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The disruption of money laundering in the western hemisphere as an effect on developing states – Can international customary law maintain and create a standard to improve financial regulation at an international level?

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**THE DISRUPTION OF MONEY LAUNDERING IN THE  
WESTERN HEMISPHERE AS AN EFFECT ON DEVELOPING STATES-  
CAN INTERNATIONAL CUSTOMARY LAW MAINTAIN AND CREATE A STANDARD TO  
IMPROVE FINANCIAL REGULATION AT AN INTERNATIONAL LEVEL?**

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## **Abstract**

*Following the recent increase in ML activities, prominent substantial hubs for finance are becoming increasingly subjected to abuses within the financial sector. With all the systems and regulatory bodies in place assumptions are that the financial sector within the western hemisphere would assume more of a rigid position in the event of market abuses. As the years go by it seems like market abuses are increasingly dominating the western hemisphere subjecting them to a higher level of crime and terrorism. This paper focuses specifically on financial regulation within the western hemisphere in comparison to the legal advances of developing states, particularly, on measures provided by the international community to reinforce AML regimes. One concludes that the West assumes a lot of power concerning the global financial sector, assuming that developing states emulate/ mimic established rules in order partake in global financing. It assesses why globalisation has both contributed towards, and helped to resolve ML, by measure of international combatting rates, whilst enforcing international standards which close any existing gaps to reduce/ eliminate the likelihood of financial abuses.*

**Keywords :** *Anti-Money Laundering, International customary law, Due Diligence*

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## Abbreviations

AML	Anti-Money Laundering
CFT	Countering Financing of Terrorism
CDD	Customer Due Diligence
DD	Due Diligence
EDD	Enhanced Due Diligence
EU	European Union
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FIUs	Financial Intelligence Units
FSAP	Financial Sector Assessment Programs
FSP	Financial service providers
GIABA	Inter-Governmental Action Group Against Money Laundering in West Africa
ICL	International Customary Law
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
MENAFATF	Middle East & North Africa Financial Action Task Force
ML	Money Laundering
MLD	Money Laundering Directive
OECD	Organisation for Economic Co-operation and Development
SOCA	Serious Organised Crime Agency
TF	Terrorist Financing
UNTOC	United Convention against Transnational Organised Crimes
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime



## Chapter 1

### Introduction and Scope

ML is becoming increasingly globalised and has been the primary cause of the recent increase in fraud and governmental negligence within the financial sector. ML is defined as the method by which criminals attempt to legalise the proceeds of their crimes whilst concealing the source. Both the World Bank and IMF explain ML as a concealment method over finances obtained through criminal activity, to indulge in profits obtained as well as control.<sup>1</sup> FATF defines ML as “the processing of criminal proceeds to disguise their illegal origin”.<sup>2</sup> The process of concealment is what the named bodies distinguish as an indispensable element of ML, as it is the group or individuals aim to hide the illicit activity by which the money is obtained. The financial dictionary supports FATF in describing ML as the altering of the appearance of finances obtained through illegitimate means.<sup>3</sup> The processing of illicit funds has been the stumbling block for the international community and its control mechanisms have been slow to reconcile with technological advancements.<sup>4</sup> The Vienna convention includes the word ‘possession’ in its definition and extends the scope of ML to those who so much as own illicit funds from crimes.<sup>5</sup> Absconding from the various

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<sup>1</sup> Paul Allan Schott, *Reference guide to anti-money laundering and combating the financing of terrorism, Second edition* (World Bank 2006) I–1, 1–3 para 3

<sup>2</sup> fatf-gafi 2016, 'Money laundering' (*Financial Action Task Force (FATF)*, 2016) <<http://www.fatf-gafi.org/faq/moneylaundering/>> accessed 3 July 2016

<sup>3</sup> Farlex Financial Dictionary and Campbell R. Harvey., 'Money laundering' (TheFreeDictionary.com 2012) <<http://financial-dictionary.thefreedictionary.com/Money+Laundering>> accessed 29 July 2016

<sup>4</sup> 'FORUM: Using technology and big data to tackle fraud and money laundering', (*Financier Worldwide Magazine*, August 2016) <<http://www.financierworldwide.com/forum-using-technology-and-big-data-to-tackle-fraud-and-money-laundering/#.V7p3YZgrLNM>> accessed 22 August 2016

<sup>5</sup> United Nations, 'FINAL ACT OF THE UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES' <[https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf)> accessed 7 July 2016

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definitions of ML, a precedent has been established in order to provide the global community with a common reference on what ML means, both regionally and internationally.

The abuse of a state economic structures extends further than the activities contracted by individuals within the state, thus making it a matter of international apprehension.<sup>6</sup> Within the United Kingdom, a recent upsurge in ML questioned its standing in the international financial community. The difficulty in comprehending why such a substantial financial hub is increasingly subjected to abuses within the financial sector can potentially diminish the respect shown by their international counterparts on regulatory power in enforcing AML regimes.<sup>7</sup> With all the systems and regulatory bodies in place it is the assumption that the western hemisphere's financial sector would assume more of a rigid position in the event of market abuses. In the last six years' market abuses have increasingly been the norm in the western hemisphere,<sup>8</sup> subjecting them to a higher level of crime and terrorism. London especially is known to have strict control on the financial sector to detect financial crime through the use of European regulation,<sup>9</sup> however financial crime is increasingly innovative and it can use various channels to launder money into the system undetected. Regardless

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<sup>6</sup> HM Government, 'Recovering the Proceeds of Crime' (CABINET OFFICE 2000)  
<<http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/crime.pdf>> accessed 2 July 2016

<sup>7</sup> James Hanning and David Connett, 'London is now the global money-laundering centre for the drug trade, says crime expert' *The Independent - Crime* (4 July 2015)  
<<http://www.independent.co.uk/news/uk/crime/london-is-now-the-global-money-laundering-centre-for-the-drug-trade-says-crime-expert-10366262.html>> accessed 21 June 2016

<sup>8</sup> Tim Wallace, 'City watchdog battles more market abuse and insider trading' *The Telegraph* (12 July 2016)  
<<http://www.telegraph.co.uk/business/2016/07/12/city-watchdog-battles-more-market-abuse-and-insider-trading/>> accessed 22 August 2016

<sup>9</sup> Home Office, 'Action plan for anti-money laundering and counter-terrorist finance' (2016)  
<[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/517992/6-2118-Action\\_Plan\\_for\\_Anti-Money\\_Laundering\\_\\_web\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering__web_.pdf)> accessed 7 July 2016

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of the scrutiny the UK or the western hemisphere may apply on their systems to promote AML, ‘dirt-money’ can always enter in different forms.

**Table 1.A: National risk assessment on money laundering**

National risk assessment on money laundering						
Thematic area	Total vulnerabilities score	Total likelihood score	Structural risk	Structural risk level	Risk with mitigation grading	Overall risk level
Banks	34	6	211	High	158	High
Accountancy service providers	14	9	120	High	90	High
Legal service providers	17	7	112	High	84	High
Money service businesses	18	7	119	High	71	Medium
Trust or company service providers	11	6	64	Medium	64	Medium
Estate agents	11	7	77	Medium	58	Medium
High value dealers	10	6	56	Low	42	Low

(Figure 1)

The banking system in developing and emerging market economies generally adopt a more sluggish attitude toward establishing thorough background checks. Biagio Bossone and Larry Promisel, prominent advisors to international financial bodies, assert that developing states must refine their structural policies within the banking frameworks to reduce the global financial risk.<sup>10</sup> Here arises the question on CDD and the ability to monitor and detect suspicious transactions. Although the detection of unusual banking practices has improved in the last 20 years,<sup>11</sup> the global economy is taking greater steps towards regulating favouritism. Both directives on the EU market in Financial Instruments ensure

<sup>10</sup> Biagio Bossone and Larry Promisel, 'Responding to the global financial crisis strengthening financial systems in developing countries the case for incentives-based financial sector reforms' <<http://www1.worldbank.org/finance/assets/images/strengthpaper.pdf>> accessed 29 July 2016

<sup>11</sup> McKinsey & Company 'The Future of bank risk management' (Working Papers on Risk July 2016)

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that this is possible relative to sales practices.<sup>12</sup> The movement of money is finding new multifarious and innovative methods of entering into the economy, especially in London. Given the free-flowing nature of money, one may understand that with use of a company established in the BVI, a house in West London can be bought by either a trust or company.<sup>13</sup> Foreign companies using foreign transactions make it harder for background checks to be undertaken on foreign buyers as non-traditional financial assets cannot be regulated as adequately as traditional methods of transactions.

A report by the Financial Times confirms the use of secretive methods to conceal assets facilitates ML. Essentially, front companies devise fake entities and disguise closely guarded corporate records. The lack of transparency allows money to be transferred even more anonymously and quickly. Misrepresentation is highly likely in such an anonymous and lucrative environment. The difficulty to locate sources of wealth may make financial checks stricter. Irrespective, differentiating institutions, from the purchase of expensive homes and life insurance policies, which are not as well-regulated as investment accounts exemplify the move of funds without trace and verification of foreign individuals. A report by Mark Camilleri, a ML reporting officer, examines the likelihood of abuse in the life insurance market and concurs that the ability to unequivocally place and recover large sums of funds may be subject to abuse by criminals.<sup>14</sup> Any open and free market economy gives rise for new ways of moving money in. The governing of suspicious assets, especially

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<sup>12</sup> European Council, 'Directive 2004/39/EC';

<sup>13</sup> Tom Burgis, 'Dark money: London's dirty secret' (25 July 2016) <<http://www.ft.com/cms/s/2/1d805534-1185-11e6-839f-2922947098f0.html>> accessed 29 July 2016

<sup>14</sup> Mark Camilleri, FCII, and Chartered Insurer, 'What is the real money laundering risk in life insurance? High-Risk, Low-Risk or No Risk—That is the Question' (*ACAMS today*, 29 February 2012) <<http://www.acamstoday.org/what-is-real-money-laundering-risk-in-life-insurance/>> accessed 29 July 2016

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in an international context, requires standards of conduct for banks and other financial bodies.

The international community has focused on unifying its capital markets, yet have refused to openly use the developments within the western hemisphere to transcend to developing states, and also integrate its banking practises to form a coherent system that combats money laundering and corruption. Standards emerge over practices and global acceptance can examine a solution over the network on AML.

Globalisation has undoubtedly made ML easier and the technological advances have only obscured specific manners by which money is moved through the international financial system. The UNODC and the Director of Economic affairs for the Commonwealth Secretariat have acknowledged that between \$600bn and \$2tn are moved within the international markets each year,<sup>15</sup> the enormity of this estimation supports the hypothesis that this global phenomenon requires a solution which the global community should standardise. By observing case law, legislative progressions and standard creating bodies like FATF, this paper will draw on how to further enforce corporate regulation through legal developments.

The preconception on technological advances, in regards to international AML regimes , exposes regulatory advancements of developing states with the western hemisphere as a mitigating factor for further development. Introducing FAFT as an international standard is

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<sup>15</sup> UNODC, 'Money-laundering and globalization' (24 October 2007) <<https://www.unodc.org/unodc/en/money-laundering/globalization.html>> accessed 29 June 2016; Sue Thornhill and Michael Hyland, *A manual of best practice for combating money laundering in the financial sector* (Commonwealth Secretariat 2000) IX pt Preface

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not enough, its relations with the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA) and Middle East & North Africa Financial Action Task Force (MENAFATF) continues to assert resolutions outlined by customary law.<sup>16</sup> The objectives are: To assess remedies on integration of global AML regimes, regarding monetary practices. To produce a more coherent system combatting ML and corruption. Identify regulatory norms within the western hemisphere in comparison to developing states. Examine the standards that emerge and recommend ideas on alignment, bridging of financial practices and subsidiaries, the power of the west regarding ML, diversification and powers over International bodies.

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<sup>16</sup> 'UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME UNITED NATIONS 2000', (2000) <<http://www.menafatf.org/images/UploadFiles/UNConventionAgainstTransnationalOrgCrime.pdf>> accessed 17 August 2016

## **Chapter 2 – AML & CDD (Literature review)**

### **AML**

Emmanuel Ioannides, an international relations advisor, suggests that 'understanding the different techniques used by criminals to introduce their ill-gotten gains into the legitimate financial system',<sup>17</sup> implements an assimilation of improved AML policies. Economic crime has made 36% of the official and underground economy.<sup>18</sup> Over time the definition of what constitutes ML has shifted from simply burglary and drug dealing to now include financial crimes that are cross-border, advancing towards the shadow economy also known as the unreported economy – including economic activity like fiscal fraud, violating market regulation. Instances like the above must be deprived from making a socio-economic contribution and in essence should be hindered from gaining control of reputable financial centres alike London and New York under a concealed appearance.

The Watergate scandal (1974) exemplified how illegal assets may be transformed into legal assets,<sup>19</sup> this case on bribery and concealment of information showed the international community that market violation can happen in many forms and at different levels. AML mechanisms arose before the notion that 9/11 curtailed the importance of ML. The funding of crime has been an unwanted feature of the markets since the Irish Republican Army, and

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<sup>17</sup> Emmanuel Ioannides, *Fundamental principles of EU law against money laundering* (Ashgate Publishing 2014)

<sup>18</sup> Edgar L Feige, *The Underground Economies* (Cambridge University Press 1989).; PWC, 'Adjusting the Lens on Economic Crime, Preparation brings opportunity back into focus' (Global Economic Crime Survey 2016) <<https://www.pwc.com/gx/en/economic-crime-survey/pdf/GlobalEconomicCrimeSurvey2016.pdf>> accessed 22 August 2016

<sup>19</sup> *United States v Nixon* [1974] Supreme Court of the United States, 418 US 683 (Supreme Court of the United States).

