1. Introduction
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Money laundering (ML) is a multidisciplinary topic which has become important since the late 1980s. Covering the political regulatory, social, criminological, anthropological and economic aspects, this volume tries to show the state of the art in the money laundering debate. Why did money laundering become so important (Part II)? To what extent does money laundering pose a problem and what effects does it have (Part III)? For whom is laundering a problem (Part IV)? What is the size of the problem (Part V)? What ways of laundering exist (Part VI)? How can it be combated and what legislation is involved (Part VII)? How effective is anti-money laundering policy? To what extent is it a danger to individual privacy protection? And what improvements can be recommended (Part VIII)?

1.1 INTRODUCTION

Money laundering, being the disguising of the illicit origin of money was criminalized only recently, though it dates back to ancient times. In these ancient times false trading was the way to transport illegal merchandise and proceeds (see Zdanowicz in this volume, Chapter 20). Chicago gangster Al Capone is often cited as the father of the modern form of transferring illegal proceeds, or money laundering. He used the cash intense business of launderettes to disguise his illegal alcohol proceeds in times of prohibition in the 1920s. Al Capone's laundering of money in launderettes might however be a myth – he was convicted in 1931 for tax evasion and not for his bootlegging.

Another potential origin of the term comes from the fact that money laundering may refer to the 'washing' of coins. Coins were washed in casinos in the early 1900s, so ladies wearing white gloves would not get them dirty playing in the casino. It is, however, also not proven whether the term laundering stems from this 'washing' of money. The term 'money laundering' first appeared in newspapers reporting the Watergate scandal in the United States in 1973. The expression first appeared in a judicial or legal context in 1982 in the case *US v $4,255,625.39* (1982) 551 F Supp.314.[1] Since, anti-money laundering measures have taken an amazing route, from fighting Al Capone's alcohol business and drugs to fighting Al Qaeda and other terrorist groups (see Chapter 2).

1.2 THE HISTORY OF MONEY LAUNDERING

Brigitte Unger of Utrecht University gives an overview of the history of anti-money laundering regulation in this volume. It is especially the United States who have a high interest in making money laundering a global issue. The Financial Action Task Force (FATF), an intergovernmental body established by the G-7 in 1989, sets international

standards (the '40 + 9 Recommendations', 40 on money laundering plus nine on terrorist financing) and forces compliance of countries by means of blacklisting countries as 'non cooperative'. Compliance with the standards is checked every three years in mutual evaluations reports, while the speed with which countries have implemented these standards is amazing. The European Union complies with the international standards, in addition establishing three anti-money laundering and combating terrorist financing Directives, which force member states to comply through hard law. The Fourth Directive will come into force soon. The EU Directives concern administrative law issues, meaning duties to identify launderers and laundering transactions, e.g. reporting duties of obliged entities, know your customer rules, risk assessment issues, while they leave the repressive part – punishing criminals – to criminal law and law enforcement of the member states.

1.3   THE PROBLEM

To what extent is money laundering a problem: How and for whom does it pose a problem? Is money laundering a serious problem? Are there any victims of money laundering? Does it harm anyone when the Italian or Columbian mafia puts a billion US$ into the European banking system? Or isn't it rather beneficial if more liquidity is put into the dried out banking sector during the financial crisis? In a newspaper interview in 2008, the United Nations Office on Drugs and Crime (UNODC) head of the money laundering section, Antonio Costa, warned about criminal organizations using the financial crisis, in particular the interbank distrust crisis, for laundering purposes. Evidently, there were also benefits for consumers and businesses who could get additional loans from an otherwise dried out banking sector.

Joras Ferwerda, economist at the Utrecht University School of Economics, gives an overview of the potential negative effects that money laundering can have. In this sense it *does* pose a problem. Money laundering can have negative effects, economically, socially and politically. The economic effects, for example, concern unfair competition between honest and dishonest business, distortion of prices, a negative effect on investment, and eventually the crowding out of honest business. Social effects include increases in corruption and bribing. Laundering needs helpers and facilitators, so more and more people are drawn into criminality. Political effects are, for example, that criminals can undermine democratic systems, with drug dealers becoming ministers. Ferwerda does a detailed analysis of the growth effects of money laundering. Here, two opposite mechanisms operate: On the one hand laundering money is simply money, which helps the private sector to grow. On the other hand, more laundering means more crime, which negatively impacts growth.

