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Autor: Levi, Michael
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EVALUATING THE REGULATION OF MONEY-LAUNDERING

Michael LEVI*

Zusammenfassung

Seit 1990 wurde die Welt von einer moralischen Panik ergriffen, die sich einerseits um das «organisierte Verbrechen» und andererseits um Drogen dreht. Als eine Folge davon wurde der Geldwäscher zu einer Art neuem «Volksfeind», was in vielen Ländern zu einschneidenden gesetzgeberischen Massnahmen führte, darunter auch im Vereinigten Königreich.

Das Forschungsprojekt, das hier in Form einer knappen Zusammenfassung berichtet wird, begann 1992 und erstreckte sich über 18 Monate. Es bezweckte die Evaluation der britischen Bestimmungen gegen Geldwäscherei aus dem Jahre 1993, und zwar anhand einer Untersuchung einer Stichprobe von 1000 Fällen, die die Banken 1991 als «verdächtig» gemeldet haben.

Nur rund 4 auf 1000 Meldungen über verdächtige Transaktionen haben zu weiteren Untersuchungen geführt oder bereits laufende Ermittlungen massgeblich beeinflusst. Vor allem Transaktionen zwischen Gesellschaften scheinen diesbezüglich völlig unbeachtet zu bleiben, obwohl die Vermutung naheliegt, dass Geldwäscher sich in erster Linie einer Firma bedienen, um ihre Aktivitäten zu tarnen. Die Gründe dieser relativ geringen Ausbeute sind vielfältig. Einer davon ist, dass der Umfang der Geldwäscherei vermutlich masslos überschätzt wird (worauf bereits der Beitrag von Petrus van Duyne in Krim. Bull. 1/94 hingewiesen hat; Red.): Geldwäscherei drängt sich aus der Sicht Krimineller erst auf, wenn ihr wirtschaftlicher Erfolg derartige Dimensionen annimmt, dass sie den Gewinn nicht mehr über exzessiven Konsum ausgeben können, und zwar auch nicht auf längere Sicht.

Neben Folgerungen für die Organisation der Ermittlungsbehörden plädiert der Autor für eine stärkere «Filterung» verdächtiger Transaktionen durch die Banken selber, bevor diese Meldung erstatten. Dadurch könne der Papierkrieg eingedämmt werden, unter dem die (spezialisierten) Polizeiabteilungen andernfalls zu erstricken drohten, und die Erfolgsrate nehme relativ zu, ohne dass die (absolute) Anzahl erfolgreicher Meldungen wesentlich geringer ausfiele. Das Problem aus der Sicht der Banken sei dabei nicht allein die verbundene Mehrarbeit, sondern vor allem das Risiko, bei einer Fehlbeurteilung, d.h. einer zu Unrecht unterlassenen Meldung später zur Rechenschaft gezogen zu werden.

Zwar haben sich informelle Praktiken herausgebildet, wonach die Polizei bei vertretbaren Entscheidungen der Banken, bei denen sich im Rückblick eine Meldung aufgedrängt hätte, von Sanktionen absieht, doch schweben Bankiers diesbezüglich in einer gewissen

Gefahr, aus der das (an sich unerwünschte) massenhaften Melden «verdächtiger» Transaktionen der (Aus-)Weg des geringsten Widerstandes wäre. Seit 1993 hat sich daher die Einsicht in die Notwendigkeit und Nützlichkeit einer starken Filterung der zu meldenden Fälle durch die Banken durchgesetzt, wenn auch die vorliegend zu referierende Untersuchung keine Hinweise darauf ergeben hat, wodurch sich die meldewürdigen Fälle von anderen unterscheiden könnten. Eine der grössten Stärken des britischen Ansatzes gegen Geldwäscherei scheint indessen in der engen und vertrauensvollen Zusammenarbeit zwischen Polizei und Geldinstituten zu liegen, die sich bereits bei der Vorbereitung der entsprechenden Gesetze angebahnt hat.

(Red.)

