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## NON-FUNGIBLE TOKENS AND ART TOKENIZATION: A TOOL FOR MONEY LAUNDERING?

### 1. INTRODUCTION

The art market constitutes one of the most influential economic sectors in the contemporary world. Every day we get new reports announcing new auctions, record-breaking prices, or the discovery of emerging talents promising substantial financial returns. Art collecting is not merely a means of asserting social prestige but also serves as an avenue for personal expression and reflects individual interests and aesthetic preferences.<sup>1</sup> The origins of the art trade can be traced back to ancient times. However, it is essential to recognize that both antiquity and the medieval period were primarily characterized by the production of artworks commissioned for specific purposes,<sup>2</sup> but since the late fourteenth century art collecting and patronage has been flourishing on an unprecedented scale. By the fifteenth century, particular works of art and architecture had come to be closely associated with their patrons. The secondary art market, on which artworks were resold to a new owner rather than purchased directly from the artist, emerged in the sixteenth

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<sup>1</sup> K. WENZEL-VOLLENBROICH, *Motivation and Expectations of Art Collectors in Today's Art Market* <https://artpiq.net/blogs/news/motivation-and-expectations-of-art-collectors-in-todays-art-market> [access 1 December 2025].

<sup>2</sup> M. CARTWRIGHT, *Trade in Ancient Greece* <https://www.worldhistory.org/article/115/trade-in-ancient-greece/> [access 1 December 2025].

century, accompanied by the rise of art collecting. This development led to the appearance of art dealers and the establishment of auction houses. Significantly, Christie's and Sotheby's, both established in eighteenth-century London, are still the leading auction houses for the art market. Initially specializing in antiquities, later they expanded globally, establishing multiple branches.<sup>3</sup>

Today, the art market has reached an advanced stage of development, shaped by time-honored institutions such as galleries and auction houses, along with mechanisms refined over time. Nowadays, a distinct shift toward the virtual sphere is redefining the way art is created, traded, and experienced.<sup>4</sup> Online auctions have become an integral part of even the most traditional auction houses, while the majority of commercial galleries now facilitate online transactions.<sup>5</sup> In March 2021, the global art market turned its attention to an auction at Christie's, during which Mike "Beeple" Winkelmann's digital artwork *Everydays: The First 5000 Days* was sold for the unprecedented sum of over \$69 million.<sup>6</sup> This sale positioned Beeple as the third most expensive living artist in the world, after Jeff Koons (\$91.1 million for a single work) and David Hockney (\$90.3 million for a single work).<sup>7</sup> Winkelmann's non-fungible-token was the first purely digital artwork ever auctioned by Christie's.<sup>8</sup>

<sup>3</sup> H. SAMSONOWICZ, *Uwagi nad genezą mecenatu i jego skutkami gospodarczymi (przełom średniowiecza i czasów nowożytnych)*, «Roczniki Humanistyczne» 34.2/1986, pp. 417-418.

<sup>4</sup> BusinessWorld, *How Online Platforms Are Transforming The Way We Interact With Art* <https://www.businessworld.in/article/how-online-platforms-are-transforming-the-way-we-interact-with-art-538727> [access 1 December 2025].

<sup>5</sup> E. SIDOROVA, *The Cyber Turn of the Contemporary Art Market*, «Arts» 2019, 8.3/2019, pp. 84-87.

<sup>6</sup> Christie's, *Results: Beeple's Purely Digital NFT-Based Work of Art Achieves \$69.3 Million at Christie's* <https://press.christies.com/results-beeples-purely-digital-nft-based-work-of-art-achieves-693-million-at-christies-1> [access 1 December 2025].

<sup>7</sup> C. GALAMBOSOVA, N. GANBOLD, *Top 10 Most Expensive Artworks by Living Artists (Updated)* <https://www.dailyartmagazine.com/10-most-expensive-artworks-by-living-artists/> [access 1 December 2025].

<sup>8</sup> L. KATZ, *First Christie's Auction Devoted Exclusively To AI Art Sparks Backlash* <https://www.forbes.com/sites/lesliekatz/2025/02/09/christies-to-hold-first-auction-devoted-solely-to-ai-art-amid-pushback/> [access 1 December 2025].

What exactly is *Everydays: The First 5000 Days*, and how can it be classified? It is an NFT, or non-fungible token, which may be defined as “a unique digital identifier that is recorded on a blockchain and is used to certify ownership and authenticity; it cannot be copied, substituted, or subdivided.”<sup>9</sup> The blockchain referenced in NFT definitions is a continuously expanding chain of cryptographically linked blocks, each containing a timestamp, transaction data, and a hash of the previous block, ensuring an immutable connection between them. The key feature of NFTs is their forgery resistance, enabling the secure purchase of shares in artworks and other assets. Remarkably, NFTs include both purely digital art and tokenized physical artworks.<sup>10</sup> The tokenization of physical artworks expands access to this traditionally exclusive market by enabling fractional ownership.

