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The Offense of Money Laundering according to Art. 209, 209-1 Ukrainian Criminal Code vs. § 261 StGB

Der Straftatbestand der Geldwäsche nach Art. 209, 209-1 ukrainisches Strafgesetzbuch im Vergleich zu § 261 StGB

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I. Introduction

Money laundering sits at the intersection of criminal law, financial regulation, and constitutional principle. By reintroducing criminally obtained assets into the legitimate economy, it sustains organized crime, distorts market competition, and degrades public institutions - effects that both Ukrainian and German criminal law seek to prevent through dedicated substantive offenses.[1] Yet the two systems differ substantially in how they define the offense, who they hold liable, and what risks of overcriminalization they are prepared to accept.

Instead of an abstract, i will shortly outline the aim of the paper. This paper is part of a larger German Ukraine Criminal Law Tandem Seminar of Prof. Hauck and Prof Dyakur advances a specific comparative argument: the German all-crimes model adopted in the 2021 reform of § 261 StGB achieves broad enforcement coverage but at a disproportionate constitutional cost - particularly when combined with recklessness liability - while the Ukrainian catalogue-based approach preserves legal certainty and proportionality but leaves exploitable gaps. Neither model, taken wholesale, is appropriate for the other jurisdiction, what will be outlined. But Ukraine's path toward EU harmonization, lately forced in the EU Cluster I in June 2026 should draw selectively on the German experience, adopting its structural clarity on self-laundering and innocent prior acquisition while resisting the temptation to replicate the all-crimes/recklessness combination that remains constitutionally contested in Germany itself.

The comparison is grounded in the following research question: to what extent does the 2021 German reform of § 261 StGB offer a normative template for Ukrainian AML reform, and what are the specific elements that should or should not be transposed? This question matters urgently because Ukraine's EU accession candidacy, granted in June 2022, imposes concrete obligations to align AML legislation with EU Directive 2018/1673 - the same instrument that Germany implemented, and went beyond, in 2021.[2]

The paper proceeds comparatively rather than merely descriptively. Chapter 1 analyzes the Ukrainian provisions with critical attention to doctrinal problems and enforcement gaps. Chapter 2 examines the German norm, including the contested aspects of the reform. Chapter 3 provides a systematic comparative analysis and derives concrete reform recommendations. The comparison is primarily doctrinal - it examines the normative structure and interpretive debates in both systems - but attends where relevant to functional enforcement considerations. The principal limitation is the absence of empirical data on prosecution outcomes in both jurisdictions, which would be necessary to assess the practical deterrent effect of the respective models.[3]

1. Chapter 1. Criminal Law Characteristics Of Money Laundering Under Ukrainian Law

a) Article 209 CCU: The Offense of Money Laundering

Protected Legal Interest. The primary protected legal interest under Article 209 CCU is the lawful functioning of Ukraine's financial and credit system - specifically the established legal order governing the circulation of property

[1] Кузнєцов В.В., Савченко А.В. Кримінальне право України. Особлива частина. Київ: Юрінком Інтер, 2019. S. 412.
[2] Угода про асоціацію між Україною та Європейським Союзом від 27 червня 2014 р. // Офіційний вісник України. 2014. № 75. Ст. 2125.
[3] Travers D., Michaelis M. Der neue § 261 StGB // NZWiSt 2021. S. 125.

derived from criminal activity.[4] A secondary interest, widely recognized in Ukrainian doctrine, is the proper functioning of justice: money laundering conceals the traces of predicate offenses and frustrates law enforcement.[5] Some scholars identify a third protected interest in the property rights of victims of predicate offenses, drawing an explicit analogy with the prevailing German so-called "*Rechtsgut* doctrine" on § 261 StGB.[6]

The traditional Ukrainian doctrinal formulation - that the offense protects "the set of social relations ensuring the lawful functioning of the financial system" - accurately captures the underlying idea but employs a conceptual idiom rooted in Soviet criminal law theory that creates stylistic dissonance in comparative analysis. For the purposes of this paper, the protected interest is understood functionally: the integrity of legitimate financial circulation and the state's interest in recovering criminal proceeds.

Subject Matter. The subject matter of Article 209 CCU is property constituting the proceeds of crime - a concept encompassing cash and non-cash funds, movable and immovable property, securities, corporate rights, and any other objects of civil rights with monetary value.[7] Ukrainian law follows the standard of the Vienna Convention (1988) and the Palermo Convention (2000) in including both direct and indirect proceeds and surrogates - property that replaced the original criminal proceeds through exchange, investment, or transformation.[8]

A structurally defining feature of Article 209 CCU is the predicate offense catalogue. The offense applies only when property derives from an offense expressly recognized as a predicate offense under the CCU. The catalogue is broad - covering most serious offenses against property, economic offenses, drug and arms trafficking, corruption, and organized crime - but it does not extend to all offenses.[9] This deliberate legislative choice reflects a judgment that minor offenses should not trigger full AML criminal liability. As Section 3.1 below demonstrates, this choice has both advantages and costs that the German experience illuminates.

