TECHNIUM
SOCIAL SCIENCES JOURNAL

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Technium Social Sciences Journal
Vol. 18, 185-193, April, 2021
ISSN: 2668-7798
www.techniumscience.com

The Development of the European Union Legislative Framework Against Money Laundering and Terrorist Financing in the Light of International Standards

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Abstract. Village autonomy carries along a demand for villages to become self-reliant through optimization of village development that is based on local values and resources. This paper aims at exploring village development within the framework of the Saemaul Undong movement in South Korea. This paper conducts a qualitative approach, and data are collected through in-depth interviews with some key persons related to Saemaul Undong. By conducting Saemaul Undong, the village development movement in South Korea covered three important aspects: improving environmental quality, increasing income, and improving the villagers' mentality. Those three aspects became the main values in transforming rural areas of South Korea to have a better life by optimizing their resources. Freedom in deciding the village program even there was also a national development policy is one of the key success factors of the Saemaul Undong movement. The success of the implementation of the Movement spread to other countries in order to adopt the strategies and model from its country of origin.

Keywords. Money laundering, terrorist financing, FATF Recommendations, European Union

1. Introduction

The current economic environment and significant developments in financial information, technology and communication provides potential benefits and opportunities for the global community. However, these opportunities also create their own challenges in term of financial market because these advancement allows money to be transferred anywhere in the world with speed and ease. Financial criminals can take advantage of these kind of development to make their illegal money appear legitimate and this process is generally referred to as "money laundering" (Unger, 2013). Money laundering is an increasing concern for the global financial community. The EU have actively taken part in the development of international, regional and national anti-money laundering instruments. These anti-money laundering countermeasures in the EU have been developed substantially and parallel with the international standards in the field. The next part of the paper provides the general understanding about money laundering and the main international instruments that plays pivotal role in the combat of money laundering and terrorist financing. Then the article examines the development of the EU legislative framework in accordance with the global standards. The paper will highlight the risks of money

Technium Social Sciences Journal
Vol. 18, 185-193, April, 2021
ISSN: 2668-7798
www.techniumscience.com

laundering and terrorist financing an areas for improvement when these rules have been adopted in the EU legal system.

2. Money laundering perception

The term "money laundering" was first used to describe the event known as the Watergate scandal in the United State and the first legislation to define and regulate money laundering as a crime was of the United State Money Laundering Control Act of 1986 with the aim to strengthen the government's ability to handle money laundering (Madinger, 2011).

Money laundering can be generally defined as a process of concealing the illicit origin of money or assets acquired through crime activities. According to FATF, money laundering can be referred to as a process in which criminals disguise the ownership and control of the original proceeds of criminal conduct by making such proceeds appeared coming from a legitimate manner. The reason for the criminals to conduct money laundering activity in order to make "dirty money" become "clean money". Furthermore, Unger & Busuioc state that "Money laundering is essentially the process of disguising the unlawful source of criminally derived proceeds to make them appear legal. Anti-money laundering legislation is aimed at ensuring that crime does not pay by preventing the offender from reaping the fruits of the crime" (Unger & Busuioc, 2007).

The complete process of money laundering consists of three stages. Placement is the first stage where the proceeds of crime are put into the financial system in order to remove the direct link between money and the illegal activities through it has acquired. The second stage, layering occurs when money is transferred between accounts to conceal the true origin from which it is generated. Some methods used in layering include the purchase of high value assets with cash and then converting or reselling them. The identity of the parties to the transaction may be obscured and the assets may become difficult to trace back and confiscate. Finally, in the last integration stage, laundered money is eventually introduced into the legitimate economy and appears as money from some legal activity (Turner, 2011). In reality money laundering cases may not have all three stages, some stages could be combined, or several stages occurs several times.

It is difficult to accurately calculate the total amount of money laundered globally. This is because its nature and there are various ways to conduct, but also it is a consequence of differences in stipulating what should be considered as money laundering in different legal system and at which point of the laundering process it should be measured (Unger & Busuioc, 2007). According to a recent study conducted by the United Nations (UN), the estimated amount of money laundered globally in one year is 2 - 5% of global GDP. However they also estimated that less than 1% of laundered funds are intercepted by law enforcement, and actual seizures amount to less than 0.2%.[1] Furthermore, an estimation of between 0.7 - 1.28% of annual EU GDP is detected as being involved in suspect financial activities (EUROPOL, 2017). This financial crime becomes a global threat and affects the financial institutions. It might weaken the soundness of the banking institutions and exposed them to serious risks especially reputational, operational, legal and financial risks. This makes the task of combating money laundering globally more urgent than ever. The fight against money laundering and terrorism financing is an important priority for the EU.