Résumé

A partir des années nonante, le monde fut saisi par une «panique morale», laquelle était axée d'une part sur le «crime organisé» et d'autre part sur la drogue. Conséquemment à cette panique, le blanchiment d'argent se transforma en une sorte de nouvel «ennemi du peuple», ce qui aboutit à des mesures législatives radicales dans de nombreux pays, parmi lesquels le Royaume-Uni.

Le projet de recherche qui est relaté dans l'article ci-dessous, sous la forme d'une synthèse succincte, a débuté en 1992 et s'est déroulé sur 18 mois. Il avait pour but l'évaluation de la prescription anglaise de 1993 concernant le blanchiment d'argent et se basait sur l'examen d'un échantillon de 1000 cas signalés comme «suspects» par les banques en 1991.

Seules environ quatre annonces de transactions suspectes sur 1000 ont conduit à une enquête ultérieure ou ont eu un effet décisif sur les enquêtes en cours. Avant tout, les transactions entre sociétés paraissent demeurer complètement inaperçues, bien qu'il soit supposé que les blanchisseurs d'argent se servent en premier lieu d'entreprises pour dissimuler leurs activités. Les raisons de ce bénéfice relativement peu important sont variées. L'une de ces raisons est la suivante: le volume du blanchiment d'argent a sans doute été surévalué sans mesure (sur ce sujet cf. la contribution de Petrus van Duyne in Bull. de crim. 1/94; Réd.): le blanchiment d'argent s'impose du point de vue des criminels, seulement quand leur succès économique atteint des dimensions telles qu'ils ne peuvent plus dépenser le bénéfice sous forme d'une consommation excessive, ceci même à plus long terme.

Outre les conclusions concernant l'organisation des autorités d'enquête, l'auteur plaide pour un «filtrage» plus vigoureux des transactions suspectes par les banques elles-mêmes, avant de déposer un rapport. De cette manière, la paperasserie pourrait être endiguée, autrement les sections de police (spécialisée) menaçaient de s'étendre sous elle, et le taux de succès croissait relativement sans que le nombre (absolu) de rapports couronnés de succès ne diminue de manière considérable. Du point de vue des banques, ce filtrage n'implique pas seulement un surcroît de travail, mais avant tout, un risque de devoir injustement rendre compte plus tard de n'avoir pas transmis certaines informations, lorsqu'il s'avère que cela aurait été opportun.

Certes, des pratiques informelles se sont développées et la police renonce à poursuivre des banques qui n'ont pas signalé des transactions douteuses pour des raisons justifiables; pourtant les banquiers courent à ce sujet certains risques, et l'annonce en masse de transactions suspectes serait la voie (issue) de la facilité pour eux. Depuis 1993, on a fini par reconnaître la nécessité du filtrage par les banques des cas annoncés, même si l'étude relatée ne donne aucun renseignement permettant de distinguer dorénavant les affaires dignes de rapports des autres. Une des plus grandes forces des dispositions britanniques contre le blanchiment d'argent paraît cependant résider dans la collaboration serrée et confiante entre la police et les instituts bancaires, qui se sont déjà engagés dans la préparation de lois appropriées.

(Réd.)

1. INTRODUCTION AND RESEARCH METHODS

During the 1990s, a «moral panic» has spread around the globe:
- about «organized crime», including the threat posed by the collapse of the former Soviet Union, and
- though not for the first time, about drugs, whose negative or perceived negative effects (on health and on crime) have been experienced in almost every country in the world, including those whose economies benefit from narcotics production.

One consequence of this international moral panic has been a special focus upon a new «folk devil» – the money launderer – who is viewed as a necessary element in the «system» of international crime, and who allegedly enables organised criminals to «penetrate» the respectable economy and to compete therein on unequal terms. Major policy developments, compliance costs, and fear of «criminalisation» among professionals who are concerned lest they or their clients fall foul of the global regulatory apparatuses have become commonplace. One of the aspects that has received significantly less attention, however, except at a rhetorical level, has been what the system is expected to achieve and how we can measure its performance. There is a need for simple descriptive information about how the anti-laundering measures are implemented in what are normally private worlds of financial activity.

