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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV)

Conclusions of the Second Typologies Exercise[1] on the Links between Organised Crime and Money Laundering

by Professor Michael Levi,
University of Cardiff

[1] Held in the margins of the 5th Plenary meeting of Committee PC-R-EV.

1. Introduction

A typology is a classification of a phenomenon in such a way as to illuminate similarities within the 'type' and differences between types. The general objective of this typologies exercise was to identify the extent to which 'organised crime' – defined in the conventional European manner – was involved in money laundering and whether there were any particular observed trends concerning this within any of the PC-REV member countries. In connection with this, a questionnaire was sent out in advance requesting PC-R-EV member states to answer the following questions:

1. **Does your country have money laundering cases[2] where organised crime was clearly involved? If so, how many and what is their proportion in the total number of money laundering cases, whether or not the indictments formally charged were money laundering[3]?**

2. **What is the range of criminal activities that produced the proceeds? What criminal activities are most common to generate proceeds? Have these criminal activities taken place in your jurisdiction or abroad or both? If abroad, in which jurisdictions? If there is a particular jurisdiction that arises especially often, please specify.**

3. **What kind of relationship(s) could be established between the person(s) laundering the proceeds and organise crime (i.e. ad hoc or continuous; member of group, advisor to it, only extraneous person bribed, influenced or threatened etc). In what ways the money launderer – organised crime relationships has come to light (intelligence, etc)? In what ways was the link between organised crime and the money launderer proven to the satisfaction of the court? Were there longer sentences imposed in cases where a conviction occurred? Was there any evidence that the person(s) laundering the proceeds acted in a professional capacity, e.g. as a lawyer or an accountant? If so, what professions were involved?**

4. **Is there any evidence or reasonably confirmed intelligence that organised crime, whether domestic of foreign, launder money through the legitimate sectors of your national economy, for example by investing in stocks, securities or futures, buying firms or real estate? If so, what sectors have been identified as being the most vulnerable to such infiltration and why? Is there any reason to believe that these investments represent the final stage of integrating criminal capital (i.e. they are not being used merely to facilitate the laundering process and represent a genuine form of investment)?**

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[2] Please refer to the Table on page 2 and provide statistical data on money laundering cases involving organised crime for the last 5 years, broken down along the various stages of the criminal procedure.

[3] E.g. charged as conspiracy of drug trafficking or of any other predicate crime, participation in organised crime or its aggravated cases, etc.

Money Laundering cases involving organised crime (1995 – 1999)

	1995	1996	1997	1998	1999
Reported					
Investigated					
Prosecuted					
Decided upon by courts					

2. The Connection

The discussion made it clear that in order to construct a typology of the relationship between organised crime and money-laundering, a member state had to have the capacity to follow through an investigation on an international basis as well as on a national one. This did not appear to be possible for every member state, either for legal reasons or, more commonly, for practical reasons. Those member states in which an unexplained increase in capital inflow of natural or, especially, legal persons was apparent had difficulties in following the trail backwards to discover the legitimate/tax unpaid/wholly illegitimate origins of the funds; those countries in which the criminal predicate was relatively clear found difficulties in following the movement of capital across borders unless they were able to mount a cross-border surveillance operation (which would happen only where they knew enough and had enough resources to track the suspects). Thus, for many member countries, the knowledge of the laundering process in its entirety was incomplete, whether these were countries in which most predicate crimes occurred or in Offshore Finance Centres and other places offering company services, which typically had very few domestic organised crime problems. (If knowledge of the laundering process were greater, there would almost certainly be less organised or serious crime.) Often, there was no real explanation of the origins of funds coming from overseas (whether from wire transfers or by the opening of credit lines), but these could not definitively be attributed to criminal origins without greater ability to co-operate across borders and detailed analysis of the originators of the funds.

