Public Summary

It is as it says on the tin?

Implementing the all crimes approach

Author:
E.A.M. Hillen (s0095338)

Supervisors University of Twente:
Prof. dr. M. Junger
Dr. A.J.J. Meershoek

Supervisor FIU-the Netherlands:
Drs. M.L.J.P. Robben-Potten

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1. Background

To be able to use the proceeds of crime, the money earned by a criminal act, one needs to launder these revenues. The spending of this money, the process of bringing it back into the regular financial system in the upper world from the underworld is called money laundering (ML). As set out by the Financial Action Task Force (FATF):
"*Money laundering is the processing of (...) criminal proceeds to disguise their illegal origin*" (FATF, 2012a).
As crime in its broadest sense has several negative aspects that can harm society, it is of importance to repress and prevent crime.

From an anti-crime perspective, which is the perspective of this research, the launderer's risk of detection and punishment is where possibilities are. Necessary is to have an effective anti-money laundering (AML) regime. An effective AML regime provides possibilities to repress and prevent money laundering as well as the predicate crimes that led to the necessity to launder money.
A country's AML regime consists of the anti-money laundering policies used in law and in practice by involved actors.
The fight against money laundering however is a constant (indirect) challenge between criminals and policy makers. Stronger AML policies force criminals to develop new methods to launder the proceeds of crime, which in their turn force policy makers to improve the existing policies against those methods.

In the fight against money laundering, a number of AML policies have been designed. One specific strategy, as reaction on the developments of criminals, is the so called *all crimes approach.* This approach is based on view that all criminal acts can be predicate to money laundering and must be seen as such. The obligation for reporting institutions to report transactions that are possibly related to the proceeds of all crime to the national Financial Intelligence Unit (FIU) stems from that.
The implementation of the all crimes approach has proven to be not sufficient in the Netherlands (FATF/OECD & IMF, 2011). Interviews with experts in the Dutch AML regime, the system of actors affected by AML policies, have lead to three categorised factors

hypothesised to play an inhibiting role in implementation of the all crimes approach in the Netherlands. These factors are: (1) lack of awareness, (2) shortage of feedback and (3) lack of instruction & supervision.

The goal of this research, demarcated to the sector of banks as one of the main groups of reporting institutions in the Netherlands, was to look abroad to whether or not these factors also play an inhibiting role in other AML regimes and how actors possibly have dealt with these. An attempt was made to detect best practices to create instruments to tackle these inhibiting factors and therefore improve the implementation in the Dutch AML regime. The main research question was as follows:

What can we learn from the implementation of the all crimes approach in other anti-money laundering regimes, searching for solutions on the inhibiting factors found in the Netherlands and therefore improve the implementation?

2. Theoretical framework

Policies such as the FATF Recommendations and EU Money Laundering Directives are part of the combat against crime. After the process of design they need to be implemented by the AML regimes. As research focussing on the implementation of AML policies is lacking, it is chosen for to study general policy implementation literature.

In policy implementation three streams can be distinguished; (1) 'top-down', (2) 'bottom-up' and (3) 'hybrid' (Van de Graaf & Hoppe, 2007). The movement depends on whether information and communication is in vertical or more horizontal design, between policy makers and actors in the field, and whether or not actors are included in the process.
In AML policy implementation, multiple movement streams can be distinguished. For example, the FATF Recommendations are designed in an hybrid style, as actors (i.e. AML regimes' FIUs) are included in design and end-users in countries are consulted. However, in the implementation phase within a regime, the movement is mainly top-down as the government provides the law actors have to be compliant with. As for the latter, the method is quick and clear but it does need the support of the actors (Sabatier, 2005).

The support of actors as set by Sabatier translates to one of the three verbs given as conditions for effective policy implementation by Glasbergen (1987, as quoted in: Van de Graaf, Hoppe, 2007): (a) having knowledge, (b) being able, and (c) willing to. These conditions aim at the actor-side of the policy implementation process and the support for the policy is found in the condition 'willing to'. 'Having knowledge' is the condition where the actors in the field understands the policy and what the policy makers expect from them. This knowledge however, does hold the danger of interpretations made by the actors, and the possibility of interpretation being mutually divergent amongst those actors (Yanow, 1993, p. 42). In AML practice this means not all actors of the regime have the same idea about the content and scope of the policy, as is thought to be of influence on the implementation of the all crimes approach in the Dutch AML regime.
For effective implementation of a policy, actors have to be informed on what is expected from them.

