45 Money laundering regulation: from Al Capone to Al Qaeda

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Money laundering – bringing illicit proceeds from drugs, fraud and other crime back into the legal economy – owes its name to Al Capone. He literally used launderettes for disguising illegal alcohol revenues during prohibition in the US. Launderettes, a flourishing cash-intensive business in the 1930s, when almost no household had a washing machine, were an ideal location to slip the money from illegal alcohol sales into the cash register. Disguising the origin of such money is, however, even older than Al Capone's "washing of money." One of the oldest techniques to circumvent government scrutiny was to use international trade to move money, undetected, from one country to another, by means of fake invoicing or falsely declared merchandise (Zdanowicz 2009).

Though money laundering is an old way of trying to hide the illicit proceeds from crime, it became an issue of international concern only in the last 20 years; and it is only since 9/11 that it figures as a prominent issue of national and international safety on the agenda of international organizations. How was it possible that a problem which existed for centuries was suddenly considered a topic of major international concern which had to be regulated? And how was it possible that its scope expanded from Al Capone's whiskey business to protecting national security and fighting Al Qaeda?

I will discuss the characteristics of the problems to be regulated in section 45.1 and what they mean for the private support and public interest in regulating laundering in section 45.2. Section 45.3 shows the regulatory responses and section 45.4 the problems of the effectiveness, enforcement and legitimacy of anti-money regulation. The conclusions in section 45.5 on regulating global issues focus mainly on the role of the EU.

45.1 THE CHARACTERISTICS OF THE PROBLEM TO BE REGULATED

After criminalization of drug abuse in 1922 in the US, there followed almost a century of hopeless efforts to reduce drug trafficking, which led to the need for combating money laundering to be put on the international agenda. If one could not get at drug dealers and eventually other criminals directly, then at least they should be discouraged by the realization that they could not reap the monetary benefits of their acts. The following characteristics make money laundering a particular regulatory challenge.

45.1.1 Victimless Crime

While money laundering makes crime pay because the launderer can safely disguise his illicit proceeds, it does not have direct victims. No one suffers from the fact that the

Colombian drugs mafia sends 10 billion dollars from one country to another. There are, hence, no victims who would complain, no liability claims that would be raised, and no tort law that could be applied. No direct harm comes from this.

The question heavily debated in legal literature is whether crime without victims should be punished at all and whether punishment is a deterrent (for a survey see Polinsky and Shavell 1997). Should the government leave people their free will and not forcibly prevent them from engaging in crime that does not harm others (Mill 1999[1869]: 21) or would society be damaged by this maleficent behavior and fall into decadence? 'Public order crime' is now the preferred term for "victimless" crime, based on the idea that there are always secondary victims such as family, friends, acquaintances and society at large. (For further reading see Siegel 2006; Siegel and Senna 2008.)

45.1.2 No Direct Effects of Laundering

The harm of money laundering is only very indirect. Unger (2007) lists 25 negative and positive effects that money laundering can have. It can deter honest business activities, if criminals invest their money in particular sectors like the transport industry, restaurants and housing; it can lead to changes in relative prices, savings, output, employment and growth, or it can affect the liquidity, reputation, integrity and stability of the financial sector. The public sector can suffer from unpaid taxes, and criminals might buy up public enterprises during privatization efforts.

There are also social and political effects like increased corruption and bribery. Professionals, like lawyers, notaries public, real estate agents and accountants, can become contaminated, since laundering needs facilitators. Criminals might undermine political institutions. That none of these effects can be directly observed poses problems for regulation.

45.1.3 Ambiguous Relation Between Money Laundering and Terrorism Financing

Money laundering can also increase terrorist activity if the proceeds of crime are used to finance it. Here laundering serves two purposes: concealing both the illegal origin of the money and the illegal destination of the funds (Masciandaro 2007). Most experts agree that the sale and trade of drugs seem to be a sizable financial contributor to terrorist organizations. The Taliban, for example, profited from the trafficking of opium and taxing the drug trade in areas under its control, and these funds were subsequently used to support terrorist organizations like Al Qaeda (Schneider 2004).

