

Thematic dossier:

Asset Recovery in the European Union: A 'No Safe Haven' Strategy for Illicit Proceeds

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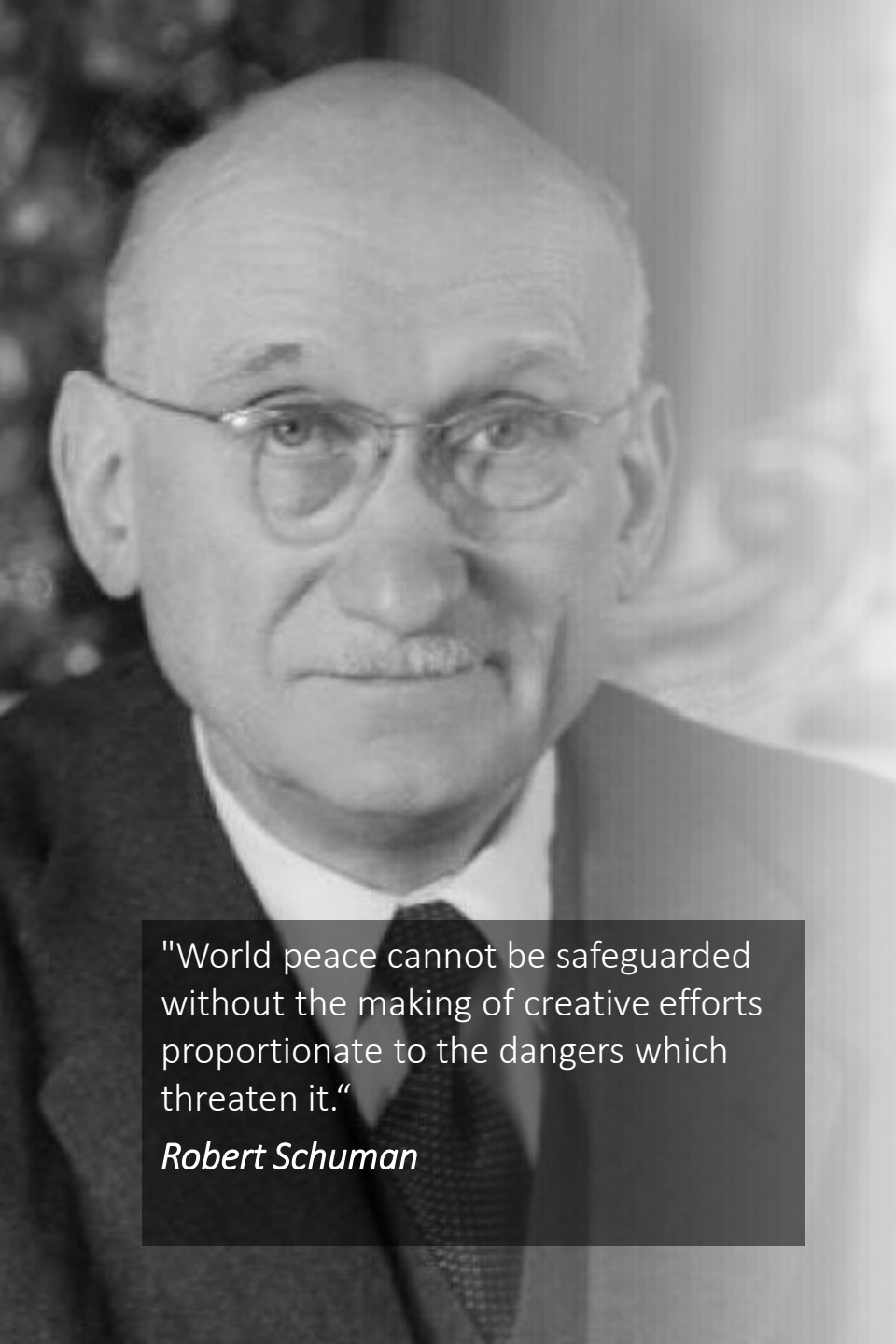
A black and white portrait of Robert Schuman, an elderly man with glasses, a mustache, and a suit, looking directly at the camera. The background is slightly blurred.

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"World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it."