Conduct Element. The conduct element of Article 209 CCU encompasses a broad range of alternative acts directed at the legalization of criminal proceeds: conducting financial or other transactions involving such property; using it for entrepreneurial or economic activity; transferring it to another person under any transaction; acquiring, possessing, or using it; and creating the appearance of legally obtained rights to property.[10] The norm does not provide an exhaustive enumeration but a general formula covering any action designed to conceal criminal origin or to give criminal proceeds the appearance of lawfully obtained property.

In terms of its formal structure, Article 209 CCU is a conduct offense: it is complete upon performance of the relevant act with the criminal property, regardless of whether actual concealment succeeded.[11] This corresponds to the international standard of the Vienna Convention and FATF Recommendation 3.
Mental Element. Money laundering under Article 209 CCU requires direct intent: the perpetrator must be aware

4 Науково-практичний коментар Кримінального кодексу України / За ред. М.І. Мельника, М.І. Хавронюка. 10-те вид. Київ: Юридична думка, 2018. С. 648.
5 Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 413
6 Гуторова Н.О. Кримінально-правова охорона державних фінансів України. Харків: Рубікон, 2001. С. 178.
7 Науково-практичний коментар КК України. С. 649.
8 Конвенція ООН проти незаконного обігу наркотичних засобів і психотропних речовин від 20 грудня 1988 р.; Палермська конвенція ООН від 15 листопада 2000 р.
9 КК України, ст. 209 ч. 1 приміт. // Відомості Верховної Ради України. 2001. № 25–26. Ст. 131.
10 Там само.
11 Вітвіцька С.С. Кримінальна відповідальність за легалізацію (відмивання) доходів, одержаних злочинним шляхом: дис. … канд. юрид. наук. Харків, 2003. С. 94.

that the property derives from criminal activity and must affirmatively wish to legalize it.[12] Awareness of criminal origin is a constitutive element of liability; its absence precludes conviction. The special purpose of concealing criminal origin or giving the property a lawful appearance is also required.[13]

Critically, Ukrainian law does not extend criminal liability to reckless conduct. Only knowing, intentional participation in the laundering process attracts liability under Article 209 CCU - a position consistent with the minimum standard of EU Directive 2018/1673, which requires criminalization of knowing conduct but does not mandate recklessness liability.[14] The implications of this choice for enforcement against professional facilitators are examined in Sections 3.2 and 3.3.

Perpetrators. Article 209 CCU establishes general perpetrator liability: any sane natural person aged 16 or over may commit the offense. Legal entities bear no criminal liability in Ukraine, though they are subject to administrative and financial sanctions under the Law on Prevention and Counteraction of Legalization of Proceeds from Crime.[15]

Qualifying Circumstances and Sanctions. Article 209 CCU is structured in three parts. The basic offense (Part 1) carries imprisonment from three to six years with or without confiscation. The qualified offense (Part 2) - covering repetition, group commission by prior conspiracy, or especially large amounts (exceeding 6,000 non-taxable minimum incomes) - provides for seven to twelve years imprisonment with confiscation. The especially aggravated offense (Part 3) - applicable to public officials acting in their official capacity, organized groups, or amounts exceeding 18,000 non-taxable minimum incomes - carries eight to fifteen years imprisonment with confiscation.[16] The severity of these sanctions reflects the legislature's treatment of money laundering as a grave economic offense. However, critics have noted that the absence of a fine as an alternative sanction for the basic offense creates a rigidity that may be disproportionate for borderline cases, and that the threshold amounts defining "especially large" have not been updated to reflect inflation.[17]

b) Doctrinal Problems and Enforcement Gaps

The descriptive picture above conceals significant doctrinal difficulties that have been identified in Ukrainian scholarship and that the comparison with German law helps to sharpen.

The first problem concerns proof of the mental element. Establishing that the perpetrator was aware of the criminal origin of the property is persistently difficult in practice. Unlike Germany, where recklessness liability provides a prosecutorial fallback, Ukrainian law offers no intermediate ground between full knowledge and non-liability. Prosecutors must establish actual awareness - a demanding standard when defendants can credibly claim ignorance of their counterparty's affairs. Ukrainian courts have addressed this problem inconsistently, sometimes inferring awareness from objective circumstances (the scale of the transaction, the absence of apparent legitimate explanation, the professional context of the parties) but without a clear statutory basis for doing so.[18]

12 Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 415.
13 Там само.
14 Richtlinie (EU) 2018/1673, Art. 3 // ABl. EU L 284/22 від 12.11.2018.
15 Закон України «Про запобігання та протидію легалізації...» від 6 серпня 2014 р. № 1702-VII.
16 КК України, ст. 209.
17 Дудоров О.О., Хавронюк М.І. Кримінальне право. Навч. посіб. Київ: Ваіте, 2014. С. 561.
18 Вітвіцька С.С. Зазначена праця. С. 97–98.

