

# Money laundering policy

## Fears and facts

*Petrus C. van Duyne<sup>1</sup>*

### Pretensions and expectations

It is difficult to argue about the nature of smells. Some of them do not even have names. But one kind of smell has certainly been nominated and changed in our appreciation: the ‘moral smell’ of money. Today the adage ‘money does not smell’ does not apply any more. Now we have all kinds of money smells: the pleasant one of ‘white money’, the somewhat debatable smell of ‘grey’, tax evasion money, the bad odour of drug money and the indisputably repulsive stench of terrorist money. Irrespective of the validity of this metaphor, the issue of ‘dirty’ money, or in legal terms, the ‘proceeds of crime’ and the related money laundering has grown into a policy with global dimensions. In less than ten years we have witnessed radical changes in the penal law systems of all the industrialised countries and beyond. Most countries have established a Financial Intelligence Unit (FIU) or otherwise have taken measures to prevent ending up on the notorious list of the ‘uncooperative countries and territories’, the ‘red card’ system of the Financial Action Task Force (FATF).

With such an important issue, in which so much effort and money is being invested, one would or should expect, in the decade of its existence, a proper knowledge of its nature and extent to have been developed and such knowledge to have been fostered. After all, the FIUs are to be considered *knowledge* centres and the various systems of information exchange are or should be tantamount to the exchange of knowledge. If that expectation is justified, how can this fostered

---

<sup>1</sup> Petrus C. van Duyne is professor of empirical penal science at the University of Tilburg, the Netherlands.

knowledge be addressed and consulted? In the light of the so-called ‘terrorist finances’ this question has become more pressing.

The question about the state of our present knowledge can be dealt with very simply: there is *no* hoard of fostered knowledge. Neither the FATF, the US administration, nor the FIUs have invested in converting the image of threat into a something approaching insight into the phenomenon itself (Van Duyne, 2002). Every member state portrays the laundering phenomenon as a global menace, but none has thought of a multi-country integrated strategic information management system (Van Duyne and De Miranda, 2002; Van Duyne et al., 2001). The inherent opacity of money laundering is matched by lack of unity and transparency on the side of the FIUs, a state of affairs which did not go unnoticed by the Money laundering Experts Group of 1998. However, this awareness has not been translated into any further action thus far.

Albeit there is little empirical knowledge, we should at any rate agree on what money laundering is supposed to mean. However, as is the case with the phrase ‘organised crime’, the substance of a collectively perceived phenomenon is often taken for granted. Is money laundering really as clear a phenomenon as legislators and jurists think it is? That is an important question, because if the phenomenon is ambiguously defined, we cannot determine the volume or extent of this financial threat. Apart from this uncertainty, there still is the (politically) *experienced* threat of the impact of the crime-money. But how does this experience relate to reality? If we want policy makers to take measures which are commensurate with the actual dimensions of the threat, such questions cannot be left unanswered.

## **Delineating the concept**

A good definition functions as a *decision rule*, which determines the circumference of application: it includes or excludes phenomena by allocating them (or not) to the set or class of application. Is there such a decision rule for money laundering? The casual way in which the phrase ‘money laundering’ is used in various contexts suggests that it is a clearly delineated phenomenon, which implies such a solid decision rule. Before answering the question about such a decision rule I will first carry out some semantic and phenomenological analysis.

### *É Semantics and the phenomenon*

Semantically, the meaning of the phrase 'money laundering' hinges on the component 'laundering'. It is alleged that the phrase derives from the habit of the gangster Al Capone of funnelling his ill-gotten gains through laundrettes to construct the pretense of a legitimate income. One can say that this is still the core meaning of money laundering: washing something, in this case 'dirty' or criminally acquired money, until it becomes 'white'. In virtually all European languages one finds this element: 'witwassen' in Dutch, 'waschen' and 'blanchissement' in German and French. In short: 'to whitewash'. This is a metaphor for constructing an apparently legitimate source, thereby legitimising illegal profits. This can be considered a strict or narrow description of money laundering. As long as crime-money has not become clean and 'white', i.e. legitimised, or if there has been no attempt to do so, there is *no* laundering. One may call the handling of the objects hiding, exporting, spending, etc., but not laundering.

The adoption of this narrow phenomenological interpretation of the meaning of laundering leads to a simple and unambiguous definition:

- Laundering is falsely claiming a legitimate source for an illegally acquired advantage. ■

The acts of falsehood may range from simple lies to highly sophisticated administrative constructions. 'Advantage' covers any material possession or (immaterial) right. In this article I will use the short phrase *crime-money*.

This definition of the meaning of laundering abstracts from the person who performs the act. Applied in this abstract form the definition must be considered too broad when it is applied in a penal law context. Should it include the perpetrator of the basic facts if it contravenes other legal interests and principles, particularly the principle of self-incrimination? After all, can we reproach a criminal for making attempts to hide his deeds? As a penal concept it may have to be restricted to the laundering of the criminal advantages of *another* person. The reasons for this restriction will be elaborated in the following sections.

True, this delineation and restricted application leave out a lot of mischief related to the illicit acquisition of advantages, like all forms of hiding, transporting or using the ill-gotten profits. These may be covered by other penal clauses, like complicity or receiving stolen goods. Unfortunately, legislators sometimes behave like fishermen who cannot stand the fact that some fish may escape their nets. This leads to an ever greater widening of the nets of the penal law in order to catch the last remaining fish. From the point of view of a strict law enforcement policy this may be adequate, but it has not only inflated the very meaning of money laundering.

Worse, as we will see, it has also jeopardised *lex certis* and brought us to or even over the brink of self-incrimination.

É *The comprehensive laundry net*

When we look at the ‘mother’ of the laundering definitions, that of the Council of Europe Convention on Laundering of December 1990, we find the elements which are bound to appear in all the consequent laws of the member states that ratified this convention. The definition is a very broad one covering not only the act of ‘making white’ in the strict sense of laundering, but also all the related follow-up activities after the successful perpetration of a predicate crime for profit.<sup>2</sup> The components of the crime of money laundering are described, in chapter II article 6, as:

- É the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
- É the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;
- É the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;
- É participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

The wording of the articles excludes very little and shows considerable overlap with fencing, receiving and handling stolen property. Property or profit from crime (including advantages, such as saved taxes) is redefined as ‘proceeds’ and receiving and handling such proceeds is ‘laundering’. This is extended to any form of hiding, disguising or concealing the identity or the hiding-place of any crime-derived proceeds.

If this is a decision rule, what does it exclude as *non-money* laundering? This question leads to remarkable answers if the penal clause is applied *reflexively* to the perpetrator of the predicate crime, which is what happens in most jurisdictions. This reflexive application implies that the offender who conceals or disguises the true nature, source, location etc. of his proceeds is guilty of laundering. The question

---

<sup>2</sup> The elements of this definition are in their turn derived from the UN convention against illicit trafficking in narcotic drugs and psychotropic substances 1988. Because of its restriction to drug offences some of my comments do not apply to this convention.

is: can the offender after the commission of the predicate crime avoid committing the subsequent crime of laundering? This point has been elaborated elsewhere (Van Duyne, 2002), and the conclusion was that after the illegal acquisition of 'proceeds' only the immediate destruction, giving away or turning oneself in to the police, may prevent someone from laundering. An example may clarify this statement.

A man commits social security fraud. This immediately triggers a chain of consequential offences: tax fraud because of the need to *disguise* the income, and laundering, not only because of the very act of disguising but also because of the act of *using* these proceeds for household expenses. His wife does not escape unscathed either: after all, she benefits from this crime-money. If they are parsimonious spenders and hoard the net savings, that hoarding is also laundering. Most systems of law do allow immediate relatives to avoid incriminating members of their family, which means that the wife can keep silent about the location of the loot. However, if she happens to be just the partner of the offender, whether a thief, fraudster or smuggler, she may have a laundering problem by protecting her friend.<sup>3</sup>

The comprehensive reflexive coverage of the laundering clause is also evident when the proceeds concern stolen objects. For example, the thief having stolen an antique art object, faces the choice between risking exposing himself by *not* disguising the object or committing the laundering offence by hiding it and/or changing its identity. The first choice is tantamount to going to the police or the customs saying: 'I have a stolen picture in the back of my car'. Composing a false document of origin or changing part of its appearance, which is a prerequisite for marketing the object (Conklin, 1994), is laundering too. It does not matter whether someone else composes the false document. Using the document is enough to fulfil the requirements of laundering.

A problem which does not seem to be addressed in the literature on laundering is the issue of making false statements to the police or fiscal authorities during an investigation. Does the suspect commit a laundering offence if he makes a false statement? According to the letter of the Council of Europe convention and many national laws, one has to conclude that lying is laundering. This seems virtually

---

<sup>3</sup> In some jurisdictions the laundering clause only applies to offences mentioned in a list of predicate crimes. Tax crimes may not (yet) be included in all the lists of predicate crimes, though that may be a matter of time. In the Netherlands the (reflexive) laundering clause applies to all crimes.

to amount to enforcing self-incrimination: during the investigation, the offender when being interviewed has a choice between confessing or committing an additional offence (apart from the ‘possession or use of the property’).