The impact of money laundering on crime is specified by Donato Masciandaro, Professor of Finance at Bocconi University, Milan, Italy. In his contribution, Masciandaro shows that one has to reconcile two strands of literature related to money laundering: Becker's economics of crime and finance, since money laundering is not only a criminal, but also a financial phenomenon. Masciandaro shows that if criminals reinvest parts of their ill-gotten gains into the real economy, this will result in a multiplicative increase of crime. Since money laundering can lead to an explosion of crime rates, it is a ticking time bomb and therefore creates a serious problem that has to be fought.

The direct effects of money laundering are questioned. Who suffers directly when the Brazilian mafia sends ten million US$ to a country? Whether there are any victims of money laundering is an important question for lawyers and philosophers. Even for practical purposes, this poses a problem. In many countries, a money laundering prosecution can only even be started by either the public prosecutor or by the victims themselves. The Financial Intelligence Unit (FIU), an organization which detects laundering from reports of the obliged entities, often faces the problem that it cannot start a prosecution because it is not the victim. But who is the victim? Money laundering usually does not have direct victims; it can even be interpreted as a 'victimless crime'. This legal philosophical concept from the nineteenth century has not lost its attraction today. The contribution by Loek Groot, Associate Professor of Economics of the Public Sector at Utrecht University School of Economics, on decimating money laundering by legalizing drugs and prostitution, analyzes from a philosophical economic background whether money laundering constitutes a victimless crime. Referring to the debate initiated by John Stuart Mill, who in his 1859 'On Liberty' argued that drugs transactions constitute a victimless crime, since both the buyer and seller of the drug agree on a contract in which the latter is asking a price for a specific amount of drugs, while the former is willing to pay this in order to get drugged. Mill's argument in a nutshell is that since both market participants act voluntarily, and since they do not cheat each other, nobody is harmed, and therefore drugs should be liberalized. A debate on the harmful effects of drugs on society followed, in which Posner (1992) introduced the concept of cost and benefits, which should be weighed against each other. In this tradition, Groot argues that if drugs were to be liberalized, money laundering from drugs would also not constitute a crime anymore. Groot speaks in favor of a cost–benefit analysis which looks at the costs of forbidding victimless crimes and the benefits of doing so. Only if the benefits from prohibiting drugs and money laundering outweighs the costs of so doing, should drugs and money laundering be criminalized. From a liberal point of view, making drugs legal and thereby decriminalizing money laundering should be reconsidered. This liberal, Dutch view on legalizing drugs and thereby reducing the criminal proceeds from drugs definitely diametrically opposes recurrent US politics, which favor a broadening of predicate crimes for laundering rather than a reduction of them. It might, however, be wise to take into account the findings of Groot and to keep an eye on the costs and benefits of anti-money laundering policy, defining who the victims of laundering are.

Michael Levi, criminologist and sociologist from the University of Cardiff in the UK, gives an overview of the most important predicate crime for money laundering: fraud. He distinguishes fraud against individuals, business and authorities and shows ways of estimating the costs of fraud. Technological progress has led to more fraud detection and improvement in data, but there are also more possibilities for larger-scale fraud in a complex society.

Recently, another predicate crime, terrorism financing, has been subsumed under money laundering. Causes for terrorism are found in inequality, lack of education and ideology. Tim Krieger and Daniel Meierrieks from the University of Freiburg, Germany, argue that while terrorist attacks are usually inexpensive, running and maintaining a terrorist organization requires substantial financial means. Countering terrorist financing may thus indeed be a viable counter-terrorism policy. Though 9/11 has traumatized the Western world, and not only Americans, from the viewpoint of sheer

costs compared to the whole US economy, the economic effects have been small. It is mainly small and less diversified countries (i.e., less developed economies) characterized by low macroeconomic robustness and facing significant terrorist activity that experience the most severe macroeconomic consequences. Terrorist financing can take place in three ways: (i) *state-financing* (i.e., state sponsorship of terrorism); (ii) *financing by legitimate means* (e.g., from business, charities, diaspora support, etc.); and (iii) *private financing by unlawful means* that usually includes outright *criminal activities* (e.g., bank robberies, drug trafficking, kidnapping, extortion). Anti-money laundering instruments are more likely to help when terrorism is financed by *private, legitimate means*. Terrorists are different from organized crime groups. They often operate in the name of 'higher ideals', they want change, while criminal groups are conservative and want to abuse existing institutions without change. Krieger and Meierrieks argue that anti-money laundering policy can help to prevent the planning and execution of terrorist attacks in the short run.

1.4   WHO IS THREATENED BY LAUNDERING ACTIVITIES?

Which countries are threatened by laundering activities? Which countries bear the costs of laundering and which ones perhaps benefit from the additional financial resources derived from launderers?