[1] https://www.unodc.org/unodc/en/money-laundering/overview.html

Technium Social Sciences Journal
Vol. 18, 185-193, April, 2021
ISSN: 2668-7798
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3. International anti-money laundering regimes

The widespread acknowledgement of the importance in combating financial crimes has led to the development of the global anti-money laundering framework. The framework is the combination of "hard law" instruments and "soft law" standards. Hard law instruments are mainly agreements under the UN treaties. Notably, these include the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the UN Convention against Transnational Organized Crime (UNCTOC) and its protocols, and the UN Convention against Corruption (UNCAC) (Borlini & Montanaro, 2016). On the other hand, soft law standards greatly influence the global legal framework against financial crime with the FATF Recommendations take the leading role in anti-money laundering and counter-terrorist financing worldwide.

3.1. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (The Vienna Convention)

The aims of the international initiatives is to weaken the power financial crimes by curtailing their economic capabilities. To achieve this, it is important to tackle the opportunities that enable such perpetrators to launder the proceeds of their crimes. The starting milestone for such efforts commenced on the global scene with the adoption of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (or the Vienna Convention). The Vienna convention was adopted in 1988, entry in force on 11 November 1990 with 191 parties to the Convention as of March 2021.[2] The Vienna Convention was introduced following the political and social development between 1970s and 1980s with growing demand for narcotic drugs and psychotropic substances for recreational purposes. This Convention aims to enhance cooperation among the members in order to more effectively handle the various aspects of illicit traffic in narcotic drugs and psychotropic substances.[3] The Convention provides definition and characterization of the offence, international cooperation in mutual legal assistance, extradition arrangements, and enforcement mechanisms Article 3 of the Convention stipulates the party members to approve necessary measures to stipulate criminal offences in relations to illicit trafficking in domestic law.[4] The scope of criminalization covers a wide list of activities such as the production, manufacture, cultivation, possession or purchase, transportation or distribution, organization, management or financing of trafficking operations.

Although the term "money laundering" was not directly mentioned in the convention, Article 3 stated that the conversion or transfer of property derived from the established offences for the purpose of concealing the illicit origin of the property leads to a crime.

"i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph a) of this paragraph, or from an act of participation in such offence or offences, 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 offence or offences to evade the legal consequences of his actions;

ii) 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 an offence or offences established in accordance with subparagraph a) of this paragraph or from an act of participation in such an offence or offences".

[2] https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en
[3] Article 2 of the Vienna Convention. Available at https://www.unodc.org/pdf/convention_1988_en.pdf
[4] Article 3, of the Vienna Convention

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Vol. 18, 185-193, April, 2021
ISSN: 2668-7798
www.techniumscience.com

This convention recognized the transnational nature of both money laundering and drug trafficking. Although, drug trafficking was recognized as the only predicate offence to money laundering in this convention, more crimes have been identified as predicate to money laundering such as human trafficking, smuggling of migrants, and terrorist financing. It can be seen that this stipulation was the basis of subsequent regulations to prevent money laundering (Stessens, 2000).

3.2. The United Nations Convention against Transnational Organized Crime and the Protocols Thereto in 2000 (the Palermo Convention)

The Palermo Convention was adopted by the UN in November 2000, came into effect in 2003 with 190 parties as of the 26 July 2018.[5] The convention is the main international instrument in fighting against transnational organized crime. The member states are required to criminalize of the laundering of proceeds of crime, including all serious predicate offences of money laundering regardless committed inside or outside the country.[6] States are required also to build regulatory framework to detect and deter all forms of money laundering, including customer identification, suspicious transactions report, and record keeping.[7] States parties are obligated to adopt legislative and other measures to criminalize the laundering of the proceeds of crime and not only drug-related offences as contained in the Vienna Convention but also other serious offences, such as corruption.[8] Countries are also required to adopt measures to trace, freeze, confiscate and seize the property and the proceeds of crime, and strengthen mutual legal assistance with each others in relation to the offences under the Palermo convention.