I should like to emphasise that these clauses – though intended to combat so-called big crime and big money – have a general application. The student who paints his stolen bike white is literally laundering. The same applies to a car mechanic who changes the identity of a stolen car. Adding the criterion ‘serious crime’ merely dilutes the whole concept. What is serious? Cannabis trafficking, while the international debate on decriminalisation is gathering strength? The illegal traffic in endangered species, depleting our collective natural heritage? (Who cares?) Or the huge savings (also proceeds) due to systematic environmental crime? Using a list of predicate crimes does not solve the problem of definition either, as the description of crimes does not differentiate between ‘serious’ theft or fraud and less serious forms. Moreover, such lists of predicate crimes tend to be extended with every complaint by disappointed law enforcement agencies or politicians, who think the law and its enforcement are not yielding enough.

So we set out with the firm conviction that we know what laundering is. After a brief inspection we observe a blurring of the edges of the concept, which leads to an increasing widening of the legal circle of application.

### *É ‘Canned’ laundering*

The laundering offence can be completely ‘canned’ in the predicate crime if by the very act of committing the crime, the proceeds become automatically ‘white’. This is often the case with documentary fraud, when the false document is at the same time the instrument by which monetary advantage is acquired *and* the tool to disguise the illegality of the act. This applies to most cases of fraud against public funds. For example, submitting a false tax form for the reimbursement of VAT or to receive an EU-subsidy may result in the document’s official endorsement by the tax or EU officer and the subsequent dispatch of the money. With the approval of the document the crime-money is immediately laundered too.<sup>4</sup> Therefore I call this complete overlap ‘canned’ laundering.<sup>5</sup>

When there is such a complete blending of criminal acts, there is a fundamental difficulty of distinguishing them. For the daily practice of prosecution this may

---

<sup>4</sup> Justifying this increased illegal wealth by including this document and the related paperwork of the approving agency implies continued laundering.

<sup>5</sup> The FATF money laundering typology and internal report of the Egmond Group, *FIUs in action* by Blezzard and Koppe (2001) provides numerous examples of the overlap of tax fraud and laundering charges.

not pose great difficulties if the system of law allows alternative charges. However, to determine the nature and extent of the phenomenon of laundering, one ends up with indeterminable and ambiguous statements for the simple reason that there is no clear answer to the question: Where does the circle surrounding money laundering exclude *non*-laundering phenomena?

One may wonder whether this ever broadening extension of the circle of the application of money laundering was intended by legislators. There is no clear answer to this question, because it depends on how various forms of law breaking are valued. There is a global agreement on offences like trafficking prohibited goods, theft, robbery and human trafficking. Tax fraud may create conflicting opinions, because of conflicting interests: it could turn respected tax havens like Liechtenstein into money laundering dens. The handling of illegal party and election funds will certainly create difficulties, even if such transgressions can only be performed by the application of the techniques used by fraudsters and money-launderers. Are the legal monies that are fraudulently funnelled out of the till of a firm to the party chest 'proceeds'? That may be the case if these illegal contributions are connected with illegal tax reductions. It is a challenging thought to consider, from this perspective on laundering, the party financing of the erstwhile Kanzler Kohl, the Elf-company, some of the previously questionable US presidential election funding (Liddick, 2000) or the Dutch Royal Telecom-company's involvement in Czech party funding.<sup>6</sup>

To return to the opening question: has a decade of anti-laundering policy clarified what the phenomenon is? Reviewing the arguments in this section I think the answer is clearly 'no'.

## **Determining the extent**

Uncertainty about the first question has an immediate bearing on the second one: how much laundered money is there? The answer to such a question is very important in relation to the efforts to be deployed. Commercial enterprises need to relate the scale of their investments to the projected yield of such investments. Let us apply such a basic commercial rule to our area. Our targeted yield is crime-money, either confiscated or prevented, and our investments consist of legislation, law enforcement efforts and the costs of legal obligations imposed on third parties,

---

<sup>6</sup> It is interesting to note that virtually *all* major corruption cases in the industrialized world that have been revealed in recent decades, concern not crime-monies from traditional gangsters and the like, but licit funds from 'respectable' firms.

such as financial institutions. What is the extent of money laundering and is there any responsible way of 'tuning' the investments designed to combat it?

The first attempt to estimate the amount of crime-money liable to be laundered was that of the FATF. Methodologically it was a disgraceful undertaking, based on untenable assumptions (Van Duyne, 1994; 2002). I have recalculated the figures contained in the statistical addendum of the FATF-report, which was supposed to be the underpinning of claims that US\$300 billion of drug money were floating around the globe per year (Van Duyne, 1994). The results of the recalculation suggest that this section of the FATF report is no more trustworthy than the bookkeeping of ENRON or Worldcom. Apart from these serious defects, nobody has thus far put forward an economic explanation of how so much money, generated year after year and which is now estimated at US\$1 trillion per year, is laundered and subsequently reinvested in the upperworld without creating a worldwide revolutionary change in property relationships.

Despite all the methodologically well founded reasons to reject the validity of the FATF's quantitative claims, these figures have acquired a life of their own to be inflated with every new politically motivated estimate (Naylor, 1999). If we bear in mind that the circle of the concept of money laundering can be expanded at will, we can look forward to new astronomic figures. As pointed out above, commercial fraud and tax fraud automatically imply acts of money laundering. The same applies to brand piracy, art crime, corruption, embezzlement and environmental or labour safety infringements, if that results in illegal savings. Similarly the proceeds from property crime like theft and burglary may be included in the laundering estimate. Either (using the legal definition) the full value of the loot is considered *potentially* 'launderable' or the value for which it has been 'fenced' is the laundered money. The rate of resale may be determined at will, sometimes at an unrealistically high rate of 50 % (Levi, 1997).<sup>7</sup> Suggestions have also been made to include the Heads of State-embezzlements also in the orbit of money laundering: the billions of Suharto, Mobutu, Abache or Milosović.

As a matter of fact, all these attempted estimations are mere manifestations of muddling for lack of a suitable methodology, strict analysis and proper strategic information management. Van Duyne and De Miranda (1999) have shown that applying proper assumptions to the data could result in a substantial downsizing. In the Dutch case, this would be of the order of 48 %. One may wonder how much

---

<sup>7</sup> As a matter of fact, the same stolen object may create in a sequence of transactions more criminal income and related laundering. A stolen watch of € 100 may be sold for € 20. The fence may sell it for € 60 to a second fence who resells it for € 90. How much has been laundered? € 170, 270 or 70?



the application of a proper methodology to other cases will yield similarly downsized figures.

## **What is the threat?**

The next question to be addressed concerns the supposed threat of money laundering. Any law enforcement policy is based on the protection of an interest. The interest which is supposed to be protected is the *integrity of the financial system*, which should not become corrupted by crime-money. This protection should also be instrumental in the fight against crime. This is usually qualified by adding: ‘Serious and organised crime’.

This threat has provided the justification for far reaching legislation in numerous jurisdictions and legitimised the actions of the democratically unaccountable FATF watchdog. Therefore it is important to examine this threat more closely. The previous section demonstrated that the range of application of the legal concept of laundering is very comprehensive. So is its threat. However, this threat is not an undivided one: it is composed of all sorts of components or ‘sub-threats’, the nature of which may be very different. This difference may be due to the *kind of people* who launder their ill-gotten profits, to the *source* of the money or to what people actually *do* with their money.

There is a bias towards the assumption that the threat comes from criminal, ‘evil’ offenders: bad people are assumed to do bad things with their crime-moneys. Another association connects the wickedness of the source of the money to the wickedness of the offender, who is subsequently supposed to do bad things with his ill-gotten wealth: drug money is supposed to be a bigger threat than fiscal fraud money. But what if the ‘wicked’ offenders spend their crime-money in the ways ‘normal’ tax evading citizens do (or would like to do)? After all, according to the legal definition of the Council of Europe, tax evasion money is crime-money too. Do the billions in drug money corrupt the banks more than the billions from tax evasion? This money is usually not buried as cash in the garden or hidden in mattresses, but is spent in our economy or simply held in bank accounts. However, the role of this tax evasion money in the financial institutions does not differ much from the money derived from normal legitimate income put in bank accounts. The banks do not hoard that money, but loan it to companies and citizens for investment in businesses and mortgages for family houses. The same may apply to drug money: it may be directly be spent on taxed goods or held in foreign bank accounts to be repatriated later for similar consumptive spending.

If we want to answer the general question of the threat and the functioning of the crime-money we must differentiate between the various ways in which the crime-moneys may jeopardise society. Some forms of that threat may be of a higher level than others. The following levels can be differentiated:

### **Levels of criminal money-management**

É *Corruptive permeation*: crime-money enters the veins and nerves of the ‘control rooms’ of the upperworld.

