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European Integration and Anti-Money Laundering Cooperation

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ABSTRACT

This paper compares European Union anti-money laundering (AML) efforts with international efforts in scope and intensity through an analysis of the timeline of AML cooperation in Europe from 1980 to 2012, showing the creation or adoption date for relevant organizations and legislation, referred to as actions. The actors include United Nations bodies, the Financial Action Task Force, the Council of Europe, and European Union bodies. This paper also comments on the utility of different European Union (EU) integration theories in explaining the patterns in cooperation. The key finding of this paper is that international AML cooperation operates in waves, with the EU riding, instead of leading, each wave. The realist proposition that cooperation among the member states of the EU is limited to low-risk and high-gain projects best explains this pattern. However, the EU rear-guard position may be due to other factors, such as specific and lengthy legislative processes.

KEYWORDS

Money Laundering, Crime, Integration Theory

Money laundering has important external and internal security implications for states because it aids criminals, benefits terrorists, and drains public and private funds that could otherwise be used for defense or under-funded programs. This paper aims to analyze anti-money laundering institutions in Europe and thus to contribute to the discourse on European Union integration. We would expect to see cooperation among integrated states due to the transnational nature of money laundering, but this paper finds that the EU follows cues from international actors. Mapping out anti-money laundering cooperation in Europe could help determine which European Union integration theories are most useful as tools for explaining EU member state action in this area.

Money laundering helps criminals utilize their ill-gotten gains by making their criminal profits appear legitimate. Increased criminal success endangers internal security and state control. Terrorists and insurgents sometimes disguise their sources of funding, which in turn makes these decentralized groups harder to track. Terrorism is an internal and external security threat. Additionally, money laundering and tax evasion represent a loss of revenue to the state, which may in turn threaten a state's defense budget and capacity, inherently reducing its security.

Globalization has led to an increase in money laundering in the last few decades. As economies and financial systems become more integrated, regulation increasingly pushes this illegal activity offshore instead of eliminating it. Additionally, new technologies of mobile banking have increased the speed and ease of international transactions and can interfere with customer identification demands and regulations. The UN Office on Drugs and Crime makes clear that globalization makes the office's job more difficult.

A number of developments in the international financial system during recent decades have made the three F's—finding, freezing and forfeiting of criminally derived income and assets—all the more difficult. These include the “dollarization” (i.e., the use of the United States dollar in transactions) of black markets, the general trend towards financial deregulation, the progress of the European market and the proliferation of financial secrecy havens (“Money-Laundering and Globalization,” 2013).

Thus, one can extrapolate that as the pace of globalization accelerates, the difficulties in tracking money laundering across the world will also increase. This is especially true with the introduction of virtual currencies such as BitCoin. An official at the Office of Foreign Assets Control (OFAC) recently indicated that agencies such as OFAC find dealing with or regulating virtual currencies increasingly challenging. The official said that since the technology is new, it is hard to find experts on the subject (“Personal Interview with Official of Office of Foreign Assets Control, US Department of Treasury. Washington D.C.,” 2013). However, the official admitted that the focus is still hard currency laundering.

Regions of further integration may feel the effects disproportionately. In Europe, the introduction of the Eurozone, compounded with that of the Schengen zone, has made it easier for criminals and their proceeds to move from state to state, evading justice and/or choosing states with the most lenient regulations. Thus, EU member states have an interest in harmonizing their anti-money laundering (AML) efforts in the region.

LITERATURE REVIEW

The extensive scholarship on European Union integration can be simplified into several groups of theories, notably neo-functionalism, liberal intergovernmentalism (loosely related to neo-liberalism), and bureaucratic path dependency. Realists traditionally have had

less to say on the topic, since they see integration as an ephemeral phenomenon, a reflection of balance of power politics.

