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PROMOTING GREATER COOPERATION IN THE FIGHT AGAINST MONEY LAUNDERING

Emile van der Does de Willebois, Lead Financial Sector Specialist and Global Lead for Financial Market Integrity at The World Bank and Che Sidanius, Refinitiv's Global Head of Financial Crime Regulation and Industry Affairs discuss what can be done to promote greater cooperation in the fight against money laundering.

The disparity between the amount of suspicious activity reports (SARs) that are submitted by financial institutions versus the amount of money that is actually recouped is formidable. According to a [2017 special report](#) from The Future of Financial Sharing program, it was forecast that over two million SARs were submitted in the US and nearly half a million SARs were forecast in the UK, yet less than 1% of criminal funds were frozen or confiscated.

A major component of the failure to recoup funds and effectively fight financial crime is the lack of coordination between banks and financial institutions, regulators, and law enforcement. In his position as Lead Financial Sector Specialist and Global Lead for Financial Market Integrity at The World Bank, it is a challenge that Emile van der Does de Willebois, sees only too often. Che Sidanius, Refinitiv's Global Head of Financial Crime Regulation and Industry Affairs, spoke with Emile to get his thoughts on what can be done to increase collaboration between entities that contend with financial criminals on a regular basis.

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Emile van der Does de Willebois, The World Bank

CHE SIDANIUS: We all know that financial crime is a global phenomenon. For your viewpoint, what do we need to do to make the system more effective? How do we move away from

just talking about it, to much more coordinated and collaborative approaches to tackling financial crime?

EMILE VAN DER DOES DE WILLEBOIS: At the moment international cooperation is not working as smoothly as it could be. Mutual legal assistance particularly is very slow. The process by which countries actually exchange evidence in financial crime cases could be sped up a lot.

It's hard to know how to address it without sacrificing some due process, and that's always the tension. You want to be faithful to the principle of due process, and you want to give defendants their rights. At the same time you realize that some of the cases can go on for decades. Some of the Marcos funds are still being litigated. If you look at how long some of the Nigerian cases are lasting, it's incredible.

At The World Bank, we have an initiative called [Stolen Asset Recovery \(StAR\)](#), jointly with the United Nations Office on Drugs and Crime, and what we do is try and facilitate international cooperation between jurisdictions. Our mission is really to help countries that have been the victims of corruption recoup the proceeds back from financial centers; we help establish relationships and bring them together through what we call "quiet diplomacy". We find that a very useful role for us to play, and we wish we were bigger and had more staff because we see how much there is to do and how many countries lack prior experience in knowing who to call at financial centers when there is an issue.

In the context of that work, we set up what we call case meetings. Let's say you have a big scandal or corruption case in a country involving different other financial centers. We try and bring those different financial centers together to the jurisdiction concerned

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and then set up a multi-day session where we might discuss international mutual legal assistance and facilitate case dialogue. For example, we hosted the [global forum on asset recovery](#) last December in Washington where we had four focus countries (Ukraine, Sri Lanka, Tunisia and Nigeria) discuss their ongoing corruption cases and their efforts to recoup funds from a host of other jurisdictions. Over the course of that forum, we organized over 100 multilateral and bilateral meetings between those four countries and international financial centers.

Just in the last year we've seen new networks of asset recovery started in the Caribbean and Central Asia, as well as the growth of ongoing larger networks like that [Caribbean Asset Recovery Interagency Network](#) and others. More and more is being done.

SIDANIUS: One of the things that we're seeing is a shift in recognition that the current anti-money laundering regime is really not working. We see in some jurisdictions (for instance, in the US according to a UN report) that the growth of illicit proceeds is increasing exponentially. From your perspective, what trends are you seeing in illicit banking sector abuse and in particular trends that politically exposed persons (PEPs) are using? Is there anything you can share in terms of your experience?

VAN DER DOES DE WILLEBOIS: If you see how much illicit money flows annually in the financial system (by the smallest estimate it's in the \$20 billion range, but many estimate that it's much, much more than that) and see that only a fraction of a fraction of that amount is being recouped, you have to wonder if criminals are truly concerned about being caught. Yes, there are some big investigations going on as we speak, but the overwhelming range of criminal activities leave one to conclude that the vast majority of financial criminals are getting away scot-free.

