1) Article 3, paragraph 2/b, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) of 1988**It also stated that: "acquiring, possessing or using money knowing at the time of receipt that it results from the crime of illicit drug trafficking."**(2) Article 03, paragraph 01/c/1, previous reference**

What is noticeable in the definition of the Vienna Convention is that it limits the illicit source of money subject to laundering to drug crimes, due to the prevalence and terrifying spread of this crime at that time.

The United Nations Convention against Transnational Organized Crime "Palermo" of 2000 also defined it through its sixth article as

A-1) Converting or transferring property knowing that it is the proceeds of crimes, for the purpose of concealing or camouflaging the illicit source of that property, or helping any person involved in committing the original crime from which it comes to escape actual legal consequences.

A-2) Concealing or camouflaging the true nature of property, its source, location, how it is disposed of, its movement, its ownership, source, or the rights related to it, knowing that they are the proceeds of crimes.

B-1) Acquiring, possessing or using property knowing at the time of receiving it that it is the proceeds of crimes.

B-2) Participating in, colluding in, or conspiring to commit any of the crimes stipulated in this Article, and attempting to commit them, assisting, inciting, facilitating, and providing advice thereon.

The Palermo Convention expanded the sources of illicit funds by using them as proceeds of crime, unlike the Vienna Convention, which limited them to funds obtained from drug crimes,



and its definition was expanded to include the stages of committing the crime and the issue of contributing to it.

B- Definition of the crime of money laundering in Algerian law:

The act of money laundering has been criminalized in Algerian law pursuant to Law 04-15 amending and supplementing the Penal Code, pursuant to the new Article 389, which states the following: "It is considered money laundering:"

A- Transferring or transferring funds with the perpetrator's knowledge that they are direct or indirect proceeds of a crime, for the purpose of concealing or camouflaging the illicit source of those funds or assisting any person involved in committing the original crime from which those funds were obtained to escape the legal effects of his actions.

B- Hiding or camouflaging the true nature of the funds, their source, location, how they are disposed of, their movement, or the rights related to them, even though the perpetrator knows that they are criminal proceeds.

C- Acquiring, possessing or using funds with the knowledge of the person doing so at the time of receiving them that they constitute criminal proceeds.

D- Participation in committing any of the crimes determined in accordance with this article, or complicity or conspiracy to commit them and attempt to commit them, and assisting, inciting, facilitating and providing advice on that. **(1) Law No. 04-15 of November 10, 2004, c. R. Issue 71, dated November 10, 2004, p. 10, amending and supplementing Order No. 66-156, dated June 8, 1966, containing the Penal Code.**

In order to further understand this criminal phenomenon, our legislator issued Law No. 05-01, related to the prevention of money laundering and the financing of terrorism, as amended and supplemented, as it considered, pursuant to Article 02 thereof, that: "It is considered money laundering:"

A- Transferring or transporting funds with the perpetrator knowing that they are direct or indirect proceeds of a crime for the purpose of concealing or camouflaging the illicit source of those funds or assisting any person involved in committing the original crime from which these funds were obtained to escape the legal effects of his actions

B- Adding or camouflaging the true nature of the funds, their source, location, how they are disposed of, their movement, or the rights related to them, even though the perpetrator knows that they are criminal proceeds.

C- Acquiring, possessing or using funds with the knowledge of the person doing so at the time of receiving them that they are criminal proceeds.

D- Participating in committing any of the crimes determined in accordance with this article, or being complicit in or conspiring to commit them, or attempting to commit them, and assisting, inciting, facilitating, and providing advice on them. **(1) Law No. 05-01, dated February 6, 2005, relating to the prevention and combating of money laundering and terrorist financing, c. R. No. 11, dated February 9, 2005, amended and supplemented by Order No. 12-01, dated February 13, 2012, c. R. A. 08, dated February 15, 2012, amended and supplemented by Law No. 15-06, dated February 15, 2005, c. R. Issue 08, dated February 15, 2015**



It is noted that the Algerian legislator's definitions of the crime of money laundering came in the same context as the Vienna Convention and the Palermo Convention, with a slight difference between our legislator's definitions and the Vienna Convention, which limited the illicit source of money to the proceeds of drug crimes, while the Algerian legislator, like the Palermo Convention, left room for all criminal proceeds.

The definitions contained in Algerian law also mentioned the stages of this crime and expanded the scope of participation in it. In the last paragraph of Article 02 of the Law on Combating Money Laundering and Terrorist Financing, other forms of participation were mentioned, in addition to those mentioned in Article 42 of the Penal Code, which is the same trend as Article 389 of the same law.

C- The jurisprudential definition of the crime of money laundering:

The crime of money laundering has been defined as: "an operation that involves concealing the source of money obtained from criminal activities." **(2) Osama Ali Ibrahim Al-Jubouri, The Role of the Bank in Combating Money Laundering in Light of its Commitment to Banking Secrecy: A Comparative Study, 1st ed., Center for Arab Studies for Publishing and Distribution, Egypt, 2016, p. 234.**

It was also defined as: "Any behavior that involves acquiring, possessing, disposing of, preserving, exchanging, depositing, guaranteeing, advertising, transferring, converting, or manipulating the value of funds." If it is obtained from a crime - knowing that - whenever the intention is to hide the money or camouflage its nature, source, location, or the person who has the right to it, or change its reality, or prevent the discovery of that, or obstruct access to the person who committed the crime from which the money was obtained. **(3) Abdel Fattah Bayoumi Hegazy, The Crime of Money Laundering via the Internet, an in-depth study on the crime of money laundering via electronic media in comparative legislation, 01st edition, Dar Al Nahda Al Arabiya, Egypt, 2009 AD, p. 15**

The second definition was clearer and more comprehensive than the first definition, which was limited to mentioning the illicit source and one stage of money laundering, which is concealment, while the second definition mentioned many stages of the crime, represented by acquisition through a previous crime, then transfer, and finally merger. It also mentioned the moral element represented by criminal intent.

Second: Characteristics of the crime of money laundering

Money laundering is considered one of the most serious and complex crimes, especially given the era in which it is committed, known as the digital age. Among its distinctive characteristics are the following:

A- The transnational dimension of the crime of money laundering:

The crime of money laundering has a transnational dimension, meaning that its elements and components may be distributed across more than one country, with the result that its effects extend beyond the borders of a single country.

B- The crime of money laundering is a consequential crime:



The crime of money laundering is considered a subsequent or subsidiary crime, which assumes the commission of an original crime from which the money in question was obtained, called the original crime.

The Algerian legislator defined the original crime under Article 4 of Law No. 05-01, as amended and supplemented **(1) Law No. 05-01, amended and supplemented by Order 12-01, previous reference** by stating that: "Any crime, even if committed abroad, allows its perpetrators to obtain funds in accordance with what this law stipulates."

From the text of the article, it is clearly evident that the Algerian legislator has expanded the scope of predicate crimes to include even those committed outside the national territory, provided that foreign law also considers them a predicate crime, and this is in accordance with Article 5 of the amended and supplemented Law 05-01, which states that: Criminal prosecution measures can only be taken for money laundering or financing terrorism if the original acts committed abroad are of a criminal nature in the country in which they are committed and in Algerian law

By referring to the text of Article 389 bis of the Penal Code, we find that it criminalizes the bleaching of criminal proceeds, regardless of their nature and name. This is the same approach that our legislator followed when issuing Law No. 05-01, as amended and supplemented, with the aim of putting an end to the spread of the phenomenon.

