

NGOs and money laundering

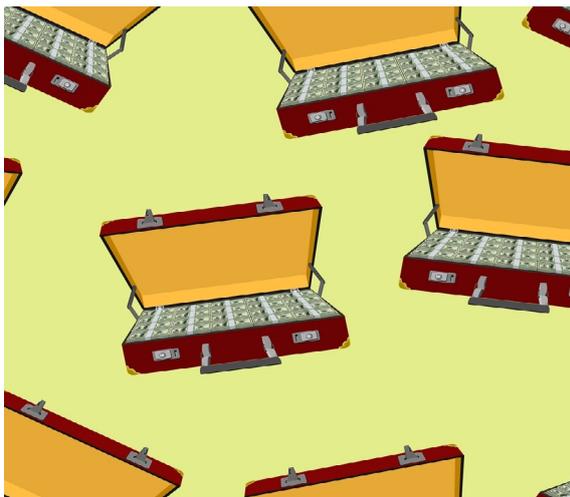
Adapting EU rules to engage NGOs better

SUMMARY

Money laundering (ML) is a major global concern. The minimum identifiable direct costs of organised crime in the European Union (EU) are estimated at around €166 billion a year. Europol, the EU's law enforcement agency and Eurojust, the EU's Judicial Cooperation Unit, estimate the minimum costs of fighting organised crime at EU level amount to €210 million a year.

To efficiently tackle ML the EU has stepped up cooperation with civil society, including non-governmental organisations (NGOs). NGOs are engaged as collectors of relevant information on illicit activities, and in developing standards and implementing anti-ML rules. At the same time, however, NGOs are considered 'subjects at risk' in the ML framework, either as fronts for terrorist organisations that raise and transfer funds, or as legitimate enterprises that indirectly support the aims of terrorist organisations.

This double-sided position for NGOs may impact on the efficacy of the measures currently in place at EU and international level to certify their transparency and accountability. NGOs, in turn, see such attempts to regulate their activities as a threat to their independence, and thus occasionally resist them.



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Glossary

Money laundering: the conversion of the proceeds of criminal activity into apparently clean funds, usually via the financial system. This is done by disguising the sources of the money, changing its form, or moving the funds to a place where they are less likely to attract attention.

Terrorism financing: the provision or collection of funds, by any means, directly or indirectly, with the intention or in the knowledge that they would be used to carry out terrorist offences.

Source: [European Commission](#).

Budgetary Impact of organised crime and money laundering

The International Monetary Fund (IMF) estimates the annual costs of money laundering (ML)¹ and underlying serious crime at **between 2 and 5 per cent** of global gross domestic product (GDP).² These percentages – calculates the IMF – would indicate that ML ranges between US\$590 billion and US\$1.5 trillion.³

New cases of illicit use of money come to light almost every day around the world, often hitting the headlines. In February 2015, the International Consortium of Investigative Journalism reported a number of [alleged attempts to evade tax by concealing funds](#) in Swiss banks. Since January 2015 the New York Times has been publishing a [series of reports](#) on shell companies buying high-value properties in New York City, while concealing the identity of the owners and the sources of their wealth (which, in some cases, is allegedly linked to corruption).

In 2013, Eurostat compiled a report on ML at European level, identifying nearly 120 000 suspicious transaction reports for the year 2010.

The minimum identifiable direct costs of organised crime in the EU are estimated at **around €166 billion a year**, according to a European Parliament study,⁴ including fraud against EU individuals (€97 billion), human trafficking (€30 billion), fraud against the EU (cigarette smuggling €11.3 billion, VAT fraud €20 billion, agriculture and structural funds €3 billion).

Organised crime and ML require resources to be allocated to tackling them, and engender social costs (indirect costs stemming from the social impact of organised crime, e.g. citizens' loss of confidence in public institutions) across the EU. [Europol](#) (the EU's law enforcement agency) and [Eurojust](#) (the EU's Judicial Cooperation Unit) estimate the minimum costs of fighting organised crime at EU level at **€210 million a year**.