3. Money Laundering Techniques

The exercise did not reveal any particular trends that call for any special action that could not anyway have been foreseen. For example, there was no observed massive rise in e-commerce or Internet bank laundering, except insofar as the Internet plainly made it easier to do and harder to stop the offering of illegal, unauthorised banking services, and harder to conduct customer identification on an ongoing basis. Rather, there was an extension and continuation of trends such as false invoicing/transfer pricing to enable secret profits to be concealed in overseas bank accounts, whether in the classic 'offshore havens' or elsewhere. There was also an apparent growth in some countries in the use of counterfeit securities to use as security against loans, which would then be defaulted: this was done both by insiders and outsiders. The ability to loot funds from businesses and financial institutions – the most common predicate mentioned by PC-R-EV States - was often connected with the absence of strong internal governance mechanisms in corporate

and government purchasing sections and usually was discovered only after the fact, making contemporaneous surveillance impossible. In some cases, the cash proceeds of crime were used to pay credits into credit card accounts, which could then be drawn against in any jurisdiction, due to the worldwide acceptability of the card schemes. Sports clubs were used as a conduit for proceeds of crime, and also as a source of social and political influence. Also noted was the creation of companies for only one or two transactions, which would then be liquidated or left dormant: this made it difficult to track and build up a portrait of systematic behaviour sufficient to found suspicion, but in any event, non-resident and corporate accounts were felt to be insufficiently carefully looked at in some jurisdictions. There was a trend towards the involvement of multiple organised crime groups in the purchase of large consignments of narcotics as part of risk-spreading: this meant that proceeds also would be distributed more widely, creating sometimes fewer problems of bulk laundering for the offenders. False identity documents were often used in bureau de change for smurfing techniques, but sometimes in collusive bureaux de change, the number of registered customers is implausibly high and this can be used as a method of analysis and proof of bad faith in court. The direct purchase of gold and high-value minerals was noted as a continuing problem in the market, in regulating the opportunities for disposing of the proceeds of crime.

4. Laundering through "imported" and "exported" funds

The general conclusion arising from an extended and fruitful discussion was that there were essentially two forms of money laundering, which one might characterise as imported and exported funds. In the case of *imported* funds, seen especially in offshore finance centres (OFC) but also in those countries that were going through privatisation, there was usually little explicit connection with criminal or non-criminal sources of funds.

1. There might develop a proactive suspicion internally;

2. The member state might receive a request from another country to assist with a current investigation (if they become aware where the funds have gone); or

3. (if the FIU's are members of the Egmont Group) they may discover by data matching that they both have interests in the same legal or natural persons.

However, especially in the first case of an internal suspicion, unless there is some audit trail, it may be difficult to work out what the predicate offence is (if any) without 'tipping off' the account-holder. Thus, the OFC would seldom know whether the suspicious transaction was connected with 'organised crime' or not.

In the case of *exported* proceeds of crime, the position was similarly problematic. Some funds were exported because it was financially unsafe to keep them within the jurisdiction rather than because of any expected incrimination or asset seizure/ confiscation risk. In the absence of compensation funds for bank deposits or investments, for example, and/or at a time of high domestic inflation, there is every economic reason

to export even legitimate capital or to transform it into domestically obtained products of a safer but convertible kind such as gold, jewellery, real estate, etcetera. Criminal competitors may create real physical risks for financial as well as person security. However, it is only when domestic or international enforcement efforts create a real risk of incrimination and, especially, asset seizure and forfeiture, for any given individual or group that they have a substantial need to launder, in the sense of need to conceal the origins and ownership of funds. Thus, the more effective that a country or – especially – a group of countries becomes in anti-laundering and asset confiscation policies, the greater the need for laundering. This applies also to the laundering of 'new' criminal acts such as the proceeds of transnational corruption. Cross-border FIU and investigative collaboration is a prerequisite for building up a more complete picture, and for ascertaining whether or not the individual crimes form part of an ongoing organised network.

