



The Basics of the International AML Regulatory Framework

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WHAT IS MONEY LAUNDERING

3 definition types:

1. Functional definitions

e.g. `Money laundering is the concealing of the illicit origin of resources with the intention to replace it with a seemingly licit source` (Groenhuijsen & Van der Landen, 1995)

2. Generic definitions

e.g. `any action in order to prevent, evade or counteract on (legit and valid) claims by third parties concerning (parts of) these assets and which enable unrestricted use of the assets or the economic fruits thereof` (MvD, 2006)

[... and what is required for this, depends on the situation. Money is does not actually need to be laundered, sometimes hiding the stains is enough.]

WHAT IS MONEY LAUNDERING

3. Legal Definitions

E.g. UN 1988 / Council of Europe 1990/2005 Definition:

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:
 - a the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
 - b the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;
and, subject to its constitutional principles and the basic concepts of its legal system;
 - c the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;
 - d participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

3 PHASES OF MONEY LAUNDERING

- Placement
- Layering
- Integration

In the 'early days' of AML regulation the emphasis was on the placement phase. Nowadays layering has more and more come to the center of attention

THE MOTIVES AND OBJECTIVES OF AML

- To hit (organised) criminals where it hurts the most: in their wallet
- To contribute to the prevention of (organised) crime by reduction of the incentives
- To protect the integrity of the financial system by preventing use and abuse by criminals and launderers.

THE FIVE STRANDS OF AML REGULATION

- Criminalisation of money laundering (in a broad sense) as a discrete offence category
- Putting into effect provisions concerning the **confiscation or forfeiture** of criminal proceeds
- Putting into effect **KYC** and **CDD** regulations for service providers
- `Privatisation` of money laundering regulations by the creation of a **reporting system**, obliging private sector service providers to report on unusual or suspicious transactions
- Enhancing international cooperation and mutual assistance by way treaties and FIU's

1. THE CRIMINALISATION OF MONEY LAUNDERING

What to include:

- only drug trafficking related offences
- 'serious' crimes
- All crimes

What to include:

- only activities providing a seemingly legitimate source
- All activities covering up the criminal origin

(does this include the hiding of the money itself?)

2. CUSTOMER IDENTIFICATION (KYC, CDD)

KYC = Know Your Customer

CDD = Customer Due Dilligence

The end of 'number accounts'

Transactions / durable bank-client relations

Beneficiary owner

(economic owner, opposed to legal owner)

PEP's Politicallt Exposed Persons

3. FIU's AND THE EGMONT GROUP

FIU = Financial Intelligence Unit

4 types:

Police model reporting to law enforcement bodies

Judicial model, reporting to public prosecutor

Joint police/judicial model

Administrative/intermediary model

Egmont Group: direct cooperation between FIU's

4. TRANSACTION MONITORING

Mandatory reporting requirements for private sector institutions +
record keeping

Unusual and/or suspicious transactions

Reporting to the FIU

Objective criteria

Subjective criteria

Objectifying of subjective criteria

Banks

Financial institutions

Credit institutions

Insurance Companies

Investment firms

Exchange offices

Casino`s

Sellers of valuable items

Accountants

Notaries

Attorney`s and lawyers

5. SUPERVISING / MONITORING

Implementation of the various AML regulatory provisions and policies is orchestrated, countries are evaluated

- worldwide, by the FATF, the UN(ODC) and the Wolfsberg Group
- Pan-European by the Council of Europe, the EC and EP, the Wolfsberg Group

Monitoring and other supervising at different levels

- `black` lists
- Mutual evaluation
- Supervising bodies

AML regulatory keyword: COMPLIANCE

THE BEGINNING: SOME U.S. DEVELOPMENTS

1970 Bank Secrecy Act

for the detection and prevention of ML

Requires financial Institutions:

- to keep records of cash purchases of negotiable instruments
- to file reports of cash transactions exceeding USD 10.000.
- to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.

1984 Comprehensive Forfeiture Act

1986 Money Laundering Control Act

made money laundering a Federal crime

THE BEGINNING: THE `OFFICIAL` STORY

- 1980s stepping up the fight against drug trafficking
- Growing awareness of the key role of `criminal finances`
- 1988 UN Single Convention Against Illicit Drug Trafficking
- Article 3.1.a: criminalising financing of ...
- Article 3.1.b: concept of money laundering
- Article 3.1.c: criminalising `money laundering`
(without using the actual word – for practical reasons)
- Article 5: confiscation of the proceeds derived from...

THE BEGINNING: THE `UNOFFICIAL` STORY

The U.S. government to an increasing extent had a problem with the (off-shore) financial centers, which were used by companies to evade US taxes.

These off-shore centers were attractive to both criminals and tax evaders because of the low level of taxes levied, the high level of bank secrecy and the possibilities to open anonymous accounts.