Neo-functionalism

Neo-functionalists believe cooperation on any issue is natural when interests converge, no matter where the issue ranks in importance on the agenda. The famous neo-functionalism Ernst Haas claimed that the main drivers of integration were positive spillover, the transfer of domestic allegiances and technocratic automaticity, *not* historical circumstances specific to post-war Europe (Haas, 1958, 1961). Neo-functionalists would expect to see cooperation on money laundering because it represents a spillover from monetary integration. They would see collaboration over money laundering as a driver of integration because it reinforces habits of cooperation.

Bureaucratic Path Dependency

Bureaucratic path dependency theorists such as Karen Alter suggest that although international organizations are created by states, they sometimes take on lives of their own. Alter would highlight how an expanded mandate of the European Union would benefit EU bureaucrats and EU agency missions (Alter, 1998). Thus, she would predict cooperation on money laundering and would see it as a byproduct/evidence of integration, not a driver itself.

Liberal Institutionalism/Intergovernmentalism

Scholars influenced by liberal institutionalism or intergovernmentalism, such as Andrew Moravcsik, believe the main drivers of integration are commercial interests, states' relative bargaining power, and incentives to enhance the credibility of interstate commitments. (Alter, 1998) He would expect cooperation because anti-money-laundering is a commercial interest. Additionally, he would argue that AML collaboration sends a signal that a state is devoted to EU values, which helps reinforce the credibility of future promises.

Realism

Realists see cooperation as a reflection of the balance of power. They would expect the hegemon to coerce cooperation only if it had substantial gains from such actions. In the case of the EU, realists would thus expect Europe to take a lead only if France and Germany, the two backbone countries, had a strong interest in AML cooperation.

The first three theories would predict more AML cooperation in the EU than is seen internationally. Realists would only predict such higher levels of integration if it were apparent that the most powerful players in the EU were disproportionately affected by money laundering.

RESEARCH QUESTION

The first step to testing these theories in the context of anti-money laundering cooperation in Europe requires answering the following two questions:

- 1) How do European Union anti-money laundering efforts compare with international efforts in scope and intensity?
- 2) Does the EU cooperation precede or follow international action?

Most scholars would predict that European AML efforts produce more thorough and

enforceable legislation, and that shared European interests allow member states to go further and faster in their regulation. Neither neo-functionalism, nor intergovernmentalism, nor bureaucratic path dependency theory can adequately explain the conclusion that international AML legislation precedes and is more rigorous than European AML legislation. Although it appears that the realist argument can explain why European states do not go further in this area, future study can tease out the finer points. One limitation of these questions is that the findings do not help determine whether this cooperation is a symptom or driver of European integration. This paper compares regional and international AML cooperation through the range of legislation and agencies with relevant mandates. This, in turn, ignores many of the nuances of de facto political power – not every agency matters, and not every law is followed. However, it is a good place to start.

Explanatory Notes on Action Levels and Legislation Types

For the purposes of this research, actions, such as creating new legislation or a new monitoring body, and actors are divided into international and regional levels. Although these different types of actions have a variable and hard-to-measure impact, in this research, actions are important regardless of their force because any action signals a willingness to “do something” about AML. Differentiating between international and regional levels helps demonstrate which types of forums states prefer to work through. International actors are the United Nations bodies and the Financial Action Task Force. Regional actors are the Council of Europe and the European Union.

The European Union is often discussed as if it is a single, unified actor, especially in the media. However, it is important to note that the EU is a conglomeration of different units and branches with varying missions that compete for resources and influence. The European Council, a summit of the heads of state or government of the member states, directs broad political goals. The Commission, representing the interests of the EU as a whole, proposes binding legislation. The Council of the EU, representing member state government ministers, votes on Commission legislation and produces non-binding agreements. The European Parliament, which represents the people (and reflects their political party choices), also votes on Commission legislation. Even when a binding piece of legislation is passed within EU organs, it is not always ratified and fully implemented within member states. Thus, an “EU law” does not arise from some abstract unified European will.

