General Background of the Seminar

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Combating money laundering has increasingly become important both on regional and international levels. Combating money laundering in many cases conflicts with the rules concerning bank confidentiality. Bank confidentiality is recognized to various degrees in different jurisdictions, but these rules in many jurisdictions are often softened in favour of the rules regarding combating money laundering. The background to this particular seminar as arranged by the Stockholm Centre for Commercial Law is to put money laundering into a general financial perspective, although not particularly considering the rules on bank secrecy. We have made an effort to present the exposure of various trades to the rules concerning money laundering.

The question of combating money laundering thus is not a national question, nor even a European question, but has an international (some would say global) impact. It is also tied to the question of terrorist financing, another angle left out here as a point of discussion at this seminar. The choice was made to focus on the particular rules that have been gradually introduced in order to combat money laundering.

Much secondary legislation was adopted within the EU during the 1980's and 1990's in order to achieve a single market for financial services. On top of this, the euro was created as a single currency for several of the EU member states. The national deregulation, and EU regulation, of financial services, banks and other financial institutions, aimed at increasing competition in the single market in financial services. Gradually the fact that deregulation contributed to an increase in various risks in the financial markets was recognized. Eventually there was also an increased understanding that risks were associated with the introduction of the euro as a single currency for several

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countries not having common rules to deal with financial crimes, such as money laundering and tax evasion.

Money laundering is seen by some as a serious crime, and there is a need for various methods to combat it. However, it is not recognized as a crime *per se* in all countries, but rather as a consequence of different criminal activities.

The Money Laundering Directive makes specific reference to certain international legal instruments on money laundering.[1] The Directive declares that money laundering should be tackled within the framework of international cooperation among juridical and law enforcement authorities. The Money Laundering Directive refers to the Vienna Convention[2] and the Strasbourg Convention.[3] The Directive further declares that Community action should take particular account of the recommendations adopted by the financial action task force (FATF) on Money Laundering.

The FATF was established by the seven most developed countries, better known as the G-7 countries, in Paris in July 1989 to examine measures to combat money laundering. The FATF issued Forty Recommendations to fight money laundering in 1990. The scope of FATF was updated in 1996. The task force is based at the OECD headquarters in Paris. It is an inter-governmental body consisting of 29 countries and two international organizations. It includes all EU Member States, the European Commission and the Gulf Cooperation Council.[4]

In addition to these international legal instruments, certain guidelines were also adopted by the financial industry to deal with the problem of money laundering. An important guideline that needs to be highlighted in this context is the "Wolfsberg Anti-Money Laundering Principles for Private Banking." A group of eleven international banks, including some EU banks, adopted a set of global anti-money laundering guidelines, drafted with the help of Transparency International, a non-governmental organization dedi-

1 Recitals 4–9 of the Money Laundering Directive 91/308/EEC.

2 Vienna Convention against illicit trafficking in narcotic drugs and psycho tropic substances was ratified on 19 December 1988.

3 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime was ratified on 8 November 1990.

4 The members of FATF are Argentina, Brazil, Canada, Hong Kong, China, Iceland, Japan, Mexico, New Zealand, Norway, Singapore, Switzerland, Turkey, USA and all EU Member States.

cated to fighting corruption.[5] The guidelines have been officially named the Wolfsberg Anti-Money Laundering Principles after the UBS training centre where they finalized.

The aim of these guidelines is to tighten the disclosure requirements for private bank accounts. The guidelines are voluntary and membership is open to all banks. Altogether eleven principles were set out in the guidelines. Most of them deal with client identification, with several principles for this purpose. The guidelines also provide a monitoring program of bank accounts and a management reporting system. There are also guidelines on education, training and information as well as record retention systems. The Wolfsberg guidelines recommend that banks accept deposits only if their source and legitimacy can be verified.[6]

Apart from the international legal instruments, some EU Member States, e.g. UK, have adopted certain unilateral measures to combat money laundering.

The EU Directive on money laundering lays down minimum rules necessary to combat money laundering. Reasons for adopting such a minimum approach include the desire of certain Member States to preserve their banking secrecy laws and to uphold the exclusive competence of the member states in the field of criminal law.