Robert Schuman

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About this OER

About this OER

1. **Author:** This OER has been developed by Dr Georgios Pavlidis, Assistant Professor of International and EU law at NUP, Cyprus as part of the activities of the Jean Monnet Chair. You can find more information about this projects at <https://www.nup.ac.cy/jean-monnet-chair/>
2. **Methodology:** This OER was developed in accordance with the principles of the UNESCO Recommendation on Open Educational Resources, as well as the Cape Town Open Education Declaration and the Paris OER Declaration, which deal with the application of open licenses to educational materials.
3. **Target audience:** This OER is designed for undergraduate students in the fields of law, political sciences, social sciences, etc, as well as for lawyers, judges, prosecutors and practitioners who are interested in the EU action in the areas of asset recovery and AML.
4. **The topic of this OER:** This OER deals with asset Recovery in the European Union and the need to implement a 'No Safe Haven' strategy for illicit proceeds (see sections **Learning Objectives** and **Learning Outcomes**)



About this OER

5. **Navigation:** This OER is structured into several sections, including an introduction, main content, learning activities, and additional resources. Use the table of contents provided to navigate through the OER and locate specific sections of interest.
6. **Reading and Understanding:** Begin by reading the introduction to gain an overview of the OER's purpose and learning objectives. Proceed to the main content, where you will find in-depth information and key concepts related to the topic. Take your time to understand the presented information and ensure comprehension before moving forward.
7. **Learning Activities:** In this OER you will encounter learning activities designed to enhance your understanding and application of the concepts covered. Engage with these activities to reinforce your learning and test your knowledge. Feel free to discuss the activities with peers or seek additional resources to deepen your understanding further.
8. **Reflection and Critical Thinking:** As you progress through the OER, take the opportunity to reflect on the concepts presented and consider their implications. Encourage critical thinking by asking questions, analyzing examples, and connecting the information to real-world scenarios.



About this OER

9. **Additional Resources:** The OER provides a list of additional resources, such as books, articles, websites, or videos, that you can explore for further study or to delve deeper into specific topics covered. Take advantage of these resources to expand your knowledge and explore related areas of interest.
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11. **Continuous Learning:** The field of knowledge covered by this OER is continually evolving. Stay updated by seeking current research, publications, or news related to the topic. Consider engaging in discussions or attending relevant events to stay connected with advancements in the field.

We hope that this OER serves as a valuable resource for your learning journey. If you have any questions or require further assistance, please reach out to us at: g.pavlidis@nup.ac.cy

Enjoy your exploration and learning!

Georgios Pavlidis

Jean Monnet Chair, NUP



Learning Objectives

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Learning Objectives

1. Understand the importance of carefully designed policies in responding to illicit trade and money laundering.
2. Identify the integration and complementary use of AML measures, criminal investigations, prosecutions, and sanctions to combat organized crime.
3. Recognize the need for continually updating EU strategies to address criminals' use of innovative technologies in concealing illicit proceeds.
4. Analyze the challenges hindering effective asset recovery, including complexity in judicial and mutual legal assistance proceedings and lack of cooperation between authorities.
5. Explore the components of an effective strategy for targeting illicit proceeds in the EU, including implementation of EU rules, enhanced supervision, coordination of FIUs and AROs, information exchange, and international cooperation.

Learning Outcomes

The slide features a dark background with several lightbulbs. At the top, there are five unlit lightbulbs hanging in a row. On the right side, there are three more unlit lightbulbs hanging vertically. In the lower right area, there is a single lit lightbulb with yellow rays emanating from it, symbolizing an idea or knowledge.

Learning Outcomes

1. Demonstrate knowledge of the significance of well-designed policies in combating illicit trade and money laundering.
2. Explain the importance of integrating AML measures, criminal investigations, prosecutions, and sanctions to counter organized crime effectively.
3. Evaluate the need for regularly updating EU strategies to counter innovative methods used by criminals in concealing illicit proceeds.
4. Assess the challenges impeding asset recovery, such as complex legal proceedings and lack of inter-agency cooperation.
5. Describe the key components of an effective strategy for targeting illicit proceeds in the EU, including rule implementation, supervision, coordination, information exchange, and international collaboration.

Main Content

Targeting Illicit Proceeds in the EU

- Illicit trades' proceeds burden societies and support various criminal activities.
- Global estimates for annual illicit proceeds range from US\$800 billion to US\$2 trillion.
- In the EU, criminal profits of approximately €110 billion are generated each year.
- Drug trafficking alone contributes at least €30 billion in annual illicit profits.
- Human trafficking generates over €3 billion in illicit proceeds annually.

Targeting Illicit Proceeds in the EU

- Poly-crime groups engage in multiple profit-generating criminal activities simultaneously.
- Transnational migrant smuggling networks generate an annual turnover of more than €6 billion.
- Money laundering is a crucial process for criminals to utilize illicit proceeds undetected.
- Targeting illicit proceeds and combating money laundering are crucial in fighting organized crime.
- The EU has developed AML strategies, but only a fraction (1.1%) of annual illicit proceeds have been confiscated.

