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**SPECIAL APPROACHES AGAINST TERRORIST ACTS  
– THE BANKS’ OBLIGATION TO COUNTERACT  
MONEY LAUNDERING PURSUANT TO THE POLISH  
BANKING LAW**

**1. INTRODUCTION**

Nowadays, banks are significant institutions for both the proper functioning of states, as well as everyday activity of the population, as they remain institutions of public trust. Considerable changes in the quality of banking took place at the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries, when the banking sector became an essential element of a properly-working national economy<sup>1</sup>. As a consequence, today banks are considered institutions specialized in conducting banking operations of borrowed funds, at the same time taking the risk of their transactions<sup>2</sup>. The important function of the banks was also apparent at the time of the latest economic crisis when central banks played an interventionist role – with the control of financial liquidity and being a lender of the last resort, while commercial banks are said to have been one of the reasons of the crisis. Taking into consideration the significance of the banking sector, the aim of this paper is to present the legal issue of money laundering and terrorism financing by an analysis of the Polish Banking Law and other domestic and international regulations and institutions.

Proper functioning of the banking sector can be ensured by a two-tier bank system, assuming the coexistence of an independent central bank and commercial banks, which is also visible in the Polish economy. The legal position and functions of the central bank, whose main purpose consists of ensuring the stability of the national currency<sup>3</sup>, is varied from the commercial ones, however the two-tier model still allows for numerous specific connections between the two

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<sup>1</sup> L. Góral, M. Karlikowska, K. Koperkiewicz-Mordel, *Polskie prawo bankowe*, Warszawa 2006, p. 10.

<sup>2</sup> *Ibidem*, p. 11.

<sup>3</sup> W. Baka, (in:) M. Bednarski, J. Wilkin (eds.), *Ekonomia dla prawników i nie tylko*, Warszawa 2005, p. 342.

types<sup>4</sup>. The main regulation governing the workings of the Polish central bank is the National Polish Bank Act (*Narodowy Bank Polski*) enacted in 1997<sup>5</sup>.

A bank, within the meaning of the Banking Law, is a legal person incorporated in accordance with the provisions of the law, acting on the basis of authorizations to undertake banking activities that expose to risk the financial resources entrusted to it under any redeemable title. According to this legal definition, it is needed for a bank, as a legal figure, to fulfil three conditions: the personal aspect (being a legal person) and two conditions which are connected with the subject of a bank's activity (banking operations on the basis of authorizations)<sup>6</sup>. Commercial banks can be created in various legal and organizational forms, but with the position of self-contained participants of economic transactions. These banks compete in conducting all banking activities, despite some of the operations being reserved for the central bank only<sup>7</sup>. Commercial banks each time need a special licence, granted by a decision of the Polish Financial Supervision Authority after fulfilling applicable legal conditions, in order to become a bank within the understanding of the Polish Banking Law and perform certain duties connected with banking operations.

According to this special role of banks in everyday life, every person by locating their money in a bank wants to be certain that the funds will be secure. It is also a legislative issue to ensure proper legal protection. One of the instruments to fulfil this aim is a provision in the Polish Banking Law – *Prawo Bankowe*<sup>8</sup> which obliges banks to counteract money laundering and financing of terrorist activity, making it therefore one of their special obligations, next to bank secrecy<sup>9</sup>.

Even though banks are not widely recognized as front-line institutions of the antiterrorist defence, in fact they can be significant figures in counteracting money laundering and financing terrorist activity. According to some views, a banker can even be regarded as the most effective weapon against terrorists<sup>10</sup>, as under certain circumstances he is able to predict and prevent terroristic activity.

## 2. COUNTERACTING TERRORISM

To meaningfully talk about terrorism financing and money laundering, it is necessary to try to create a legal definition of terrorism, which is a wide

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<sup>4</sup> L. Góral, M. Karlikowska, K. Koperkiewicz-Mordel, *Polskie prawo...*, p. 11.

<sup>5</sup> National Polish Bank Act of August 29, 1997 (Journal of Laws of the Republic of Poland from 1997, No. 140, item 938).

<sup>6</sup> G. Sikorski, *Prawo bankowe. Komentarz*, Warszawa 2015, p. 5.

<sup>7</sup> L. Góral, M. Karlikowska, K. Koperkiewicz-Mordel, *Polskie prawo...*, pp. 11–12.