Additionally, “EU laws” encompass a wide variety of binding and non-binding agreements. The most relevant legislation regarding anti-money laundering efforts include joint actions of the Council of the EU, a framework decision of the Council of the EU, and three directives. The directives were initiated by the European Commission and passed by the European Parliament and the Council of the EU. Before delving into these instruments, a brief explanation the Council of the EU’s role is necessary.

Council of the European Union, European Council, and Council of Europe

The Council of the European Union should not be confused with either the European Council or the Council of Europe. The Council of the European Union, which in this paper will be referred to in short-hand as the Council, is the EU body in which the national ministers from each EU country meet to coordinate policies and adopt laws. The specific minister that attends each meeting is determined by the topic at hand. Thus, the Council of the EU represents the interests of each member state in the field at hand. For example,

when discussing a general economic plan, the economic and finance ministers from each member state would attend. Justice and Interior ministers are responsible for coordinating policy and adopting legislation related to anti-money laundering and countering the finance of terrorism (AML/CFT) (Moravcsik, 1998). The Council of the EU can be thought of as “multiple councils.”

The European Council is essentially a forum for the heads of state or government of the member states to decide broad political priorities and to address matters too sensitive to leave to lower-level ministers. However, the European Council has no power to pass laws.

The Council of Europe is *not* a body of the European Union. The Council of Europe, which in this paper will be referred to in shorthand as the CoE, is a separate organization with a more inclusive membership that aims to promote cooperation and shared values across the European continent. The Council of Europe has a separate set of conventions and standard-setting bodies that will be addressed later in the paper.

The Council of the EU approves the budget, a powerful tool, but does not have the right to initiate legislation. The relevant minister from the country who holds the presidency of the EU chairs the different Council meetings. An exception is made for the foreign ministers council, whose permanent chairperson is the EU’s High Representative for Foreign and Security Policy. Although the chairperson does not receive special voting rights, he or she can still guide the policy agenda. The current High Representative is Baroness Catherine Ashton (UK). She assumed office on December 1, 2009, and will hold the position through October 31, 2014. Italy will hold the current six-month presidency until Latvia takes over in January 2015. Given the limits of such a brief term, the idea of trios was formally put forward in 2007. Trios are three countries that hold successive terms that can collaborate and discuss common goals to accomplish throughout the 18-month period in which one of them holds the presidency. Currently, Italy is collaborating with Latvia and Luxembourg. Future research could examine the role of particular presidencies as active or passive promoters of AML cooperation.

FINDINGS

Table 1 summarizes the timeline of anti-money-laundering cooperation in Europe from 1980 to 2012, showing the creation or adoption date for relevant organizations and legislation. These may also be referred to as “actions” in this paper. The color-coding refers to the type of actor, or the “action-level”. Light blue refers to United Nations (UN) bodies, yellow refers to the Financial Action Task Force (FATF), green refers to the Council of Europe (CoE), and dark blue refers to European Union (EU) bodies. The actions have been grouped roughly according to their time of adoption. These groupings have important defining characteristics that will be articulated shortly.