Next to conditions for effective implementation, there are mechanisms for obtaining compliance of actors. In the Compliance Theory of Etzioni three mechanisms for obtaining compliance of actors are given; (a) normative, (b) coercive and (c) remunerative mechanisms (Baier et al., 1986; Lunenburg, 2012).
Understanding the reasons for a policy corresponds to the first mechanism; the normative mechanism. This mechanism functions by referring to the end goal of the policy and to shared norms between the policy maker and the actors (Baier et al., 1986; Lunenburg, 2012).
Research has shown policy makers frequently disregard what their policy needs in the end, administratively speaking, and therefore design policies that are in risk of failure in implementation in that area (Baier, March & Saetren, 1986). This implies policies cannot be implemented entirely as they were designed, and therefore the end goal is jeopardised.

The second mechanism, coercive, refers to the task of supervisors. When actors in the field are not compliant, the supervisors can issue a warning or fine the non-compliant actor.

The third mechanism, the remunerative mechanism, contains supplying resources and making the pathway of implementing the policy attractive to the actor. To AML practice it means providing reporting institutions with systems to report transactions and create knowledge input for the systems used for detecting. In short, creating an easy pathway to detect and report unusual transactions. In current practice, the pathway to report transactions itself is sufficiently dealt with as reporting institutions are provided with specific designed programs for transaction reporting[1] . Instruction and manuals on reporting transactions via this program are provided on the website of the FIU.
Feedback can also help actors understand what the policy is designed for.

3. Research methods

As described before, the goal of this research was to look across the border to how other AML regimes have implemented the all crimes approach and to see what FIU-the Netherlands can learn from their experience.
It is tested whether or not the hypothesised inhibiting factors in the Dutch AML regime play a role in the implementation of the all crimes approach in other countries.
Five countries have been selected to participate in this research:
- A
- B
- C
- D
- E

Of these countries, experts of the national FIU were interviewed. For these interviews, of semi-structural nature, interview protocols were designed to ensure the categorised factors were included.
Next to the interviews conducted, a questionnaire was designed to question reporting actors in the sector of banks in the accompanying countries. This lead to an amount of eight respondents, too few to generate generalisable data. However, the filled-in questionnaires were used as supportive background information.The data collected from the interviews was coded and further researched and matched to the three central issues.

3.1 Measured concepts

The factors or concepts measured in this research were:

Issue I: Awareness
- Perception: how do banks perceive the all crimes approach?
- Awareness: do the banks have sufficient knowledge on the all crimes approach?
- Law: is the all crimes approach present in national law?
- Reporting transactions: are transactions in relation to all crimes reported?
- Reporting twice: if there is a necessity to report to both the police and the FIU, does this function well?

Issue II: Feedback
- Feedback in general: how and how well does the system of feedback function?
- The amount of feedback: how do banks perceive the amount of feedback provided?
- The level of feedback: how do banks perceive the level of feedback provided?

Issue III: Instruction & Supervision
- Instruction: how and by whom are banks instructed on reporting transactions?
- Supervision: what is the role of the supervisor and how well does this role function in practice?

3.2 Data analysis

In this research, notes were taken by the interviewer during the interview. Directly after the interviews these notes were completed to create a file with full sentences. These were then coded to bring back to central themes, and further analysed and matched to the three central issues.
The data gathered with the questionnaires was analysed with the analytical program SPSS.

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[1] In the Netherlands, as in numerous other countries, the software program 'goAML' as developed by the United Nations Office on Drugs and Crime is used for reporting transactions.

4. Results

The inhibiting factors as hypothesised to play a role in the implementation of the all crimes approach in the Dutch AML regime all more or less were found to play an inhibiting role in the participating foreign AML regimes.
The only AML regime studied that does not experience bottlenecks in practice is country E. However, they have experienced problems in the past, and therefore was able to contribute many best-practices for this research.

■ The factor awareness is found not to play an inhibiting role in most participating AML regimes. However, before actors can be compliant with laws and regulations, there is a clear need for understanding the scope and usefulness of these.
■ The factor feedback follows up on awareness. It is found to play an inhibiting role in few of the participating AML regimes. Actors need feedback on their reported transactions to increase knowledge and improve the system of detecting suspicious transactions. In all AML regimes studied, banks desire more feedback on individual reports made. Via the best practices found in this research, FIU-the Netherlands could improve their supply of feedback.
■ The factor instruction & supervision also has shown to be present in an inhibiting role in most of the participating countries. The main reason being unclarity on what tasks supervisors have and how these should be executed. Cooperation between FIUs and supervisors is key in improving.