<sup>8</sup> Banking Law of 29 August 1997 (Journal of Laws from 1997, No. 140, item 939).

<sup>9</sup> Z. Ofiarski, *Prawo bankowe*, Warszawa 2008, pp. 284–287.

<sup>10</sup> J. W. Wójcik, *Przeciwdziałanie finansowaniu terroryzmu*, Warszawa 2007, p. 25.

and complex issue encompassing criminal, international, legal, criminological and forensic aspects. Terrorist activity is itself hard to define, so as a consequence many definitions can be found in various domestic and international laws. Authorities, in pursuit of a proper definition, have identified some of the essential most common elements, such as: violence or threat of its usage, a desire to spread fear, destabilization of state structure, political motivation of the action<sup>11</sup>. Even though terrorism itself is not defined in Polish law, the legislator decided to define a “terrorist offence” in the Polish Criminal Code<sup>12</sup>, and also a “terrorist” act is defined in the Act on Anti-Terrorist Activities<sup>13</sup>.

What is often stated in the doctrine is the fact that terrorism is made up of two elements: ideology and finance<sup>14</sup>. A lack of proportion between the financial resources of terrorists and those belonging to the state, which tries to counteract rapidly changing terrorism activity (cyber, nuclear etc.<sup>15</sup>), is often observed. It is possible to hamper the activity of terrorist groups by limiting their access to or detaching them altogether from financial resources. To fulfil this goal, cooperation between police, legal bodies and banking authorities is necessary on domestic and international levels<sup>16</sup>. Undoubtedly, financing of terrorism can be considered as one of the so called (in the doctrine) “crimes without borders”<sup>17</sup>, as it is an expanding crime and a growing international problem. Transborder cooperation is needed according to the gravity of the danger, and international solutions shall be sought within supranational partnerships<sup>18</sup>. This is easily visible in international laws and contracts as well as in European Union regulations. One of the most important EU laws on this subject is the Directive of the European

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<sup>11</sup> J. W. Wójcik, *Przeciwdziałanie finansowaniu...*, p. 37.

<sup>12</sup> Article 115 § 20. Terrorist offence

A terrorist offence is a prohibited act with a sentence of imprisonment for at least five years, committed with the aim of:

- 1) seriously terrorising a large number of people,
- 2) forcing a public authority of the Republic of Poland, or another state or international organisation, to take or not to take a certain course of action,
- 3) cause a serious disturbance in the political system or the economy of the Republic of Poland, or another state or international organisation,  
– or a threat to commit such an act.

<sup>13</sup> Act on Anti-Terrorist Activities of June 10, 2016 (Journal of Laws from 2016, item 904).

<sup>14</sup> J. W. Wójcik, *Przeciwdziałanie finansowaniu...*, p. 79.

<sup>15</sup> Cyberterrorism is regarded as one of the most significant dangers of the 21<sup>st</sup> century, which makes it an interesting issue for a plethora of authors; for more, see A. Podraza, P. Potakowski, K. Wiak, *Cyberterrorizm zagrożeniem XXI wieku. Perspektywa politologiczna i prawna*, Warszawa 2013.

<sup>16</sup> B. Hołyst, *Terroryzm. Tom I*, Warszawa 2009, p. 680.

<sup>17</sup> More can be found in e.g. A. Fichtelberg, *Crime without border: An introduction to International Criminal Justice*; some other crimes considered as “with no borders” are for example cybercrimes such as hacking or pornography.

<sup>18</sup> E. Pływaczewski, *Przeciwdziałanie praniu brudnych pieniędzy z perspektywy międzynarodowej*, “Państwo i Prawo” 2002, Vol. 8.

Parliament and the Council of October 26, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>19</sup>. The directive emphasizes that: “money laundering and terrorist financing are international problems and the effort to combat them should be global”<sup>20</sup>. Directive 2015/849 of the European Parliament and the Council of May 20, 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing<sup>21</sup>, which repealed Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, is a significant document. The legislation forced states to introduce into their national legal systems a prohibition on money laundering, as well as a wide range of obligations for banks and other financial institutions connected with the identification of customers, registering money transfers and informing suitable services.

