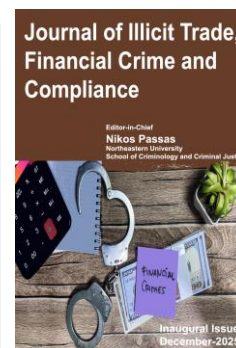


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Challenges of Artificial Intelligence and Money Laundering in The Application of International Criminal Law

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ABSTRACT

On May 31, 2024, the European Union approved a new anti-money laundering directive, 1640, and two other regulations, 1620, which establishes the European Anti-Money Laundering Authority, and 1624, which provides directly applicable rules on preventing money laundering by the financial system. The European Union also adopted Regulation 1689 on artificial intelligence (AI) on June 13, 2024.

The three regulations and the Directive represent a huge challenge for the application of international criminal law due to the emergence of AI, with a dizzying and frightening development.

Methodology

This paper studies the challenges of artificial intelligence and money laundering in the application of international criminal law using the abstract logical method specific to criminal law, combined with the use of the explanatory causal method in criminological aspects.

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Research Question and Approach

On May 31, 2024, the European Union approved a new anti-money laundering directive, 1640², and two other regulations, 1620³, which establishes the European Anti-Money Laundering Authority, and 1624⁴, which provides directly applicable rules on preventing money laundering by the financial system. The European Union also adopted Regulation 1689⁵ on artificial intelligence (AI) on June 13, 2024.

The three regulations European Union 1620/2024, 1624/2024 and 1689/2024, and the Directive 1640/2024 represent a huge challenge for the application of international criminal law due to the emergence of AI, with a dizzying and frightening development, to which an infallible halo is given that does not correspond to reality, with an ambivalent effect, which makes life easier but creates new risks that must be addressed within the security-freedom framework, because although AI tools can revolutionize the fight against money laundering, it is necessary to maintain a balance between effectiveness and safeguarding fundamental rights.

Thus, article 76.5 of Regulation 1624/2024 of 31 May on the prevention of money laundering allows decisions involving AI systems, but article 75 g) only allows the sharing of information generated by AI if it has been subject to appropriate human supervision, in accordance with the Union's demands for "human-centered and trustworthy" AI (whereas 1 of Regulation 1689/2024 of 13 June on AI). Furthermore, despite the current existence of European anti-money laundering regulations, and the survival of the Union depends on their success, the crime of money laundering is not punished equally in the criminal codes of each European country, and the Community does not have European criminal law to protect its own interests. Although the Union increasingly directly applies rules, such as Regulation 1624/2024, which complains of fragmented approaches and inconsistent application (whereas 2).

Finally, the fight against money laundering requires, according to Regulation 1624/2024, "rapid and continuous adaptations of the legal framework" in the face of the constant evolution of technology and the means available to criminals (whereas 83) and requires preserving "social and financial inclusion" (whereas 78). In this sense, the Regulation highlights the positive aspects of new products but also warns that "it is important to be vigilant regarding the risks associated with the supply of innovative products or services" (whereas 7), which will be addressed in this paper.

Results and Discussion

The Ambivalent Effect of AI

The "new scenario"⁶ of Digitalization has an "ambivalent effect"⁷: "it has raised barriers and fostered distance, but it has also made possible interactions of very different types"⁸, it makes life easier, although it also creates new risks⁹, which must be addressed in the framework of the "security-freedom conflict"¹⁰, because although the tools of

²Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849.

³Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

⁴Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

⁵Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

⁶PÉREZ GONZÁLEZ, S., "Responsabilidad penal Empresarial por el uso de sistemas de inteligencia artificial", in GONZÁLEZ, M.R./ POELEMANS, M. (Coords.), Estudios sobre los efectos de la aplicación de la inteligencia artificial en el Sistema jurídico, Bosch, Barcelona, 2024, p. 575.

⁷INNERARITY GRAU, D., "¿Vivimos en una sociedad más controlada y menos libre?", in SANTALLA PULIDO, M. (Coord.), ¿En qué hemos cambiado?, La sociedad poscovid, 2, La Voz de Galicia, A Coruña, 2023, p. 50.

⁸Ibidem.

⁹Cfr. MUÑOA VIDAL, T., "Blanqueo de dinero y mundo digital", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N. (Coords.), IX congreso sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2024, p. 553.

