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National Risk Assessment of Money Laundering and its importance in combating Human Trafficking

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Content

ML from HT/SOM

Modus operandi of laundering

National Risk Assessment

Law in books and law in action

Focus: HT from developing countries to developed ones and „following the money“ in suppression of this type of crime in developed countries

“For those of you who think it cannot happen to you, I want to let you know that the danger of the trackers is so wide that only God knows who is safe.”, Titi Atiku Abubakar, Wife of Nigeria's Vice-President (cited in: CORRUPTION AND HUMAN TRAFFICKING: THE NIGERIAN CASE, Osita Agbu, 2004)



HT – serious crime

HT usually entails the illicit recruitment and transportation of men, women and children across borders with a view to „enslavement“ – e.g. sexual servitude in brothels, child labor, or other forms of cheap labor (with the aim of exploitation) – cheap or seasonal labor, difficult or dangerous jobs

In many cases the level of physical and psychological damage inflicted upon the victims is so severe and enduring that it can be impossible to restore them the complete health (*estimation: 2.45 million persons are being exploited in the world, FATF, 2011*).



Top of Agenda

THB and smuggling of migrants (SOM) is on the top of the agendas of a number of international organizations and individual countries:

Annual reports on organized crime and on trafficking on human beings of the *Bundeskriminalamt* (Germany) www.bka.de

Report on Trafficking in Human Beings in Southeast Europe, UNICEF, UNOHCHR, OSCE/ODHR, 2002, <http://www.unhchr.ch7women/trafficking.pdf>

Annual Reports of EUROPOL

UNODC in Vienna (non public) database – multiple sources on global trends; cross national routs and the volume of trafficking in persons, as well as data on victims and offenders; responses of criminal justice systems.



Reports: Extending the scope to include illegal migration (SOM)

- Distinction is not always obvious to authorities which are dealing with criminal investigations of such cases: *Cases can be seen as SOM in the transit country and HT in the country of origin or destination (SOM is always transnational, while HT (ongoing exploitation) might not be (USA, countries in African continent))*
- Importance of the offence : e.g. in the mid 90s, 20 to 25% of persons who were helped to escape were assisted by facilitators, today this portion exceeds 70% (Hungary). Fees are extensive and increasing.
- The need to avoid, for the purposes of ML typologies work, any unnecessary methodological complications arising from the definitions of both crimes and their elements **(for AML purposes, both crimes should be treated as predicate offence)**



Seriousness of the crime

Asia Pacific Group (AGP), People Smuggling, People Trafficking, Money Laundering and Criminal Asset Confiscation (annual reports)

- Explore the legal framework and the use of anti-money laundering and asset confiscation systems in countering migrant smuggling and human trafficking

FATF Report, 2011, Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants

MONEYVAL, 2005 (in cooperation with FATF) Report on Proceeds from Trafficking in Human Beings and Illegal Migration/Human Smuggling



Highly profitable crime

UNODC – HT third largest source of income for the organized crime groups (after drug, arms trafficking);

FATF/Moneyval - HT among the most lucrative and core business of international criminal organizations; global challenge of the same proportion as drugs and arms trafficking (also EUROPOL, UN)

Total illicit profits from HT per year 32 USD billion annually (ILO, 2005); 10 billion USD per year (Moneyval & FATF, 2005). Official statistics for SOM are scarce and incomplete.



ML overall

Estimating the amount of worldwide money laundering is problematic:

the International Monetary Fund (IMF) has estimated that between **2% and 5% of global GDP per year** is generated annually as the proceeds of crime (in an amount in the trillions of dollars)



On individual level: Prices for human smuggling/assistance to illegal migration

- Range form **250 EUR to 100.000 USD** (e.g. from China to Italy 13,000 USD; to/through Croatia 500 EUR, for transit through Serbia and Montenegro USD 1000) (2005)
- depending on route and origin, the nationality and wealth of the migrant; risks involved in journey, the degree of professionalism of the „service provider“, amount of **bribes** paid to facilitate the operation etc.



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- WHERE DOES THE MONEY GO –
- ➔ reporting, investigating, indicting and convicting



Main Trends detected in ML

Cash-intensive and Money service business

(In)formal banking systems

Front companies - any entity set up by and controlled by another organization, such as intelligence agencies, organized crime groups, banned organizations, religious or political groups, advocacy groups, or corporations.

New (i)llicit business

Commingling of funds

Straw man – intermediary

Involvement of Cash couriers

False Documents for identification

Investments in Real Estate

Investments in Cars, In Lifestyle

Stock markets?



