The link between Money Laundering and Corruption
Is the fight effective?

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CONTENT

INTRODUCTION

Crimes in the financial sector can be a challenge for the European Union towards a more integration process by reducing the rate of crimes in this sector. An open market in which there is free circulation of goods, people and capital can be subject to criminals who commit money laundering and other crimes, therefore it is necessary to have a good and harmonised policy in this field.

Money laundering is also linked to corruption. Through corruption politicians have the tendency to maximise profits or to manipulate the criminal justice system in their advantage so that the risks of being arrested, prosecuted, convicted and sanctioned are reduced. The main purpose of money laundering is to increase profits; consequences and methods of this fraud, especially when committed by Political Exposed Persons of a Member State, will be analysed in this paper.

In order to understand the concept of money laundering it is important to consider it according to its components: methods, mechanisms and instruments in connection to the three stages involved: (i) placement of the money; (ii) layering - structuring financial transactions to hide the trail; (iii) integration - making the illegitimate wealth to appear legitimate.

Money Laundering can be defined as "the act of disguising the source of any funds, a way of converting or hiding the source or of moving any funds contrary to the law. The money can be from legal or illegal resources. It might be criminal profits, kickbacks or bribes, or money hidden to avoid taxes."[1], but more scholars studied this phenomenon and numerous definitions were created based on the same mechanism of hiding illegal profits.

In the European Union, at present, this criminal offence is regulated by the 4th Anti-Money Laundering Directive and Terrorist Financing. These two crimes are regulated together, but the difference is that money laundering refers to crimes already committed, whereas terrorist finance is progressive and often is funded by legal sources of money such as charitable entities, legitimate businesses or self-financing. Sources for terrorism activities were also criminal proceeds, for example drug trafficking, but raising funds from illegal activities were more frequent in the past. Now, this is no longer the common practice because of the high risk illegal

[1] Issues of crime and money laundering; Hot money interview with Rod Stamler; Organised crime and money laundering; G7 Report Inc, 2003

funds pose and terrorism activities do not involve proceeds of crime. While money laundering criminals try to conceal the source of illegal the funds, terrorism criminals try to hide the scope for which they lawfully raised funds.

This thesis, however, will not focus on the financing of terrorism, but on the money laundering activity, reasons and efforts for combating it, the money laundering legal framework; the institutions responsible with combating it and most important - the link with corruption.

Money Laundering is considered a "euro-crime" as well as terrorism and corruption which are regulated at EU level in article 83(1) TFEU. The European Union introduced with the Lisbon Treaty a new legal framework in the criminal field: a stronger role for the European and national parliaments as well as comprehensive judicial control by the European Court of Justice within the limits of the Treaty. As for the money laundering criminal offence, crime involving cross-border action, EU exercised its competence through the Directives adopted, most recently - the 4th Anti-Money Laundering and Terrorism Financing Directive. Rules were established of what constitutes a criminal act and what sanctions can apply for these acts.

The fight against money laundering aims to protect the financial market from being misused.

Money laundering is a financial crime with economic effects. When money laundering activities involve a Political Exposed Person (PEP), the effects can be even more dangerous because it is threatened not only the stability of a country's financial sector, but also its political and social stability. Therefore, effective regimes to combat these crimes are essential to protect the global financial framework by preventing financial and power abuses. Money laundering prevention is especially relevant for the criminal offence of "grand corruption" because it involves large sums of money and because it takes place at a government's level, affects the trust of the citizens in their good governance and the rule of law. Moreover, grand corruption affects the economic stability of a state.

Thus, when establishing a link between money laundering and corruption, criminal offences attributed to "grand corruption" have to be investigated, analysed and sanctioned.

RESEARCH QUESTION

How are the criminal offences of money laundering and corruption correlated and fought against in the international legal framework?

4. Method and material

This research is based on literature, press releases, primary and secondary legislation regarding the anti-money laundering policies. The EU policy in this field will be analysed starting with the first rules on the prevention of Money Laundering and ending with the 4th AML Directive of the EU. Besides this, the background of EU legislation consists in the FATF policy in the field and the principles on which Money Laundering policies are created (such as Basel principles).

Regarding the link between money laundering and corruption, the FATF Recommendations also include corruption risks and the Report that FATF issued in July 2011 on "Laundering the proceeds of corruption" will be analysed. Nevertheless, at an international level, there are several provisions in different conventions regarding these criminal offences of money laundering and corruption, namely the United Nation Convention against Corruption; Council of Europe Criminal Law Convention on Corruption; and The African Union Convention on preventing and combating corruption.

CHAPTER 1: THE MONEY LAUNDERING PHENOMENON

1. Definitions

Money Laundering is considered at EU level a Euro-Crime, regulated in article 83-1 TFEU and outlined in the Article 1 (3) of the 4th Anti-Money Laundering Directive and terrorism financing. But before analysing the European Union's legal basis of money laundering, many scholars defined this criminal offence.

Money laundering can be defined as "the act of disguising the source of any funds, a way of converting or hiding the source or of moving any funds contrary to the law. The money can be from legal or illegal resources. It might be criminal profits, kickbacks or bribes, or money hidden to avoid taxes."[2] Thus through money laundering individuals, companies or political structures (when corrupt) make use of illegal profits, obtained through illegal means and conceal this by making their winnings look lawful.

From another point of view money laundering is a "the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If done successfully, it also allows them to maintain control over these proceeds and ultimately to provide a legitimate cover for their source of income".[3]

2. Historical background of Money Laundering

Money laundering is not a new phenomenon. It dates back to the first Chinese underground banking system. India had a similar system called Hundi or Hawalla in the Middle East. These two systems existed long before the Western banking systems came into existence. These are the oldest forms of money laundering which are active even today and work independently of normal commercial channels, often in countries where there is war or political instability.[4] Also

[2] Issues of crime and money laundering; Hot money interview with Rod Stamler; Organised crime and money laundering; G7 Report Inc, 2003

[3] European Money Trails, Ernesto U. Savona, Harwood Academic Publishers, 1999, p.4, as cited in R.B Jack, "Introduction" in Money Laundering – Home Papers on Public Policy

[4] ibidem

termed as IVTS (informal value transfer systems) are used to "transfer funds or value from place to place either without leaving a former paper trail of the entire transaction or without going through regulated financial institutions at all"[5]. But these systems resulted in being the main source of terrorism financing and started to be regulated both in the US and the EU. Criminals had to find other methods to conceal the origin of their funds and for any new illegal practices, the policy fighting money laundering and financing terrorism continues to develop.

The origin of the "money laundering" term dates back to the 1970's, used by American law enforcement authorities and it has entered into common usage during the Watergate inquiry in the United States.[6]

Further on, more interest for money laundering appeared in the 1980's as a result of drug trafficking, the huge profits generated by this criminal activity and other forms of transnational criminal activity that could arise. Other sources for money laundering were smuggling or counterfeiting of goods.

Because of the increasing means of committing money laundering, international institutions, authorities and governments had to create and update legislation in accordance with the money laundering activities and to create new strategies and countermeasures depending on these illegal practices in the field.

However, for creating an anti-money laundering strategy it should be taken into account the international nature of the crimes which produce illicit profits. Criminals can know the global financial system and use this to their advantage by laundering their funds and protecting them from confiscation by law enforcement. For this reason, close international cooperation is recognized as essential and the role of such a strategy is to deter and destroy the criminal organisations by creating a difficult and unfavorable environment for them.[7]

From an international point of view, a response to money laundering was the asset control efforts which spread in two directions. First, through new weapons of immobilization and

[5] Passas, 2003, p.8
[6] European Money Trails, Ernesto U. Savona, Harwood Academic Publishers, 1999, p.4
[7] W.C. Gilmore, Dirty Money (2004);

forfeiture of assets and second, trough efforts to criminalise, discover and curb money laundering, under both international and national law.[8]

Starting with the 1990's, it was reached to the conclusion that all forms of crimes, including money laundering cannot be eliminated, but the solution to this was to create good and integrated strategies for combating it. Thus, such strategies of money laundering can be seen in every law system, but in this paper we will focus on the anti-money laundering policy of the European Union, taking into consideration the FATF Recommendations which are the main source of EU legislation.

3. Stages of money laundering

Money laundering is considered a three-stage process or it involves three basic steps: (1) the placement stage; (2) the layering stage and (3) the integration stage. In order to understand the phenomenon better, I will illustrate now each of these stages.

The placement stage is the most important because not only represents the method in which the money laundering process starts but also because it gives public authorities the best possibility of controlling the laundering process by identifying it and stopping it. The method in the placement stage is the following: the "dirty" money or proceeds of crime enter into the financial sector through physical disposal or the purchase of an asset. Methods of placement can be loan repayment (the repayment of loans of credit cards is done will illegal profits); currency smuggling (the physical movement of illegal currency or monetary instruments across the border) or currency exchanges when foreign money are purchased with illegal funds.[9] The scope of this stage for criminals is to place the illegal profits in the financial circuit and make these profits look legitimate, while for the authorities, through this stage, the criminal holding illegal profits can be identified due to the large amounts placed in the financial system. Another method is that the money launderer uses "smurfs"[10] to avoid the existing threshold laws and avoid suspicion.

[8] M.C. Bassiouni and D.S. Gaultieri, "International and national responses to the globalization of Money Laundering., in E.U.Savona

[9] https://www.moneylaundering.ca/public/law/3_stages_ML.php, Money Laundering - a three stage process

[10] smurf. (n.d.). The Dictionary of American Slang. Retrieved June 10, 2017 from Dictionary.com website

Through this technique, the illicit funds are exchanged in smaller quantities for highly liquid items such as traveler checks, bank drafts or deposited directly into saving accounts.[11] Thus, this stage is not only the most important, but also the most difficult for both parties because depending on how this stage develops the laundering of money is hindered or it goes into the second stage: the layering process.

After the criminal proceeds are placed into the financial system, in the layering stage financial transactions are restructured in order to conceal or disguise the trail of the illegal profits, for example by creating a false origin of the goods. Despite the first stage which gives the authorities a good chance to identify the criminal, this stage is more complex for both parties because often it involves an international movement of funds. If this is succeeded, identifying the criminals and the money-laundering activity across the initial border is much more difficult and in some cases even impossible. This phase can consist of a continuous movements of the funds globally and electronically.

The final stage is the integration, through which illegal funds gain a legitimate origin. Once these funds enter into the legitimate economy they return to the criminal through apparent legal means and can be used for any purposes. Examples of integrating into the financial system illegal goods are by purchasing properties, jewelry or expensive automobiles and thus no attention is particularly drawn to them.