A method which distinguishes threats and policy responses and classifies (European) countries into low and high threat areas is carried out in the EU Project 'The Economic and Legal Effectiveness of Anti Money Laundering and Combating Terrorist Financing Policy' (ECOLEF) (see Unger et al., 2011, Second and Third delivery to the EU). One can see that rankings depend very much on the weight different variables get. If, for example, the cash intensity of the economy is weighted highly, the Southern European countries are especially highly threatened by money laundering risk. If, however, big financial centers are considered to have a high money laundering risk, then Northern European countries seem more threatened. Whatever the final model and scheme that wins the threat assessment race, it seems the trend is going in the direction of ranking and benchmarking in this area.

Jakub Brettl, a former student from Utrecht University shows different ways of estimating the country risk of laundering. Compared to the findings of John Walker (see Chapter 13 in this volume), Brettl's findings emphasize the role of cash. The more cash-intense a country, the higher the risk of laundering, he argues, whereas Walker focuses on the role of financial centers for laundering. Stephen Dawe, Senior Financial Sector Expert at the Legal Department of the IMF, in his contribution on conducting national money laundering or the financing of terrorism risk shows the latest approaches of the IMF to assess the likelihood that money laundering occurs. Countries, sectors and transaction types can be scored and ranked on a scale from 1 to 7, showing whether they are highly exposed to money laundering risks or not. The IMF has created a large dataset with several modules for this. It distinguishes between the likelihood that a risky event occurs and the consequences this type of laundering has.

Is money laundering a problem for small or for big countries? Which countries tolerate laundering? In the international debate it is very often small countries and little islands

who are blamed for tolerating money laundering. When in 1995 the Seychelles openly advertised 'If you invest more than 10 million US\$, we will not inquire where the money originates from', there was uproar in the international community. Under the US threat of blacklisting and of forbidding American banks to do business with the Seychelles, the Seychelles finally gave in to international pressure (see Unger and Rawlings, 2008). Unger and Rawlings (2008) showed that countries might have an incentive to compete for criminal money. Gnutzmann, McCarthy and Unger (2010) distinguished between small and big countries. They showed that while big countries are responsible for larger amounts of laundering due to the volume of their financial markets, small countries have a larger incentive to launder, hence are more likely to launder. This is because they usually bear the benefits from laundering, but not the costs of the underlying crime, which often stays in the country of origin of the money. Killian McCarthy shows in this volume that the argument is reversed when it comes to developing countries, who usually do not suffer from criminal money – neither domestically nor abroad – but from their own crime. One has to look at anti-money laundering policy from the perspective *cui bono?*: 'whom does it serve', McCarthy suggests anti-money laundering policy benefits mostly the rich, large and developed countries.

Two distinguished representatives of small, developed (and rich) countries have been generous enough to provide their view on small countries' role concerning money laundering and financial integrity. His Highness, Prince Michael von und zu Liechtenstein, a big supporter of academics in general and president of the European Center of Austrian Economics Foundation, was kind enough to comment on the role of Liechtenstein: a small country of around 36 000 inhabitants, located between Austria and Switzerland, with a large financial sector and high financial expertise. Liechtenstein came into the news when lists of German account holders in Liechtenstein popped up under the suspicion of tax evasion. The scandal grew when it turned out that the Liechtenstein bank employee who had collected this information by violating the bank's confidentiality requirements had received several million euro from the German government to pass on this list. Evidently, the Germans were eager to get at their tax evaders in order to increase tax revenues. However, lawyers were concerned whether a government purchasing stolen lists from criminals was engaged in a criminal activity called *Hehlerei* (dealing in stolen goods) in the German Criminal Code.

His Highness very clearly expresses the view that hard crimes like drugs, fraud and human trafficking should not be intermingled with soft misdemeanors like tax evasion. Since tax evasion is no predicate crime for money laundering in Liechtenstein, the country has not and is not doing money laundering here. The US policy of making tax evasion a crime is not necessarily the road that Europe should be following. It is not by criminalizing tax evasion that one should reduce tax avoidance, the Prince argues, but by making tax laws more transparent and simpler among European (and other) countries. At the moment it is impossible to oversee the different tax loopholes, so how could a Liechtenstein bank possibly find out who evades taxes? Simplifying tax laws and providing legal certainty in this area is, according to the Prince, the right way to go.

The second small European country, Austria, with 8 million inhabitants, located between Germany, Switzerland, Liechtenstein, Czech Republic, Slovakia, Italy, Slovenia and Hungary, also came into the news for not complying with FATF Recommendations and for providing the opportunity for especially the Russian mafia to launder its money.