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the rise of white collar crimes.<sup>20</sup> With morals and ethics in question one may agree with John Locke, that for a fair chance in life one must consider the rules governing the ability to live in a liberalist society. The conflicting view to his theory may be that the underground economy is not wrong, and from an ethics standpoint incurs no real risk on the stability of the economic system as a whole from an individual trying to make a living, although governments should still create remedies protecting proprietary rights.<sup>21</sup>

Al Capone had notoriously used laundrettes to conceal, transfer and legalise the true source of illegal money, and this economics of ML saw the inception of the Council Directive 91/308/EEC as the first binding European directive explaining ML and the prosecutions and liabilities that arise over association of the knowledge thereof.<sup>22</sup> Considering the history on the rise of ML at an international level, Europe and the rest of the international financial community created measures to be able to develop a conceptual framework to understand, regulate, control and possibly eradicate ML in a continual evolutionary context.

Undoubtedly the war on drugs ushered in the development of the AML industry. Peter Alldrige, a professor of law, agrees that the AML industry arose due to the failure of the international community to successfully resolve the war on drugs; the very existence of AML is contingent on the criminalisation of activities surrounding illicit activity and extends the scope to funds obtained through the activities.<sup>23</sup> One asserts that the development of the

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<sup>20</sup> Angelique Chrisafis, 'Spotlight turns to slick IRA money-making machine' *The Guardian* (March 2005) <<https://www.theguardian.com/uk/2005/feb/19/northernireland.northernireland1>> accessed 22 August 2016

<sup>21</sup> George H Smith, 'John Locke: Money and private property' (*Libertarianism.org*, 20 November 2015) <<http://www.libertarianism.org/columns/john-locke-money-private-property>> accessed 22 August 2016

<sup>22</sup> International Bar Association, 'Europe' (*IBA Anti-Money Laundering Forum*) <<http://www.anti-moneylaundering.org/Europe.aspx>> accessed 22 August 2016

<sup>23</sup> Peter Alldrige, *What went wrong with money laundering law?* (Palgrave macmillan 2016)



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definition of such activities expands the scope of ML creating complex instances for application.

## **Developments**

The global approach on AML assumes extreme importance, especially in regards to the advancement and interconnectedness of policies and rules that are ever changing. The conglomerate of organisations that seek to promote AML have unfortunately established certain boundaries on the accessibility and influence on establishing universal regimes. The growing global concern of ML, and the access to transnational markets by criminal, has helped to fuel the establishment of bodies to infiltrate ML systems at macro level. Some of these bodies can be seen to frustrate the international community and can be seen to introduce new levels of regulations through soft law measures aiming for strict enforcement from an unimposing position.<sup>24</sup> Considering AML from an international customary law point of view, arguments will look at established standards and how they convince the international community to further tackle ML together.

Because of the pluralistic economic nature of Europe, the EU provides a conglomerate of directives to reflect both the diversity within the union and the need for unification of a governing standard of the rule of law. The key to AML here is the effectiveness and cooperation of member states on mandatory rules. The EU is very much supported by laws and is not subjected to restrictions that FATF or the IMF may impose, this is not to say their

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<sup>24</sup> Kern Alexander, *The Legalisation Of The International Money Laundering Regime- The Role Of The Financial Action Task Force* (1st edn, ESRC Center for Business Research, University of Cambridge 2000) <[http://www.cbr.cam.ac.uk/fileadmin/user\\_upload/centre-for-business-research/downloads/working-papers/wp177.pdf](http://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/working-papers/wp177.pdf)> accessed 22 August 2016.

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powers are limited over non-compliant states.<sup>25</sup> In the event of a political challenge, these powers are supported further by judicial powers which can give these bodies the discretion to validate lawful sources of funds and motives. Over 30 years, AML regimes have shown the move from drug trafficking, expansion of the definition of predicate crimes and TF, now covering an international scope. Binding and enforceable directives are permitted to infiltrate the laws of finance regardless of jurisdictional governance. The EU, comprising of 28 Member States conclude on standards for reporting, monitoring and compliance. The implementation of the 3 directives in the last 20+ years has furthered the commitment on combatting ML within Europe especially in concerns to contracting member states. The directives can be likened to FATF 49 recommendations and in comparison can set standards of a micro-prudential nature. The binding nature of EU directives forgo the ideals of the international community and member states that believe in state autonomy (giving rise to the most recent Brexit and the ongoing actions for exemption from the EU from Turkey)<sup>26</sup>

The EU has relied on reporting and interchange of information. Its laws conceptualised countermeasures of ML in order to create a rationale on what may provide a basis for AML laws. Over time the international standard on ML has deconstructed the reasons behind why ML is such an issue. Since states are reviewing ML costs, it has been down to governments to prioritise fair market conduct within the markets economy. Agreeing with, Dr Hinterseer previous director of UniCredit bank, the idea that ML began under socio-

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<sup>25</sup> FATF Secretariat, 'Financial action task force an introduction to the FATF and its work what is the FATF? What are the FATF recommendations? What are the benefits of implementing the FATF recommendations?' (2010) <<http://www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/Introduction%20to%20the%20FATF.pdf>> accessed 22 August 2016

<sup>26</sup> Liz Cookman, 'Turkey, the Brexit bogeyman, is not so different from the UK' *The Guardian* (19 July 2016) <<https://www.theguardian.com/commentisfree/2016/jun/25/turkey-brexit-uk-leave-campaign-migrant-turks-britain>> accessed 22 August 2016

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political challenge and has now evolved to become bigger, with political gains and advances now at the forefront of ML.<sup>27</sup> It is without a doubt the<sup>28</sup>G8 supported the need for regimes to take part in national and international level AML regimes. Dr Amandine Scherrer, a policy analyst at the European Parliament, provided the reasoning behind the implementation of soft law<sup>29</sup> – to further fuel hard law as a means of facilitating international cooperation. In agreement with Scherrer,<sup>30</sup> John Kirton,<sup>31</sup> director of G20 Research group, examines compliance to improve AML standards by specifically soft law regimes, allowing the international community to unify to combat ML under the G8(now G20) regime. The introduction of this intervention facilitates cooperative regulation to tailor state economic management, accumulating to complete global ‘structural forces’.<sup>32</sup>

Ioannides lists key regulatory bodies and regulations: The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, the OECD, the UNODC, 1988 Basel Capital Accord, 2000 Wolfsberg Global AML Guidelines for Private Banking, the ECB, the IMF, and the World Bank. With EU and the UN in mind, Ioannides observes that FATF can be known as a substantial foundation for developing transnational cooperation over organised crime and the proceeds that arise from it.<sup>33</sup> The academic community have voiced their variances on what constitutes organised crime; the divergence

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<sup>27</sup> Kris Hinterseer, *Criminal finance: The political economy of money laundering in a comparative legal context* (Kluwer Law International 2002)

<sup>28</sup> '1989 economic declaration', (16 July 1989)

<<http://www.g8.utoronto.ca/summit/1989paris/communiquel/index.html>> accessed 1 August 2016

<sup>29</sup> Amandine Scherrer, 'Explaining Compliance with International Commitments to Combat Financial Crime: The G8 and FATF' (Institut d'Etudes Politiques de Paris 2006) <<http://www.g8.utoronto.ca/scholar/scherrer.pdf>> accessed 29 July 2016

<sup>30</sup> Scherrer, note 19.

<sup>31</sup> John Kirton, 'Explaining compliance with G8 finance commitments: Agency, Institutionalization and structure' (2006) 17(4-5) *Open Economies Review* 459–475

<sup>32</sup> Kirton note 20

<sup>33</sup> Ioannides, note 14.

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in geographical location does impact views on activity but this problem is readily solved by what such activities produce. Scherrer also supports the notion that the understanding of transnational crime will always be at the brunt of academics' ability to extend their criticisms, but their acumen is sanctimonious in comparison to what established organisations have come to understand.<sup>34</sup>

### **International bodies**

On discussing the definition of ML, the EU and its' Council has figured out the importance of penalising organised crime active both in state and across borders.<sup>35</sup> There are, although, difficulties in the penalisation of international ML – the sharing of information helps to monitor the compliance of formalities. As Ruman Fanugi purports macro and micro level financial management is currently being well supervised by FATF because it merges powers from the legislative domain and the financial sector to deal with the sophisticated and complex manner in which money launderers conduct their finances and secrete their identity in the process.<sup>36</sup> There is larger scope for the advancement of AML and both Levi and Gilmore suggest that advancement may only arise from how well states conform to monitoring bodies.<sup>37</sup> This assumes that the governance by FATF enforces both basic and advanced principles of law that must be recognised by all financial services looking to globally combat ML. Implementation of FATF inspired legalities can be reviewed in the

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<sup>34</sup> Scherrer, note 19.

<sup>35</sup> Article 39,30(1) & 34 (2)(b) of the treaty of the EU

<sup>36</sup> Commonwealth Secretariat, *Combating money laundering and terrorist financing* (2nd edn, Commonwealth Secretariat 2007)

<sup>37</sup> Michael Levi and Bill Gilmore, 'Terrorist Finance, Money Laundering and the Rise and Rise of Mutual Evaluation: A New Paradigm for Crime Control?' (2002) 4(2) *European Journal of Law Reform* 337–364

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development of the Egmont group which established a cumulative body of FIUs to stimulate universal cooperation on reporting.<sup>38</sup>

## **IMF**

After 9/11 the IMF took the initiative to develop a standard over ML in regards to TF. It funds AML/CFT strategy to ensure that member states are engaging over substantial financial measures. It establishes an international standard and is funding limits the excuses member states may raise to the IMF. As a surveillance mechanism one can agree that it upholds international financial veracity. In line with ICL, it is the presumption that with help from Article IV consultations,<sup>39</sup> the IMF uses AML and CFT initiatives to boost the integrity of the international markets.<sup>40</sup> The 188 countries a party to ensuring that a legitimate financial market is preserved notices the policies and procedures, and creates an economic standard.<sup>41</sup> Despite the fact that this body is limited in enforcement powers its drive is to ensure that there is a global consensus on the solicitation of international AML principles.<sup>42</sup>

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<sup>38</sup> 'The Egmont group of financial intelligence units', (19 July 2016) <<http://www.egmontgroup.org/>> accessed 4 August 2016

<sup>39</sup> International Monetary Fund, 'The IMF and the Fight Against Money Laundering and the Financing of Terrorism' (21 March 2016) <<http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>> accessed 24 August 2016

<sup>40</sup> IMF, 'Factsheet -- the IMF and the fight against money laundering and the financing of terrorism' (21 March 2016) <<http://www.imf.org/external/np/exr/facts/aml.htm>> accessed 30 June 2016

<sup>41</sup> International Monetary Fund, 'Anti-money laundering/ combating the financing of terrorism (AML/CFT) - The Fund's involvement in AML/CFT' <<https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>> accessed 24 August 2016

<sup>42</sup> Jack Boorman and Stefan Ingves, 'International Monetary Fund, financial system abuse, financial crime and money Laundering— background paper' (monetary and exchange affairs and policy development and review departments in consultation with legal and other department 2001) <<http://www.imf.org/external/np/ml/2001/eng/021201.pdf>> accessed 27 July 2016

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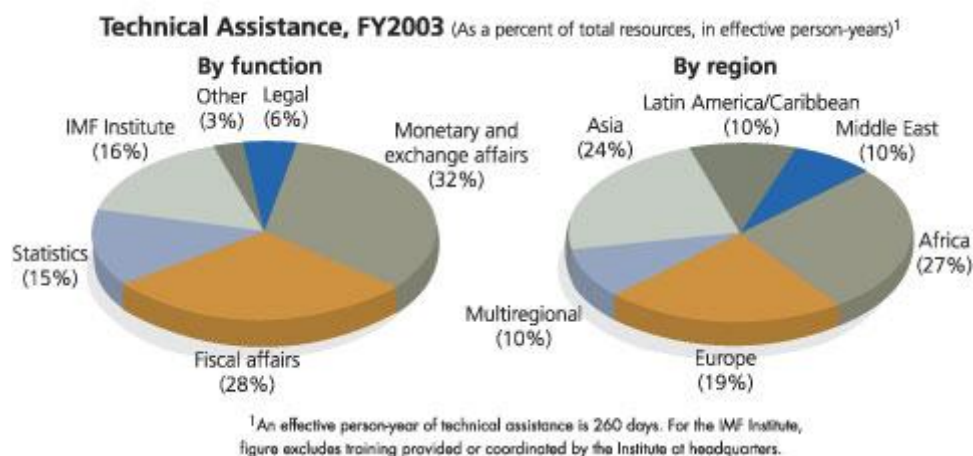
The IMF as a compliment to the international community has without doubt prompted a response to ML at global scale.<sup>43</sup> Its assessments have shown how unity between key bodies within the global community can ensure that harmonisation conquers technological advances, and its initiatives, like the FSAP, may take on increased roles. With the support of the World Bank a global regime on AML was established and the global economy witnessed the creation of FATF in 1989.<sup>44</sup> Both the IMF and the World Bank, with immense synchronisation, are seen to affect the manner by which FATF operates at global scale. The evolution of AML regimes within the IMF have seen the development of the international surveillance on institutions that play a significant role within the global economy.<sup>45</sup> Data shows that the IMF's AML regimes are better examined in developing states and emerging markets. Figure 2 shows that the IMF have an established global influence on monetary and exchange affairs, its focus centred mainly in Africa and Asia, purporting to the fact that influence requires expansion for a multiregional effect. The data below shows that as a body that works alone its scope is not wide enough.

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<sup>43</sup> International Monetary Fund, 'Public information notice no. 11/74' (27 June 2011) <<http://www.imf.org/external/np/sec/pn/2011/pn1174.htm>> accessed 4 August 2016

<sup>44</sup> Michael Levi and Peter Reuter, 'Money laundering' (The University of Chicago 2006) <[http://faculty.publicpolicy.umd.edu/sites/default/files/reuter/files/levi\\_and\\_reuter.pdf](http://faculty.publicpolicy.umd.edu/sites/default/files/reuter/files/levi_and_reuter.pdf)> accessed 29 July 2016

<sup>45</sup> Jeroen Cremer, 'AML regulations part. 2' (*Compliance - Wise*, June 2016) <<https://www.compliance-wise.com/where-does-transaction-monitoring-come-from/>> accessed 24 August 2016



(Figure 2) Technical assistance by the IMF<sup>46</sup>

FATF, the IMF, UN, OECD and bodies alike emphasise the transnational nature of money laundering. Alldrige suggests that the sparse variety in what ML is seen as creates some vagueness.<sup>47</sup> One institute in particular seeks to clarify the disparities and its AML regimes seek to show the global community that a global problem requires transparency to be able to effectively shape the ways states cumulatively recognise international norms.

