MONEY LAUNDERING OPERATIONAL AND CRIMINAL LAW ISSUES D. MERCKX

Central thought

Integrated approach

operating procedures
financial markets
intelligence
legal procedures

MONEY LAUNDERING

- Not a new concept
- Basically illegal use of financial systems
- Reduce risk of seizure
- Money # magical

MONEY LAUNDERING

- Characteristics:
 - divisibility
 - transportability
 - scarcity
- Annual turnover drugs

400 billion \$

Turnover criminal activities

800 - 1.3 billion \$

- = 15 % of global trade
- Crim. money injected in fin.markets 1 billion \$ / DAY

FINANCIAL MARKETS

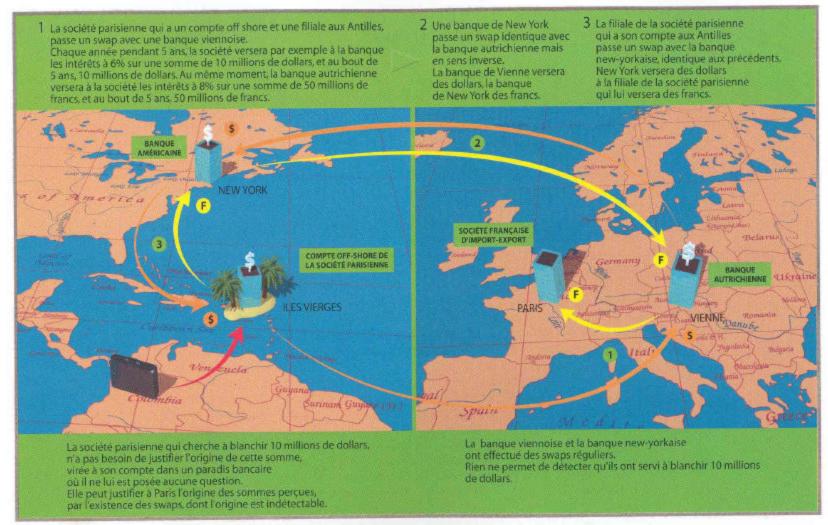
- CHIPS: 1 trillion \$ / day
- SWIFT: 1,9 milion messages / day annual value 854 trillion \$
- 95 % of international trade flows
- Deregulation / Privatization / IT

FINANCIAL MARKETS

- Not restricted to physical location
- Financial value separated from economic reality
- Example: SWAPS



La ronde des swaps



Le swap est un produit financier dérivé très répandu, qui peut servir à des opérations très différentes, de couverture ou de spéculation. Si des enquêteurs curieux cherchent à connaître l'ensemble des opérations de cette ronde de swaps, il leur faudra des mois pour en comprendre le mécanisme, d'autant que le schéma montré ici peut être rendu

beaucoup plus complexe, sans difficulté pour le blanchisseur. On ne pourra d'ailleurs même pas reconstituer, de l'extérieur, l'ensemble du circuit, puisqu'il passe par des paradis bancaires et fiscaux. Dans un circuit de ce type, les banques ne prennent aucun risque puisqu'il n'y a rien d'illégal à leur niveau.

CASH MONEY

- Weight of cash: 10 x weight of heroin
- Op Moneypenny II: 10,5 Mi Eur in 1 week
- Ops Goldfinger I and II: 78 Mi Eur in 3 months (I)
 - 5,8 Mi Eur in 10 days (II)
- Large denomination banknotes (500 EUR)
- Anti-terrorism measures: shift towards cash

BELGIAN FIU STATISTICS

01/12/93 - 31-12/03

• STR's 83.156

• Sent to Prosecutor' Office 50.088 (60,02%)

• Files 15.780

• Sent to Prosecutor's Office 5.764 (36,5 %)

BELGIAN FIU STATISTICS

01/12/93 - 31-12/03

Amount represented by files
 11,1 billion Eur

• Convictions 513

• Suspects / imprisonment 867/2.000 year

Confiscation
 474 Million Eur

BELGIAN FIU STATISTICS

• Fiscal offences

10 % - 2003: 19,7 %

• Embezzlement

4,7 % - 2003: 7,8 %

• Bankruptcy (related)

2 % - 2003: 4,7 %

OPERATIONAL REACTION

- HARM
- Increase of capital
- Cash generators
- Cash watch



INDICATORS BANK OPERATIONS

- refusal of information
- opening account with no economic activities
- different signature authority
- exclusive cash deposits
- use of transit-accounts
- use of sleeping account
- cash or cheque withdrawals
- night safe-deposits

INDICATORS BANK OPERATIONS

- withdrawals in different subsidiaries
- insistance on speed of execution
- difference between turnover and amounts transiting
- difference between economic activitiy and nature of funds transiting
- reimbursement of full loan
- reimbursement of loan in disproportionate cash deposits
- closing of account after question for justification

PROBLEMS BANKING ENVIRONMENT

- volume of transactions
- cost-effectiveness
- customer service levels
- downsizing reliance on electronic banking
- public financing?