However, very often terrorism is financed with clean money by abusing donations and foreign aid. This involves a process completely different from money laundering: "money dirtying," which is the reverse of money laundering. Regulating terrorism together with money laundering therefore poses an additional challenge.

45.1.4 Unknown Size of the Problem

The regulator has a difficult business to do: there are no victims, the link between money laundering and crime is only a very vague one, and between money laundering and terrorist financing this link is even more doubtful. The regulator also does not know how

big the problem is that he regulates. Estimates on global money laundering are still in their infancy, first because the underlying crime is unknown and second because the proceeds of this unknown crime can only be estimated. As Reuter and Greenfield (2001: 171) observe, "knowing the value of drug exports from Mexico to the US is $1–3 billion rather than $10–20 billion may be very important for purposes of allocating resources for money laundering investigations or even passing money laundering regulations in Mexico." Global estimates for money laundering range from between $45 million and $280 million (Reuter and Greenfield 2001), and $1.5 trillion in the IMF and Human Development Report 1999 (see TNI 2003) to $2.85 trillion (Walker 1995, 2002; Walker and Unger 2009).

45.1.5 A Global Phenomenon

Money laundering is a global phenomenon, and regulation of it increased with the deregulation of financial markets, which has made countries more vulnerable. Today, money can be pumped around the world within a second through the push of a computer button. The fact that financial capital can move freely between countries has created new ways for organized crime to disguise the origin of illegal proceeds. Instruments like bearer shares, over-the-counter derivatives outside the control of national banks, techniques like bank-to-bank loans, and international mortgages created room for maneuver also for criminals. Innovations which benefit legal transfers open doors for illegal moves. The international dimension also implies that regulating money laundering in one country will depend heavily on simultaneous action in other countries. The winners and losers of regulation might differ: some countries might profit from the additional money, while others might suffer from increased crime. Loopholes in the anti-money laundering regime will be used by launderers; therefore some sorts of international instruments and cooperation are needed.

45.2 THE POLITICAL ECONOMY OF MONEY LAUNDERING

Yandle (2011) distinguishes five theories of regulation: public interest theory, which assumes that regulators serve a broad public interest; capture theory, which recognizes that politicians are captured by rent-seeking groups; special interest theory, which specifies which party will be most influential in this process; the money-for-nothing theory, which focuses on the financial support politicians can gain by threatening industry with regulation; and the bootleggers and Baptists theory, which shows regulation as the outcome of odd alliances which share common interests for quite different reasons. This chapter focuses on the first three theories.

45.2.1 Lack of Private Interest for Regulating Money Laundering

According to the economic theory of regulation (see Becker 1968; Stigler 1971), special interest groups and other political participants will use the regulatory and coercive powers of government to shape laws and regulations in a way that is beneficial to them. But such a "capture" by the most influential group evidently does not take place with

money laundering, because it is a victimless crime. The lack of victims means that there are also no private groups involved that would specially lobby for regulating money laundering.

Given the lack of private interest in lobbying for money laundering regulation, not much support of the private sector in law implementation and enforcement can be expected. The private sector can quietly ignore the rule, or can actively counteract it, but are very unlikely to be supportive, nor to contribute voluntarily to the costs of enforcing a government rule which does not have any advantage for them. Economists stress the information problem inherent in such a situation, where the regulator will act as the principal and the private sector as an agent in a "principal–agent setting" (see Rees 1985a, 1985b; Rosen 1986; Stiglitz 1987; Sappington 1991). Political scientists would add problems of political and bureaucratic power of the agent (Moe 2006), which can frustrate and even counteract the enforcement of rules.