Although some perceive the NFT market as a temporary trend, an ultimate proof of downfall or just a speculative “bubble,”<sup>11</sup> its value is undeniable and has stabilized at a substantial level, with signs of sustained growth. Estimates regarding the actual size of the market and its future trajectory vary significantly across different reports. According to the *NFTs Market Report and Forecast 2024-2032*, the global NFT market was valued at approximately \$27.31 billion in 2023 and is projected to reach \$264.6 billion by 2032.<sup>12</sup> Another report suggests that the market is expected to expand by \$84.13 billion between 2025 and 2029.<sup>13</sup> Fur-

<sup>9</sup> A. SESTINO, G. GUIDO, A.M. PELUSO, *Non-Fungible Tokens (NFTs) Examining the Impact on Consumers and Marketing Strategies*, London 2022, pp. 15-17.

<sup>10</sup> The concept of NFTs extends beyond the art market; an NFT token can serve as a medium representing the value of various unique assets, including collectibles, gaming items, music, virtual real estate, and admission tickets. Moreover, it can function as a purely digital asset within the metaverse.

<sup>11</sup> A. WHITAKER, *Art and Blockchain: A Primer, History, and Taxonomy of Blockchain Use Cases in the Arts*, «Artivate» 8.2/2019, pp. 21-25.

<sup>12</sup> GlobeNewswire, \$264.6 Bn Non-Fungible Tokens (NFTs) Market Research and Forecasts 2024-2032 <https://www.globenewswire.com/news-release/2025/01/13/3008758/28124/en/264-6-Bn-Non-Fungible-Tokens-NFTs-Market-Research-and-Forecasts-2024-2032.html> [access 1 December 2025].

<sup>13</sup> Yahoo!Finance, *Non-Fungible Token (NFT) Market to grow by USD 84.13 Billion (2025-2029)* <https://finance.yahoo.com/news/non-fungible-token-nft-market-225400031>.

thermore, Binance reports that “the NFT market has grown 220x since 2021.”<sup>14</sup> While some projections may seem overly optimistic—especially given the downturns the sector has experienced following its initial boom—available data indicate that the NFT market continues to operate at a substantial level. Rather than reflecting a decline, current trends suggest a phase of consolidation and stabilization, marked by more moderate growth dynamics and reduced speculative pressure.

NFTs were designed to redefine digital ownership and create a more democratic ecosystem by removing intermediaries like auction houses and galleries, enabling artists to benefit more conveniently from their work.<sup>15</sup> However, NFTs also present heightened risks, particularly in terms of fraud, sanction evasion, and money laundering. According to the Elliptic NFT Report 2022 Edition, from July 2021 to July 2022, over \$100 million worth of NFTs were publicly reported stolen in scams.<sup>16</sup> Similarly, in its report *Money Laundering and Terrorist Financing in the Art and Antiquities Market*, the Financial Action Task Force (FATF) highlights the significant vulnerability of NFTs as instruments used to conceal the origin of illicit funds. The report further underscores the challenge of providing a clear legal classification for NFTs and points to the lack of regulatory consistency in overseeing this market.<sup>17</sup>

Given that the NFT market is relatively young, there is a shortage of extensive research on the phenomenon and the extent of criminal activities associated with it. In this case, even more than in other more extensively researched areas, analyses must rely predominantly on

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html [access 1 December 2025].

<sup>14</sup> Binance Square, *Non-Fungible Tokens (NFT) Market Report 2023* <https://www.binance.com/en/square/post/1888759507698> [access 1 December 2025].

<sup>15</sup> L. BRANDES, M. CLEGG, E. DE BELLIS et al., *Crypto-marketing: how non-fungible tokens (NFTs) challenge traditional marketing*, «Marketing Letters» 33.6/2022, pp. 705-708.

<sup>16</sup> Elliptic, *NFT Report 2022 Edition* <https://www.elliptic.co/hubfs/NFT%20Report%202022.pdf> [access 1 December 2025].

<sup>17</sup> FATF, *Money Laundering and Terrorist Financing in the Art and Antiquities Market* <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Money-Laundering-Terrorist-Financing-Art-Antiquities-Market.pdf.coredownload.pdf> [access 1 December 2025].

estimates and assumptions. The aim of this article is to present the NFT market and the process of art tokenization in the context of the associated risks. Paragraphs 2 and 3 define the key concepts (tokenization, NFT, blockchain) within the current legal framework, focusing on FATF standards and EU regulations, along with NFT-specific characteristics. Paragraphs 4 and 5 examine the money laundering risks, detailing how criminals may exploit NFTs, and outlining countermeasures. The article concludes with key findings and proposals for amendments to legislation currently in force.