The [European Anti-Fraud Office](#) (OLAF) had running costs amounting to €57.7 million in 2013. Its 2014 work programme included around €8.5 million in grants and project funding to help authorities and organisations fight fraud both inside and outside the EU. Eurojust's 2014 budget was over €32 million, of which €8 million was operational expenditure on organised crime cases. Europol's 2015 budget is €94.43 million, a quarter of which is spent on operational activities (not all related to organised crime).

Money laundering and NGOs

In spite of the increased global importance of ML, and in spite of the increased amount of public money spent to tackle it, **global detection rates** for illicit funds by law enforcement remain low. The United Nations Office on Drugs and Crime (UNODC) estimates them to be as low as [1 per cent for criminal proceeds, with a seizure rate of 0.2 per cent](#).

To address these shortcomings, national governments, international institutions and companies have stepped up efforts to fight ML. According to [KPMG](#), an international consultancy, in 2014 the number of global companies that took an active interest in ML issues had **increased by 26 per cent** since 2011. National regulators have not only made transparency a central issue in the anti-corruption agenda, they have also put industry lobbyists under pressure to disclose their interests, and they have begun to consider public accountability a crucial part of corporate social responsibility. Following calls for closer cooperation to fight ML, governments have strengthened cooperative efforts in two ways: (1) by creating (or merging existing) inter-governmental fora to discuss and approve standards meant to be enforced nationally – the [Financial Action Task Force \(FATF\)](#) and the [Egmont Group](#) being cases in point; and, increasingly, (2) by engaging civil society organisations to help draw up, monitor and enforce anti-ML rules.

Cooperation between the public sector and civil society organisations – and particularly NGOs, amongst the most common type of civil society organisations – is seen as an innovative solution to fighting ML. A few examples can be found at international level. In 2012, UNODC and the [UNCAC Coalition](#), a global network of 350 NGOs operating in over 100 countries, entered into a partnership to train local NGOs to cooperate with governments in Africa to fight corruption and ML. Another example is the [Devex Impact](#) initiative. Sponsored by the US Agency for International Development, this initiative is meant to encourage networking among international institutions, professionals, and NGOs. In doing so, Devex Impact also sponsors initiatives to fight ML and corruption in developing economies.

Increased cooperation with NGOs, however, does not come without risks. In fact, alongside the increased demand for NGOs to play an active role in preventing and tackling ML, concerns are being raised about NGOs as 'subjects at risk' for ML purposes. Such concerns address the **NGOs' potential involvement in terrorism financing**, either as fronts for terrorist organisations that raise funds and transfer money, or as legitimate enterprises that indirectly support the aims of terrorist organisations. This risk was noted for the first time in 1996 by the Group of 7 leading economies (G7), who called for [measures to combat organisations](#) that falsely claimed to have charitable goals and were actually engaged in unlawful activities.

In general, terrorist operations are considered to be less expensive than many other criminal activities (the 9/11 attacks were estimated to cost US\$500 000;⁵ the 7/7 London bombing in 2005 £8 000⁶). However, a terrorist group, like any criminal organisation, needs to build up and maintain financial infrastructure. According to estimates by the US Central Intelligence Agency (CIA), Al-Qaida spent about US\$30 million a year to sustain its activities before 9/11. Thus, demands for increased regulation and financial transparency of NGOs have become **central to counter-terrorism policies**. The stated aim of such demands is to reduce NGOs' vulnerability to abuse by terrorist organisations.

NGOs, however, resist these attempts to introduce binding rules on their financial transparency, since they consider them a threat to their independence and a limit on access to resources.⁷ Further, NGOs insist on being involved in all stages of the decision-making process concerning ML, so that they can help tailor the rules to the needs of civil society.

Partnerships in the EU with NGOs

Information gathering

NGOs play a crucial role in reporting on global corruption, increasing awareness of the extent and impact of corruption, and conducting research and analysis into the causes and potential solutions.

In 2012 the EP released a [study](#) in which the role of NGOs was emphasised as essential to the success of the **233 investigative reports** (over five years) on cases of fraud related to the **misuse of EU funds** within the 27 Member States. This was one reason why in its [resolution](#) of 23 October 2013 on organised crime, corruption and money laundering, the EP called on the Commission to increase the resources allocated to specialised NGOs, media and research.