Like oil to the Gulf States bank secrecy and low tax level to many mini-jurisdictions was a `natural` commodity (and the main sources of income)

THE BEGINNING: THE BIRTH OF THE FATF

1989, Paris, Summit Meeting G7

Establishment of the Financial Action Task Force on Money Laundering (FATF / GAFI)

Purpose: `... to consider additional preventive efforts in this field, including the adaptation of the legal and regulatory system so as to enhance multilateral judicial assistance.

Initially 16 members, now 33:

G7: CA, FR, DE, IT, JP, UK, US

other: AS, AT, BE, LU, NL, SP, SE, CH

other: Commission of the European Communities

FATF: FORTY RECOMMENDATIONS

Includes provisions about:

- Confiscation forfeiture
- CDD
- Record keeping
- Compliance (by countries) provisions
- Measures in case of non-compliance
- Measures against NCCTs
- Supervision, by countries of their (private sector) institutions
- The competent authorities, their powers and resources
- Transparency of legal persons and beneficiary owners
- International cooperation and mutual assistance
- Extradition
- International information disclosure and exchange

NCCTs

	2000	2001	2002	2003	2004	2005/2006
Bahamas	+	-	-	-	-	-/-
Cayman Islands	+	-	-	-	-	-/-
Cook Islands	+	+	+	+	+	-/-
Dominica	+	+	+	-	-	-/-
Egypt	-	+	+	+	-	-/-
Granada	-	-	+	-	-	-/-
Guatemala	-	+	+	+	-	-/-
Hungary	-	+	-	-	-	-/-
Indonesia	-	+	+	+	+	-/-
Israel	+	+	-	-	-	-/-
Lebanon	+	+	-	-	-	-/-
Lichtenstein	+	-	-	-	-	-/-
Marshall Islands	+	+	+	-	-	-/-
Myanmar	-	+	+	+	+	+/+
Nauru	+	+	+	+	+	+/-
Nigeria	-	+	+	+	+	+/-
Niue	-	-	-	-	-	-/-
Panama	+	-	-	-	-	-/-
Philippines	+	+	+	+	+	-/-
Russia	+	+	+	-	-	-/-
St. Kitts & Nevis	+	+	-	-	-	-/-
St. Vincent & the Grenadines	+	+	+	-	-	-/-
Ukraine	-	-	+	+	-	-/-
23	15	17	15	9	6	3/1

FATF: MONEY LAUNDERING TYPOLOGIES

FATF Typology reports:

drafted from the very start, issued since 1995

Typologies serves two purposes:

- To describe (observed and potential) money laundering methods and operation schemes
- To provide `profiles` indicative to potential money laundering activities.

FATF: WIDENING ITS SCOPE

2001 October 29:

FATF ISSUES 8 SPECIAL RECOMMENDATIONS

Since this date AML's fast growing brother was born: **ATF**

Anti-Terrorism Financing recommendations

1 special recommendation was added (about cash-couriers)

Though being a different type of crime, TF often makes use of the same methods as ML, hence the same regulatory provisions can be applied to safeguard the (integrity of) the financial system.

UN(ODC): GPML and AMLID

1. UN Conventions
2. Global programme on Money Laundering
3. Model legislation
4. AML International Database
5. The Ten Fundamental Laws of Money Laundering

WOLFSBERG GROUP

Wolfsberg Principles:

initiative of twelve globally operating private financial institutions (banks)

2000 The Wolfsberg Anti Money Laundering Principles for Private Banking
(revised in 2003)

2002 the Wolfsberg Anti-Money Laundering Principles for Correspondent
Banking and a Statement on Monitoring, Screening and Searching

additional diligence: e.g. PEPs (Politically Exposed Persons)

No transactions with so called 'Shell Banks'

EU: THREE MONEY LAUNDERING DIRECTIVES

1991 - 1st directive (91/308/EEC)

Embracing the FATF Forty Recommendations

Focus on drug-trafficking related money laundering

2001 – 2nd directive (2001/97/EC)

Extension to all crime types

Extension of the number of service providers obliged to report transactions

Enhancement of the CDD requirements

2005 – 3rd directive (2005/60/EC)

Inclusion of Terrorist Financing

Shift to subjective criteria

COUNCIL OF EUROPE

Legal instruments: Treaties, Resolutions, Recommendations

Most important one:

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (and on the Financing of Terrorism) (ETS 141, 1990 / CETS 198, 2005)

Deals mainly with international cooperation and mutual assistance

Contains a definition on ML

MS can opt out for specific crime categories, e.g. in the Netherlands the provisions are not applicable in case of tax related offences

CONCLUSION

A tremendous worldwide effort has resulted in a dense network of AML regulatory provisions.

On the formal level the net is closing, the meshes in it are being repaired

To what extent does this really affect organised crime and its profitability?

To what extent does this really have contributed to the integrity of the financial system?

What is actually known about money laundering?

ML TYPOLOGIES

- 3 stages
- Turnover manipulation
- Loan Back
- Invoice manipulation
- Underground Banking / Alternative Remittance
- Legal Entities in Tax Havens and Offshore Financial Centers