Within the [Financial Action Task Force](#) (FATF, the standard setter on anti-money laundering) and other international dialogues on this topic, we have debates on whether or not, as law enforcement changes its tactics, bad actors change their tactics, too. I think to some degree it's true that illicit actors change their behavior in accordance to what law enforcement is using. When you look at some of the big scandals involving the use of shell companies, investments in real estate and planes and luxury goods, etc., I think it's emblematic of how corrupt officials are still operating now in much the same way as how they have been operating for many years. I'm not sure that we see much of a change or that they're constantly changing their ways. And considering how little is being confiscated and the relative impunity, why would they change tactic?

One caveat is around virtual currencies and anonymous transfer of value. The jury seems to be very much out on that. We have certain jurisdictions that say, "If we look at these deals being done in drugs or in weapons, so much is now using virtual currency that makes it harder to trace. We have to clamp down on the virtual currency exchanges to be able to get relevant information." Whereas you have others who say, "Well, yes we see a bit of it, but it tends to be fairly marginal and the vast majority are still just going through the banking system as before and using big bank accounts and big investments like they did 10 to 20 years ago."

I could imagine that there is a lot that we're not seeing yet simply because the expertise hasn't been built on the law enforcement side to be able to track that adequately. The few law enforcement officials who are doing that are saying, "The reason we're not finding more of it is because we're not equipped to look for it, but there would be more." I can't assert either side of that, but I do have a question as to whether there isn't much more going through virtual currencies than we know.

SIDANIUS: Turning our attention to your experience on some of the good practices that you see in banks and corporates: what do you see to be effective in the use of technology or other practices that go a long way towards tackling financial crime?

VAN DER DOES DE WILLEBOIS: The [Joint Money Laundering Intelligence Taskforce](#) (JMLIT) that the British have put in place is effective, and I think you'll see many more countries follow suit. That is something you can do in countries that have a great rule of law tradition, where we know that due process will be followed.

I think having those types of task forces is a great idea. Of course, it is open to abuse. I'm not advocating the opening of all the bank account registers to autocratic states that would use that as a means to target undesirable political opponents. It's something you need to be very careful of, and I think it's a debate that we should be having at the global level on anti-money laundering and terror financing.

When we do an evaluation according to the FATF standards, we look at very technical high-level details. We should also be a bit more cognizant about what the conditions are under such a system, which is ultimately a system that provides the government with a lot more financial information on its citizens. It's a good thing if you're targeting organized financial crime, but you need to have conditions in place to make sure that it's not abused. I think in some cases, certain parts of the anti-money laundering framework are being abused very badly.

For instance, look at [FATF's Recommendation 8 on nonprofit organizations](#). There is this idea that non-profit organizations are especially vulnerable to terrorist financing, and therefore governments should get a lot more information on these organizations. Under certain circumstances it is true, and we have seen the fly-by-night operations that claim to be gathering funds for Syrian orphans and widows, but in fact are sponsoring the next attack. You need to be on your guard, but that doesn't mean you can subject the whole nonprofit sector to the measures that some countries are using - ostensibly saying that they just want to comply with the global anti-money laundering framework whereas in fact what they're doing is cracking down on civil society and using these rules to do that.

It is necessary to have a debate at the global level of what conditions need to be in place before you can have an effective anti-money laundering framework. It's a debate we're not having enough. The previous round of evaluations by FATF were more focused on technical compliance and getting the laws on the books. Now the idea is on really looking at effectiveness and asking questions such as, "How much money are you confiscating? How many people are locking up? Do you see a change in behavior when it comes to crime? Do you see crime going down? Are you being effective?"

We wanted to have that debate. That was the idea behind the methodology. However, I'm not sure we've really succeeded in that. We're very quickly gone back to having a discussion about technical details and what the letter of the law really means, which is a discussion we're all comfortable with because we've been having it for the 15 years.

But having the bigger discussion about what such-and-such country is really achieving on this front is something we haven't become very good at yet. I think FATF's attempt to do it was right, and I think the tools are there if you look at the methodology for evaluation, but it's not yet being applied properly. We're going back to these monstrous reports of 200-300 pages which quite frankly I don't think anyone ever reads.

By the end of the last run we were at 500 or 600 pages for some countries, and that's just absurd. The whole idea was that we were going to condense it and have less technical discussion, and instead have more of a discussion on the fundamentals. Asking the question, "What is this system really achieving?" We're not having that debate, and that's a shame.