3.3. The United Nations Convention against Corruption

The United Nations Convention against Corruption (UNCAC) is a landmark, international anti-corruption treaty adopted by the UN General Assembly in October 2003, came in effect in 2005 with 187 parties as of March 2021.[9] This convention is unique not only in its worldwide coverage but also in the extent of its provisions, recognizing the importance of both preventive and punitive measures.[10] Under UNCAC regulations, states members are obliged to adopt coordinated policies that prevent corruption and assign a body or bodies to coordinate and inspect their implementation. The preventive policies covered by the Convention include measures for both the public and private sectors in efforts to prevent and combat corruption, and measures to prevent money-laundering.[11] State members must criminalize bribery, embezzlement of public funds, obstruction of justice and the concealment, conversion or transfer of criminal proceeds.[12] Chapter IV requires the states to give support each other in cross-border criminal matters, for instance, gathering and transferring evidence of corruption for use in court.[13] The Convention also lay a framework for countries to adapt both their civil and criminal law in order to facilitate tracing, freezing, forfeiting, and returning funds obtained through corrupt activities.[14]

[5] https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html
[6] Article 6 of the Palermo Convention
[7] Article 7 of the Palermo Convention
[8] Article 8 of the Palermo Convention
[9] https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&lang=en
[10] https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf
[11] Chapter II of the Convention
[12] Chapter III of the Convention
[13] Chapter IV of the Convention
[14] Chapter V of the Convention

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Vol. 18, 185-193, April, 2021
ISSN: 2668-7798
www.techniumscience.com

4. Financial Action Task Force and its recommendations

The most significant and important achievement in fighting against money laundering and then terrorist financing happened in 1989 in Paris with the establishment of the Financial Action Task Force (FATF). Less than one year since its establishment, FATF issued Forty Recommendations, which ensure a coordinated global responses to deal with the misuse of financial systems for laundering drug-related money in February 1990, then these recommendations were revised in 1996, 2003, and 2012 to cover updated money laundering techniques and broaden the scope beyond the scope of drug-money laundering, representing the global standards in combating money laundering and then terrorist financing around the world, including the EU.

The recommendations consist a list of forty recommendations, urging state members to introduce substantive and procedural criminal regulations, preventive administrative and financial measures, and measures to ensure transparency on the ownership of legal persons and arrangements. In addition, the recommendations ask the members to create related agencies with appropriate functions, powers, resources, and mechanisms for internal and external cooperation. Notably, after the event of 11 September 2001, the FATF issued the Eight (later expanded to Nine) special recommendations to combat terrorist financing through the ratification and implementation of the UN instruments, criminalizing the financing of terrorism and associated money laundering activities, freezing and confiscating terrorism-related accounts, reporting suspicious transactions, international cooperation, controlling alternative remittance services, controlling and monitoring wire transfers and cash couriers and monitoring the vulnerabilities associated with non-profit organizations.

In 2012, the recommendations were updated with the supplement of the following issues: (i) Anti-money laundering and counter terrorist financing policies and coordination; (ii) money laundering and confiscation; (iii) terrorist financing and proliferation; (iv) preventive measures; (v) measures to ensure transparency on the ownership of legal persons and arrangements; (vi) the establishment of competent authorities with appropriate functions; and (vii) improving powers, mechanisms, and arrangements to cooperate with other countries. The FATF Forty Recommendations, together with the Nine Special Recommendations, have been ratified by over 180 countries, and they are globally recognized as the international standards for anti-money laundering and countering terrorist financing.[15]

5. The European Union regimes

5.1. The first anti-money laundering directive in 1991

In recent decades, the EU and its member states have actively get involved in the development of instruments for the efforts to combat money laundering and terrorist financing. The FATF Recommendations have been effective in criminalizing the act of money laundering and they have established stronger punishment for the money laundering offence, making it play an important role in the introduction and development of the first anti-money laundering directive (the first AMLD) of the EU in 1991. This directive was the first stage in combating money laundering at the European level.[16] In this directive, the term "money laundering" was introduced, based on conception of the 1988 Vienna Convention. The first AMLD put concentration on combating the laundering of drug proceeds through the financial sector. This directive required state members to prohibit money laundering and to obligate the financial

[15] http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html
[16] Council Directive 91/308/EEC, of 10 June 1991, Prevention and Use of the Financial System for the Purpose of Money Laundering, 1991

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Vol. 18, 185-193, April, 2021
ISSN: 2668-7798
www.techniumscience.com

sector, a wide range of financial and credit institutions and professions, to identify their customers, keep appropriate records, train staff, keep the records and report suspicious transactions of money laundering to the authorities (Cox, 2014). The sanctions would be imposed on the non-compliance credit and financial institutions.[17] However, the directive failed to include any provisions regarding the nature, functions and powers of the responsible authorities (Mitsilegas & Gilmore, 2007).