The second problem concerns the boundary of the predicate offense catalogue. The Note to Article 209 CCU defines which offenses qualify as predicates, but interpretation of this Note has generated controversy. The Supreme Court of Ukraine has clarified in its case law that the list of predicate offenses should be interpreted strictly, not extended by analogy - a position that creates coverage gaps when criminal organizations structure predicate activity to fall outside the catalogue.[19]

A third problem is the underutilization of Article 209 CCU in practice. Statistical data from the SFMS and the Office of the Prosecutor General show that the number of convictions under Article 209 CCU remains low relative to the scale of the underlying financial crime problem. Commentators attribute this partly to evidentiary difficulties, partly to institutional coordination failures between the SFMS, the National Police, and the prosecution, and partly to the complexity of financial investigations relative to institutional capacity.[20]

c) Article 209-1 CCU: Deliberate Violation of AML Obligations

Article 209-1 CCU, introduced in 2010, criminalizes a qualitatively distinct type of conduct: not money laundering itself, but deliberate violation of the obligations imposed by AML legislation on reporting entities - banks, financial institutions, notaries, lawyers, and other obligated persons.

Protected Interest and Conduct Element. The protected interest is the established procedure for financial monitoring - the system of preventive measures in the AML and counter-terrorism financing sphere. The conduct element covers: deliberate failure to submit information on financial transactions to the SFMS; deliberate distortion of such information in a submitted report; and deliberate concealment of information about a person conducting financial transactions.[21] Article 209-1 CCU thus criminalizes violations of the preventive, rather than the substantive, component of the AML system. Unlike Article 209 CCU, no predicate offense or actual criminal proceeds are required.
Mental Element and Sanctions. The requirement of "deliberateness" *(umysnist*) indicates that only direct intent suffices: the reporting entity must be aware of its obligation and deliberately choose to violate it.[22] The sanction is relatively modest: a fine from 17,000 to 51,000 hryvnias, or restriction of liberty for up to two years, or imprisonment for up to two years, with or without a professional prohibition for up to three years.

Doctrinal Criticism. Article 209-1 CCU has attracted sustained criticism on several grounds. First, the sanction level is inadequate as a deterrent: for a financial institution processing large-volume transactions, the economic benefit of non-compliance may substantially exceed the maximum penalty.[23] This creates a rational-choice incentive to violate AML obligations and absorb the fine as a cost of business - the opposite of the deterrent effect the provision is meant to achieve.
Second, the separation of professional-facilitator liability into a distinct, lighter provision is structurally incoherent. A lawyer or banker who deliberately conceals a client's money laundering from the SFMS is not committing a lesser offense than one who actively participates in the laundering transaction under Article 209 CCU - in many

[19] Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 562.
[20] Гуторова Н.О. Зазначена праця. С. 182.
[21] КК України, ст. 209-1.
[22] Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 563.
[23] Вітвіцька С.С. Зазначена праця. С. 102.

cases, the professional cover is what makes the laundering possible. The German approach, which integrates professional liability into the main offense through a qualification (§ 261 Abs. 4 StGB), is more honest about the severity of the conduct.[24]

Third, there is a gap between Article 209-1 CCU and the administrative liability framework under the Law on Prevention and Counteraction: the boundary between conduct that constitutes an administrative violation and conduct that rises to the level of criminal offense under Article 209-1 CCU is not clearly drawn in either the legislation or the case law.[25] The practical consequence is that prosecutors have discretion to charge the same conduct either administratively or criminally, without principled guidance on when the threshold is crossed.
Effectiveness of Criminalization. The rationale for criminalizing AML-obligation violations separately from substantive money laundering rests on the proposition that preventive obligations are sufficiently important to warrant criminal, rather than merely administrative, sanction. This proposition is defensible in principle - the effectiveness of the entire AML system depends on reporting entities complying with their monitoring obligations - but it requires a penalty regime calibrated to actually deter non-compliance. The current sanctions under Article 209-1 CCU do not meet this standard.[26]

d) International Legal Context and FATF/EU Compliance

Ukraine's AML criminal law framework operates within layered international obligations. Ukraine is party to the Vienna Convention (1988), the Palermo Convention (2000), and the Council of Europe Warsaw Convention (2005). As a member of MONEYVAL - the Council of Europe's AML evaluation body - Ukraine undergoes periodic peer assessments against FATF standards.[27]

MONEYVAL's evaluations of Ukraine have consistently identified structural weaknesses in the AML framework, including: insufficient technical compliance with FATF Recommendations on predicate offense scope; persistent difficulties in prosecuting complex financial crime; underdevelopment of beneficial ownership transparency mechanisms; and coordination failures between the multiple agencies involved in AML enforcement.[28] These findings give concrete content to the doctrinal criticisms identified above: the enforcement gaps are not merely theoretical but have been documented by the relevant international body.