Crime-money enters the fabric of the upperworld through participation in strategic positions which may influence decision making in trade and industry or the administration. Recent examples are Russian banking (Rawlinson, 1996; Burlingame, 1997), Banco Ambrosiano (Cornwell, 1983), BCCI (Adams and Franz, 1992), Banque Crédit Lyonnais: the case of Parretti and Fiorini (d’Aubert, 1993), the findings of the ‘clean hands’ operation: for example, the Craxi case.

É *Criminal upperworld subsidy*

The crime-money is used to establish uneconomic firms or to sustain loss making enterprises. There are two variations:

- An existing *legitimate* loss making enterprise is sustained by money derived from (tax) fraud;
- A new enterprise is legitimately established and maintained for other than rational commercial reasons, like prestige or to provide relatives or friends with a job.
- The sponsoring of sport clubs is also a frequently observed phenomenon. Boxing was often sustained by American mobsters, while in the present tainted figures like the prime-minister of Italy supports AC-Milan.

É *The once only crime-money ‘impulse’*: defusion by integration.

The crime-money is invested in a legitimate firm once only, after which the enterprise is able to function on a commercially rational and legitimate basis. By its full integration in the upperworld order, the crime-money ceases to be a potential threat. Hence the expression, ‘defusion by integration’. As this label is always applied with the ‘wisdom of hindsight’, I can only provide some historical examples: the US robber barons; legitimised rum runners (dad Joe Kennedy). The money returned to drug producing countries may be invested in the local economy and boost the industry. Anderson (1979) also provides examples of such ‘gentrification’ of mafia money in New York.

É *Criminal reinvestment*

The crime-money is reinvested in the offender’s own crime-enterprise for the continuation or expansion of the crime business.

*É Rainy day provisions*

However hectic and hedonistic a criminal's life may be, some may also consider that they will have to retire one day. This may be prepared for by means of normal savings in bank accounts, hoarding or investment, such activities constituting a sort of criminal pension scheme.

*É Life style expenses*

The daily expenses associated with running a household and maintaining a certain lifestyle. This hardly needs explanation.

On the face of it the order of this typology may reflect a decreasing scale of seriousness, though this depends on one's value judgements. For example, the third level represents the perfect laundering operation, one that amounts to a 'defusion' of the threat and a 'gentrification' of the crime-money: after full integration there is only the murky history left. Such a 'happy ending' may nevertheless be considered a moral 'evil', because it amounts to 'absolution without penance'. With corruptive permeation such integration is not achieved, while the threat may be of a deeply rooted and disguised nature. The criminal connection remains in the background and even when well hidden, criminal aims are still pursued by the manipulation of the 'respected' members of society. Maintaining loss-making businesses can hardly qualify as a type of social and economic integration. It requires continuing dependence on crime-money and an on-going laundering process, while it disturbs fair competition and market relationships.<sup>8</sup> Aside from such value judgements it may be more interesting to find out how prevalent these levels of criminal financial management are. I will address this question by surveying the findings of the research projects that have been carried out in the Netherlands.

## **Criminal money-management observed**

In order to obtain insight into the financial management of the crime-entrepreneurs from which the supposed menace to society stems, the National Detective Service of the Dutch police extended the pilot project carried out by the University of Tilburg (Van Eekelen, 2001). Given the results of the latter project the new research

---

<sup>8</sup> This criminal subsidy does not differ essentially from the agricultural subsidy policy of the EU in subsidising loss-making farmers. The difference is that the distortion of fair competition by the EU is far greater and more detrimental to numerous farmers elsewhere, and it is maintained by means of public funds.

project involved selecting cases in which the CID or fiscal police assessed the criminal profit at €450,000 (f1,000,000) at a minimum. The reason for this base line selection is the experience that criminal income below this amount is usually used for daily 'needs', which may not or incompletely be recorded in the criminal files.

From among the 159 criminal recovery cases investigated since 1993 and involving an amount of assessed crime-profit of at least €450,000 (police assessment) 52 cases were selected, comprising 139 suspects and 37 'legal persons'.<sup>9</sup> In 49 cases the police estimated that the illegally obtained profit was more than €450,000. The total sum was €200 million with a median of €2 million. In three cases the fiscal police determined that there was additional tax to be paid of at least €450,000. The highest fiscal additional tax was €134 million, which has not been paid thus far. When more suspects were involved, not all them netted €450,000, though the majority (82) were in this category. In the cases of 15 persons and 15 legal persons the illegal profits could not be determined. The two biggest crime categories concerned drugs and various forms of fraud: 25 and 21 respectively. One case concerned money laundering (or rather channelling the money out of the country) and four cases concerned various crimes like trading in women, hormone swindles, organised car and cargo theft. This division did not differ much from the distribution among the total set of cases involving €450,000 and more comprising the judicial data-base.

In 23 drug cases the offenders were foreigners or members of ethnic minorities from Morocco or Turkey. These minorities were primarily involved in drug trafficking. The Turks mainly trafficked heroin, while the Moroccans were engaged in cannabis, cocaine and heroin alike. Foreigners were also active in 9 other cases. These involved trading in women (Hungarian), excise fraud (Italian mafiosi), investment fraud (Israeli), a mortgage swindle (Surinam), and organised excise and VAT scams (Belgian).

The 22 fraud cases involved 11 fiscal fraud schemes: 9 organised VAT and excise fraud schemes and two corporate tax fraud cases. The 11 remaining cases comprised mortgage and investment fraud schemes, long firm fraud, embezzlement and large scale swindling of diamond dealers and banks. A motley array of crooked entrepreneurs indeed.

From our angle the most interesting aspects of the findings concern the criminal financial management and its potential threat to the underworld. In other words:

---

<sup>9</sup> The Dutch, and many other continental systems of law, differentiate between 'natural persons' and 'legal persons'. In this article we will denote legal entities, like firms, corporations, foundations, associations and so forth using the phrase 'legal person'.

how was the money handled, and subsequently laundered, and what use was made of it in the upperworld.

### *É Handling crime-money*

The routinely made statements of law enforcement agencies is that they are fighting an increasingly sophisticated enemy, particularly in the field of finances. By way of axiom or by simple association it is assumed that sophisticated money-management should therefore reflect *organised* crime (Adamoli, 2001) and the other way round. By implication organised crime is supposed to possess or to hire the skills and the intelligence of ‘facilitators’ to abuse, mislead, corrupt or deceive experts in the upperworld and (it goes without saying) it knows how to operate ‘transnationally’ (not a great feat in the European Union).

Given these assumptions, what did we glean from the criminal files? We first tried to fit the ways in which the offenders handle their crime-money into the usual FATF representation of the phases of laundering, which – with minor variations – is still used today (Van Duyne et al., 2001). For convenience I summarise these as follows:

- *placement*: money is put into the financial system;
- *layering* and ‘*criss-crossing*’: the sum is divided into smaller amounts for smooth handling and criss-crossed between numerous bank accounts;
- *integration*: the smaller amounts must be put together again;
- *justification*: the crime-money must be justified (this is the actual laundering in the narrow sense);
- *embedding*: the money is woven into the upperworld economy.

Though these financial transactions look like successive phases of making the crime-money ‘white’, the process may stop at any phase or earlier phases may be repeated. The actual sequence depends on the nature of the crime-enterprise or the administrative requirements. For example a trader in second hand and stolen goods, who eschews financial institutions, has little to do with financial constructions. He may only have to justify his illegal income, which may (partly) be achieved by means of inflating the turnover of a front firm.

The actual pattern of the handling of the money is represented in table 1.

**Table 1:**  
**The handling of crime-monies: the FATF classification<sup>10</sup>**

	Number of records of handling crime money in the three crime categories <sup>É</sup>		
<i>FATF-categories</i>	Drugs	Fraud and economic crime	Other forms of crime for profit
Cash phase: Placement/ withdrawal	14	5	1
layering/ criss-crossing <sup>§</sup>	—		
integration	2		
justification	12	9	
embedding	21	5	
Total	49	19	1
<sup>É</sup>	The numbers do not represent criminal files or suspects: one or more suspects in a criminal case may perform various money laundering operations.		
<sup>§</sup>	The often mentioned layering-phenomenon was not observed. In two cases forms of disguising the crime-money were observed.		

As the table shows, the number of observations in the files which could be categorized is lower than the number of cases and suspects. This is due to the contents of the criminal files: if a particular behaviour was not mentioned, it was not scored, even if one could assume that it had very probably taken place. Such instances were due not only to negligent omission on the part of the (fiscal) police. Some criminals simply refused to make statements. In 14 cases the police could

---

<sup>10</sup> To these scores no figures for money totals could be added. The files were very unsystematic in connecting observed ways of handling money with the amounts of money involved.

only conclude that ‘the money had disappeared’ without leaving any trace in the banks or elsewhere.

It is not surprising to observe the highest frequency of *placement* of cash in the drug cases, as this is a cash based business. As a rule, the observations end with this phase. The reason for this limited observation is not always that the monies are subsequently concealed by some sophisticated method, but the simple fact that the money was still in the bank account at the time of arrest. If the money was transferred to a foreign bank, it was still in that financial institution, either in the form of a savings account or in the form of financial products. The more elaborate forms of money-management, like integration, and justification (strict laundering), were much less frequently observed. Criss-crossing between numerous accounts to obscure the paper trail was not observed.