5.2. The second anti-money laundering directive in 2001

The techniques of money laundering has been change over the years, making the existing global anti-money laundering framework was not adequate to address the changes in money laundering operations. As a result, the FATF revised its Forty Recommendations in 1996, with the main aims of broadening the list of predicate offences for money laundering, extending the preventive responsibilities beyond the financial sector, and updating the customer identification system. These changes were followed by the EU, led to the adoption of the second anti-money laundering directive in 2001. The Directive 2001/97/EC of the European Parliament and of the Council of the European Union of 4 December 2001 (hereinafter the second AMLD) amended and updated the first AMLD on the prevention of the use of the financial system for the purpose of money laundering.[18] The main aim of the second AMLD was to refine the existing provisions and to fill the gaps in the existing legislation highlighted by the FATF Forty recommendations. There were two main changes in the second AMLD. Firstly, the second AMLD expanded the definition of money laundering, taking into account underlying offences such as corruption and thus expanding the predicate offences. It expanded the scope of predicate offences for which suspicious transaction reporting was mandatory ranging from drug trafficking in the first AMLD to all serious offences. Secondly, the second AMLD also extended the scope of duties in the first directive to include a number of non-financial activities and professions such as lawyers, notaries and other independent legal professionals, accountants, estate agents, art dealers, auctioneers and casinos (Cox, 2014). In order to remove the fear that the imposition of such professions would violate client's confidentiality rules and could potentially break the integrity and fair of court proceedings, the second AMLD provides for the possibility of exempting lawyers in some cases from the responsibility of reporting suspicious transactions(Mitsilegas & Gilmore, 2007).

5.3. The third anti-money laundering directive in 2005

The FATF revised its Forty Recommendations in 2003 regarding the development in money laundering typologies. Based on these update, the EU adopted the Directive 2005/60/EC (the third AMLD) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in October 2005, and state members were required to implement the third Directive by the end of 2007.[19] The third AMLD established guidance that reinforce the previous EU legal framework. In this version, it changed the procedures for customer identification and documentation, also known as "customer due diligence" (CDD). While the second AMLD required evidence gathering on the client, the third AMLD adopted a risk-based approach to ensure that those subject to a CDD requirement acquire the necessary information (Terrill & Breslow, 2015). The third AMLD also broadened the scope of persons

[17] Article 4 -8 of the Directive
[18] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0097&rid=1
[19] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32005L0060

subject to regulation. In this directive, the scope of anti-money laundering regime included the activities associated with terrorist financing.

5.4. The fourth anti-money laundering in 2015

The EU passed the Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the fourth AMLD) of 20 May 2015. This directive amends Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repeals Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC and it was implemented in all of the member states in June 2017.[20] This is an updated and improved version of the third AMLD when it reinforces various provisions of the third AMLD in order to combat money laundering and terrorist financing, along with increasing ownership transparency in firms. These changes keep the EU comply with the latest guidelines from the FATF Recommendations, helping to ensure global consistency in anti-money regimes.

The fourth AMLD expanded the scope of obliged entities compared with the previous directive (Koster, 2020). Some firms and individual conducting financial activities such as investment companies has been regulated under the fourth version and therefore they are the subjects to comply with the anti-money laundering regulations. This means that more firms will have to comply with the fourth AMLD regulations, including CDD requirements. While under the third AMLD, only casinos were classified as the obliged entities, the obliged entities under the fourth AMLD added all credit and financial institutions, various Designated Non-Financial Businesses and Professions (DNFBPs), and gambling services. Occasional transactions, which is transaction outside of a regular business relationship, with total amount of €10,000 or more are also included in the regulation and these must be reported to the authorities. Additionally, a unique feature of the fourth AMLD is that e-money products are regulated under the fourth AMLD for the first time.