4. Reasons for combating money laundering

The money laundering phenomenon ever since the beginning raised interest among politicians, prosecutors, authorities and academics due to its negative consequences in the social and economic environment. While money laundering is considered most of the times to be the result of organised crime, it is also committed not only by companies in the private sector, but also in the political sector, where it results in corruption. Thus, the consequences of committing

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http://www.dictionary.com/browse/smurf "To avoid being reported by banks, criminals often make numerous deposits of slightly less than $10,000, a practice known as smurfing (1980s+)""

[11] https://www.moneylaundering.ca/public/law/3_stages_ML.php, Money Laundering - a three stage process

this fraud expand in many parts of the society and public authorities have to fight against this practice. Tackling money laundering is not easy because the methods in which it is done are numerous but the more means the criminals find to escape taxes and sanctions, more supervision, legislation and enforcement rules are constantly created or adapted to the society's needs.

The most important reason to fight money laundering is to allow law enforcement authorities to confiscate the illegal profits, in those cases where confiscation might not be possible.[12] Confiscation is the main measure applied in this case. According to earlier legislation, both the Vienna Convention and the Money Laundering Convention (1988) dealt with two types of confiscation: object confiscation and value confiscation. However, in the former case, tracing the good (the property obtained through illegal profits) might be more difficult for authorities because the appearance can be changed or the proprietor can sell it to a third party and then this party, who bought the property in good faith, has to deal with the consequences. In order to eliminate this "escape route", it is important to criminalise the laundering techniques where the property or its source is hidden or given a legitimate appearance.

Secondly, because the methods in which is committed, money laundering in more general terms can be considered as an offence against the administration of justice, harming the society in favour of private interests.

Because money laundering is often a product of organised crime, the effects of these organisations on the legitimate economy are likely to maintain itself through money laundering operations because these imply, at some point, contact with persons or institutions from the legitimate economy. In this situation, not only banks get involved in this criminal activities, but also public authorities and thus corruption is also entailed. Thus, money laundering can also affect the effective allocation of resources and capital, which not is not only illegally used, but is also not invested properly.

Moreover, when money laundering activities involve corruption offences, the public confidence in the international financial system is reduced and the world economy can become unstable and favour the creation of organised crime groups.

[12] See for the following analysis a detailed opinion in G. Stessens(2000), *A new international law enforcement model, Cambridge University Press,* pp.85-87

From another point of view, at a European level, it was considered that the effects of money laundering were on a short-term - unfair competition or missing revenues from governments, but as a long-term effect, this practice would result in damaging the reputation of the financial sector of an EU Member State.[13] In order to prevent this, several legislations exist at the national level and Community level, having its roots in the international standards combating money laundering and corruption.

5. Efforts of combating money laundering

It is clear from all the negative consequences mentioned above that money laundering needs to be fought. The first attempts in Europe, as mentioned before, started in the 1980's.

A policy to fight money laundering was named the "twin-track fight" and consisted in a preventive policy and a repressive policy. The former is found in banking law, while the latter is found in criminal law.[14] I will focus more on the preventive policy which aims at the hindrance of money laundering by setting identification and reporting obligations for financial institutions, certain non-financial institutions and legal professionals like lawyers and civil-law notaries. Regarding the repressive policy, the objective is to punish the money launderer by freezing, seizure and confiscation of assets.[15] But because the repressive policy involves a complex procedure in which criminals are sanctioned for this type of fraud, the procedure will not be analysed in this thesis. Also, regarding these two policies, the repressive one has its origins in the American law, while the preventive policy has its roots in the Swiss law[16]. While the American model concerning the repressive policy was internationalized in Europe through the Vienna Convention and the Money Laundering Convention, the preventive approach from the Swiss model was internationalised through the FATF Recommendations and the European Anti-Money Laundering Directives,[17] which will be further analysed.

[13] Unger (2007), in Melissa van den Broek (2015), P*reventing money laundering,* Eleven International Publishing,p.3
[14] G. Stessens, op.cit.
[15] Melissa van den Broek, op.cit
[16] For further research, G Stessens, op, cit, pp. 108-112
[17] Ibidem, p.112

The fight against money laundering takes places at all levels and some of the institutions that developed anti-money laundering policies are: at an international level, the United Nations through conventions; the FATF (Financial Action Task Force) through The Forty Recommendations on money laundering, the financing of terrorism and proliferation. At the European level, there were several Directives regulating the money laundering activities, the last one being the 4th Anti-money Laundering Directive - Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. The scope of this Directive was, similarly to the 3rd Directive on money laundering to "provide a common EU basis for the implementation of the FATF Recommendations".[18] Thus, the European Union though this Directive harmonized at a regional level the prevention of money laundering. The differences between the 3rd and the 4th Anti-Money Laundering Directives will be seen in the following chapter.

Besides the existent legislation at an international, regional and even national level, a resulting obligation in preventing money laundering is addressed to legal professionals, which have to report any suspicions of money laundering to the competent authorities in relation to the fundamental principle of legal professional privilege.[19]

A study initiated by the European Commission in which the EU Member States' policies in combating money laundering were compared is ECOLEF (The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy) between 2009 and 2012. In this study, the objective was to set a framework for the cost-benefit analysis in the evaluation of money laundering and terrorist financing policy with reference to the threat assessments in every EU Member State. However, this research study will not be analysed in this paper and it is just a reference to the efforts done at the European level against this type of fraud.

[18] Melissa van den Broek (2015), Preventing Money Laundering, Eleven International Publishing, p. 5
[19] ibidem

CHAPTER 2 - The Money Laundering Legal Framework

The implementation of the various anti-money laundering regulatory provisions and policies is coordinated and evaluated worldwide by the FATF, the United Nations and the Council of Europe at a pan-European level along with the European Commission, the European Parliament and the Wolfsberg Group[20].

1. Money laundering at an international level: criminalization and confiscation

1.1. The United Nations

The phenomenon of money laundering is one of the most important criminal activities to be fought against because it is not limited to states but has a cross-border dimension. Therefore, for combating money laundering collaboration worldwide is necessary and one of the forerunners in this field is the United Nations, responsible since the 1980's mainly for the trafficking and drug abuse, one of the main sources of illegal money. The revenues obtained through selling drugs are given an apparently legal source and introduced on the market and this is how the money laundering activity is carried out. It is acknowledged that this source of money laundering is not only harming the health and welfare of humans or the society, but also generates "large financial profits which enable transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial businesses and society at all its levels".[21] Thus, United Nations Convention (1988) against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[22] was the first international instrument to deal with international emergency situations related to the criminalisation of money laundering by drug traffickers. Following this Convention, the United Nations extended the fight against money laundering in 2003 and 2005 through The UN Convention against Transnational Organized Crime which included specific measures to combat money laundering, and

[20] http://www.wolfsberg-principles.com/

[21] The United Nations, "Political Declaration and Global Programme of Action" of the General Assembly, reproduced in V. Mitsilegal, op. cit.

[22] The UN Convention can be found here: http://www.unodc.org/pdf/convention_1988_en.pdf

respectively the UN Convention against Corruption. It was decided that money laundering does not resume to drug trafficking, but also has serious implications in other criminal offences such as corruption. Nevertheless, these Conventions urged states to create a regime not only for banks but also for non-financial institutions, including natural or legal persons exposed to money laundering activities.

The United Nations Office on Drugs and Crime (UNODC) is responsible for the anti-money laundering policy of the United Nations through a Global Programme. This programme encourages States to develop policies to combat money laundering and terrorist financing, it is responsible for the monitoring and analysis of any problems related to these criminal activities that can emerge, increases public awareness against these offences and acts as a "coordinator of initiatives" to the United Nations and other international organizations.[23] Furthermore, it established the International Money Laundering Information Network (IMoLIN), a "research resource" for these criminal activities.[24]

1.2. The Council of Europe

The Council of Europe is also one of the forerunners in combating money laundering and corruption along with the United Nations through its monitoring bodies: MONEYVAL and GRECO. These bodies encouraged Member States to comply with international standards in the fight against money laundering and corruption through a process of mutual evaluation and certain recommendations.

The first Recommendations adopted by the Council of Europe date back to the 1980's on measures against the transfer of ownership and the safekeeping of funds of criminal origin.[25] Following this, in 1990 (entered into force in 1993) a new Convention was issued on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.[26] This Convention's scope was to ease the international cooperation and mutual assistance in crime investigation and track down

[23] http://www.unodc.org/unodc/en/money-laundering/programme-objectives.html?ref=menuside
[24] See www.imolin.org., Handoll, op.cit, p.112
[25] Recommendation No R(80)10
[26] ETS, No 141, in Handoll, op.cit., p.115

the proceeds of crime, seize and confiscate them.[27] The States are responsible for combating money laundering at a national level, but the Convention also has specific rules regarding international cooperation and provides rights of 3rd parties, not only the 43 Member States of the Council of Europe at that moment, now 47.[28] Because more issues were connected to money laundering, the 2005 Convention[29] added rules regarding the Financing of Terrorism, but for this field two more Conventions were necessary: one for the prevention of terrorism and one against trafficking in human beings. The latest Convention includes more comprehensive provisions with money laundering offences and adds also the role and functioning of the Financial Intelligence Units (FIU's).

These rules issued by the Council of Europe represent a primary source to the programme of the FATF in the prevention of money laundering because the measures adopted by the Council of Europe (COE) were "not generally implemented then".[30] Thus, COE had a supporting role for the Member States in implementing the European and international anti-corruption and anti-money laundering measures through mutual cooperation agreements. The Council of Europe is represented by the Economic Crime and Cooperation Division in the fight against corruption, money laundering, asset recovery, terrorist financing or other criminal offences.

2. Money Laundering at an international level: prevention

2.1 The Financial Action Task Force

The Financial Action Task Force in the only international, inter-governmental body specialised in fighting money laundering. Established in 1989 at the G-7 Summit in Paris it enhanced all the previous policies in combating criminal offences in the financial system and issued the 40 Recommendation to deal with these issues. The FATF aims at "setting standards and promoting effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the

[27] ibid
[28] The Member States can be found here: http://www.coe.int/en/web/portal/47-members-states
[29] The updated version of 1193 - Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;
[30] V. Mitsilegas, op.cit, p. 44

international financial system".[31] The first step in the 40 Recommendations dates back to 1990 when the basic framework of universal application was issued. At that time, the scope of the Recommendations was to protect the financial system by persons who were laundering money through drug trafficking. But because the money laundering techniques were and are continuously increasing these Recommendations were updated in 1996, 2003 and 2016[32] - the latest development also including terrorist financing. The FATF also issued the Eight Special Recommendations on Terrorist Financing, but these will not be analysed further. Because Member States have different legal and financial systems they cannot combat money laundering in the same manner and the FATF Recommendations are an incentive for States to bring their national systems together into compliance with the international standards in the fight against money laundering and terrorism financing and ease the implementation of measures.