One of the main strands of international cooperation is related to the global strategy of the United Nations, as fighting terrorism can be considered one of the main UN aims. According to art. 1 of the United Nations Charter: “to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”<sup>22</sup>. Over the years, United Nations has been actively acting in favour of counteracting terrorism by preparing many antiterrorism conventions, such as the International Convention for the Suppression of Terrorist Bombing (1997) or the International Convention for the Suppression of the Financing of Terrorism (1999)<sup>23</sup>. Peace and safety were also among the priorities of the Seventeenth Session of the United Nations General Assembly which took place from September 2015 until September 2016<sup>24</sup>.

Requisite laws are also a part of the European countries’ cooperation, which is evidenced in European Union laws on countering terrorism as well as in the activity of EU bodies, starting from the 2003 European Security Strategy, which

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<sup>19</sup> Directive 2005/60/EC of the European Parliament and of the Council of October 26, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance); at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005L0060> (visited June 30, 2016).

<sup>20</sup> *Ibidem*.

<sup>21</sup> See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849> (visited June 30, 2016).

<sup>22</sup> See <http://www.un.org/en/sections/un-charter/chapter-i/index.html> (visited June 30, 2016).

<sup>23</sup> The original texts of the United Nations Conventions on Terrorism in different languages can be found on the website: [https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml](https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml) (visited June 30, 2016).

<sup>24</sup> See [http://www.unic.un.org.pl/70-sesja-zo-\(strony\)/70-sesja-zgromadzenia-ogolnego-onz-wrzesien-2015-r-%E2%80%93-wrzesien-2016-r\)/2897](http://www.unic.un.org.pl/70-sesja-zo-(strony)/70-sesja-zgromadzenia-ogolnego-onz-wrzesien-2015-r-%E2%80%93-wrzesien-2016-r)/2897) (visited June 30, 2016).

classified terrorism as one of the biggest threats to European security<sup>25</sup>. The United Kingdom was a founding member of the Financial Action Task Force (FATF), which is a body, made up of 34 member countries, responsible for inter-governmental cooperation and as such is concerned with counteracting money laundering and terrorist financing, made up of 34 member countries<sup>26</sup>.

Directive 2005/60/EC provides a definition of terrorist financing in the directive on the money laundering: “For the purposes of this Directive, ‘terrorist financing’ means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision”<sup>27</sup>. The effectiveness of EU activities is mostly dependent on the policy of member states – what should be mentioned is the fact that cooperation between countries is mainly intergovernmental, perhaps most vividly compared to other issues<sup>28</sup>. As noted above, money laundering, a crime without borders whose effects may spread across vast areas encompassing numerous countries, deserves special treatment in order to facilitate its detection and prevention.

The impact of terrorist financing on the banking sector manifests itself in many various ways. Academics have formulated classifications of the methods used by criminal groups to influence the banking sector. The classification proposed by W. Jasiński divides such actions into 4 groups<sup>29</sup>:

1) first of all, criminal groups consider banks as subjects which manage money – in cash and cashless forms, which may originate from financial institutions;

2) it is possible for the members of the groups to enter into conspiracies together with banking executives in order to internally control their financial sources;

3) usage of financial instruments (created and licensed by banking activity) to support their financial undertakings;

4) making use of the existing financial instruments to do damage to third parties, for example by fraudulent seizure of property.

The areas which are mostly endangered by money laundering-related activity are: cash actions (for example receiving payments), credit operations, bank guar-

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<sup>25</sup> See <http://www.antyterroryzm.gov.pl/eng/anti-terrorism/foreign-cooperation/the-european-union/677,The-European-Union.html>. (visited June 30, 2016).

<sup>26</sup> See <https://www.gov.uk/government/publications/preventing-money-laundering/preventing-money-laundering#financial-action-task-force-fatf> (visited September 18, 2016).

<sup>27</sup> Directive 2005/60/EC of the European Parliament and of the Council of October 26, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance); see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005L0060> (visited June 30, 2016).

<sup>28</sup> B. Hołyst, *Terroryzm...*, p. 687.

<sup>29</sup> W. Jasiński, *Przeciw szarej strefie. Nowe zasady zapobiegania praniu pieniędzy*, Warszawa 2001, pp. 30–31.

antees, non-cash transactions, letters of credit, securities. Very often financing of terrorist activity involves acting according to obligatory legal norms, whilst exploiting loopholes, which, in turn, leads to acting in contravention of the law<sup>30</sup>.