Austria was mainly criticized for not criminalizing self-laundering and for its banking secrecy, which does not allow official authorities to have access to bank information except when there is already an ongoing lawsuit. The Governor of the Oesterreichische Nationalbank (Austrian Central Bank), and former university Professor of Public Finance, Ewald Nowotny, reflects on the role of small countries for financial integrity. Contrary to the US, which lists as the ultimate goal of anti-money laundering policy to reduce money laundering and crime, the EU has included a third goal: to maintain the integrity of financial markets. The contribution on financial market integrity and the role of small countries shows that under international pressure Austria was able to adapt its laws and regulations very quickly to international standards. The chapter demonstrates the changes that have been made, which are even more amazing when one takes into account Austria's traditionally very legalistic culture, which means that what is written in a law must be practicable and practiced and must be consistent with what is written in other parts of the law. Certain parts of the FATF Standards and of the EU Directives are much more difficult to implement for legalistic countries than for less legalistic cultures who only copy and paste the Directive and leave it up to the national Courts to decide in cases of conflicting norms. To give an example: self-laundering – where the one who commits the crime also does the laundering of its proceeds – was considered double punishment by Austrian Criminal Law, since doing the robbery and doing something with the money from the robbery was seen as one criminal act. Austria, under FATF threat of blacklisting, changed this very fundamental principal of law and abandoned self-laundering. This also means a very far reach of the FATF into countries' national rights; in particular, because the hard-law EU Directives do not oblige countries to abandon self-laundering and the FATF Recommendations are not founded on any legal or democratic base. They are soft law based on the threat of blacklisting in the event of non compliance.

The anti-money laundering law, with its very American origins in adding up punishments is much more difficult to implement in a legalistic culture than in a more pragmatic culture. With regard to implementation, many Eastern European countries only copied and pasted the EU Directive and waited to see how the administration and Courts would deal with it. Austria has a very well functioning bureaucracy, dating back to Empress Maria Theresa, which very meticulously sticks to the law and the room for maneuver it provides. Changing the law in a country with a legalistic culture means a much more binding commitment to international standards than in a more pragmatic culture. Adapting the Austrian anti-money law to adjust to international standards must therefore be seen as a high commitment to the international community. Bank secrecy is a constitutional right in Austria which could only be removed with a two-thirds majority of Parliament. Many of the criticized bearer instruments have been forbidden by law as well.

The chapter illustrates the changes in law and the supervisory body for anti-money laundering policy issues. Furthermore, it claims that for financial integrity small countries have a definite advantage over large countries: it is not only easier to know your customer, but the more essential part of anti-money laundering policy is to know your banks. In a small country with regular meetings of all actors it is much easier to reach agreements and an overview over anti-money laundering threats and to combat them in a consensual style.

1.5 THE SCALE OF THE PROBLEM

The first estimate of global amounts of money laundering was performed in 1995 by the Australian criminologist John Walker from the University of Wollongong. He first estimated the proceeds of crime per type of crime and country and then used a gravity model (see Walker and Unger 2009) in order to find out how much of these proceeds were attracted by which country.

Walker's first estimate amounted to 2.8 trillion US$ laundered worldwide. Ever since, a large debate built up: In 1998, Michael Camdessus of the IMF came up with a guess of 1.5 trillion US$, by then five percent of global GDP. Some countries estimated their amount of laundering and came up with similar amounts (for a survey of this debate and for estimates for the Netherlands, see Unger 2007). Lately, the Walker model was tested (see Ferwerda et al. 2013), refined and a new specification of it was suggested.

In this volume, Andreas Buehn and Friedrich Schneider give a short overview of a large amount of estimates and present their own model of estimating laundering, the MIMIC model. By means of observable variables which are assumed to develop parallel with money laundering, they can calculate how money laundering changes over time. They have to assume a base year in order to calculate the volume of money laundering. The advantage of the MIMIC model is that it is one of the few methods to measure money laundering over time. Another one favored by me and also discussed by Buehn and Schneider is that of Busato, Bagella and Argentiero which is also in this volume (Chapter 17). Buehn and Schneider measure that money laundering increased US$ 273 billion (or 1.33% of official GDP) in 1995 to US$ 603 billion (or 1.74% of official GDP) in 2006 for 20 OECD countries

The contribution of Raymond Baker, Director of Global Financial Integrity (GFI) focuses on estimating money laundering and capital flight from wealth data. Baker wants a broader approach, including all forms of finance that escapes regulation, since especially for developing countries this can be disastrous. Baker shows that for every dollar of development aid sent to developing countries, ten dollars flow back as capital flight. This disequilibrium in world finance deprives developing countries of their chance to catch up.