## 2. NFTs AND TOKENIZATION: CHARACTERISTICS AND CATEGORIZATION

In its simplest form, the term “tokenization” is the creation of tokens with an assigned value. More precisely, this involves converting real-world assets or rights into digital units (tokens) recorded on a blockchain, enabling their storage, transfer, and division into smaller units.<sup>18</sup> Cryptographic tokens can be classified in several major categories based on their application, technology, and function within the blockchain ecosystem. In terms of fungibility, tokens can be divided into fungible and non-fungible tokens.<sup>19</sup> Fungible tokens include payment tokens, utility tokens, and security tokens, which can be used as a store of value, a unit of account, or a medium of exchange in blockchain transactions. The best-known members of this category are Bitcoin (BTC), Ethereum (ETH), USDT, and DAI. In contrast, non-fungible tokens (NFTs), are characterized by their uniqueness, meaning that none of the tokens in the group are mutually interchangeable.<sup>20</sup> A specific subcategory of NFTs

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<sup>18</sup> M. NIXON, G. WANG, *SoK: Tokenization on Blockchain*, «Cryptology ePrint Archive» 1536/2021, p. 3.

<sup>19</sup> The concept of „semi-fungible tokens” is also occasionally referenced.

<sup>20</sup> A.G. GARNETT, *Digital tokens: 8 types of crypto coins* <https://money.britannica.com/money/digital-token-types> [access 1 December 2025].

comprises tangible tokens which are directly linked to physical assets.<sup>21</sup> Another criterion for classification based on functionality encompasses not only payment, utility, and security tokens but also includes, for example, governance tokens and stablecoins. There are numerous criteria for classifying tokens; therefore, the categorization I have given should not be regarded as an exhaustive framework. I will not be using further classification criteria in this study.

Although NFTs gained a significant amount of mainstream attention in 2021, their origins can be traced back to 2012 and the development of Bitcoin-based „Colored Coins.”<sup>22</sup> In 2017, Larva Labs introduced CryptoPunks, the first NFT collection on Ethereum, featuring 10,000 unique, algorithmically generated characters. This project partly inspired CryptoKitties, a game centered on trading virtual cats, which pioneered the ERC-721 token standard—now fundamental for NFTs. Apart from the ERC-721 standard, the market hosts a variety of other standards, including ERC-1155, EOSIO, Algorand, Tezos, and Flow.<sup>23</sup>

NFTs are distinguished by their uniqueness and immutability. Uniqueness means that an identical code cannot be generated, while blockchain registration provides a unique proof of ownership. Additionally, the blockchain records the NFT’s title, creator, and timestamp, collectively known as its “metadata.”<sup>24</sup> It is important to emphasize that owning an NFT linked to a specific digital artwork does not, by default, entail that all copies of the artwork available online must be automatically removed due to their alleged illegality. Purchasing an NFT grants ownership of an “official certificate” that verifies the authenticity of a specific cryptographic code associated with a particular asset—regardless

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<sup>21</sup> B. PILLAI, K. BISWAS, V. MUTHUKUMARASAMY, *Blockchain Interoperable Digital Objects* [in:] *Blockchain – ICBC 2019*, eds. J. JOSHI, S. NEPAL, Q. ZHANG, L.-J. ZHANG, San Diego 2019, pp. 81-84.

<sup>22</sup> T. ASTE, P. TASCA, T. DI MATTEO, *Blockchain Technologies: The Foreseeable Impact on Society and Industry*, «Computer» 50.9/2017, pp. 18-20.

<sup>23</sup> F. REGNER, A. SCHWEIZER, N. URBACH, *NFTs in Practice – Non-Fungible Tokens as Core Component of a Blockchain-based Event Ticketing Application*, [in:] *ICIS 2019 Proceedings*, Munich 2019, pp. 2-3.

<sup>24</sup> L.H.R. HAYES, N.T. HIMMELRICH, *The Basics of Non-Fungible Tokens and NFT Transactions*, «The Licensing Journal» 5/2022, pp. 79-80.

of whether it exists solely in the digital realm or has a corresponding representation in the physical world.<sup>25</sup> The use of the phrase “by default” is intentional, as the aforementioned principle represents the general framework governing the relationship between NFTs and copyright law concerning the work associated with a given token. However, market practice demonstrates that the seller of an NFT may incorporate within the contract a transfer of a license granting the purchaser specific rights to use the underlying work in designated fields of exploitation.<sup>26</sup> This, of course, raises questions about the enforceability and legal recognition of such transfers. For instance, under Polish copyright law, the Copyright and Related Rights Act (*Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych*) stipulates that a contract transferring economic copyright must be executed in writing under pain of nullity.<sup>27</sup> Given the complexity of intellectual property issues in the NFT context, a detailed analysis of this point falls beyond the scope of this paper.

Many would argue that, in essence, the purchase of an NFT may amount to no more than the acquisition of something that has no tangible value.<sup>28</sup> But is that really so? It depends on the terms in the contract. An NFT in itself does not inherently possess a significant value; rather, its worth stems from perceived appreciation. The valuation of a given NFT is inherently arbitrary, characteristically not very different from the valuation mechanisms observed in the traditional art market. Furthermore, aesthetic preferences and individual tastes play a significant role, as they constitute categories which are subjective by nature and

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<sup>25</sup> S. SYNOWIEC, *Można już inwestować w ulamek dzieła sztuki. Czas tokenów* <https://cyfrowa.rp.pl/opinie-i-komentarze/artykuły/18185441-można-juz-inwestować-w-ulamek-dziela-sztuki-czas-tokenów> [access 1 December 2025].