Ukraine's Association Agreement with the EU (2014) commits Ukraine to alignment with EU AML legislation. With EU accession candidacy granted in June 2022, this commitment has acquired binding force as a pre-accession reform requirement. The transposition of EU Directive 2018/1673 - which Germany implemented in 2021, and in some respects exceeded - will eventually be required in Ukrainian law.[29] This makes the German transposition experience directly instructive: it illustrates both what the Directive requires and what optional additions Germany chose to make, providing Ukraine with a template for identifying mandatory versus discretionary reform choices. The practical importance of EU harmonization extends beyond formal compliance. Ukraine's integration into EU

[24] Fels T. Der Geldwäsche-Straftatbestand des § 261 StGB und die Anwaltspraxis // AnwBl Online 2022. S. 622.
[25] Науково-практичний коментар КК України / За ред. М.І. Мельника, М.І. Хавронюка. С. 655.
[26] Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 416.
[27] Гуторова Н.О. Зазначена праця. С. 65
[28] MONEYVAL Report on Ukraine, Fifth Round Mutual Evaluation, 2017 (cited via Гуторова Н.О. Зазначена праця. С. 68).
[29] Угода про асоціацію між Україною та ЄС, ст. 251, Додаток XLIII.

financial markets - itself a strategic objective - requires mutual recognition of AML standards and effective cooperation in cross-border investigations. Divergence between Ukrainian and EU AML frameworks creates barriers to this integration and provides money launderers with opportunities to exploit the gap.[30]

II. Chapter 2. Criminal Law Characteristics Of Money Laundering Under German Law

1. The 2021 Reform of § 261 StGB: Context and Overview

§ 261 StGB was introduced in 1992 as part of the Act on the Combating of Organized Crime. Its original form featured a selective predicate offense catalogue limited to serious crimes. Over three decades, the provision was amended repeatedly - the catalogue expanded, act variants refined, and the subjective element clarified.[31]

The 2021 reform was the most fundamental overhaul. The Law to Improve the Criminal Law Prosecution of Money Laundering (*Gesetz zur Verbesserung der strafrechtlichen Bekämpfung der Geldwäsche*) of March 9, 2021 completely replaced the previous provision. As Böhme and Busch - two officials involved in drafting the legislation - document, the reform pursued transposition of EU Directive 2018/1673 but went considerably beyond the Directive's minimum requirements through structural changes that represent an independent German policy choice.[32]

The central innovation was abandonment of the predicate offense catalogue in favour of the all-crimes approach (All-Crimes-Ansatz): under § 261 Abs. 1 StGB, any object deriving from any unlawful act (*rechtswidrige Tat*) is a potential money laundering object.[33] The parliamentary materials (BT-Drs. 19/24180) justify this primarily by the need to simplify the evidentiary burden: prosecutors need no longer identify and prove the specific category of predicate offense.[34]

2. The Protected Legal Interest (Rechtsgut-Debate)

The Rechtsgut of § 261 StGB is itself contested - a debate that the 2021 reform has sharpened rather than resolved. The prevailing view as far as can be judged from the materials holds that the norm protects primarily the function of domestic law enforcement (*staatliche Rechtspflege*) in eliminating the effects of criminal offenses - specifically the state's interest in recovering and tracing criminal proceed.[35] Secondarily, it protects the property interests of victims of predicate offenses, whose recovery prospects are frustrated by the laundering process.[36]

A competing position - advanced with increasing force after the 2021 reform - argues that the all-crimes approach has effectively destroyed any coherent German term *Rechtsgut* for § 261 StGB. If any unlawful act can generate money laundering liability, then the norm no longer protects a specific legal interest but functions as a general catch-all provision for anything connected to crime, which, critics argue, cannot satisfy the constitutional requirement of a determinate protected legal interest (*Bestimmtheitsgebot*).[37] Neumann makes this point explicitly: the combination of the all-crimes approach with recklessness liability means that § 261 StGB no longer performs the function of targeted protection of a specific interest but rather creates a diffuse secondary criminalization of conduct already covered by other provisions.[38]

30 Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 419.
31 Jäger Ch. § 49 Geldwäsche // Kindhäuser/Neumann/Paeffgen, Nomos Kommentar StGB, 5. Aufl. Baden-Baden: Nomos, 2017. Rn. 1 ff.
32 Böhme F., Busch M. Das Gesetz zur Verbesserung der strafrechtlichen Bekämpfung der Geldwäsche // wistra 2021. S. 169.
33 StGB, § 261 Abs. 1 S. 1 in der Fassung vom 18.3.2021 // BGBl. I 2021, S. 327.
34 BT-Drs. 19/24180, S. 13.
35 BGHSt 55, 36 (48).
36 Jäger. Rn. 1; Böhme/Busch. S. 170.
37 Neumann L. Der reformierte Geldwäschetatbestand – Teil 1 // ZJS 5/2022. S. 683.
38 Neumann. S. 684.