Key Components of AML

Component 1

preventive AML
measures

E.g. customer due diligence, record keeping, implementation of internal control measures, reporting of suspicious transactions (SARs)

Component 2

criminalization of
money laundering

E.g. conversion or transfer of property, concealment of the true nature, source or ownership of property; aiding and abetting, inciting and attempting such an offense

Component 3

international
cooperation

E.g. spontaneous and upon request exchanges of information. Safeguards with regard to confidentiality, respect of the purpose for information exchanges, etc.

Closing loopholes and enhancing AML

- The EU's AML framework has two preventive functions: preventing financial institutions from working with suspicious clients and ensuring traceability of financial information.
- Obligated entities, including auditors, accountants, and legal professionals, have obligations to identify and verify clients' identities and report suspicious transactions.

Closing loopholes and enhancing AML

- The EU has revised and improved customer due diligence requirements multiple times since the adoption of the first AML Directive in 1991.
- The latest AML Directive introduced provisions to facilitate financial investigations and asset tracing, including national registers for corporate entities, central bank account registries, broader information access for FIUs, and transparency of beneficial ownership for virtual assets.
- These provisions enhance traceability of assets, prevent money laundering, and close loopholes for introducing illicit proceeds into the financial system.

Closing loopholes and enhancing AML

- The EU's Action Plan highlights failures by credit institutions to comply with core AML requirements and problems in the functioning of FIUs, including lack of cooperation and technical difficulties in information exchange.
- Additional reforms are needed, such as interconnecting member states' registries or electronic data retrieval systems on bank accounts for cross-border cooperation and access to financial information.

Closing loopholes and enhancing AML

- Proposals include establishing a European AML supervisory body and an EU FIU to coordinate and support the processing and analysis of financial data.
- The new AML body could directly supervise problematic market segments and impose sanctions on noncompliant firms.
- The European Commission is expected to propose the establishment of a pan-European supervisor, potentially entrusting the task to the European Banking Authority.

Enhancing the Role of Asset Recovery Offices

- Success in cross-border financial investigations relies on international cooperation, but obstacles can hinder information exchange and asset freezing/confiscation.
- Closer cooperation between FIUs and national authorities, along with systematic collection and exchange of financial information, would improve the efficiency of financial investigations and lead to more confiscation of illicit proceeds.

Enhancing the Role of Asset Recovery Offices

- The EU has set standards for cooperation between Asset Recovery Offices (AROs) and introduced Directive 2019/1153, granting broader access to financial information for law enforcement agencies and AROs.
- Initiatives like the informal coordination platform for AROs have increased information exchange-related contacts, but progress is still insufficient given the volume of cross-border money laundering cases.



A complex institutional architecture



Enhancing the Role of Asset Recovery Offices

- Expansion and acceleration of AROs' data access, enhanced power in asset freezing, and strict time limits for responses to requests from counterparts are necessary.
- AROs need increased staff, financial resources, and technological capabilities, including the use of the Secure Information Exchange Network Application (SIENA) for swift and secure information exchange.
- The European Financial and Economic Crime Centre established by Europol provides additional support for financial investigations and the use of financial intelligence in cross-border cases.
- A comprehensive EU-wide cross-border financial investigation strategy is needed, focusing on high-value targets, standard operating procedures, joint investigation teams, and advanced technology and forensic capabilities.

Common Rules on Non-Conviction-Based Confiscation

- The main challenge in confiscation proceedings is establishing the illicit origin of assets, which involves reconstructing a paper trail from the assets to the crime.
- Legal obstacles and practical complexities hinder financial investigations and the establishment of beneficial ownership, such as stringent mutual legal assistance laws and complex money laundering schemes.
- Non-conviction-based (NCB) confiscation has been explored as a way to strengthen asset recovery, but it is still linked to criminal proceedings and has been favored by the FATF.
- The adoption of Directive 2014/42 in the EU has introduced common rules and minimum provisions for NCB confiscation, but additional common rules and measures should be developed to address remaining differences and explore innovative options like unexplained wealth regimes.

Mutual Recognition of Confiscation Orders

- Regulation 2018/1805 represents a paradigm shift in cross-border asset freezing and confiscation by implementing the mutual recognition of orders.
- The new "direct enforcement" model replaces inefficient fragmented EU legal instruments and simplifies the process.
- The regulation ensures automatic enforcement of freezing and confiscation orders throughout the EU, with standardized certificates and procedures.

Mutual Recognition of Confiscation Orders

- It goes beyond traditional mutual legal assistance models and covers a variety of orders, limits grounds for refusal, introduces strict deadlines, and protects victim and third-party rights.
- Mutual trust between member states' judicial authorities is crucial for successful implementation, and previous EU initiatives have highlighted its importance.
- Overcoming hesitation and inertia of national authorities and addressing serious breaches of fundamental rights are key challenges that need to be tackled at the EU level.