<sup>26</sup> D. MENDIS, *When you buy an NFT, you don't completely own it – here's why* <https://www.weforum.org/stories/2021/08/digital-art-what-do-you-actually-own-when-you-buy-an-nft/> [access 1 December 2025].

<sup>27</sup> Polish Copyright and Related Rights Act of February 4, 1994 (*Ustawa z dn. 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych*), *Dziennik Ustaw* 1994, No. 24, item 83, Art. 53.

<sup>28</sup> T. CHAN, K.F. K. Low, *DeFi Common Sense: Crypto-backed Lending in Janeshs/o Rajkumar v Unknown Person ('CHEFPIERRE')*, «Modern Law Review» 86.5/2023, pp. 1278-1280.

beyond rational or objective measurement.<sup>29</sup> A particularly notable trend in the NFT market is the rising occurrence of hybrid transactions, where buyers of a digital artwork receive its physical counterpart in the same transaction. A relevant example is the auction of Zbigniew Libera's piece, *Lego. Obóz koncentracyjny – wykrojnik opakowania przedstawiający nadzorców*,<sup>30</sup> organized by the Polish Auction House. In this particular case, the purchaser obtained both the digital representation of the artwork and one of its original physical editions.<sup>31</sup>

### 3. LEGAL CLASSIFICATION OF NFTs

A preliminary analysis of intellectual property law in the NFT context reveals persistent legal complexities and uncertainties. The legal classification of NFTs remains problematic under the current legal frameworks, no matter whether at the level of national jurisdictions or within EU law. The realm of tokens and blockchain technology continues to be a *terra incognita*, albeit one that is increasingly recognized both by national regulators and legislators.<sup>32</sup> The varied nature of tokens complicates their legal classification. To regulate aspects of this emerging sector, the EU legislator introduced the Markets in Crypto-Assets Regulation (MiCAR),<sup>33</sup> which officially entered into force on June 29, 2023, while its full provisions are due to apply from December 30, 2024. MiCAR regulates

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<sup>29</sup> S. SMEE, *Will NFTs Transform the Art World? Are They Even Art?* <https://www.washingtonpost.com/arts-entertainment/2021/12/18/nft-art-faq/> [access 1 December 2025].

<sup>30</sup> *Lego. Concentration Camp – Packaging Die-Cut Depicting Overseers* (my translation, K.B.).

<sup>31</sup> Polski Dom Aukcyjny, *Pierwsza w historii Hybrydowa Aukcja NFT w Polsce* <https://polskidomaukcyjny.com.pl/publikacje/pierwsza-w-historii-hybrydowa-aukcja-nft-w-polsce> [access 1 December 2025].

<sup>32</sup> Among the European Union member states, Malta, Estonia, and Luxembourg stand out as jurisdictions where local legislators exhibit the highest level of interest in this subject.

<sup>33</sup> Markets in Crypto-assets Regulation (Regulation (EU) 2023/1114 of May 31, 2023, OJ L 150).

the public offering, issuance, and trading of crypto-assets, including specific provisions for asset-referenced tokens (ARTs) and electronic money tokens (EMTs). It also establishes dedicated frameworks for the issuance of ARTs and EMTs, as well as for intermediary services in the crypto-asset market. To determine whether NFTs fall under the regulatory framework of MiCAR, it is necessary to refer to the definition of crypto-assets provided in Article 3(1), No. 5 of MiCAR. According to this provision, a crypto-asset is defined as “a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology.” Given the broad scope of this definition, certain NFTs would likely be classified as crypto-assets under MiCAR. Additionally, Article 3(1), No. 9 of MiCAR defines a “utility token” as “a type of crypto-asset that is only intended to provide access to a good or a service supplied by its issuer.” This definition could also apply to specific types of NFTs. In the context of this paper, Article 2(3) of MiCAR is of particular relevance, as it states that “MiCAR does not apply to crypto-assets that are unique and not fungible with other crypto-assets.” This exemption pertains explicitly to NFTs on the art market. Moreover, recital 10 of the regulation explicitly states that “digital art and collectibles” are not envisaged as falling within the scope of MiCAR. The legislator’s rationale for excluding such tokens is based on their value, which is derived from the unique characteristics of each crypto-asset and the specific utility it gives its holder. Additionally, recital 10 emphasizes that, although these tokens may be traded on marketplaces and accumulated for speculative purposes, they are not readily interchangeable. Furthermore, due to their unique nature, their relative value cannot be determined by comparing them to an existing market or an equivalent asset. However, it is important to note that under MiCAR not all NFTs automatically qualify as unique and non-fungible. According to recital 11, fractional parts of a unique and non-fungible crypto-asset should not be considered unique and non-fungible in themselves. Moreover, the issuance of NFTs as part of a large series or collection may indicate their fungibility, especially if a unique identifier is the only distinguishing feature. In such cases, the mere attribution of a unique identifier is not enough to classify

