

The Fight against Money Laundering

Monique EGLI COSTI

Visiting Scholar

Victoria University of Wellington Law School, New Zealand

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Overview

- I. The money laundering (ML) problem & related challenges
- II. Fighting ML – International efforts
- III. Fighting ML – Domestic efforts
- IV. The future – Issues & possible solutions

I. The ML problem & related challenges

- Definitional issues
 - Process of transforming the proceeds of crime ('dirty money') into apparently legitimate money or other assets
 - The problem & its importance: harm to economy, society, etc.
 - Dependence on predicate offence (underlying crime)
(e.g. corruption & bribery, fraud, organised crime, drug & human trafficking, etc.)
- Similar challenges as for other transnational issues
 - Cross-border problem but domestic jurisdiction
 - Complex issue with limited hard data
 - Difficult and uneven cost/benefit analysis
- Need for multidisciplinary, multi-sector, multi-governance approach involving public and private actors (e.g. network approach)

II. Fighting ML – International efforts

- Anti-ML regime combines legally binding instruments (conventions) & non-binding instruments (international standards and recommendations)
- Anti-ML regime developed around two fronts: prevention + enforcement
- Involvement of multiple international institutions and bodies, including:
 - United Nations (UN) System
 - UN Office on Drugs and Crime (UNODC)
 - UN Interregional Crime and Justice Research Institute (UNICRI)
 - International Monetary Fund (IMF) & World Bank
 - Economic and Social Council (ECOSOC)
 - Others
 - Organisation for Economic Co-operation and Development (OECD)
 - The Financial Action Task Force (FATF) and FATF-style regional bodies
 - Egmont Group of Financial Intelligence Units
 - International Criminal Police Organization (INTERPOL)
 - World Customs Organization
 - International standard setting bodies in the area of financial regulation and supervision (BCBS, IOSCO, IAIS)
 - G7 and G20

II. Fighting ML – International efforts

- UN Conventions (legally binding on parties but vague and lacking enforcement system) include:

1988 UN Convention
against Illicit Traffic in
Narcotic Drugs and
Psychotropic Substances
(Vienna)

189 parties
(entry into force
11 Nov 1990)

Among other things, criminalising ML is mandatory for all parties

2000 UN Convention
against Transnational
Organized Crime
(Palermo)

181 parties
(entry into force
29 Sept 2003)

Among other things: criminalising ML is mandatory for all parties; parties are called upon to use relevant initiatives of regional, interregional and multilateral organisations as a guideline against ML

2003 UN Convention
against Corruption (New
York)

172 parties
(entry into force
14 Dec 2005)

Among other things, calls upon parties to use relevant initiatives of regional, interregional and multilateral organisations as a guideline against ML

II. Fighting ML – International efforts

- Mainly ‘soft law’ instruments
- The Financial Action Task Force (FATF) and its activities
 - FATF set up in 1989 by G7 (Secretariat hosted by OECD in Paris)
 - 40 Anti-ML recommendations (1990, revised in 1996 & 2003, reissued in 2012) endorsed by more than 190 jurisdictions
 - FATF also established recommendations for countering the financing of terrorism (CFT) and most recently for countering the financing of proliferation of weapons of mass destruction, now integrated into the 40 FATF Recommendations 2012
 - IMF and World Bank recognise the FATF recommendations as global Anti-ML and CFT standard
 - Financial Stability Board recognises the FATF recommendations as international standard in the area of market integrity and considers them as one of 12 key international standards for sound financial systems
 - Mutual evaluations conducted to promote implementation of the recommendations
- FATF-style regional bodies also established (Asia/Pacific Group on Money Laundering, MONEYVAL, etc.) forming together with FATF, the FATF Global Network
- International standard setting bodies in the financial regulation and supervision area also issue recommendations (BCBS, IOSCO, and IAIS in respect of the banking, securities markets, and insurance sectors respectively) and are FATF observers
- ‘Voluntary’ implementation; mutual evaluations and peer reviews promote implementation of standards in domestic jurisdictions
- G20 encouragement & commitment since the global financial crisis

III. Fighting ML – Domestic efforts

- Dependent on institutional setting, culture, experiences, etc.
- International peer reviews (mutual evaluations)
 - Assessments highlight gaps in domestic jurisdictions
 - Publicity affects reputation of jurisdictions
- Case study: New Zealand

IV. The future – Issues & possible solutions

- Anti-ML regime has its critics in scholarly literature
 - Legitimacy of the development and the governance of the regime has been criticised
 - Real motives have been questioned
 - Need for participation of all jurisdictions (strengthened multilateralism)
- Constant evolution
 - Evolution of methods used for ML, therefore evolution of anti-ML tools
 - Anti-ML measures displace ML activities
 - Measures based on assessments of risks
- More questions than answers?
 - Need for more relevant information and (scholarly) research
 - Confidential vs public information
 - Need for more resources
- A balancing act
 - Need for increased public awareness and active stakeholder engagement
 - The issue of financial inclusion
 - Implementing updates: moving goalposts
- Need for enhanced and deeper international cooperation
 - Cross-border legal and information exchange
 - Capacity building and technical assistance (unwilling & (un)able vs willing but unable)
 - Need for more resources
- Towards sustainable development goals

Thank you

Questions? Comments?