C- The crime of money laundering is an economic crime:

Money laundering is considered an economic crime as it affects the economies of countries and threatens their entity and financial stability. Money is smuggled to future countries for the purpose of laundering and re-injecting it into the national economy in the form of various projects where it is invested under the cover of so-called multi-faceted investments such as medical clinics and luxury shops...Etc. **(2)Amjad Saud Qutaifan Al-Khraisha, The Crime of Money Laundering, a Comparative Study, 1st ed., Issue 1, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2008, p. 80**

D- The crime of money laundering is an organized crime:

The term organized crime is applied to a group of criminal acts and behaviors that are linked to each other. Jurisprudence has defined it as: "A collective criminal activity that is practiced continuously by organizations."

Criminal, its members work according to an internal system that determines the role of each of them and obey the orders of the head of the organization and their goal is profit. **(1) Houria Loumi, Combating Illicit Funds, thesis to obtain a doctorate in science, University of Algiers 01, Ben Youssef Ben Khadda, Faculty of Law, Department of Law, 2018 AD, p. 28**

As for Algerian law, it did not define it, merely referring to it in Article 176 of the Penal Code, which states: "Every association or agreement, regardless of its duration and number of members, formed or constituted for the purpose of preparing for one or more felonies, or one or more misdemeanors, punishable by at least five (05) years of imprisonment against persons or property, shall be an association of evildoers, and this crime shall be based on the mere joint determination to carry out the act."



The crime of money laundering is considered one of the organized crimes that is preceded by careful planning, and is characterized by the intertwining and complexity of the criminal acts that make up it, so the time to decipher its parts is long.

E- The crime of money laundering is a banking crime:

The crime of money laundering is considered a banking crime, given the role this sector plays in money laundering operations. This appears in two ways:

-The first aspect: Financial institutions ensure the confidentiality of their customers' bank accounts and their indivisibility.

-The second aspect: Financial institutions have provided many facilities such as technical work mechanisms, electronic financial transfers, magnetic cards, and the Internet, to carry out money laundering operations and investments in other fields. **(2) Muhammad bin Al-Akhdar, International Mechanisms to Combat the Crimes of Money Laundering and Financing International Terrorism, University Publishing House for Publishing, Printing and Distribution, Algeria 2016, p. 25.**

Section Two: The concept of electronic financial transfer

Electronic financial transfer is one of the most important banking technologies produced by modern technology, and is considered one of the prominent features indicating the adoption of electronic banking. In order to clarify it more clearly, this requires us to define it (first), then mention its most important distinguishing characteristics (second).

First: Definition of electronic financial transfer

The legal importance of electronic financial transfer has made the issue of its definition a matter of interest to legal experts and jurists alike.

A- Legal definition of electronic financial transfer:

Many legal texts have referred to the process of electronic financial transfer, both at the international and domestic levels. Accordingly, we will mention some of the definitions contained in international legislation, then determine the position of the Algerian legislator

Definition of electronic financial transfer in international legislation:

In line with the requirements of the international trading environment, the United Nations Commission on International Commercial Law issued a model law on international credit transfers in 1992, and defined, pursuant to Article 02 thereof, electronic financial transfer as: "The set of operations that begin with the payment order issued by the order with the aim of placing the value of the transfer at the disposal of the beneficiary" **(1)** WWW.Uncitral.un.org.con, consulted the 16/01/2023 à 16 h 31.

What is noticeable about the United Nations Committee's definition is that it was characterized by a kind of ambiguity, as it did not mention the party implementing the order nor the data that should be mentioned in it.

The American legislator defined it more clearly in Article 4 of the Unified Commercial Code as follows: "The set of steps that begin with a transfer order issued by the beneficiary with the aim of paying the beneficiary of the order. This is done orally, electronically, or in writing, and includes any order issued by the order's bank or intermediary bank, aimed at



implementing the order of the order to transfer. The beneficiary's bank's acceptance to pay the value of the transfer is transferred to the benefit of the beneficiary specified in the order."(2)WWW.Law-cornell-edu, consulted the 15\01\2023 à 17h30

This definition includes mentioning the two parties to the transaction, namely the orderor and the beneficiary of the order, and the necessity of having intermediary banks to settle the transaction. It also mentions the method of issuing the order, which may be oral, written, or electronic.

B- The Algerian legislator's position on the electronic financial transfer process:

The Algerian legislator addressed the issue of financial transfer in commercial law, specifically in Chapter One of Part Four entitled: "On Some Means and Methods of Payment" of Book Four: "Commercial Bonds", limiting himself to mentioning the necessary data. Article 543 bis 19 stipulates the following: "The transfer order contains:

- 1- The order directed by the account holder to the account holder to transfer funds, values, or bonds of specified value;
- 2- Statement of the account in which the discount is made;
- 3- Explaining the account to which the transfer is made and its owner;
- 4- Implementation date;
- 5- Signature of the transfer order.

Article 543 bis 20 also states that it shall be non-reversible from the date of deduction from the account of the person ordering the transfer and shall be final upon entry of the transferred amount into the beneficiary's account.(1) **Order No. 75-59, dated September 26, 1975, containing the Commercial Code, c. R.No. 101, dated December 19, 1975, amended and supplemented by Law No. 22-09, dated May 5, 2022, c. R. Issue 32, dated May 14, 2022 AD**

Referring to the Monetary and Loan Law, we find that Article 69 considers as means of payment any means that enables its owner to transfer funds, regardless of the bond or technical method used.

Article 66 of the same law states: "Banking operations include...Placing payment methods at the disposal of customers and managing these methods. (2)**Order No. 03-11, dated August 26, 2003, relating to cash and loans, c. R.No. 52, dated August 27, 2003, amended and supplemented by Law No. 17-10, dated October 11, 2017, c.R.A.57, dated October 12, 2017**

Regulation No. 97-03 also addressed the clearing house, as it is an essential intermediary in the electronic financial transfer process, as Article 03 thereof stipulates: "The clearing house shall, for the benefit of its members, undertake the task of settling balances by establishing daily clearing among themselves for the following: ...Transfers for the benefit of account holders registered in its records.(3) **Regulation No. 97-03, dated November 17, 1997, relating to the Clearing House, c. R.Issue 17, dated March 25, 1998**

The Algerian legislator also allowed, in Law No. 18-04, and specifically in Article 46/2, that every transfer of funds be made through all written or electronic payment methods.(4) **Law**



No. 18-04, dated May 10, 2018, sets out the general rules relating to mail and electronic communications, c. R. Issue 27, dated May 13, 2018

Anyone who carefully examines the aforementioned texts of Algerian law will not find a definition of electronic financial transfer. However, this does not negate the legislator's recognition of it as an electronic payment method carried out through an order issued by the commander to the intermediary bank, which includes the deduction of a specific amount of money from the account of a person called the commander for the benefit of another person called the beneficiary. The order may be issued in writing or electronically and is considered non-reversible once the amount has been transferred to the beneficiary's account.