a token as truly non-fungible, which may result in its inclusion within the scope of MiCAR.<sup>34</sup> When attempting to establish a classification of NFTs in legal categories in addition to MiCAR, it is essential to consider MiFID II and MiFIR. If an NFT exhibits characteristics typical of securities, such as dividend rights or profit-sharing entitlements, it may be classified as a financial instrument within the meaning of MiFID II. It is worth noting that the European Securities and Markets Authority (ESMA) has issued guidelines on the classification of crypto-assets as financial instruments, emphasizing the need for a case-by-case analysis based on the specific characteristics of the given asset.<sup>35</sup> Moreover, if NFTs satisfy the legal criteria for classification as electronic money under the Electronic Money Directive (EMD2)<sup>36</sup> or as payment services under the Payment Services Directive (PSD2),<sup>37</sup> they become subject to the regulatory obligations and oversight established for these financial instruments.

These considerations regarding the legal classification of NFTs have a practical significance in the context of money laundering activities, as the appropriate legal qualification will be crucial in determining whether NFT transactions fall within the scope of AML regulations.<sup>38</sup> Both electronic money institutions (EMIs) and payment service providers (PSPs) are legally obligated to implement AML procedures. Another critical aspect, particularly from the perspective of money laundering

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<sup>34</sup> C. ENGELMANN, *MiCA – impact on NFT regulation* <https://www.linkedin.com/pulse/mica-impact-nft-regulation-christoph-engelmann-nfswe/> [access 1 December 2025].

<sup>35</sup> ESMA, *Consultation on the Technical Standards specifying certain requirements of MiCA (3rd package)* <https://www.esma.europa.eu/press-news/consultations/consultation-technical-standards-specifying-certain-requirements-mica-3rd> [access 1 December 2025].

<sup>36</sup> Electronic Money Directive (Directive 2009/110/EC of September 16, 2009, OJ L 267).

<sup>37</sup> Payment Services Directive (Directive (EU) 2015/2366 of November 25, 2015, OJ L 337).

<sup>38</sup> This article focuses primarily on money laundering; therefore I have deliberately refrained from using the phrase “Countering the Financing of Terrorism (CFT),” despite the fact that the two phenomena are typically discussed together.

schemes, is the potential classification of NFTs as virtual assets. Such a classification could, under certain circumstances, bring NFT transactions within the regulatory scope of AML legislation. A more detailed examination of this issue will be conducted in the second part of this article (Paragraphs 4 and 5), which is specifically dedicated to money laundering risks associated with the NFT market.

#### 4. MONEY LAUNDERING: A GENERAL DEFINITION

As I have shown, the legal status of NFTs is characterized by uncertainty, with elements of a gray area and, to some extent, a regulatory gap.<sup>39</sup> The want of clear regulations within a given market can create opportunities for exploitation and misconduct. This section of my article will address abuses related to NFT transactions in the art market. It will examine the phenomenon of money laundering within the NFT sector, explore the mechanisms that criminals may employ, and analyze methods to counteract such illicit practices.

The general concept of “money laundering” should be understood as actions to integrate funds or other assets derived from illicit sources or intended for the financing of illegal activities into the legal and financial system.<sup>40</sup> Both international legal acts and the scholarship on the subject offer definitions that provide a more detailed characterization of the constitutive elements of money laundering. Article 3 of Directive (EU) 2018/1673,<sup>41</sup> adopted on 23 October 2018, defines money laundering as an intentional offense comprising:

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<sup>39</sup> A.J. SULKIS, *The Future of Non Fungible Tokens (NFTs): An Analysis of Regulatory and Compliance Challenges and Opportunities*, «Global Journal of Business and Integral Security» 2024, pp. 78-80.

<sup>40</sup> W. SZWARNOWSKI, *Przestępstwo prania brudnych pieniędzy w ujęciu komparatystycznym. Rozważania porównawczoprawne na tle porządków prawnych wybranych państw europejskich, azjatyckich oraz kontynentu amerykańskiego*, «Studenckie Zeszyty Naukowe» 20.32/2017, p. 70.

<sup>41</sup> V AML Directive (Directive (EU) 2018/1673 of 23 October 2018 on combating money laundering by criminal law, 2018, OJ L 284).

1. conversion or transfer of property derived from criminal activity to conceal its illicit origin or assist offenders in evading legal consequences,
2. concealment or disguise of the true nature, source, location, movement, rights, or ownership of such property,
3. acquisition, possession, or use of property, knowing its criminal origin at the time of receipt,
4. participation and facilitation, including aiding, abetting, inciting, or attempting any of the above acts.

