

Network Regulation of Cross-Border Economic Crime

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Outline

- 1- Few words on the recent Seventh Session of the Conference of the Parties to the UN Convention on Transnational Organized Crime (UNTOC).
- 2 - Transnational / cross-border economic crimes: main features.
- 3 - The response at the international and European level through international conventions. Some critical aspects regarding implementation.
- 4 - The response through “new” means: explaining the meaning of “network regulation”. Some examples and challenges.
- 5 - The fight against transnational crime as general interest in the EU

The reaction to transnational economic crime

INTERNATIONAL CONVENTIONS:

- a. UN Convention for the suppression of the financing of terrorism, NY, 9 December 1999. Ratifications: 185. In force as of 10 April 2002.
Italy: 2003. Japan: 2002
 - b. UN Convention against transnational organized crime, Palermo, 15 November 2000. Ratifications: 179. In force as of 29 September 2003.
Italy: 2006. Japan: only signed in 2000
 - c. UN Convention against corruption, NY, 31 October 2003. Ratifications: 171. In force as of 14 December 2005. Italy: 2009. Japan: only signed in 2003.
- OECD: The Organisation for Economic Co-operation and Development (OECD) adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in November 1997. The OECD Convention addresses only the bribery of foreign public officials in international business transactions. Plus several recommendations. Italy: ratified in 2000. Japan in 1998.



- **What about compliance with international conventions?**

- a. UN 2000 Palermo Convention. Article 32. Conference of the Parties to the Convention

“1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention”.

- b. UN 1999 Convention. No mechanism.

- c. UN 2003 New York Convention: Conference of the parties plus *Implementation Review Process*.

- d. OECD Working group on bribery

Is it enough to ensure the implementation of the convention? Pros and cons of an international convention.

REGIONAL CONVENTIONS THE CASE OF EUROPE

COE:

- a. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw, 16 May 2005. Italy has only signed the convention.
- b. Civil law convention against corruption, 4 November 1999
Ratifications: 35 - Italy: ratification last year on 13 June 2013
- c. Criminal law convention against corruption, 27 January 1999
Ratifications: 45 - Italy: ratification last year on 13 June 2013
and Additional Protocol 2003

WHERE COOPERATION AMONG STATES IS NOT ENOUGH

Network regulation

Operational cooperation
(Egmont Group, judicial and legal cooperation)

Cooperation
private to private
(Wolfsberg group)

Standard Setting
Bodies (FATF
Basel Committee)

Egmont group

- Recognizing the importance of international cooperation in the fight against money laundering and financing of terrorism, a group of Financial Intelligence Units (FIUs) met at the Egmont Arenberg Palace in Brussels, Belgium, and decided to establish an informal network of FIUs for the stimulation of international co-operation.
- The importance of cooperation among FIUs
- The difficulties in cooperation registered in Europe.

Egmont Group

Member FIUs



Eurojust - EU

- Lisbon Treaty. Articles 85 and 86 TFEU. Eurojust mission: *“to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States [...]”*. Article 86 states that, *“in order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor’s Office from Eurojust”*.
- Composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to their own legal systems.
- With the attacks of 9/11 in the USA, the focus on the fight against terrorism moved from the regional/national sphere to its widest international context and served as a catalyst for the formalisation, by Council Decision 2002/187/JHA, of the establishment of Eurojust as a judicial coordination unit.
- Eurojust stimulates and improves the coordination of investigations and prosecutions between the competent authorities in the Member States and improves the cooperation between the competent authorities of the Member States.
 - <http://www.eurojust.europa.eu/about/background/Pages/History.aspx>

Wolfsberg group

- The Wolfsberg Group is an association of eleven global banks, which aims to develop financial services industry standards, and related products, for Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies. Banco Santander - Bank of Tokyo-Mitsubishi UFJ – Barclays - Citigroup Credit Suisse - Deutsche Bank - Goldman Sachs HSBC - J.P. Morgan Chase - Société Générale - UBS

FATF: A Standard Setting Body

- What is a standard setting body? What is an international standard?
- Main body in the fight against money laundering and terrorist financing: the Financial Action Task Force (FATF) Recommendations: from the rule-based approach to the risk-based approach.
 - Fatf-style regional bodies

What about State compliance?

- FATF Mutual evaluation reports (similar as MONEYVAL)
- Lists of non-cooperative countries



Reasoning on effectiveness

Other Bodies in the Fight against ML and Corruption

- Hybrid (because they evaluate both binding and non-binding acts) mechanisms:
 - Moneyval (Council of Europe)
 - GRECO (Council of Europe)
 - OECD Working group on bribery (peer-review monitoring system).

OECD guidelines and recommendations (ex. 2009 Recommendation of the Council for further combating bribery of foreign public officials in international business transactions) in order to cover aspects not treated in the OECD Convention, or they simply predate the convention.

When standards become law: the transposition at EU level of FATF recommendations

- **Third EC Anti-Money Laundering Directive no. 60/2005**

Preamble, n. 5: “Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even Community level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Community in this field should therefore be consistent with other action undertaken in other international fora. The Community action should continue to take particular account of the Recommendations of the Financial Action Task Force (hereinafter referred to as the FATF), which constitutes the foremost international body active in the fight against money laundering and terrorist financing. Since the FATF Recommendations were substantially revised and expanded in 2003, this Directive should be **in line with that new international** standard”.

Recommendations are incorporated into a binding instrument.

The fight against transnational crime as general interest in the EU

- The fight against crimes may be invoked by EU Member States in order to justify domestic measures limiting the free movements of goods, persons, services, and capital.
- Some judgments of the European Court of Justice:
 - *Kadi* (2008 and 2013)
 - *Jyske Bank Gibraltar* (2013)
 - And a judgment rendered by the European Court of Human Rights:
 - *Michaud v France case* (2012) “...to prevent activities which constitute a serious threat to democracy” (par. 123). Right to private communication and legal privilege.

Conclusions

- The fight against transnational crimes has spurred international cooperation
- The emergence of networks  problems of transparency and accountability
- Should network regulation be considered an “alternative” to international cooperation among States?

ありがとうございます

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