C- The jurisprudential definition of electronic financial transfer:

There are several jurisprudential definitions regarding electronic financial transfer. Some define it as: "An automated process carried out with the intervention of one or more banks. It is achieved by registering with them the transfer of money or financial values, by transferring them from a depositor's account to another depositor's account, which may be for the same order or as another creditor beneficiary." **(5) Karima Boukhalfa, The Legal System of Bank Transfer, a memorandum submitted to obtain a master's degree in private law, Business Law Branch, Mohamed Lamine Dabbaghine University - Setif 02, Faculty of Law and Political Science, 2014/2015, p. 08**

Professor Dr. Samiha Al-Qalyoubi defined it as: "The procedure that a bank performs when transferring a certain amount of money from one customer's account to another customer's account. This process is done as follows: Through its bank by depositing **(1) Suleiman Daif Allah Al-Zaben, Electronic Money Transfer and the Legal Responsibility of Banks, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, 2016, p. 38**

weeAmounts are in another customer's account or in another account of his in the same bank. The bank carries out the process of transferring from one account to another electronically without a physical transfer of funds and without the presence of the other customer. The transfer may also take place from one bank to another. In this process, the electronic transfer of funds takes place through accounting entries through a bank.

The two previous definitions have confirmed that electronic financial transfer is a process or means of bank payment, carried out at the level of banks and financial institutions based on the request of their customers to transfer a specific amount of money to the beneficiary's account or another account belonging to the same order, and the account may be located in the same bank or in another bank. Since it is done using the Internet, this eliminates the need for the presence of both parties to the transaction.

Second: The distinctive legal characteristics of the electronic financial transfer process

Electronic financial transfer is characterized by a number of characteristics, including:

A/ The international nature of electronic financial transfer:

Most countries rely on it to settle accounts and transfer funds through the use of electronic media betn users in different parts of the world. **(2)Ghania Batli, Electronic Payment Methods, 1st ed., Dar Houma, Algeria, 2018, p. 25**

B/ Electronic financial transfer is a business:



Electronic financial transfer is considered a banking transaction and, therefore, a commercial transaction. This is confirmed by Article 2, Paragraph 13 of the Commercial Code, which states: "Any banking transaction, exchange transaction, brokerage, or commission transaction is considered a commercial transaction according to its subject matter." **(3) Order No. 75-59, amended and supplemented, previous reference**

As for the customer, whether he is an order person or a beneficiary, he is considered commercial by extension when the matter relates to commercial needs in accordance with the provisions of Article 4 of the Algerian Commercial Law, and if the matter is not related to his trade, it is considered a civil act.

A/ Electronic financial transfer is a restricted process:

Consent to the electronic money transfer process is not sufficient to carry out the process. Rather, the bank must make some written entries in each of the two accounts, which will result in deducting an amount from the commander's account and entering it into the beneficiary's account. Registering the amount in the commander's account is considered as if the commander has withdrawn the amount from his account, and registering it in the beneficiary's account is considered as if the commander has delivered the amount to the beneficiary, and the beneficiary has deposited the amount into his account. **(4) Ghania Batli, op. cit., p. 35.**

We conclude from what we have discussed in the previous two requirements that the process of money laundering using electronic financial transfer is criminal behavior, intended to give legitimacy to the funds called criminal proceeds, by resorting to electronic financial transfer, which is one of the most important banking technologies thanks to the speed, security and complete confidentiality it provides, and the transfer of criminal proceeds may take place in the same country in which the dirty money was obtained Or outside its borders for the purpose of concealing its illicit source and reintegrating it into the national or international economy.

The second requirement: The elements of the crime of money laundering using electronic financial transfer and the stages of its implementation

To say that there is a crime of money laundering, the elements required by law must be present for it to be committed (Section One), and then the stages of its implementation must be determined (Section Two).

Section One: Pillars of the crime of money laundering

For the crime of money laundering to occur, its elements must be present as required by law, as follows:

First: The legal pillar

One of the principles on which criminal systems in various countries of the world are based, including Algerian law, is the principle of legality, which means: "There is no crime, no punishment, or security measure without law"**(1) Article 1 of Order No. 66-156, dated June 8, 1966, c. R.No. 49, dated June 11, 1966, amended and supplemented by Law No. 21-08, dated December 1, 2021, c. R.Issue 91, dated December 5, 2021,** which makes legislation



the only source of criminalization and punishment, which is what the Algerian Penal Code adopted.

When the Penal Code was issued in 1966, it was free of any criminalization of the act of money laundering, as the latter had not witnessed widespread dissemination except in the last two decades. Algeria ratified the United Nations Convention against Trafficking in Narcotic Drugs and Psychotropic Substances, concluded in Vienna on 12/20/1998, which entered into force on 11/11/1990 (2) **Presidential Decree No. 95-41, dated January 28, 1995, ratifying with reservations the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, c. R.Issue 70, dated February 15, 1995** It also ratified the United Nations Convention against Transnational Crime, adopted by the General Assembly of the United Nations on 11/15/2000. (3) **Presidential Decree No. 02-55, dated February 5, 2002, ratifying the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly of the United Nations, on November 15, 2000, c. R.Issue 09, dated February 10, 2002**

At the regional level, Algeria has ratified a number of agreements in order to combat money laundering, perhaps the most important of which is the Arab Convention to Combat Money Laundering and the Financing of Terrorism, issued in Cairo on

December 21, 2010 (1) **Presidential Decree No. 14-250, dated September 8, 2014, ratifying the Arab Convention to Combat Money Laundering and the Financing of Terrorism, issued in Cairo on September 21, 2010, c. R. Issue 55, dated September 23, 2014**, as well as the organized crime across the national borders liberated in Cairo on December 29, 2010.(2) **Presidential Decree No. 14-251, dated September 8, 2014, ratifying the Arab Convention to Combat Organized Crime Across National Borders, liberated in Cairo, on December 21, 2010, c. R. Issue 56, dated December 25, 2014**

On the domestic front, Algerian legislators have issued legal texts related to this crime. We find Law No. 05-01 of February 6, 2005, relating to the prevention of money laundering and the financing of terrorism, and the laws amending it.(3) **Law No. 05-01, op. cit** This comes after Article 389 of the Penal Code was added in 2004.

Among the laws adjacent to Law 05-01, we find a group of laws prior to its issuance and others subsequent to it, such as Order 96-22 related to violating the legislation and regulations related to spending and the movement of capital to and from abroad. Among the acts violating this law according to Article 1 thereof are:

False declaration, failure to comply with declaration obligations, failure to comply with stipulated procedures or required formalities, failure to obtain required licenses, failure to comply with the conditions associated with these licenses.

This law was amended by Order 03-01, and Article 1 was amended by Article 2, which added the phrase: "The violator shall not be excused for his good faith." (4) **Order No. 96-22, dated July 9, 1966, relating to the suppression of violations of legislation and regulations relating to exchange and the movement of capital to and from abroad, c. R. Issue 43,**



dated July 10, 1996, p. 11, amended and supplemented by Order 03-01, dated February 19, 2003, c. R. Issue 12, dated February 23, 2003

Executive Decree No. 02-127, dated 04/07/2002, was also issued, which included the establishment, organization and operation of the Financial Inquiry Processing Cell, and stipulated that, among the Cell's tasks is combating money laundering and terrorist financing.

(5)Article 4 of Executive Decree No. 02-127, dated April 7, 2002, includes the establishment, organization and operation of the Financial Inquiry Processing Cell, c. R. Issue 23, dated April 23, 2002.