The FATF defines money laundering as the processing of criminal proceeds to disguise their illegal origin, thereby integrating them into the legitimate financial system.<sup>42</sup>

According to the classification most commonly found in publications on the subject, money laundering typically consists of three fundamental stages: placement, layering, and integration. This categorization is, of course, purely theoretical, as in many instances the boundaries between these stages are difficult to distinguish, or the crime may be committed without adhering to all the stages or through the overlap of multiple phases. Given the numerous possible variations, this three-phase model should be regarded as a generalized framework that illustrates the fundamental steps typically involved in money laundering.<sup>43</sup> The ingenuity of criminals who engage in this practice, combined with technological advancements, is constantly giving rise to new methods at each of the three stages of money laundering. However, it is important to emphasize that in recent years the international community has been combating the phenomenon more and more proactively. This is evidenced, for example, by the EU's continuous development of AML legislation and the establishment of a specialized authority, the Anti-Money Laundering Authority (AMLA), headquartered in Frankfurt-am-Main.

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<sup>42</sup> FATF, *Frequently Asked Questions* <https://www.fatf-gafi.org/en/pages/frequently-asked-questions.html> [access 1 December 2025].

<sup>43</sup> M. MAZUR, *Pranie pieniędzy – ujęcie kryminologiczne*, «Czasopismo Prawa Karnego i Nauk Penalnych» 10.1/2006, p. 137.

## 5. MONEY LAUNDERING IN THE CONTEXT OF NFTS AND THE ART MARKET

The practice of money laundering on the traditional art market is not a novel phenomenon.<sup>44</sup> The market's expansion into the metaverse was, to some extent, a response to evolving market demands and a necessary step toward its development. However, the advent of tokenization has exposed the art market to new methods of criminal exploitation. Transactions involving NFTs are now conducted both by traditional art market institutions, such as art dealers and auction houses, and by specialized trading platforms.<sup>45</sup> The total value of NFT transactions sometimes matches, and in certain cases even surpasses, the figures achieved on the conventional art market. Consequently, it is hardly surprising that the criminal underworld has shown a keen interest in leveraging NFTs for illicit purposes.

Importantly, it is generally challenging to quantify the scale of abuses on the art market,<sup>46</sup> and when it comes specifically to NFTs, the measurability of the phenomenon becomes even more elusive. In its report *Money Laundering and Terrorist Financing in the Art and Antiquities Market*, the FATF emphasizes that many jurisdictions do not recognize NFTs within their legal frameworks, and national regulators struggle to determine whether this market falls under regulatory oversight, which only complicates the issue even more. The FATF report, which was published in February 2023, is still pertinent on the whole, with most of its findings still applicable. The previous section of this article illustrated the considerable difficulties associated with giving a legal

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<sup>44</sup> W. PŁYWACZEWSKI, *Pranie pieniędzy na rynku dzieł sztuki – skala zjawiska oraz możliwości przeciwdziałania*, «Przegląd Prawa i Administracji» 3440.88/2012, p. 81.

<sup>45</sup> S. EHRLICH, *NFT Marketplace CEO Explains Why The Industry Is Moving Beyond Ideological Purists* <https://www.forbes.com/sites/stevenehrlich/2021/07/06/nft-marketplace-ceo-explains-why-the-industry-is-moving-beyond-ideological-purists> [access 1 December 2025].

<sup>46</sup> S. BUSHELL, *Entrenched secrecy leaves the art world open to fraud* <https://www.thetimes.com/uk/law/article/entrenched-secrecy-leaves-the-art-world-open-to-fraud-bvgwpqjkl> [access 1 December 2025].

definition of the nature of NFTs. The FATF report identifies certain characteristics of NFTs and the digital market that contribute to the market's vulnerabilities, particularly in terms of its susceptibility to money laundering. Some of the vulnerabilities highlighted by the report are transferability of ownership, i.e. no need to physically transfer the work of art,<sup>47</sup> the potential exploitation of flaws in smart contracts used by NFT platforms for theft or other illicit activities, insufficient monitoring of NFT wallets, the ability to obscure transactions related to virtual assets, exposure to theft, and the risks associated with wash trading. Transactions involving NFTs are open to the direct effects of the weak points of this market. Moreover, additional susceptibilities inherent in the art market itself must also be considered beyond these characteristics specific to the virtual world. Additional weaknesses include lack of transparency, subjective pricing, high-value transactions, and the substantial individual value of artworks—a factor of particular significance in the case of NFTs linked to physical assets in the real world. Furthermore, numerous virtual exchanges on the NFT market may open the door to “self-money laundering.”<sup>48</sup> It is fairly evident that nearly all the characteristics that make the NFT market so unique and innovative also render it highly vulnerable to the risks of money laundering and other forms of financial misconduct.

A key aspect of combating money laundering is the Customer Due Diligence (CDD) process, which includes Know Your Customer (KYC) procedures as its initial and fundamental stage. According to FATF Recommendation No. 10, CDD involves identifying and verifying customers and their beneficial owners, assessing the purpose of the business relationship, conducting periodic reviews, and monitoring transactions for suspicious activity. The measures applied depend on the client's

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<sup>47</sup> This is the general rule, since a smart contract itself may include an obligation for the actual transfer of the asset, as long as the artwork is not confined exclusively to the virtual realm.