5.5. The fifth anti-money laundering directive in 2018

On 19 June 2018 the fifth anti-money laundering directive (Directive (EU) 2018/843), which modified the fourth AMLD, was issued by the EU. The deadline state members to transpose these new regulations into national law is by 10 January 2020.[21] In this directive, a number of substantial improvement has been introduced to better prevent the financial system from being used for money laundering and terrorist financing. These upgrades rules such as: Enhance transparency by setting up publicly available registers for companies, trusts and other legal arrangements; Enhance the powers of EU Financial Intelligence Units by provide them with access to widen range information for the carrying out of their tasks; Limit the anonymity related to virtual currencies and wallet providers, and prepaid cards; Broaden the criteria for the assessment of high-risk third countries and enhance the safety for financial transactions to and from such countries; Establish central bank account registries or retrieval systems in all member states; and improve the cooperation information exchange between related parties.

5.6. The sixth anti-money laundering directive in 2018

The sixth anti-money laundering directive (the sixth AMLD) is the EU Directive number 2018/1673 of the EU with the main aim is to standardize the definition of crime related to terrorism and money laundering in within the EU, and define the criminal liability and

[20] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849
[21] https://ec.europa.eu/info/law/anti-money-laundering-amld-v-directive-eu-2018-843_en

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Vol. 18, 185-193, April, 2021
ISSN: 2668-7798
www.techniumscience.com

sanctions for the involved entities. This directive was issued in November 2018 and the member states must transpose into their national law by 3 December 2020 and implemented by regulated entities within member states by 3 June 2021.[22]

In term of definition, the sixth AMLD gives more clarity of the definition of money laundering with the introduction of 22 predicate offences, which directly constitute money laundering and member states must criminalize them whether they are illegal in those jurisdictions or not. Furthermore, this directive also extends criminal liability to cover any involved legal persons, such as partnerships, companies and more. "Legal persons" also includes individuals and businesses acting on the company's behalf, for instance, consultants, lawyers and accountants. Under the new rules, individuals and companies can both be prosecuted for money laundering crimes simultaneously, or as separate cases. Liability will also be taken into account in the cases where the lack of action, supervision or control of an individuals that make money laundering offences possible.

As part of these changes, the sixth AMLD also introduces strict punishments for money laundering offences, including a new minimum prison sentence of four years compared with the current one year imprisonment, and the suspension of operations or even permanent closure of the firms which have been used for money laundering activities.

6. Money laundering and terrorist financing risks and areas for improvement within the EU

The EU conducts risk assessments in order to identify and better handle the risks of money laundering and terrorist financing affecting the EU financial market. In order to achieve these aims, the EU adopted a Communication entitled "Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework" on 24 July 2019. Despite the significant enhancement of the legislative framework, challenges still remain. These challenges have been reflected in four reports.

6.1. Assessment of money laundering and terrorist financing risks

Regarding the risks of money laundering and terrorist financing, the European Commission conducts a on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities as the requirement of Article 6 of the fourth AMLD.[23] This is an updated version of the first supranational risk assessment in 2017. The report shows that most recommendations of the first supranational risk assessment have been implemented by the various actors. However, some vulnerabilities still remain, particularly on anonymous products, customer identification, and new unregulated products like virtual assets. This assessment presents a list of 47 products and services, rising from 40 in the first supranational risk assessment.(Koster, 2020)

6.2. Areas for improvement

Firstly, the report on the assessment of recent alleged money laundering cases involving EU credit institutions was conducted in order to assess the role of credit institutions.[24] The findings of this report showed that substantial incidents of failures by credit institutions to comply with core requirements of the AMLD, such as risk assessment, customer due diligence, suspicious transactions reporting.

[22] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.284.01.0022.01.ENG
[23] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0370
[24] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0373

Secondly, the report on assessing the framework for cooperation between Financial Intelligence Units (FIUs) with third countries, obstacle and ways to improve such cooperation.[25] The report showed that although FIUs take responsibility in sharing information, there has been a small number of cross-border reports. In some cases, the lack of common templates and the lack of proper information technology also hinder the process and effectiveness of information exchange

Thirdly, the report on the interconnection of national centralized automated mechanisms of the Member States on bank accounts was conducted to assess the conditions and the technical specifications and procedures for ensuring secure and efficient interconnection of the centralised automated mechanisms. This report deals with IT concerns at the EU level, given that a future EU wide interconnection of the centralised mechanisms would speed up access to financial information and facilitate cross border cooperation.

7. Conclusion

The fight against money laundering and terrorist financing is a continuous task, supported by a legislative framework that requires regular updates. Although much has been obtained to keep the existing framework updated, there are many shortcomings regarding the EU legislative framework need to be addressed.

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