If this legal arsenal indicates anything, it indicates the criminalization of the act of money laundering and an attempt to confront it as much as possible.

Second: The supposed element (the primary crime is the source of illicit money)

The presumed element is any behavior or incident that legal logic requires to be present at the time the perpetrator commits his crime, and which precedes and is necessary for the existence of the criminal act. The crime of money laundering is considered a subsidiary crime that depends on the occurrence of an original crime that is the source of this illegal money.(6)

Amjad Saud Qutaifan Al-Khraisha, previous reference, p. 95

The first crime can be determined in one of the following ways:

The first method: not defining crimes in general, so that the scope of the original crimes expands to include all legally criminalized acts.

-The second method: The original crime is confined to a limited framework.

-The third method: It combines the two previous methods, such as stipulating that felonies are considered a source of illegal money, then mentioning some misdemeanors exclusively.

(1)Khalouf Khadija, Lonnie Farida, Pillars of the Crime of Money Laundering in Algerian Legislation, Al-Ustadh Al-Baheth Journal of Legal and Political Studies, Volume 2, Issue 8, December 2008, p. 605

The Algerian legislator has expanded the scope of predicate crimes to include even crimes committed outside Algerian territory, provided that foreign law considers them a predicate crime. This is in accordance with the text of Article 5 of Law No. 05-01, as amended and mentioned above.

Third: The material element of the crime of money laundering

The material component of the crime in general means bringing the criminal idea out into the outside world, so that it becomes tangible behavior on the ground. Criminal behavior is any activity carried out by an individual that causes harm to various interests that are subject to legal protection. **(2)Adel Akram, The Crime of Money Laundering - A Comparative Study, 1st ed., New University House for Publishing and Distribution, Egypt, 2013, p. 38**

Article 389 bis of the Penal Code has identified 3 types of criminal behavior in the process of money laundering, which are:

A- Transfer or transfer of funds:

Money transfer or transfer means conducting a banking or non-banking operation in order to change money into another form, such as converting money obtained from the drug trade into



jewelry or archaeological paintings, which are resold in exchange for foreign currencies in countries that do not impose restrictions on these transfers, with the aim of concealing the illicit source of the money and escaping legal consequences **(3)Nader Abdel Aziz Shafi, The Crime of Money Laundering, a Comparative Study, 2nd ed., Modern Book Foundation, 2005, pp. 80-81.**

B- Hiding or camouflaging the true nature of money:

Concealment refers to any action that prevents the truth from the illicit source. As for camouflage, it refers to creating a legitimate, unreal source of dirty money, such as merging it into a legal company, and showing this money as profits for this company.

The subject of camouflage and concealment is the reality of the funds or their source, the possibility of disposing of them or their movement, or the rights related to them and their ownership.

C- Possession, acquisition or use of these funds:

It is a crime for anyone to receive any money from crime gangs for profit or gain, whether in exchange for work or service, regardless of whether this money is money, bank transfers, or in-kind compensation.

It is also considered the mere possession of these funds, whether they are owned by the possessor or others, as well as their use for any legitimate or illegitimate purpose. **(1) Mohamed Qassima, The Role of Arab Legislation in Combating the Crime of Money Laundering, PhD Thesis in Law, Department of International Law and International Relations, Faculty of Law, University of Algiers, 2015/2016, p. 83.**

Fourth: The moral element (criminal intent):

In addition to the previous pillars, Algerian law requires the presence of a moral pillar for the crime of money laundering, in accordance with Article 389 bis Q. A, **(2) Houria Loumi, op. cit., p. 144** which stated: "With the perpetrator knowing that these are criminal proceeds."

A- Science:

Knowledge is considered an essential element in the element of intent. Considering that the crime of money laundering is a crime subsequent to a primary crime, the perpetrator is presumed to know that the funds of the crime were obtained through a criminal means, and to know that their purpose is to conceal or camouflage the illicit source, in accordance with Article 389 bis of the Amended and Supplemented Penal Code. The knowledge intended here is certain knowledge of the illegality of the money subject to money laundering.

As for the time of knowledge, it depends on whether the crime was temporary or ongoing. If it was temporary, knowledge must be available at the moment of committing the material behavior. However, if it was ongoing, knowledge of the source of the money is sufficient; that is, at a moment subsequent to committing the material behavior. **(3)Yazid Bouhleit, Criminal Policy in the Field of Money Laundering in Algeria, New University House for Publishing and Distribution, Egypt, 2015 edition, p. 157**

The perpetrator's will to commit one of the moral elements of the crime of money laundering is considered.



Will, like the element of knowledge, is considered an essential element in the moral pillar of this crime. It is the realization of a certain behavior. (4) **Houria Loumi, op. cit., p. 149.** If this behavior is criminal, then the intent is considered criminal. Also, the will to engage in an activity does not presuppose prior knowledge of it. Therefore, if the will to engage in the behavior is absent, then the criminal intent is absent from the accused. The will must be focused on both the behavior and the result. The will to engage in the behavior means the will's direction towards it The will to result means the natural effect represented by a change in the external world

Section Two: Stages of implementing the crime of money laundering using electronic financial transfer

The implementation of the crime of money laundering using money transfers goes through basic stages, which are the deposit stage (first), the camouflage stage using electronic money transfer systems (second), and the integration stage (third).

First: Deposit stage:

During this stage, illicit cash is brought into the financial cycle, often in quiet areas and cities, free from suspicion and means of monitoring and control.

The goal of this stage is to convert illicit money in banknotes into bank deposits and employ its revenues in several accounts with one or more banks, or companies that may be inside or outside the country, considering that the crime of money laundering is a cross-border financial and economic crime. (1) **Adel Akroum, op. cit., p. 47**

Second: The camouflage stage using electronic financial transfer systems:

At this stage, money launderers seek to hide the relationship of criminal proceeds after they enter the banking system with their illegal sources (2)**Nabil Sakraoui, Izz al-Din Qamrawi, Organized Crime: Smuggling, Drugs, and Money Laundering in Algerian Legislation, 1st ed., Dar al-Huda for Printing, Publishing, and Distribution, Algeria, 2008, p. 139.,** and among these techniques and means that perpetrators of the crime resort to is electronic financial transfer.

Electronic financial transfer is considered one of the most effective electronic payment methods for this crime, as it paralyzes the effectiveness of the most complex systems related to reporting the transfer of local deposits. Through it, criminal proceeds leave the country in which they were obtained and are transferred to fictitious accounts and companies. (3)**Abdel Fattah Bayoumi Hijazi, The Crime of Money Laundering between Electronic Media and Legislative Texts, Dar Al-Fikr Al-Jami'i for Publishing and Distribution, Egypt, 2015, p. 62**

Electronic financial transfer in Algeria is carried out through innovative systems used by banking and financial channels. These systems were introduced as Algeria moved toward creating an integrated electronic banking system, most notably the Instant Gross Settlement System (ARTS) and the Remote Clearing System (ATCI), in addition to its integration into the Global Financial Interbank Telecommunications System (SWIFT).



These systems can be negatively exploited by perpetrators of money laundering, thanks to the safety and speed they achieve.