¹⁰MORÓN PENDÁS, I., "La utilidad de las nuevas tecnologías en la prevención del blanqueo de dinero", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., IX congreso..., cit., p. 604.

artificial intelligence can revolutionize the fight against money laundering, it is necessary to maintain a balance between efficiency and safeguarding fundamental rights¹¹.

According to Regulation 1624/2024, the fight against money laundering requires "rapid and continuous adaptations of the legal framework" in the face of the constant evolution of technology and the means available to criminals¹² and requires preserving "social and financial inclusion"¹³. In this sense, the Regulation highlights the positive aspects of new products but also warns that "it is important to be vigilant regarding the risks associated with the supply of innovative products or services"¹⁴.

Risks of AI

Artificial intelligence is not about the "panacea"¹⁵ or the much-sought remedy that cures all ills, but artificial intelligence "is fallible"¹⁶ due to programming defects and lack of control of the algorithms¹⁷, it is given a halo of infallibility that does not correspond to reality, since these are highly manipulable statistics and methodologies, because all artificial intelligence requires manual work of constant correction and algorithms adapt to prejudices and systems of oppression¹⁸, are insecure in their scope and reliability, lack transparency and are not reproducible¹⁹, which is why the secrecy of algorithms has been compared to ancient alchemy and some results have been criticized because it is not known how to get there²⁰. In addition, the environmental²¹ and energy²² catastrophe caused by artificial intelligence was denounced, since, as an example, a conversation with ChatGPT consumes half a liter of water and tens of millions are made daily²³.

Certainly the absence of credit risk, as there is normally a prepayment, discourages service providers from obtaining complete and accurate information about clients or the nature of commercial relationships²⁴, providers who usually use "weak technology"²⁵; the quality of the data that generates false positives and negatives²⁶ and the "voracity" of the markets to access "all types of data for the most varied uses" and its obtaining outside the interested parties contrary to the Right to Privacy has been denounced²⁷, with the problems of liability for damages caused by AI²⁸ in models designed for people, physical or legal,²⁹ and the dangers of both algorithms ending judicial

¹¹Cfr. PAVLIDIS, I.G., "Deploying artificial intelligence for anti-money laundering and asset recovery: the dawn of a new era", in *Journal of Money Laundering Control*, vol. 26, nº 7, 2023, p. 155.

¹²Whereas 83.

¹³Whereas 78.

¹⁴Whereas 7.

¹⁵MIRANDA RODRIGUES, A., "Inteligência artificial no Direito penal – a Justiça preditiva entre a americanização e a europeização", in MIRANDA RODRIGUES, A. (Coord.), *A inteligência artificial no Direito penal*, I, Almedina, Coimbra, 2022, p. 51.

¹⁶CARO CORIA, D.C., "Compliance, neurociencias e inteligencia artificial", in DEMETRIO CRESPO, E. (Dir.), *Derecho penal y comportamiento humano. Avances desde la neurociencia y la inteligencia artificial*, Tirant lo Blanch, Valencia, 2022, p. 645.

¹⁷Ibidem.

¹⁸Cfr. JAUME PALASÍ, L., "¿Ha impulsado la pandemia la digitalización?", in SANTALLA PULIDO, M. (Coord.), *¿Estamos preparados para el mundo que viene? La sociedad poscovid*, 3, La Voz de Galicia, A Coruña, 2023, pp. 75, 77, 79 and 80.

¹⁹Cfr. DEMETRIO CRESPO, E., "El Derecho penal ante el desafío neurotecnológico y el algorítmico: reflexiones preliminares", in *Derecho penal y comportamiento...*, cit., 2022, p. 26.

²⁰Cfr. MARTÍNEZ GARAY, L., "¿Ciencia o alquimia? Algoritmos y transparencia en la valoración del riesgo de reincidencia", in DEMETRIO CRESPO, E., "Derecho penal y comportamiento...", cit., 2022, p. 498.

²¹Regulation (EU) 2023/1114, of May 31, on cryptoasset markets, in its whereas 7, highlights the possible adverse effects on the climate and the environment of the mechanisms to validate operations with cryptoassets.