In the literature, it is also possible to find three other basic sources of terrorism financing: support provided by some states as well as organizations, legal business activity, as well as activity of organized criminal groups<sup>31</sup>. As underlined by J. W. Wójcik, donors usually do not take part in terrorist offences but in reality they are the propelling force behind the acts<sup>32</sup>.

### 3. POLISH REGULATIONS

Definitely, one of the most important regulations with regard to terrorism financing is art. 106 of the Polish Banking Law<sup>33</sup>. Pursuant to this provision, every bank (within the understanding of the Banking Law) is obliged to fulfil duties imposed by the legislator. The crimes mentioned in the rule are accordingly found in the Polish Criminal Code as financing terrorist activity (art. 165a of the Criminal Code) and money laundering (art. 299). Art. 165a<sup>34</sup> was introduced to the Polish legal system in 2009 as an expression of international obligations stemming from counteracting terrorism. The classification of the offence indicates that public safety is the legal good protected by the regulation<sup>35</sup>. The offence should be regarded as a typical formal crime which exposes, in abstract terms, a legal good to danger which can be brought about by any agent<sup>36</sup>.

As noted above, the need for penalization of money laundering<sup>37</sup> is partly grounded in international regulations. Norms enacted to deal with this problem

<sup>30</sup> J. W. Wójcik, *Przeciwdziałanie finansowaniu...*, pp. 81–82.

<sup>31</sup> *Ibidem*, p. 79f.

<sup>32</sup> *Ibidem*, p. 79.

<sup>33</sup> Article 106 of the Banking Law

1. The Bank is obliged to counteract the use of its banking activity for purposes connected with crimes referred to in Article 165a or 299 of the Criminal Code of June 6, 1997 (Journal of Laws from 1997, No. 88, item 553, as amended), hereinafter the “Criminal Code”.

<sup>34</sup> Article 165a. of the Criminal Code Anyone who collects, transfers or offers means of payment, financial instruments, securities, foreign exchange, property rights or other movable or immovable property in order to finance a terrorist offence is liable to imprisonment for between two and 12 years.

<sup>35</sup> D. Gruszecka, (in:) J. Giezek (ed.), *Kodeks karny. Część szczególna. Komentarz*, Warszawa 2014, p. 296.

<sup>36</sup> *Ibidem*, pp. 296–299.

<sup>37</sup> Article 299 of the Criminal Code

§ 1. Anyone who receives, transfers or transports abroad, or assists in the transfer of title or possession of legal tender, securities or other foreign currency values, property rights or real

protect a particular legal good which is the preservation of lawful, proper, honest, reliable economical and financial relations<sup>38</sup>. *Mens rea* for both of the abovementioned offences covers both direct intention and recklessness. An offence committed by an employee of a bank or another financial institution requires this person to be aware of and informed about being an object of special duties connected with her function<sup>39</sup>. What is important is the fact that a person may avoid liability if, under art. 299 § 8 of the Criminal Code, she reports information about the perpetrators or the circumstances of the commission of the offence. Such extraordinary mitigation of punishment is also possible if the offender attempts to report the circumstances or information.

In case of a reasonable suspicion of banking activity being used in order to conceal criminal actions or for the purposes connected with tax offences or offences in art. 165a or 299 of the Criminal Code, banks should notify a public prosecutor, the police and a competent authority authorized to conduct preparatory proceedings (article 106a(1) of the Banking Law), as gathering, passing and offering of the monies under art. 165a of the Criminal Code can be conducted manually by a bank or through the usage of the operations thereof<sup>40</sup>. The obligation has a rather legal, not social, character<sup>41</sup>, even though no legal sanctions for a failure to comply therewith were envisioned.

It is important that in the event of a justified suspicion that any resources in a bank account originate from or are connected with an offence other than the offence referred to in art. 165a or art. 299 of the Criminal Code, the bank is authorized to block the resources in the bank account (art. 106a(3) of the Banking Law). What is needed to be emphasized is the fact that an employee in breach of their duty by virtue of not reporting the circumstances stated in art. 106 is subject to disciplinary measures, which does not exclude criminal liability. Another regula-

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or movable property obtained from the profits of offences committed by other people, or takes any other action that may prevent or significantly hinder the determination of their criminal origin or place of location, their detection or forfeiture, is liable to imprisonment for between six months and eight years.