5. Conclusion

The implementation of the all crimes approach has been found to be challenging in all participating AML regimes. Many experience the same problems, some have already faced and successfully tackled these. Given the fact an AML regime contains many actors, and many types of policies need to be implemented in practice, complex problems are easily created. Through communication and cooperation, many of these problems can be tackled.

Answering the general research question:

What can we learn from the implementation of the all crimes approach in other anti-money laundering regimes, searching for solutions on the inhibiting factors found in the Netherlands and therefore improve the implementation?

The completed implementation of the all crimes approach in country E, backed up by findings of the FATF in the Mutual Evaluation Round (FATF/OECD & IMF, 2011), is made possible by the following factors found in this research: (1) a clearly set law focussing on the proceeds of all crime, (2) awareness amongst all actors, made possible by (3) clear communication, guidelines and feedback, and (4) shared norms and beliefs amongst actors.

In the Dutch AML regime a change in national law could create more awareness for the all crimes approach, as by mentioning the obligation to report transactions in relation to proceeds of all crime would tackle the room for discussion on what the scope of money laundering is. The increase of awareness amongst actors could be made possible by using the feedback system as used in country E, by monitoring the end-users of the suspicious transactions and creating feedback for reporting institutions based on their experience in practice. The amount of feedback provided to banks is found to be lacking in all countries, as banks are said to always request more feedback. This factor could be tackled by FIUs communicating with banks on where they can find general feedback provided, as not all actors previously were aware of.

The mechanisms for gaining compliance (Baier et al., 1986; Lunenburg, 2012) standing out in this research were the normative mechanism and the coercive mechanism. The normative mechanism as mainly present in country E; by shared norms and beliefs actors are willing to be compliant, or translated to practice by the shared norm of keeping the national economy healthy actors are willing to perform their tasks and compliance is met. The coercive mechanism stood out in country C as banks were explained to be very aware of probable impact of punishment.

In this research also all conditions of effective policy implementation as displayed by Van de

Graaf and Hoppe (2007) play a role; actors need to have the knowledge, must be able to and willing to implement the policy. In AML regimes, such as country B and E, where actors have knowledge, are able and willing to be compliant there is little or no problem in practice. However, all participating countries have experienced problems in one or more fields at some time.

Next to the three main issues of awareness, feedback and instruction & supervision, other possible inhibiting factors have emerged in this research:
(1) the type of FIU present in the AML regime; easy connection to and communication with law-enforcement partly depends on the type of FIU.
(2) Possibly cultural differences between countries act as inhibiting factors.
(3) The capacity of the FIU is a third possible other inhibiting factor as sufficient number of staff is necessary for investigation of reported transactions.

To, in future, tackle the complexity of the topic with all its facets, it is up to policy making bodies, governments and FIUs as central actor in the AML regime to arrange the pathway for all conditions to be met.

Using the best practices found in the participating countries as building blocks, the following general recommendations can be made to improve the implementation of the all crimes approach in the Netherlands and possibly other participating countries:

■ Awareness:
(1) Governments need to create clear laws covering the all crimes approach.
(2) These laws and accompanying policies need to be clearly communicated with reporting institutions.
(3) Reporting institutions should be motivated to actively discuss (changes in-)
the FATF Recommendations and EU Money Laundering Directives with each other.

■ Feedback:
(1) AML regimes should consider using the example of the system used in country E of feedback questionnaires to end-users of the reported transactions.

(2) AML regimes should investigate whether or not the desire of reporting institutions to receive a greater amount of feedback can and should be met, or how actors can be directed to the available feedback more effectively.

■ Instruction & Supervision:
(1) AML regimes should clearly set roles and tasks of supervisors and monitor the execution hereof.
(2) FIUs and supervisory bodies need to communicate about their performance on these tasks.

The all crimes approach: it is as it says on the tin, it just has to be explained and promoted before we can fully benefit from it to prevent today's and tomorrow's criminals from enjoying their proceeds of crime.

This research had, due to limited time and resources, some demarcations. Based on these demarcations, recommendations for further research have been made, of which the main are:

■ As this research focussed on the sector of banks as one of the main reporting sectors in the Netherlands, other reporting sectors were excluded. It is recommended to further research into the implementation of the all crimes approach in other reporting sectors.
■ Focussing on the process of reporting and gathering suspicious transaction reports, law enforcement was excluded in this research. As law enforcement is an end-user of the reports, it is recommended to study how law enforcement uses these reports, beyond the strategy of getting feedback to provide to reporting institutions.
■ Five AML regimes were selected to participate in this research. It is recommended to study more AML regimes in future, to provide more best-practice data for more countries.

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