The latest efforts in this field deal with trying to analyze money laundering routes from assets confiscated. The contribution of Thomas Pietschmann from the UNODC takes this kind of approach. Here, drug seizures are used to identify drug routes. Pietschmann first gives an overview of the efforts of the UNODC to regulate and fight drugs and money laundering. In 2009, the United Nations (UN) developed a new model to estimate drug money flows. In his chapter, Pietschmann presents the efforts of the UN to find out about major routes of drugs and drug money. His model indicates that the most cocaine consumption still takes place in the US, followed by Europe. Using a transport route model fed with data on drug seizures, one can show where the drugs and the drug money flow. According to Pietschmann, in 2009 about 53 billion US$ were available for laundering from the cocaine trade alone. Special attention in this model is also given to transit countries.

A new approach of using a two sector dynamic macroeconomic equilibrium model, where one sector, the legal sector, is known and can be calculated, and the second

sector, the criminal sector, can be simulated from the model parameters, has been used for estimating money laundering by the Italian economists Michele Bagella, Francesco Busato and Amedeo Argentiero from the Universities of Rome 'Tor Vergata', Naples Parthenope and Perugia. This model predicts money laundering in percent of GDP for the US and the EU countries.

Despite all the analysis, there is still some doubt as to whether money laundering increases or decreases over time. Unger and den Hertog (2012) showed that it was impossible from all empirical studies done so far to even conclude the direction of money laundering trends. Many opt, as Buehn and Schneider do, for the opinion that laundering is increasing. Yet, when one looks at the development of the proceeds of crime, they seem to be stable over time.

The second unresolved question is whether money laundering is big or small in volume. Here the major divide between economists and criminologists still seems to exist. Money laundering research is performed among many disciplines. Evidently, the methodologies of these disciplines differ a lot, with several scientific 'languages' being used. Unfortunately, there are very few 'translators' between them. The most pronounced and prominent critique of John Walker's estimates (and other large global estimations) is Peter Reuter from the School of Public Policy and Department of Criminology, University of Maryland. In his contribution on whether estimates of the volume of money laundering are either feasible or useful, Reuter criticizes assumptions of the Walker model and generally rejects global estimates of money laundering. Also, when one reads the contribution of Petrus van Duyne, emeritus Professor of Criminology from Tilburg University, the Netherlands on 'Crime-money and Financial Conduct', one sees that he favors a criminological micro, or as he calls it, 'bottom up approach', for discovering crime-money. The Dutch criminologists have been pioneers in studying money launderers and their behavior, and the article of Van Duyne gives an impressive overview of this. From what kind of predicate crime do launderers earn their money, what do launderers do with their money, how do they spend it, and are they rich or poor are questions that have been addressed in several case and file studies. At a micro level one cannot detect the large sums of criminal money proclaimed by international institutions such as the FATF or the IMF, or found in the economic models of Walker (1995) and Walker and Unger (2009), Van Duyne claims. He gives several explanations for this but favors one: methodological mistakes of economists, by simply just inconsistently counting together wrong variables. According to him, the threat of laundering is heavily exaggerated. There are simply far fewer launderers and less crime-money than internationally proclaimed. However, Van Duyne also mentions one argument which might reconcile the debate led by criminological and international economists. It is an argument which Stephen Levitt (2006) elaborated in his famous article 'Why do drug dealers still live with their mom': only very few drug dealers make it to the top. There is a very low chance of becoming the head of a criminal organization and of earning very much. The rest of the dealers remain severely underpaid, often below the minimum wage, clinging to the small chance of getting rich, similar to lotto players. This might explain why internationally respected bottom-up analysts like Petrus van Duyne, Michael Levi and Peter Reuter do not find large amounts of crime-money. They might simply mainly find the many small dealers on the shopfloor.

1.6   WAYS TO LAUNDER

Which techniques do launderers use to launder money? And how much money is laundered and in what ways? John Zdanowicz, Professor of Finance at Florida International University, in Chapter 20 estimates the oldest way of laundering, trade based money laundering, being illicit money hidden in fake invoices for export and import products. He shows that one can detect particular products with very unusual prices or weights, and countries which definitely have more of these dubiously priced products. He establishes risk indicators by product and by country. In the US on average, more than 10 million records per year are analyzed, with each record identifying the item, quantity and US\$ value along with the mode of transportation, the US customs district through which the goods passed and the foreign country involved in the trade. Zdanowicz deals with very large datasets, where over 232 columns represent every country in the world, while every import harmonized code and every export harmonized code are represented by over 26 000 rows. If a transaction exceeds a certain threshold it is classified as suspicious. In total, Zdanowicz calculates, about 168 billion US\$ moved out from the US due to trade-based money laundering and 233 billion US\$ moved into the US: This amounts to about ten percent of US trade.