In the light of this, in 1992, *prior to* the introduction of the Money Laundering Regulations 1993 (which came into force only in April 1994), I and my research associate Michael Gold conducted an 18-month review of:

- how the financial institutions were implementing the money laundering regulations then in force (which were not dramatically different from those introduced later) – Britain being then the most advanced European country in implenting formal anti-laundering measures;
- what the impact of those measures had been on criminal investigation and prosecution; and
- to the extent that this was possible, on criminal behaviour[1].

There is always a problem in evaluating impact. First, how can one tell whether regulations are deterring money laundering if one has no clear idea how much money laundering there is? Second, how can one judge the *potential* effects of anti-laundering measures, given that the *actual* input into them may be modest and/or highly variable between financial institutions and police forces? And third, how does one judge the *long-term* potential of matters such as good relationships between law enforcement agencies and the financial institutions, which may not have any readily measurable outcome during the period of evaluation? None of these problems is readily resolvable, but it is important to be aware of them. Within the modest funding and time available, the way that we approached this was to conduct in-depth interviews and observation at four major UK retail banks and interview an *ad hoc* sample (by snowballing contacts) of insurance companies and merchant banks. We drew also on the detailed review by myself in 1988-1990 of police-bank relationships[2]. We followed through a sample of 1000 cases reported in 1991 to what was then the National Drugs Intelligence Unit (and is now the National Criminal Intelligence Service, or NCIS – the central clearing house for suspicious transaction reports) to see what the outcomes of the reports were after they were passed on for detailed investigation to the police or Customs. (We took a further sample of 1993 cases to see if anything significant had changed, focussing particularly on the cases described by NCIS as «successful», to attempt to identify any distinguishing and common characteristics of these successes.) We interviewed in depth police and customs officers from a variety of specialist disciplines – fraud, drugs, anti-terrorism – in London and the English provinces, in Scotland, Wales and Northern Ireland, to see how they used these financial disclosures and what problems they experienced with them, as well as how – if at all – the reports from financial institutions had assisted them in major criminal cases. In the UK, and – with some variations – in most of Europe, the financial institution decides to make a report of suspicions to the central police bureau; that bureau (NCIS, in the UK) distributes the bank's report to the police or customs area that they consider to be appropriate; and the investigators in that area decide when, how, and with what intensity to investigate.

2. RESEARCH FINDINGS

The results of this research consist both of descripion and statistical data, whose significance has to be appreciated only within the context of the description of the business, law enforcement, and prosecution systems that «produced» them. One of the first points to emphasise is our conclusion, based not only on interviews but also on *a priori* reasoning, that there is a tendency to overestimate the amount of money that is laundered, wrongly equating it with the proceeds of crime: except at the highest levels, much proceeds of crime are simply spent on conspicuous consumption for criminals, their families and friends, rather than saved and/or reinvested. They may have some cash surplus from dealing, and they may have temporary storage problems with that, but it is only when the volume of profit (net of disbursements on criminal staff and other operational costs) becomes too high to spend in the foreseeable future that criminals (and tax-evading businesspeople) have a laundering problem. To the extent that proceeds of crime enter the official banking system, it is often via offenders' spending on travel and leisure, with bookmakers, casinos, car dealers, club owners, publicans, airlines, etc., and on domestic improvements such as building and decoration. Consequently, estimates of laundering derived from criminal proceeds are prone to exaggeration.

Partly because of limited investigative resources, in the past, suspicious transaction reports by banks, building societies, and other regulated bodies – which are now 50 times the number initially predicted – seldom provide information that would enable the police or customs to mount a surveillance operation on a target offender. The information does help to build up a profile, and multiple reports on the same person or on connected persons may trigger more detailed investigation, but mainly if the person is already «known» or under investigation anyway. Because of the low proportion of reports that receive much more than routine checks on criminal intelligence databases, we do not know what proportion of the reports, if followed up «thoroughly», would yield evidence of crime. Moreover, a variety of Serious Fraud Office cases (such as Polly Peck) demonstrate the ease with which large corporations can transfer vast funds overseas without arousing any suspicion of crime or, if there was suspicion, any reports to NCIS (or plausible action against the apparent beneficiaries as a result, even had they been reported).