The Forty Recommendations take into account the constitutional framework of a country when providing preventive measures and international cooperation in the fight against money laundering and corruption. These Recommendations cover: (1) AML/CFT policies and coordination including risk assessment and the application of a risk-based approach; (2) the criminal offence of money laundering, confiscation and provisional measures; (3) rules on the terrorist financing and proliferation financing; (4) other preventive measures such as countries' obligation to ensure that *"financial institution secrecy laws do not inhibit implementation of the FATF Recommendations"*[33], rules on CDD (customer due diligence) and record-keeping and additional measures for specific customers and activities. The additional measures include provisions for PEPs (Politically exposed persons), for cross-border correspondent banking when financial institutions perform CDD, for money or value transfer services, new technologies or wire transfers;[34] (5) rules on transparency and beneficial ownership of legal persons and arrangements[35]; (6) powers and responsibilities of competent authorities and other institutional

[31]The scope of FATF can be found here: http://www.fatf-gafi.org/about/
[32] http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf
[33] Ibidem, Recommendation 9
[34] Ibidem, Recommendations 12-16
[35] Recommendations 24-25

measures; [36] and the last part (7) contains rules on international cooperation including international instruments, mutual legal assistance or extradition.[37]

The fight against these criminal offences is conducted not only by the FATF-style regional bodies, but also by IMF and World Bank. These global financial institutions have an important role in monitoring and ensuring that countries comply with anti-money laundering (and terrorist financing) standards and the standards are effective.

Moreover, the FATF does not neglect the link between money laundering and corruption and the negative effects that can result in the economic development of a country when the governance is conducted in the interest of the leaders and not in the interest of the state. According to the G20 Summit of the FATF criminal offences committed at a governance level are bribery and theft of public funds with the scope of obtaining private gain. These are methods in which money laundering is carried out by public officials. Thus, the scope of the FATF Recommendation are to prevent money laundering and terrorist financing, but can also combat corruption when they are efficiently applied by: "(1) safeguarding the integrity of the public sector; (2) protecting designated private sector institutions from abuse, (3) increasing transparency of the financial system, (4) facilitating the detection, investigation and prosecution of corruption and money laundering, and the recovery of stolen assets".[38]

The 40 Recommendations in 2012 and updated in 2016 as "International Standards on combating money laundering and the financing of terrorism and proliferation" also offer interpretative notes on the 2003 Recommendations.

2.2. The Basel Committee

In combating money laundering, the policies are focused mainly on the role of the financial system and the negative effects that this criminal offence poses for the global, European or national financial system. Financial institutions such as banks have an important role in this area. The first comprehensive preventive effort at an international level was done in 1988

[36] Recommendations 26-35
[37] Recommendations 36-40
[38] As stated by FATF: http://www.fatf-gafi.org/publications/corruption/?hf=10&b=0&s=desc(fatf_releasedate)

through the Basel Committee on Banking Regulations and Supervisory Practices (now re-named Basel Committee on Banking Supervision- BCBS). A "Statement of Principles" was issued by the Committee stating some principles which "encourage banks management to put in place effective procedure to ensure that all persons conducting businesses with their institutions are properly identified, that transactions which appear illegitimate are discouraged and that co-operation with law enforcement agencies is achieved".[39] This statement aimed at preventing money laundering through the illegal use of the banking system but it was not legally-binding.

The initial "Statement of Principles" was updated first in 1997 - "Core principles for effective banking supervision" which dealt with internal controls followed by the 1999 -"Core principles methodology", which completed the former with other criteria and then in 2001 guidance was issued for customer identification, the KYC (know your customer) standards.[40]

Thus the principles refer to the need for financial institutions to identify the risks of money laundering, to understand them, evaluate them and to take the necessary measures in order to reduce them to an acceptable threshold.

The purpose of BCBS is to strengthen the regulation, supervision and practices of banks worldwide in order to ensure financial stability.

3. Money laundering at a Community level

3.1 Anti-Money Laundering Directives

The prevention of money laundering and the terrorist financing in the European Union is meant to protect the financial market for being misused through these methods. EU rules are based on international standards such as the Financial Action Task Force (FATF) Recommendations and completed by national rules. The FATF is the main international body concerned with combating money laundering, the financing of terrorism and other threats to the integrity of the international financial system. Thus, there is a wide and international EU cooperation in this area through the European Commission who has an observer status on the

[39] Preamble, recital 6. Text reproduced in V. Mitsilegas, *Money Laundering Counter Measures in the European Union;* Kluwer Law International, p. 47
[40] Handoll, op.cit. p.125

Expert Group on Money Laundering and Terrorist Financing and also has the right to take part in the informal network of Financial Intelligence Units Platform (FIU).[41]

Regarding the European's Union strategy in combating money laundering, this is continuously developing since 1991 when the 1st Directive (91/308/EEC) was issued. This Directive incorporated the FATF Forty Recommendations and focused on drug-trafficking related money laundering aspects, but it was considered insufficient in the prevention of the use of the financial system through money laundering because it lacked important provisions such as the appropriate procedure for financial institutions to identify and verify who the customer was. Secondly, there was some pressure put on financial institutions to control their stuff and train them to be aware of suspicious transactions, but this strategy it didn't prove to be successful. Finally, financial institutions were not allowed to hold anonymous bank accounts. There was harmonization though this measure in the banking practices but it conflicted with the bank's obligation to confidentiality of customers.[42] Therefore, the 1st Directive was amended by Directive 2001/97/EC on prevention of the use of the financial system on money laundering which was extended to money launderig from all crime types, not only drug-trafficking. The 2nd Directive also extended the number of service providers obliged to report transactions such as non-financial agents or financial businesses which can be involved in money laundering (luxury goods, casinos) and enhanced the CDD (customer due diligence) requirements. However, what this Directive lacked were justifications for combating money laundering.

Following the 1st and 2nd Money Laundering Directives, in 2005 the 3rd Directive was adopted (2005/60/EC) which also included the prevention of terrorist financing and the revised 2003 FATF Recommendations. The scope of this Directive was to offer even more harmonization at the Community level, which could adopt measures for combating money laundering and terrorism financing in accordance with the subsidiarity and proportionality principle. Moreover, taking into consideration international rules, it introduced coordination and

[41] FIU is is an "informal group, set up in 2006 by the Commission which brings together EU countries' financial intelligence units and helps them cooperate with each other. The Commission takes part in the Platform and provides support. The EU FIU platform also discusses matters related to **FIU.Net** – the IT system used by FIUs to exchange information"; A report of the FIU's Platform concerns feedback on money laundering and terrorist financing cases and typologies: http://ec.europa.eu/justice/civil/financial-crime/fiu-intelligence/index_en.htm

[42] ("The Early History of Money Laundering | Law Teacher", 2017); https://www.lawteacher.net/free-law-essays/commercial-law/the-early-history-of-money-laundering-commercial-law-essay.php#ftn30

cooperation with international specialized bodies in this field. This was considered to be necessary because this type of crimes are often carried out in an international context, and no national measures or even Community measures can be sufficient in fighting money laundering and terrorist financing.[43] The third Directive replaced the first Money Laundering Directive as amended through the second Directive, but now a new Anti-Money Laundering Directive was issued and entered into force in 2015 (Directive EU 2015/849). Through to the 4th Directive AML Directive an obligation for the Member States was introduced: to prevent, detect and effectively combat money laundering and terrorist financing. Furthermore, the role in preventing money laundering was expanded at a national level.

The 4th Anti-Money Laundering Directive

The regulatory background for the Anti-Money Laundering Directives has been since the 1990's the FATF Recommendations. The European Union is the most diligent region worldwide in implementing in the Community's legal framework the Recommendations. In time, FATF constantly updated these Recommendations and each time the European Union responded quickly by adopting a new Directive to give full effect to the updated versions.[44] FATF is thought-out to be the global standard-setter for measures to combat money laundering and terrorist financing.[45] Despite the fact that FATF Recommendations can be considered as "soft law" instruments[46], the EU Anti-Money Laundering regime was strongly influenced by them. For example, the 4th Anti-Money Laundering Directive is a response to the latest version of the FATF Recommendation from 2012, namely "International Standards on combating money laundering and the financing of terrorism and proliferation".[47]

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[43] J. Handoll, Capital, Payments and Money Laundering in the EU, Richmond Law & Tax Ltd, p.133,135

[44] Anti-Money Laundering Legislation: Implementation of the FATF Forty Recommendations in the European Union; Colin Tyre QC; p. 69-70

[45] Research handbook on EU Criminal Law; op.cit.; p.342

[46] THE EVOLVING EU ANTI-MONEY LAUNDERING REGIME; Challenges for Fundamental Rights and the Rule of Law; Valsamis Mitsilegas and Niovi Vavoula, 2016;

[47] In the **Preamble to the fourth AML Directive, Recital 4** states that:
Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible

Following the rationale used for adopting the 1st Anti-Money Laundering Directive - *"the free movement or internal market legal basis under the justification that preventing money laundering was essential to ensure the integrity of the Community financial system and the internal market"*[48]*;* the 4th Anti-Money Laundering Directive was adopted on the basis of Article 114 TFEU and the principle - that money laundering (and terrorist financing) must be prohibited and not criminalized - was preserved.

The necessity to constantly update legislation in this field is a result of the negative effects that money laundering can have "*on the stability and reputation of the financial sector, while terrorism shakes the very foundations of our society".* [49] Michel Barnier also suggested a preventive approach for the protection of the financial sector, therefore the nature of the 4th Anti-Money Laundering Directive is not criminal, but rather precautionary in implementing measures within the financial system. This is highlighted in Recital 59 of the Directive, which provides administrative sanctions and measures for Member States who did not correctly transpose the Directive.[50]

According to Article 83 (1) TFEU the European Parliament and the Council have a voluntary obligation -*"may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension"* through the means of a Directive. These criminal offences include the terrorism financing, but more important the money laundering and corruption which embody the topic of this paper. However, the 4th Anti-Money Laundering Directive does not establish minimum rules regarding

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with, and at least as stringent as, other actions undertaken in international fora. Union action should continue to take particular account of the FATF Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the 'revised FATF Recommendations').