Straw man

Asian student residing in Belgium opened an account with Belgian bank. Shortly afterwards a Belgian restaurant owner of Asian origin was given power of attorney to his account.

During one year the account exclusively showed international payments from Central Asia featuring the same clients. The funds were withdraw in cash, first by student, then by restaurant owner...



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Characteristics of money laundering associated with human being trafficking and illegal migration

In order to have comprehensive and effective mechanisms of AML policies for HT/SOM:

To examine best practices and obstacles to successful preventive and repressive policies in this area both domestically within jurisdictions and internationally, given its cross-border dimension;

Assessment of the characteristics of ML associated with HT and illegal migration and to assess whether these are distinct from other types of ML activity



Main Trends detected in ML HT and SOM

- Wire remittance services: *smurfing/structuring* - the same person performs a number of transactions with the same or different service providers over a short period of time;
- Use of false identification documents or those of illegal migrants or victims of trafficking;
- A remittance service being used together with an associated economic entity (e.g. travel services)
- Clients being accompanied by other persons - the real client
- Cash being sent by different senders to the same person abroad



- Use of cash/body couriers;
- Purchase of real estate, vehicles and other tangible objects, mostly registered under different name;
- Investment in legal cash based business activities (bars, restaurants, tourist agencies where sometimes victims are employed) with overlarge profit compared to the commercial structures (little staffing, low real commercial activity);
- Less frequent method: purchase of gambling chips in casinos
- The involvement of high risk countries,
- The existence of unrealistic wealth compared to the client's profile.



- In HT and illegal migration criminals launder their own money (professional launders are used in the US, Italy and Russia) - implication for those countries which do not recognize „own proceeds“ laundering as a category of the money laundering offence



National risk assessment – based on the 2012 FATF standards

Standards have been accepted internationally as the global policy benchmark for anti-money laundering, anti-terrorist financing and anti-proliferation financing measures by the UN, IMF, World Bank (WB), Asian Development Bank etc.

Requirement for countries to undertake a national risk assessment – HOW EXPOSED INDIVIDUAL COUNTRY IS;

Including of tax crimes as predicate offences to money laundering;

Measures relating to domestic politically exposed persons;

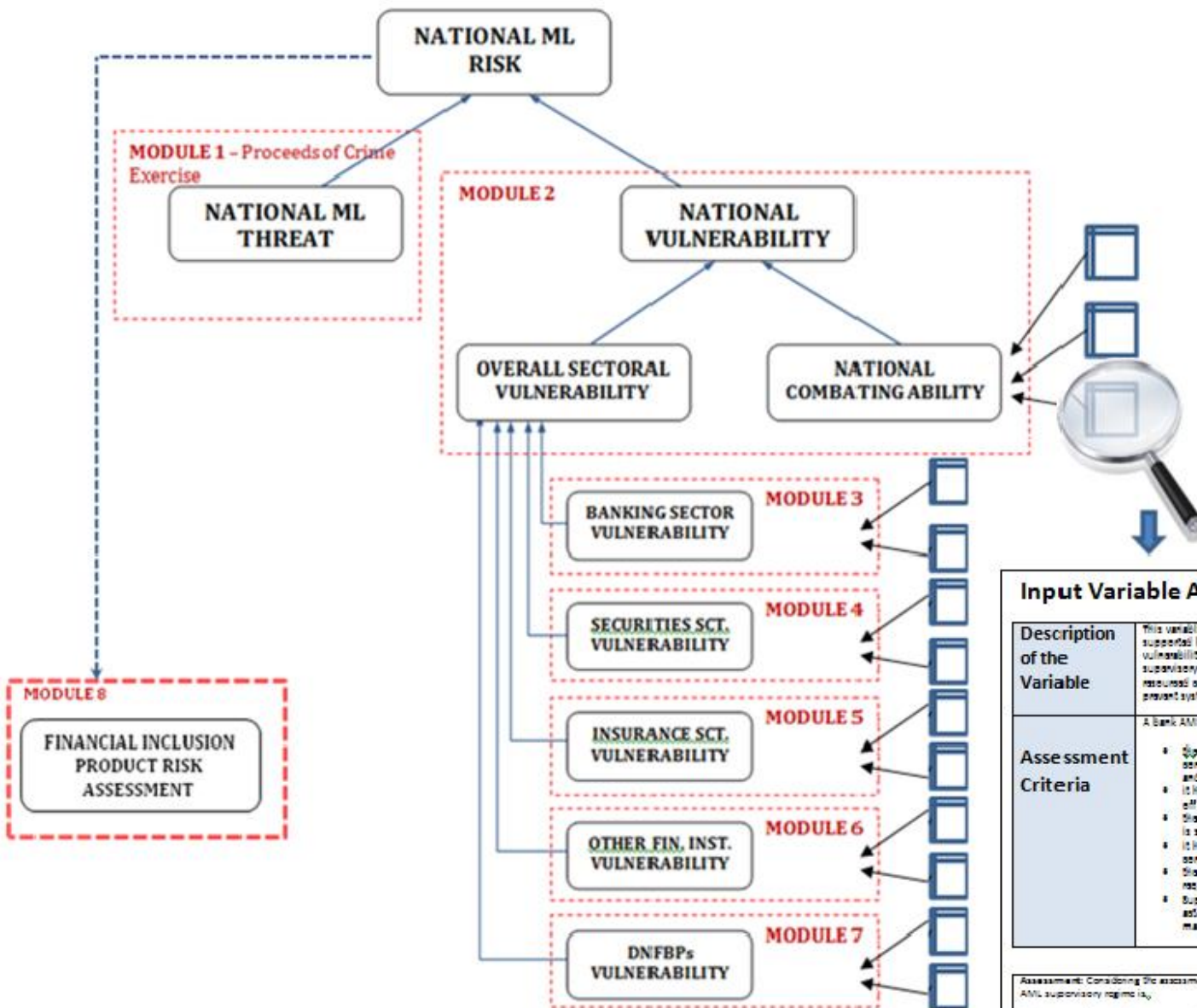
Requirement for countries to ratify the UN Convention Against Corruption.