## FATF

Ioannides purports that technological encroachments facilitate the evolution of ML. FATF “parallel forces” join as both a preventative and conciliatory measure to withstand the increasing development of the cybernetic economy. The intergovernmental body made up of 35 member jurisdictions, with an added 2 originating as regional organisations,<sup>48</sup> provides AML global standards. A fact sheet by the IMF concludes that for integrity to be recognised within the international financial community FATF recommendations must

<sup>46</sup> IMF, 'Technical assistance FY2003' (2003)

<<https://www.imf.org/external/pubs/ft/exrp/techass/techass.htm#box1>> accessed 5 August 2016

<sup>47</sup> Alldrige, note 16

<sup>48</sup> fatf-gafi 2016, 'Members and observers - financial action task force (FATF)' (2016) <<http://www.fatf-gafi.org/about/membersandobservers/>> accessed 8 August 2016

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establish a framework which manages the “mechanisms of international cooperation”<sup>49</sup>.

– This further highlights the importance of FATF as a “multidisciplinary group”, as the only institute that uses its transnational powers to gain access and infiltrate the financial markets. Min Zhu, a Chinese economist, emphasises the economic need for global financial frameworks to be able to action ethical requirements over the movement of money.<sup>50</sup> This mega body continuously reviews how states a party to its recommendations commonly apply and comply with measures to bring effect to AML/CFT. The 1990s introduced the FATF 40 recommendations,<sup>51</sup> aiming for global application. Most recently this body has shown that through the revision of recommendation 5 on CDD, the banking industry can ensure that states understand that ML involves facilitating the financing of travel for an individual seeking to embark in terrorist activities.<sup>52</sup> The over extension may create a complex affect and questions what amounts to the criminalisation of ML, namely the men’s *rea* (mental/knowledgeable) aspect of facilitating a crime. The *Da Silva* case explored in the UK described the men’s *rea* of ML as one that may have an “inkling or fleeting thought” of conduct, especially pertaining to those who may operate within the financial sector.<sup>53</sup> FATF has developed to ensure that its recommendations are not considered lightly by outlining frameworks for AML action, whilst ensuring there is practicality in application which is shown in reflecting the expanding dimension of ML. Implications are assessed where the financial,

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<sup>49</sup> IMF, note 29

<sup>50</sup> *ibid*, note 51

<sup>51</sup> FATF, 'The FATF recommendations' (2016) <[http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)> accessed 8 August 2016

<sup>52</sup> '17 October to 23 October 2015' (October 2015) <<http://www.fatf-gafi.org/publications/fatfgeneral/documents/fatf-plenary-october-2015.html>> accessed 8 August 2016

<sup>53</sup> *R v Da Silva* [2006] EWCA Crim 1654 Lexis Web



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legal and operational business economy attempts to constructively define ML. Mitsilegas examines that the expansion of AML regimes creates a restraint on legal certainty, the Proceeds of Crime Act 2002 (POCA) has extended its scope in a definitional manner, and by way of activity.<sup>54</sup>

By assessing the revision of recommendations FATF has been the catalyst in the introduction of FATF-Style Regional Bodies alike GIABA and MENAFATF. This particular development has been the key to effective application of FATF recommendations in the developing markets, with provision of methodologies for the effectivity of its AML systems. FATF has essentially been built on the failure to combat the war on drugs by G7, accumulative with the first legislative act, making laundering a crime,<sup>55</sup> and the Vienna convention working within the international domain. Presuming that the growth of transnational policing amounts with the increase of financial actors, FATF as a body that feeds off of the socio-political and economic developments, may only steer the international community in the manner that it is influenced in.

Aldridge comments on the unrepresentative nature of FATF, which may cause problems in the validation of certain policies due to lack of transparency of policy makers.<sup>56</sup> States may rightly question the validity of AML policies delivered to the international community, considering that the basis of FATF foundation lack treaty support. The critical evaluation of models and frameworks developed by FATF suggest the application of its

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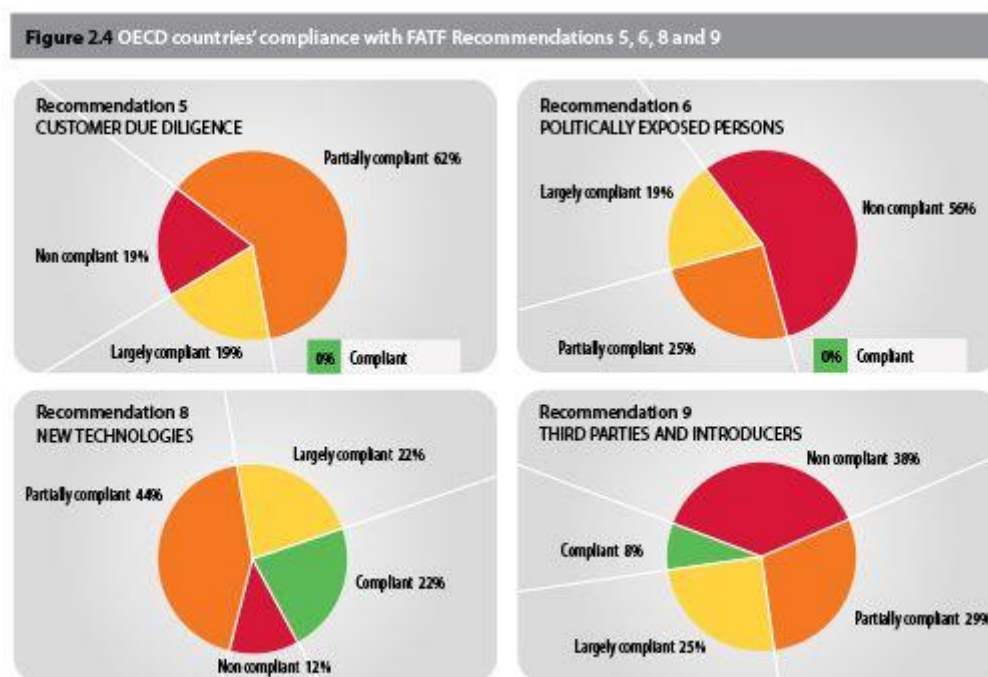
<sup>54</sup> S 330(2)

<sup>55</sup> The money laundering control act 1988

<sup>56</sup> *ibid*, note 24

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recommendations are difficult to implement because it is known as a soft-law mechanism, which purports its devised minimum standards. Until states recognise FATF recommendations in their laws, it is meaningless, and has no greater effect than to name and shame. The OECD observer reports that FATF considers the financial implications that follow the failure in implementing AML regimes, alike establishing sanction on transactions derived from states which do not uphold the reporting recommendations made customary by FATF.<sup>57</sup>



(Figure 3) OECD state compliance with basic FATF recommendations<sup>58</sup>

<sup>57</sup> OECD, 'Name and shame' can work for money laundering' *OECD Observer No 223* (October 2000) <[http://www.oecdobserver.org/news/archivestory.php/aid/358/\\_93Name\\_and\\_shame\\_94\\_can\\_work\\_for\\_money\\_laundering.html](http://www.oecdobserver.org/news/archivestory.php/aid/358/_93Name_and_shame_94_can_work_for_money_laundering.html)> accessed 9 August 2016;

<sup>58</sup> OECD development, 'OECD countries' compliance with Financial Action Task Force (FATF) Recommendations 5, 6, 8 & 9.' (Pinterest 2014) <<https://uk.pinterest.com/pin/68891069274569338/>> accessed 9 August 2016

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In highlighting the key developments of FATF standards, information shows that this body develops whilst understanding the implementation and evaluation of recommendations, with help from interpretive notes. Despite this, as of 2014 the body still failed to generate a constructive compliance mechanism within developing OECD markets, with 0% compliance on CDD and PEPs. This data supports the notion that developing states are likely to be less compliant because of they may not acquire as many resources as those within the western hemisphere. The discussion on the recommendations proposed requires unanimous implementation for global effectiveness, although it can be argued that the influence of transnational bodies is not as powerful as they assume to be. There is the assumption that transparency and accountability will only be recognised globally where it is both “pervasive and indefinite”.<sup>59</sup> Basic recommendations fulfil their potential when integrated within multinational initiatives pursuant to political commitments on targeting ML. The international financial system is greatly influenced by the most common manner of trade of finance which is banking – this requires a continuous risk assessment with help of the World bank,<sup>60</sup> FATF 49 recommendations, FATF methodology, UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UN Convention Against Transnational Organised Crime and UN International Convention for the Suppression of Financing of Terrorism. These bodies accumulatively store information for effective assessment of cross-border development.<sup>61</sup> The SAFE intervenios case establishes pre-existing norms from the

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<sup>59</sup> Ibid, note 24

<sup>60</sup> OECD, 'Policy brief: financial action task force on money laundering' (FATF - OECD 1999) <[http://www1.worldbank.org/finance/assets/images/PB9906\\_en.pdf](http://www1.worldbank.org/finance/assets/images/PB9906_en.pdf)> accessed 29 June 2016

<sup>61</sup> The World Bank, 'Money laundering/terrorist financing risk assessment' (29 February 2016) <<http://www.worldbank.org/en/topic/financialmarketintegrity/brief/antimoney-laundering-and-combating-the-financing-of-terrorism-risk-assessment-support>> accessed 29 June 2016

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international financial regulatory community, which although is not initially legally binding,<sup>62</sup> revises EU policy commitments by way of the ECJ for member states to agree to maintain. In reviewing the case below the question on how FATF defines CDD/AML, what requirement financial institutions must maintain, especially in regards to KYC, is explored and observes the manner in which international law evolves to suggest a new structure on the management of the global market economy.

### **Review: SAFE INTERVIOS case**

The ECJ case on ML has become a major factor in cross-border developments on AML. It is the understanding that this case allows FATF to identify ICL from an international perspective relative to banking and financial institution regulation and practices in preventing ML. The review of activity on CDD as a facility for adequate risk management, by FSPs, at regional level establishes requirements for unification of global risk management.<sup>63</sup>

The SAFE case assessed the inability for the FSP to be able to offer “additional”<sup>64</sup> data on customer transactional information, and the FSPs failure to comply resulted in the closing of several accounts. As a result of these closures the FSP appealed against the decision, stating that the court had no authority in pursuing the AML regimes in this manner because firstly, it would have an unfair impact on the institute from a competition law point of view.

Secondly, the requirement for disclosure of information was too wide a scope to be

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<sup>62</sup> unknown, 'Legal alert- New AML/CDD requirements following the ECJ's CASE C-235/14 REGARDING SAFE INTERENVIOS' (Bonn & Schmitt advocats 2016) <[http://bonnschmitt.net/fileadmin/media/Legal\\_Info\\_Our\\_Publications/Our\\_Legal\\_Alerts/B\\_S\\_Legal\\_Alert\\_New\\_tendencies\\_of\\_KYC\\_after\\_the\\_ECJs\\_case\\_Safe\\_Interevios\\_SA.pdf](http://bonnschmitt.net/fileadmin/media/Legal_Info_Our_Publications/Our_Legal_Alerts/B_S_Legal_Alert_New_tendencies_of_KYC_after_the_ECJs_case_Safe_Interevios_SA.pdf)> accessed 17 August 2016

<sup>63</sup> Dirk Helbing, 'Globally networked risks and how to respond' (2013) 497(7447) Nature <[http://gu.friends-partners.org/Global\\_University/Global%20University%20System/List%20Distributions/2013/MTI2396\\_20130508/nature12047%20copy.pdf](http://gu.friends-partners.org/Global_University/Global%20University%20System/List%20Distributions/2013/MTI2396_20130508/nature12047%20copy.pdf)> accessed 16 August 2016 51–59

<sup>64</sup> Case C-235/14 *Safe Interenvios, SA v Liberbank, SA Banco de Sabadell, SA Banco Bilbao Vizcaya Argentaria, SA* [2015] ECJ

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covered. Relying on the Bank of Spain as its supervisor it felt it was only subjected to what the operative regulator required.<sup>65</sup> Liberbank SA, Banco de Sabadell SA, Banco Bilbao Vizcaya Argentaria SA were the three banks to terminate customer activities of those who they felt brought a greater risk for the working of the bank. Their ability to do this showed that the case recognised the need for the banking industry to be adequately interlinked to exercise its own powers, especially where sharing of information is required between partner banking. SAFE contested with the legalities of a partner bank being able to shut the client accounts due to the regulatory makeup of its AML and CDD requirements, and the powers the ECJ maintain in intervening in this respect. Not only did this case assert the ECJ's position in ensuring AML is maintained at national and EU level, but the opinion of the advocate general purports that FATF serves its purpose in creating standards that establish international norms.