[48] THE EVOLVING EU ANTI-MONEY LAUNDERING REGIME; Challenges for Fundamental Rights and the Rule of Law; Valsamis Mitsilegas and Niovi Vavoula, 2016; p.268

[49] Michel Barnier (former Commissioner for Internal Market and Services), European Commission; Press Release; 5 Feb. 2013

[50] ***Recital 59 of the 4th Anti-Money Laundering Directive:*** *"Member States have to lay down effective, proportionate and dissuasive administrative sanctions and measures in national law for failure to respect the national provisions transposing this Directive […]. This Directive should therefore provide a range of administrative sanctions and measures by Member States or serious, repeated or systematic breaches of the requirements relating to customer due diligence measures, record-keeping, reporting of suspicious transactions and internal controls of obliged entities."*

the definition of these crimes in the sense of Article 83(1), but it expressly states in Article (1), para 2, that Member States *"shall ensure that money laundering and terrorist financing are prohibited".*[51] Furthermore, in para 3-5 it offers its own definitions to money laundering and terrorism financing,[52] but through these provisions, the Directive indicates more what kind of behaviour is considered a criminal act. It does not offer a harmonized definition of these criminal offences and leaves this to the latitude of the Member States, but it does offer harmonized measures that Member States have to transpose into national legislation to prevent money laundering and terrorist financing.[53]

The new regulatory framework of the 4th Anti-Money Laundering Directives provides the following novelties to the 3rd Directive: emphasis on ultimate beneficial ownership and enhanced customer due diligence (CDD); an expanded definition of a politically exposed person (PEP); the cash payment threshold reduced to €10,000; expanded framework to include entire gambling sector, not only casinos how it was previously regulated; enhanced risk-based approach, requiring evidence-based measures and the inclusion of tax crimes as predicate offences.

After stating the scope of the Directive in article 1 and guidance for the money laundering and terrorism financing concepts, article 2 provides information about the obliged entities who are subject to this Directive such as financial institutions, credit institutions, natural or legal

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[51] Research handbook on EU criminal law, op.cit., p 343-344

[52] ***Article 1 - Para 3:*** *"For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as* ***money laundering:***
(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, 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 such an activity to evade the legal consequences of that person's action;
(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 derived from criminal activity or from an act of participation in such an activity;
(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity;
(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).
Para 5: *"5. For the purposes of this Directive,* ***'terrorist financing'*** *means the provision or collection of funds, by any means, directly or indirectly, with the intention that they be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA"*

[53] Research handbook on EU Criminal Law, op. cit.; p. 344

persons working in the exercise of their powers (notaries, lawyers, tax advisors), tax or company service providers, estate agents.

The 1st two novelties of the 4th Anti-Money Laundering Directive are:

1. **The cut of the minimum threshold for persons receiving cash amount from 15.000 to 10.000 EUR**

2. **The inclusion of all gambling services, not only casinos in the obliged entities subject to the Directive.**

Regarding the second novelty, it was introduced the principle that Member States can exempt (with the exception of casinos) gambling operators of lower risk situations from the rules transposing the Directive, according to the lower risk proven by the nature and the operating size of such services.[54]

Another novelty can be found in article 3, para 4 of the Directive and consists in:

3. **The inclusion of tax crimes, indirect and direct taxes, as predicate offences.**

However, along with the other criminal activities considered by the Commission in the 4th Anti-Money Laundering Directive[55], no harmonized definition exists for tax crimes at the community level. Each Member State has defined tax crimes in a certain way in the national legislation and the differences can affect the implementation of other rules of the AML Directive.[56] Therefore, in Recital 11[57] a guidance is offered to Member States to follow the

[54] Domenico Siclari; The New Anti-Money Laundering Law - First perspectives on the 4th European Union Directive, Palgrave Macmillan, 2016, page 2

[55] Other criminal activities regulated by the 4th Anti-Money Laundering Directive includes as predicate offences terrorism, drug trafficking, organized crime, fraud and corruption as defined either by the European Union or the United Nations.

[56] THE EVOLVING EU ANTI-MONEY LAUNDERING REGIME; Challenges for Fundamental Rights and the Rule of Law; Valsamis Mitsilegas and Niovi Vavoula, 2016; p.270

[57] **Recital 11, 4th Anti-Money laundering Directive:** *It is important expressly to highlight that 'tax crimes' relating to direct and indirect taxes are included in the broad definition of 'criminal activity' in this Directive, in line with the revised FATF Recommendations. Given that different tax offences may be designated in each Member State as constituting 'criminal activity' punishable by means of the sanctions as referred to in point (4)(f) of Article 3 of this Directive, national law definitions of tax crimes may diverge. While no harmonisation of the definitions of tax crimes in Member States' national law is sought, Member States should allow, to the greatest extent possible under their national law, the exchange of information or the provision of assistance between EU Financial Intelligence Units (FIUs).*

FATF Recommendations and to collaborate as much as they can with the EU FIU's for information exchange. Cross-border cooperation between FIU's is an essential factor in achieving the best answer to the predicate offences of tax crimes.

The 4th novelty is **a more targeted and focused risk-based approach** in which Member States must collaborate with the Union in identifying, understanding and mitigating the risks of money laundering. The new supranational risk-based approach has been recognized at an international level and European Supervisory Authorities (such as EBA, EIOPA and ESMA) can provide Guidance using evidence-based decisions on the risks affecting the Union's financial interests.[58] Moreover, the risk assessment was structured on three levels: the supranational / EU level (article 6); the national level (article 7) and the obliged entities level (article 8).

At a supranational level, the Commission is designated *"to review cross-border situations that could affect the internal market and that cannot be identified and effectively combatted by individual Member States".* [59] For the assessment of risk in cross-border activities the Commission has to collaborate with the experts in this field such as the Expert Group on Money Laundering and Terrorist Financing and the representatives from the FIUs.[60]

Also at a national level, the risk assessment can represent an important source of information in the Commission's appraisal. The Member States designate an authority or establish a mechanism for the risk assessment and once identified it shall be used among others to improve the AML/CFT regime, to identify areas of low or high risk money laundering activities and for informing the obliged entities to carry their own risk assessment.[61]

The role of the obliged entities in conducting risk assessment is to evaluate, according to entity's nature and size, the risk factors *"relating to their customers, countries or geographic areas, products, services, transactions or delivery channels".*[62] One of the characteristics of these policies is the customer due diligence, which is a very important factor for assessing risk, if not the most important.

[58] Recital 13, 4th AML Directive, as referred in Research handbook on EU Criminal Law, op.cit.
[59] Recital 14, 4th AML Directive
[60] ibidem
[61] Article 7, 4th AML Directive
[62] Article 8, 4th AML Directive

Customer due diligence is important when a firm, covered by money laundering regulations enters into a business relationship with a customer or a potential customer. CDD involves all the necessary information that a firm must know about its customer such as identity, the source of funds when executing a transaction. Through this method, the firm lessens the money laundering risks, besides others, that a customer can expose it to. CDD is also the practice of KYC (Know your customer). According to Michael Volkov[63] KYC includes the following steps that a financial institution (or business) must take: (1) Establish the identity of the customer; (2) Understand the nature of the customer's activities (the primary goal is to identify that the source of the customer's funds is legitimate); (3) Assess money laundering risks associated with that customer for purposes of monitoring the customer's activities. Moreover, KYC practice can be challenging for entities when applying simplified, normal or EDD controls. In this sense, supervision of payment institutions that operate cross-border through agents can pose high risks associated with the money transfer sector.[64]

Financial institutions or private firms must know their customer for the subsequent reasons: compliance with legislation requirements in the money laundering field; to protect them, at the time due diligence is carried out against the customer by making sure the identity is correct, no fraud identity is permitted; to be sure that the customer was not involved in money laundering, fraud, or even corruption activities when the customer is a PEP.[65] Thus, EU rules and international standards require a risk-based approach to CDD.

New rules of the 4th AML Directive concern also: **the expanded definition and treatment of Politically Exposed Persons (PEPs).**

Previously in the 3rd AML Directive, PEPs were considered to be "*natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons"*[66] and the FATF Recommendations were transposed rigorously in the former Directive with the distinction between foreign and domestic PEPs.

[63] http://blog.volkovlaw.com/2015/07/know-your-customer-kyc-due-diligence-best-practices-2/
[64] Domenico Siclari, op. cit.
[65] International Compliance Association; https://www.int-comp.org/careers/a-career-in-aml/what-is-cdd/
[66] Article 3 (8) of the 3rd AML Directive

The 4th AML Directive took a different approach regarding the PEPs. In the new legal provisions, there is no such distinction as the FATF proposed and article 3, para 9[67] introduces a wide range of positions that an individual can hold in order to be recognized as a PEP. Another important feature that was introduced is the enhanced due diligence to all the transactions or business relationships which involve PEPs. This is a requirement for MS's obliged entities to strengthen the customer due diligence when a politically exposed person is involved.[68] In the Commission's view, this approach *"would give greater clarity and more consistency to the provisions, while placing the EU ahead of the international standard"*.[69]

Nevertheless, a 6th novelty is **the new requirements for beneficial ownership information.**

Beneficial ownership is part of the customer due diligence by identifying the beneficial owner of a company. Money Laundering activities involve in many cases persons working in a secret environment, trying to hide as much as they can, through the misuse of corporate vehicles, their illegal profits. A solution to this issue was proposed by FATF and consists in making available to the responsible authorities *"the information regarding both the legal owner, the beneficial owner and the source of the corporate vehicle's assets".*[70] Departing from the FATF Guidance on Transparency and Beneficial Ownership which defines the beneficial owner, provides effective mechanisms to combat the misuse of legal person and arrangements and information on transparency, a non-binding Guidance, the 4th AML Directive defines the beneficial owner as: *"any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted"*[71]. Regarding

[67] Article 3 (9) of the 4th AML Directive; For example: (a) heads of State, heads of government, ministers and deputy or assistant ministers; (b) members of parliament or of similar legislative bodies; (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies[…] (e) members of courts of auditors or of the boards of central banks; (f) ambassadors […] (h) directors, deputy directors […] of an international organisation.
[68] Article 20, 4th AML Directive
[69] Commission Impact Assessment accompanying the proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering including terrorist financing and the proposal for a Regulation on information accompanying transfers of funds, SWD(2013) 21 final, p. 42., in V. Mitsilegas, N. Vavoula, op.cit.
[70] FATF Guidance, Transparency and Beneficial Ownership, 2014, p. 3; found at: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf
[71] Article 3, para 6, 4th AML Directive

the transparency principle, the 4th Directive implements an obligation for Member States to ensure that beneficial ownership information is held in a central register in each Member State, for example a commercial register, companies register, or a public register.[72] Recital 14 of the Directive specifies that "*obliged entities must obtain and hold 'adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership*". All this information is held in the registers previously mentioned.

A problem with beneficial ownership - the storing of personal data and making it available to the supervisory authorities can concern the data protection of PEPs as individuals. In this sense, according to Recital 14, competent authorities fighting against money laundering, terrorism financing, corruption, tax crimes and fraud can have access to data because of their supervisory authorities, but if another person wants to have access to the beneficial ownership information, data protection rules must be respected and that person has to demonstrate a legitimate interest. This is also supported by Article 39, para 1 and 2 in which no information shall be disclosed to a third party, but this prohibition does not apply for the competent authorities.[73]

The 4Th Directive boosts the international cooperation - because it addresses and incorporates the FATF Recommendations updated in 2012 and the UN provisions in a stricter way. The 4th AML Directive is an endeavor of the European Union in intensifying its efforts to combat money laundering and terrorism financing effectively. Full harmonization may lack in this field, but the Directive is a new step in achieving a stable and effective legal framework at a Community level in the fight against money laundering and terrorism financing.