I think that, provided the conditions are there, closer cooperation between financial institutions and law enforcement is something that is certainly yielding results. There are joint task force initiatives within [Eurojust](#) and [Europol](#) to facilitate flows of

information which are great and seem to be increasing needed dialogue. I think also in the context of practitioner networks such as the Camden Asset Recovery Interagency Network (CARIN) and similar regional networks and also within the Egmont group (worldwide organization of FIUs) the number of operationally focused initiatives is growing, and that's a good thing.

SIDANIUS: Do you think that there is something in the regulatory or legal framework that needs to be addressed, or are there other anti-bribe or anti-corruption laws that you think need to be furthered or strengthened to make the system more effective as far as tackling criminal activities?

VAN DER DOES DE WILLEBOIS: One of the aspects that FATF evaluations consistently show as an area where countries are underperforming has to do with the non-financials, the so-called Designated Non-financial Businesses and Professions (DNFBPs).

Don't get me wrong, I still think there is a lot to be done on the banking side and on the financial institutions side. I've every reason to believe that they're taking it much more seriously than they were previously; if you just look at the growth of compliance and certainly in most tier-one banks, it's extraordinary how that has translated into a 200-300% increase in staff over the last couple of years. I'm not sure that that means, however, that the flows through those banks are necessarily being stemmed. The whole discussion of what is going through correspondent banking channels and what the liability is for a correspondent bank for moneys that goes through its system is a fascinating one, and I don't think we've solved that yet. I do think that if you talk about compliance and what banks are doing, they certainly have upped their game. They've upped their game in North America and in Europe, but I think they've also upped their game globally.

The DNFBPs (particularly lawyers, accountants and tax advisors) however, who, according to anti-money laundering provisions, should be obliged to conduct due diligence and file suspicious transaction reports are clearly not coming on board to the same degree. In some countries in Europe you see a bit of an improvement in that. Here in my own jurisdiction in the Netherlands, you do see that real estate agents and notaries who are by law involved in any transfer of real estate are increasing their suspicious transaction reports. It's very useful information if you talk to the people dealing with that. But globally (particularly the lawyers), the DNFBPs are not being subjected to anti-money laundering obligations to the same extent.

I think there is a whole area of service providers that handle illicit proceeds (such as lawyers and tax advisors) who can be useful sources of information for anti-money laundering purposes that we're not tapping. These are people who either perform in an

advisory role to illicit actors or who handle the actual investment of illicit funds (such as real estate agents involved in real estate purchases). That's something that we should be paying more attention to.

At the moment we're working on a publication on using insolvency procedures to go after bad actors and recover illicit funds. We have already published a book called [Public Wrongs, Private Actions](#) which focuses on using civil remedies to go after illicit actors. In using that you can target not just the principals in a big corruption case (the ex-presidents or the ministers), but also those with much deeper pockets - for instance, the banks that have facilitated the flow of funds or the lawyers or other advisers who have played an accessory role in the process. Looking at other ways of going after bad actors is useful and is a discussion we're having now.

Another recent development that we've seen in France and in Spain for instance is with civil society organizations (CSOs) holding others accountable. In France you had two CSOs - Transparency International and Sherpa - taking the leaders of several Central African nations to court. As organizations whose statutory aims are to fight corruption, they were found to have standing, and that is a great leap forward. The mere fact of an allegation of corruption gives an organization whose statutory aim is fighting corruption, the right to take alleged perpetrators to court. You do not need to show a direct (monetary) interest. The court ruled that the CSOs had standing and could take action to hold these people accountable.

I think situations like that have considerably enlarged the scope of the playing field, due to the number of people who can take action in response to a country perpetrating large scale corruption and investing that in the West. I think that's very helpful. It's very much the beginning. We don't know whether the same would hold in common law countries (for instance in the UK or the US), but if other parts of the world can follow suit, that would be something I'd see as very helpful.

Do you see crime going down? Are you being effective?"

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In this role, Emile is responsible for setting and leading the policy dialogue related to the financial markets integrity area on behalf of the Finance, Competitiveness & Innovation Global Practice. Emile, a Dutch national, has been with the Bank since 2004, providing policy advice to countries on anti-money laundering, combating the financing of terrorism and asset recovery and building country capacity to conduct financial investigations. Emile specializes in the abuse of legal entities, beneficial ownership issues and the use of non-profit entities for terrorist purposes. Previously he was with the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia, and in private practice, specializing in banking and securities law. Emile holds degrees in Philosophy and Law from Leiden University.

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