²²Blockchain technology has a high cost due to the electrical consumption necessary for the encryption, due to the nodes that support the distributed registry that guarantee security (cfr. NAVARRO CARDOSO, F., "Blockchain, smart contract y compliance: anotaciones para el Derecho penal y procesal de la persona jurídica", in DEMETRIO CRESPO, E., *Derecho penal y comportamiento...*, cit., 2022, p. 679).

²³Cfr. JAUME PALASÍ, L., op. cit., pp. 76 and 77.

²⁴Cfr. FATF, *Money laundering using new payment methods*, October 2010, <http://www.fatf-gafi.org>, p. 21, §§58 and 61.

²⁵GÓMEZ INIESTA, D.J., "El uso de las monedas virtuales y el dinero electrónico en el delito de blanqueo y la Directiva 843/2018", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N. (Coords.), *VIII congreso internacional sobre prevención y represión del blanqueo de dinero*, Tirant lo Blanch, Valencia, 2021, p. 656.

²⁶Cfr. MIRANDA RODRIGUES, A., "Compliance inteligente e prevenção e luta contra o branqueamento", in MIRANDA RODRIGUES, A. (Coord.), *A inteligência artificial no Direito penal*, II, Almedina, Coimbra, 2022, p. 222.

²⁷MORÓN PENDÁS, I., op. cit., p. 604.

²⁸Cfr. PÉREZ GONZÁLEZ, S., op. cit., p. 575.

²⁹Cfr. MIRANDA RODRIGUES, A./AIRES DE SOUSA, S., "Algoritmos em contexto empresarial: vantagens e desafios à luz do Direito penal", in MIRANDA RODRIGUES, A. (Coord.), *A inteligência artificial no Direito penal*, II, Almedina, Coimbra, 2022, p. 36.

discretion³⁰ and transforming prisons into institutions of control rather than socialization³¹; and the delegation of judicial power to machines³² has even been described as a sacrifice or extinction of humanity and genocide³³.

In addition, security gaps have been detected in artificial intelligence and blockchain tools have been associated with the use of cryptocurrencies for money laundering³⁴, there are tumblers or multi-address mixers that guarantee anonymity³⁵, in fact mixer services processed the majority of bitcoins laundered³⁶, Regulation (EU) 2023/1113, of May 31, on information on transfers with funds and cryptoassets, warns of the high risk regarding money laundering of technologies designed for anonymity, citing "cryptoasset mixers"³⁷ and the Regulation (EU) 2023/1114, also of May 31, or MiCA Regulation, on cryptoasset markets, also added a section 6 to article 18 of Directive 2015/849 that obliges the European Banking Authority to pay special attention, by favoring anonymity, to mixing services.

In short, to condemn the dangers that artificial intelligence and new technologies represent with respect to money laundering, it has been said that the name of the search engine chosen on the Internet allows us to open "the gates of Dante Alighieri's hell"³⁸, so before clicking the button should remember what was written on the lintel of the door to hell: "*lasciate ogni speranza, voy che entrate*"³⁹.

Advantages of AI

However, artificial intelligence and the development of technologies, including the Internet, have implied unquestionable advantages⁴⁰, cryptographic security, the traceability of the blockchain, the development of user profiles⁴¹, patterns of money laundering and suspicion⁴², the obtaining of evidence by the prosecution through Transaction tracking through blockchain⁴³ and artificial intelligence even facilitates, through online resources, identity verification or other duties of diligence for the prevention of money laundering⁴⁴, such as in Fintech companies through big data systems and computer applications⁴⁵ or Regtech, technologies that facilitate compliance with regulatory requirements⁴⁶, v. gr., the Chainalysis Reactor investigation software is used judicially as expert evidence by identifying transaction users and analyzing movement flows, searching for bitcoin addresses to detect tax crimes⁴⁷, with which the encrypted protocols "serve investigation and repression organizations to track illicit operations and identify those responsible"⁴⁸, and Regulation 2023/1113, of May 31, on information on fund transfers and crypto assets, refers to the "use of analytical tools based on distributed registry technology, to detect the origin or destination of cryptoassets"⁴⁹ and with a vision of the future obliges the Commission to present, until June 30, 2027, a report on technological solutions for compliance with the obligations imposed on cryptoasset service providers with the latest advances and the use of distributed ledger analytical tools to identify transfers as

³⁰Cfr. MIRANDA RODRIGUES, A., "Em busca da racionalização na determinação da medida da pena - entre a digitalização e a necessidade de um «algoritmo legal a ser seguido»", in MIRANDA RODRIGUES, A. (Coord.), A inteligência artificial no Direito penal, III, Almedina, Coimbra, 2024, p. 220.