A- Immediate Gross Settlement System (ARTS):

The Bank of Algeria has established an immediate gross settlement system for large amounts and urgent payments. It is an interbank settlement system for payment orders via bank or postal transfers for large amounts or urgent payments made by participants in this system **(1)Regulation No. 05-04, dated October 3, 2005, including the system of immediate gross settlement of large amounts and urgent payment, c. R. Issue 02, dated January 15, 2006**

This system aims to:

- Compliance with international standards and criteria in the field of electronic payment systems risks and qualification of the banking sector.
- Reducing payment risks and shortening the period between banks.
- Ensuring safety and speed in exchanges in accordance with international standards.
- Encouraging the establishment of foreign banks. **(2)Ahmed Zaghdar, Kulthum Hamidi, Evaluation of the performance of the Algerian system of immediate settlement (arts) in the Algerian banking system during the period 2006-2014 AD, Revue de recherche et études scientifiques, Volume 09, Issue 02, 2015, p. 11.**

b- The Instrument Clearing System and Other Broad Public Payment Instruments (ATCI):

This system is considered complementary to the previous system, and specializes in the automated processing of private payment methods used in the public payment system, and debit transfer instruments for withdrawal and payment operations by bank cards using advanced software. **(3)Majdoub Wahrani, Electronic Banking as a Strategy for Activating Government and Electronic Governance, published on the WWW.Cerist.dz website, accessed on: 12/22/2023 AD, (S14:30 PM)**

This system, which was established by the Bank of Algeria and is called the Electronic Clearing System (ATCI), only accepts transfers whose nominal value is less than (01) million dinars. As for amounts that exceed this limit, they are implemented within the system of immediate aggregate settlement of large amounts and urgent payment. The system operates according to the principle of multi-party clearing of payment orders submitted by participants in this system. **(4)Regulation No. 05-06, dated December 15, 2005, relating to the clearing of sukuk and other broad public payment instruments, published on the WWW website. BANK OF ALGERIA.COM, accessed on: 12/22/2022 (S17:10D).**

C- Global Interbank Financial Communications System (Swift):

The trade sector is an important nerve for both the international and national economy, and it is closely linked to the banking sector because of the means of payment and settlement it provides it. The SWIFT system (Swift) is considered one of the most successful technologies adopted by banks due to the trust, security and complete confidentiality it provides.

In the desire of the Algerian state to develop its banking and economic sectors, it joined this system on 12/31/1991. The SWIFT network is a cooperative association of private law in Belgium with its social headquarters in Hulpe. It does not aim to achieve profits, but rather



provides a guaranteed means of settling payments by introducing unified standards in international banking relations. (5) **Mustafa Zarouti, Saida Hanak, Motives for Using the SWIFT Network in International Transactions, Revue d'économie et de Statistiques Appliquées, Volume 10, Issue 02, p. 167.** safely and confidentially, within the framework of transferring transfers issued by banks or customers or any other monetary collections and rights The system is characterized by the fact that the messages sent by any bank that is a member of the association are reassured of their arrival, even if it is the network (1) **Issa Lafi Hassan Al-Samadi, Legal Responsibility for Electronic Banking in Jordanian Legislation, Electronic Financial Transfer, State Doctoral Thesis in Private Law, Business Law Branch, University of Algiers 01, Faculty of Law, Ben Aknoun, 2009/2010 AD, p. 130**

The receiver is busy, and this is due to the presence of a storage station for messages including customer transfers, bank transfers, foreign currency enhancements, documentary facilities, documentary credits, securities, and private payment messages.

Section Three: Integration and Integration Stage:

This stage aims to legitimize criminal proceeds, integrating the bleached funds into the economy and then returning them to the banking system, ultimately appearing as natural proceeds from a business transaction (2) **Abdul Fattah Hijazi Bayoumi, previous reference, p. 63.** This is achieved by:

-Electronic deposit of profits earned from suspicious and fictitious deals and companies in electronic banks.

-Electronic access to secondary financial markets and buying and selling of stocks and bonds.

- Carrying out e-commerce operations. (3) **Hidayat Bouazza, The Legal System of Electronic Payment, a Comparative Study, PhD Submission in Private Law, Abi Bakr Belkaid University, Tlemcen, Faculty of Law and Political Science, 2018/2019, p. 346**

Section Two: The role of banks in confronting the crime of money laundering using electronic financial transfer

Money laundering is a well-regulated financial and economic crime, and banks and financial institutions are used as a conduit for its cleanup using electronic money transfer technology, making it a banking crime.

Given the seriousness of this criminal phenomenon, the Algerian legislator sought to encompass and contain it by placing a set of obligations on the banking system, some of which relate to preventive measures (the first requirement), and some of which relate to combating it (the second requirement).

The first requirement: Banks' commitment to taking preventive measures

Banks and financial institutions are committed to taking a number of preventive or precautionary measures to avoid the occurrence of the crime of money laundering using electronic financial transfers, the most important of which are commitment to the principle of verifying the customer's identity (Section One), commitment to taking vigilance measures (Section Two), and commitment to preserving documents (Section Three).



Section One: The principle of commitment to verifying the customer's identity

One of the most important rules that banking has settled on is the "know your customer" rule, which is the rule that the Algerian legislator has established and imposed as a preventive legal obligation on banks and financial institutions. Before opening any bank account or book, (1) **Article 7 of Law No. 05-01, op. cit.** and before keeping any bonds or values, or renting any fund, they must verify the identity and addresses of their customers, through the original official documents that are still valid for this purpose. (2) **Article 05 of Regulation No. 12-03, dated November 28, 2012, relating to preventing and combating money laundering and terrorist financing, c. R. Issue 12, dated February 27, 2012**

The term customer includes natural and legal persons who have a bank or postal account, as well as beneficiaries of transactions carried out by professional intermediaries in addition to unusual clients, and persons who are partners in a financial transaction carried out by banks, financial institutions or Algerian postal services. (3) **Article 04 of Regulation 12-03, previous reference.**

The identity of the customer, a natural person, is verified as an initial check by submitting a valid official document with a photo of the person concerned, as well as submitting a document issued by the competent department proving the address. (4) **Article 7 of Law No. 05-01, previous reference**

As for the legal person, his identity must be verified by submitting his basic law and all subsequent amendments, in addition to his commercial register, in application of the provisions of Article 7 of Law 05-01, as amended and supplemented. Any document submitted by the client, whether he is a natural or legal person, must be preserved Information relating to the customer must be updated annually, and for each change that occurs in the civil status of the natural person or in the legal activity of the person. (1) **Article 7 of Law 05-01, op. cit.**

Algerian law requires banks and financial institutions to verify the identity of their customers when initiating any transaction. Banks must scrutinize transactions throughout their relationship with their customers to ensure consistency between the information provided and the transactions completed, particularly those related to the sources of funds.

Accordingly, banks and financial institutions at which money is transferred electronically must carefully verify the identity of the issuer and beneficiary to avoid any suspicious act and to prevent any attempt to launder money using this technology.