§ 2. Anyone who, as an employee of a bank, financial or credit institution, or any other entity legally obliged to register transactions and the people performing them, unlawfully receives a cash amount of money or foreign currency, or who transfers or converts it, or receives it under other circumstances raising a justified suspicion as to its origin from the offences specified in § 1, or who provides services aimed at concealing its criminal origin or in securing it against forfeiture, is liable to the penalty specified in § 1.

<sup>38</sup> J. Giezek, (in:) J. Giezek (ed.), *Kodeks karny. Część szczególna. Komentarz*, Warszawa 2014, p. 1214; quoted after: J. Długosz, *Przestępstwa prania pieniędzy*, (in:) R. Zawłocki (ed.), *System Prawa Karnego. Tom 9. Przestępstwa przeciwko mieniu i gospodarcze*, Warszawa 2011, p. 577.

<sup>39</sup> J. Giezek, (in:) J. Giezek (ed.), *Kodeks karny...*, p. 1233.

<sup>40</sup> G. Sikorski, *Prawo bankowe. Komentarz*, Warsaw 2015, p. 304.

<sup>41</sup> H. Kosiński, (in:) H. Gronkiewicz-Waltz (ed.), *Prawo bankowe. Komentarz*, Warszawa 2013, p. 383.



tion worth mentioning is art. 105 of the Banking Law, which states the cases when banks are obliged to reveal information subject to banking secrecy under certain circumstances. The entities which are entitled to ask for information are divided into groups: firstly – banks, credit institutions, other financial institutions, secondly – entities with the rights of state authorities, thirdly – justice entities and finally – tax authorities<sup>42</sup>. *Inter alia*, the following are mentioned: the Financial Supervision Authority on the basis of the Banking Law and the Act on Supervision over Financial Markets, courts or public prosecutors in connection with pending proceedings concerning particular criminal or fiscal offences, the General Inspector of Financial Information, the Internal Security Agency, the President of the Management Board of the Bank Guarantee Fund, the National Bank of Poland etc. Possible conflicts between these obligations (art. 104, 105 and 106, 106a of the Banking Law) are solved by the act which by its regulations releases banks from liability for the damage which might occur as a consequence of an infringement of bank secrecy, by giving priority to art. 106 and 106a of the Banking Law. This represents one example of a limitation upon the bank secrecy principle<sup>43</sup>. Importantly, banks are not liable for the damage caused if the obligations indicated in art. 106(1) of the Banking Law are performed in good faith. If the circumstances were not connected with an offence or concealing criminal activity, liability for the damage resulting from withholding banking operations is borne by the State Treasury. Article 106b expresses a special regulation (consistent with bank secrecy) that banks, their employees or financial intermediaries may only be demanded to provide information on the basis of a decision of a district court – on a formal motion of a public prosecutor.

#### 4. SPECIAL REGULATIONS

Special, more detailed regulations are found in the Act on Counteracting Money Laundering and Financing Terrorist Activity, enacted in 2000 and later amended to accommodate EU legislation. The regulation created legal frames of a system which coordinates particular actions of institutions, something that guarantees the realization of the act's aims. Under the Act, banks are obliged to, *inter alia*<sup>44</sup>:

– register transactions totalling over 15 000 euros, even if they consist of smaller transactions, as well as register every transaction which is suspected of having originated in an illegal or undisclosed source [suspected transaction];

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<sup>42</sup> A. Tupaj-Cholewa, (in:) H. Gronkiewicz-Waltz (ed.), *Prawo bankowe. Komentarz*, Warszawa 2013, pp. 368–370.

<sup>43</sup> E. Fojcik-Mastalska (ed.), *Prawo bankowe*, Wrocław 2009, p. 47.

<sup>44</sup> L. Mazur, *Prawo Bankowe. Komentarz*, Warszawa 2008, pp. 620–622.



- maintain the register of transactions for 5 years from the first day of the year following the year in which a given transaction was made;
- convey information about registered transactions to the General Inspector of Financial Information;
- acknowledge that the judge is entitled to decide whether the reasons outlined in the public prosecutor's formal motion (art. 106 section 1 and 2 of the Banking Law) justify the revealing of information under bank secrecy.

It is also important to mention that the obligations concerning registration of banking transactions are also connected with identifying the people who conduct them<sup>45</sup>.