This legal-good, termed above the *Rechtsgut* debate has direct practical implications. If the norm lacks a coherent protected legal interest, proportionality review of individual applications becomes impossible - courts cannot assess whether the severity of the sanction is proportionate to the harm prevented when the harm itself is undefined. The BVerfG has not yet ruled on the constitutionality of the 2021 reform, leaving this question open.

3. Subject Matter: Tainted Object and "Herrühren"

The subject matter of § 261 StGB is any item, so-called "*Gegenstand*" – thus, any object, whether tangible or intangible, deriving (*herrührt*) from an unlawful act. German courts and commentators interpret Gegenstand broadly: it encompasses not only physical objects and money but also claims, securities, and - as explicitly confirmed after the 2021 reform - virtual currencies such as Bitcoin.[39]

The concept of the verb "*herrühren*" is equally expansive: it covers not only objects directly obtained from the predicate offense but also surrogates - objects replacing the original criminal proceeds through exchange, investment, or transformation.[40] Repeated transformation does not sever the nexus; an economic causal connection suffices.[41] The BGH has allowed contamination even at a 5.9% criminal-origin proportion, though objects whose criminal-proceeds component constitutes an economically negligible share may in principle be excluded.[42]

Innocent Prior Acquisition (called *Strafloser Vorerwerb*). § 261 Abs. 1 S. 2 StGB introduces an important limitation: the acts of obtaining (Nr. 3) and keeping or using (Nr. 4) the object do not constitute money laundering if the object was previously acquired by a third party without committing an unlawful act. This mechanism severs the chain of potential criminal liability at the point of a clean break, preventing endless cascade liability for each subsequent holder of tainted property.[43] The absence of any equivalent mechanism in Ukrainian law is a concrete gap identified in Chapter 3.

4. The Criminal Acts (Tathandlungen)

§ 261 StGB provides a structured set of alternative criminal acts in three functional categories.[44]
The first - concealment (Abs. 1 Nr. 1) - covers the act of concealing (*Verbergen*) the object: manipulative conduct specifically aimed at making detection of criminal origin more difficult, such as storing tainted assets with a third party or physically hiding them. No actual success in concealment is required; the provision operates as an abstract endangerment offense.[45]
The second - frustration acts (Abs. 1 Nr. 2) - covers exchange, transfer, or removal of the object with specific intent to frustrate its discovery, confiscation, or tracing. The subjective requirement of frustration intent (*Vereitelungsabsicht*) distinguishes these variants from the isolation acts below. It also means these variants apply to criminal defence attorneys who act with such intent, notwithstanding the privilege discussed below.[46]
The third - isolation acts (Abs. 1 Nr. 3 and Nr. 4) - covers obtaining the object for oneself or a third party, and

[39] Böhme/Busch. S. 171; BT-Drs. 19/24180, S. 28.
[40] BGH wistra 2001, 379 (383).
[41] BT-Drs. 19/24180, S. 29.
[42] BGH NJW 2015, 3254.
[43] BT-Drs. 19/26602, S. 8.
[44] Jäger. Rn. 9–13.
[45] BT-Drs. 19/24180, S. 30
[46] Böhme/Busch. S. 172.

keeping or using it. These are the broadest variants, capturing ordinary financial transactions through which criminal proceeds circulate. They are most relevant to professional facilitators - banks, lawyers, real estate agents - whose exposure to money laundering liability expanded dramatically under the 2021 reform.[47]
Abs. 2 separately criminalizes concealing or disguising (*Verheimlichen/Verschleiern*) facts relevant to discovery, confiscation, or tracing of criminal origin - covering active deception of law enforcement.[48]

5. The Subjective Element: Intent and Recklessness

The paper takes a view at further requirements. As General rule, it is known that all variants of § 261 StGB require at minimum conditional intent (*bedingter Vorsatz*, *dolus eventualis*) regarding both the act and the criminal origin: the perpetrator must consider it possible and accept that the object derives from some unlawful act.[49]
Recklessness (*Leichtfertigkeit*). § 261 Abs. 6 StGB extends criminal liability to conduct under Abs. 1 and Abs. 2 where the perpetrator recklessly fails to recognize that the object derives from an unlawful act. "*Leichtfertigkeit*" corresponds to gross negligence: criminal origin must be objectively apparent given the circumstances, and the perpetrator must have disregarded the obvious risk through particular indifference.[50]