<sup>48</sup> Polish National AML Risk Assessment, p. 265 <https://www.gov.pl/web/finanse/krajowa-ocena-ryzyka-prania-pieniedzy-oraz-finansowania-territoryzmu> [access 1 December 2025].

assigned risk level, following the risk-based approach (RBA) principle. Recommendation No. 10 is part of the international standard established by the FATF, which consists of a total of 40 recommendations designed to combat money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction.<sup>49</sup> These recommendations serve as global guidelines for countries which want to develop effective systems to mitigate these threats. In the European Union, the main legal framework for anti-money laundering (AML) and counter-terrorist financing (CFT) has so far been based on Directive (EU) 2015/849 (AMLD4), as amended by Directive (EU) 2018/843 (AMLD5), and Directive (EU) 2018/1673 on combating money laundering by criminal law. However, the AML/CFT Package which was published in 2024 comprises three legal instruments that introduce significant changes in this area. At the time of writing this paper, none of the legal acts constituting the AML Package had entered into force yet.

In the European Union, the Fifth Anti-Money Laundering Directive (AMLD5) defines which institutions are obligated to implement such measures for their actual or potential clients. These entities are referred to as obliged institutions. The Supranational AML Risk Assessment issued by the European Commission<sup>50</sup> says that the scope of AMLD5 has been expanded to include, among others, businesses engaged in the exchange of fiat currencies for cryptocurrencies and virtual asset service providers (VASPs), as well as entities trading in works of art, provided that the value of a single transaction or a series of linked transactions amounts to at least EUR 10,000. Furthermore, it warns that certain liberal professions face heightened exposure to AML/CFT risks and identifies art and antiquities dealers, virtual currency exchange platforms, and

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<sup>49</sup> FATF, *The FATF Recommendations* <https://www.fatf-gafi.org/recommendations/FATF-Recommendations-2012.pdf> [access 1 December 2025].

<sup>50</sup> European Commission, *Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0554> [access 1 December 2025]. The European Commission is required to issue such an assessment every two years. Up to the date of this article, a more recent version has not been released.

virtual currency account providers as particularly vulnerable to such threats. While galleries and auction houses are classified as high-risk entities under AML/CFT regulations, the status of NFT platforms remains unclear, mirroring the legal ambiguity surrounding NFTs as such. The classification of a given platform—whether it permits NFT trading or is specifically designed for such transactions—depends on the legal status of the NFT itself, the platform's functional characteristics, and the jurisdiction under which it operates.<sup>51</sup> Importantly, these platforms differ in structure, standards, and due diligence protocols, which complicates their precise legal classification even more.<sup>52</sup> As I write in the section dedicated to the legal classification of NFTs, in certain cases, NFTs may be deemed securities. Such a classification would result in platforms facilitating the trading of these assets falling under AML regulations. Moreover, NFT exchanges that facilitate NFT trading for cryptocurrencies or fiat currencies may be classified as Virtual Asset Service Providers (VASPs), which would also subject them to AML regulatory requirements.<sup>53</sup> The FATF defines a VASP as an entity that: 1) conducts transactions involving virtual assets on behalf of clients, such as buying, selling, storing, transferring, or exchanging virtual assets for fiat currency, 2) facilitates the exchange of NFTs for other financial assets, such as cryptocurrencies or fiat currencies.<sup>54</sup> The FATF explicitly states that in the determination of the legal classification of NFTs and NFT trading platforms, the functional role of the NFT in a given context should be the primary consideration. The interpretation should

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<sup>51</sup> T. ZHARUN, *Types of NFT Marketplaces and How to Legally Structure Them* <https://legalnodes.com/article/nft-marketplaces-legal-structuring> [access 1 December 2025].

<sup>52</sup> Polish National AML Risk Assessment, p. 265.

<sup>53</sup> This article does not exhaust the topic of the legal classification of NFTs and NFT platforms. Its primary objective is to focus on aspects relevant from the perspective of AML regulations and it does not address the legal classification of NFT platforms under the E-Commerce Directive, the EU Digital Services Act, or the Digital Copyright Directive.

<sup>54</sup> FATF, *Updated Guidance for a Risk-Based Approach (RBA): Virtual Assets and Virtual Assets Service Providers*, p. 21 <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/RBA-VA-VASPs.pdf> [access 1 December 2025].

not be based on the terminology used by the platform itself but rather on the actual nature of the asset traded on such a platform. Some NFTs may not initially appear to meet the FATF definition of a virtual assets; however, upon closer examination, if they effectively serve payment or investment purposes, an initial classification may prove inaccurate. Finally, NFTs may fall within the scope of FATF standards when they function as a digital representation of other financial assets. In such cases, however, NFTs would not be classified as virtual assets, but rather as a specific type of financial asset.<sup>55</sup>

A review of major NFT platforms reveals diverse approaches to AML compliance. OpenSea, one of the largest platforms, has yet to implement comprehensive AML measures. In August 2024, it received a Wells Notice from the SEC, suggesting potential securities violations due to certain NFTs potentially qualifying as securities,<sup>56</sup> which would necessitate AML compliance. OpenSea has pledged to strengthen its procedures but has not yet mandated AML measures for users. Meanwhile, some platforms are voluntarily adopting AML safeguards, recognizing their long-term benefits, including enhanced trust among users and investors and alignment with evolving regulations. According to FATF, many risks inherent in the NFT market, particularly its vulnerability to money laundering, can be mitigated through robust compliance mechanisms.<sup>57</sup> A key example is Nifty Gateway, which has integrated AML procedures, positioning itself as a professional, compliant entity and securing partnerships with major auction houses like Christie's and Sotheby's.<sup>58</sup>

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<sup>55</sup> *Ibidem*, p. 24.