In the cases of fraud and economic crime the cash or placement phase could better be termed ‘*displacement*’, as the concern of the business crime-entrepreneurs was to get the money *out* of the financial system. After all, to blend into the legitimate world of trade and industry fraudsters may eschew suspicion arousing cash payments. In accordance with this supposition the first concern of the fraudsters may have been to withdraw the monies from the bank accounts at the right moment in order to avoid confiscation when their scam was busted. In 21 cases some form of *justification* of the criminal income could be observed. Economic *embedding* or *weaving* of the crime-money in underworld enterprises could be observed in 12 cases. This precipitation of the crime-money in the underworld will be discussed in later sections.

Analysis of criminal financial management in terms of the FATF categorisation does not appear to provide much insight. The reason may be that it has been designed from the law enforcement perspective on the underground (drug) economy, not from the perspective of the acting criminal, who has a surplus money problem. From the perspective of criminal behaviour, the classification shown in Table 2 may be more appropriate. It classifies ways of handling crime-money according to the methods used to hide it from investigators. On the basis of a strict interpretation of the meaning of money laundering, only the category ‘justification’ may be considered ‘white-washing’: falsely claiming a legitimate source for the acquisition of the money or assets. The categories in table 2 are not mutually exclusive as in the same case and with the same money more than one way of handling the crime-money may be employed. For example, a portion of the money may be exported, and part of it subsequently brought back by means of a loan-back construction, while an expensive car may be paid for in cash to be subsequently put in the name of a relative.

**Table 2**  
**Ways of disguising proceeds: number of observations**

Forms of concealment/disguise	drugs trade	fraud & economy	other crimes for profit	Total
Export	31	9	2	42
Ownership disguise	10	5	4	19
<u>Justification:</u>				
loan back	3	3		6
payroll	2			2
speculation				
bookkeeping	7	4	2	13
'Untraceable'	4	8	2	14

#### *Exportation of crime-money*

As can be observed in Table 2, in most cases the money was simply exported. In the cases involving Turkish or Moroccan offenders this appeared to be an obvious option. Either through exchange offices or by means of physically transporting the cash, the crime-moneys were brought to safety in the home countries. There are no reports of extra laundering activities in the relevant countries. It is a safe assumption that in the receiving countries the hard currency is gladly accepted without any additional justifications being required. In the drug trafficking cases about €15 million had been exported to Turkey and Morocco. Dutch entrepreneurs invested only €0.9 million abroad as against €2.3 million in the Netherlands.

#### *Disguise of ownership*

The second most frequently used means by which assets can be safeguarded while still remaining available for use is the simple *disguise of their ownership* by putting them in someone else's name. This ownership disguise did not appear to be very sophisticated. The obvious defects were the closeness of the relationship between the nominal owner and the beneficiary and the nominal owner's difficulty in proving that s/he had the means to acquire the assets. Though corporations had been used fraudulently to acquire, or to channel, the money, few corporations were set up for the purpose of disguising ownership. For most crime-entrepreneurs this way of disguising their proceeds seemed to be beyond their entrepreneurial



capacities. Nominal owners were frequently persons, some of whom found themselves the involuntary owners of unknown property, like the mother of one middle level Dutch cocaine trafficker, who got into trouble with the Inland Revenue Service. In other cases relatives were (ab)used by having (moveable) assets or bank accounts put in their names. Natural persons as nominal owners appeared to be used by default or as an emergency measure. The exceptions were a British crime-entrepreneur and two Dutch cannabis traffickers, all of whom invested in real estate and used corporations for the purposes of beneficial ownership.

### *False justification*

From the point of view of 'real' laundering, *justification* of the acquired monies or assets is of course the real craft: proving that the increase in wealth, whether in terms of money, assets or valuables, has a legitimate source. One of the constructions most frequently used and most frequently mentioned, is the well trusted *loan back method*. Given the many references to this construction it was surprising to learn that (a) its frequency was low and (b) its sophistication extremely shallow. Van Duyne et al. (1990) described a professional provider of loan back constructions, who designed professional contracts, complete with a related correspondence and real flows of interest and repayments to the loaning corporation in order to imitate perfectly real loan transactions. The loan back provider saw to it that his clients did indeed make the required monthly payments of interest and capital.<sup>11</sup> Such sophistication could not be observed in the cases included in this study. Loan contracts were sometimes missing or the 'contracts' did not mention the repayment and interest terms, let alone make provisions for ensuring that the required 'flow back' of interest and capital payments took place.

In two cases laundering by means of paying a salary could be observed. In one case the modest sum of €75,000 was loaned to a small firm which handed out a monthly salary. Obviously, this laundering was not intended to justify proceeds of substantial size, but to placate the Inland Revenue Service.

'Real' laundering by *phony bookkeeping* was a technique that was mainly used by crime-entrepreneurs who operated with registered firms. It goes without saying that this form of money laundering related to the way in which their firms functioned as covers for the illegal activities. For example a florist using his floriculture as a cover for growing cannabis plants, needed to cover expenses as well as the income from the cannabis sales. In the cocaine traffic, involving Colombians, phony paperwork relating to commodities (sugar) on the parallel

---

<sup>11</sup> This money-launderer was caught not because of laundering (not punishable at that time) or tax fraud, but because he cheated pensioners.

market was designed to justify the return flow of the money to Colombia. Such covers were easily busted. One hash entrepreneur, who was also the owner of a transport firm, had the intention of making a settlement with the tax inspector by reporting his black money (or part of it) and working out a compromise. However, he was arrested before he could realise his plan.

One would have expected to find the crime-entrepreneurs using additional laundering techniques by including false invoices in their paperwork. As a matter of fact, that was not always observed. The 'bust firms' in the VAT and excise scams did not leave much paperwork to justify anything. The concern of the organising crime-entrepreneurs in this field was not to justify their illegal income, but to withdraw the money and disappear as soon as they knew it was their turn for a visit by the tax man – as could be deduced from the last row of Table 2, denoting the *untraceability* of the proceeds of crime. The profits of six fraud entrepreneurs, one investment fraudster and two 'traditional' crime-entrepreneurs (car theft and fencing) could not be traced. The investigators found either front firms or straw men, but no paperwork (except false invoices in the bookkeeping of other firms), or any money. The latter had just 'gone with the wind'.

The situation is different in the tax fraud cases where the management intended the continuation of their firms, albeit in a fraudulent way. The forms of fraud consisted usually of dodging employers' social security contributions and withholding the tax of their staff (thus perpetrating 'black wages' fraud). In these cases the false bookkeeping is the laundering, even if the withholding tax fraud consists of a mixture of omissions and false invoices. However, such documents did not cover all the ill-gotten proceeds. Therefore, in the same way as the drug money, the contents of the 'black till' had to disappear to foreign banks.

### **Levels of penetration**

The previous section provided an impression of the ways in which the crime-entrepreneurs managed their ill-gotten profits in order to remain able to use them without alerting law enforcement agencies. Some laundering could be observed, but pragmatic (or perhaps shortsighted) as many criminals are, most of them appeared to be satisfied with bringing their crime-money to safety or just spending it as they saw fit. Crime-moneys end up in the legal economy, where they are not only used for the pleasures of life, but also to penetrate the upperworld for purposes other than consumption.

Before analysing the levels of penetration of the upperworld it may be instructive to provide a quantitative overview of what is known of the spending of criminals. This may provide an aggregate indication of the ways in which the crime-moneys are handled and spent. In the Netherlands the information available

for such an analysis is derived from the Judicial data base 'Rhapsody'. Granted, such information has certain methodological flaws. First of all the objects confiscated have to be registered and secondly their value has to be determined. Furthermore, not all such confiscated objects need be derived from crime as confiscation aims at safeguarding any property belonging to the criminal for the purposes of making redress after conviction. Finally, as analysis of the criminal records showed, in many cases the objects of spending are known, but the objects in question have been used up, sold or are located in a foreign jurisdiction, which may create juridical or practical problems for confiscation. In such cases these objects are not recorded. Therefore, Table 3 should be read with caution: it provides an indication and a rank order of 'material matters of interest' to the criminals, not their actual wealth.