45.2.2 Public Interest Theory of Regulation and US Interests

Seen from a public interest theoretical point of view, the reason for regulating money laundering was a very pragmatic one. After years of losing the war on drugs, exemplified by the constant or ever increasing amounts of drugs produced and consumed (see UNODC drug reports, e.g. UNODC 2006), a new strategy has evolved. Now it is a case of "following the money instead of having to chase the criminal," of hitting international crime the most by getting at its money and "making crime less profitable." The grounds for this process are shaky and lobbied for only by the United States, which eventually got international organizations and some governments to truly, voluntarily comply.

With money laundering, it is the government, and more specifically the US government, and not the private sector which has an interest in regulation. The government claims it has to protect the public good where the nation's health is threatened by drugs and national security is threatened by terrorism. Those in favor of public choice see this as a problem. Their aim is to protect individual free will, and so they are very critical of governmental regulatory intervention which purports to protect public goods (Huntington 1952; Bernstein 1955; Levine and Forrence 1990; Laffont and Tirole 1991).

Money laundering was not considered much of a problem until the 1980s, when the US started criminalizing money laundering in the context of its "war on drugs." In 1986, it became the first country to make money laundering a crime (Title 18, US Code Sec. 1956), with penalties of up to 20 years in prison and $500 000 in fines. In addition, the law permits civil penalty lawsuits by the government for the value of the funds or property involved in the transaction (Takats 2007).

From a legal point of view, the Achilles' heel in defining money laundering relates to the so-called "predicate offences" which generate the proceeds that make laundering necessary. Hiding or disguising the source of certain proceeds will, of course, not amount to money laundering *unless* these proceeds were obtained from a criminal activity (Busuioc 2007). The United States has developed a list of over 130 predicate crimes for money laundering. Originally mainly crimes with regard to drugs were on the list; eventually fraud, counterfeiting, fencing, illegal work and so on were added and, after 9/11, terrorist financing. The developments in the US explain why money laundering came so late on the international agenda and why it became an issue in fighting Al Qaeda.

With regard to law enforcement, the Banking Secrecy Act (1970) can be seen as an early starting point. It in fact curbed banking secrecy to fight money laundering, and was followed by a series of laws to further strengthen enforcement: the Money Laundering Control Act (1986), the Annunzio–Wylie Money Laundering Act (1992), the Money Laundering Suppression Act (1994), the Money Laundering and Financial Crimes Strategy Act (1998) and finally the USA Patriot Act (2001) (Takats 2007, fn. 1).

It is not surprising that the US, with the largest number of money launderers in the world, has been the first country and the strictest when it comes to money laundering regulations. Half of the globally laundered funds are probably transferred through American banks (Walker 1999; Unger 2007).

45.3 THE REGULATORY RESPONSES

45.3.1 The Reporting System and Problems with it

Originally, the regulations were rule-based. Money laundering enforcement relied on the private sector reporting to public law enforcement agencies. In the US, banks had to file a rule-based currency transaction report (CTR) for cash transactions exceeding $10000. Rule-based regulation was less risky for both the private sector and the government. As there were explicit criteria for reporting, it was a standard disclosure process. Bank reports were ex post verifiable.

The precision of rule-based regulation however also had disadvantages. Not only banks but also money launderers were aware of the criteria for suspected money laundering and could circumvent them. Thus they could "smurf," that is, divide up large cash deposits to keep them under the reporting threshold of $10000 (Takats 2007: 8).

The weaknesses of rule-based reports led the US in 1996 to introduce a discretionary report, the suspicious activity report (SAR). The definition of "suspicious" was left vague to keep both money launderers and banks in uncertainty (Takats 2007: 8).

A rule-based approach provides precise rules and hence legal certainty, but it also encourages, apart from smurfing, formalistic over-reporting. This is why not only the US but also Europe switched from a rule-based to a risk-based approach. The change to a risk-based approach also happened at a time when governments everywhere introduced supposedly less bureaucratic, more subject-friendly, more responsive regulations (Ayres and Braithwaite 1992; Hutter 2005, 2006).