WB NRA, based on 2012 FATF Recommendations:

Second Generation NRA tool provides a practical and transparent framework that assist countries to better understand and analyse the complex web of ML risk. Following items can be described as the main strengths of the tool:

- Provides an idea on the overall risk and vulnerability in the country.
- Allows diagnostic and scenario analysis.
- Allows comparison of vulnerabilities arising from various products/services.
- Allows comparison of vulnerabilities arising from various sectors.
- Prioritisation and sequencing of potential AML actions.
- Contributes to the cooperation and collaboration among AML/CFT stakeholders.



Input Variable Assessment Template

Description of the Variable	This variable assesses whether a country has a comprehensive AMU supervision regime supported by adequate powers, staff and other resources. Money laundering vulnerabilities in the banking system can be reduced if the country has a strong bank supervisory regime. A comprehensive bank supervisory structure that is adequately resourced can ensure a high level of compliance with national bank requirements and prevent systemic problems in the industry.			
Assessment Criteria	<p>A bank AMU supervisory regime is comprehensive and in high quality if:</p> <ul style="list-style-type: none"> • the supervisory body has adequate resources to ensure a high level of AMU compliance in the banking system, including sufficient number of well trained and highly skilled inspectors; • it has a comprehensive AMU supervisory program that consists of regular on and off site inspections; • the supervisor's moral suasion has a significant impact on bank management and is sufficient to positively influence behavior patterns; • it has strong and effective enforcement powers that can be used to enforce AMU compliance; • there is evidence that it acts effectively and impartially when supervisory action is required; and • supervisory enforcement measures such as monetary penalties, administrative actions and removal of bank licenses are sufficient to positively influence bank management and staff behavior. 			
<p>Assessment: Considering the assessment on this, please rate how high the quality and comprehensiveness of the bank AMU supervisory regime is.</p> <p>Please enter the rating in an appropriate box.</p>				
Low (0.00 – 0.20)	Low/Medium (0.21 – 0.40)	Medium (0.41 – 0.60)	Medium/High (0.61 – 0.80)	High (0.81 – 1.00)
Please explain the grounds for the given rating:				



NRA: Quantitative and Qualitative Data Analysis

Quantitative data: statistics on suspicious transactions reporting, all other reporting to FIUs; reports of possible crimes, number of indictments, convictions and asset restraint measures

Qualitative data: expert assessments that are solicited through surveys and questionnaires, workshops, interviews

Advantages and disadvantages – quantitative- impartial, consistent and easier to measure and compare, but often not sufficient to analyze highly complex components of AML regimes (dark figures and non reported cases are high)
Qualitative – advantage of being based on the views of AML professions who are familiar with the operation of the system and its complexities, but relying on subjective views (unintentionally biased, overly focused on some aspects while overlooking others; provided by professionals with limited expertise on the specific subject matter)



Many possible player in detection, investigation, prosecution and **confiscation** – COOPERATION

Entities obligated to report suspicious transactions to FIU (e.g. banks, law offices, insurance agencies, agencies supervising financial markets etc.);

FIU,

Inspectorates,

Customs (reporting duty for certain amounts of cross border movement of funds),

Immigration services,

Intelligence services,

Law enforcement (police),

Prosecutors, Lawyers, Judges



National risk assessment – based on the 2012 FATF standards

Contains core, or essential, recommendations including the requirement to:

1. Criminalize ML, terrorist financing and proliferation financing in accordance with international law;
2. Freeze assets and confiscate the proceeds of crime;
3. Establish a financial intelligence unit (FIU) to collect, analyze, evaluate and disseminate suspicious transaction reports from financial institutions and other reporting entities;
4. Supervise those financial institutions and other reporting entities to ensure compliance with customer due diligence and other requirements contained in the standards;
5. Ensure that comprehensive and effective mechanisms are in place to cooperate effectively on the international level given the growing international dimension to these crimes.