**Table 3**  
**Confiscated assets of criminals in two 'income categories' and file analysis**

**1993-2000**

Categories of property	€ 45.000-450.000	> € 450.000	cases from file analysis
Dutch cash: N	210	56	28
<i>Median</i>	6.239	20.641	25.473
Sum	4.791.698	5.690.836	1.569.084
Foreign cash: N	98	37	18
<i>Median</i>	574	1.610	1.795
Sum	442.057	1.410.343	825.713
Bank acc.: N	21	11	3
<i>Median</i>	5.347	18.056	26.910
Sum	451.208	506.325	73.453
Bond & shares: N	-	34	-
<i>Median</i>		94	
Sum		34173	
Claims: N	28	22	11
<i>Median</i>	2.274	3.996	1.533
Sum	21.1473	6.849.818	302.100
Real estate: N	25	13	8
<i>Median</i>	49.414	123.535	167.391
Sum	2.237.228	6.476.544	62.566.540
Vehicles: N	126	39	18
<i>Median</i>	6.177	16.060	14.579
Sum	1.461.200	1.573.107	1.122.534
Boats, planes: N	19	6	5
<i>Median</i>	12.354	7.520	15.039
Sum	409.939	112.385	112.385
Jewellery: N	124	48	23
<i>Median</i>	1.393	3.869	4.338
Sum	646.101	825.681	505.176
Other goods: N	37	19	8
<i>Median</i>	-	-	-
Sum	797.383	30.315	10.194
Total	688	285	122
Sum	11.448.287	23.509.527	67.087.179

In order to remain our focus on the category of wealthy subjects we have analysed hitherto, only the confiscations of offenders with an estimated illicit profit of between €45,000 and €450,000, and more than €450,000 have been included in the analysis shown in Table 3. The absolute numbers in the table do not indicate persons, but the value of confiscated items, whether these concern bank accounts, treasures hidden in the ground, claims or earrings. It should be noted that the patterns of spending of the less and more wealthy do not differ much.

Inspection of the table shows that on average most money is spent on real estate. Next comes everything that rolls, floats or flies. In addition much cash was found and confiscated. As far as investment in the financial upperworld is concerned, the criminals showed very little interest indeed. As we will learn from the qualitative analysis carried out in the following sections, the confiscation data-base could be biased if, for example, the shares and bonds were held abroad and thus were not confiscated or if they had already been sold. To anticipate our analysis: investing in these financial products did occur, but very infrequently.

In an earlier section, a typology of the penetration of crime-money was suggested. This typology has been applied to the data contained in the criminal files, with the results being presented in the following table.

**Table 4**  
**Levels of penetration of crime-money in the upperworld:**  
**number of observations from the file analysis**

Levels of penetration	Drugs	Fraud and economic crime	Other forms of crime for profit	Total
Corrupting permeation	3	3		6
Criminal subsidy	6	3		9
Once only-infusion	8	2		10
Investment crime firm	9	4	1	14
'Rainy day' provision	20	9	1	30
Life style	9	6	2	17

Elaborating the material summarised above we get the following picture:

*É Corruptive permeation*

The cases we categorised as examples of corruptive permeation did not involve so-called 'executive corruption', required for the ongoing crime-business, but

‘strategic’ penetration. An example of ‘executive corruption’ was the corrupt relationships that some offenders maintained with bank clerks in Dutch and related French banks to prevent suspicious transaction reports being issued. As far as strategic penetration is concerned only a few cases could be identified.

- One Dutch middle level cocaine trafficker and swindler obtained an interest in a *bureau de change*, which was not a stable ‘upperworld bridgehead’: it was closed down after a killing on the premises.
- Another Dutch cocaine wholesaler (importing from Colombia) tried to invest € 450,000 in a firm of car dealers. The offer was rejected and a few days later he was arrested.
- An notorious British drug dealer residing in the Netherlands, bribed a detective (possibly also a judge) and is alleged to have an interest in an English football club (Barnes et al., 2000).
- A withholding tax fraudster paid large bribes to firms willing to support him by, for example, providing false invoices. He also loaned much money to small firms of friends.
- One of the investment fraudsters had bought shares in a supermarket chain, though this was possibly only an investment.

### *É Criminal upperworld subsidy*

Crime-entrepreneurs appeared to take little interest in subsidising other (legitimate) firms.

- A Dutch-Moroccan combination invested in a restaurant and a sports school in the Netherlands, and seems to have invested €450,000 in Morocco in a fish processing factory (soft information).
- A Dutch hash wholesaler is alleged to have invested in a garage. The amount of money is unknown.<sup>12</sup>
- The tax fraudster mentioned above loaned € 975,000 to a group of friendly, legitimate, entrepreneurs. The soft loans were only partly repaid.

The contents of the criminal files provided no evidence about the distortion of ‘fair competition’ arising from investment of the illegal profits in the firms mentioned above. As a matter of fact, the companies had little economic weight.

---

<sup>12</sup> This investment was apparently little liked by competitors, who launched two grenades into the building. They failed to explode.

*É The once-only money influx: defusion by integration*

In six cases, enterprises were set up with the intention of operating legitimately. In the absence of information to the contrary, it was assumed that they actually functioned legitimately.

- Three ethnic drug entrepreneurs established regular companies in their home countries. Little is known about the degree of their success.
- The Dutch hash wholesaler who invested in the garage mentioned above, also took over an international telephone sex line (operating in Eastern Europe), which went bankrupt due to its overoptimistic management.
- Two business-crime entrepreneurs established companies. One VAT racketeer established a sausage factory, which was about to succeed when he was arrested. A married couple who invested the proceeds of embezzlement very successfully on the stock market used part of their profit to buy a cosmetics boutique. Maybe the latter was a toy for the wife.

*É Reinvestment in one's own crime-enterprise:*

Concerning the re-investment in one's own crime-enterprise a distinction must be made between traffic in prohibited substances and business crime. Reinvestment in a drug-smuggling firm (aside from purchasing new shipments) is a discernable act: for example a new boat is bought. In the area of business crime many fraud schemes result in cost price reductions, which are at the same time criminal re-investments, unless the accrued profits are siphoned off.

- The drug enterprises invested mainly in means of transport: boats and a camper. It was not always possible to differentiate between investment for smuggling or recreation: for example the yacht could be used for both purposes. An oil firm involved in excise fraud invested in a lorry for the transport of gas as well as in a device for inflating the latter with air.
- Three traffickers invested in sales outlets like pubs and coffee shops, where besides coffee or other drinks the contraband (hashish) could be sold under the counter.
- Corporate entities were established to disguise the ownership of assets, like boats (two drug cases) or were used as front firms for VAT fraud schemes.
- 'Black' wages can be considered as examples of re-investment, as they are instrumental in reducing business costs.

*É Rainy day provisions:*

The cases in this category are ambiguous, as their categorisation is partly the product of interpretation. After all, crime-entrepreneurs do not state to the police that (part of) the observed or confiscated assets were intended as a 'pension' or a 'retirement fund'. In addition, cash money hoarded at home, at friends or in a bank safe may represent a 'retirement fund' as well as working capital. There is also overlap with the categories of criminal underworld investment: a hotel in Istanbul may be established as a licit underworld enterprise, but may also be intended as a place to which to retire after a life of crime.

- Nine drug entrepreneurs invested in real estate, mainly abroad, one in the Netherlands. In seven cases the investment countries were Turkey and Morocco. To this effect the Turks exported around €6.6 million. Though the Moroccans exported € 3.6 million, there was no demonstrable connection between these money flows and identifiable real estate investments. In only two cases could real estate investments with a total value of over € 1 million be identified.
- Sums totalling € 6.5 million were exported, either in the form of cash or by means of opening foreign bank accounts. Of this total, € 4 million were exported to Morocco, Turkey and in one case to Thailand (where the girlfriend lived).
- Capital accumulation for a 'rainy day' was less clearly discernable in the cases of (organised) business crime. Only the embezzling couple mentioned above and two brothers involved in a € 100 million underground banking case invested heavily in real estate. The embezzlers even succeeded in obtaining a mortgage of € 2.25 million for the construction of a block of apartments. Two 'conservative' crime-entrepreneurs bought bonds.

*É Lifestyle*

The criminal files turned out to be less informative about the lifestyles of the crime-entrepreneurs than we expected. Maybe the investigators did not always think that the offenders' spending patterns were interesting enough to record. Despite this limitation, patterns of lavish spending could be deduced from a number of cases, though not to the extent stated by Van Duyne (2000). Much depends on the crime-entrepreneur's social circle and on his assessment of the usefulness or the risks associated with conspicuous consumption. One of the Moroccan hash wholesalers, who had invested heavily in Morocco, complained that he could not live according to his means in the Netherlands as he knew he might attract police attention thereby. Also, some other ethnic crime-entrepreneurs allegedly lived



parsimonious lives in the Netherlands, going on sprees as soon as they were in their home countries.

Otherwise we encounter here a wide variety of forms of spending: beauty farms and the expenses associated with plastic surgery for a girlfriend; horses for a daughter; (soft) loans to friends and acquaintances; precious objects (crystal and jewellery); an odd piece of very expensive antique furniture (a clock valued at € 160,000), and 26 antique watches, which may also be interpreted as speculative investment.

One type of use of the proceeds of crime that cannot be considered as an instance of penetration of the upperworld, but which certainly constitutes an important reserve, are the savings, held either in cash at home or in bank safes, or in bank accounts (or buried in the gardens of relatives, as in the case of the British suspect). These savings may be kept as reserves for later criminal investments or as a nice little nest egg. The files contained no indications that these monies were held for strategic purposes. Whatever the possible interpretation, these 'nest eggs' amounted to € 24 million.

### **The abuse of corporate entities**

Another worry concerning the relationship between the crime-entrepreneurs and the upperworld is the abuse of corporate law structures: limited liability companies, associations, foundations or various kinds of off-shore facilities. Questions of interest are:

- In what kinds of cases have corporate entities been used?
- What was the nature or legal status of the entities?
- How or for what purposes were these entities (ab)used?