Yet the risk-based approach had the opposite effect and encouraged even more relatively useless over-reporting, also called the "crying wolf problem" (Takats 2007; Dalla Pellegrina and Masciandaro 2009). The regulation gave private actors more discretion about what to report and instructed them to report transactions that *they* considered suspicious. It gave them vaguer criteria as to which transactions to report. This meant not only that private actors had to estimate the risks of a transaction being suspect, but also that they themselves ran the risk of getting accused of false reporting or more generally of being held responsible for whether they did a good job or not. The liability might induce businesses with a reporting duty to play it safe, by reporting as many cases as possible. Reporting units, according to Takats, might behave strategically and on

purpose dilute information, by behaving like the little boy in the fairy tale and "crying wolf" so often that, when there was real money laundering, no one would take the cry seriously.

Unger and van Waarden (2009) showed that countries' reactions depended heavily on the legal system within which the private sector had to report. In the US, the fierceness of the legal conflict, the often severe sanctions, and the uncertainty of outcomes induced people to be formalistic and choose to "go by the book" (Bardach and Kagan 1982). Here the risk-based approach indeed led to an increase of reports and a decline in convictions, indicating a crying wolf problem. In the Netherlands, however, with a consensual legal system, where the regulator worked out the new rules in cooperation with the private sector, and where fines were extremely low, reporting went down drastically and the number of convictions increased (Unger and van Waarden 2009).

45.3.2 Seeking for Alliances and Expanding Regulation: From the War on Drugs to the War on Terror

Aware of the problem's international dimension, the US needed alliances with its anti-money laundering policy. It put pressure on international organizations to fight drugs. Similarly, international legislation of money laundering began with the criminalization of the proceeds of drug-related offences, as provided by the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Drug Convention). Since money laundering was mainly a problem for rich countries, which provide financial expertise, low corruption and high stability for placing illicit funds, the US pressured its G-7 partners to create an organization that would coordinate their efforts; thus the Financial Action Task Force (FATF) emerged in 1989 (Huelsse 2009). Officially only a task force, the FATF is an intergovernmental organization with a small secretariat based within the OECD building in Paris. Membership of the FATF was initially very exclusive – restricted to the G-7 countries plus other OECD members.

The organization's club-like character (Drezner 2007: 122, 142) enabled FATF members to agree quickly on a set of common standards, the Forty Recommendations, which were intended as a benchmark for national anti-money laundering legislation. As recommendations, they are not binding rules but standards of behavior that states can adopt voluntarily (Huelsse 2009).

Over the years, these recommendations have been revised with one important addition: Following the 9/11 attacks, FATF published "Eight Special Recommendations on Terrorist Finance" (later extended to nine). Though money laundering and the finance of terrorism are two rather distinct activities, linking them has given an enormous boost to combating money laundering. The FATF was now engaged in the "war on terror" (Winer and Roule 2002).

By 2009 the FATF included 34 members plus five associate members, who represented regions (see www.fatf.org). There are also a number of international organizations especially involved in combating money laundering, like the Egmont Group, which started in 1995 with 14 members and now consists of 116 members. It is a network designed to improve interaction among financial intelligence units in the areas of communications, information sharing and training coordination.

45.3.3 Setting an International Standard for Money Laundering: The Forty plus Nine Recommendations

By now the FATF's 40 recommendations for money laundering and nine on terrorist financing have become the international standard. FATF member states have to adopt these recommendations, and compliance is checked through mutual assessments of FATF member countries.

The recommendations include issues regarding the legal system and law enforcement, that is to say, the criminalization of money laundering on the basis of the UN Vienna Convention, the application of the law to corporations, penalties, the possibility of confiscation, the absence of bank secrecy, customer due diligence, the know-your-customer rule applied by financial institutions, the prosecution of politically exposed persons (PEPs), reporting requirements to financial intelligence units and other reporting units, training, auditing, sanctions for not reporting and non-compliance, establishment of a financial intelligence unit, existence of supervision, and the establishment of one central database.