   Unger and Ferwerda (2011) used Zdanowicz's idea of unusual prices for identifying money laundering in the real estate sector. Together with criminologists they developed an instrument to detect suspicious objects and applied this method to two Dutch cities. The same methodology can also be used to estimate the costs of corruption in public procurement. Joras Ferwerda and Brigitte Unger from the Utrecht University School of Economics demonstrate this method in this volume. At the moment, in a small project lasting until June 2013, together with Ioana Deleanu, they are busy applying the same method to estimate corruption in public procurement for the European Union in a joint project with PriceWaterhouseCoopers and Ecorys. A new field to enter the money laundering debate is tax evasion. Some countries see fighting tax evasion as the main purpose of anti-money laundering policy (e.g. the Nordic countries) whereas others focus on combating drug dealers (e.g. Austria). Lately, the US and the FATF have made great efforts to include tax evasion as a predicate offence into the money laundering definition. The concept of money laundering, starting with fighting drug crimes, then extended to all other sorts of other crime among which are human trafficking and corruption and finally terrorism would then be further enlarged. The contribution of Victor van Kommer from the International Bureau of Fiscal Documentation (IBFD) shows how authorities can measure the tax gap and tax compliance. The article also warns against too precise measurements of the tax gap in practice. Especially in less developed countries, hunting for tax money might turn into a war against people. Van Kommer makes the case for applying the principles of good governance in order to raise enough tax income, monitor the compliance of tax payers and still keep enough flexibility for effective administration.

   Lotte Tromp, Iris van Rossum, Andreas Buehn and Victor van Kommer analyze to what extent corporations can make use of tax havens to launder money. They investigate the definition of tax havens. Under which conditions, they ask, is a country a tax haven? They survey the literature on tax havens and distinguish three categories of tax havens: the ones with low corporate tax rates; the ones with large secrecy; and the ones with low corporate tax rates *and* large secrecy. With this concept, they test whether the

Netherlands is a tax haven. The Netherlands have repeatedly been accused (especially by the US) of being a tax haven for corporations. Unger (2007) also highlighted special financial constructions, such as special purpose vehicles, to facilitate laundering. The chapter here (chapter 23) concludes that the Netherlands, with its low corporate tax rates and exemptions attract mainly tax avoiders, like famous pop music groups, but less so criminal money. This is quite the opposite from the findings of Unger (2007).

Do launderers profit from developments in financial markets like financial innovations? The contribution of John Biggins working at the financial services regulatory authority at the Central Bank of Ireland, shows that especially the over-the-counter (OTC) derivative market can be abused by criminals. He first explains derivatives and translates the language of financial markets into more accessible language. Buying equals going short, selling equals going long and making a bet for interest rates to fall is a 'plain Vanilla swap'. Since the payoff is derived from a contingent future event (namely the interest rate falling), it is called a derivative. Biggins shows that with the help of a broker this partly unregulated market can easily be abused by paying largely in cash for the bets and booking the winnings as legal income. With this, Biggins points to the most sensitive point of regulating money laundering. Criminals very quickly discover loopholes or as Unger and Den Hertog (2012) put it: water always finds its ways.

In his second contribution, Michael Levi presents e-gaming in the EU and associated money laundering risks. He shows differences relating to risk to exist between land-based and e-gaming, and argues for desirability of different AML regulations for the latter, as opportunities for monitoring are different.

1.7   LEGAL ASPECTS

Paolo Costanzo, a lawyer who has worked at the European Union on money laundering issues and is now employed at the Italian Central Bank, Banca d'Italia, which is also the location of the Italian Financial Intelligence Unit, analyzes the change from a rule-based to a risk-based approach in anti-money laundering policy. Originally, reporting entities, like banks and other financial institutions, had to identify laundering activities by means of a rule-based approach. They had clear rules which dictated under what circumstances they had to report a transaction to the Financial Intelligence Unit. For example a clear rule would be, 'if there is a cash transaction exceeding 8000 euro, this has to be reported'. The problem with this approach was that far too many reports were sent (every grandmother buying a car for her grandson had to be reported).