#### *É Cases with legal entities*

Inspection of the data showed that the extent to which corporate entities were used in drug cases and in business crime cases hardly differed. In 18 drug cases legal entities were used; in the business crime cases the score was also 18.

The number of legal entities being used in the operations of the crime-enterprises differed, though the criminal files did not always mention the exact number of entities. Despite this, we can safely assume that the number of legal entities used in the business crime cases was much higher. This is because of the need for strings of 'bust-firms' in the VAT cases, of which the investigators mentioned only the relevant ones. Drug dealers appeared to be in need of one or

two legal entities for special reasons such as putting a hotel in the name of a company. The cross-border investment swindlers used a total of 12 companies.

### *É The legal status of the entities*

In most cases the legal entities used were limited liability corporations, as such organisations may help offenders to avoid creditors and/or to hide the chief architects of acts of fraud by using straw men as company directors. However, even if the limited liability company was a kind of standard, some crime-entrepreneurs used partnership firms, co-operatives, associations, foundations and one-man businesses, running the risk of personal liability.

In the context of the threat of 'global', cross-border crime, one would expect to find many examples of the use of foreign legal entities, particularly in tax haven jurisdictions. Foreign entities were actually used, though much less in off-shore centres than one might have expected. In three cases *Panamanian* and *Arubian* corporations were mentioned. Otherwise, there was a prevalence of Dutch corporations with limited liability (*besloten vennootschappen*). The foreign bases of the other non-Dutch corporations were: Belgium, Germany, Switzerland, the United Kingdom, the USA (Delaware) and Turkey.

### **The (ab)use of legal entities**

It goes without saying that the functions of the legal entities were a reflection of the requirements of the crime-enterprise. In accordance with our rough division between drug enterprises, business crime-enterprises and other crime-enterprises for profit (long firm fraud, theft, receiving stolen goods and trafficking in women), we make the following distinctions:

#### *É Drug enterprises*

In these cases, legal entities were used for the following functions:

- Regular production:

This function was apparent only in the case of the enterprise that grew cannabis plants. The nursery had a legitimate output, but financially, cannabis production proved more rewarding, while the firm's books were used to disguise illegitimate expenses and sources of revenue.

The other cannabis nurseries did not make use of this type of cover, but nevertheless used corporate entities

- as sales outlets  
Sales outlets in the Dutch cannabis market are invariably coffee shops. Such firms had the legal status of partnerships (with personal liability).
- as transport covers  
For wholesalers, the transport of large cargos usually requires a legitimate cover. This applied to the cocaine wholesalers, who imported quantities of coal, and to three hashish exporters, one of whom hid the contraband in butter, the second who put his ocean-going vessels in the name of various corporations, and the third who ran a loss-making touring car company as a cover for drug shipments.
- for the purposes of money-management  
Some, but not all drug entrepreneurs used corporations for the management of crime-money (not money laundering in the comprehensive meaning). Typical activities included: shipping the purchase price of drugs back to Colombia; making money available for the purchase of transport; investing in the touring-car firm mentioned above.
- for the purposes of investment and laundering  
Some of the crime-money was invested in corporations. Such moves were not always accompanied by laundering activities – as they were not in the cases of the moderate investments made in a sports school and a pool room by two Dutch hash entrepreneurs. Investment in, *and* laundering through, legal entities could be observed in the cases of higher-level dealers, for example, who placed assets in the names of corporations.
- as an instrument of crime  
Only in one case was the legal entity itself the instrument by which crime was committed. This case involved not the drug business, but the sideline job of long firm fraud.

### *É Business crime*

Corporate entities also have a range of uses in the area of business crime that only partially overlap with those found among the drug entrepreneurs.

- The (criminal) enterprise  
Some of the excise fraudsters used their own, otherwise legitimate, firms. These were abused in all kinds of ways, but were not designed to go bankrupt. In terms of Van Duyne's (1997) typology they were *criminal enterprises*, not *crime-enterprises*.
- The legal entity as 'jemmy'  
The corporation can be set up as an instrument for the commission of crime: it is the figurative jemmy of the fraudster. As the victimisation alert rate in

business crime is high, such companies are usually ‘bust firms’. This applies particularly to firms used to cover bogus transactions in VAT and excise scams. In the investment fraud cases the legal entities were used for creating the well-known labyrinths designed to lead investors astray. The embezzlers established a corporation to divert the money unnoticed from their employer.

- Money management

As stated before, legal entities can be used for handling proceeds of crime, and eventually for the finishing touch, its ‘cleaning’, but that final stage was not always to be found. In four cases firms were established for *moving* money only. The underground banking case was not so completely ‘underground’ as to be in need of corporations for this function. The large amounts of money generated by the Italian mobsters in their excise scam needed to be rushed out of the country by means of a Dutch limited liability company. The investment fraudsters resorted to a Panamanian company.

- Money laundering

Cases where legal entities were used with the objective of ‘real’ laundering (in our strict meaning) were found much less frequently than expected, unless we also include the ‘adjusted’ paper work of the criminal enterprises, which mixed fraudulent activities with otherwise ‘clean’ bookkeeping. Indeed, the international investment fraudsters did establish a corporation for this laundering function. Numerous entities were used by other VAT and excise fraudsters to ‘park’ their acquisitions in the name of the entities. The defrauding interim manager used corporations to purchase paintings.

The general picture that emerges from our analysis of the financial management involved in 52 high-level criminal cases, suggests much pragmatism and little strategy. The level of financial laundering skills displayed cannot be rated very highly, while penetration of the upperworld looks shallow. The police usually claim that if criminals have no brains of their own, ‘they hire them’. This could be observed only in two cases – one where the crime-entrepreneurs were supported by a real estate expert they had befriended; and in another case where the assistant in a law firm helped to establish a corporation. Otherwise, the crime-entrepreneurs simply trusted (or overrated) their own cunning and skills. Business crime entrepreneurs relied on their accountant or company secretaries, who were not separately hired as criminal financial advisors, but who were already there and seemed to be looking at the paper work with the expected ‘Nelsonian eye’.

## Comparison with other research

The findings of this research do not seem to square fully with the threatening images routinely conveyed by law enforcement agencies, nor with the regular press reports concerning the activities of the very wealthy drug barons. It goes without saying that the phenomenon of extremely wealthy drug barons should not be dismissed as a mere media fiction, but they may not be representative of crime-entrepreneurs. This raises the question whether the results of this research hold true only for the Dutch case, or whether they have wider applicability.

To answer this question we searched for comparative material. This proved difficult for the simple reason that comparative research has not been carried out thus far. Even if there are scattered data, the different ways of collecting and processing them render direct comparison well-nigh impossible. As a matter of fact all we have are the 'typology reports' of the FATF and a recent German study on money laundering (Suendorf, 2001). Despite this difficulty we nevertheless reviewed the data from the perspective of the question: If there is so much money laundered so widely and so professionally, what do the examples tell us? Underlying this question is the assumption that if (organised) criminals do succeed in acquiring predominant (financial) positions in the upperworld, it will not take long before they are spotted, to be subsequently included in the semi public 'threat catalogue' of the law enforcement agencies. These 'threat catalogues' are to be compared with the empirical findings.

Suendorf's (2001) study of money laundering in Germany contains some 40 examples that conform to the broad juridical meaning of that concept, namely, handling the proceeds of crime. The examples are taken from interviews with expert law enforcement practitioners and cover a time span of about ten years, though one example stems from the mid-1980s.

From this set of examples two cases can be considered thorough organised money-managements: the *Bosporus case* and the *Mozart case*. Both cases concerned separately established organisations to move the crime-monies of heroin wholesalers to their respective home countries. In the Mozart case about DM 60 million had been transported.

The *Bosporus case* involved an extensive network of exchange bureaux directed by an entrepreneur living in Iran, who served a Kurdish heroin wholesaler exporting to Germany. The monies were collected in various cities in Germany, and taken to branches of the Iranian, or associated but independent, bureaux de change. Subsequently the monies were placed in German banks and transferred to the bank accounts of allied

money change offices in New York. From these accounts they were diverted to Dubai and – if required – back to Germany or Turkey. To lull the German police, the bureau de change submitted occasional suspicious transaction reports.

The *Mozart case* involved a similar network of currency exchange offices. These were working on behalf of Turkish heroin wholesalers and were fed with crime-money from Italy and Spain. The handling of the crime-money appeared to be even more integrated into the legitimate cross-border trade system of Turkey with Europe. Turkish traders who were in need of EU currency could circumvent exchange controls by balancing their payments in Germany (made through the exchange office in there) with the placement of Turkish money in Istanbul. This legitimate money could be intertwined with the crime-money. These examples, which represent quite professional schemes, still do not clarify what is actually done with the crime-money, let alone that the money is ‘cleaned’ and integrated in the legitimate economy.

When we inspect the examples provided by Suendorf of investment in the underworld, we get the following picture. There were (attempts to make) an investment in the underworld in eleven cases, though these were made with changing success and professionalism.