Similarly, regarding the financing of terrorism the requirements are the criminalization of terrorism, the implementation of the UN instruments on terrorism contained in the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism, the United Nations Security Council Resolution 1373, and others. Countries must have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments. There are also recommendations concerning the confiscation of assets (see www.fatf.org).

45.4 ENFORCEMENT, EFFECTIVENESS AND LEGITIMACY PROBLEMS

45.4.1 Instruments to Achieve Countries' Compliance

In the absence of any legal instruments to make non-members follow its rules, FATF relied on soft instruments like "seminar diplomacy" and peer review (Sharman 2008). The cooperation of countries was not always "voluntary" in the proper sense, since the relationship between FATF members and non-members is hardly symmetrical (Tranøy 2002). On the one side we have the world's richest countries led by the global hegemony of the US (Simmons 2000, 2001; Williams 2001; Naylor 2002), and on the other side there is a heterogeneous group of states, ranging from developing countries to offshore centers, with none of them being anywhere near equal in power to the FATF members. Though non-members are legally free to ignore the FATF rules, it may not be very wise for them to do so. Hence there surely exists a shadow of hierarchy, which explains why non-member countries comply even in the absence of explicit threats and coercive measures. "To call this voluntary compliance hardly seems the correct label for such rule following behavior" (Huelsse 2009).

In addition, the FATF uses direct hierarchical means to enforce non-members' compliance with its rules. In 1995 the government of the Seychelles, an island state of some 80000 people in the Indian Ocean, passed the Economic Development Act (EDA)

through which the islands invited internationals to invest a minimum of US$10 million and in return the Seychelles government would grant immunity from prosecution. The US Department of the Treasury issued an advisory to banks and financial institutions urging them to exercise strict caution in their financial dealings with the Seychelles. The Republic Bank of New York stopped all payments to and from the Seychelles. The FATF issued its first ever public condemnation of an individual country. One year later, the Seychelles also introduced an Anti-Money Laundering Act (Simmons 2000: 258–9; Sharman and Rawlings 2006; Unger and Rawlings 2008: 333).

By intervening, FATF was paving the way for its later strategy of blacklisting countries considered to be tolerant of money laundering (Unger and Rawlings 2008). The blacklist contains 25 "negative" criteria, such as banking secrecy and some loopholes of law and financial regulation (for the complete list see FATF 2000). Countries that succumb to some of these are listed by the FATF as non-cooperative countries and/or territories (NCCTs). Between its first appearance in 2000 and 2006 this blacklist has become shorter and shorter. In October 2006, Myanmar, the only country left on the list, was finally also removed (Unger and Ferwerda 2008).

The blacklist of the FATF suffered from severe problems. First, the list contained only 23 subjectively selected countries and no large country. Second, countries could show compliance with the FATF recommendations by filling in written statements. Thirdly, only when a certain not precisely defined threshold of declared compliance was not reached were they put on the list. Overall, the blacklist, therefore, did not sufficiently fulfill the transparency criteria for being a successful instrument of naming and shaming (Braithwaite 1989; Erp 2007). The list was judged discriminatory towards small islands and countries (Unger and Ferwerda 2008). Rawlings (2007) showed that blacklisting might have had reverse effects. Some states have experienced loss of business, but other offshore centers have prospered. Examples of these are the Cayman Islands, Bermuda, Jersey, Guernsey and the Isle of Man. Since all the countries have been removed, the list can be viewed as having failed to identify countries with a lax anti-money laundering policy.

For fairness it has to be mentioned that there are some positive effects. The fact that no country is left on the blacklist suggests that all countries have adjusted and improved their regulatory framework to combat money laundering, perhaps because of FATF (FATF 2006). The fragile legitimacy of FATF was definitely not improved with blacklisting. It had been looking repeatedly for cooperation with the IMF and the World Bank, which originally did not consider money laundering as their mandate (interview with Richard Gordon, May 2008). But since 9/11 cooperation has started, in particular with writing a common methodology. The IMF and World Bank – their own legitimacy problems notwithstanding (Barnett and Finnemore 2004) – are universal organizations, which gives them an advantage over the exclusive FATF (see Reuter and Truman 2004; Huelsse 2009). One condition for this cooperation set by them was that the FATF give up blacklisting (interview with Richard Gordon, May 2008).