In its proposal for a [fourth anti-ML directive](#) (close to adoption, see 'Outlook' below), the Commission aims in particular to have NGOs monitored more closely. According to the text, the ultimate owners of companies would have to be listed in central registers in EU countries, accessible to people with a 'legitimate interest', such as investigative journalists, concerned citizens and NGOs. This remains a sensitive matter, however. Giving NGOs access to companies' data may fall foul of national laws protecting privacy.

Standard setting and implementation

NGOs are increasingly involved in drafting and implementing ML rules. Well-known examples of standard setting are provided by the ['Global anti-ML guidelines for private banking'](#)⁸ and the guidance paper drafted by the [Banker's Alliance](#).⁹ Both these sets of guidelines are aimed at tightening the disclosure requirements for private bank accounts. Looking at Europe in particular, Transparency International has developed [Gateway](#), a **corruption measurement tool**, which it uses to prepare global and country-specific reports, along with toolkits, working papers, policy positions and expert answers relating to various aspects of corruption. Similar efforts are undertaken by [Global Integrity](#), the [World Justice Project's Rule of Law Index](#), [Global Witness](#) and the [U4 Anti-Corruption Resource Centre](#) (see box).

A final form of cooperation between NGOs and EU institutions consists of the implementation of anti-ML rules. NGOs' engagement in implementing anti-ML rules may be direct or indirect. One example of the former is the [Financial Transparency Coalition](#) (FTC). As a global network including governments, experts on illicit financial flows, and NGOs, the FTC attempts to use its expertise to influence global norms and standards for financial transparency and promote concrete measures to increase transparency. Since 2014 the FTC launched a campaign to increase transparency in company ownership in the EU.

Indirect involvement, instead, is exemplified by the partnerships between NGOs and companies to improve transparency and accountability. Depending on the type of

NGOs against corruption and ML

- (1) *Global Integrity* – Global Integrity works to increase transparency and accountability at governmental level.
- (2) *Global Witness* – Global Witness campaigns for increased transparency and against corruption of economic players.
- (3) *U4 Anti-Corruption Resource Centre* – The U4 Anti-Corruption Resource Centre assists donor practitioners in addressing corruption challenges through development support.
- (4) *Transparency International* – Transparency International advocates transparency and supports campaigns against corruption in public and private sectors.

partnership, corporations may adopt certification criteria created by NGOs (for example, the nine standards for business transparency developed by the Spanish [Fundacion Lealtad](#)), promote excellence and transparency (such as Price-WaterhouseCoopers' ['Transparency Awards'](#)) or donate to NGOs that promote transparency and accountability.

NGOs and terrorism financing

Alongside efforts to increase the involvement of NGOs in fighting ML, the EU has tightened restrictions and controls on NGOs to guarantee that they are financially accountable and are not used as a vehicle for ML.

Terrorism financing

The **European Commission** has stepped up efforts to enhance transparency in order to prevent and counter terrorism financing (e.g. implementing measures with respect to politically exposed persons and on controls on cash-flows, or by enhancing cooperation between financial intelligence units of member states).¹⁰ This topic was first addressed in 1989, when the G7 Summit set up a task force, the FATF, to propose measures to combat ML. The European Commission is a FATF member. In 1990, the FATF released the first set of 'special recommendations', known as '[the 40 Recommendations](#)', for addressing ML. The recommendations were revised in 1996 (to take account of changes in money laundering trends and to anticipate potential future threats), then again in 2003 and in 2012 with a stronger framework to act against criminals and address new threats to the international financial system.

Recommendations V to VIII concern international cooperation, alternative remittance, wire transfers and NGOs. The FATF's [interpretative notes](#) on regulation VIII set out **15 implementation measures** to promote the transparency and integrity of NGOs. Such measures – to be applied proportionately and flexibly, in order to avoid discouraging legitimate charitable activities – include:

- publishing information on their purposes and activities, as well as those of the people who direct them;
- publishing, annually, a financial statement with detailed information on income and expenditure;
- keeping a record of all domestic and international transactions, and making them available for public authorities to verify that funds were spent in a manner consistent with the purposes and objectives of the organisation;
- taking steps to confirm the identity, credentials and good standing of their donors as well as those of their associates.