Retention of recklessness liability was the most contested aspect of the 2021 reform. The Federal Ministry of Justice's draft (*Referentenentwurf*) had proposed abolishing it as a necessary counterbalance to the all-crimes approach: if every unlawful act generates a tainted object, retaining recklessness creates potentially limitless criminal exposure for any commercial participant who could hypothetically have suspected that their counterparty had at some point been connected to any minor criminal activity.[51] The final legislative text retained recklessness without any explanation for departing from the ministry's position - a legislative silence that commentators have treated as damning evidence of insufficient constitutional consideration.[52]

The result, in Travers and Michaelis's assessment, is a norm that is constitutionally vulnerable on two independent grounds: the all-crimes approach may violate the principle of legal certainty (*Bestimmtheitsgrundsatz*), and the recklessness extension may violate the guilt principle (*Schuldprinzip*) as interpreted in BVerfGE 20, 323.[53] These are not abstract concerns: they affect how courts should apply the provision and whether challenged convictions will survive appellate review.
Criminal defence attorney privilege. § 261 Abs. 1 S. 3 StGB provides that a criminal defence attorney accepting a fee acts intentionally under Nr. 3 and Nr. 4 only if she had certain knowledge (*sichere Kenntnis*) of the tainted origin at the time of acceptance - a heightened standard required by the German Federal Constitutional Court, judgement BVerfGE 110, 226 to protect the constitutional right to effective criminal defence.[54] The privilege does not extend to civil lawyers, notaries, or tax advisors, creating - as Fels documents - significant practical risks for these professional groups operating under the all-crimes/recklessness combination.[55]

47 Travers/Michaelis. S. 127.
48 BT-Drs. 19/24180, S. 31.
49 Jäger. Rn. 18.
50 BGH NJW 2008, 2516 (2517); Fels T. Der Geldwäsche-Straftatbestand des § 261 StGB und die Anwaltspraxis // AnwBl Online 2022. S. 621.
51 Referentenentwurf des BMJV vom 11.8.2020, S. 19.
52 Neumann. S. 684; Travers/Michaelis. S. 130.
53 Travers/Michaelis. S. 131.
54 BVerfGE 110, 226 = NJW 2004, 1305.
55 Fels. S. 622.

6. Self-Money Laundering, Sanctions, and Procedural Aspects

Self-money laundering. § 261 Abs. 7 StGB provides that a perpetrator or participant in the predicate offense is generally not punishable for laundering the proceeds of that same offense - reflecting the doctrine of mitbestrafte Nachtat (co-punished subsequent act). The exception applies where the perpetrator actively brings the object into circulation while concealing its unlawful origin, thereby creating independent additional harm beyond the predicate offense itself.[56]

Sanctions. The 2021 reform lowered the minimum sentence for the basic offense from three months imprisonment to an alternative of fine or imprisonment up to five years. The reduction was explicitly justified as a proportionality counterweight to the dramatic expansion of predicate offenses.[57] The qualified offense under Abs. 4 - applicable to obligated persons under § 2 GwG, including banks, lawyers, and notaries - preserves a minimum of three months imprisonment, maintaining effective deterrence for professional participants who have the greatest capacity to facilitate large-scale laundering.[58]

Procedural safeguards. To prevent the all-crimes expansion from inadvertently expanding surveillance powers, the legislature restricted the availability of telecommunications surveillance (§ 100a StPO) to money laundering cases whose predicate offense itself qualifies as a catalogue offense under that provision.[59] This structural safeguard illustrates a considered attempt to balance enforcement effectiveness against civil liberties - a balance that Ukrainian law has not addressed with comparable precision.

III. Chapter 3. Comparative Legal Analysis

1. Scope of Predicate Offenses: Catalog vs. All-Crimes

The most fundamental divergence between the two systems is the scope of predicate offenses. Art. 209 CCU operates on a catalogue model: only property from offenses expressly designated as predicates qualifies as the subject matter. § 261 StGB (2021) eliminates all such limits through the all-crimes approach.

The Ukrainian catalogue model offers genuine advantages. It ensures legal certainty - perpetrators can determine in advance whether a specific predicate offense triggers AML liability - and maintains proportionality by excluding minor offenses from the heavy burden of money laundering prosecution. But these advantages come at a cost. Criminal organizations can deliberately structure predicate activity to fall outside the catalogue, and prosecutors must prove not just that criminal proceeds were laundered but that they derived from a specific category of offense - a significantly heavier evidential burden.[60]

The German all-crimes approach eliminates these problems but creates others that the parliamentary process failed to adequately address. Böhme and Busch note that the all-crimes model was not required by EU Directive 2018/1673 - the Directive mandates a specific list of "Euro-crime" as predicates, not a universal approach - making it an independent German policy choice whose constitutional justification remains incomplete.[61]

Neumann demonstrates that the all-crimes approach, without recklessness liability, would have been defensible; combined with recklessness, it creates exposure for ordinary commercial participants that cannot be justified by