[72] Article 30, para 3, 4th AML Directive

[73] Chapter 5 of the 4th AML Directive provides rules regarding data protection, record-retention and statistical data, in accordance with Data Protection Directive 95/46/EC. For further analysis para 40-44 are relevant.

CHAPTER 3: Money Laundering and Corruption

1. The link between money laundering and corruption

Corruption is a widespread phenomenon which used to be linked to poor countries until it was decided that it is a universal concept found in all countries whether developed or in the developing process across the globe, in the public or the private sector. Corruption can be understood as the use of the public office[74] for private gain and it is done through several criminal methods such as bribery, extortion, fraud, embezzlement, theft of public funds. In order to benefit effectively from the public goods, the source of all illicit gains has to be concealed. Thus, corrupt officials stole assets through the process of money laundering and if the process is successful there is no confiscation of the assets illegally obtained.

When corruption takes place in developing countries the process of laundering the illicit gains happens through the international financial system.

The fight against corruption is exercised at all levels. The first and most important instrument dealing with this criminal offence worldwide is the UN Convention. The UNODC (the United Nations Office on Drugs and Crime) declared expressly that corruption and money laundering are inter-connected: *"There are important links between corruption and money laundering. The ability to transfer and conceal funds is critical for the perpetrators of corruption, especially for large-scale or grand-corruption. Money laundering statutes can contribute significantly to the detection of corruption and related offences by providing the basis for financial investigations. It is therefore essential to establish corruption as the predicate offence for money laundering ".* [75]

Also, UNODC considers that the process of money laundering fuels corruption, because if corrupt public officials lack the possibility to launder bribes, kick-backs, public funds or even development loans from international financial institutions, the incentive to get engaged in these

[74] Public official or PEP - "politically exposed person" is someone who holds a legislative, administrative or judicial position within a state;

[75] UNODC, Anti-Corruption Tool Kit, referenced in: Corruption and Money Laundering: A Symbiotic Relationship; D. Chaikin, J. Sharman, Palgrave Macmillan, 2009, p.39

criminal activities decreases. Thus, the more efficient the fight against money laundering is, the more productive is the fight against corruption.

Following this declaration, the UN Convention against Corruption contains certain provisions regarding measures to prevent money laundering in Article 14 and the laundering of the proceeds of crime in article 23.[76]

But the UNCAC is not the only one fighting against corruption. Other regional conventions contain provisions related to the proceeds of corruption hidden through the process of money laundering. Besides the UN Convention on Corruption, there are three more: (1) OECD[77] Anti-bribery Convention; (2) COE (Council of Europe) Criminal Law Convention on Corruption[78]; (3) AU (African Union) Convention on preventing and combating corruption.

The OECD Convention states in article 7 that each party which bribes its own public official to apply money laundering legislation will also bribe a foreign public official, regardless of the place where the initial bribery took place.

The COE Convention regulates in article 13 that a party (for example a contracting state) can adopt legislative or other measures to establish, under its domestic law, the conduct for these criminal offences (and the committed acts) according to article 6, para. 1 and 2 of the COE Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime.[79] Such criminal offences can consist in the conversion or transfer of property with the scope of concealing or disguising the illicit origin of it so that the person responsible can evade punishment and confiscation of assets. Article 13 also adds that criminal offences are considered in accordance with articles 2-12 of the COE Convention on Corruption. These include active or passive bribery of domestic or foreign public officials; bribery in the private sector or bribery of international organisations, international parliamentary assemblies, bribery of judges or officials in international courts and trading in influence.[80]

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[76] For the content of these articles:
https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

[77] Organisation for Economic Co-operation and Development

[78] Found at this address: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173

[79] Found at this address: https://rm.coe.int/168007bd23

[80] Article 13 COE Convention on Corruption, corroborated with article 6 COE Convention on Laundering, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

The AU Convention does not lack to impose parties in article 6 the same obligation, as the COE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, to adopt legislative and other measures necessary to identify corruption proceeds for the purpose of money laundering. Thus, the UNCAC along with these others free international organisations addresses the processes of laundering the illicit goods obtained from engaging in corrupt activities.[81]

The fight against money laundering and corruption should not be ignored and improved in all countries whether developed or in the developing process because of the negative consequences of corruption which are: (1) the enormous profits generated through this criminal offence to be laundered; (2) it facilitates the money laundering process and terrorist financing methods; (3) systemic corruption undermines regulatory and legislative AML/CFT regimes (4) undermines the institutional development.

The AML and CFT regimes diminish the adverse effects of the criminal activity in the financial sector and promote integrity and stability in the financial markets. These regimes do not only fight against money laundering and terrorism financing, but also help to combat corruption due to the existing link between these criminal offences as stated by IMF*: "Effective anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitate financial abuse."*[82]

Any AML programme should be risk-based. Corruption raises a high level of risk, thus according to a study of ACAMS (Association of Certified Anti-Money Laundering Specialists)[83] an AML programme can be vulnerable to this criminal offence because corruption generates a high amount of illicit funds. Also, because of the link with money laundering, if corruption is not detected and verified it can hinder the implementation of effective measures to combat money laundering. This can happen by interfering with the institutions responsible for fighting money

[81] *Working paper, The UN Anti-Corruption Convention and Money Laundering,* Indira Karr, Miriam Goldby; https://www.surrey.ac.uk/law/PDFs%20Files%20(Law)/Corruption/carrgoldbyAML%20article.pdf
[82] https://www.imf.org/external/np/leg/amlcft/eng/, Min Zhu, Deputy Managing Director of the IMF
[83] http://www.acams.org/aml-white-paper-anti-bribery-corruption/

laundering when public officials are corrupted to get involved in the laundering process of the illicit gains. A programme can also be vulnerable because of the different regimes that exist from a country to another and hamper the international cooperation in the fight against money laundering.

Therefore, the more efficient an AML regime is, better results can be achieved in the fight against corruption. This is happening by identifying the movements of financial assets which look skeptical and could be the result of the criminal activity and by tracing these criminal profits of state assets, preserving, recovering them and then returning to the rightful owner for their rightful use.[84]

Furthermore, along with the United Nations, the Council of Europe and the African Union, the FATF also establishes a link between money laundering and corruption and has an important role in the fight against these criminal offences. According to FATF, corruption cases can consist of bribery or theft of public funds for private gain which are concealed through the process of money laundering.

Another reason to strengthen the fight against corruption is the high-risk that a PEP can pose for money laundering. A PEP's position offers him a significant advantage that other criminals involved in money laundering offences (such as drug-traffickers) do not have it. Because of his position a PEP not only has rightful access to significant public funds and knowledge of state budgets, public companies but also has the ability to control them. Thus, corrupt PEPs will use this power for personal financial gain and by stealing from the State besides the poverty disease and political instability that exist in a country, it also harms the economy.[85]

Therefore the FATF issues a Reference Guide and Information Note on the use of the FATF Recommendations to support the fight against corruption. As stated in this guide there are 4 methods to diminish the risk factors of laundering the proceeds of corruption: (1) by safeguarding the integrity of the financial sector; (2) by protecting designated private institutions

[84] The UN Anti-Corruption Convention and Money Laundering, Working paper, op.cit.

[85] http://www.fatfgafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf; FATF Report, Laundering the Proceeds of Corruption, July 2011

from abuse; (3) by increasing transparency in the financial sector; (4) by detecting, investigating, prosecuting and recovering the stolen assets.[86]

Regarding the first method, key government agencies are less likely to be corrupted if they have sufficient independence and autonomy, enough budgetary resources to execute their functions and skilled, honest staff.

Private institutions such as banks or insurance companies or businesses and professions (lawyers, accountants) can also be subject to corruption. In order to prevent the involvement in the criminal offences of corruption and money laundering a "fit and proper" control has to be rendered for managers and owners of these institutions/businesses and the latter also have the obligation to verify the employers. This can be done through *"internal control systems or audit functions to ensure compliance with AML/CFT measures."*[87]

In order to identify the acts of corruption and money laundering the scope of the FATF Recommendations is also to ensure transparency in the financial sector. This concerns to collect the necessary data to identify the customer and trace him in cases of corruption and money laundering. For PEP as a customer, even more cautious measures are necessary, therefore *"financial institutions must put in place appropriate management systems"*.[88]

The incentive for corruption and money laundering, if it is difficult to be stopped, it is significantly reduced if any country has an efficient system and operating authorities to detect, investigate and prosecute the responsible persons and recover the stolen assets. The detection and investigation are done by the FIU and the information found is sent to the competent authorities to further investigate and prosecute the responsible persons. The FATF Reference Guide adds in this situation that *"corrupt persons may be punished even if the corruption offence cannot be pursued"*.[89] Thus this is a hindrance to the incentive of the criminal offences of corruption and money laundering. But besides the national policy of a country, effective laws and mechanisms also have to exist in every legislation to fight cross-border corruption.

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[86] FATF Corruption, Reference Guide and Information Note on the use of the FATF Recommendations to support the fight against corruption; (2017); from http://www.fatf-gafi.org/media/fatf/documents/reports/Corruption%20Reference%20Guide%20and%20Information%20Note%202012.pdf

[87] Ibidem, p.3

[88] Ibidem, pp.4-5

[89] Ibidem, pp.6-7

For example, at an international level, the Working Group on Bribery of OECD is responsible for examining bribery cases of foreign officials after detected by the FIU in accordance with the AML scheme and also contributes to the measures taken by countries to identify and confiscate the illicit gains from the bribery of foreign public officials.

Thus, corruption produces huge profits to be laundered in the international financial system, but at the same time bribery, trading in influence or embezzlement compromises the AML systems.[90]

2. ABC programme: Anti-bribery and Corruption

An ABC programme is an answer to the threat and risk of bribery and corruption. It can consist of conducts and standards to form a comprehensive and practical approach to risk assessment in this field. Any organisation, financial institution or even public or private companies, has or should have an ABC programme or certain rules to hamper the involvement in corrupt activities. As an example, we will see further what an ABC programme involves and how a financial institution can approach and understand the corruption risks.