These cases look at what constitutes ML and the ECJ's decision gives a clearer insight into how it is defined in alignment with FATF. The court established that major AML norms come from FATF (49 recommendations)<sup>66</sup> and the obligatory factor in remaining in line with them.<sup>67</sup> The identified issue saw an extension of CDD obligations placed on banking and the affiliation and management they have with their customers and other FSP. Here the European commission's application of the ECJ's decision extended FATF regulatory powers in EU's Member State AML regimes. These powers were expressed in the manner by which banks took steps, recognising AML and CDD in relation to other financial entities,

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<sup>65</sup> Law 10/2010 article 2

<sup>66</sup> See note. 39

<sup>67</sup> Recommendation 2- FATF

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dependant on risk level. This measure, to reflect the level of risk that potentially may exist at the time, are observed where the banks acknowledge the risk, pursue judgement, and rightfully close the accounts that were of an implication to their personal AML regimes.<sup>68</sup>

The ECJ's realignment of interpretations changes the dynamics of EU AML regime by ensuring the AML directive<sup>69</sup> is in line with the FATF definition of what CDD is, and further, how FATF defines what banks or FSP's roles are in combatting ML.<sup>70</sup> The recently recognised definition enlarges its scope of application<sup>71</sup> – laws get stricter and tougher and as they do this they reveal elements of vagueness. Kevin Sullivan agrees that the disparities in regulatory opinions implicates compliance.<sup>72</sup> At EU level too many strict laws are rendered ineffective until states have the ability to transpose regional based directives at a domestic law level. Not only does this make the directive more effective in application but the added local peculiarity can make it more specific to the financial institutions within the state. Further implications arise when adopted at local level because of differences in local legislation. As opposed to regulations that are imposed at secondary level, the use of directives incurs a range of variances for states that have subsidiaries elsewhere. One purports that regulatory instruments have a better effect, especially in line with uniformity of the global market economy, in creating an international framework. The FATF standards have, through the case, been given firm legal footing at European level introducing a level of austerity on regulatory practises and rules, especially for any that can incur implications

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<sup>68</sup> See note. 50

<sup>69</sup> DIRECTIVE 2005/60/EC

<sup>70</sup> Directive 2007/64/EC

<sup>71</sup> See note.50

<sup>72</sup> Kevin Sullivan, *Anti-money laundering in a nutshell: Awareness and compliance for financial personnel and business managers* (APress 2014) 50–53 ch 4

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on regulatory practices. An analysis of the idea of too strict application of this provision is rebuked where banking institution with lax AML regimes are considered counterproductive, against activity within a region heavily dominated by regulatory bodies against ML. This is asserted in recognition of the possibility in engaging in the support of TF. To expect to have no other requirement than what is imposed by the state operating in is farfetched, and questions security regimes.

As mentioned, this case reviews the aims of FATF regarding what constitutes ML and terrorism. By reviewing the risks exposed by financial activities, their acknowledgement that regardless of the fact that the same risk may not appear in every given situation, it should not detract from the idea that financial institutions must take measure to protect the global economy. The actions to close the accounts proved that CDD has the ability to revoke customer engagement in markets by way of assessing customer risk in relation to their business activities. This refutes the ability for criminals to gain easy access to the internal markets as a result of banking practices failures.<sup>73</sup> The decision by the ECJ has used EU law to convert the recommendation into hard law for compulsory application. Its transnational nature of information sharing could play a role in the development of operational relationships between one or more entity. By Liberbank SA, Banco de Sabadell SA, Banco Bilbao Vizcaya Argentaria SA requesting for customer information, this case supports banking rights over operational data protection in regards to CDD regimes.

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<sup>73</sup> THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, 'DIRECTIVE 2005/60/EC - The prevention of the use of the financial system for the purpose of money laundering and terrorist financing' (Official journal of the European union 2005) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:en:PDF>> accessed 16 August 2016

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## **Review: Opinion of advocate general**

Advocate general Eleanor Sharpston acknowledged that the reviewing of customer accounts is not a strange phenomenon within the world of finance and banking.<sup>74</sup> If anything, the lack there of increases the risk of engagement in ML and the effect it will have on other banks that use its services. Complying with CDD regimes is effective where the suspicion of ML exists and extends beyond reasonable doubt where the FSP may engage with clients whose financial matters are transnational in nature with large levels of movement. This discussion considered that the assessment of risk as an obligation, as key to understanding each case from its own perspective rather than a generic assumption. As market participants engage in different activities, assessments must be made pursuant to the nature of service provided. Bearing in mind that there is the likelihood risk management may fail, one can assess that Sharpston position on risk based mitigation in line with FATF, is based on the measures taken by the individual institutions and how well they follow guidance provided.<sup>75</sup>

The disclosure of information is tasking, and the excuse that national data protection is restricted to laws on jurisdictional basis is incorrect, the idea that 'no man is an island' stands out here as no financial institute functions alone. Where risk exists information transference must be fluid in order to address gaps that may arise as a result of lack of understanding of a customer and his or her relationship with the financial institution.

Sharpston looks at the legitimate interest the banks had in asking for more information and

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<sup>74</sup> Note 49, Opinion of Advocate General Sharpston

<sup>75</sup> FATF, 'GUIDANCE FOR A RISK-BASED APPROACH THE BANKING SECTOR' (2014) <<http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf>> accessed 17 August 2016



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that this action was justifiable in this respect. Getting the international community to understand this norm is beneficial, as it means that access to information can aid in understanding transnational organised crime as a whole. Restrictions on access to information breaks down communication and goes against the UN mandate for the international combatting of ML.<sup>76</sup>

Sharpston addressed the widening of the CDD scope and refutes the notion that cooperation amongst competent authorities implicates competition within the European markets.<sup>77</sup> Her opinions holds great weight in the development of the ECJ's ruling, released prior to the ECJ's decision, it can be seen as an anchor of reasoning on which way the court should decide. By analysing her response to the case, an answer is produced clarifying how to establish CDD norms for international cooperation between institutions.<sup>78</sup> A conglomerate of regulators aid in quality assurance of oversight to prevent the depreciation of a corporation's value and any likelihood of reputational damage.<sup>79</sup>

Concerning all that has been discussed above there are some questions that may arise pertaining to implications on ensuring EU Member States law are more effective and stricter and do not contend with FATF recommendations. Article 52(1) of the charter of fundamental rights of the EU discusses the legitimate basis for limiting privacy rights. In this instance, according to proportionality, assessments must adhere to FATF recommendations to decipher when to apply this fundamental right. James Sheptycki observes that what may constitute a financial institution for instance, may alter within time to narrow or broaden its

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<sup>76</sup> FATF special recommendations V

<sup>77</sup> See Note. 59

<sup>78</sup> Recommendation 27 FATF

<sup>79</sup> See Note .57

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scope and can affect its experiential nature.<sup>80</sup> Sheptycki recognises the two manners to establish definitions by a denotative and connotative manner and in a transnational application can form to mean two different things. Transnational organised crime defined by the World Ministerial Conference use words like: group organisations; links; laundering of illicit proceeds; the transference between different borders and affiliations with other groups. This definition recognises “...that organized transnational crime is a major concern of all countries and ... calls for a concerted response from the international community..”<sup>81</sup> This definition can effect regulatory practices and rules, as even within the UK grasping the concept of transnational can create some difficulties on allocation and performance of regulatory powers.<sup>82</sup> Addressed in the SAFE case, evidence suggests that SAFE did not understand the powers enabled to the banks to close the accounts. The ECJ’s binding doctrine on banking conduct in regards to AML shows that EU law uses its discretion to better align its fragmented practise and this case proves that FATF outlines the best interpretations for effective AML regimes.

### **CDD- widened scope**

From the international law perspective, the ECJ’s binding decision over the FATF recommendation on how companies, financial firms and banks ought to behave, widens the scope on how agencies interact with national authorities. Reflecting this point is the UK regarding POCA, nationally, and regionally, prior to the recent exit from Europe. This case

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<sup>80</sup> James Sheptycki, 'Teaching and learning guide for: Transnational crime and transnational policing' (2009) 3(6) Sociology Compass 1029–1033

<sup>81</sup> IMOLIN, 'CRIME PREVENTION AND CRIMINAL JUSTICE' (United Nations General Assembly Forty-ninth session Agenda item 96 1994) <<https://www.imolin.org/imolin/naples.html>> accessed 15 August 2016

<sup>82</sup> IMOLIN, 'REPORT OF THE WORLD MINISTERIAL CONFERENCE ON ORGANIZED TRANSNATIONAL CRIME' (United nations general assembly 1994) <<https://www.imolin.org/imolin/naples.html>> accessed 17 August 2016

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has made a distinct statement on how the public and private sector should react to ML nationally and internationally. The opinions of the advocate general were key to ensuring risk management was understood, and information sharing was adhered to adequately for ML detection. FATF was used to update observed standards on information sharing between the private sector and began to establish itself heavily in the European community (with help of the Egmont group). The SAFE case found ways to enhance the implementation of international standards.<sup>83</sup> The parallel between FATF standards and evolving risks assessed its application in the global network and suggests that through this case it is becoming the international template for combatting ML and factors pertaining to it. This is not to say that FATF is omnipotent and reserves all powers, it still requires assistance to deal with TF,<sup>84</sup> but in the event of DD it is the belief that it adequately breaks down this element of risk management.<sup>85</sup>

Over time the UK's legislation had been governed to effect by AML directives, refining of these laws means CDD requirements change and require clarification on application. The next chapter looks at CDD from both an UK and international perspective on what it means for legalities to conform to one understanding, and the likelihood of eradicating local disparities at definition basis. By paying attention to details and asking: What constitutes ML? What is a financial institution? What are the operational requirements? An assessment of how the international community can expand the coverage of global regulations. The

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<sup>83</sup> See note, 52

<sup>84</sup> United Nations Security Council Resolutions

<sup>85</sup> fatf-gafi 2016, 'The financial action task force leads renewed global effort to counter terrorist financing' (2016) <<http://www.fatf-gafi.org/publications/fatfgeneral/documents/fatf-leads-renewed-global-effort-to-counter-terrorist-financing.html>> accessed 15 August 2016

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legal and regulatory advances from the SAFE case have clarified the understanding of AML on a European/ regional level. Now the question remains on how to further the scope and how to solve the disparate problem.

## Chapter 3 -UK application of EU law

### Introduction to the findings

The background of AML practises in the UK are established from the POCA 2002 and UK money laundering legislation 2007 which are inherently based on EU legislations which have developed its standards from FATF.<sup>86</sup> These standards pertain to activities of regulated bodies and the criminalisation of ML activities. A report by the UK Home Affairs Committee explained that “without doubt...the UK is a destination for laundered money.”<sup>87</sup> As a state with one of the highest concentrations of foreign bank branches in the world, it is a container for headquarters of multinational companies. London specifically is recognised globally as the largest financial centre.<sup>88</sup> The divergence in its economy can be related to a free market as the UK’s vulnerabilities in the financial market stem from the relationships it has with other states who are either highly regulated or not. What this shows is the increased need for CDD in transactional based activities and that the UK, despite the large network of AML regimes, is struggling to protect their financial markets.<sup>89</sup> HMRC in 2015 had taken steps as an enforcement body to ensure that there is strict compliance of AML Procedures on all level of payment activities,<sup>90</sup> but the assessment remains that EU

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<sup>86</sup> UK Government, ‘The Money Laundering Regulations 2007’

<sup>87</sup> Estate Agent Today, ‘Money laundering back on the agenda in government.’ (ETSOS, July 2016) <<https://www.estateagenttoday.co.uk/sponsored-content/2016/7/money-laundering-back-on-the-agenda-in-government>> accessed 17 August 2016

<sup>88</sup> Tim Wallace, ‘Rule Britannia: London Overtakes New York As The World’s Best Financial Centre’ *Telegraph* (2015) <<http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/11884783/Rule-Britannia-London-overtakes-New-York-as-the-worlds-best-financial-centre.html>> accessed 26 August 2016.

<sup>89</sup> See note,6

<sup>90</sup> ETOS, ‘HMRC spot checks, make sure your processes are compliant’ (16 July 2015) <<http://etsos.co.uk/hmrc-spot-checks-make-sure-your-processes-are-compliant/>> accessed 17 August 2016; HM Treasury, ‘Anti-money laundering and counter terrorist finance supervision report 2013-14’ (GOV.UK 2016) <<https://www.gov.uk/government/publications/anti-money-laundering-and-counter-terrorist-finance->

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regulations may be complicating how the UK should establish their practices against ML and the confusion becomes a stepping stone for illicit undertakings.

## **EU LAW**

Much blame has been placed on regulations established at EU level as to why it is difficult for the London markets to remain steadfast in the global AML network. From the view of the EU, which is devised of a single market, suggestions demonstrate that national economies pursue the mandates of the single market to assert fair competition rights and withstand the macroeconomic effects of ML. Relative to the EU initiative, policies or laws implemented pursue the idea of an international financial system and is pursuant to state application. EU law on ML began in the 1980s, from there the 1991 money laundering directive placed the European community as a security actor that had cross-border powers. These powers although contested to by member states is presumed to be a prolific measure towards maintaining the single market for a purpose of integration. Developing from the Maastricht Treaty the later establishment of the EU aimed to promote soundness in the global economy. The introduction of FIUs are observed as recent developments and at EU application have been given too much a responsibility in too short a timescale. Mitsilegas comports the argument further on the rights provided to the different units and the benefits examined from having various levels of regulations in order to cover the European domain.<sup>91</sup> EU law on AML developed to establish a strong rapport in as an observation of the international community as key initiator of security governance beyond the national

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supervision-reports/anti-money-laundering-and-counter-terrorist-finance-supervision-report-2013-14#fnref:7> accessed 17 August 2016

<sup>91</sup> Valsamis Mitsilegas, *Money laundering counter-measures in the European Union: A new paradigm of security governance versus fundamental legal principles* (Kluwer Law International 2003)

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domain. There were challenges on EU AML measures viewed through the constant expansion and broadening of categories of ML – legal certainty was required in order to establish grounded principles for the continued development of EU measures.<sup>92</sup> The suggestion that the difficulty they have to assert a restrictive approach to AML is reliant on the continuous updating of legislation is incorrect; as established earlier in the paper technological advances develop the ways ML is conducted in the global economy so it would only make sense for measures to adopt the continuous developmental technique.