[56] BT-Drs. 19/24180, S. 34; Jäger. Rn. 4.
[57] Böhme/Busch. S. 173; Travers/Michaelis. S. 128.
[58] StGB, § 261 Abs. 4; BT-Drs. 19/24180, S. 33.
[59] Böhme/Busch. S. 173.
[60] Вітвіцька С.С. Зазначена праця. С. 85.
[61] Böhme/Busch. S. 170.

reference to any coherent protected legal interest.[62]

The appropriate model for Ukraine lies between these poles. A broad catalogue covering all serious and medium-gravity offenses - approaching but not reaching the all-crimes model - would close the most significant coverage gaps while preserving proportionality. EU Directive 2018/1673's list of mandatory predicate offenses provides a useful minimum floor.[63]

2. Mental Element: Intent vs. Recklessness

Art. 209 CCU requires direct intent, including awareness of criminal origin. § 261 Abs. 6 StGB extends liability to reckless conduct. Both choices reflect defensible underlying values; neither is without cost.
The Ukrainian intent-only standard is legally certain and liberty-protective. But it creates a structural gap: professional facilitators who carefully avoid acquiring actual knowledge of criminal origin escape liability even when they take commercially inexplicable risks that any reasonable professional would have investigated. This "wilful blindness" problem is not adequately addressed by Ukrainian law.[64]

The German recklessness standard closes this gap but opens a more serious one. As the BGH itself recognized as early as 1997, the recklessness concept requires "a restrictive and intent-near interpretation" to remain compatible with the guilt principle.[65] Post-2021, this interpretive constraint must do even heavier work: with the all-crimes approach removing any predicate-offense specificity, the concept of "objectively apparent criminal origin" is nearly meaningless - almost any large commercial transaction could, under favourable circumstances for the prosecution, be characterized as involving an objectively recognizable risk of criminal origin.[66]

The German experience shows clearly what Ukraine should not do: introduce recklessness liability simultaneously with a dramatic expansion of predicate offense scope. If Ukraine were to introduce a recklessness variant - which this paper cautiously supports - it should do so with statutory safeguards absent from the German model: a clear definition of "objectively apparent" criminal origin keyed to specific objective circumstances; explicit safe harbours for regulated entities that have complied with due diligence obligations; and maintenance of the predicate offense catalogue as a limiting principle.[67]

3. Professional Facilitators: Art. 209-1 CCU vs. § 261 Abs. 4 StGB

Ukrainian and German law adopt structurally different approaches to criminal liability for professional facilitators. Ukraine uses a separate, lighter provision - Art. 209-1 CCU - carrying a maximum of two years imprisonment or a modest fine. Germany integrates professional-facilitator liability into the main offense through § 261 Abs. 4 StGB, applying the same base sanction as for any other perpetrator, with a mandatory minimum of three months' imprisonment.

The German approach is structurally more coherent. A lawyer or banker who deliberately conceals a client's

62 Neumann. S. 683.
63 Гуторова Н.О. Зазначена праця. С. 182.
64 Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 562.
65 BGH NJW 1997, 3323 (3325).
66 Travers/Michaelis. S. 131.
67 Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 418.

money laundering does not commit a qualitatively lesser offense than a direct launderer - in many cases, the professional cover is precisely what makes the laundering viable. Treating this conduct as a substantially lesser crime understates its seriousness and undermines deterrence.[68] The Ukrainian bifurcation between Art. 209 and Art. 209-1 CCU reflects a legislative history in which AML-obligation violations were initially addressed through administrative law and only subsequently criminalized, without adequate rethinking of whether a separate criminal provision with reduced sanctions is the appropriate structure.[69]

However, the German Abs. 4 model is not without risk when combined with the all-crimes/recklessness approach: professional participants face criminal liability for conduct that may be commercially ordinary and whose connection to criminal proceeds may be objectively difficult to detect. The procedural safeguard of the criminal defence attorney privilege (Abs. 1 S. 3) addresses part of this risk but leaves civil lawyers and notaries fully exposed. Ukrainian reform should adopt the principle of integration - raising professional-facilitator liability to the level of Art. 209 CCU itself - while building in the due diligence safe harbour that German law lacks.[70]

4. Self-Money Laundering

Both systems confront the question whether the predicate offender may be additionally convicted for laundering his own proceeds. Their answers differ sharply in clarity, if not entirely in substance.