- É Real estate: there are three examples of insolvent enterprises, including a construction firm that obtained a suspicious infusion of Italian money, but which nevertheless went bankrupt (p. 208/210).
- É A greengrocer, whose son was involved in heroin trafficking and who invested part of the proceeds in his father’s firm, which expanded quickly (p. 207).
- É Some small, unspecified enterprises that obtained suspicious money. One was abused by Russians who acquired a share of 10 %. The owner succeeded in buying them out (p. 207).
- É A bathroom design store, whose Russian owner was pressurised into accepting a compatriot as manager. Money laundering is suspected (p. 208/9).
- É Three attempts were mentioned, among others by the suspects involved in the above mentioned *Mozart case*, to establish a partial credit firm (*Teilzahlungsbank*), but such attempts were to no avail (p. 213).
- É A pizza bakery, established by a mafia family that had fled to southern Germany because it was being threatened by fellow mafiosi. The firm expanded quickly due to extortion involving local restaurants and pubs (p. 234).
- É A steel firm run by a female manager, who indicated that ‘*she did not understand much of economics*’, something that was clearly manifest from her suspicious transactions (p. 235).

É A car dealer whose enterprise is supposed to have grown thanks to the investment of Italian crime-money (p. 171).

These case descriptions recorded in interviews with German investigators should be interpreted with great care. In only a few cases it is clear that the description is based on the outcome of a complete investigation or trial. In addition, in many cases it remained unclear whether the monies that were supposed to be invested had been fully laundered. Most of the other examples only concerned the channelling of suspected monies. The sophistication and professionalism displayed did not look overly impressive (the exceptions mentioned here).

This picture seems to underline the thesis that ‘only stupid criminals are caught’. Despite this stopgap argument used to explain away the modest results of law-enforcement efforts, if every offender, including the clever ones, has a certain statistical chance of being caught – a chance that increases with the extent of the offender’s wealth and the length of time for which he has been operating – why do we not find more examples of those clever guys after ten years of chasing for the ‘big money’? One elusive ‘Scarlet Pimpernel’ may dodge the law, but a supposed host of Pimpernels?

In its annual reports from 1997 to 2000, the FATF presented various ‘typologies’ of ‘laundering’, again according to the broad legal meaning of the expression. These typologies, 28 all together, are actually intended as instruction material. For a direct systematic comparison they are not useful. This is partly due to the way the examples have been collected. The cooperating countries of the FATF are requested (through their representatives) to submit striking examples from which the secretariat of the FATF can compose its annual reader of laundering cases. The emphasis is on those transactions that may have some educational value for the financial institutions, and to which are added warning notes containing serious comments like: ‘In this way legal persons may be abused for the purposes of laundering’. The cases mainly concern the moving of suspicious funds through the financial system. Only three of the 28 ‘types’ or case descriptions mentioned the ‘cleaning’ of crime-money or its precipitation in the upperworld economy. A number of cases actually did not concern money laundering, but fraud (e.g. VAT-evasion in the gold trade), again demonstrating the overlap between the two. Reading those 28 ‘typologies’ intended to convey the really serious cases, one may again raise the question: ‘If so much crime-money is threatening the upperworld economy, where is it and where are the really clear examples of that menace?’

Other research findings do not provide much material for comparison either. The studies concern the summary and survey of official statistics, such as those maintained in England and Wales (Levi, 1997), by the US bureau of judicial statistics (Tonry, 1997), and by the Central Directorate of the Judicial Police in Italy (Paoli,

1997). The articles show that the researchers had to rely on rough descriptive statistics with very few distinctive features or variables. The gross totals reveal enormous catches by the US customs and the Drug Enforcement Administration (DEA): US\$520 million by customs and US\$60 million by the DEA). Compared to this the amounts in England and Wales (£12 million in 1993) are very modest. However, from these figures little or nothing can be deduced regarding the way in which criminal finances are managed or their relationship with the underworld. For example, in the US, the fact that an object is confiscated does not necessarily imply that it has been acquired with crime-money. Objects can be confiscated if they are involved in the perpetration of a crime, even if they have been purchased with 'clean' money. For a car or house to be confiscated, it is sufficient to possess a small amount of drugs or to make telephone calls from a house to a buyer of drugs.

## Conclusion

Surveying the findings of this research project about the financial management of crime-money, it appears that real financial acumen and skills are not widespread, while very few crime-entrepreneurs venture into the legitimate upperworld of trade and industry, let alone higher spheres of influence. Very little crime-money was really 'cleaned' or laundered in the strict meaning of the term by constructing a phony legitimate source. In the few cases in which this was attempted, for example by means of the *loan back construction*, it proved to be rather primitive. The proceeds of crime were rather moved around and spent than integrated after 'white washing', into the economy. If that happened the coveted assets were real estate, and these were bought not to establish real estate firms, but to own the assets for their own sake. Some made more conservative investments by buying safe bonds and securities or, more rarely, bought speculative shares on the stock market. With the exception of one failed attempt, there were no initiatives to penetrate or take over established firms.

Within this general picture some differences must be noted. Some ethnic minority crime-entrepreneurs did make sizeable investments in their home countries, again mainly in the hotel branch and in one case (allegedly) in the fishing industry. Dutch, indigenous, crime-entrepreneurs were big spenders, but shallow investors. This applies even to the (organised) business crime-entrepreneurs. Contrary to expectation, they did not defraud with the aim of extending their market share or commercial power. Though some reduced their cost price and



did better than they would have done otherwise, the files contained no evidence of a criminal market extension.<sup>13</sup>

The fear that big crime-money inevitably leads to corruption could not be substantiated either. Corruption did occur and in a few cases the accounts managers of banks were made accessories to 'laundering' through channelling the crime-money out of the country. One business crime-entrepreneur paid handsome bribes to his business associates. However, these cases were few and remained on the level of 'executive corruption'. Higher level strategic corruption could only be observed in the case of the notorious Englishman Curtis Warren (Barnes et al. 2000).

The corruptive situation and penetration of the underworld may be different in the economies of the home countries of some ethnic minorities. Reports about economic development in northern Morocco mention a profound change in the property relationships, particularly in the real estate sector, but also in economic relationships generally (De Mas, 2001). The massive influx of money from abroad has contributed to much inflation in land prices and often to the establishment of enterprises without any economic viability. A large part of this influx consists of income from drug trafficking and from the smuggling of other (legal) commodities to circumvent import levies, but much legal money is also remitted home by labourers in Western Europe. It is therefore difficult to conclude that *crime-money* as such is playing havoc with the underworld economy.

Other factors can contribute to the unwanted effects, the most important being unregistered inflows of money, too large for the local productive infrastructure. As this influx is unregistered, economic policy cannot take it into account and is, as a consequence, based on the assumption that the volume of money in circulation is smaller than it is in reality (Hallett, 1997). However, it is open to debate whether this is the consequence of money laundering or bad governance and the mismanagement of public funds.

Surveying the established facts about crime-money in relation to its economic role, we face a dilemma. On the one hand, due to the apparent indifference of the law enforcement agencies and policy makers to the development of proper analysable statistics, we are in a state of virtual ignorance in the face of a proclaimed global threat. This casts doubts on the reality of such a menace. On the other hand

---

<sup>13</sup> In other research such a criminal market extension has been observed: in the catering business the expansion of the Van der Valk empire was based on long term systematic tax fraud (Bogaarts and Van Gelder, 1996); in the meat production sector one processing firm still succeeds in dominating the wholesale market (Van Duyne, 1997). The former has been prosecuted to receive a 'slap on the wrist', the latter escaped prosecution until recently.

it cannot be denied that the observed flows of unaccountable or very suspicious monies are occasionally very voluminous. In the underground banking case analysed as part of this research project, the two Pakistani brothers did handle well over € 100 million, a sum comparable with that involved in the so-called Ramola case at the beginning of the 1990s. In every jurisdiction there is also anecdotal evidence of crime-entrepreneurs who – like Michael Michael or Curtis Warren in the UK, Zwolsman and Verhoek, alias the Stutterer, in the Netherlands or his Pakistani ally, the money manager Abbas in Belgium (De Stoop, 1998) – amassed staggering amounts of money.<sup>14</sup> Similarly organised VAT and excise fraud cases generate hundreds of millions of euros (Van Duyne, in preparation). Therefore, our findings do not necessarily lead to the conclusion that the amount of crime-money in circulation should be considered negligible. All we can establish is that of all these flows of supposed crime-money only a small part can be identified in the form of assets. These assets hardly ever consist of production factors that may have an impact on the economies of the industrialised world. Their dimensions cannot provide the empirical basis for the threatening images that are usually presented to the public and adopted by legislators as the basis for ever more severe laws against money laundering.

## Discussion

More than ten years have passed since the US and the FATF launched their programme against the threat of money laundering. Despite an avalanche of (usually normative) literature and threat assessment reports, the number of empirically based research reports is still small and is confined to the ones mentioned in the UK, the Netherlands and Germany. As a matter of fact we are still in a state of ignorance as far as the nature and extent of the phenomenon is concerned. The lack of interest in empirical research has already been commented upon in the previous sections.