<sup>56</sup> M. SIGALOS, *OpenSea receives Wells notice from SEC, regulator says NFTs are securities* <https://www.cnbc.com/2024/08/28/sec-issues-wells-notice-to-nft-marketplace-opensea.html> [access 1 December 2025].

<sup>57</sup> FATF, *Money Laundering...*

<sup>58</sup> Desa Unicum, *NFT Art – Auction House and Platforms Activity* <https://desa.pl/en/stories/nft-art-market-auction-house-and-platforms-activity/> [access 1 December 2025].

## 6. CONCLUSIONS

The role and significance of NFTs on the art market can be interpreted in various ways: as a complete revolution and revaluation, a new artistic movement akin to conceptualism, or simply as a novel form of artistic expression. Regardless of how this phenomenon is perceived, it cannot be ignored. Even if NFTs, in their current form, do not withstand the test of time, they may serve as a foundation for the development of something new. As with any emerging phenomenon, the advent of NFTs has attracted the attention of the criminal underworld, which is continually on the lookout for new methods to channel illicit funds and obscure their illegal origins. The absence of precise regulations specifically addressing NFTs renders this domain particularly vulnerable to exploitation. Recent years have demonstrated efforts to mitigate this technological and legal loophole. However, this raises the question of how extensively the market should be regulated to avoid stifling its growth. With regard to money laundering risks, regulatory interest in the NFT market has so far emerged merely as a “by-product” of efforts to regulate the crypto-asset market. Although the legal classification of NFTs and NFT trading platforms remains an open question—and may remain so given the inherent complexity and multifunctionality of NFTs—the potential risks they pose are gaining increasing attention. Unfortunately, NFT platforms are still not unequivocally subject to AML/CFT obligations, which should be addressed, as this regulatory gap makes the market particularly “attractive” to potential criminals. As this article demonstrates, some platforms operating in the market are already adhering to AML regulations. However, this is not yet a standard industry practice, and regulatory oversight continues to be insufficient. Furthermore, the establishment of official NFT transaction registries remains a crucial and unresolved issue, albeit such databases could facilitate the identification of suspicious transactions. This article primarily focuses on the money laundering risks associated with the NFT market and, therefore, is limited to the analyses and recommendations it presents. However, it should be acknowledged that numerous unresolved issues persist in the context of NFTs, including intellectual property protection, the liability of NFT

platforms for various violations of the law, and the tax implications of NFT transactions.

## NON-FUNGIBLE TOKENS AND ART TOKENIZATION: A TOOL FOR MONEY LAUNDERING?

### Summary

This article examines the NFT market and art tokenization in the context of money laundering. It explores the evolution of the art market toward digitalization, the definition of NFTs, and their legal and technical aspects. Additionally, it highlights the rapid growth of the market and associated risks, such as fraud, sanction evasion, and money laundering. It discusses mechanisms for concealing illicit funds, as well as the lack of clear regulations and oversight of NFT platforms within the AML/CFT framework. It emphasizes the need for regulatory clarification, the establishment of transaction registries, and addresses other unresolved issues related to NFTs, including intellectual property protection and tax obligations.

### NFT I TOKENIZACJA SZTUKI – NARZĘDZIE DO PRANIA PIENIĘDZY?

#### Streszczenie

Artykuł analizuje rynek NFT i tokenizację sztuki w kontekście prania pieniędzy. W artykule przedstawiona ewolucję rynku sztuki w kierunku digitalizacji, definicję NFT oraz ich aspekty prawne oraz techniczne. Zwrócono również uwagę na dynamiczny rozwój rynku i związane z nim ryzyka, takie jak oszustwa, unikanie sankcji i pranie pieniędzy. Publikacja omawia mechanizmy ukrywania niewłaściwych środków oraz brak jednoznacznych regulacji i nadzoru nad platformami NFT w kontekście AML/CFT. Artykuł podkreśla konieczność doprecyzowania przepisów, ustanowienia rejestrów transakcji oraz wskazuje na inne otwarte kwestie związane z NFT, m.in. ochronę własności intelektualnej i zobowiązania podatkowe.

**Słowa kluczowe:** NFT; tokenizacja sztuki; rynek sztuki; pranie brudnych pieniędzy.

**Keywords:** NFT; art tokenization; the art market; money laundering.

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