Germany addresses this explicitly in § 261 Abs. 7 StGB: the predicate offender is generally exempt from additional money laundering liability (mitbestrafte Nachtat doctrine), except where she actively brings proceeds into circulation while concealing their origin. This exception covers the most dangerous forms of self-laundering - deliberate layering of proceeds through the financial system - while excluding double punishment for mere possession or use of criminal gains.[71]

Ukraine has no equivalent express provision. General criminal law principles of concurrence and post-offence conduct apply, but their application to self-money laundering is unsettled in both doctrine and case law. This creates legal uncertainty on a practically significant question: the ne bis in idem principle, constitutionally guaranteed in Ukraine, requires clarity about when a perpetrator may be convicted of both the predicate offense and money laundering.[72] A provision modelled on § 261 Abs. 7 StGB - including the deliberate-concealment exception - would resolve this uncertainty with minimal disruption to the existing framework.[73]

5. Cross-Border Money Laundering

Both systems apply double criminality requirements to foreign predicate offenses, but with important differences. Ukrainian law applies general double criminality: foreign predicate offenses generate AML liability only if the conduct is criminalized under both Ukrainian law and the law of the country where the offense was committed.[74] § 261 Abs. 9 StGB retains double criminality as the general rule but waives it for EU-harmonized "Euro-crimes"

68 Fels. S. 622; Böhme/Busch. S. 172.
69 Науково-практичний коментар КК України. С. 656.
70 Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 563.
71 BT-Drs. 19/24180, S. 34; Jäger. Rn. 4.
72 Вітвіцька С.С. Зазначена праця. С. 97.
73 Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 564.
74 КК України, ст. 7–8.

- including terrorism, drug trafficking, and corruption - where it suffices that the predicate offense would constitute an unlawful act under German law, regardless of its classification in the country of commission.[75] This partial waiver was required by EU Directive 2018/1673 for harmonized offenses.

As Ukraine advances toward EU accession, an equivalent adjustment - at minimum for EU-harmonized Euro-crimes - will be required. The German model provides a direct template.

6. Structural Comparison Table

Feature	**Art. 209/209-1 CCU (Ukraine)**	**§ 261 StGB (Germany, 2021)**
Predicate offenses	Catalog (broad but not universal)	All crimes (any unlawful act)
Subject matter	Property from catalogued crime	Any object from any unlawful act
Surrogates covered	Yes	Yes
Innocent prior acquisition	Not explicit	Explicit (Abs. 1 S. 2)
Intent required	Direct intent only	Conditional intent (+ recklessness)
Recklessness liability	No	Yes (Abs. 6)
Professional facilitators	Separate lighter provision (Art. 209-1)	Qualification within main offense (Abs. 4)
Self-money laundering	No express rule	Express exemption with exceptions (Abs. 7)
Foreign predicate offenses	Double criminality required	Waived for Euro-crimes (Abs. 9 Nr. 2)
Base sanction	3–15 years' imprisonment	Fine or up to 5 years imprisonment
Qualified sanction	Up to 15 years (organized group)	3 months–5 years for GwG obligated persons

Source: Own Compilation from German and Ukraine Material in the Seminar, cf. Bibliography.

IV. Conclusions

This paper set out in the beginning to answer a specific question: to what extent does the 2021 German reform of

[75] Böhme/Busch. S. 171.

§ 261 StGB offer a normative template for Ukrainian AML reform, and what elements should or should not be transposed? The answer that emerges from the comparative analysis is both encouraging and cautionary.

The encouraging part is that the German reform has produced structural clarity in several areas where Ukrainian law is genuinely deficient. The explicit treatment of self-money laundering in § 261 Abs. 7 StGB resolves a question that Ukrainian law leaves dangerously open. The mechanism of innocent prior acquisition in Abs. 1 S. 2 addresses a gap that could otherwise produce disproportionate cascade liability. The integration of professional-facilitator liability into the main offense, rather than a separate lighter provision, reflects a more accurate assessment of the seriousness of professional complicity. And the partial waiver of double criminality for Euro-crimes provides Ukraine with a direct template for the adjustment that EU accession will require.

The cautionary part concerns the all-crimes approach and recklessness liability - the signature innovations of the 2021 reform. These elements should not be transplanted into Ukrainian law. The all-crimes approach, as the German scholarly debate has demonstrated, sacrifices legal certainty without a constitutional justification adequate to the scope of the expansion. Recklessness liability, when combined with an unlimited predicate offense scope, creates potential criminal exposure for ordinary commercial conduct that cannot be reconciled with the guilt principle. The fact that these elements remain constitutionally contested in Germany itself - the German Constitutional Court, the BVerfG has not yet ruled on the 2021 reform - is sufficient reason for Ukraine not to replicate them during a period of ambitious legislative reform where the priority should be workable, proportionate, and durable norms rather than maximum coverage at any constitutional cost.

The concrete reform agenda for Ukrainian law that this comparison identifies is therefore selective rather than wholesale: expand the predicate offense catalogue toward but not to the all-crimes model, drawing on the EU Directive's list of mandatory predicates; introduce explicit provisions on self-money laundering and innocent prior acquisition modelled on the German text; integrate professional-facilitator liability into Art. 209 CCU while building in statutory safe harbours for entities that have complied with due diligence obligations; and adjust the double criminality rule for Euro-crimes in line with EU accession requirements. These targeted reforms would substantially improve the effectiveness and coherence of Ukrainian AML law while preserving the proportionality and legal certainty that the German experience shows may be sacrificed when legislative ambition outruns constitutional discipline.

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