Banking practises emerged in policy development from the Basel committee beginning in 1988, identifying those affiliated with banking institutions and regimes devised as an accolade to already establish international initiatives. Basel statement of principles are only enhanced by FATF for global harmonisation and in the same way POCA and the UK ML regulations establish FATF in their national domain presenting national authorities mandated to fight against ML with compliance regimes.<sup>93</sup>

### **UK AML framework**

The UK's AML framework shows the UK Treasury to be in charge of delegating supervisors over AML/CFT and distributes monitory powers between them. There is wide scope on the sectors of supervision from estate agents to casinos, with 27 supervisory bodies to facilitate. The range from global to smaller professional bodies to public sector organisations is an example of how the scope of regulation is covered. The treasury works with these bodies to establish a recognised system of transparency on good market

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<sup>92</sup> See note, 75

<sup>93</sup> Recommendation 13-16

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supervision and its practices. A 1996 report on the incorporation of the NCIS exemplified the development of UK's AML system and facilitated in establishing a better information gathering system.<sup>94</sup> The NCIS's ability to analyse and exchange information even with the technological advancement of ML, as an example to the international community, shows FIU's as a more adequate resources to support FATF.

As of 2014 there were changes made to the supervisory structure of the FCA which became the sole manager of consumer credit for financial institutions, and HMRC as the supervisor for estate agents. A year later the UK regulatory regime was revamped by CILEx.<sup>95</sup> This development came after the previous existing financial services authority was replaced because of the difficulty it faced in maintaining its duties over suspicious transactions reports.<sup>96</sup> The latter development of the FCA enables its duties on AML to be resumed especially in light of the division of banking and business conduct.

### **UK due diligence in light of SAFE**

In light of the case discussed in the previous chapter, one reviews the effects the ECJ's decision has on the UK. The decision on CDD may affect regulatory practises or rules in the UK as the ECJ holds power to create a basis for UK laws to follow in terms of what may be implemented. It is acknowledged that the UK must comply with EU AML laws on CDD and KYC, and legal obligations on AML norms, but in advancing its AML measure CDD should first be examined. The UK's government policy position on CDD outlines the various levels of DD

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<sup>94</sup> 'FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING TABLE OF CONTENTS', (FATF 1997) 7–9 <<http://www.fatf-gafi.org/media/fatf/documents/reports/1996%201997%20ENG.pdf>> accessed 17 August 2016

<sup>95</sup> See note, 77 HM Treasury

<sup>96</sup> See note, 77 ETOS



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and establishes an understanding on risk management.<sup>97</sup> With reference to FATF UK banking and businesses are subjected to the standards outlined relative to EDD. For UK business conduct, it outlines the superior nature of FATF and the criminalisation of failing to disclose a suspicion of ML, even in respects to understanding business relationship.<sup>98</sup>

## **UK Developments**

Recent developments have been established from the understanding that ML is a global issue and the UK as a prominent international financial centre will be exposed to external risks. Developing the governmental powers over AML is key in pursuing those who expose the markets. The UK can develop its AML measures by working through international groups and relative cohorts to extend its regulatory scope to foreign actors that participate in its markets. It is conceived that in order to defend the UK's financial system cross-border cooperation,<sup>99</sup> via CDD measures acknowledged at an international level by international organisations that interact, should be progressively examined.<sup>100</sup>

The UK has observed a new review on CDD and KYC requirement inspired by FATF with the development of the 4<sup>th</sup> AML directive. UK implementations, by 2017, may enforce substantial CDD regimes extending the responsibilities of banking and financial institutional requirements. With the consensus of the EU community the UK can establish a generic

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<sup>97</sup> HM Revenue & Customs, 'Money laundering regulations: Your responsibilities' (5 August 2013) <<https://www.gov.uk/guidance/money-laundering-regulations-your-responsibilities>> accessed 17 August 2016

<sup>98</sup> POCA 2002

<sup>99</sup> Cabinet Office, 'Anti-Corruption Summit 2016' (GOV.UK 2016) <<https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016/about>> accessed 18 August 2016

<sup>100</sup> Home Office and HM Treasury, 'Action Plan for anti-money laundering and counter-terrorist finance' (2016) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/517992/6-2118-Action\\_Plan\\_for\\_Anti-Money\\_Laundering\\_\\_web\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering__web_.pdf)> accessed 17 August 2016

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standard on digital identity which is becoming a dominant feature in transactional based relationships.<sup>101</sup> Thoughts suggest a devised international obligatory framework on reporting and maintenance structures examines unity.

### **3<sup>rd</sup> Money Laundering directive**

By aiming to ensure that FATF's customary standards are recognised on a global domain the definitions within its directives have outlined CDD requirements. It was implemented by the UK in the year 2007, assessing DD from a third party perspective, expanding bodies that were agreed as financial institutions to credit institutions, auditors, tax advisors and high value goods dealers. Relative to the SAFE case, the credit institution performing the service for the others should have been constrained to measures surrounding DD.<sup>102</sup>

3 major bodies within the European established the 4<sup>TH</sup> EU AML directive, for a common European standard implementing FATF recommendations and observes to annul already existing MLR 2007 by replacing it. For the UK this would have been acknowledged as an advancement in ensuring uniformity on how to ensure that it can interact with its European counterparts. Member States must acknowledge that domestic legislation is co-dependent on EU directives, and considering that the UK has reserved their powers to revoke their membership with the EU, must seek to ensure the domestic laws compliment the updated European requirements. One may reject the argument that the new ML directive is difficult

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<sup>101</sup> Pinsent Masons LLP, 'UK government aims to make it easier for companies to meet anti-money laundering duties' *Out-Law* (1 September 2015) <<http://www.out-law.com/en/articles/2015/september/uk-government-aims-to-make-it-easier-for-companies-to-meet-anti-money-laundering-duties/>> accessed 17 August 2016

<sup>102</sup> HM Government, 'Implementing the Third money laundering directive: A consultation document' (2006) <<http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/moneylaundering310706.pdf>> accessed 17 August 2016

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for UK to implement, considering that its foundations stem from FATF. Pertaining to mitigating risk of ML, the UK has already proved that it can cover this particular scope. By implementing a National Risk Assessment, they have reflected the work of FATF to engage with other supervisors and used collated information on risk to support and enhance UK domestic supervisory legislation on AML.<sup>103</sup>

### **What does this mean for the United Kingdom?**

The development of directives and revised recommendations,<sup>104</sup> considering the transfer of securities by offshore companies into the UK, assesses the requirement of additional measures used to combat the socio-political ties existing with the EU. An example is the Channel Islands as an offshore centre,<sup>105</sup> recommendation 30 purports the introduction of AML standards and the EU action plan to combat crime, through a common policy states can establish AML against organised crime.<sup>106</sup> This new directive is major in the European domain,<sup>107</sup> in repealing Directive 2005/60/EC the AML policies devised by the UK will have to recalibrate its already existing structure on AML. Possible implications may be that it would cost too much for the UK to conduct and the global community may observe the UK

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<sup>103</sup> HM Treasury and Home Office, 'UK national risk assessment of money laundering and terrorist financing' (15 October 2015) <<https://www.gov.uk/government/publications/uk-national-risk-assessment-of-money-laundering-and-terrorist-financing>> accessed 17 August 2016

<sup>104</sup> Recommendation 25

<sup>105</sup> Vanessa Houlder, 'Jersey confident as offshore financial centre despite credit downgrade' *Financial Times* (March 2016) <<https://www.ft.com/content/284d23e8-e6dd-11e5-bc31-138df2ae9ee6>> accessed 20 August 2016

<sup>106</sup> Valsamis Mitsilegas, *Money laundering counter-measures in the European Union: A new paradigm of security governance versus fundamental legal principles* (Kluwer Law International 2003)

<sup>107</sup> THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, 'DIRECTIVE (EU) 2015/849' (Official journal of the European Union 2015) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:141:FULL&from=EN>> accessed 17 August 2016

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refuting this new directive in wake of Brexit maintaining its pre-existing rules as it may feel as though POCA<sup>108</sup> does enough.

The 3<sup>rd</sup> MLD created a standard on basic DD processes and within the UK impacted the control of banking and investment firms. The 4<sup>th</sup> is presumed to try to enhance the standard of procedural conduct enhancing compliance with the FCA, POCA and other bodies of enforcement.<sup>109</sup> POCA has been amended countless times by the use of statutory instruments.<sup>110</sup> Implemented in 2003, it criminalises failures to disclose suspicious transactions, placing an obligation of adopting CDD measures in order to find suspicion; necessitates all financial institution in the UK to have AML/CFT training. This is not to say POCA's measures are not active in the combating of drug trade,<sup>111</sup> but the large movements of cash in the UK is a reason why there are expanded investigatory powers over duties of individuals and businesses.<sup>112</sup>

## **CDD & KYC alignment with FATF**

The SAFE case did not create new resolutions of obligation; the element it precluded to was the ability to ensure that obligations are imposed from the recommendations outlined in FATF. Through the MLD,<sup>113</sup> the EU attempts to establish maintenance of the international

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<sup>108</sup> UK Government, 'Proceeds Of Crime Act 2002 (POCA) Money Laundering Provisions' (Home Office 2015).

<sup>109</sup> ETAY KATZ and Allen & Overy LLP, 'Implementation of the Third Money Laundering Directive – an overview' (Law and Financial Markets review 2007) accessed 17 August 2016

<sup>110</sup> Serious crime act 2015; HM Government, 'Serious crime act 2015 fact sheet: Amendments to the proceeds of crime act 2002 background' (2002)

<[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415945/Fact\\_sheet\\_-\\_Amendments\\_to\\_the\\_Proceeds\\_of\\_Crime\\_Act\\_2002.pdf#](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415945/Fact_sheet_-_Amendments_to_the_Proceeds_of_Crime_Act_2002.pdf#)> accessed 18 August 2016

<sup>111</sup> See note, 17 page 21

<sup>112</sup> Bankers Academy, 'Regulatory compliance' (2015) <<http://bankersacademy.com/resources/free-tutorials/57-ba-free-tutorials>> accessed 18 August 2016

<sup>113</sup> Directive (EU) 2015/849

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standard for those using any type of financial service, on identity verification, and the institutes the responsibility to ensure suspicion of ML is easily reviewed from both an insider and outsider perspective. State operational obligations on individual banking CDD measures, over business relationships, account for the cross-border gap. A possible complication of application in diminishing state responsibilities, can create incompatibilities, increasing expenses to ensure that every bank-business relationship extends their AML/ CDD regime beyond national territory.

The UK's application in light of the SAFE case observes some implications of AML practises. By understanding that AML norms are derived from FATF it gives the ECJ and advocate general a substantive regulatory right over how the UK must examine the directives as a mechanism that reflects recommendations on background checks on the customer and beneficial owner.<sup>114</sup> To an extent this diminishes the UK's government operative powers on how to establish customer risk at national level.

### **Challenges faced at international level**

CDD is observed as a measure to access all levels of risk, and this reasoning justifies why it is important for the other banks to get information from the customers, this right must not be questioned by sustained personal data and privacy laws.<sup>115</sup> The FATF recommendations establishes an ICL standard through the SAFE case , prior to the decisions of the case , acknowledging AML regimes was already mandatory, time and technology has brought to effect the progression of the role market participants play in relation to ML and must go

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<sup>114</sup> Article 8(1)(b); see note, 49 paragraph 21.

<sup>115</sup> See note,52

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beyond national AML requirements, especially pursuant to the coverage institutions may have as the financial markets transcends into the global domain. The benefits of this is a generic understanding that banks can do more by legitimately requesting for more.

Although this will be an issue for the international community on how much information sharing is too much? The suggestion that FATF recommendations are the template for directives on AML<sup>116</sup> may mean that participants in the financial markets must create their operational standards based on the advice an intergovernmental body. The UK application of this requirement has transposed the MLD's with ease because the EU as its previous enactor provided FATF recommendations as the EU binding authority.<sup>117</sup>

## **KYC & CDD**

To further understand CDD from an international standpoint, KYC must be examined for continuous intelligence on the pattern of customer transactions. There will however, always be a degree of distance between institutions and customers, but it is up to the regulators to ensure there is not a great gap. By assessing the 3 elements to KYC on customer identification, DD and EDD, institutions ensure a follow up from the first day the customer/client examines an interest in the institution to subsequent everyday activities.

This standard establishes international norms by which a number of institutions have devised measures to work with their governments to assume minimum responsibilities.<sup>118</sup>

Broad identification duty,<sup>119</sup> can implicate the establishment of a global consensus on

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<sup>116</sup> See note, 89

<sup>117</sup> See note 26

<sup>118</sup> Recommendation 10-11

<sup>119</sup> Article 3, Article 11 (f) DIRECTIVE (EU) 2015/849; recommendation 13

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recognising generic instances of ML establishing a burden on institutes that attempt to work together.

Basic CDD<sup>120</sup> is an assessment activity of an entities information and enhanced purporting to thorough handling of information. In the event market participants may try to evade tax or are in operations with shell companies, which has restrictions on ownership disclosure. FATF recognises what substantiates adequate CDD and creates minimum requirement responsibilities for financial institutions to ensure states a party to its recommendations apply scrutiny to their disclosure measures.<sup>121</sup> The UK's transparency on financial activities makes it easier for the EU to assess how active its national authorities are in asserting recognised standards on basic CDD.<sup>122</sup> Its reflection of FATF recommendation 20-23 recognises the benefit from a business conduct point of view and further extends to banking supervision, especially in regards to lending.<sup>123</sup> For the UK, aligning prudential controls with financial institution activities creates a level of austerity against the exploitation of market integrity. It is of the opinion that the UK's relationship with the EU allows for its provision to have an effect on its non-EU related bilateral relationships reinforcing international CDD standards to those who are not directly a party to the EU.