Money laundering in HT/SOM

While the total value of confiscated POC assets in a jurisdiction may be high, an examination of data by predicate offence may reveal that the value of confiscated assets related to one or more types of common offence (e.g. human trafficking) is disproportionately small when compared to the known extent of the crime.

Reported cases in Croatia 2012

Human trafficking: 6

Illegal transfer of persons across the state border: 68

Money laundering: 16

Convicted persons in Croatia in 2012:

Human trafficking: 2

Illegal transfer of persons across the state border: 70

Money laundering: 2



World Bank NRA

Serbia (Report published April 2014)

In 2011 HT

Reported: 50

Investigated: 45

Indited: 48

Convictions: 29

HAT in Serbian report is identified as presenting the **low level** of ML risk: it represents a „*new phenomenon in Serbia – often confused or intertwined with „illegal migration“*“

Nigeria (under assessment)

Croatia (currently under assessment)



The removal of the profit

- If countries are to make real progress against HAT and illegal migration, the removal of the profit from these crimes, through dissuasive confiscation orders, appears to be *condition sine qua non* in the development of national strategies
- Jurisdictions should recognize HT and SOM as serious offences which should be capable of attracting significant confiscation orders after conviction
- Offender should demonstrate the origin of proceeds or property should be liable for confiscation
 - Incriminate self laundering



Not easy - reasons

It is acknowledged that ML in relation to HT and SOM is not easy to detect and prosecute

- The payments are almost exclusively made in cash (*cash flows between criminals: recruiters, transporters, exploiters, guards, hosts and hiders, watchers or guards, accomplices between law enforcement agencies*);
- Payments are often made outside the countries where the smuggling and trafficking crimes are likely to be detected (transit and destination countries)
- Amounts paid per transaction are often small (to avoid reporting threshold)
- (Sometimes) Lack of self criminalization of self laundering
- Smugglers and traffickers adapt their working methods to avoid detection based on new regulation and risk assessment
- Where confiscation of proceeds is not in place traffickers appear able to retain most of the profits with impunity (lack of general prevention)



Not easy - reasons

- Most countries treat victims as valuable intelligence rather than as possible witnesses;
- Bank requirements of identification (customer ID check or the absence of identification) is sometimes not preformed seriously enough;
- Connection with legal business - proceeds are generated through a continuous process where the victims are located (industry, services, prostitution);
- Lack of measures which require offenders, upon conviction for these offences, to demonstrate the origin of alleged proceeds or other property liable to confiscation;
- Local police may not always realize the implication of cases they are handling - obtaining evidence of payments/financial benefits is a prerequisite for obtaining a conviction



Conclusion

- In recent years, progress has been made towards the development of a common understanding of HT and establishing legal norms regarding HT (Data and research on HT: A global study (2004) IOM, Frank Laczko (ed).)
- The amount of scientific and empirical research has grown significantly and it is difficult to find regions of the world not included in a trafficking study (But much research on trafficking shows that trafficking is a problem and tends to be limited to mapping routes and identifying the main countries of origin and destination and focuses on one type of exploitation);
- Tendency to focus on studying the victims, and less attention is given to studying the traffickers, the clients, and law enforcement agencies who may be involved in creating the conditions under which trafficking can flourish (including the role of NGOs, international organizations etc).



Conclusion

THEREFORE:

- **More interdisciplinary studies are needed** (migration, criminal law, human rights law, law enforcement, health law etc.) to tackle the problem;
- Policies to combat HT/SOM should be **more evidence based**, drawing on results from different research and evaluations
- In order to make **national data comparable, common guidelines** for the collection of data should be developed, both with regard to the type of data and to the methods used
 - law in books is harmonized with international regulations, but the number of victims is still high and the amount of illicit profit not confiscated is very high
- **Following the trace of money and taking confiscation of proceeds of crime from HT/SOM seriously might be approach worth to take, as well as concentrating on money launderers of proceeds gained through HT/SOM**



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