Table 1 Timeline of anti-money-laundering actions in Europe		
Group	Adopted	Action: Organization or Legislation
A	6/27/80	CoE Recommendation on measures against the transfer and safekeeping of funds of criminal origin
	12/20/88	UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
B	7/16/89	FATF Created
	4/1/90	FATF publishes first 40 Recommendations
	11/8/90	CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)
	6/10/91	EU Council Directive 91/308/EEC on the Prevention of the Use of the Financial System for the Purpose of Money Laundering
	1996	FATF revises 40 Recommendations
C	1997	UN Office on Drugs and Crime founds the Law Enforcement, Organized Crime, and Anti-Money-Laundering Unit
	9/97	CoE launches MONEYVAL
	12/5/97	Joint Action 97/827/JHA: Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at the national level of international undertakings in the fight against organized crime
	1998	UNODC Law Enforcement, Organized Crime, and Anti-Money-Laundering Unit Expanded
D	1998	UNODC Law Enforcement, Organized Crime, and Anti-Money-Laundering Unit launches the International Money-Laundering Information Network (IMoLIN)
	3/19/98	98/245/JHA Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone programme)
	6/29/98	98/428/JHA Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network
	12/3/98	EU 98/699/JHA: Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime
	11/15/99	UN Convention against Transnational Organized Crime
E	12/9/99	UN Convention for the Suppression of the Financing of Terrorism
	12/4/00	UN Convention against Corruption is called for
	9/28/01	UNSC Resolution 1373, requiring criminalization of terrorism-related activities
F	10/01	FATF revises 40 recommendations, adding 8 more
	12/4/01	Directive 2001/97/EC of the European Parliament and of the Council amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering
	10/31/03	UN Convention on Corruption is adopted
G	10/04	FATF revises Recommendations, now 40+9
	2004	UNODC re-launches IMoLIN
	7/29/05	UNSC Resolution 1617, strongly urging implementation of FATF 40+9
	12/1/05	UNODC and IMF Model-Legislation on Money-Laundering and Financing of Terrorism published
	5/16/05	CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198)
	10/26/05	EU Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
	9/8/06	United Nations Global Counter-Terrorism Strategy launched: Resolution 60/288 and Annexed Plan of Action
H	3/11/08	Directive 2008/20/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as regards the implementing powers conferred on the Commission
	4/09	UNODC and IMF Model Legislation on Money-Laundering and Financing of Terrorism is revised
	10/13/10	CoE MONEYVAL revised and becomes independent
	2012	FATF 40+9 Recommendations revised

Note:
CoE = Council of Europe (green)
UN = United Nations (light blue)
EU = European Union (dark blue)
FATF = Financial Action Task Force (yellow)
MONEYVAL = Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
UNODC = United Nations Office on Drugs and Crime
UNSC = United Nations Security Council
IMF = International Monetary Fund

Source: Author

Table 1. Timeline of anti-money-laundering actions in Europe

Group A consists of only one action, the Council of Europe's Recommendation on measures against the transfer and safekeeping of funds of criminal origin in 1980. This

recommendation is not included in Group B because it comes eight years before the next action. Although it is an important underpinning of the actions to come, it is in a distinct time category and does not appear to directly precipitate immediate action. However, it is important to note that the Council of Europe did play a role early in the process.

Group B consists of the series of actions from 1998 to 1991 that can be characterized as the first wave of anti-money-laundering collaboration. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in 1988, appears to have precipitated several important actions. First, the Financial Action Task Force was created in 1989, and published its first 40 Recommendations, global standards to combat money laundering. In the same year, the Council of Europe pushed through a major Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141), known as the Strasbourg Convention. It is not clear whether the Financial Action Task Force or the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances prompted the Council of Europe Strasbourg Convention. Yet it is clear that the EU was not a leader in this group. European Union bodies were the last to act, three years after the UN Convention and several months after the FATF and CoE actions.

Group C, from 1996–1997, includes the revision of the Financial Action Task Force recommendations and the subsequent creation of new AML units. The United Nations Office on Drugs and Crime founded the Law Enforcement, Organized Crime, and Anti-Money-Laundering Unit in 1997. In September of the same year, the Council of Europe launched their Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, now known as MONEYVAL. In December, the European Union followed with a joint action that created a simple mechanism for evaluating the application and implementation at the national level of international undertakings in the fight against organized crime. A joint action of the Council of the EU is a coordinated action of the states involving the deployment of resources to achieve a specific objective. The fact that the Council of the EU passed this joint action is evidence that the foreign policy ministers of member states had AML on their minds. However, the passing of a joint action is not as significant a collaborative accomplishment as is the creation of a new directive, for example.