The disappointing experience of blacklisting non-cooperative countries by the FATF confirms earlier findings on ratings under globalization: blacklisting and ratings by international organizations are less powerful than when done by private companies, because the former stand under the influence and pressure of large states which shape and finance them (see Graz and Noelke 2008; van Waarden 2008: 84–98). Van Waarden (2011) men-

tions as examples the judgments of rating agencies such as Standard & Poor's, Moody's and Fitch, which receive much broader acceptance than rankings of international organizations. Since 2009 the FATF has started a more differentiated grey list.

45.4.2 Some Regulatory Weaknesses

The Achilles' heel of the anti-money laundering and combating terrorist financing (AML/CFT) regime is the veritable patchwork of national lists of predicate offences. Some countries like China and Italy exclude home country laundering from their money laundering definition. In these countries, a drug dealer who is caught when laundering his own proceeds of crime cannot be prosecuted for money laundering but only for the drug crime itself. Austria only included home country laundering in 2010, under the pressure of criticism from FATF. To find a common denominator of predicate crimes for money laundering that includes the most serious crimes like drugs, weapons, human trafficking and all crimes committed by organized gangs seems a necessary and important step towards legislation that does not create opportunities for avoidance by launderers. Also, whether corporations can be prosecuted as opposed to individuals differs in the laws. Whether PEPs can be prosecuted for money laundering or are under immunity is also differently regulated. This can make it difficult to prosecute corrupt officials for money laundering. Especially in many Asian and African countries PEPs cannot be prosecuted. Counterfeiting and product piracy is a predicate crime in the US, but it often does not fit into European penal law, since it is considered private law there. This gives rise to irritations with negative FATF evaluations. Often tax evasion is related to money laundering, but in most countries tax evasion is not a predicate crime for laundering (see Unger 2007).

45.4.3 Effectiveness

What started as soft law became hard law in Europe. In Europe, the EU has transposed the FATF recommendations by establishing three directives which have to be integrated into national law by its member states. The first EU directive, 91/308/EEG, for the prevention of the use of the financial system for the purpose of money laundering foresaw a need for financial institutions to identify and report any suspicious financial transactions. The second directive, 2001/97/EG, for the prevention of the use of the financial system for the purpose of money laundering extended the remit of the first recommendation to other groups. Since 2001 car dealers and sellers of ships, art and antiques, gold, silver and jewelry and, since June 2003, also lawyers, notaries public, tax consultants, accountants and real estate agents have been under-reporting duty.

The third and most recent directive, 2005/60/EG, on the prevention of the use of the financial system for the purpose of money laundering and terrorism financing broadened the definition of money laundering, by including financing terrorism. It replaced the first EU directive.

With regard to cash, the EU regulation no. 1889/2005 on cash entering or leaving the EU says that any individual entering or leaving the Community and carrying cash of a value of 10000 euros or more shall declare that sum to the competent authorities of the member state.

As with the US, enforcement problems occurred in Europe. Reporting systems are under heavy criticism. With regard to suspicious transactions, reporting outputs rather than outcomes are evaluated: what countries do with suspicious transaction report data remains in its infancy (Levi and Reuter 2006). Reuter and Truman (2004) showed that only 7.5 percent of the suspicious reports are used for further investigation in the US. A similar criticism of low performance holds true for the Dutch system of reporting unusual transactions. In a recent report, the Dutch Court of Audit criticized, among others, the inefficient way of handling reporting data (Algemene Rekenkamer 2008).

The fact that by now the IMF and World Bank also are busy with combating money laundering has increased in particular the collection and development of data that allow assessment of anti-money-laundering policy. An IMF working group is busy developing a methodology to assess the attractiveness of countries and their vulnerability to money laundering. A task force at Eurostat has started to collect statistical indicators for assessing the effectiveness of the anti-money-laundering policy.