One may think us better informed on the clear issues of *principle*, like the corruptive effects of crime-money and the related laundering, and the negative economic impact that crime-money is bound to have on our economy. However,

---

<sup>14</sup> See Barnes et al., (2000) for an overview of the ‘rise and fall’ of the Liverpool crime-entrepreneur Warren, at present detained in the Netherlands. The Dutch hash wholesalers Zwolsman and Verhoek netted € 35 million and well over € 50 million respectively. Zwolsman’s ill-gotten proceeds were invested in hand-made cars. Of Verhoek’s wealth only some € 7 million could be traced.

the degree of clarity of these issues is open to debate. One of the dogmas fuelling the fight against laundering is the frequently repeated claim concerning the corruptive impact of crime-money and laundering on the integrity of the financial system. In a broad ethical sense this dogma looks irrefutable, though it can become meaningless if it is expanded to every sphere of life that may be touched by the ill-gotten profits of criminals. If it applies to the financial system it also applies to the automobile industry, real estate, tourist offices or the neighbourhood in which any criminal buys his daily bread with his crime-money. In principle there is no limit to the application of such a dogma, as is revealed by the spread of reporting measures to lawyers, notaries, real estate agencies and other traders of valuables like jewellers.

Even more debatable, when tested against the evidence, are the claims that laundered money leads to corruption. What is the corruptive effect on the official financial institutions, when – without their knowing – crime-money flows through their ‘arteries’, and how are they threatened by this flow? Looking at the ways the financial institutions are used, it is difficult to differentiate between crime-money flowing through banks and criminal information flowing through the cables of a telephone company. Apart from fraudsters, criminals have more to gain from a well-functioning and secretive banking system than from an ill-functioning one. Some of the affluent offenders with a conservative economic outlook bought and resold safe bonds in exactly the same way as the usual conservative citizen would do. How did that corrupt the banks involved? All they asked from the banks was a normal efficient service. If we take the argument a step further, we may raise the question whether the financial integrity dogma is not just an opportunistic argument to stifle potential doubts, as the dogma may be applied quite selectively. For example, during the Latin American debt crisis Colombia succeeded in remaining solvent and paying off its debts. Though it was known to them that they were (partly) paid in cocaine dollars, no western bank or government had any qualms about this or felt corrupted (Strong, 1995; Verbeek, 2001). Granted, corruption remains a problematic area, involving more than crime-money (Van Duyne, 2001). As a matter of fact, virtually all the grand corruption in the industrialised countries in the past twenty years has involved the payment of *white* money by ‘respectable’ captains of industry to equally ‘respectable’ politicians, some having become heads of government or heads of state.

Another issue concerns the big gap between the huge sums of crime-money that are thought to exist on the one hand and the relatively small sums that are actually traced assets on the other hand. There may be two explanations. One is the quite predictable law enforcement explanation: ‘We do not trace much of the money and assets because the criminals are too smart. So we need more tools’.

This amounts to the demand for more severe laws, more investigative powers, fewer civil rights, more funds and more staff. Another, not implausible, explanation is that much of the crime-money remains homeless money and instead of threatening our society keeps floating around. However, to use another metaphor, this is comparable to migrant cattle, which only lose weight while being on the move, usually to the advantage of the stopping places where they rest for a while. The financial stopping places are the banks, which gain while the herds of crime-money are passing through them. It requires more than metaphysical dogma and rhetorical repetition of the evil of crime-money to clarify the corruptive impact of these passing criminal financial herds. At any rate proper research is required to test this thesis.

Maybe this mixture of economic argument and dogma (behind which one can discern a heavy dose of opportunism) is not the most appropriate perspective. The principle at stake is much more basic than some economic threat supposedly posed by elusive crime-money. The fight against criminal money-management, including laundering, should be driven by the simple desire to see the *restoration of justice*. The offender should not retain the money or any other criminal advantage in the first place. To uphold the basic principle that 'crime should not pay' we do not need additional dogmas, witch-hunts or cries of wolf, but sufficient insight into the phenomenon to obtain a well-balanced application of the necessary legal tools.

## References

- Adamoli, S., Organised crime and money-laundering. Trends and counter measures: a comparison between Western and Eastern Europe. In P.C. van Duyne, V. Ruggiero, M. Scheinost and W. Valkenburg (eds.), *Cross-border crime in a changing Europe*. Huntington, Nova Science, 2001
- Adams, S. and D. Franz, *A full service bank. How BCCI stole billions around the world*. New York, Simon and Schuster, 1992
- Anderson, A.G., *The business of organised crime. A Cosa Nostra family*. Stanford, Hoover Institution Press, 1979
- d'Aubert, F., *L'argent sale. Enquête sur un krach rententissant*. Parijs, Plon, 1993
- Barnes, T., R. Elias and P. Walsh, *Cocky. The rise and fall of Curtis Warren. England's biggest drug baron*. Bury, Milo books, 2000
- Blezzard en H. Koppe, *FIUs in action*. Zoetermeer, 2001
- Bogaarts, R. en H. van Gelder, *Het Teken van de Toekan. Op het spoor van de familie Van der Valk*, Meulenhoff/Kritak, 1996
- Burlingame, T., Criminal activity in the Russian banking system. *Transnational Organised Crime*, 1997, no. 3, 46-71
- Conklin, J.E. *Art Crime*. Westport, Connecticut, Praeger, 1994
- Cornwell, R., *God's banker. The life and death of Roberto Calvi*. Londen, Unwin Paperbacks, 1983
- De Mas, P., De poreuze noordkust van Marokko. *Justitiële Verkenningen*, 2001, no. 5, 72-86
- Duyne, P.C. van, Money laundering; estimates in fog, *The Journal of Asset Protection and Financial Crime*, 1994, no. 1, 58-76
- Duyne, P.C. van, Will Caligula go transparent? Corruption in acts and attitude. *Forum on Crime and Society*, 2001, no. 2, 73-98
- Duyne, P.C. van, Organised crime, corruption and power. *Crime, Law and Social Change*, 1997, no. 3, 201-238
- Duyne, P.C. van, Money laundering: advances in global ignorance. In: P.C. van Duyne, K. von Lampe and N. Passes (eds.), *Upperworld and Underworld in Cross-border Crime*. Nijmegen, Wolf Legal Publishers, 2002
- Duyne, P.C. van, Organising cigarette smoking and policy making ending up in smoke. *Crime. Law and Social Change*, 2003, forthcoming
- Duyne, P.C. van, R.F. Kouwenberg and G. Romeijn, *Misdaadondernemingen. Ondernemende misdadigers in Nederland*. Arnhem, Gouda Quint, 1990

- Duyne, P.C. and H.A. de Miranda, The emperor's cloths of disclosure; hot money and suspect disclosures. *Crime, Law and Social Change*, 1999, nr. 2, 245-271
- Duyne, P.C. and H.A. de Miranda, *Report on the Falcone project: Database harmonisation of suspicious transactions*. Zoetermeer, NRI, 2002
- Duyne, P.C. van, M. Pheijffer, H.G.. Kuijl, Th.H. van Dijk and G. Bakker, *Financial Investigation of Crime. A tool of the integral law enforcement approach*. Leliestad, Koninklijke Vermande, 2001
- Eekelen, J. van, De invloed van misdadaadgeld. Bedreiging of bedrog? *Ars Aequi*, 2001, no. 12, 954-962
- Hughes Hallett, A.J., Money laundering and measuring illegal activity: an economic analysis. In: E.U. Savona (ed.), *Responding to Money Laundering*. Harwood Academic Publishers, ISPAC, 1997
- Levi, M., Taking the profit out of crime. *European Journal of Crime, Criminal Law and Criminal Justice*, 1997, no. 3, 228-239
- Liddick, D.R., Campaign fund-raising and money laundering in recent U.S. elections: Criminal networks in action. *Crime, Law and Social Change*, 2000, no. 2, 159-182
- Naylor, R.T., Wash-out: A critique of the follow-the-money methods in crime control policy. *Crime, Law and Social Change*, 1999, no. 1, 1-57
- Paoli, L., Seizures and confiscation measures in Italy: an evaluation of their effectiveness and constitutionality. *European Journal of Crime, Criminal Law and Criminal Justice*, 1997, no. 3, 256-272
- Rawlinson, P., Russian organised crime. A brief history. *Transnational Organised Crime*, 1996, no. 1-3, 28-52
- Stoop, C. de, *Ik ben makelaar in hash*. Amsterdam, Bezige Bij, 1998
- Strong, S., *White wash. Pablo Escobar and the cocaine wars*. Londen, Macmillan, 1995
- Suendorf, U., *Geldwäsche. Eine kriminologische Untersuchung*. Neuwied, Luchterhand, 2001
- Tonry, M., Forfeiture laws, practice and controversies in the US. *European Journal of Crime, Criminal Law and Criminal Justice*, 1997, no. 3, 294-309
- Verbeek, N., *De baronnen van de cocaïne*. Amstelveen, Zaak de Haas, 2001