Group D shows the expansion and implementation of AML practices throughout 1998. The cut-off point between group C and D is not as obvious as the dividing line between group B and C. The former groups are only separated by several months, whereas groups B and C are separated by five years. However, analyzing the actions that take place in 1996 through 1998 as two waves is justifiable because group C sees the creation of new units, whereas group D largely consists of less significant actions. As explained above, Joint Actions are not as much of a leading step as Directives. The EU is one of the only actors in this period, but it seems to be reacting to earlier actions. The Joint Actions refer specifically to the FATF 40 Recommendations from 1996 as a reason for their existence. All in all, the source of momentum during this time period is unclear. It appears to be a period of expansion and implementation rather than innovation.

Group E, from 1999–2000, consists of a wave of new UN conventions. The fact that the adoption dates of the UN Convention against Transnational Organized Crime and the UN convention for the Suppression of the Financing of Terrorism are less than a month apart demonstrates that there was a strong push within the United Nations for progress on transnational criminal issues at the time. Additionally, although the United Nations Con-

vention against Corruption was not adopted until October 2003, drafting for it began less than a year after the other two conventions were adopted. If one looks back at group D, one sees that the EU Joint Actions round takes place in the year preceding these UN conventions. However, one cannot infer that the EU joint actions precipitated the UN conventions. A small measure such as a joint action is specific and does not have the visionary power to inspire a large convention. The UN leads Group E, in 1999 and 2000.

Group F shows the post-9/11 shift in emphasis from countering organized crime to countering the finance of terrorism (CFT). Although there is a short gap in time between the group E and F, there is a major shift in the type of legislation that indicates that there are two distinct waves of action from 1999 through 2001. The role of the September 11 attacks in 2001 cannot be ignored. The UN Security Council (UNSC) passed Resolution 1373 on September 28, 2001, which requires the criminalization of terrorism-related activities, including the financing of terrorism through money laundering. Although a UNSC resolution does not require the same breadth of support as a UN convention, Resolution 1373 shows that the Security Council came to a consensus, no small feat. A month after Resolution 1373, the Financial Action Task Force substantially revised its recommendations to add eight more. Then, in December, the EU adopted Directive 2001/97/EC. This Directive amended Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering. Although a new directive shows that the EU is interested in AML, this move was a response to the new FATF 40 + 8 Recommendations.

Group G shows a flurry of activity as the FATF revised its recommendations to become the 40 + 9, and, subsequently, the other organizations swiftly revised their own legislation, especially after the United Nations Office on Drugs and Crime (UNODC) published its model legislation. The UN is the most active actor during this period. The Security Council passed Resolution 1617, the UN Office on Drugs and Crime re-launched its research resource, The International Money Laundering Information Network (IMOLIN), and the UNODC published the model legislation. However, UNSC Resolution 1617 strongly urges the implementation of FATF 40+9, so it is unclear which body was the true instigator behind the scenes. Either way, the push came from the international, not regional, bodies. The Council of Europe revised its 1990 Strasbourg Convention with the express purpose of integrating the FATF 40+9, as opposed to creating a new innovative piece of legislation to combat money laundering, for example.

Finally, group H is the least coherent group. The actions are spread apart and seem to be diverging, but the purpose may become clearer in the next few years. The EU passed Directive 2008/20/EC amending the implementing powers of the Commission related to Directive 2005/60/EC from three years earlier. The UNODC revised its model legislation. In 2010, the Council of Europe revised the mandate of The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MON-EYVAL) to turn it into an independent agency to monitor implementation of AML best practices and legislation. Finally, in 2012, the Financial Action Task Force revised its 40 + 9 Recommendations. Although the pattern of action or goal is as yet indiscernible, it is clear that anti-money-laundering action and cooperation continue to be important today.