Hence, the first step that a financial institution takes is the designation of a responsible person for the application of the ABC programme. Then it extends the evaluation area of money laundering and terrorism financing risks to corruption risks. After broadening the risks, it increases the number of measures necessary to identify the source of the funds obtained through the transactions executed. A training is offered to all the employees, including specialists. The next step is that the internal audit control is also extended to include anti-corruption measures and no benefits that could correspond to corrupt activities are allowed (as gifts or protocol advantage). Finally, any ABC programme should include measures for the identification of PEPs and monitor effectively the relationship and the transactions made with them.[91]

Financial institutions have to enhance existing controls and procedures of anti-money laundering anti-bribery and corruption programs. Ensuring consistent application of compliance with AML and ABC requirements can be a challenging. According to a KPMG study on Anti-

[90] D. Chaikin,J. Sharman, Corruption and Money Laundering: A Symbiotic Relationship, Palgrave Macmillan, 2009
[91] Deloitte Study, Catalina Stroe, 2015

Bribery and Corruption[92] "*a growing number of companies are finding it more difficult to deal with ABC issues, because of their complexity, increasing globalization of their operations and the need to deal with these matters in many different jurisdictions*".[93] A survey was conducted on ABC and some of the challenges that companies face when analysing the risk consist in: the audit of third parties for compliance, the performing of due diligence over foreign agents / third parties, lack of internal resources or difficulty in identifying and assessing risks because of the different variations in country requirements.[94]

However, despite the difficulties that an ABC programme can pose, governments and any public or private institution or company must have one - as comprehensive and effective as possible.

3. Grand corruption and money laundering

"Ill-gotten gains don't disappear by themselves. Dictators, warlords and other criminals need ways to hide their identity and move dirty cash around the world. Then they need a nice safe place to spend their loot."[95]

As mentioned earlier in this chapter corruption is the criminal offence which consists in the use of the public office for private gain. There is no universal and comprehensive definition worldwide, but each state knows what this criminal activity entails and provides specific rules to measure and combat corruption. The fight against this criminal offence is essential because of its negative effects that result in a society: undermining fairness, stability and efficiency of the financial sector, thus affecting the economy of a state by hampering the development in that state where corruption is high.

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[93] Jimmy Helm, KPMG Forensic in Central & Eastern Europe and Global Leader, KPMG Anti-Bribery & Corruption Services.

[94] https://assets.kpmg.com/content/dam/kpmg/pdf/2015/09/anti-bribery-corruption-2015.pdf, Global Anti-Bribery and Corruption Survey, KPMG International, 2015

[95] ("Corruption and Money Laundering | Global Witness", 2017); https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/

Corruption comprises of a vast number of criminal offences, but regarding the link between money laundering and corruption the distinction between grand corruption and petty corruption is significant.

Petty corruption involves the exchange of small amounts of money as minor favors usually between persons that know each other or in places such as hospitals or schools (for example seeking employment for a friend, paying your medic a sum of money for the operation it has to perform).[96] Because of the little amount of money given for certain advantages, petty corruption is not considered in most cases relevant for the interaction with money laundering. However, it still has negative effects in a society because it is more common and it affects those individuals who are poor and cannot afford "the favours". On a small scale, firms can also be affected by petty corruption, but the effects cannot be compared to grand corruption which can put an end to a company.[97]

Grand corruption penetrates the highest level of a national government, affects the trust of the citizens in their good governance and the rule of law. Moreover, through this type of corruption the economic stability of a state is altered.[98] Through the grand corruption leaders benefit from state resources and often the criminal offences recognised as "grand corruption" involve large sums of money illegally obtained. The high amount of illegal profits acquired by PEPs has to be concealed to prevent confiscation and this is done through the process of money laundering. Thus, when establishing a link between money laundering and corruption, criminal offences attributed to "grand corruption" have to be investigated, analysed and sanctioned.

Corruption offences such as bribery can be attributed to both petty corruption and grand corruption, but with the difference that the latter involves large sums of money and is committed by public officials knows as PEP.[99] Other corruption offences, ascribed to grand consist in: embezzlement (the public official uses his office to obtain money which rightfully belong to the State in his own personal interest), extortion (the public official uses the threat of his power to receive money) and self-dealing (in which the corrupt PEP has a personal financial interest in acts and decisions he makes in his official capacity, for example he is interested in a company

[96] ("Petty Corruption", 2017); https://www.readyratios.com/reference/business/petty_corruption.html
[97] Measuring corruption, Charles Sampford, Arthur Shacklock, Carmel Connors; Ashgate Publishing, 2007; p.9
[98] ibidem
[99] ibidem

which is involved in business with the state).[100] All of them involve an abuse of power from the public official and the person responsible for these criminal offences has to be identified, judged, prosecuted and the assets obtained illegally have to be confiscated.

According to the FATF Report on "Laundering the proceeds of corruption" the **methods** used are: (1) use of corporate vehicles and trusts; (2) use of gatekeepers; (3) use of domestic financial institutions; (4) use of offshore or foreign jurisdictions; (5) use of nominees; (6) use of cash.

(1) The use of corporate vehicles and trusts

Corporate vehicles and trusts pose a high risk for money laundering. One of the issues that can arise is the use of shell companies to conceal the identity of the beneficial owner.

Corporate vehicles are legal entities through which a wide variety of commercial activities are conducted and assets are held. In every market-based economy, these are indispensable because the flow of goods, services, capital, ideas or technology is done through corporate vehicles.[101] Following the OECD Report regarding the misuse of corporate vehicles a study of the FATF[102] on the same issue stated that corporate vehicles include corporations, partnerships with limited liability characteristics, foundations or trusts.

Corporations are legal entities whose owners consist of shareholders, liable only for the amount of the investment and can consist of private or public companies.

Partnerships are associations of two or more legal or natural persons created to conduct business where the liability of the partners depends on the actions and the type of the partnership which can be general or limited to the amount of the investment.

Foundations require a property dedicated to certain purposes and are understood in civil law as a "common law trust". The amount derived from the principal assets is used to fulfill the statutory purpose.

[100] FATF Report, Laundering the proceeds of corruption, 2011, p.7
[101] OECD, Behind the corporate veil, 2001, p. 7
[102] Financial Action Task Force, THE MISUSE OF CORPORATE VEHICLES, INCLUDING TRUST AND COMPANY SERVICE PROVIDERS, 2006

Trusts are corporate vehicles that separate legal ownership (control) from beneficial ownership are important for managing and transferring assets. Trusts include persons and entities that, on a professional basis, participate in the creation, administration and management of corporate vehicles.[103]

All these entities can be used for illicit purposes such as money laundering or bribery and corruption. The difference between corporate vehicles and trusts is that the former addresses to a situation when criminals use money laundering defences put in place by banks and other financial institutions by misusing corporate vehicles, while the latter addresses a situation when criminals provide trust and company services, to disguise and convert their proceeds of crime before they enter the traditional financial system.[104]

The principal methods in which corporate vehicles are deterred from legitimate purposes such as business finance, mergers and acquisitions, or estate and tax planning and are used to launder the proceeds of crimes, in particular - bribery, are the use of shell corporations or the use of nominees.

Shell companies are corporate entities which can be lawfully used to hold stock or intangible assets of another business entity, but when misused for illicit purposes these companies can establish layers between the criminal and the laundering criminal transaction.[105] For example, a situation in which a scheme was set up by legal professionals to hide the origin of the beneficial owners[106] is the *White Whale Case*, an international money laundering operation near Costa del Sol, Spain in which criminal proceeds were laundered through real estate investments.

The investigations in the *White Whale Case* started in September 2003 by cross referencing data from an investigation of drug trafficking, with information coming from another investigation on assets owned by Eastern European citizens living in the Costa del Sol (Malaga).[107]

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[103] Ibidem, Annex 6 – Corporate vehicles

[104] Ibidem, p.5

[105] FATF Report "Money Laundering Using Trust and Company Service Providers", 2010, p.34-35

[106] The natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also encompasses those persons who exercise ultimate effective control over a legal person or arrangement.

[107] FATF Report, THE MISUSE OF CORPORATE VEHICLES, INCLUDING TRUST AND COMPANY SERVICE PROVIDERS, 2006, p.7

The Anti-Corruption Prosecutor's Office uncovered a complex network of money laundering in 2005, through a Marbella law firm of the lawyer Fernando Del Valle - the main accused. He was the administrator of more than 500 off-shore companies, except one held by Horacio Oliviera, the employee.[108]

The lawyer was also managing the client's bank accounts and real estate buying and selling. The investigation conducted to the fact that several clients of Fernando Del Valle were connected with international organized crime groups and/or with people involved in serious crimes in Spain and abroad.

In this case, Fernando Del Valle designed a real business web in order to guarantee the anonymity of his clients. Through the created system it offered his clients a "limited liability company"[109] whose partners would be a foreign legal person and a national natural person with 99% of the shareholders who attended the act of constitution (1% shareholder remaining and single administrator). The money and property came from one of the hundreds of companies that the lawyer created in Delaware or any other place where the companies could benefit of fiscal opacity. At the same time, a bank account was opened in Spain of the foreign firm that controlled the shareholding of the company incorporated in Spain. The Spanish patrimonial company created was named Re.Es. [110]

The Spanish companies were established to launder the illegal profits using the real estate market. They were companies created exclusively for the management and administration of real estate properties.

The off-shore companies which participated in the Spanish companies were "shell companies" established in an American State (Delaware in this case) whose laws allow a special

[108] http://elpais.com/elpais/2011/03/31/actualidad/1301559423_850215.html, Claves de la Operación Ballena Blanca

[109] FATF Report (2011); Annex 6: The LLC is a hybrid business structure that is designed to provide the limited liability features of a corporation and the tax and operational flexibilities and efficiencies of a partnership. The advantages are: 1. Limited liability of the members; 2. Profits and losses are passed-through for taxation purposes; and 3. In the U.S., for the most part, you do not need to be a U.S. person to own, operate or control an LLC. LLCs generally have fewer disclosure requirements, both in the formation stages and subsequently. Unlike corporations, LLCs are run by members and do not have a formal structure (i.e. with directors and corporate officers). Generally, there are no annual reporting requirements for LLCs, and there are less administrative burdens than on corporations. Generally, they are less expensive and easier to form and maintain.

[110] http://elpais.com/elpais/2011/03/31/actualidad/1301559423_850215.html,
Claves de la Operación Ballena Blanca

tax regime for these companies and for their transactions. The companies were pre-constituted in the name of an agent (usually a lawyer: Del Valle in this case) before the incorporation of the company.[111]

Thus, between the administrator of the companies and the real owners who later purchased the shell, no link was found during the investigation. The beneficiaries of the Spanish or off-shore companies remained hidden.

The method in which the shell companies were used was the following: the launderer (LAU) transferred funds from a foreign country to a non-resident account owned by the Spanish company Re.Es. These funds were gathered in the account of Re.Es under the false pretense of foreign loans received. The destination of the funds obtained was the purchase of real estate properties in the name of Re.Es. in the integration process of money laundering, taking advantage of the hidden situation of the launderer and of the beneficial owners.