In the 2000 Act, the office of the General Inspector of Financial Information (*Główny Inspektor Informacji Finansowej*) was introduced. The post, functioning under the auspices of the Minister of Finance, is bound to prevent the placing on the market of financial means which come from illegal or non-disclosed sources as well as counteract terrorism financing<sup>46</sup>. The body is also obligated to control the fulfilment of obligations by banks, which are, in the estimation of the Inspector, evidential and informative<sup>47</sup>. Owing to Memoranda of Understanding – bilateral agreements, it is possible for the body to share information and act with its counterparts from other countries. So far, eighty six agreements regarding mutual cooperation have been entered into by the Inspector<sup>48</sup>.

Each year, the activity of the Inspector is increasing and getting more significant, which is borne out in the numbers. In accordance with its 2015 general report from March 2016<sup>49</sup>, the General Inspector of Financial Information conveyed to public prosecutors' offices 398 notices of an offence of money laundering, which were connected with suspicious transactions totalling 17.1 billion PLN. What is more, just during last year, 339 bank accounts were blocked and 40 transactions were suspended, totalling 165.2 million PLN. The General Inspector fulfilled its statutory duties also by instituting 41 proceedings with regard to transactions which potentially might have been related to terrorism financing. Under art. 33

<sup>45</sup> M. Bączyk, (in:) E. Fojcik-Mastalska (ed.), *Prawo bankowe. Komentarz*, Warszawa 2007.

<sup>46</sup> L. Mazur, *Prawo bankowe...*, pp. 620–622.

<sup>47</sup> E. Fojcik-Mastalska (ed.), *Prawo bankowe...*, p. 47.

<sup>48</sup> See [http://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc/giif/wspolpraca-miedzynarodowa/-/asset\\_publisher/3cSg/content/wspolpraca-dwustronna-generalnego-inspektora-informacji-finansowej?redirect=http%3A%2F%2Fwww.mf.gov.pl%2Fministerstwo-finansow%2Fdzialalnosc%2Fgiif%2Fwspolpraca-miedzynarodowa%3Fp\\_p\\_id%3D101\\_INSTANCE\\_3cSg%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-2%26p\\_p\\_col\\_count%3D1#p\\_p\\_id\\_101\\_INSTANCE\\_3cSg\\_\\_\\_](http://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc/giif/wspolpraca-miedzynarodowa/-/asset_publisher/3cSg/content/wspolpraca-dwustronna-generalnego-inspektora-informacji-finansowej?redirect=http%3A%2F%2Fwww.mf.gov.pl%2Fministerstwo-finansow%2Fdzialalnosc%2Fgiif%2Fwspolpraca-miedzynarodowa%3Fp_p_id%3D101_INSTANCE_3cSg%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1#p_p_id_101_INSTANCE_3cSg___) (visited June 30, 2016).

<sup>49</sup> General Inspector of Financial Information Report from 2015, at [http://www.mf.gov.pl/c/document\\_library/get\\_file?uuid=22ac6a62-b882-438f-bbe9-2eddd0d4ce12&groupId=764034](http://www.mf.gov.pl/c/document_library/get_file?uuid=22ac6a62-b882-438f-bbe9-2eddd0d4ce12&groupId=764034) (visited June 30, 2016).

section 3 of the Act, the information was conveyed 2 587 times to the entitled bodies and units at the Inspector's own initiative.

## 5. CONCLUSION – EFFECTIVE CRACKDOWN ON TERRORISM

In summary, current Polish activity aimed at counteracting money laundering and terrorism financing rests primarily on legislation – on both domestic and international levels - and an institutional system. Current Polish regulations concerned with money laundering and terrorism financing constitute a part of the international (especially European) system created to prevent countries from dangers in this area. International regulations have created a complex system of prevention and sanctions which can only be effective if countries implement them correctly. Legislation pertaining to money laundering should be helpful, as international cooperation is needed between public institutions, the government, special services and justice organs. In addition, the membership of Poland of international antiterrorism coalitions and organizations is pertinent, as terrorism-related offences can only be effectively fought over borders<sup>50</sup> with the exchange of opinions and experience.