The way forward

- Effective response to illicit trade and money laundering requires carefully designed policies, integration of AML measures and criminal law tools, and continual updates to strategies.
- Issues such as complexity of legal proceedings, lack of resources, and lack of cooperation hinder effective asset recovery.
- The EU's AML Action Plan outlines key focus areas including effective implementation of EU rules, development of an EU rulebook, enhanced supervision, improved coordination, facilitation of information exchange, and global collaboration with the FATF.

The way forward

- The EU should reinforce its legal arsenal for cross-border tracing, freezing, and confiscation of assets, considering international standards while adopting innovative policies and harmonization initiatives.
- The success of post-Lisbon instruments demonstrates the value of assigning more competences to the EU in the area of AFJS (Asset Freezing and Confiscation Systems).
- Strengthening the EU's role as a genuine security union requires practical and effective approaches to combat illicit trade, transnational criminality, and cross-border money laundering.

Key Takeaways

Key Takeaways

1. Effective policies are crucial for addressing illicit trade and money laundering.
2. Integration of AML measures, criminal investigations, prosecutions, and sanctions is essential in combating organized crime.
3. Regular updating of strategies is necessary to counter innovative methods employed by criminals.
4. Challenges like complex legal proceedings and lack of cooperation can hinder asset recovery efforts.
5. A comprehensive strategy for targeting illicit proceeds includes rule implementation, supervision, coordination, information exchange, and international collaboration.



Learning Activity

Learning Activity

Activity: Developing Effective Strategies to Combat Illicit Trade and Money Laundering

Objective: Analyze the key elements and challenges in combating illicit trade and money laundering and propose innovative strategies for addressing these issues.

Instructions:

Form small groups with your fellow students. Your group will be assigned a specific aspect related to combating illicit trade and money laundering, such as policy development, integration of AML measures, challenges in asset recovery, international cooperation, or innovative strategies.

Research your assigned aspect using the provided text as a reference. Feel free to conduct additional research to gather more information.

Discuss and analyze the information you have gathered within your group, considering the implications and effectiveness of current approaches in combating illicit trade and money laundering.



Learning Activity

Brainstorm and develop innovative strategies or initiatives to strengthen the EU's efforts in combating illicit trade and money laundering, focusing on your assigned aspect.

Seek guidance and support from your instructor as needed while formulating your strategies. Make sure to consider practicality, feasibility, and potential impact when developing your ideas.

Prepare a brief presentation summarizing your findings and proposed strategies. Each group will have an opportunity to present their analysis and strategies to the rest of the class.

During the presentation session, actively engage with other groups' presentations. Ask questions for clarification and participate in discussions to exchange ideas.



Learning Activity

After all presentations, participate in a group discussion where you can share your thoughts, provide feedback, and engage in a constructive dialogue on the proposed strategies.

Take note of the key takeaways from the activity and reflect on the importance of collaborative efforts in developing effective strategies to combat illicit trade and money laundering.

Note: If you have any questions or need clarification, don't hesitate to reach out to your instructor.



Self-Assessment Questions

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Self-Assessment Questions

What are the key elements required for an effective response to illicit trade and money laundering?

How can the integration of AML measures, criminal investigations, prosecutions, and sanctions contribute to combating organized crime?

Why is it important to continually update strategies to address criminals' use of innovative technologies in concealing illicit proceeds?

What challenges can hinder effective asset recovery, and how can they be mitigated?

Explain the components of an effective strategy for targeting illicit proceeds in the EU and the role of international cooperation.

Additional Resources

Additional Resources at EU level

Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, OJ L166/77, 28.06.1991.

Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, OJ L 156/43, 19.6.2018.

European Parliament resolution of 19 September 2019 on the state of implementation of the Union's anti-money laundering legislation (2019/2820(RSP)).

Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332/103, 18.12.2007.

Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA, OJ L 186/122, 11.7.2019.

Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, OJ L 303/1, 28.11.2018.

Judgment of the Court of Justice of the European Union (Grand Chamber) of 25 July 2018 in the case LM (C-216/18 PPU).

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With gratitude,

Georgios Pavlidis

Jean Monnet Chair, NUP

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The Jean Monnet Chair at NUP

Since 2020, Neapolis University Pafos has the honor to be the host of a prestigious Jean Monnet Chair, which has been awarded to Dr. George Pavlidis to further promote his teaching and research into innovative methods for “Targeting Criminal Assets in the European Union”. The Jean Monnet Chair at NUP fosters the development of existing and new teaching, including Open Educational Resources (OER), while research activities and events give greater visibility to this field of study at national and regional level. The promotion of knowledge sharing through OERs, a working papers series and a knowledge database on asset recovery fall within the mission objective of the NUP School of Law, which aims to consolidate a strong contribution to the discussion on the future of the European integration.