45.4.4 Legitimacy Problems

Anti-money-laundering policy runs the risk of contravening human rights. Vervaele (2005) criticized the paradigm change in law that followed from the incorporation of financing terrorism. Making laundering an issue of national security means that the enforcement authorities can enter people's houses without notification and can secretly tape phone calls or establish cameras. Today, a person suspected of laundering is treated as a potential terrorist. This can mean a severe violation of people's privacy.

Lawyers in several countries object to their reporting duty. They claim that they are bound to professional privacy protection on behalf of their clients.

The anti-money-laundering policy will have to prove some success very soon; otherwise it will face serious problems of legitimacy. Police in the Netherlands claim that the money laundering law helps them to catch drug dealers, because, when suspected of money laundering, the criminal has to provide proof of the origin of his funds, while, when there is suspicion of drug dealing, the police must prove the crime, so there seem to be some benefits. But overall the policy has to be able to prevent additional laundering or to reduce existing amounts of laundering, or to prevent or reduce predicate crimes. These benefits of the policy will have to outweigh its costs and are yet to be shown.

45.5 CONCLUSIONS

With money laundering, the EU basically implements US policy rather than exports its own policy to other countries. However, the regulatory powers of the EU provide it with the means increasingly to shape international standards (Schimmelfenning forthcoming). While money laundering legislation is only and can only be soft law at the global regulatory level in the Financial Action Task Force, the EU can and does use hard law and imposes it through directives on its member states. This development of international soft law becoming hard law at lower levels of governance can also be found in other areas like environmental regulation (see Karlsson-Vinkuyzen 2011).

So far, money laundering, though a global problem, continues to be handled by

cooperation between nation-states and by entities like the EU which are still public in character, unlike multi-level governance entities like the WTO (see Zürn forthcoming). The norms imposed on individual nation-states tend to be mostly subjects of discussion at international levels, like that of EU working groups and G-20 meetings, where a broad democratic discourse is missing. In money laundering policy, the FATF becomes increasingly important through its evaluation system. Though nation-states influence, through their national legal institutions, implementation and enforcement, international organizations exert a dominant influence on standard setting as well as on monitoring and evaluation. The instruments used so far by the FATF, like blacklisting, have because of their lack of transparency and of fair treatment of all member states lacked legitimacy. Since monitoring and verification of international rules are increasingly carried out by actors that are not directly under the control of nation-states (Zürn forthcoming), money laundering issues face more and more problems typical of global regimes. As Coleman (forthcoming) stresses, in a global policy-making context, the term public "policy does" not refer to state actors anymore. The distinction between private and public organizations also becomes blurred (Scott 2011).Typical examples of this development are private organizations like Transparency International, which rates predicate crimes such as corruption, or private firms that establish risk-based reporting mechanisms for banks. What Marx (2011) finds for business regulation might also eventually hold for money laundering regulation through an increase in private standards. With the switch from rule-based to risk-based money laundering standards, more room is left for private organizations to define these standards and implement them, for example bank warning systems. However, the standards which form the bases for their evaluation are set by the FATF and display a strong touch of Americanism and lack of knowledge of European legal traditions and institutions.

Thus money laundering regulation displays features as well as deficiencies of global regulation. Scott (2011) argues that the enforcement of global regulations can imply that actors do not feel bound by these norms and can create problems of compliance and fragmentation. First impressions of the effectiveness of anti-money-laundering policy support this view: "crying wolf" by over-reporting and copying and pasting of FATF regulations by new member states, in the hope that nobody will monitor the execution of the policy, are examples of this. The FATF seems to define itself as the central coordinator by giving other international institutions some directions, and the EU seems to accept these directions willingly. However, it might face problems of legitimacy and lack of compliance with a policy that seems to attract neither business nor citizens but is only a public interest perceived by international organizations and governments.

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