Enhanced CDD applies to situations where identity has been concealed whilst controlling legal entities, this recognises an ongoing process for higher level risk based supervision. The UK application of this measure may consult the transmission of information to other

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<sup>120</sup> Cf note 105,

<sup>121</sup> See note, 60

<sup>122</sup> HM Government, 'The money laundering regulations 2007'

<[http://www.legislation.gov.uk/uksi/2007/2157/pdfs/uksi\\_20072157\\_en.pdf](http://www.legislation.gov.uk/uksi/2007/2157/pdfs/uksi_20072157_en.pdf)>accessed 20 August 2016

<sup>123</sup> Basel Committee on Banking Supervision, 'Customer due diligence for banks' (Bank for international settlements 2001) <<http://www.bis.org/publ/bcbs85.pdf>> accessed 20 August 2016

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member states within the EU,<sup>124</sup> pertaining to fraud activities, PEPs and banking. One supposes that the 3<sup>rd</sup> party DD is a broader identifying and reporting mechanism over asset cloaking against corruption supported by The Bribery act 2010.<sup>125</sup>

## **Benefits of the UK – EU relationship**

One may presume that the exchange of information between developing states reflected by The Council regulation<sup>126</sup> examines the 3<sup>rd</sup> MLD on disrupting ML on a global level.<sup>127</sup> Cross-border correspondent banking extends 3<sup>rd</sup> party DD beyond regulatory scope of EU payment services.<sup>128</sup> A criticism on vague terms examines UK's attempt to implement rules and to define terminology which can be misconstrued on a global level.<sup>129</sup> Although UK law has to follow the EU law on ML, even with the recent Brexit, the UK can still benefit from developing EU AML policies. The consideration and main focus looks beyond the powers of the EU on the UK legislative body but more so on the leeway given over refining definitions, elevating the scope of AML obligations of the UK towards the international community.

There are benefits examined in banking supervision, examined by the FCA/PRA division dabbling in any activity pertaining to the creation of banks and the latter activities. For safety and soundness of the UK economy a lot of the UK banking industry is made up of foreign institutions and presumably the UK's financial regulation must take up the form

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<sup>124</sup> Article 4-5 of council regulation (EC) 1889/2005

<sup>125</sup> Vincent Béglé, 'Conducting Third party due diligence' (*ETHIC Intelligence*, 22 March 2012) <<http://www.ethic-intelligence.com/experts/157-conducting-third-party-due-diligence/>> accessed 20 August 2016

<sup>126</sup> See, note 105

<sup>127</sup> Recommendation VII FATF

<sup>128</sup> Directive 2005/60/EC

<sup>129</sup> cf. 109, article 17 (2)



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that will cater for the international banking community. With this in mind the disclosure environment works for the benefit of UK to get a greater understanding of the institutions that have taken residence within its regulatory domain. Reflective on the development of the Basel committee on banking practices, realisations that KYC regimes alone are insufficient, and that standards on CDD align with FATF examine safety and soundness of banking practices.<sup>130</sup> This supports the idea that a conglomerate of banks within the UK produces a risk that extends beyond the UK markets and its possible deficiencies should be managed.

The UK actively promotes DD and because it looks to regulate higher level risk and establishes a malleable solution to compliance of activities that have a greater risk basis.<sup>131</sup> Application of the 3<sup>rd</sup> MLD examines its effectiveness in supporting CDD measures as it safeguards the legitimate transactions from illegitimate ones. By reviewing all those a party there is a greater understanding on how corruption is affiliated with ML especially from the international standpoint and how relative to FATF this may be recognised through established global standard.

HM's treasury examines UK's previous decision to restrict extension to classify letting agents as financial/credit institutions, restricting function abilities with international partners on the tackling of vulnerabilities within the property sector.<sup>132</sup> This will have an adverse effect on the global combatting of ML because of the recognition that ML is being conducted in more innovative manner. FATF recognises, through its recommendations, that the financial

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<sup>130</sup> SEE note 1

<sup>131</sup> The Bribery Act 2010

<sup>132</sup> See note 91

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systems scope of regulation should be enhanced beyond just banking financial institutions so long as they require customer identification and maintain an element of DD.<sup>133</sup> Financial activity has developed from what it was classified as in the 2<sup>nd</sup> MLD. Recent advancements show the UK is extending their regulatory scope to letting agents on property transactions used as an avenue for ML. Today both the Money laundering regulation 2007 and POCA is recognised as a standard setting body within the UK on conducting CDD.<sup>134</sup>

Despite today's standard setting bodies, the UK must reconsider costs, compliance, and enforcement activity, for the new 4<sup>th</sup> MLD if they decide to remain a party to it. They also have to revise their definition of a PEP,<sup>135</sup> to compose a better understanding on corruption and fraud. Establishing duties on institutions to recognise risk sensitivity for CDD,<sup>136</sup> are just a few ways to evolve ML barriers and establish effective reporting mechanisms. An account by the law society expressed the development of ML offences in the face of criminal law.<sup>137</sup> Today, definition based reliance on the courts are scarce with persuasion arising from the international community.<sup>138</sup>

The UK-EU relationship benefits from transnational policing methods and networks of regulation as information gathering is proving more and more diverse and new institutions are created with sparse diversity of monetary and policing powers. In assessing the concerns on data protection and human rights on looks to the disparities in EU member states within

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<sup>133</sup> Recommendations 12-120 FATF

<sup>134</sup> Fi Walkley, 'How do money laundering regulations affect me?' *Foxtons* (19 April 2016) <<http://www.foxtons.co.uk/discover/2016/04/how-do-money-laundering-regulations-affect-me.html>> accessed 17 August 2016

<sup>135</sup> (ARTICLE 398) DIRECTIVE 2005/60/EC),

<sup>136</sup> article 7, *ibid*

<sup>137</sup> *Money Laundering Guidance* ([Law Society] 2004).

<sup>138</sup> See note 52

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the FIUs, there is a burden placed on the understanding of how wide the EU system should operate although the council's decision has narrowed the problem to ensure all the different FIU's cooperate with each other for fluid information exchange. With over 50 different FIU'S,<sup>139</sup> although the accumulation of intelligence on an EU basis will be a substantial international development, one may suggest that there will always exist variances in laws. With many bodies unification will incur difficulties, but will be adequate to establish a centralised database.

Corruption is akin to illicit financial movement from the western hemisphere through to developing states, often the global financial system identifies financial actors as a cause for implemented harsh regimes to restrict facilitation of ML.<sup>140</sup> Though ICL could be adopted and promoted, there is a recognised difficulty in establishing harmonisation in national rules on corruption especially pursuant to rights on privacy. It is my perception that central banks may be able to resolve this issue on DD of financial transactions especially over those who have substantial powers over state activities.

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<sup>139</sup> 'The Egmont group', (2016) <<http://www.egmontgroup.org/about/list-of-members/by-region/europe>> accessed 17 August 2016

<sup>140</sup> Fatima-Zahra Boukhari, 'Illicit financial flows from developing countries' (*infomineo*, 15 January 2016) <<http://www.infomineo.com/illicit-financial-flows-from-developing-countries/>> accessed 15 August 2016

## Chapter 4- Ghana

### Key features of the comparative

ICL is observed to be steered by the UN and two bodies examine the transnational nature of ML. The UNTOC on international cooperation, transparency and accountability, connecting with FATF, UNTOC examines the transnational aspect of crime and fraud and the global community, upon acknowledgment of Ioannides discussion on the UNTOC's web of countermeasures.<sup>141</sup> UNCAC compliments UNTOC in using the law for already established civil and criminal laws as mechanisms for confiscation and punishment. UNCAC's definition of corruption expands the scope beyond the receipt of bribery and abuse of powers for personal gain, supporting FATF in linking it with ML.<sup>142</sup> The discussion on PEPs in Ghana and the UK suggest that the control on corruption as an AML measure are both correlated towards wealth distribution and state control. Understanding political and financial risks within the international domain may engage in transnational resolution especially where activities are dominant.

The Enron scandal is an example of threatening financial security as a matter of corruption, in the face of ML which had an adverse effect on the global economy.<sup>143</sup> In 2011 a report by Michael Ogisi estimated that within the sub-Saharan African business domain 76% of its

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<sup>141</sup> Ioannides note,15

<sup>142</sup> 'Money Laundering' (*Oecd.org*) <<https://www.oecd.org/cleangovbiz/toolkit/moneylaundering.htm>> accessed 22 August 2016.

<sup>143</sup> Joe Kay, 'The Enron Verdicts: Corruption And American Capitalism - World Socialist Web Site' (*Wsws.org*, 2006) <<https://www.wsws.org/en/articles/2006/05/enro-m29.html>> accessed 22 August 2016.

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median \$1,481.06 GDP is acknowledged as a derivative of corruption and is widespread.<sup>144</sup>

Its implications on social and economic development<sup>145</sup> interlinks it with ML and the relationship it can examine with weak business practices.

### **PEPs & corruption**

Corruption has been recognised as an internal enemy threatening the integrity of AML and is a recognised as a product of ML.<sup>146</sup> Credit and financial institutions with subsidiaries elsewhere especially in developing states can be the reason why regulations are partially deficient. It is usually in this instance that we find PEPs take advantage of business relationships and corruption levels within, states, reliant on the access to economic regulations. PEP's are prominent public actors and the associates of those engaging in the public sector.<sup>147</sup> Establishing a transnational financial regulatory trail as an international standard must be made effective in state legislation on ownership. Access to PEP financial conduct is crucial as we find that especially in the African context this class of persons to be a major root cause of corruption. John Hatchard and Jeremy Pope examine corruption from the standpoint of political will and laws and regulations, concluding that they work hand in hand in order to effectively combat ML, one does not suffice alone.<sup>148</sup>

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<sup>144</sup> Gallup, 'Is Corruption Widespread within business located in this country, or not?' (Gallup.com 2011) <<http://www.gallup.com/poll/154571/majority-worldwide-sees-widespread-corruption-businesses.aspx>> accessed 20 August 2016

<sup>145</sup> The World Bank and Dina Elnaggar, 'Q&A: Innovations in the fight against corruption' (*World Bank Live*, May 2012) <<http://live.worldbank.org/qa-innovations-fight-against-corruption>> accessed 20 August 2016

<sup>146</sup> Ioannides, note 15, page 72

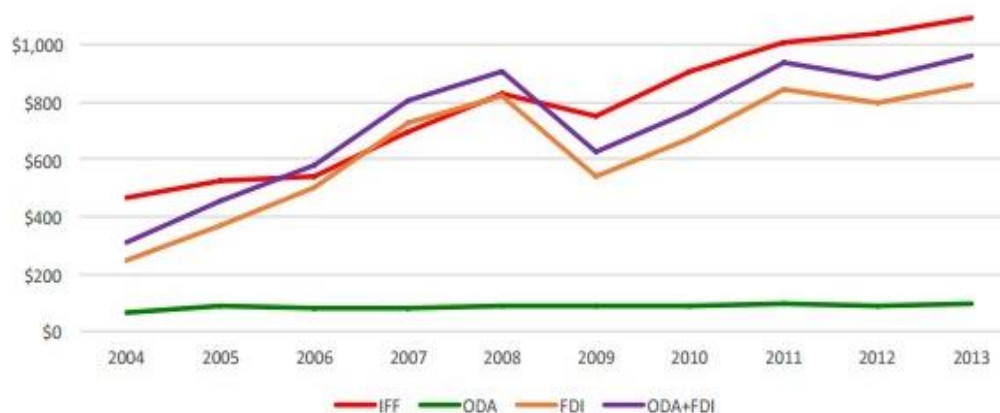
<sup>147</sup> Mariano FERNÁNDEZ SALAS, *The Third Anti-Money Laundering Directive And The Legal Profession* (1st edn, 2005) <<http://www.anti-moneylaundering.org/Document/Default.aspx?DocumentUid=7B528765-CB1F-4748-9733-68935E2C4745>> accessed 22 August 2016.

<sup>148</sup> John Hatchard, *Combating Corruption* (Edward Elgar Publishing Limited 2014).

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## AML and international relations

There are different grades of what may constitute a crime reliant on the various jurisdictions, ideals vary and this is not beneficial. Extraterritorial legal impact on developing states incur threats and actions that may not be beneficial to the global economy, for instance, black listing will increase the risk of a state and not ensure the EDD is conducted properly on PEPs. The most dominant international AML regimes has been influenced substantially by global financial crisis and has implemented most of its bodies accordingly.<sup>149</sup> The international struggle to remain on top of developments within the markets can be recognised as a catalyst for corruption, and ML can easily be transferred through states. A major issue is that AML regimes do not work as quick and as a result is very slow in keeping up with market trading between Pep's and those who act on their behalf.<sup>150</sup> The Jacobellis v Ohio case saw the US supreme court explain corruption as something that, on an international level, may be hard to explain, but certain acts determine, within its definitional scope the link between abuses of power and personal gain.



(Figure 7)

<sup>149</sup> The Basel Committee on Banking Supervision, 'The Basel committee's response to the financial crisis: Report to the G20' (Bank for international settlement 2010) <<http://www.bis.org/publ/bcbs179.pdf>> accessed 21 August 2016

<sup>150</sup> See note 31

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The graph above shows Illicit financial flows of a 9 year period from developing states.<sup>151</sup>

This reflects pertinent literature of ICC's concerns over effect of ML – so far the discussion has been on AML and trade finance, and has annulled the argument that strict rules implicates the movement of finance at an international level.<sup>152</sup> Corporate governance as a means to refute corruption within the state of Ghana establishes banking practices; Energy bank for example acts to maintain strict AML programs all in the name of best practice.

This regards the relationship between banking management and ML, but does stricter rules mean better AML?<sup>153</sup> The developing economies, mainly African states, are known to lack ethical practices and discipline in leadership,<sup>154</sup> and the restraints on establishing democracy becomes a motive for corruption. Reviews on off-shore companies are exemplary to the western hemisphere's version of AML regime abuses by way of manipulating global tax requirements.<sup>155</sup> Weak international standards have fuelled the association of tax evasion and PEPs, and UK is the example of how its various constitutional relations can establish offshore centres and services that escape the regulatory regime on global standards of best practises.<sup>156</sup>

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<sup>151</sup> Dev Kar and Joseph Spanjers, 'Illicit financial flows from developing countries: 2004-2013' (2015) <[http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update\\_2015-Final.pdf](http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update_2015-Final.pdf)> accessed 15 August 2016

<sup>152</sup> Sam Fleming, 'ICC flags up concerns over effect of money-laundering laws' *Financial Times* (19 June 2014) <<http://www.ft.com/cms/s/0/275a1900-f706-11e3-8ed6-00144feabdc0.html#axzz4C3AeO86g>> accessed 19 June 2016

<sup>153</sup> Energy Bank Ghana, 'Corporate governance' <<http://www.energybankghana.com/index.php?q=node/128>> accessed 19 June 2016

<sup>154</sup> Kwame Frimpong and Gloria Jacques, *Corruption, Democracy, And Good Governance In Africa* (Lightbooks 2001).

