



National and International Cooperation in the Fight against Money Laundering

Teresa Russo, Associate Professor of EU Law
Lecturer of International Organization and EU Migration Law
EUWEB Leader, UNISA
Dr. Stefano Busillo and Dr. Emanuele Vannata (eds.)



Summary

1. Short Insight of National Systems

2. A Look at the International Actors Involved in Preventing and Countering Money Laundering

3. The EU Response

4. Conclusions

1. Short Insight of National Systems

- Money laundering is recognized as a **stand-alone crime** in most EU Member States
- According to the the **Italian Criminal Code**, money laundering keeps such stand-alone nature **even if** its definition comprises **at least four different behaviours (artt. 648-bis, ter, ter.1, 512-bis)**
- National legal frameworks include also a **preventive approach** in the form of the traceability of financial flows and the reporting of suspicious transactions

2. A Look at the International Actors involved in Preventing and Countering Money Laundering

- The international community is **sensitive** to the money laundering topic as it is **often related** to **financing terrorism**
- At international level, the involved actors are **governmental** and **technical** bodies alike
- Such actors do provide support to the national systems and authorities in both **preventing** and **countering** money laundering

Some examples are:

- The **Financial Action Task Force (FATF)** is the global money laundering and terrorist financing watchdog that was established by the G-7 Summit of Paris in 1989. This inter-governmental body sets international **standards** (Recommendations) that aim to prevent these illegal activities;
- The **Egmont Group** is a united body of 164 **Financial Intelligence Units (FIUs)**. The Egmont Group provides a **platform** for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing

- **The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)** is a permanent monitoring body of the **Council of Europe** entrusted with the task of **assessing compliance** with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of **making recommendations** to national authorities in respect of necessary improvements to their systems
- The European Commission's **Expert group on Money Laundering and Terrorist Financing** that advises the Commission on Anti-Money Laundering and Terrorist issues, **assists the Commission in the preparation of delegated acts, legislative proposals and policy initiatives**

3. The EU Response

- EU anti-money laundering legislation dates back to the 1990s with the adoption of **five main directives**
- The last one is the 5° Anti-Money Laundering Directive: **Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU**
- It was adopted after the terrorism outbreak in Europe of 2016

- The Directive's purposes are to:
 - **improve the transparency** of transactions;
 - introduce **forms of protection** in **virtual currency** operations;
 - **foster the cooperation** between the single Member States **Financial Intelligence Units**;
 - **enhance** the controls on **Third Party Countries** at high risk.

Article 75 (ex Article 60 TEC)

Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, **shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.**

The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph.

The acts referred to in this Article shall include **necessary provisions on legal safeguards.**

- **Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders**
- According to Article 3 **“Freezing orders or confiscation orders shall be executed without verification of the double criminality of the acts giving rise to such orders**, where those acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute one or more of the following criminal offences under the law of the issuing State...”
- This list of offences includes **laundering of the proceeds of crime**
- This Regulation will enter into force on **19 December 2020**

- On 24 July 2019, the Commission published the **Communication *Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework***, Brussels, 24.7.2019, COM(2019) 360 final
- The Communication outlined the **weaknesses** of **European Union's own strategy** to fight money laundering and financing terrorism
- In particular, the forms of control on transactions was **strongly questioned**

- On 7 May 2020, the European Commission adopted an ***Action plan for a comprehensive Union policy on preventing money laundering and terrorism financing***, Brussels, 7.5.2020, C(2020) 2800 final
- The action plan builds on six pillars to accomplish **in a span of twelve months** :
 - Effective implementation of existing rules;
 - A single EU rulebook;
 - **EU-level supervision**;
 - A support and cooperation mechanism for financial intelligence units;
 - Better use of information to enforce criminal law;
 - A stronger EU in the world;

One meaningful step requires the **creation** of the **European Supervisory Authority** within the first trimester of **2021**, marking a certain **tendency** to **broaden** the creation of centralized agencies in the EU legal framework

4. Conclusions

- **Global tendency towards the adoption of administrative measures which affects individual rights**
- **Need to balance with the principle of legality and with the protection of fundamental rights**
- **The introduction of the principle of mutual recognition of decisions against money laundering by Regulation 2018/1805/EU is the important logical extension of the European Arrest Warrant (EAW)**