Additional measures on financial transparency are set out in the FATF's [International best practices](#) on 'Combating the abuse of Non-profit organisations' and the FATF's [Handbook for Countries and Assessors](#) on evaluation and assessment. Both documents explain how oversight mechanisms on NGOs' fiscal transparency should work, and how coordination of international policies and government bodies involved in combating terrorism financing should be enhanced.

EU regulations on money laundering

Other rules concerning the role of NGOs within the ML framework are set out in EU legislation. The first Directive on ML dates back to 1991, and was aimed at preventing a free and open financial market (that at the time was created by EU rules on free movement of capital and the liberalisation of banking, insurance, and

investment services) from being abused by criminals. Anti-ML rules are currently set out in [Directive 2005/60/EC](#), which entered into force in 2005.¹¹

A broader set of legislative measures complete the European anti-ML normative framework. These include [Directive 2006/70](#) on 'politically exposed persons' and simplified customer due diligence; [Regulations 1781/2006](#) and [1889/2005](#) dealing with traceability of funds and controls of cash; and [Council Decision of 17 October 2000](#) concerning arrangements for cooperation between the financial intelligence units of the Member States on sharing information.

Article 18 of Regulation 1781/2006, in particular, allows Member States to **exempt payment service providers situated in their territory from the obligations set out in the directive, if the funds go to non-profit actors (including NGOs)**. However, a number of caveats apply: the maximum amount per transfer is set at €150, and beneficiaries must comply with obligations to undergo external auditing and supervision by national authorities.

EU Financial Regulation

A number of provisions in the EU's Financial Regulation (FR) deal with the issue of ML. To begin with, Article 58 of the FR explicitly includes the fight against ML among the principles informing the regulations. The relevant rules are explained with reference to two different forms of expenditure.

Article 140 of the FR contains the principles and conditions applicable to financial instruments. Point 4 of this article makes explicit reference to prevention of ML for the entities that are entrusted with EU budget implementation tasks. These entities – when entrusted under the 'indirect management' provisions – may include 'bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees' (Article 58(1)(c)(vi)).

The obligation to prevent ML may be direct or indirect. In the former case, the entities above

(together with all financial intermediaries selected to participate in the execution of financial operations under a financial instrument) must comply with relevant standards and applicable legislation on the prevention of ML, the fight against terrorism and tax fraud. Article 140 of the FR also includes an **indirect obligation** to respect rules on prevention of ML. The entities mentioned above 'shall not be established, and shall not maintain business relations with entities incorporated, in territories whose jurisdictions do not cooperate with the Union in relation to the application of the internationally agreed tax standard and shall transpose such requirements in their contracts with the selected financial intermediaries'.

Article 106(1)(e) of the FR excludes from participation in **procurement procedures** candidates or tenderers who 'have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests'.

Implementation of the EU budget

According to Article 58 of the FR, the Commission shall implement the EU budget in three ways:

- (1) *Direct management* – managed directly by the Commission's departments (including executive agencies);
- (2) *Shared management* – management shared with Member States;
- (3) *Indirect management* – budget implementation tasks are entrusted to third entities, of both a public and private nature.

Finally, Article 141(d) of the Implementing Rules of the FR underlines that ML is to be considered among the illegal activities detrimental to the EU's financial interests, and refers to the definition of ML given in Article 1 of Directive 2005/60/EC.

Outlook

To define precisely the role NGOs play in the anti-ML framework is a complex task. Efforts to engage NGOs in tackling ML parallel – and at times run counter to – the demand to tighten controls on their transparency and financial accountability. To make things more complex, there is no one-size-fits-all approach to certifying the financial transparency of NGOs. Consequently, the efficacy of the measures currently in place to certify NGOs' transparency and accountability is debated. A [study](#) produced for the European Commission in 2008 to assess the extent of abuse of non-profit organisations for financial-criminal purposes at EU level reported only limited abuses. In 2009, a [report](#) from the UN Counter Terrorism Implementation Task Force advised governments to avoid ideological approaches to monitoring NGOs' activities, since these would do more harm than good. A [2010 World Bank working paper](#) demonstrated the dearth of examples of national regulations that had resulted in detecting or deterring cases of terrorism financing.