All the transactions were done through notaries, also responsible for their involvement in this money laundering scheme. Public notaries had an obligation to report and disclose any suspicious transactions to the Spanish FIU.

The investigation could be able to identify the money laundering activity due to the incorporation of several companies by the same persons in the financial market and the purchase of several real estates in a short period of time.

According to the Financial Action Task Force, the risks that corporate vehicles and trusts pose consist, first of all, in the fact that a corporate vehicle can easily be created and dissolved in some jurisdictions; second, a vehicle can be created as part of a series of multi-jurisdictional structures, in which a corporation in one jurisdiction is owned by one or more other corporations or trusts in other jurisdictions; third, specialised intermediaries and professionals can be used to conceal true ownership; forth, the use of nominees represents an easy method which may be used to disguise ownership and corporations; and finally there is a possibility that any other vehicles can be used to launder money, vehicles whose only purpose is to disguise the beneficial owner of the underlying asset.[112]

[111] FATF Report, THE MISUSE OF CORPORATE VEHICLES, INCLUDING TRUST AND COMPANY SERVICE PROVIDERS, 2006, p.7

[112] FATF Report, Laundering the proceeds of corruption, 2011, page 18

(2) Use of gatekeepers

A method used to launder the proceeds of money laundering is the use of gatekeepers. Money Laundering schemes involve often professionals who use their legal expertise to launder the illicit profits. Gatekeepers are "individuals that protect the gates to the financial system 'through which potential users of the system, including launderers, must pass in order to be successful".[113] Gatekeepers include lawyers, notaries, trust and company service providers, real estate agents, accountants or other non-financial businesses such as casinos. Criminals need gatekeepers to be able to conceal the origin of the illegal profits, make them seem legitimate and integrate them into the financial system. For this, gatekeepers purchase property, manipulate corporate vehicles and trusts or manipulate mergers and acquisitions. Moreover, gatekeepers can also include persons that have control or access to the financial system such as "insiders" who use their knowledge to help criminals in concealing ownership or the illegal profits of a transaction[114] or PEPs who have access to funds and systems in their country and can use this influence to change the legislation to their benefit, when they are directly responsible for the criminal offences they want to adapt.

An earlier case relevant for the use of gatekeepers was the Duvalier Case[115], in which the former president of Haiti was accused of diverting Haitian government assets back in the 1980's through lawyers. The trial of assets recovery started in 1988 and ended in 1990. According to the UK Court's opinion, the lawyers used the professional secrecy to avoid the client identification.[116]

[113] FATF Report, Global Money Laundering and Terrorist Financing Threat Assessment, 2010, p. 44

[114] "Insiders are generally known as members of a group of limited number who have access to private, secret, privileged or restricted information. The term refers usually to the person who owns business information, but generally speaking it could apply to those in other powerful organisations such as within government." ibidem, para. 224

[115] Republic of Haiti and others v Duvalier and others, found at: http://www.uniset.ca/other/cs2/19891AER456.html;

[116] FATF Report, Laundering the proceeds of corruption, 2011, para 59

Another relevant case for the use of gatekeepers is *Chiluba case*[117]. In this case, the former president of Zambia, Frederic Chiluba was accused of embezzlement by using law firms to distribute and disguise money obtained from the *"coffers of the Zambian government"*, a sum of 46 million dollars[118]. The method that the president used to launder money was the use of corporate vehicles and government funds were transferred to accounts held by those entities.[119] The action was brought by the General Attorney of Zambia for dishonest assistance against Iqbal Meer and his firm, Meer Care & Desai, for their role in the various schemes undertaken by the ex-president of Zambia and their associates.[120]

In this case, millions of dollars were transferred to the client accounts of certain law firms. From these, lawyers would make certain expands to other accounts located either in Zambia or another country, upon instructions from complicit PEPs.[121] The laundered money was also used for personal expenses and asset acquisitions for the government officials and their families.[122] The Court noted in its opinion that *"there is no reason for his client account to be used for any genuine currency transactions. This is a sum of money which has been traced back to [the Zambian Ministry of Finance]. It is a classic example of washing money through [the attorney's] client account to hide its origins and to clothe it with an aura of respectability."*[123]

The Court also examined the possibility in which the PEP's lawyer withdrew GBP 30 000 from the State, a sum which was excessively high for the President's annual salary. The withdrew was done the lawyer's accounts, which disguised the fact that the money originated from government accounts, and further hampered the ability to trace the proceeds.[124] *The court noted that "[the lawyer] made no inquiry as to how the President could simply take such a large*

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[117] Also known as: Zambia v Meer Care & Desai, 2007, a case in which "civil proceedings were brought by Zambia in the High Court against the president of Zambia between 1991 and 2001 - Frederic Chiluba and nineteen of his alleged associates", case successfully appealed in 2008 at the England and Wales Court of Appeal.

[118] FATF Report, Laundering the proceeds of corruption, 2011, para 60

[119] ibidem

[120] http://www.lawsociety.org.uk/support-services/advice/articles/case-summaries/zambia-v-meer-care---desai/, Appeal Decision

[121] idem ft.118

[122] ibidem

[123] Zambia v Meer Care & Desai (a firm) & Ors [2007] EWHC 952 (Ch) (04 May 2007), para. 782 http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2007/952.html&query=(Zambia)+AND+(Meer)+AND+(care)+AND+(court)+AND+(decision)

[124] idem ft. 118; para 61

amount of money. An honest solicitor would not participate in such a transaction without a full understanding of its nature so that he could be satisfied it was lawful. [The lawyer] did not so satisfy himself because he was unwilling to ask the question because he was afraid of the answer."[125]

These cases illustrate the variety of ways in which gatekeepers, in particular lawyers create corporate vehicles, open bank accounts, transfer proceeds, purchase property to avoid AML controls and launder the proceeds of corruption. Moreover, the method in which lawyers conceal the identity of the corrupt PEP is the attorney-client privilege.[126]

To prevent these illicit activities assisted and supported by gatekeepers, nevertheless, the international anti-money laundering community has developed measures targeting money laundering and gatekeepers in particular among which the "Know Your Customer" procedure in banks, and the "Customer Due Diligence" which were established by the 40+9 Recommendations of the Financial Action Task Force.[127]

(3) **The use of domestic financial institutions** is done by PEPs who have control or ownership of those institutions and this gives them an advantage when laundering their criminal proceeds by creating a low risk of detection. The focus was to "ensure that foreign PEPs are subject to enhanced due diligence regarding the source of funds deposited into financial institutions"[128]. The EDD (enhanced due diligence) is a measure to prevent corrupt PEPs from laundering their proceeds in foreign bank accounts.

A relevant *case* for the use of domestic financial institutions is the trial for plunder of the *President Joseph Estrada of the Philippines* between 2001 and 2007.[129] The former president was accused and convicted to *"Reclusion perpetua"*[130] of collecting large amounts of money

[125] Zambia v Meer Care & Desai (a firm) & Ors [2007] EWHC 952 (Ch) (04 May 2007), para. 865

[126] FATF Report, Laundering the proceeds of corruption, para 57

[127] "GATEKEEPERS' ROLES AS A FUNDAMENTAL KEY IN MONEY LAUNDERING", Paku Utama, 2016, p.3

[128] FATF Report, Laundering the proceeds of corruption, 2011, para.62

[129] Also known as: People of the Philippines vs. Joseph Ejercito Estrada, et al. (Sandiganbayan, Criminal Case No. 26558 [for Plunder], 12 September 2007

[130] http://cnnphilippines.com/news/2015/04/17/life-imprisonment-reclusion-perpetua-legalese-napoles.html; **Reclusion Perpetua** is different from Life Imprisonment; This is a sentence which according to the Revised Penal Code of the Philippines convicts the accused from 20 to 40 years of imprisonment with the possibility to be pardoned after 30 years;

(500 million pesos) as a result of kickbacks from illegal gambling and excise taxes at the expense of the Philippines people.[131] In order to conceal the ill-gotten wealth, the president represented himself as "Jose Velarde", when depositing in a bank account in the Philippines the illegal transactions he executed. He used the alias in the presence of the bank's personnel even though it was not his real name.

The court also noted that the money used through that account was used for various asset purchases, including real estate for the benefit of Estrada.[132]

Regarding the alias of Jose Velarde, to be lawfully used, the president must have had the intention to be publicly known henceforth under this name, intent that Estrada did not have when executing the transaction in the presence of the bank's personnel. The president could also not use the secrecy of Bank Deposits Law to open a bank deposit under the false name of Jose Velarde.[133]

According to the first judgment, the former president was found guilty of plunder[134], however the decision was appealed and Estrada was pardoned on the 26th October 2007.[135] The details of the conviction and pardoning are not so important for the subject matter of this thesis, but what is relevant is the use of a domestic institution for private purposes. In this case, Estrada used the Equitable ECI Bank, one of the largest banks in Philippines during his presidency, to launder his profits from illegal gambling and excise taxes.

(4) **The use of offshore or foreign jurisdictions** is happening when criminals extend their operations beyond national boundaries to prevent the detection of their illegal activities and the illegitimate ill-gotten wealth. An off-shore jurisdiction can consist in opening a bank account in a place known as a "tax haven" where there are limited jurisdiction and control of the money laundering criminal offence.

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[131] FATF Report, Laundering the proceeds of corruption, 2001, para 65

[132] ibidem

[133] People v. Estrada, 2nd of April 2009, J.Brion, found at: https://www.scribd.com/doc/78339502/people-v-estrada-people-v-ulama

[134] http://www.lawphil.net/courts/sandigan/sb_26558_2007.html, Philippines Jurisprudence, Criminal Case No. 26558, September 12, 2007; PEOPLE OF THE PHILIPPINES vs. JOSEPH EJERCITO ESTRADA, ET AL.

[135] http://uk.reuters.com/article/uk-philippines-estrada-idUKMNB0007120071025; Former Philippine president Estrada pardoned;

In this situation money is often transferred from developing countries to financial institutions in developed countries or where the climate for investment is stable.[136] This can result in an erosion of the developing countries tax base, caused by tax evasion, corruption, plunder, money laundering or simply irrational investment.[137]

Through this method large amounts of money are possible to be laundered. In a Report of The Tax Justice Network from 2012 *"at least $21 to 32$ trillion as of 2010 SS has been invested virtually tax free through the worlds still expanding black hole of more than 80 offshore secrecy jurisdictions"*[138].

The incentive for using offshore jurisdictions is based on the following: first, foreign jurisdictions offer secrecy, and the most common method to create anonymity is through the use of shell companies; second, in off-shore jurisdictions there are low tax rates for the companies established in those regions; and third offshore jurisdictions offer political stability.[139] A person who placed his profits in a foreign jurisdiction also considered the political stability in that area, the possibility to prosper economically and the low risk to lose the funds.