Physical borders and geographical location remained relevant even in a globalised financial system. Many countries reported a larger visibility of cross-border currency movements. Even when funds transfers were sent to financial institutions within the country where the crimes occurred, offenders tended to withdraw funds in cash to break the audit trail, and would then move the cash physically to a different (often neighbouring) country. One possible reason for this is that even if cash 'placement' was reported in the new country, the absence of any demonstrable predicate offence would make it unlikely that, whatever their suspicions, any criminal prosecution would take place (especially where there was no money laundering offence of 'own funds' laundering). On the other hand, what was noted was the creation of many nominee accounts in OFC or non-OFC territories as a consequence of transnational private and public sector bribery via the medium of transfer pricing for sales and purchases. This was to some extent a hangover from the old days of exchange control, where false invoicing was used to create 'slush funds' overseas, with access to foreign currency even through credit cards in the name of the nominee companies or personal accounts. When privatisation happened, there was apparently nothing to stop the management privatising these slush funds for their own personal use, and sometimes the funds were used to purchase shares in the privatised business. Transnational corporations also bribed public officials with funds held on their behalf overseas, and these might be used to purchase real estate or for conspicuous consumption. Anti-laundering suspicious transaction reporting systems were not very well organised to detect these forms of behaviour, which were 'organised crime' only in the sense that the systematic looting of companies and financial institutions tended to be an ongoing form of 'enterprise crime' and was sometimes used to purchase political patronage or 'roof' in some former Soviet countries. Indeed, comparatively little was stated about drugs or traditional 'organised crime' predicate (e.g. extortion) laundering compared with the more serious forms of organised economic crime and corruption.

Alternative money transmission services were utilised among ethnic groups who trusted each other and who had shops which facilitated such payments. One case was elaborated in which this was done in a small town by the transfer of paper chits, apparently covered by international trade in legitimate commodities far in excess of what might reasonably

be consumed or sold in a small town that had no real tourist trade: the disparity between customs data and the counterfeit paper trade was the lever by which this deception was proven, and this highlighted the value of data matching using different forms of data collected. In parallel with this 'underground' banking in which there was no book-keeping trace except for the 'netting out' of final balances periodically (like the meetings of clearing banks to decide and effect net transfers), there was increasing use of money wire transfers through specialist firms performing this function. There was evidence of 'smurfing' wire transfer payments below the (informal or formal) reporting limits of the wire transfer companies. Cases were noted of remote account-opening by the same person using multiple identities. Such persons were sometimes involved in smuggling human beings or products, legal and illegal. The defining characteristic of the disciplined smugglers was that they paid duty to avoid the risk of trouble, and higher duty than they needed to. It was considered useful to train customs officers to play a counter-intuitive role of checking people out who seemed suspiciously honest by paying duties in such circumstances: indeed, customs authorities might play a bigger role by enabling more effective cross-checking of claimed transportation in false invoicing by organised economic criminals who sometimes became lazy and careless and did not bother to support their carousel frauds with real physical movement.

In some respects, the label of 'organised crime' was considered to be unhelpful in illuminating the laundering process, since it tended to understate the role of professionals and of economic criminals and was sometimes required to trigger the use of special powers that were needed to investigate economic criminals as well as 'organised criminals'. In other cases, however, it could be demonstrated that much economic crime was conducted by persons engaged in long-term enterprise crime, who channelled their proceeds into offshore accounts and the purchase of privatised businesses by wholly or partly fictitious invoicing. It was expected that this, along with smuggling of cash and conversion of cash into high-value products, would continue to be a dominant type of illegal funds transfer. In practice, the origins of funds would be concealed sufficient to defeat most enquiries, especially if there was no obligation on citizens to justify the origins of their wealth. In practice, the more effective the cross-border co-operation and the greater the efficiency and skills of FIUs, the greater need there will be for criminals to utilise complex laundering techniques and to organise their access to professional launderers.

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