What is more, on the domestic level proper legislation is essential as that could be a weapon to define, examine and prosecute terroristic activity. The whole system – with a wide range of regulations and activities – should be buttressed by correct implementation and internal rules within institutions. Unfortunately, often it is said that institutions do not have the proper procedures to fight that kind of activity or that the ones in place are defective<sup>51</sup>. Complex and extensive regulations are not always adjusted to particular institutions and bodies, especially when it comes to financial and personnel resources. New legal obligations should be preceded by an analysis of the particular environment and its specification.

In my opinion, the creation of bodies responsible for particular actions connected with counteracting money laundering (such as the General Inspector of Financial Information), seems to be a beneficial development, and the number of actions undertaken thereby proves that the work of such novel bodies is effective and can be a successful weapon against terrorism on the financial level. As the problem of terrorism and money laundering grows, the involvement of bodies other than special services should be regarded positively. Again, success in

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<sup>50</sup> J. W. Wójcik, *Przeciwdziałanie finansowaniu...*

<sup>51</sup> M. Smolar, *Formy zwalczania procederu prania brudnych pieniędzy*, at <https://webcache.googleusercontent.com/search?q=cache:YzRok0X3vn4J:https://www.abw.gov.pl/download/1/1292/Segregator21.pdf+&cd=1&hl=pl&ct=clnk&gl=uk&client=safari> (visited September 20, 2016).

this area is dependent upon the existence of cooperation between multiple agencies and their counterparts in different countries.

The arguments given above prove that an effective fight against the expansion of terrorism, when it comes to the banking sector, should be based on a number of premises. First of all, special education of employees (as well as clients) of financial institutions and banks is necessary, as they are responsible for monitoring and discovering activities potentially related to money laundering and terrorism financing. Very often the first barrier for successful terroristic activity can be created by a human act. Legislation and institutional systems in Poland should be supported by the activity of properly prepared professionals, since supervision, control and cooperation with relevant public organs, and between employees and clients, is needed. In the past, various special projects were introduced in order to secure the appropriate functioning of banks. Worth mentioning is *Poznaj swojego klienta (Know your customer)* – a promising initiative focused around identifying clients. Special standards were created to prevent money laundering and other crimes. Some of the most common facets of the procedure are:

- identifying the documents of clients with regard to banking regulations;
- executing other verifactory measures, for example: making phone calls or imparting letters with special offers to clients;
- recognizing and understanding the type of business activity and transactions conducted by the client<sup>52</sup>.

With the growing problem of terrorism, its development and professionalism, modern long-term actions, methods of identification and initiatives are needed. Especially, research into new technologies and areas which require wide knowledge and instruments as well as specialist experience, is essential. In the modern world, where an increasing amount of business takes place online, with anonymity and secrecy, it is necessary for the legislator and services to be familiar with the innovative methods of offenders. One of the important aspects is also the need to activate the social element – citizens should be educated and encouraged to collaborate with the state to avoid the negative influence being exerted not only on their own interests, but also on the welfare of the country as a whole.

## Summary

One of the main issues connected with terrorism – a “crime without borders”, a complex phenomenon the definition of which has proven elusive, is terrorism financing and money laundering.

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<sup>52</sup> J. W. Wójcik, *Pranie pieniędzy. Studium prawnokryminologiczne i kryminalistyczne*, Toruń 1997, pp. 359–360.

The Polish legislator – in the Polish Banking Law – imposes on banks (within the scope of their legal definition) a duty of counteracting money laundering and terrorism financing, which corresponds with the significant role of banks and other financial institutions when it comes to the prevention of terrorist crimes.

On the basis of the Act on Counteracting Money Laundering and Terrorism Financing, a special system was created – the aim of the regulations is to facilitate successful performance by banks of their duties. In the Act, the office of the General Inspector of Financial Information was created, with an important task of controlling the realization of banks' duties, as well as cooperation with relevant services and improvement of international antiterrorist activity.

Beyond any doubt, the functioning of the Polish system could be guaranteed by broader legal and institutional frameworks on an international level, the achievement of which is contingent upon the activity of the European Union and the United Nations. A significant element in the fight against terrorism financing crimes is also proper training of the banking sector employees and officers, as well as ensuring proper communication and cooperation between them.

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#### KEYWORDS

banking law, financing, money laundering, terrorism

#### SŁOWA KLUCZOWE

prawo bankowe, finansowanie, pranie pieniędzy, terroryzm