³¹Cfr. MIRANDA RODRIGUES, A./FIDALGO, S., "Pena de prisão e inteligência artificial - o que esperar de uma aliança (im)provável", in MIRANDA RODRIGUES, A. (Coord.), A inteligência artificial no Direito penal, III, Almedina, Coimbra, 2024, p. 264 and 265.

³²Cfr. MIRANDA RODRIGUES, A., "Inteligência artificial...", cit., 2022, p. 53.

³³Cfr. GRECO, L., "A impossibilidade jurídica de juizes robôs", in <http://www.institutoeduardocorreia.com.br/videos>, 2020, minutes 49 to 52.

³⁴Cfr. MOREIRA DOMINGOS, I., "Las nuevas tecnologías y el impacto del blanqueo de dinero procedente de la corrupción organizada en la democracia", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., IX congreso..., cit., 2024, p. 549.

³⁵Cfr. GÓMEZ INIESTA, D.J., "El uso de las monedas virtuales...", cit., p. 660.

³⁶Cfr. JOFFRE CALASICH, F., "Criptocriminalidad", in MEIROVICH, G.D./BERRUEZO, R. (Dirs.), Ilícitos económicos y evidencia digital, Editores Fondo Editorial, Buenos Aires, 2022, pp. 190 and 195.

³⁷Whereas 17.

³⁸SALAZAR ICAZA, J.C., "Blanqueo de dinero y medios digitales", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., IX congreso..., cit., 2024, p. 558.

³⁹DANTE ALIGHIERI, Divina Comedia, translated by Cayetano Rosell, illustrated by Gustavo Doré, Montaner y Simón editors, Barcelona, 1870, p. 13, song 3, verse 9.

⁴⁰Cfr. MATA BARRANCO, N.J. DE LA, "Ilícitos vinculados al ámbito informático", in CUESTA ARZAMENDI, J.L. DE LA (Dir.), Derecho penal informático, Civitas/Thomson Reuters/Aranzadi, Cizur Menor, 2020, p. 16.

⁴¹Cfr. GÓMEZ INIESTA, D.J., "El uso de las monedas virtuales...", cit., pp. 652 and 663.

⁴²Cfr. MIRANDA RODRIGUES, A., "Compliance inteligente...", cit., 2022, p. 218.

⁴³Cfr. MOREIRA DOMINGOS, I., op. cit., p. 550.

⁴⁴Vid. The money laundering officer's practical handbook 2011, Compliance training products limited, Cambridge, pp. 37-39 and 54.

⁴⁵Cfr. <http://www.iebschool.com>.

⁴⁶Cfr. MIRANDA RODRIGUES, A., "Compliance inteligente...", cit., 2022, p. 216.

⁴⁷Cfr. JOFFRE CALASICH, F., op. cit., p. 191, n. 20.

⁴⁸FERRÉ OLIVÉ, J.C., "Los hechos previos del blanqueo, con especial consideración en la ciberdelincuencia y los delitos antecedentes en la Directiva 2018/1673", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., IX congreso..., cit., 2024, p. 253.

⁴⁹Whereas 17.

well as trends in the use of self-hosted addresses to make transfers without third-party intervention and their risks for money laundering⁵⁰.

AI and Compliance

It is not about artificial intelligence based on big data deciding innocence or guilt, since justice is not programmable and requires human intervention, but about a collaborative model between people and machines that process a large amount of information to make predictions⁵¹, with the ability to filter and analyze almost unlimited data⁵². Nor is it just that compliance programs exempt or mitigate the criminal liability of legal entities and that they have an evidentiary function, but that artificial intelligence and new technologies incorporated into compliance programs must provide added value to management business and play a more proactive or preventive role, warning of risks, than reactive, reacting against dangers that have already materialized⁵³, but without reaching a "surveillance society"⁵⁴

Ethical Considerations

On the other hand, artificial intelligence is in the hands of large technology companies more powerful than many states, which by using "secret and industrial property"⁵⁵ can end up violating "the most basic constitutional principles and rights, such as non-discrimination or freedom of information"⁵⁶ and the proof by private algorithms challenges the presumption of innocence and the contradiction⁵⁷ or equality of arms, due to its opacity⁵⁸. The replacement of the judge by the AI also violates the constitutional principle of human dignity.⁵⁹ Obviously, "innovation and development are permanent sources of tension for the Law"⁶⁰, forcing it to "redefine categories or even generate new ones"⁶¹. Therefore, the risks of artificial intelligence must be offset by "reliable"⁶² AI regulation that protects, among many other things, from algorithmic bias⁶³.