(5) The use of nominees;

First of all, a nominee can be a person, corporation, or beneficiary who has been appointed or designated to act for another, for example a director was nominated by another director to act in his or her place.[140] In this situation, the PEP nominates a trusted associate or family member without taking into account the profession that person has, with the scope that this nominee will assist and help the PEP in disguising and moving the proceeds of corruption.

A typical use of nominees can be found in the case of *Arnoldo Aleman*[141], president of Nicaragua between 1997 and 2002. He was accused and convicted of the corruption offence of

[136] FATF Report, Laundering the proceeds of Corruption, 2011, para 70;
[137] Greed, Corruption and the Modern State, Susan Rose - Ackerman, Paul Lagunes, Edward Elgar Publishing, 2015, p.317
[138] https://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf; Tax Justice Network, The price of offshore Revisited, p.5
[139] Idem, fn. 33
[140] FATF Report, THE MISUSE OF CORPORATE VEHICLES, INCLUDING TRUST AND COMPANY SERVICE PROVIDERS , 2006, p.24
[141] Arnoldo Aleman; http://star.worldbank.org/corruption-cases/node/18466

embezzlement and the money laundering offence to conceal the illegal gains stolen from the State. In this case, the former president was able to *"siphon government funds* [$100 million] *through a non-profit institution known as the Nicaraguan Democratic Foundation (FDN), an entity incorporated by Aleman's wife in Panama […] nevertheless, Aleman was able to steal and subsequently move money also through the active participation of Byron Jerez, the country's tax commissioner at the time"*[142] and a close friend. The assets identified and seized by the FATF from Miami, Florida, resulted to have been used for private purposes such as the sale of a helicopter or several properties. The former president was convicted to a 20 years' imprisonment sentence, however after 4 years of jail the Supreme Court of Nicaragua, the origin jurisdiction of Arnoldo Aleman, overturns the US Florida District Court's decision and allows the president to execute his sentence at his plantation due to health problems.[143]

The importance of the case is denoted not from the US Court's conviction and sentence, but from the case facts. Arnoldo Aleman used the nominees' method to launder his criminal proceeds with the help of his wife, through the establishment of a shell company and also in complicity with his close friend and high ranking official in the Treasury Department - Byron Jerez.

(6) The use of cash

The prevention of laundering the criminal proceeds through cash use was what the first FATF Recommendation from 1990 aimed at. The use of cash is used more for laundering the proceeds of drug trafficking and is not expected to be generated by grand corruption cases because high amounts of cash payments to a PEP can generate AML / CFT controls to avoid the placement of illegal profits in the financial system.

A relevant case for the use of cash is the Zambian recovery lawsuit[144] analysed in the use of gatekeepers section in which "*the president of Zambia directed his UK-based lawyer to*

[142] FATF Report, Laundering the proceeds of corruption, 2011, para 74

[143] http://www.jurist.org/paperchase/2009/01/nicaragua-high-court-overturns.php; Nicaragua high court overturns corruption conviction of ex-president

[144] Attorney General of Zambia v. Meer Cares, et al., (UK)(2007) court opinion

withdraw GBP 30 000 in cash from accounts containing diverted government money and deliver it to him personally."[145]

Grand corruption is an international phenomenon that is often linked besides money laundering to serious crimes such as trafficking in drugs. In many situations it involves cross-border financial transfers and it cannot be addressed alone at a European level. Therefore, international cooperation is necessary to deal with corruption, money laundering, cross-border transactions, prevention, criminalisation and confiscation.

After considering the corruption phenomenon and the various methods used to launder the proceeds obtained from it at an international level, the **European Union institutional framework** must be taken into consideration. Corruption, as a wide-spread challenge in all societies, "*it harms the European Union as a whole by lowering investment levels, hampering the fair operation of the Internal Market and reducing public finances"*[146] The competence of the EU in the corruption field is limited to the provisions of the Lisbon Treaty and, in the absence of a Directive which criminalizes corruption, the European Union cannot intervene in corruption practices.[147] A fundamental legal basis is article 83 TFEU, para (1)[148] which states an obligation for the EU Member States to collaborate in establishing criminal responsibility in the corruption and money laundering fields, among others. The Anti-corruption package of the European Union adopted by the Commission includes: (1) *A Communication on fighting corruption in the EU (2011); (2) A Commission Decision establishing an EU anti-corruption reporting mechanism; (3) A report on the implementation of Council Framework Decision 2003/568/JHA on combating*

[145] FATF Report, Laundering the proceeds of corruption, 2011, para.79

[146] http://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption_en; Corruption in the European Union

[147] Research handbook on EU criminal law, V. Mitsilegas; M. Bergström; T. Konstadinides; Edward Elgar Publishing, 2016, p. 396

[148] **Article 83 TFEU (ex Article 31 TEU)** ***(1):*** *The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.*
These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

corruption in the private sector; and (4) A report on the modalities of EU participation in the Council of Europe Group of States against Corruption (GRECO).[149]

Nonetheless, implementation by EU States remains insufficient. Thus, in 2008, through a Council's Decision, the United Nations Convention against Corruption has been approved "on behalf of the Community."[150]

[149] The four documents address measures taken by the European Commission for the serious harms generated by corruption at the economic, social and political level and can be found here: https://ec.europa.eu/home-affairs/what-is-new/news/news/2011/20110606;

[150] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:287:0001:0110:EN:PDF, *Article 1: The United Nations Convention against Corruption is hereby approved on behalf of the Community"*

CHAPTER 4 – CONCLUSIONS

Money laundering and corruption activities have always been a backfire for a society when trying to emerge in a correct, well-functioning and prosperous community.

The money laundering phenomenon was controversial ever since its appearance among authorities, private persons or political persons because of its negative consequences in the social and economic environment. Many times, money laundering was considered to be intrinsically linked with organised crime but it is also present in the private sector. Moreover, the presence of money laundering activities in the political sector results in corruption affecting not only the environment, but the foundation of a State.

Thus, the money laundering consequences expand in a society entirely and it is important for each State to develop a policy in combating money laundering and corruption. Public authorities must carefully and thoroughly identify, investigate and sanction these criminal offences. Tackling money laundering can be a challenging task because of the diversity of methods used. However, while criminals find new means to escape taxes and sanctions, supervision, legislation and enforcement rules are constantly created or adapted to the society's needs.

Research Question: How are the criminal offences of money laundering and corruption correlated and fought against in the international legal framework?

In order to assess the final outcome of this thesis, I will consider now the main findings of the previous chapters.

Chapter ONE is an essential part, which does not provide the answer to the research question, but introduces the reader in the criminal field of money laundering by explaining this phenomenon, the historical background and the three stages of the money laundering process, very important when laundering corruption proceeds: the placement stage; the layering stage and the integration stage. Moreover, the reasons to combat money laundering and the efforts made at an international or regional level are embodied in this chapter.

Chapter TWO is partially answering to the research question by providing the international and European legal framework of money laundering. In this chapter we can observe that at an international level the institutions responsible for money laundering and corruption offences are on one hand - The United Nations and the Council of Europe for criminalization and confiscation; and on the other hand – The Financial Action Task Force and the Basel Committee for prevention. At a community level, the European Union followed the FATF Recommendations and issues 4 Directives against money laundering activities or other offences linked such as terrorist financing or corruption.

Furthermore, in this chapter the international instruments used in the fight against money laundering and corruption can be found, namely: The UN Convention against Corruption – according to which money laundering is not linked only with drug trafficking, but also has serious implications in the corruption offences. Another instrument is the Council of Europe's Criminal Law Convention on Corruption or the OECD Anti-bribery Convention. These organisations are the forerunners in combating money laundering and corruption. Through them, Member States are encouraged to observe and comply with international standards in fighting money laundering and corruption.

Nevertheless, the Financial Action Task Force in the only international, inter-governmental body specialised in fighting money laundering. The FATF also considers the link between money laundering and corruption and the outcomes of these offences, when used together. The results are even more harmful in the economic development of a country when the Government's leaders rules in their own interest and not in State's interest or for their citizens.

Chapter THREE provides the most relevant and controversial aspects regarding the link between money laundering and corruption. According to this chapter money laundering techniques are used in the criminal offence of "grand corruption" because it involves large sums of money which must be concealed, not to be confiscated. Grand corruption poses high risks in the good functioning of a society as a whole, not only in the financial sector, because it takes place at a government's level, affects the trust of the citizens in their good governance and the rule of law. Nonetheless, grand corruption affects the economic stability of a state. Thus, when

establishing a link between money laundering and corruption, criminal offences attributed to "grand corruption" have to be investigated, analysed and sanctioned.

A conclusion that can be drawn from this thesis is that corruption produces huge profits to be laundered in the international financial system. When the possibility to launder corruption proceeds from bribery or embezzlement is attained easily in a certain region the international AML systems can be compromised. For example, a corrupt official can use a shell company in a "tax haven" and if he succeeds the practice expands even more instead of being stopped or significantly reduced.

Thus, the effects of the criminal activities of money laundering and corruption are reflected mostly in the financial sector, by influencing the financial integrity and stability of States. Criminals work best in weak and corrupt countries, where the money laundering controls are ineffective, or even worse – don't exist. In these cases, moving illegal funds is done easily because the possibility to be detected lacks.

Systemic corruption can undermine the effectiveness of the legislative, regulatory and enforcement Anti-Money Laundering/ Combating the financing of terrorism (AML/CFT) measures. The FATF study on "Laundering the Proceeds of Corruption" mentions the necessity for States to implement effective AML/CFT programmes to hamper the access of corrupt officials to access the global financial system. Strong AML/CFT regimes are important instruments in preventing, detecting and combating money laundering, terrorism financing, but also corruption.

One more aspect that can be understood from this thesis concerns the harmonization in the field of money laundering and corruption. At a European level, an example is the 4Th Anti-Money Laundering Directive which boosts the international cooperation - because it addresses and incorporates the FATF Recommendations updated and the UN provisions in a stricter way. The 4th AML Directive is an endeavor of the European Union in intensifying its efforts to combat money laundering effectively. Full harmonization may lack in this field, but the Directive is a new step in achieving a stable and effective legal framework at a Community level in the fight against money laundering.

Taking into account the international legal framework also, I consider that achieving full harmonization is impossible because of the many differences that exist in national legislations. However, the international bodies presented in this thesis responsible of these criminal offences provide an obligation for States to cooperate, through the Financial Intelligence Units, in achieving the best policies to fight against money laundering and corruption.

Close international cooperation is recognized as essential and the role of such a strategy is to hamper the criminal activities of corruption and money laundering by creating a challenging and unfavorable climate for them.

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