INDICATORS INSURANCE SECTOR

- abnormal interest in resiliation of contract
- unusually high premium payments
- premium payments coming from abroad
- changing of beneficiary
- resiliation of contract regardless of costs

INDICATORS REAL ESTATE SECTOR

- payments in cash
- buying without seeing the real estate
- purchase on behalf of third persons
- use of different names during acquisition

MONEY LAUNDERING SCHEMES

- back-to-back loans
- underground banking systems
- Internet banking
- diversified financial activities
- new financial intermediaries

- Covering in layers:
 - receiving, managing, possessing goods
 - converting, transferring to conceal origin or help suspect escape
 - hiding or concealing nature, origin, location, movement, property

- General application of the offence
 - applicable to all predicate offences
 - including fiscal fraud
 - example

- The predicate offence
 - autonomous offence
 - "follow the money"-principle: conversion flows
 - no proof of link between illegal activity and money laundering offence
 - no proof of link between predicate offence and money launderer

- The proof of the illicit origin of the funds
 - proof necessary
 - but autonomous character ML offence
 - no positive proof of predicate offence
 - convincing elements that funds cannot be of legal origin

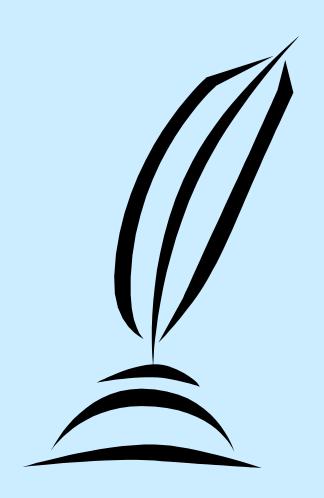
- The burden of proof
 - reversal unacceptable in criminal law
 - division or sharing possible
 - no positive proof of predicate offence
 - convincing elements that funds cannot be of legal origin
 - example

Prosecution

Predicate offence

and / or

money laundering



INTENTIONAL ELEMENT

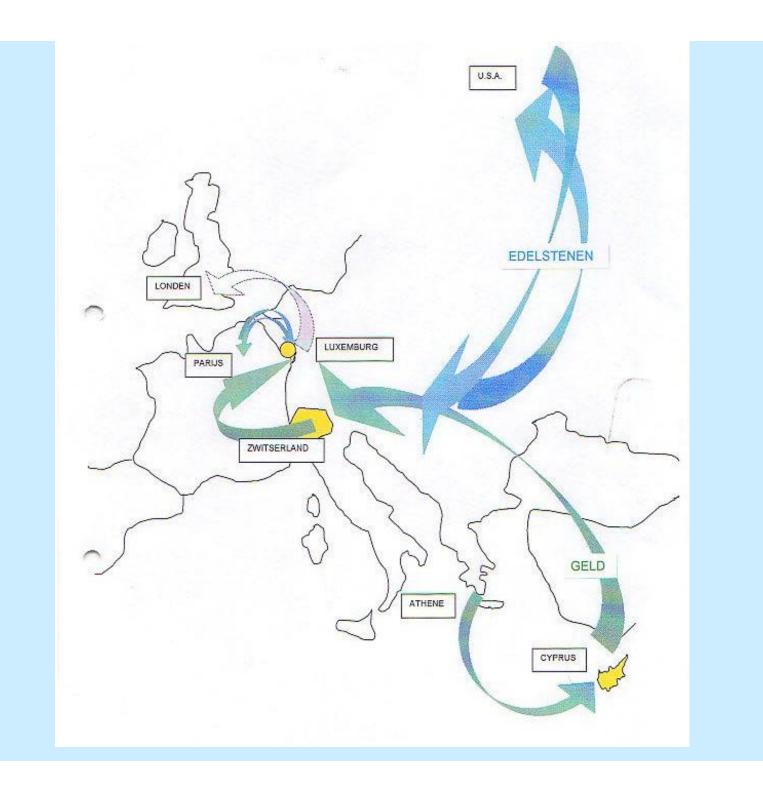
Suspect knew or "had to know"



INTENTIONAL ELEMENT

- Lack of documents
- Circumstances of operation
- Funds disproportionate to financial position suspect
- Changing explanations
- No reasonable economic background
- Tax haven banking relationships
- Travel patterns not matching the business
- Illogical multiple banking relationships in diff countries
- "Knowledge inferred from objective factual circumstances"

- Individual culpability
 - individual responsability
 - structured crime groups
 - criminal organisation-offence



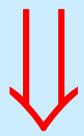
Legitimate economies

under pressure

- money needed
- 2-5 % of world GDP laundered
- indispensable but dangerous
- 1.000 billion \$ floating around



Fighting organised financial crime



Structure of society

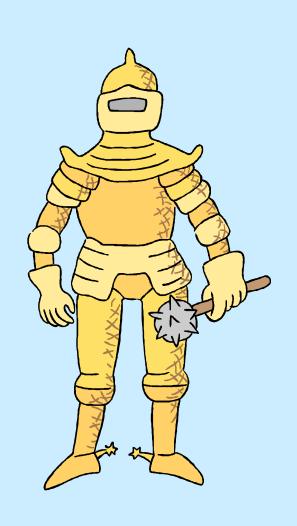
Central question

Society fully willing to combat money laundering?

ANSWER

No

COMBATTING MONEY LAUNDERING REMAINS **A NECESSITY**



THANK YOU FOR YOUR ATTENTION