In this sense, the Presidency of the Council and the negotiators of the European Parliament reached an agreement in December 2023 on the Artificial Intelligence Regulation to ensure that its use in Europe is safe and respects both fundamental rights and the values of the Union⁶⁴. After two marathon sessions, of 22 and 14 hours, a framework was agreed upon so that technological innovation is guided by ethical and legal principles⁶⁵, with a risk-based approach that requires stricter standards for cases of greater danger, evaluations of impact on fundamental rights prior to the implementation of high-risk artificial intelligence systems and prohibitions on uses of artificial intelligence that entail unacceptable risks, such as cognitive behavioral manipulation, indiscriminate tracking of facial images and some cases of police surveillance predictive, although exceptionally police emergency procedures are allowed to use artificial intelligence tools without assessment or remote biometric identification in certain crimes and real threats, such as terrorism or more serious crimes⁶⁶. The Regulation also affects generative artificial intelligence models, such as ChatGPT, with rules to guarantee transparency and risk management, as well

⁵⁰Cfr. Art. 37.3, b) and e).

⁵¹Cfr. MIRANDA RODRIGUES, A., "Compliance inteligente...", cit., 2022, pp. 212, 215 and 219-221.

⁵²Cfr. CARO CORIA, D.C., op. cit., pp. 638 and 639.

⁵³Cfr. NAVARRO CARDOSO, F., op. cit., pp. 691 and 692.

⁵⁴Cfr. MIRANDA RODRIGUES, A., "Compliance criminal digital - a aliança ambígua entre a prevenção e a repressão da criminalidade empresarial", in MIRANDA RODRIGUES, A. (Coord.), *A inteligência artificial no Direito penal*, III, Almedina, Coimbra, 2024, p. 108.

⁵⁵CARO CORIA, D.C., op. cit., p. 633.

⁵⁶Ibidem.

⁵⁷Cfr. MIRANDA RODRIGUES, A./AIRES DE SOUSA, S., op. cit., 2022, p. 36.

⁵⁸Cfr. MIRANDA RODRIGUES, A., "Inteligência artificial...", cit., 2022, p. 16.

⁵⁹Cfr. GRECO, L., op. cit., 2020, minute 54.

⁶⁰NAVARRO CARDOSO, F., op. cit., p. 692.

⁶¹Ibidem.

⁶²PÉREZ GONZÁLEZ, S., op. cit., 2024, p. 591.

⁶³Cfr. CARO CORIA, D.C., op. cit., pp. 651 and 652.

⁶⁴Cfr. CONSEJO EUROPEO, Reglamento de inteligencia artificial: el Consejo y el Parlamento alcanzan un acuerdo sobre las primeras normas del mundo en materia de inteligencia artificial, in <http://www.consilium.europa.eu/es/press/press-releases/2023/12/09>, p. 1.

⁶⁵Cfr. PARRA, S., "La UE pacta la primera ley sobre inteligencia artificial del mundo: usos prohibidos, multas y antecedentes", in <http://www.nationalgeographic.com.es>, pp. 4 and 6.

⁶⁶Cfr. CONSEJO EUROPEO, op. cit., pp. 3-5.

as copyright⁶⁷, which has already generated lawsuits against the companies that created ChatGPT and other popular platforms artificial intelligence⁶⁸.

Thus, Regulation 1624/2024 on the prevention of money laundering allows decisions involving AI systems⁶⁹, but only allows the sharing of information generated by AI if it has been subject to appropriate human supervision⁷⁰, in accordance with the Union's demands for "human-centered and trustworthy"⁷¹.