The Directive applies primarily to banks and financial institutions, including insurance companies. Due to the shortcomings of the Directive, an amendment of the money laundering Directive was adopted in December 2001. The amending Directive extends the existing EU legislation to embrace not only drug trafficking but also all organized crime. A clear obligation is imposed on Member States to combat the laundering of the proceeds of organized crime. The scope of the Money Laundering Directive is extended to include money obtained by fraud or corruption relating to the EU budget. The definition of financial institutions is also expanded to cover, for example, credit institutions, insurance companies, investment firms and currency offices.

[5] The bank signatories included: Credit Suisse, UBS, Citigroup, Chase Manhattan, JP Morgan, Barclays, HSBC, Deutsche Bank, Société Générale, ABN Amro and Banco Santander Central Hispano.

[6] Article 1(1) of the Wolfsberg Guidelines.

The amending directive also extended the coverage of the Money Laundering Directive to non-financial activities and professions vulnerable to misuse or abuse by money launderers. The rules on client identification, record keeping and the reporting of suspicious transactions now cover a wide range of professions. Article 2a of the amending Directive imposes identification and reporting obligations on external accountants and auditors, real estate agents, casino owners and fund transporting companies.

The proposal to include the legal profession generated much controversy. The long delay in reaching an agreement on the amending directive was largely due to the inclusion of the legal profession within its scope of application. Due to intense lobbying and pressure as exerted by the legal profession, there was a long delay for the Council and European Parliament to reach a final agreement on the scope of the professions included in the amending directive.

The main objection to the inclusion of the legal profession as to complying with the reporting requirement was based on the premise that it would compromise a lawyer's duty of discretion and confidentiality in professional relationships with clients. A compromise was finally reached whereby the legal profession was included in the directive subject to certain safeguards and exceptions.

In order to overcome the shortcomings in the exchange of information between the financial intelligence units of the Member States, a Council Decision was adopted on 17 October 2000. The aim of this Decision is to create contact points between Member States to receive suspicious transaction reports as set out in the money laundering directive. This unit will cooperate with national agencies in order to assemble, analyze and investigate relevant information related to money laundering.

The differences in the legal provisions, jurisdiction and powers of law enforcement services within the EU have increased the opportunities for money laundering and other organized crimes. A new legal provision therefore was incorporated in the Maastricht Treaty on the European Union in order to rectify this situation. It provides for cooperation between police forces to deal with cross-border crimes. Such cross-border cooperation is necessary in order to fulfill the Treaty objective of ensuring a high level of safety within the area of freedom, security and justice.

Europol started limited operations fighting against drugs on 3 January 1994 in the form of the European Drugs Unit, located in The Hague in the Netherlands. Europol commenced operations on 1 July 1999. Even though it is an EU body, it still functions as an inter-governmental body. The Amsterdam Treaty provides, however, that within a period of five years after its entry into force, Europol will be conferred more competence in matters relating to cross-border criminal investigations.

There are several instruments at the disposal of the EU to combat money laundering, some of which overlap. The Europol, the European Police College, Euro jurist and the national financial intelligence unit of the Member States are assigned certain powers and functions, some of which are similar to each other. In order to avoid conflicts of interest or any duplication of work, closer coordination among these bodies is necessary. The extent to which further competence could be devolved on these third pillar legal instruments depends largely on the consensus reached by the Member States. It might be rather premature to elevate Europol to the position of its American counterpart, the Federal Bureau of Investigation, but it could attain such a status in the event the EU develops over the long run into a kind of a United States of Europe.

Some Member States have adopted unilateral measures to deal with money laundering. This was partly in response to the inadequacies in the original directive as to combating money laundering in an efficient and effective manner. The UK has taken a traditional legalistic approach and adopted even stricter rules on money laundering and terrorism than those in the directive.

The amending directive introduced far-reaching changes to the original money laundering directive and has widened its application to non-financial sectors and other professions.

It is against this background that this conference in Stockholm 2010 is to be seen. The idea has been to illustrate how things have developed in the UK and Scandinavia with respect to combating money laundering. We are therefore very happy that we could convince Mr. Justice Cranston, Prof. Rosa Lastra, Charles Proctor and Andrew Clark from London, together with several persons from different Scandinavian countries, to participate in the seminar and share their valuable views and experiences from different fields.

We wish to thank them all for participating and also for contributing to this publication.

We also wish to thank Advokatvännerna for sponsoring this seminar and making it possible.

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