Executive Summary of the Eurojust Report on Money Laundering

Subtitle

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Executive summary

The aim of the *Eurojust Report on Money Laundering* is to support national authorities investigating and prosecuting cross-border money laundering cases by providing a structured overview of the legal and practical issues to be expected and possible solutions, including using the European Union Agency for Criminal Justice Cooperation's (Eurojust) tools to enhance judicial cooperation.

The report is based on an analysis of cases registered at Eurojust from 1 January 2016 to 31 December 2021. During this period, Eurojust registered 2 870 cases in its case management system, with a steady increase over the years. Given this large number of cases, the report focuses on certain selected topics: (i) predicate offence; (ii) complex money laundering schemes; (iii) financial and banking information; (iv) asset recovery; (v) cooperation with third countries; (vi) cooperation with the European Public Prosecutor's Office; (vii) potential conflicts of jurisdiction and *ne bis in idem* issues; and (viii) spontaneous exchange of information.

Based on Eurojust's casework, legal and practical challenges in money laundering cases are identified, but the report also proposes solutions and best practices that practitioners should be aware of.

The 10 most relevant legal and practical challenges identified in the report are as follows.

1. Differences in national law in relation to the requirements for identifying the predicate offence for the conviction for money laundering. In order to investigate money laundering, some countries have to investigate the predicate offence as well.
2. The relevance of dual criminality and the money laundering predicate offence, i.e. (i) lack of substantive harmonisation concerning whether money laundering would constitute an offence in any Member State irrespective of the jurisdiction where the predicate offence was committed or (ii) when under national law or national case-law dual criminality is indispensable for international charges and the predicate offence in question does not constitute a crime in that country but merely an administrative offence.
3. The lack of harmonisation concerning what constitutes a predicate offence for money laundering and criminalisation of self-laundering may cause difficulties in prosecuting and in judicial cooperation in situations where money is laundered through several jurisdictions.
4. Difficulties arising from the use of cryptocurrencies. The use of this type of digital currency makes it difficult to keep track of the assets held by those under investigation. It is essential to know the activity and mechanisms used to monetise or convert cryptocurrency into legal tender.

5. Financial expertise and resources that are required to analyse data relating to large amounts of cryptocurrency that are used to launder money, and to ascertain whether they are relevant to the investigations in the other countries involved.
6. Identification of the beneficial owner of the criminal assets, which is made difficult by the existence and use of shell companies or letterbox companies, by the identification of extraneous elements in the companies' structures or by the fact that suspects usually do not act under their own name to hide the financial trail that would show the illicit origin of the money. Moreover, the difficulties in and importance of establishing beneficial ownership in third-party confiscation. This shows that clarity in the rules on beneficial ownership is of the utmost importance in money laundering and other cases.
7. Practitioners are still not sufficiently familiar with the Regulation on the mutual recognition of freezing orders and confiscation orders.
8. Issues relating to determining who is considered a victim in a given country, who can apply for compensation and how to ensure proportionate compensation of all victims when the amount frozen is not enough to be restituted to all victims.
9. Some cases show that the tracing of money transfers within the European Union is reasonably manageable, but when cooperation is required from outside the EU it becomes difficult, and sometimes authorities discontinue the pursuit of such cooperation.
10. Conflicts of jurisdiction arising from the essentially different qualification of one criminal activity covering two jurisdictions: for example, in one jurisdiction the actions qualify as VAT fraud, while in the other they qualify as money laundering.

The 10 most relevant best practices identified in the report are as follows.

1. Issuing a European Investigation Order or letter of request to request certain investigative measures, but also to trigger consideration of whether to launch a criminal investigation into the predicate offence.
2. The use of highly skilled experts to perform house searches with a focus on digital devices and to take copies of relevant electronic evidence, with the aim of obtaining access to crypto wallets belonging to the main suspect.
3. The use of asset recovery offices, even in the apparent absence of a criminal investigation, for the purpose of identifying assets from suspects in other countries.
4. The benefits of including the consideration of asset recovery precautionary measures within the framework of a joint investigation team.
5. Establishing a joint investigation team solely for the purpose of conducting a financial investigation, if such is possible under the law of the countries involved.
6. Cooperation between public prosecutor's offices and financial intelligence units is essential for an efficient system for tackling money laundering.
7. Where possible, and in accordance with the legal principles of each Member State, the adoption of an interpretation of a Member State's criminal code to allow a civil recovery order to be recognised with an undertaking by the given Member State's judiciary to cooperate internationally in criminal matters. In another case, the legal basis chosen was the spontaneous exchange of information under the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States of the European Union.
8. The benefits of clarifying, via Eurojust, where appropriate, the valid legal basis to freeze funds for restitution to the victims.

9. When, in some countries, the violation of due diligence measures is not a criminal offence and there is no corporate liability, consideration could be given to agreeing on international recommendations and standards.
10. The increase in the number of Contact Points for Eurojust and Liaison Prosecutors posted at Eurojust has proved very useful in cooperation with third countries.