However, criminals also knew the rules and could use smurfing to circumvent them: just sending 7999 euro in order to stay below the reporting threshold, for example. This is why the US and the EU changed to a risk-based approach. In a risk-based approach the obliged entities, banks financial institutions, but also lawyers, notaries, real estate agents, dealers in goods with large values have to develop their own criteria for when they consider something to be risky. Costanzo shows that a risk-based approach will lead to less uniform compliance patterns, and that it will change the mode of supervision. Controls, like compliance, have an essential judgemental component and require that the competent authority focuses on the whole compliance process to understand when the failure of the measures adopted depends on poor compliance and when it depends on

lack of information about risks. Costanzo shows that costs for the banking sector have certainly increased, especially in the 'transition' period. The investments that have to be done, in terms of organization, procedures, staff, training, IT tools, etc. have been, and still are, considerable. Costanzo is positive about the future and thinks that benefits from a better identification of money laundering risks will (over)compensate for these costs in the long term.

Anti-money laundering policy is based on a twin approach. One part concerns criminal law which identifies criminal acts and punishment, and the other part relates to administrative law. The latter aims at preventing laundering happening by making sure that the private sector, such as banks, dealers in large values, real estate agents, notaries and lawyers identify and report laundering activities. In their chapter, 'Prevention of money laundering and terrorist financing from a good governance perspective' Melissa van den Broek and Henk Addink (Institute of Constitutional and Administrative Law of Utrecht University, Faculty of Law, Economics and Governance) give an overview of the administrative law part of AML policy. They identify four administrative law related elements: customer due diligence (know your customer measures); the reporting obligation of entities (entities have to report suspicious transaction to the FIU); the record-keeping obligation of obliged entities; and the enforcement (supervision and sanctioning) of those obligations. Are these elements in line with principles of good governance, a concept which has been promoted by the World Bank in recent years? These principles are put into groups that allow us to test whether legal norms (in our case anti-money laundering regulations) are in line with them.

Principles of proper administration, of transparency, of citizens' participation, of effectiveness, of accountability and of respecting fundamental human rights are first described and then tested. The authors find tensions between some of these principles – in particular the tension between the reporting obligation and the principle of legal privilege (which forms part of the right to a fair trial). Since notaries and lawyers have been included as entities that are obliged to report suspicious transactions, there is a tension between the lawyer's duty of secrecy and the right of the client to confidentiality, that is, the client's right to speak openly with his lawyer and thus to a fair trial, and the lawyer's duty to report a suspicious transaction or client. Another tension they identify is between the effectiveness of anti-money laundering policy and the accountability of politics. Involving the private sector by using a risk-based reporting approach which leaves it up to the private sector to develop criteria for identifying money laundering risks means a strong involvement of private actors in the process, which could jeopardize the classic understanding of accountability. Who can be held accountable for anti-money laundering policy if the public sector shifts responsibilities for combating laundering in a very poorly defined way to the private sector?

From a criminal law perspective, John Vervaele (Utrecht Law School, Utrecht University) shows that money laundering and terrorist financing regulations imply a paradigm change in law. Already the classic AML approach of the FATF has resulted in several substantial changes such as establishing an autonomous offence; the elaboration of asset-freezing, asset-seizure and asset-confiscation into an autonomous control and sanctioning mechanism. The real paradigmatic chance has however been established by enlarging the anti-money laundering approach to combating terrorist financing. With this, criminal law evolves into a proactive law, of a preventive kind. We see an evolution

from a judicial criminal law to a criminal law with the strong power of the executive branch of government. We also see an evolution from a criminal law based on the violation of a legally protected interest into a criminal law of the dangerousness of a person. This can imply serious privacy concerns.

1.8   IMPLEMENTATION AND EFFECTIVENESS OF AML

With regard to the implementation and effectiveness of anti-money laundering policy in practice, Brigitte Unger and Frans van Waarden, Professor of sociology at Utrecht University are less optimistic than Paolo Costanzo about the future of the risk-based approach. They agree with Costanzo that the risk-based approach will end up as a book of rules, however, they do not think that this book is the result of the private sector's learning experience, but rather a set of rules emerging from court decisions. More and more private entities and (falsely) accused launderers will go before the courts and finally the court decisions will establish new rules. The risk-based approach will end up as a new rule-based approach with rules set by the courts and not by politicians. The authors show that reporting duties under the risk-based approach have quite different effects in an adversarial system, like the US and a consensual system, like the Netherlands. Reporting increased in the US, since banks are afraid of being punished for not reporting. However, they tend to overdo it, and report too much, and in this way deliver quite useless information to the law enforcement agencies. In the Netherlands, where rules have been developed jointly with the private sectors and where fines are low, the amount of reporting has decreased, but the quality of information has increased.