In light of the transition from paper support to electronic support, banks can verify the identity of parties within the framework of electronic financial transfers using an electronic signature, which Article 02 of Law No. 15-04 (2) **Law No. 15-04, dated February 1, 2015, defining the general rules related to electronic signature and ratification, c. R.A.06, dated February 10, 2005** defines as: "Data in electronic form, attached to or logically linked to other electronic data, used as a means of authenticata

For a signature to be considered electronic, it must be created on the basis of an electronic certificate of authentication, be linked to a website that enables its identity to be determined, be designed with a secure mechanism dedicated to the electronic signature, be created through



means exclusively controlled by the website, and finally be linked to special data on which subsequent changes can be detected. (Marginalization of this paragraph, Article 7 of Law No. 15_04, previous reference)

Section Two: Commitment to taking vigilance measures

The Algerian legislator obligated financial institutions and banks to take vigilant measures regarding transactions completed with their clients to discover the extent of their possible connection to the crime of money laundering.

This obligation was included for the first time as a precautionary measure within the framework of preventing money laundering crimes, when the Algerian legislator amended Law No. 05-01 pursuant to Order No. 12-02, **(3)Order No. 12-02, op. cit.** so that Article 10 bis 04 thereof stated the following: "Those subject to the duty of vigilance are obligated throughout the duration of the business relationship." They carefully monitor the operations carried out to ensure that they match the information they possess about their customers."

This new obligation includes the following:

First: Commitment to vigilance regarding some operations, including electronic financial transfers

This obligation is stipulated in Article 10 of Law No. 05-01, amended and supplemented by Article 06 of Order No. 12-02,**(4) Law No. 05-01 amended and supplemented by Order 12-02, previous reference.**which states: "If an operation is carried out under unusual or unjustified circumstances of complexity, or appears to be not based on an economic justification or a legitimate location, or in cases where the amount of the operation exceeds a limit, it shall be carried out" Determining it requires the subject to pay special attention to it and inquiring about the source and destination of the funds, as well as the location of the operation and the identity of the economic operators.

An annual report shall be prepared and kept without prejudice to the application of Articles 15 to 22 of this Law.

The first thing that is noted about this legal text is that the legislator has not specified what is meant by circumstances that are subject to a kind of complexity or unusual operations. Also, knowing whether there is an economic justification for them and whether they are based on a legitimate location is not an easy matter because it requires the customer's certain knowledge. In the midst of this ambiguity, banks and financial institutions have no choice but to adhere to all necessary precautions to avoid the crime of money laundering Electronic financial transfers are among the banking operations that require extreme intelligence, as the latter achieves security and speed in transferring money as it is one of the most advanced technologies and means of payment in the banking field, which makes it the most appropriate means among perpetrators of the crime of money laundering. In this regard, Article 17 of Law 12-03 stipulates that:Banks, financial institutions and financial departments of Algeria Post must, within the framework of electronic transfers, regardless of the method used (ATCI, ARTS, SWIFT...)And/or placing the funds at the disposal to ensure accurate verification of the identity of the person ordering the operation and the beneficiary, in addition to their addresses.



This is the same obligation affirmed by Article 29 of Regulation No. 11-08, **(1)Regulation No. 11-08, dated November 28, 2011, relating to the internal control of banks and financial institutions, c. R.Issue 47, dated August 29, 2012.** which stipulates the precise identification of the person ordering the electronic financial transfer and the beneficiary thereof, in addition to precisely specifying their addresses, regardless of the means used for the transfer.

Article 10 bis 04 **(2)Order No. 12-02, op. cit.** mentioned above requires banks and financial institutions to prepare and maintain annual reports as long as the process is not subject to any danger or suspicion. However, if it is likely to involve a crime of money laundering, notification shall be made in accordance with the provisions of Article 19 of Law 05-01.**(3) Law No. 05-01, op. cit.**

Second: Politicians are moving towards commitment to vigilance

This obligation is derived from the text of Article 29 of Regulation No. 11-08, **(4)Regulation No. 11-08, op. cit.** which requires banks and financial institutions to accurately identify their customers and the transactions they carry out. Banks and financial institutions rely on internal standards that determine how to accept new customers, procedures for identifying customers, verifying submitted documents, and classifying them in light of the risks of money laundering and terrorist financing. This is the same matter confirmed by Article 7 of Regulation No. 12-02. **(5)Regulation No. 12-02, op. cit.**

In our opinion, the reason for this commitment is the influence that politicians have, which enables them to misuse their jobs and use them to help them carry out money-laundering crimes.

Third: Banks and financial institutions' commitment to vigilance in their relations with foreign banks and financial institutions

The commitment to vigilance in banking transactions extends to the relationship between Algerian banks and financial institutions and their foreign counterparts, in accordance with Article 59 of Law No. 06-01,**(1) Law No. 06-01, dated February 20, 2006, relating to the prevention and combating of corruption, c.R.Issue 14, dated March 8, 2008, pp. 12-13.** relating to the prevention and combating of corruption, which states: "In order to grant and detect the proceeds of corruption, banks that do not have a financial presence and are not affiliated with a financial group subject to supervision are not permitted to be established in the Algerian region."

Banks and financial institutions established in Algeria are also not permitted to establish relations with foreign financial institutions that allow their accounts to be used by banks that do not have a financial presence and are not affiliated with a financial group subject to supervision.

The constant emphasis and concern on banks in establishing relations with foreign banks is due to the desire of the Algerian legislator to prevent money laundering operations. Therefore, the establishment of correspondence relations by Algerian banks and financial institutions with their foreign counterparts is dependent on the latter belonging to a financial group subject to supervision. This requires banks to collect the necessary and sufficient information



about foreign banks and financial institutions And knowing the nature and extent of the legitimacy of its work and reputation, which is the same matter that Article 09 of Banking Law No. 12-03 was directed towards

Section Three: Document preservation

Banks and financial institutions must retain all documents related to the transactions they conduct locally and internationally, as well as documents related to their customers. This is what the Algerian legislator has stipulated through Article 14 of Law No. 05-01, which obliges banks, financial institutions and similar financial institutions to retain all documents related to the identity and addresses of customers within at least 5 years after closing the account or stopping the dealing relationship As well as all documents related to the operations carried out by customers for a period of 5 years after the operation was carried out. **(2) .Law No. 05-01, op. cit**

Regulation No. 12-03 confirmed this obligation in accordance with Article 8 thereof, which states: "Banks, financial institutions and financial departments of Algeria Post must keep at the disposal of the competent authorities the following:"

- Documents related to the identity and addresses of customers, within a period of at least 5 years after the closure and/or cessation of business.
- Documents related to operations carried out, including confidential reports, during a period of at least 5 years after the operation was carried out.
- Banks, financial institutions and financial services of the Algerian Post must prepare procedures for the benefit of their operational bodies, according to which they determine the data that should be kept regarding proving the identity of customers, individual transactions and the legal and regular duration of the retention process. **(1)Houria Loumi, op. cit., p. 194**

It can be concluded from the aforementioned legal texts that the scope of the obligation to retain documents includes retaining all documents related to customers that banks have obtained in the process of verifying their identity. The obligation also includes retaining documents related to banking operations conducted by the customer. The texts did not specify a specific type of operations, as they left the field open. As for the retention period, it was set at a minimum of at least 5 years, while leaving the maximum open In confirmation by the legislator and out of his keenness on the importance of keeping documents that can be referred to whenever there are doubts about the existence of a crime of money laundering at the bank level.