<sup>155</sup> Hamish Boland-Rudder, 'The Panama papers' (27 May 2016) <<https://panamapapers.icij.org/>> accessed 21 June 2016

<sup>156</sup> Ibid. note 5,11 setting a higher international standard

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## Findings: Ghanaian activity

As of 2012 Ghana was removed from the high risk state list developed by FATF this creates a domicile for AML within the Ghanaian financial markets,<sup>157</sup> thus generating a system of AML laws which will bring to effect a global consensus on ML resolutions. Prior to the removal Ghana had failed to assert the political will against criminalising corruption and ML.<sup>158</sup>

### *Highest and Lowest Perceptions of Government Corruption in Free Press Countries\**

Is corruption widespread throughout the government in [country], or not?

	<b>Corruption is widespread in government</b>		<b>Corruption is widespread in government</b>
Czech Republic	94%	United Kingdom	43%
Lithuania	90%	Netherlands	33%
Ghana	89%	Australia	33%
Portugal	88%	Finland	30%
South Africa	88%	Luxembourg	26%
Italy	86%	Norway	25%
Costa Rica	82%	New Zealand	24%
South Korea	80%	Switzerland	23%
Hungary	79%	Denmark	15%
Cyprus	77%	Sweden	14%

\*According to Freedom House 2013 Media Freedom Status

GALLUP

(Figure 4) Ghana and UKs corruption indexes<sup>159</sup>

<sup>157</sup> Lawrence Quartey, 'Ghana delisted from high risk money laundering/terrorist financing nations' (The African Report 2012) <<http://www.theafricareport.com/West-Africa/ghana-delisted-from-high-risk-money-launderingterrorist-financing-nations.html>> accessed 22 August 2016

<sup>158</sup> Ibid. note 135 page 295 para 10.2.4

<sup>159</sup> Freedom House 2013, 'Highest and Lowest Perception of Government Corruption in Free Press Countries' (2013) <<http://www.economistaterry.com/2013/11/the-concomitance-of-religiosity.html>> accessed 20 August 2016



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By way of FATF the GIABA has intervened in domestic ML,<sup>160</sup> by extending the scope to contain the element of personal use which counters the international mandate against organised crime. Even from the recent declassification of risk state status, Ghana has lost market confidence with a high percentage of likelihood that PEPs are a considerably substantial cause of ML and corruption. This is supported by the rise in Ghana's corruption index.<sup>161</sup>



(Figure 5) Ghana corruption index

<sup>160</sup> 'Ghana Loses Over \$2.8 Million Dollars Through Money Laundering - GIABA' (*Ghana Trade - Official SME Product Portal and Web Gallery*) <<http://ghanatrade.gov.gh/Latest-News/ghana-loses-over-28-million-dollars-through-money-laundering-giaba.html>> accessed 22 August 2016.

<sup>161</sup> Trading Economics, 'Ghana corruption index 1998-2016' (2016) <<http://www.tradingeconomics.com/ghana/corruption-index>> accessed 20 August 2016

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(Figure 6) Ghana government spending

Correlations can be assessed between Ghana's corruption index and government spending,<sup>162</sup> which reached an all-time high between 2014 -2016. This reflects why there is a lack of public confidence in their political parties with a 4.1 out of 5 rating belief that political parties engage in corruption.<sup>163</sup> The recent scandal within the Ghanaian judicial system recognised systemic problems of corruption relative to investigatory privacy rights.<sup>164</sup> Ghana's secrecy levels play a role in transparency and global access to information – data research<sup>165</sup> reflects further why the public domain requires reforms parallel to AML regimes as in order reflect FATF.

<sup>162</sup> Trading economics, 'Ghana Government spending' (2016)

<<http://www.tradingeconomics.com/ghana/government-spending>> accessed 20 August 2016

<sup>163</sup> Transparency International, 'Transparency international - country profiles' (2016)

<[http://www.transparency.org/country#GHA\\_PublicOpinion](http://www.transparency.org/country#GHA_PublicOpinion)> accessed 20 August 2016

<sup>164</sup> Transparency International, 'Ghana Authorities Need To Investigate Thoroughly Allegations Of Judicial Corruption' (2015)

<[http://www.transparency.org/news/pressrelease/ghana\\_authorities\\_need\\_to\\_investigate\\_thoroughly\\_allegations\\_of\\_judicial\\_co](http://www.transparency.org/news/pressrelease/ghana_authorities_need_to_investigate_thoroughly_allegations_of_judicial_co)> accessed 20 August 2016.

<sup>165</sup> 'Transparency International - Ghana' (*Transparency.org*, 2016)

<[http://www.transparency.org/country#GHA\\_DataResearch](http://www.transparency.org/country#GHA_DataResearch)> accessed 20 August 2016.

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A questionnaire distributed to FSP's reflect that a range of bodies for the prevention of ML govern the monetary services. Eco Bank subsidiaries in the UK have proved to maintain the states CDD measures to align with the rules the state of Ghana had implemented to ensure transnational cooperation (appendices Results 1&2). For further reinforcement Eco Bank within Ghana enforces a Company Conformity Assessment Program manual to establish best business practises on trade, requiring those using their service to action state laws. (appendices Results 3)

**Ghana relative to FATF**

GIABA has been introduced by FAFT to regenerate the AML culture of West Africa. Ghana in relation to this body has been subjected to reforms from deficiencies that they experienced in 2009 – not acting in compliance with recommendations on CDD and PEPs.<sup>166</sup> The development of the state's public commitment via legislative and institutional framework developments created an environment for financial activities to remain in line with FATF pursuing global aim in combatting of ML. Despite a series of acts governing the Ghanaian economy,<sup>167</sup> substantial developments eliminating its high risk level were observed through the AML regulations 2011 and Economic and Organised Crime Office Act 2011. This created an assurance that the state has the ability to conform its financial institutions, by way of government, to establish a strong AML network. Following from the struggle, to initially align its AML measures with FATF, it is ones' assertion that it was an ineffective

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<sup>166</sup> GIABA, 'Mutual evaluation report, anti-money laundering and combating the financing of terrorism - GHANA' (INTER-GOVERNMENTAL ACTION GROUP AGAINST MONEY LAUNDERING IN WEST AFRICA 2009) <[http://www.giaba.org/media/f/341\\_Ghana%20Executive%20Summary%20-%20Eng-1](http://www.giaba.org/media/f/341_Ghana%20Executive%20Summary%20-%20Eng-1)> accessed 22 August 2016

<sup>167</sup> Anti-Money Laundering Act (AMLA), 2008

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enforcement tool and GIABA through the mutual evaluation report is a better actionable measure for a developing state like Ghana. GIABA together with FATF establishes a network that pushes governance in West Africa to ensure their laws are effective against the facilitation of ML whatever form it may take.

The 1960 Criminal Offences Act supports the idea that ML can be as a result of a range of predicate offences. Complementary to the above act, the Banking Act 749 criminalises acts that refute CDD regimes. Difficulties that arise from disclosure activities, regulation of PEPs and understanding of conflict of interest are found to be examined in developing states like Ghana. The Global corruption barometer estimated 27% engaged in bribes in the public services domain.<sup>168</sup> Regulation of such will only be accomplished by “transparent handling(s) of ...investigations and subsequent sanctions...”.<sup>169</sup> The discussion has recognised the transnational element of ML and thus requires the international community to be diligent in managing its jurisdictional powers for protection.

ML within developing states like Ghana can witness the proceeds of corruption move from one state to another. A great benefit from international customary practises is the ability for a developing state to action their laws by support of FIU’s. Merging law enforcements and the private sector active investigations on PEP’s is only effective as and when states

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<sup>168</sup> Michael Ofori Amanfo Boateng, 'Corruption barometer: 54% says corruption has increased in Ghana' (2012) <<http://edition.myjoyonline.com/pages/news/201307/109126.php>> accessed 23 August 2016

<sup>169</sup> Stephen Odoi Larbi, 'Anas' evidence against judges must be probed without interference – TI | Kasapa102.5FM' *KasapaFM Online* (22 September 2015) <<https://kasapafmonline.com/2015/09/22/anas-evidence-against-judges-must-be-probed-without-interference-ti/>> accessed 20 August 2016

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interact with them. What this means is that international cooperation may be stunted by the failures of developing states to ensure their FIU's are active.<sup>170</sup>

### **Any negative externalities?**

Ghana and the rest of West Africa are observed to have a culture that readily accepts corruption as a political norm.<sup>171</sup> Attempts to reform the ideals of political bodies can be a challenge, despite being named a nucleus of West Africa's narcotics trade. In a report by UNODC,<sup>172</sup> Ghana's many AML laws struggled to acknowledge the importance of aligning its regimes with the international community establishing a system to scrutinise government proposal of AML laws. And because the definitional base for PEPs are broad it will have to look the international community for clarity. The IOSCO has also recognised that consensus should be established on a global level and further recommends that cooperation between national authorities may be the best focus for gaining international assistance on ML issues.<sup>173</sup> To do this states must be a party to FATF or the FSRB or otherwise be named and shamed.<sup>174</sup> The ability to extend conviction rights to activities that cause proceeds of crime

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<sup>170</sup> ESAAMLG, 'Mutual evaluation report anti-money laundering and combating the financing of terrorism republic of Angola' (ESAAMLG 2012) <[http://www.esaamlg.org/userfiles/ANGOLA\\_MUTUAL\\_EVALUATION\\_DETAIL\\_REPORT.pdf](http://www.esaamlg.org/userfiles/ANGOLA_MUTUAL_EVALUATION_DETAIL_REPORT.pdf)> accessed 23 August 2016

<sup>171</sup> Jonty Bloom, 'Radio 4 - today- political corruption' (BBC) <[http://www.bbc.co.uk/radio4/today/reports/archive/politics/political\\_corruption.shtml](http://www.bbc.co.uk/radio4/today/reports/archive/politics/political_corruption.shtml)> accessed 23 August 2016

<sup>172</sup> UNODC, 'COCAINE TRAFFICKING IN WESTERN AFRICA SITUATION REPORT' (2007) <<https://www.unodc.org/documents/data-and-analysis/Cocaine-trafficking-Africa-en.pdf>> accessed 29 August 2016

<sup>173</sup> IOSCO, 'Report on money laundering' (2008) <<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD26.pdf>> accessed 30 June 2016

<sup>174</sup> Ibid note,135 page 284

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to cross borders, may introduce conflicts based on differences of jurisdictional ability to establish successful AML regime.

The analysis of Ghana and UK's cross-border development on ML and CDD, In the interest of Justice and where two states are in conflict on prosecution rights, FATF should be an establisher of measures pertaining to punishment.<sup>175</sup> As an actor between the UK and Ghana a bilateral treaty to establish CDD measures on funds control, on a risk sensitive basis, is noticed as a measure for cross-border development .<sup>176</sup> Financial products generally have restrictions and regulations to ensure that they are not abused. Harmonising rules is a barrier mechanism and unifying the UK and Ghanaian ideals on corruption may solve some competing issues that may arise and establishes a dependency on the UK as a state that actively pursues AML.

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<sup>175</sup> Recommendation 37

<sup>176</sup> EMERGING MARKETS COMMITTEE OF THE INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS, 'Report on cross-border activities of market intermediaries in emerging markets' (2005) <<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD193.pdf>> accessed 30 June 2016

## Chapter 5- Conclusions & Recommendations

White collar crime is an example of corruption recognised in the UK and western hemisphere and compared to Ghana has established legislative measure that are considerably durable whilst refusing to accept corrupt behaviours as part of their economic culture. The issue of flexibility, fluency and responsiveness of regulations are key components to effective management of businesses that cross borders.<sup>177</sup> A report by the FCA examines the importance of having an authority that commits to ensuring institutional compliance by way of laws.<sup>178</sup>

### **Brexit & AML**

Brexit as a political commitment to refute the dominance of the EU in its political course may mean that the UK would now have to either renegotiate or maintain its EU-UK AML commitments on powers of treaties.<sup>179</sup> To date there are no substantial developments on AML regimes to reflect the independence of the UK; the fact that the UK's ML regulation 2007 reflects the 3<sup>rd</sup> MLD may incur difficulties on the restructuring of UK laws and go against EU and international cooperation.<sup>180</sup> Considerations are given in regards to the 2017 4<sup>th</sup> MLD implementation, and where the UK will stand in regards to its developments. Whether the leave will have an effect on financial crime is reliant on the UK's approach

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<sup>177</sup> Kenneth S Blazejewski, 'The FATF and Its Institutional Partners: Improving the Effectiveness and Accountability of Trans governmental Networks' (Temple University 2009)  
<<http://www.temple.edu/law/ticlj/ticlj22-1Blazejewski.pdf>> accessed 23 August 2016

<sup>178</sup> DIRECTIVE 2005/60/EC

<sup>179</sup> Article 50 Treaty of Lisbon

<sup>180</sup> 'Brexit and AML', (*ihatemoneylaundering*, 25 June 2016)

<<https://ihatemoneylaundering.wordpress.com/2016/06/25/brexit-and-aml/>> accessed 23 August 2016

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towards maintaining FATF requirements and sanctions imposed on some business activities which could vary from the EU.<sup>181</sup> To improve global AML practises, one believes that it is in the UK's best interest to maintain the EU resolutions on AML especially within the banking sector. Although regulatory impact on the UK is predominantly unknown at this moment in time and will depend on negotiations formed, possible changes may be examined in the classification of risk profiles relative to the management of PEPs.<sup>182</sup>

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<sup>181</sup> Sam Hemmant, 'Will Brexit affect UK's approach to tackling financial crime? Anti-money laundering (AML), anti-bribery and corruption (ABC) and sanctions' (*Lexis Nexis*, June 2016)  
<<http://bis.lexisnexis.co.uk/blog/posts/anti-money-laundering/will-brexit-affect-uks-approach-to-tackling-financial-crime>> accessed 23 August 2016

<sup>182</sup> Joe Dunphy, 'Regulatory impact of Brexit' (*Finextra*, 5 July 2016)  
<<https://www.finextra.com/blogposting/12811/regulatory-impact-of-brexit>> accessed 23 August 2016



## Conclusions

This paper aimed to assess the activity of ICL on AML developments. It considered the global bodies affecting financial practises over high risk states and any international resolutions that may extend powers to those that need it.