Our research reveals that at least before 1994, the area of reporting inter-company transactions has been an almost complete black hole in the system of money-laundering detection: it is not so much that there are no reports on

inter-company transfers, but they seldom lead to successful investigation, while *a priori*, one would expect serious money-launderers to use corporate vehicles for their long-term activity. This is a core problem for the future, since given that we have not yet developed any clear objective triggers for suspicion in such contexts, it is difficult for bankers or for anyone to monitor such transactions without investing a great deal of expensive time.

Few reports to date – roughly 4 in every thousand reports, though rising subsequently from recent information – have triggered off new investigations or have made a major impact on existing investigations (in the sense that without them, a major criminal would not have been convicted), though there have been some important cases that have been generated by them (for example the widespread taking of banknotes by employees from «destruction cages» at the Bank of England, and the conviction for embezzlement of an accountant in charge of undercover operations finance at Scotland Yard), and there is some disruptive effect on traffickers. Largely because many disclosers classify and report suspicions under the Criminal Justice Act 1988 only when their suspicion is sufficiently strong that they are almost certain that the money comes from fraud, theft or robbery, this category was disproportionately likely to yield a conviction, compared with reported suspicions of drugs trafficking. However, bankers cannot normally be expected to know what sort of crime – if any – is involved in customer behaviour about which they are suspicious. Moreover, it should not be thought that the 4 in a thousand represents 4 in a thousand definite examples of money-laundering: these are (increasingly reasoned) *suspicions*, and unless they are all intensively investigated – as they currently are not – financial institutions can seldom know absolutely that they are the proceeds of crime.

It is difficult to assess the disruptive impact of money-laundering regulations or their deterrent effect, since there are no reliable data on the current extent of laundering. There is evidence that traffickers are forced to store and courier out significantly more cash than was the case before the regulations were introduced and enhanced, making them more vulnerable to surveillance and asset forfeiture. However in the past, there has been little monitoring by the National Criminal Intelligence Service (NCIS) of what happens to the reports they pass on – though this is now changing – and receiving forces see it as a drain on scarce manpower (and on their performance measures, which are under pressure) to report back the results. The upshot is that «the system» as a whole learns little about what customer conduct best predicts either «appropriate suspicion» or successful investigation. We do not know the extent

to which, with speedier handling from the institutions to NCIS, from NCIS to outlier forces, and from force financial investigation units to operational officers, more reports by banks would generate convictions (and I would recommend controlled experiments in which the police vary the amount of effort they put into investigation, to see what difference this makes to outcomes). However, greater emphasis on the «downstream» police and customs usage of suspicious transaction reports is necessary if the system is not to break down and backlogs develop indefinitely.

The vast bulk of «hits» (i.e. disclosures that involve people and/or companies already suspected by police or customs) involved local UK customers. Investigations of UK customers and of sterling transactions also have a greater chance of success, though it does not tell us anything about the correctness of suspicions, since police investigative inputs are often quite modest. Largely because they have few commercial accounts and have fewer very large cash transactions that arouse suspicion and that are reported mainly because of their sheer size, the «hit rates» of building societies as a whole is slightly higher than those for banks: however, the expansion of their role after deregulation might alter this position. Very few reports that led to investigative success involved more than £100 000. There are regional differences in policy and approach which could account for differences in police performance: Customs follow-ups to disclosures produce a lower percentage of arrests than do those of the police, because Customs are primarily involved in apprehending cross border drug trafficking, excise, VAT, and EC fraud – a narrower range of crimes.

A major difference between financial institutions has been the degree of «filtering» (now officially recognized as being the task of an «appropriate person» designated under the Money-Laundering Regulations 1993). Our research reveals that heavy filtering leads to a higher proportion of «hits» and to a not significantly lower absolute number of «hits»: despite the added work it gives financial institutions, it is therefore recommended as a way of reducing the overload on investigators, who currently spend too much time in reactive processing of disclosures, as well as maximising respect for the principle of customer confidentiality consistent with the law. However, I acknowledge that this involves financial institutions in greater costs, and that they may be criticized if a suspicion «filtered out» by them subsequently turns out to have been the proceeds of crime. Customary working practices have developed under which the authorities have agreed to be tolerant of honest mistakes, and will not prosecute except where violations of the regulations are clear. But

understandably, police officers feel more comfortable about such assurances than do financial institution staff who may be subject to criminal liability.