As for the competent authorities, according to the text of Article 4 of Law No. 05-01, they are the authorities concerned with combating money laundering and terrorist financing, in particular the Financial Inquiry Processing Cell. **(3) Law No. 05-01, op. cit., p. 06.**

The second requirement: Banks are obligated to notify of suspicious electronic financial transfers

In the context of combating and prosecuting money laundering crimes, and in order to maintain electronic financial transfer systems and so that they are not a tool for carrying out the crime, the Algerian legislator has obligated notification of suspicious money laundering operations using electronic financial transfers.



Accordingly, we devoted the first section to the concept of notification of suspicion, and we devoted the second section to the form and procedures of notification of suspicion.

Section One: The concept of notification of suspicion

To define the concept of notification of suspicion, it is necessary to define it (first), then define its forms (second), in addition to clarifying that the financial inquiry cell monopolizes the right to receive the notification (third).

First: Definition of notification of suspicion:

Notification of suspicion is defined as: "A legal procedure through which the legislator aims to limit and confront the phenomenon of money laundering, by notifying the relevant authorities or by declaring to the authorized party any operation related to money obtained from a crime, suspected of being so, or directed to support terrorist operations.(3)" **eliteandthruth. Blog spot. Com. Accessed on 01/23/2023,) at 5:00 PM: 22m**

It is also defined as: "A legal action issued by a person who is neither the perpetrator nor the victim of the crime. The person reporting the crime is not considered a witness to its occurrence, but rather only notifies the public authority about it so that it can verify the latter and take what it deems appropriate regarding it.(1)" **Abeer Mazghish, Notification of Suspicion as a Mechanism to Combat Financial Corruption in Algerian Legislation, Journal of Rights and Freedoms, Volume 10, Issue 01 of 2022, p. 1780.**

The Algerian legislator has enshrined the notification of suspicion without giving it a definition, contenting itself with stipulating its obligation through Article 20 of Law No. 05-01, amended and supplemented, which states: "Without prejudice to the provisions of Article 32 of the Code of Criminal Procedure, those subject to it must inform the competent authority of every operation related to funds suspected of being obtained from a crime or appearing to be directed to money laundering and/or financing terrorism.

This notification must be made as soon as there is suspicion, even if it is not possible to postpone the implementation of these operations or after they are completed.

Any information aimed at confirming or denying suspicion must be communicated without delay to the competent authority. **(2)Article 20 of Law No. 05-01, op. cit., amended and supplemented by Article 10 of Order No. 12-02, op. cit., and Article 09 of Law No. 15-06, op. cit.**

Article 10 of Regulation 12-02**(3) Regulation No. 12-03, previous reference** also obliges banks, financial institutions and financial services of the Algeria Post to monitor, through their regulations, all accounts and to highlight unusual or suspected activities, and before that those that have no economic or commercial justification, capital movements that are practiced excessively compared to the account balance, transactions related to amounts unrelated to normal or potential customer operations, As well as complex operations that appear to have an illegal purpose and that exceed the limit set out in the regulatory texts

It can be concluded from the content of these legal texts that notification of suspicion regarding financial transfers is an immediate mandatory procedure, which includes the submission of a report by those subject to this obligation to the relevant authorities upon receipt, whenever they become suspicious of the existence of electronic financial transfers



received on sums of money that may be obtained from criminal proceeds, in order to whitewash them and then reintegrate them into economic and commercial projects.

Second: Forms of notification of suspicion

There are two forms of notification of suspicion:

A- Notification of suspicion upon knowledge:

This is the form contained in the provisions of Article 20 of Law No. 05-01, **(3) Law No. 05-01, op. cit.** which obliges subject persons to inform the competent authority of the illicit source of funds, and they are exempted if they are ignorant of this. This notification was provided as an exception to the obligation to maintain professional confidentiality.

Therefore, whenever the persons subject to this obligation become aware of the existence of electronic financial transfers of illegal funds, they must immediately inform the competent authority

B - Notification of suspicion when in doubt:

According to Article 20 of Law 05-01, those subject to this obligation must notify the competent authority of any transaction involving funds suspected of being criminal proceeds, or of being the subject of laundering or directed to financing terrorism, **(1) Abeer Mazghish, op. cit., p. 1782** regardless of the technology used, including electronic financial transfers. Of course, this attention can only be achieved by carefully implementing oversight procedures and conducting thorough inquiries regarding these suspicious transactions.

Third: The financial inquiry processing cell monopolizes the right to receive notification of suspicion

The Financial Inquiry Processing Cell monopolizes the right to receive reports from those subject to this obligation in order to carry out the tasks assigned to it within the framework of preventing money laundering and terrorist financing.

A- Definition of the financial inquiry processing cell:

The Financial Inquiry Processing Cell was established pursuant to Executive Decree No. 02-127, **(2) Executive Decree No. 02-127, dated April 7, 2002, establishing, organizing and operating the Financial Inquiry Processing Cell, c. R.No. 32, dated April 23, 2002, amended and supplemented by Executive Decree No. 08-275, dated September 6, 2008, c. R. No. 50, dated September 7, 2008, then Executive Decree No. 10-237, dated October 10, 2010, c. R.No. 59, dated October 13, 2010, amended and supplemented by Executive Decree No. 13-157, dated April 15, 2002, c. R. Issue 23, dated April 28, 2013** amended and supplemented, and Article 02 thereof stipulates that: "An independent administrative authority, enjoying legal personality and financial independence, and shall be placed with the Minister in charge of Finance." Article 04 bis of Law 05-01, **(3) Article 4 bis of Law No. 05-01, included in Order No. 12-02, previous reference.** amended and supplemented, defines it as follows: "The specialized body is an independent administrative authority enjoying legal personality and financial independence, and shall be placed with the Minister in charge of Finance."

This is the same definition as stated in Article 2 of Executive Decree No. 22-36, Article 2 of which specifies its headquarters as being in the city of Algiers. **(4) Executive Decree No. 22-**



36, dated January 4, 2022, defining the tasks, organization, and functioning of the Financial Inquiry Processing Cell, c.R.Issue 03, dated January 9, 2022

B- Persons subject to the obligation to notify of suspicion

Pursuant to Article 19 of Order No. 12-02, the Algerian legislator has identified the persons imposed on this legal obligation as:

1- Banks and financial institutions:

The Algerian legislator has subjected banks and financial institutions to the duty of notification of suspicion because the perpetrators of the crime of money laundering use it as a channel to transfer their powerful funds electronically to other accounts to remove suspicion from the sources of these funds

She confirmed this, in addition to Article 19, Article 03 of Order No. 12-02, by saying: "Banks, financial institutions and financial departments are subject to the Algerian Post's law of notification of suspicion of regulatory form and must request a receipt..."

2- Non-financial institutions and professions:

Non-financial institutions and professions mean any natural or legal person who practices activities other than those practiced by financial institutions, especially regulated liberal professions, especially lawyers when they carry out financial work on behalf of their clients, notaries, judicial bailiffs, auction governors, accounting experts, account governors, certified accountants, brokers, customs agents, brokers in stock exchange operations, real estate agents, service providers to companies, and agents selling cars, bets, and games As well as traders of precious stones and metals, archaeological pieces, artistic artifacts, and natural and legal persons who, within the framework of their duties in particular, consult and/or carry out operations that result in deposits, exchanges, investments, transfers, or other movement of funds.(1) **Article 4 of Order No. 12-02, previous reference**

The above-mentioned persons are obligated to notify of suspicion under penalty of the penalties stipulated in Articles 32 and 33 of Law No. 05-01, as amended and supplemented, which are:

- A fine ranging from 1,000,000 to 10,000,000 DZD for anyone who, with prior knowledge, refrains from writing or sending a notification of suspicion.
- A fine ranging from 200,000 to 20,000,000 DZD for managers and employees of financial institutions and subordinates who intentionally inform the owner of the funds or transactions subject to the notification of suspicion of the existence of this notification or provide him with information concerning him.

