

A photograph of a city skyline at sunset. The sky is a mix of orange, pink, and purple. Several skyscrapers are visible, some with lights on. In the foreground, there is a bridge over a river, and some trees and streetlights are visible.

**Anti-money laundering and the changing
face of public-private cooperation
Tackling the proceeds of smuggling
Dr. Benjamin Vogel**

OVERVIEW

- I. Sketching Anti-Money Laundering
- II. Smuggling and AML
- III. European law and the global framework
- IV. The purpose of private sector reporting
- V. The role of state intelligence
- VI. The place of the Financial Intelligence Unit

I. SKETCHING ANTI-MONEY LAUNDERING

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- Criminal Justice
- Private Sector
 - Private sector customer due diligence
 - Private sector reporting obligations
- Financial Intelligence Units (FIUs)
- Supervisory authorities

II. SMUGGLING AND ANTI-MONEY LAUNDERING

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- Smuggling as predicate offence: Article 2 para. 1 (p) of Directive (EU) 2018/1673 of 23 October 2018 on combating money laundering by criminal law.
- Smuggling as a means of laundering
- Financial Intelligence Units often close to customs authorities (in Germany integrated in the Customs Criminal Office)

III. EUROPEAN LAW AND THE GLOBAL AML FRAMEWORK

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- Financial Action Task Force International Standards, updated 2018
- Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing
- Directive (EU) 2018/843 of 30 May 2018 amending Directive (EU) 2015/849
- Emancipation of the EU legal framework (esp. beneficial ownership registries, EU list of high risk third countries)

III. EUROPEAN LAW AND THE GLOBAL AML FRAMEWORK

- Global AML architecture largely inspired by US legal concepts
- Tensions between common law instruments and continental systems
- Major points of contention:
 - Data protection law
 - Inquisitorial procedural systems
 - Institutional cultures of public authorities

III. EUROPEAN LAW AND THE GLOBAL AML FRAMEWORK

- The purpose of AML evolving over time through an expansion of predicate crimes
- Transnational definition of money laundering highly intent-focused
- Flexibility to the detriment of clearly defined criminal policy

IV. THE PURPOSE OF PRIVATE SECTOR REPORTING

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Status quo

- Trend towards an ever increasing amount of suspicious activities reports (“quantitative” approach)
- Relevant degree of suspicion remaining rather unspecific
- Reporting regularly leading to the suspension of a transaction

IV. THE PURPOSE OF PRIVATE SECTOR REPORTING

Deficits of the current regime

- Proportionality of data collection
- Low quality of suspicious activities reports
- De-risking of clients by private entities

IV. THE PURPOSE OF PRIVATE SECTOR REPORTING

Policy options

- Combining quantitative and qualitative approaches
- Unusual activities reports with low suspicion threshold without leading to a suspension of transactions
- Suspicious activities reports once obliged entity decides not to go ahead with a transaction or business relationship
- Making use of private sector as intelligence provider as well as gatekeeper

V. THE ROLE OF STATE INTELLIGENCE

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Status quo

- Private sector expected to identify money laundering largely on its own
- Beyond typologies only limited flow of intelligence from state to private sector
- Often conflicting political demands to prevent crime and facilitate business opportunities

V. THE ROLE OF STATE INTELLIGENCE

Deficits of the current regime

- Anonymity of clients and beneficial owners remains widespread
- Limited ability to understand origin of funds, especially when originating from abroad
- Often no legal basis to provide private sector with case-specific intelligence

V. THE ROLE OF STATE INTELLIGENCE

Policy options

- Allowing for the sharing of information from ongoing criminal investigations with private sector
- As a result more targeted customer due diligence by private sector
- Customer due diligence is essentially transformed from being a merely precautionary measure to become a monitoring of suspects

V. THE ROLE OF STATE INTELLIGENCE

Obstacles

- Need to effectively protect the secrecy of judicial investigations
- Need to protect citizens from being unjustly targeted and stigmatised on the basis of unreliable intelligence
- Need to prevent misuse of sensitive data by private sector

VI. THE PLACE OF THE FINANCIAL INTELLIGENCE UNIT

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Status quo

- Various institutional shapes from country to country
- Key tasks of FIU remain ambiguous
- Impossibility to analyse most private sector reports

VI. THE PLACE OF THE FINANCIAL INTELLIGENCE UNIT

Deficits of the current regime

- Ambiguity of the relationship between criminal justice and FIU
- Powers of FIUs remain insufficiently defined
- Evidentiary value of FIU reports unclear

VI. THE PLACE OF THE FINANCIAL INTELLIGENCE UNIT

Policy options

- Strengthening the FIUs ability to conduct operational analyses
- Limiting criminal justice access to FIU data
- Strengthening the FIUs autonomy as regards data exchange

VI. THE PLACE OF THE FINANCIAL INTELLIGENCE UNIT

Obstacles

- Proportionality of pre-criminal suspicion investigations
- Possible reluctance of criminal justice authorities to share data with FIU
- Judicial remedies against FIU data processing

THANK YOU FOR YOUR ATTENTION!