Since 1993, there has been general approval of the idea of filtering of suspicions by *banks* to improve the quality of disclosures and reduce the strain on the police. However, we were unable to isolate any analytical characteristics of these «quality disclosures», partly because bankers' reports have to be matched by investigative inputs in order to tell which ones would have produced a high yield, and both financial institutions' criteria and police and customs responses are highly variable in practice. Some major offenders have moved their money in such a way that the authorities arguably ought to have been alerted. However the analysis of some past large cases showed that it was very rare, even in retrospect, for their financial arrangements to look obviously «wrong». Most offenders, even most «traffickers» (who are typically small-time user-dealers), are not disciplined businesspeople who blend into a business environment. But most «target criminals» appear to use shell companies or underground banking arrangements in which unlicensed «money people» agree to transfer funds overseas for them, supplying these funds to overseas businesspeople who want sterling. By contrast, the overwhelming number of disclosures centred around personal accounts, and financial institutions have not been very successful at spotting the misuse of «front» companies for the intermingling of crime proceeds with legitimate takings (though new guidelines and the more active involvement of merchant banks and money market institutions will improve the absolute number of «hits» from such sources).

3. CONCLUDING COMMENTS

One of the greatest strengths of the UK system compared with many overseas is the positive working relationship between law enforcement and financial institutions, upon which the authorities rely. The involvement of financial institutions alongside police and legislators in developing guidelines for interpretation of statutes has generated greater legitimacy for the regulations and more consistency via training than would otherwise have occurred. There has consequently been a political as well as law enforcement benefit. In practice, bankers who fall short of active conspiracy with traffickers or other offenders are very seldom charged: indeed, there were only 65 prosecutions and 27 convictions of anyone for s.24 Drugs Trafficking Offences Act 1986 money-laundering offences between 1986 and the end of 1992, including

probably only one non-conspiring banker. But there is informal and regulatory control by the Bank of England and other regulators, so one should not take low numbers prosecuted either as an indicator that there is nothing wrong or as a simple index of regulatory inaction. The data understate the true level of benefit from the UK system, because in later years, I anticipate that many individual and corporate names that have been reported as suspicious but not acted against will be investigated thoroughly if they reappear. This is the difficulty with short term evaluation.

But although the legal environment has changed since the original reports we analysed were made, the general analysis I have offered remains relevant, not only for the UK but also for other countries which have adopted, or are considering adopting, suspicion-based transaction reports. Systems need to be developed not only for processing competently the volume of reports, but also for monitoring and feeding back upon their quality. All of this does not in the slightest mean that the UK system for dealing with money-laundering has been unsuccessful: what it means is that there are inherent difficulties in spotting *prosecutable* money-laundering and that the control of money-laundering has to be examined in its totality, from suspicion to the prosecution process. As a research design, despite financial limitations, our project was fairly successful in the sense that we were able to collate and triangulate information from all participants (except criminals themselves). However, as with many other areas of rapidly evolving control systems, the criticism can always be made that things have changed since the research was done. I remain convinced, though, that there are severe natural limits to the investigateability of money- laundering itself and even of suspicions of money-laundering developed by financial institutions. These limitations affect the researcher as well as the police.

Notes et bibliographie

* Professor of Criminology and Director, White-Collar and Organized Crime Unit, School of Social and Administrative Studies, University of Wales College of Cardiff, Cardiff, Wales.

[1] Gold M. and Levi M., *Money-Laundering in the UK: an Appraisal of Suspicion-Based Reporting* (London, 1994), available only from the Police Foundation, 1 Glyn St., London SE11 5RA.

[2] See : – Levi M., «Regulating Money Laundering: the death of bank secrecy in the UK», *British Journal of Criminology* 31(2), 1991, 109-125;
– Levi M., «Pecunia non olet: cleansing the money launderers from the Temple», *Crime, Law, and Social Change*, 16, 1991, 217-302.