A [fourth anti-ML directive](#) is currently close to being finalised, following agreement in trilogue in December. The new directive would for the first time oblige Member States to keep central registers of information on the ultimate 'beneficial' owners of corporate and other legal entities. Increased vigilance over suspicious transactions made by clients will be requested of banks, auditors, lawyers, real-estate agents and casinos. On [27 January 2015](#), a joint meeting of the Civil Liberties, Justice and Home Affairs (LIBE) and Economic and Monetary Affairs (ECON) Committees voted in favour of [the text agreed with Council in December](#). On 10 February 2015, the Council approved the text at first reading. Parliament's final vote is expected in the May plenary, allowing adoption in second reading.

A few crucial aspects need to be addressed by the EU to improve the effectiveness of anti-ML rules and fully benefit from the engagement of NGOs:

- **Agreement on a legal definition of NGOs.** The EU lacks a formal definition of NGOs, which are referred to in various ways. This not only frustrates efforts to efficiently regulate NGOs' transparency and fiscal accountability, it also impedes NGOs' attempts at self-regulation.
- **Flexibility and proportionality of the restrictions imposed on NGOs.** The FATF's interpretative guidelines, for instance, stress the importance of proportionate and flexible controls. The 2011 [analysis](#) by the UN Centre on Global Counterterrorism Cooperation also underlines the importance of adopting a case-by-case approach.
- **Consultation of NGOs.** While the EU has promoted consultation as best practice since 2001, it is still only being taken up slowly, not only at national but also at supranational level. For instance, the revised 2008 FATF mandate omitted an obligation to consult with non-financial businesses and professions affected by its standards. Since 2008 the FATF has only included a general commitment to working more closely with the private sector. NGOs criticised their exclusion from important decisions (in October 2010, for instance, when the FATF launched a review of its requirements).
- **Self-regulatory initiatives by NGOs to certify their financial accountability and transparency.** While there is a large number of these initiatives at EU and

international level – in 2009 a [study authored by the European centre of not-for-profit law](#) on behalf of the European Commission identified 140 self-regulatory initiatives from the then 27 EU Member States – they still enjoy little or no recognition by the EU institutions.

Main references

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Endnotes

¹ See European Commission [MEMO](#) 'Frequently asked questions: Anti-Money Laundering', 5.2.2013.

² See M. Camdessus, 'Money laundering: the importance of international countermeasures', address to the Plenary Meeting of the Financial Action Task Force on Money Laundering, Paris, 10 February 1998.

³ See [Money laundering in Europe](#), Eurostat, 2013.

⁴ See [The economic, financial & social impacts of organised crime in the EU](#), EP [study](#), 2013.

⁵ See [Final Report of the National Commission on Terrorist Attacks upon the United States](#), Chapter 5.4.

⁶ See [Report of the Official Account of the Bombings in London on 7th July 2005](#), HC 1087, May 2006, paragraph 63.

⁷ See B. Hayes, 'Counter-Terrorism, "Policy Laundering", and the FATF: Legalizing surveillance, Regulating Civil Society', 14(1), *The International Journal of Not-for-Profit Law*, 2012.

⁸ This was drafted in 2000 by Transparency International in cooperation with the Wolfsberg Group, a group of 12 international banks.

⁹ This is a financial working group organised in 2013 by Thomson Reuters Foundation and the Manhattan District Attorney, including representatives from leading banks and corporations, as well as NGOs.

¹⁰ See European Commission [MEMO](#) 'Frequently asked questions: Anti-Money Laundering', 5.2.2013. See also P. Bakowski, '[Combating money laundering: EU law in an international context](#)', European Parliamentary Research Service, 2012.

¹¹ The Directive introduced simplified and enhanced 'customer due diligence': a preventive system whereby financial institutions and entities (including auditors, lawyers, notaries' accountants, real estate agents and casinos) are required to check the identity of their customers and report suspicious transactions to 'financial intelligence units'.

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