CONCLUSIONS AND FUTURE STUDY

Conclusions

Table 2			
<i>Group Leaders of Anti-Money-Laundering Action Waves</i>			
<u>Group</u>	<u>Date</u>	<u>Pattern of Action</u>	<u>Leader</u>
A	1980	CoE Basis of AML	Council of Europe
B	1988-1991	Basis of AML Legislation	UN or FATF
C	1996-1997	New Units	FATF
D	1998	Expansion and Implementation	Unclear
E	1999-2000	New Conventions	UN
F	Late 2001	Post 9/11 shift to CFT	UN
G	2004-2006	40+9 and Revisions	FATF or UN
H	2008-2012	Unclear	Unclear
<i>Note:</i> UN = United Nations FATF = Financial Action Task Force			

Source: Author

Table 2. Group Leaders of Action Waves

In table 2, one can see that the “leader” for a pattern of action within each group is overwhelmingly an international actor, whether the United Nations or the Financial Action Task Force. Although the precise mechanisms of leadership are debatable, it seems evident that the EU comes towards the rear of the pack. The data points to three main conclusions.

- 1) The leader may not be clear or constant, but the EU follows international cues.
- 2) The Council of Europe is least active, but its actions are significant.
- 3) The UN and the FATF seem to lead the way most of the time, although it is unclear which is more important.

First, cooperation across the globe appears to operate in waves, with the EU riding, instead of leading, each wave. This may support the realist proposition that EU member states would not cooperate heavily on anti-money-laundering, or at least not devote special resources to lead the way. It is important to note, however, that the EU rear-guard position may be due to other factors, such as specific and lengthy legislative processes. A closer look at the initial informal conversations surrounding each action is needed to identify the ideological impetus for each action. It is possible that EU bodies or leaders could have initiated the actions, but codification took so long that international bodies were able to draft legislation more quickly. This could apply in the case of the Financial Action Task Force, which has fewer internal political battles. However, much EU legislation explicitly references FATF guidelines. Additionally, it seems unlikely that the 193 member states of the UN agree upon and implement policy more quickly than the EU’s 28 member states. Although the binding quality of EU legislation raises the stakes, the EU member states have

the advantage of relative homogeneity (compared to the UN).

Second, the Council of Europe acts infrequently, but its actions are significant. The CoE published the first recommendation dealing with illegal flows of money across borders. The Council also passed a convention on the proceeds from crime in 1990, and launched MONEYVAL in 1997. However, it only has two actions since 2000 – a new convention on money laundering and the launching of MONEYVAL.

Third, international actors tend to lead the way. The UN and the FATF have the most influence, although it is unclear which is more important. The late 1980s saw the creation of the basis of most AML legislation, with UN and FATF leadership. Then, new units were created under FATF leadership. The UN led a wave of new AML conventions in 1999–2000, and then another wave post 9/11 that shifted the focus to countering the finance of terrorism. Finally, from 2004–2006, the FATF and UN lead the way with the 40+9 and other revisions.

Future Study

To see whether legislation reflects European power politics, further research should compare the voting power of EU member states to the rigor of their domestic AML legislation, since this reflects the importance they give the issue. The model legislation provided by the UN Office of Drugs and Crime and the International Monetary Fund would serve as an important baseline for structure and content. An interesting question to pursue would be whether powerful states are disproportionately affected by money laundering.

A closer look at the timing and political rhetoric surrounding each cooperative breakthrough may provide better information. This would require a detailed content analysis of each piece of legislation. It might also be well served by an accompanying analysis of the political goals of the sponsoring institution at the time.

Distinguishing between “major” and “minor” actions would add further nuance. Major actions require broad consensus and commitment. Small branches of an organization might commit a minor action without the support of the full organization. For example, the Law Enforcement, Organized Crime, and Anti-Money-Laundering Unit could start a new peer-review program, but this does not carry the same weight as a United Nations Convention approved by the General Assembly and the Security Council. Further research could explore whether major actions create a ripple effect among other organizations by sparking major or minor actions within those other organizations.

Future projects should attempt to quantify the importance of legislation and agencies. Legislation can also be measured in the frequency of revision and proportion of implementation among signatories. Agencies can be compared by size, ability to enforce, and budget, all of which reflect the importance member states place in them.

AUTHOR'S NOTES

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