Section Two: Form and procedures for notification of suspicion

First: The form of notification of suspicion

It was regulated by Article 4 of Executive Decree No. 05-06, which includes the form, model, content and receipt of notification of suspicion. It stipulates that: "The designs for notification of suspicion shall be borne by the bodies subject to Article 19 of Law No. 05-01, dated 27 Dhu al-Hijjah 1425 AH corresponding to 06 February 2005 AD, mentioned above, and the Financial Inquiry Processing Cell shall be responsible for designing the receipt of notification of suspicion and no other.(2)" **Executive Decree No. 05-06, dated January 9,**



2006, including the form, model, content and receipt of notification of suspicion, c. R.Issue 02, dated January 15, 2006

Accordingly, the notification of suspicion and the receipt of its receipt shall be prepared in accordance with Annexes I and II of this Decree. For the persons mentioned in Article 19, they shall bear the responsibility for designing the notification, while the Financial Inquiry Processing Authority shall undertake the design of the receipt

According to Article 5 of the same executive decree, the notification of suspicion shall be in clear handwriting, without any padding or additions, by automatic telegraphy, including:

- Details of the entity issuing the notification (banking institution, address, telephone).
- Information related to the suspected account and the documents used to open it.
- The full identity of natural and legal persons (the company's address, legal nature, activity, tax identification number, and statistical index).
- Full identity of managers and partners.
- Customer type, regular or not.
- The identity and status of the signatories qualified to manage the account.
- Identifying suspicious transactions and describing them accurately, identifying suspicious funds, details of the transaction, and reasons for suspicion.
- The suspect's history, in addition to the conclusion and opinion.

Second: Procedures for notification of suspicion

Notification of suspicion shall be made in accordance with the following legal procedures:

- Issuing the entities subject to compliance with this notification according to the form specified in Executive Decree No. 06-05,(1) **Article 02 of Executive Decree No. 05-06, previous reference** to be sent by a representative of the subject institution to the Central Bank in complete confidentiality, which in turn transfers it to the financial inquiry processing cell. Since the Financial Inquiry Processing Cell has been entrusted with the task of combating the crimes of money laundering and terrorist (2) **Article 4 of Executive Decree No. 22-36, op. cit** financing, it receives all statements, media memos, financial information, and confidential reports on an exclusive basis.

After the cell receives notification of suspicion from the persons subject to this obligation, it shall process the statements that have reached its knowledge in all ways and means that it deems appropriate for this purpose.

In order to discover suspicious sources of funds, the cell may request that it be provided with all information and documents deemed necessary to perform its duties. (3)**Article 4 of Executive Decree No. 22-36, previous reference, and Article 15 of Law 05-01 amended and supplemented, previous reference**

Those subject to it only have to respond within 30 working days,(1) **Article 05 of Executive Decree No. 22-36, previous reference, and Articles 15 and 20 of Law No. 05-01, previous reference.** and it can seek the assistance of any person it deems appropriate to take care of a specific file.(2) **Article 8 of Executive Decree No. 22-36, previous reference**



If the Authority requests to be provided with any information it deems appropriate to perform its duties, banking secrets cannot be invoked against it, **(3)Article 22 of Law No. 05-01, op. cit.** and no measures will be taken against those subject to the obligation if the Authority's request is responded to. **(4)Article 23 of Law No. 05-01, previous reference**

The Financial Inquiry Processing Cell may object conservatively for a period of 72 hours to the implementation of any banking operation by any natural or legal person who is strongly suspected of committing the crime of money laundering or financing terrorism. The procedure shall be recorded on the notification of receipt of the notification of suspicion. Precautionary measures cannot be maintained after the expiry of the period. **(5)Article 17 of Law No. 05-01, amended and supplemented, previous reference**

If the notification of receipt does not include a receipt for notification of suspicion for precautionary measures, or if any decision issued by the Algerian court or the investigating judge before whom the investigation is being conducted is not communicated to those subject to the duty of notification of suspicion within a maximum period of 72 hours, they can carry out the operation subject to the notification. **(6)Article 18 of Law No. 05-01, previous reference**

After the committee conducts investigations and inquiries, analyzes the data, and concludes that the facts are subject to criminal prosecution, the file is sent to the regionally competent public prosecutor in complete confidentiality, so that he can take whatever action he deems appropriate regarding the facts and results of the investigations sent to him.**(7) Article 04 of Executive Decree No. 22-36, previous reference, and also Article 04 of Executive Decree No. 02-127, previous reference**

Conclusion:

The process of money laundering is one of the criminal phenomena that ravage the economies of countries and their societies, and this danger increases in size given the speed of its achievement in the era of digital transactions, which do not know geographical borders or time dimensions, which has made the issue of cleaning up the funds capacity in the wheel of the national and international economy an easy matter for its perpetrators.

The exploitation of banking technologies by criminal groups paralyzes the banking system from performing its effective role in combating and preventing this criminal phenomenon, as electronic payment methods, in particular financial transfers, are performed with complete confidentiality and extreme speed, and this creates an atmosphere of safety when carrying out the crime.

Through what we discussed previously, we reached the following results:

Weak oversight mechanisms at the level of banks and financial institutions are an effective factor in the high probability of the crime of money laundering using electronic financial transfer.

The expansion of legal texts and banking systems, and their inclusion of ambiguous legal terms, creates confusion and ambiguity in the minds of banking sector workers, who are unfamiliar with the legal rules set forth to combat this crime. In addition, the numerous



amendments to legal texts lead to instability, thereby affecting the principle of legal security required in this sector.

Weak control over the technical aspect of electronic banking transactions, including financial transfer systems, facilitates the implementation of the crime in its stages.

The lack of accuracy and inadequacy of oversight and investigation procedures, particularly with regard to the sources and destination of funds after transfer, may determine the likelihood of committing a money laundering crime.

The absence of actual and real application of the principle of "know your customer" makes banks a channel for financial whitewashing.

Banks and financial institutions fear that their reputation will be damaged due to the pressures they may be exposed to exerted by influential people, and this reduces the submission of notifications of suspicion to the Financial Inquiry Processing Cell.

Therefore, we propose the following recommendations:

The need to strengthen and modernize banking supervision mechanisms to keep pace with the new method for transactions conducted in the banking sector, namely the electronic method.

- The necessity of creating legislative and regulatory stability to avoid the bloat of texts, fill legal gaps, and formulate articles in a clear manner, free from ambiguity and vagueness.
- Developing the human element in the banking sector technically and legislatively to achieve the required performance.

Reducing the severity of the principle of banking secrecy and reassuring the banking and financial sector by providing it with legal guarantees in order to remove the fear and confusion that afflicts it due to submitting notifications of suspicion.

- Ensuring the good activation and application of the "Know Your Customer" principle to ensure reducing the possibility of committing the crime of money laundering