Maaike Stouten and André Tilleman analyze the first tension mentioned by Broek and Addink in Chapter 27 in more depth. In their contribution on 'Reporting duty for lawyers versus legal privilege – unresolved tension' they first define 'legal privilege' as the right of the client to confidentiality combined with a duty of secrecy on the part of the lawyer. They then give an overview and interpretation of various court decisions on this issue. Particularly interesting is the case they present where the Belgian bar, the 'Ordre des Barreaux', supported by some other bar associations, initiated a court case seeking a preliminary ruling from the European Court of Justice on the legality of the reporting duty to lawyers pursuant to the Second EU Directive in relation to *inter alia* Article 6 ('Right to a fair trial') of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). From this case one can conclude that the question of legal privilege and reporting duty has not been solved in non-contentious circumstances, where there is no link with judicial procedures. Furthermore, the European Court of Justice judgment left the interpretation of 'ascertaining the legal position' open to interpretation by national courts. The Belgian (and similarly the French) court applied a broad interpretation of the ECJ's judgment, whereas the Polish, Finnish and Dutch legislations applied a narrow interpretation. This means that defining what legal privilege is and what exceptions there are is far from being harmonized in Europe.

Jan van Koningsveld, former employee of the Dutch financial police FIOD, now Director of the Research Center Offshore Kennis Centrum, doubts the three-phase money laundering model of the UNODC. He claims that when the executive follows

this approach it risks missing important money laundering cases. He tries to rethink the stages of the money laundering process to make enforcement more effective and suggests four instead of three phases for laundering. In particular, the stage before the criminals park their criminal proceeds would give the executive a second chance to trace the illicit proceeds.

From a practical perspective, former Austrian FIU policeman and now employee at EUROPOL, Burkhard Mühl, has analyzed the access by law enforcement agencies to financial data. Is it effective, or in fact the weak link in the investigation of financial crime and the tracing of criminal proceeds? Mühl used the CARIN Network which comprised at the time of the survey 46 countries and jurisdictions, including all 27 countries of the European Union. The research provided general information on how the systems in the respective countries function, supplemented by five cases studies which focused in particular on the identification of bank accounts via central bank account registers, central credit referencing agencies and other means. The research examined procedures, practical questions and obstacles in the daily work of law enforcement in their attempts to obtain financial information. The research findings indicate that two-thirds of the participating countries believe that the procedures they have in place to obtain financial information work well, whereas one-third are of the opinion that their systems do not work well. An increase in the submission of electronically processed and standardized data by the financial institutions as well as shorter response times by financial institutions are commonly seen as areas where improvement is needed. Finally, the study made clear that the establishment of central bank account registers as a tool to identify bank accounts and to trace crime proceeds seems to be an important requirement for law enforcement. At the moment almost all EU countries have established or decided to establish central bank registers. The only two exceptions at the time of writing this introduction are Cyprus and Austria.

Ioana Deleanu from the Utrecht University School of Economics shows differences of access to information by different Financial Intelligence Units. She uses information flow theory to find ways of improving information between the obliged entities, the Financial Intelligence Unit, the police, and the Public Prosecutor.

Barbara Vettori, Assistant Professor in Criminology at the Faculty of Sociology of the Università Cattolica del Sacro Cuore di Milano, Italy, in her chapter gives an overview of the cost–benefit analyses on anti-money laundering policy done so far. How effective is anti-money laundering policy? What are its costs what are its benefits? Little empirical research has been done on this. Legal concepts of how to empirically approach 'effectiveness' are not yet fully developed. Vettori highlights the work of Ferwerda (2009) who for the first time tried to operationalize legal effectiveness for empirical work. Vettori has participated in the first cost–benefit analysis done, the so-called 'Savona project', an EU project under the leadership of Ernesto Savona, which conducted a concise cost–benefit analysis on the ultimate beneficial ownership regulation. The EU project ECOLEF, led by Brigitte Unger, tries to fill in numbers for the variables defined by the 32 FATF Recommendations, by the EU and by Eurostat for European countries.

Money laundering will certainly stay on the international agenda for a while. We hope to disappoint money launderers, as we did with our first book (Unger, 2007). Very quickly after it appeared it was being sold secondhand from the Cayman islands, as it did not contain the practical hints for launderers on where to place their money. With this

book we hope to attract the attention of researchers, law enforcers and people interested in this issue.

NOTE

1.   See http://www.laundryman.u-net.com/page1_hist.html

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