Application of International Criminal Law

The future in the application of international criminal law is uncertain. In this area, there is not "an autonomous doctrinal body sufficiently endowed with general principles"⁷² and initiatives arose for the construction of a European criminal law in a broad sense that have not yet become positive law⁷³, such as the *Corpus Iuris*, a doctrinal text commissioned by the European Parliament and the Commission from a group of experts led by Professors Tiedemann and Delmas-Marty⁷⁴, or the so-called euro crimes. Therefore, there is no "something similar to a European Criminal Code"⁷⁵, although there are criminal harmonization directives with minimum standards on the definition of crimes and sanctions as well as intense judicial cooperation⁷⁶. It is a "Europeanization of national criminal law"⁷⁷, and not an "authentic"⁷⁸ or "properly European criminal law"⁷⁹, a Europeanized national law in which the importance of harmonization through directives without direct effectiveness but which must be transposed in each country is indisputable⁸⁰. Despite this "clear legal basis"⁸¹, since the Lisbon Treaty of 2008, the political basis for the construction of a European criminal law is uncertain, at a time when several countries and political parties question the idea of Europe⁸², and also there are "strong resistances"⁸³ and legal difficulties "to unify criteria at the international level"⁸⁴, such as in matters of criminal liability of legal entities⁸⁵.

However, money laundering, due to globalization⁸⁶, has been "the center of gravity of an intense network of initiatives"⁸⁷ in the international area, and continues to be among "the great challenges of criminal policy"⁸⁸ in the world. The fight against money laundering has generated a necessary internationalization of criminal law due to the common objectives that exceed the sovereignty of each country and the facilities that "legislative and judicial uniformity"⁸⁹ represents, although this globalization has also been highly criticized by those who "They oppose a world government of the economy and defend the reaffirmation of the identity of the peoples"⁹⁰.

⁶⁷Cfr. PARRA, S., op. cit., p. 5.

⁶⁸Vid. GRYNBAUM, M.M./MAC, R., "The New York Times demanda a OpenAI y Microsoft por el uso de obras con derechos de autor en la IA", The New York Times, 27 de diciembre de 2023, pp. 1-4.

⁶⁹Cfr. article 76.5.

⁷⁰Cfr. article 75 g).

⁷¹Whereas 1 of Regulation 1689/2024 of 13 June on AI.

⁷²GONZÁLEZ CUSSAC, J.L., "De nuevo sobre la construcción de un Derecho penal económico europeo", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N. (Coords.), X congreso internacional sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2025, p. 449.

⁷³Cfr. LORENZO SALGADO, J.M., "Consideraciones sobre el dogma legalista como principio básico en la construcción de un Derecho penal europeo", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., VIII congreso..., cit., 2021, p. 813.

⁷⁴Cfr. FERRÉ OLIVÉ, J.C., "El Corpus Iuris de normas penales para la tutela de los intereses financieros de la Unión Europea. Desde el proyecto europeo hasta la actualidad", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., VIII congreso..., cit., 2021, p. 781.

⁷⁵FOFFANI, L., "Exigencias fundamentales para la construcción de un Derecho penal europeo", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., VIII congreso..., cit., 2021, p. 806.

⁷⁶Cfr. FOFFANI, L., op. cit., 2021, p. 807.

⁷⁷FERNÁNDEZ TERUELO, J.G., "Evolución del Derecho penal económico europeo", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., VIII congreso..., cit., 2021, p. 768.

⁷⁸GONZÁLEZ CUSSAC, J.L., op. cit., 2025, p. 503.

⁷⁹LORENZO SALGADO, J.M., "Consideraciones...", cit., 2021, p. 814.

⁸⁰Ibidem.

⁸¹FOFFANI, L., op. cit., 2021, p. 809.

⁸²Ibidem.

⁸³GONZÁLEZ CUSSAC, J.L., op. cit., 2025, p. 499.

⁸⁴FERRÉ OLIVÉ, J.C., "El Corpus Iuris...", cit., 2021, p. 782.

⁸⁵Vid. ABEL SOUTO, M., "Algunas discordancias legislativas sobre la responsabilidad criminal de las personas jurídicas en el Código penal español", Revista General de Derecho Penal, 2021a, No. 35, pp. 1-62.

⁸⁶Vid. ABEL SOUTO, M., El blanqueo de dinero en la normativa internacional: especial referencia a los aspectos penales, Universidad de Santiago de Compostela, 2002, pp. 48-50.

⁸⁷FOFFANI, L., op. cit., 2021, p. 825.