The extension of definitions of what constitutes ML beyond the idea of narcotic handling<sup>183</sup> has helped to change the way banking industries especially within the UK lead the fight towards establishing a more unified regime against AML.<sup>184</sup> Banking practises observing core principles for a greater supervisory system, scrutinises transactions of a transnational nature. Infiltrating institutional frameworks of other states, establishes CDD reliance recognised by FATF.<sup>185</sup> Accepting 'international institutions and conventions emerg(ing) to play a coordinative role' supported in the SAFE case, reflects the manner by which the UK uses the 3<sup>rd</sup> MLD. This showed the balance of evasive investigatory measures,<sup>186</sup> and the scrutiny Ghana faced in failing to regulate their PEPs.

By grasping that there is no individual victim of AML, the international community can work together to establish a network to adequately protect the global economy. One substantial finding is that it is not what is ML but what amounts from the activity. A unification in regulatory training within the EU became the solution to establishing a common standard towards AML and resolved basic definitional issues. The beauty of the global economy is the

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<sup>183</sup> Recommendation 5 FATF

<sup>184</sup> Martin Bentham, 'Britain's FBI' to lead fight on London's dirty money' *Evening Standard* (8 April 2016) <<http://www.standard.co.uk/news/crime/britain-s-fbi-to-lead-fight-on-london-s-dirty-money-a3221041.html>> accessed 24 August 2016

<sup>185</sup> SEE note 1

<sup>186</sup> Ethan A. Nadelmann, 'Global prohibition regimes: The evolution of norms in international society' (1990) 44(04) *International Organization* 479–520

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variances in financial institutions and how they all work together for the transference of money and commodities. Recognition of FAFT by the EU simplifies this problem of uniformity and extends the responsibility of legal reach as the UK shows through implementation of the 3<sup>rd</sup> MLD and is looking to incorporate the 4<sup>th</sup>. Something very important has been established in the world of risk management and that is the ability to apply DD in all manners of business relations regardless of the status of the individual within the state. Increasing controls over the activities of PEPs means bodies like the HMRC, assuming greater responsibility, create a larger network to cover the ever increasing scope of institutes that may be subjected to ML vulnerabilities.<sup>187</sup>

FATF's 3 primary functions on promoting, adoption and implementing of its AML standards face prohibitions, the adequate tools to combat ML exist but the main issue is on enforcement and implementation.<sup>188</sup> FATF standards need more focus and precision for specific application at an international level to cover variances, which almost cannot be avoided because each state has its different legal regulations. Strict regulations can be disadvantageous to weaker institutions and so there must be a balance to establish uniformity. Failures of third parties, to do background checks on their customers, created an arena for civil resolutions. An understanding on the mental capacity of the crime has been seen to establish a system for punishment. Looser laws aid in applying classified civil activities to criminal punishment.

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<sup>187</sup> Arla regulation team, 'Anti-money laundering and letting agents' *ARLA* (June 2014) <<http://www.arla.co.uk/news/june-2014/anti-money-laundering-and-letting-agents.aspx>> accessed 17 August 2016

<sup>188</sup> David Lewis, 'Ending Impunity: Creating a level playing field by enforcing the conventions we have' (2016) <<http://www.fatf-gafi.org/publications/fatfgeneral/documents/tackling-corruption-together.html>> accessed 18 August 2016

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The discussion on data protection laws as a defence mechanism is seen to be superseded by AML objectives. Discussions on internationalism and supporting governmental collaborations, to unify legal principles, examines governmental DD on combatting corruption and exchanging of information, works as the all-seeing eye over the global community. An understanding that the eye over the western hemisphere is much clearer, so to steer developing states through its readily regulative governing bodies, deals with corrupt officials who think they can escape the laws of their own lands. Global prohibition regimes exemplified in banking, establishes a consensus to make reasonable efforts to determine the true identity of all customers requesting the institution's service. This shows states are now aligning their internal frameworks with ML countermeasures in order to sustain associations with other states that are working to be integrated in the financial markets, states like those in the EU.<sup>189</sup> Chartering global trust in the private sector is proactively repressing strict laws. Ensuring that their expert based nature expands for states that may not have reached that domain with their own legal rules, making transparency a common feature for anti-corruption, anti-tax evasion, for a better developed network on financial stability.<sup>190</sup>

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<sup>189</sup> Commission of the European Communities, *White Paper-Preparation of the Association Countries of Central and Eastern Europe for integration into the Internal market of the Union* (5 COM (1995) 163 final <[http://www.ab.gov.tr/files/ardb/evt/1\\_avrupa\\_birligi/1\\_6\\_raporlar/1\\_1\\_white\\_papers/com1995\\_white\\_paper\\_preparation\\_for\\_eastern\\_european\\_countries.pdf](http://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_6_raporlar/1_1_white_papers/com1995_white_paper_preparation_for_eastern_european_countries.pdf)> accessed

<sup>190</sup> Ibid Ioannides page 89

## Recommendations

A conglomerate of recommendations for international customary development examine opinions on **(i) improved international alignment with FATF, (ii) increase use of harmonised banking practises cross-culturally, (iii) the bridging between subsidiaries in high risk states, (iv) use of the western hemisphere to assert the AML in the international community, (v) using diversity to better enforce FATF requirements, (vi) giving international bodies a more distinguished power.**

Diversity is a key factor in the disruption of AML regimes by which launders use to maximise their activities and remain under the radar. The discussion has requested a need for supervisory bodies to share information with each other.<sup>191</sup> ICL practise for legal enforcers and financial institutions must maximise on their transparency network to work together. Blurring the lines may create more work, but will ensure a system of unbroken communication. Sullivan mentioned that when an AML investigation is being conducted in line with legal enforcement the aperture on global engagement may steadily diminish.<sup>192</sup>

To facilitate transparency there must be a reduction of cross-border complexities, a global consensus on risk focused measures simply recognise presumed risk. Exemplified in the consensus, technological advances create the gaps within the regulatory environment and this is where ML thrives,<sup>193</sup> a solution is for regulatory laws to evolve with technology as a preventative measure rather than taking on a reactional nature. An international body

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<sup>191</sup>The UK money laundering legislation 2012

<sup>192</sup> Ibid, note 60

<sup>193</sup> Ioannides note, 15

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should review new found financial processes and how AML may be restricted through it, especially considering that electronic transactions are at the rise of this century. To add, creating initiatives like the Stockholm programme to expand the exchange of information,<sup>194</sup> will aid in assessing high risk state profiles and link regulatory bodies that are effective and substantial in the regulatory domain. This will draw a map of all states and bodies that are inactive. FATF already has a list of states failing to assert AML regimes, access to state regulatory department can resolve these issues examined in the earlier discussed technological advancements.

At national level AML regimes must develop an international nature and the standards set must establish trust within the international community, this is key in the evolving of standards that has shaped the cooperative, investigatory domain of AML. In order to do this, strict application of conflicting definitions should be clarified by FATF to simplify and improve institutional practices. The ECJ's binding decision over the EU transfigured where to go to align regional standards. On state accountability regarding various global bodies, for example the UK-EU reliance to make effective the 4<sup>th</sup> MLD. It expands the scope of ML to other criminal offences<sup>195</sup> and widens the scope of the reporting mechanism. If national authorities ensure their experts share their experiences on corruption and ML, especially amongst the private sector, a domain to exchange views on compliance and control practises can assess the congruous nature of pre-existing AML regimes.

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<sup>194</sup> Council regulation (EC) 881/2002

<sup>195</sup> Amendments directive 91/309/EEC

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Extending ML to cover predicate offences, as a wide spread concept, can use taxation laws to counter criminal activities. One asserts that this can help to enhance and clarify principles for the international community further regulating professionals active in the financial domain.<sup>196</sup> James Freis supports the need to reveal hidden networks established by those who work with financial product, supporting wider regulation on departmental activities.

Soft law introduces too many variances, a resolution is to introduce a global coalition to strengthen individual rules of law.<sup>197</sup> Like the EU, the UK should use FATF to create an international consensus, establishing multilateral and unilateral action over deficient jurisdictions compromising the UKs financial regulatory system, to gain control.<sup>198</sup> For impact to be paramount, as a prominent state, the UK's development of multilateral operations forwards the agenda for internationalism.<sup>199</sup> Recommended changes to the global financial industry reflects higher standard setting as to how the international community deals with ML and criminal assets. This in turn allows states to be fully immersed in influencing global networks on AML.

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<sup>196</sup> JAMES H. FREIS, 'GLOBAL MARKETS AND GLOBAL VULNERABILITIES: FIGHTING TRANSNATIONAL CRIME THROUGH FINANCIAL INTELLIGENCE' delivered at the academic session on 'global initiatives to avoid the Mis(use) of the financial system for illegal purposes' of the committee on Int' (FinCen 2008) <[https://www.fincen.gov/news\\_room/speech/pdf/20080425.pdf](https://www.fincen.gov/news_room/speech/pdf/20080425.pdf)> accessed 18 August 2016

<sup>197</sup> Ibid, Ioannides page33

<sup>198</sup> HM Government, 'Advisory notice on money laundering and terrorist financing controls in overseas jurisdictions' (2016)

<[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/534959/hmt\\_advisory\\_notice\\_june\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534959/hmt_advisory_notice_june_2016.pdf)> accessed 24 August 2016

<sup>199</sup> Ibid note, 5 paragraph 11.32

## Appendix A

Hello my names is Marilyn and I am currently conducting research for my final piece to complete my Master course, I will be every grateful if you would please be sure to fill in the questionnaire below on financial regulation especially on money laundering. Please answer as honestly and as concise as possible.

This's question: **The disruption of money laundering in the Western Hemisphere as an effect on developing states – can international customary law maintain and create a standard to improve financial regulation at an international level?**

Questionnaire

What financial institution do you work in? *Ecobank Account opening*

What is your role in this institution? *A customer/Service office*

Is this institution a subsidiary from another state? *Yes*

If so which state? *London*

What regulatory body is the institution you work in regulated by? *Bank of Ghana*

What measures are in place in cooperation with anti-money laundering laws within Ghana? *Investigation of a business on client prior to signing a contract.*

How often would you say this institution is subjected to Money laundering and criminal financing? *Not often*


Did you receive any training on how to handle instances of Money Laundering? *Yes*

How often are you updated on changes surrounding regulations within the financial sector?

What models and frameworks have been established in the institution to prevent money laundering? *Knowing Our Customers - Verifying a customer identity and exercising due diligence to help manage or prevent risk.*

Do you know of any key cases that have changed the course of money transaction in your institution? *Not really.*

Thank you for your cooperation.



Marilyn Duah

(Result 1)

## Appendix B

Hello my names is Marilyn and I am currently conducting research for my final piece to complete my Master course, I will be every grateful if you would please be sure to fill in the questionnaire below on financial regulation especially on money laundering. Please answer as honestly and as concise as possible.

This question: **The disruption of money laundering in the Western Hemisphere as an effect on developing states – can international customary law maintain and create a standard to improve financial regulation at an international level?**

Questionnaire

What financial institution do you work in? *Ecobank Ghana Ltd*

What is your role in this institution? *Account Opening Officer*

Is this institution a subsidiary from another state? *No*

If so which state? *NA*

What regulatory body is the institution you work in regulated by? *Bank of Ghana*

What measures are in place in cooperation with anti-money laundering laws within Ghana? *Companies CAP Manual.*

How often would you say this institution is subjected to Money laundering and criminal financing? *Very Often*


Do you receive any training on how to handle instances of Money Laundering? *Yes*

How often are you updated on changes surrounding regulations within the financial sector? *Not often.*

What models and frameworks have been established in the institution to prevent money laundering? *Complying with the KYC and Cap manual*

Do you know of any key cases that have changed the course of money transaction in your institution? *NO*

Thank you for your cooperation.



Marilyn Duah

(Result B)



Candidate number: 1545582

## Appendix C

Thesis question: **The disruption of money laundering in the Western Hemisphere as an effect on developing states – can international customary law maintain and create a standard to improve financial regulation at an international level?**

### Questionnaire

What financial institution do you work in? **MAGLANS MONEY LENDING SERVICES**

What is your role in this institution? **MANAGING DIRECTOR**

Is this institution a subsidiary from another state? **NO**

If so which state? **N/A**

What regulatory body is the institution you work in regulated by? **BANK OF GHANA, MONEY LENDERS ASSOCIATION OF GHANA**

What measures are in place in cooperation with anti-money laundering laws within Ghana? **GOING ACCORDINDLY WITH THE ANTI-MONEY LAUNDERING LAWS IN GHANA**

How often would you say this institution is subjected to Money laundering and criminal financing? **ANNUALLY**

Did you receive any training on how to handle instances of Money Laundering? **YES**

How often are you updated on changes surrounding regulations within the financial sector? **AS AND WHEN THE NEED ARISES**

What models and frameworks have been established in the institution to prevent money laundering? **ANTI-MONEY LAUNDERING DIVISION IS ESTABLISHED**

Do you know of any key cases that have changed the course of money transaction in your institution? **NO CASE AT THE MOMENT**

Thank you for your cooperation.

Marilyn Duah

(Result C)

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