⁸⁸Ibidem.

⁸⁹FERNÁNDEZ TERUELO, J.G., op. cit., 2021, p. 767.

⁹⁰Ibidem.

Money laundering belongs to the "hard core"⁹¹ of euro crimes and constitutes, from the beginning and in the last 35 years, "a paradigmatic example of a European criminal policy that aspires to become authentic European criminal law"⁹², that is why, it has been rightly described as "the type of crime most intensely determined by the community harmonization process"⁹³, since seven directives and four regulations in less than three and a half decades⁹⁴ on the same crime establish a record that is difficult to surpass, although, surprisingly, the Union was slow to adopt one real criminal harmonization, since the first five directives refer to administrative prevention measures, despite its great criminal political impact that motivated the criminalizing wave of money laundering throughout Europe, and only Directive 2018/1673 is a true instrument of penal harmonization⁹⁵.

If progress is to be made in the construction of European criminal law, it is essential to delimit precisely criminal law from administrative sanctioning law⁹⁶ and respect the principle of legality, both in its democratic aspect, according to which the "structure of the Community legislative process must be perfected"⁹⁷ to overcome the traditional democratic deficit⁹⁸, and in its basic foundations of liberal criminal law, through directives without overlapping actions⁹⁹ that "duly delimit the criminal sphere, without indeterminacy zones or elastic clauses, avoiding, in short, ambiguities and trying to achieve an obligatory degree of concretion"¹⁰⁰. Only in this way could the task of national legislators be facilitated and harmonization be reconciled with the validity of the principle of legality¹⁰¹.

Also, it is essential in the construction of European criminal law to respect the principle of proportionality, punishing only suitable conduct that affects the vital interests for community coexistence, necessary or indispensable to protect the legal interest and proportional *stricto sensu* or without limitations of rights superior to those protected¹⁰².

Consequently, it should be criticized that Directive 2018/843, in addition to violating proportionality with invasive processing of personal information in prepaid cards with operations of 50 euros¹⁰³, has forgotten both providers of virtual assets, crypto assets or tokens, which are not virtual currencies¹⁰⁴, such as "virtual to virtual"¹⁰⁵, exchanges, and that Directive 2018/1673, on criminal aspects¹⁰⁶, leans towards "solutions subject to abundant doctrinal criticism"¹⁰⁷, such as the violation of the principle of proportionality punishing money laundering for many minor

⁹¹FOFFANI, L., op. cit., 2021, p. 810.

⁹²FOFFANI, L., op. cit., 2021, p. 809.

⁹³FERNÁNDEZ TERUELO, J.G., op. cit., 2021, p. 777.

⁹⁴Vid. ABEL SOUTO, M., "Las reformas penales sobre el blanqueo de dinero introducidas en España por la Ley orgánica 6/2021, de 28 de abril, y su aplicación jurisprudencial hasta 2024", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., X congreso..., cit., 2025, pp. 347-353.

⁹⁵Cfr. FOFFANI, L., op. cit., 2021, p. 808.

⁹⁶Cfr. GONZÁLEZ CUSSAC, J.L., op. cit., 2025, p. 512.

⁹⁷LORENZO SALGADO, J.M., "Consideraciones...", cit., 2021, p. 826.

⁹⁸Vid. ABEL SOUTO, M., El blanqueo..., cit., 2002, pp. 185-200.

⁹⁹Cfr. VIDALES RODRÍGUEZ, C., "Los principios de legalidad y proporcionalidad en la Directiva 2018/1673, del Parlamento Europeo y del Consejo, de 23 de octubre de 2018, relativa a la lucha contra el blanqueo de capitales mediante el Derecho penal", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., X congreso..., cit., 2025, p. 468.

¹⁰⁰LORENZO SALGADO, J.M., "Consideraciones...", cit., 2021, p. 839.

¹⁰¹Ibidem.

¹⁰²Vid. LORENZO SALGADO, J.M., "Estructura del principio de proporcionalidad penal y su aplicación en la Unión Europea", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., X congreso..., cit., 2025, pp. 519-552.

¹⁰³GÓMEZ INIESTA, D.J., "El uso de las tarjetas de prepago para el blanqueo y la financiación terrorista y la Directiva 843/2018", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N. (Coords.), VII congreso sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2020, pp. 326 and 328.

¹⁰⁴Cfr. LORENZO SALGADO, J.M., "El blanqueo de dinero procedente de los delitos descritos en los artículos 368 a 372 del CP y las nuevas tendencias de financiación del terrorismo advertidas por las Directivas de 2018", in ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N., VII congreso..., cit., 2020, p. 461.

¹⁰⁵GÓMEZ INIESTA, D.J., "El uso de las monedas virtuales...", cit., p. 683.

¹⁰⁶Vid. ABEL SOUTO, M., "Blanqueo de dinero, responsabilidad criminal de las personas jurídicas y directivas de 2018", SANZ HERMIDA, A. M. (dir.), La justicia penal del siglo XXI ante el desafío del blanqueo de dinero. 21st century criminal justice facing the challenge of money laundering, Valencia: Tirant lo Blanch, 2021b, pp. 41-71. There is a English version of this article under the title "Money laundering, criminal responsibility of legal persons and 2018 directives", in pp. 301-334 and in Journal of Applied Business & Economics, volume 22, 2020, pp. 205-222.

¹⁰⁷LORENZO SALGADO, J.M., "El blanqueo...", cit., 2020, p. 467.

offenses¹⁰⁸ and the aggravation of money laundering in response to various previous crimes¹⁰⁹, even though it uses "optional transposition clauses"¹¹⁰, which can determine "that the internal regulations "allow themselves to be guided" and develop a criminal policy that is highly debatable or directly misguided"¹¹¹.

Furthermore, despite the current existence of European anti-money laundering regulations, and the survival of the Union depends on their success, the crime of money laundering is not punished equally in the criminal codes of each European country, and the Community does not have European criminal law to protect its own interests. Although the Union increasingly directly applies rules, such as Regulation 1624/2024, which complains of fragmented approaches and inconsistent application¹¹².

Conclusion And Implications

The three regulations European Union 1620/2024, 1624/2024 and 1689/2024, and the Directive 1640/2024 represent a huge challenge for the application of international criminal law due to the emergence of AI, with a dizzying and frightening development, , to which an infallible halo is given that does not correspond to reality, with an ambivalent effect, which makes life easier but creates new risks that must be addressed within the security-freedom framework, because although AI tools can revolutionize the fight against money laundering, it is necessary to maintain a balance between effectiveness and safeguarding fundamental rights through a "human-centered and trustworthy" AI. Furthermore, despite the current existence of European anti-money laundering regulations, and the survival of the Union depends on their success, the crime of money laundering is not punished equally in the criminal codes of each European country, and the Community does not have European criminal law to protect its own interests. Although the Union increasingly directly applies rules, such as Regulation 1624/2024, which complains of fragmented approaches and inconsistent application (whereas 2). The future in the application of international criminal law is uncertain and initiatives arose for the construction of a European criminal law in a broad sense that have not yet become positive law. If progress is to be made in the construction of European criminal law, it is essential to delimit precisely criminal law from administrative sanctioning law and respect the principle of legality and proportionality.

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- [3] ABEL SOUTO, M., "Blanqueo de dinero, responsabilidad criminal de las personas jurídicas y directivas de 2018", SANZ HERMIDA, A. M. (dir.), *La justicia penal del siglo XXI ante el desafío del blanqueo de dinero. 21st century criminal justice facing the challenge of money laundering*, Valencia: Tirant lo Blanch, 2021b, pp. 41-71. There is a English version of this article under the title "Money laundering, criminal responsibility of legal persons and 2018 directives", in pp. 301-334 and in *Journal of Applied Business & Economics*, volume 22, 2020, pp. 205-222.
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¹⁰⁸Cfr. VIDALES RODRÍGUEZ, C., *op. cit.*, 2025, p. 474.

¹⁰⁹Vid. ABEL SOUTO, M., "Las reformas...", *cit.*, 2025, pp. 347-369.

¹¹⁰LORENZO SALGADO, J.M., "El blanqueo...", *cit.*, 2020, p. 467.

¹¹¹Ibidem.

¹¹²Whereas 2.

- [8] ABEL SOUTO, M./LORENZO SALGADO, J.M./SÁNCHEZ STEWART, N. (Coords.), X congreso internacional sobre prevención y represión del blanqueo de dinero, Tirant lo Blanch, Valencia, 2025.
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