Money Laundering – who cares?

Dr. Jürgen Brandstätter

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Prominent victims and offenders:

- Former presidential candidate **Bob Dole**
- Former governor of New York **Eliot Spitzer**

Historic Development:

- 1989, the G7 founded the Financial Action Task Force on Money Laundering (FATF)
- 1991, First Money Laundering Directive (91/308/EEC)
- 2001, Second Money Laundering Directive (2001/97/EC)
- 2005, Third Money Laundering Directive (2005/60/EC)

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Personal Scope:

- Credit institutions as well as financial institutions
- Auditors, insolvency practitioners, external accountants and tax advisors
- Independent legal professionals (does not include in-house counsel)
- Trust or company service providers
- Estate agents
- High value dealers
- Casinos

Factual Scope:

- Buying and selling of real property or business entities
- Managing of client money, securities or other assets
- Opening or management of bank, savings or securities accounts
- Organization of contribution necessary for the creation, operation or management of companies
- Creating, operation or management of trusts, companies or similar structures.

Risk based approach:

Clients with potential higher risk:

- Politically exposed Persons (PEPs), near family member and people closely associated to them
- Large and implausible distances between the company and the clients domicile
- Moving of accounts without explanation
- Moving of assets between different company branches without explanation
- Unusual cash withdrawals
- Use of elaborate company structures (“off-shore”) where the owner is not obvious
- Moving of assets not in accordance with the business idea behind the transaction
- Etc…

continued:

Products assumed to be high risk:

- Private banking when large sums are involved
- Off-shore companies, trusts etc. where the owner is not obvious
- Cross border banking relations with third countries are deemed to be high risk by law
- Services where there is no personal contact with the client
- Credit settlements
- Financing of high risk goods to countries subject to embargos
- Savings deposits not under the clients name where the beneficiary might make transactions using a code word
- Cash businesses
- Non-resident accounts, number accounts, clients where the correspondence is picked up at the branch

Preventive measures:

Customer/Clients Due Diligence (CDD)

- Establishing a business relationship
- Carrying out an occasional transaction
- Money laundering or terrorist financing is suspected
- Veracity or adequacy of documents, data or information previously acquired for the purpose of CDD is questioned

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continued:

- Information to be recorded (to be kept for five years)
- Information to be obtained to verify identity from an independent source (in case of higher risk clients)
- Whether simplified due diligence may occur (e.g. where client is a bank from a member state)
- Whether steps need to be taken for enhanced due diligence
- What steps need to be taken for enhanced due diligence
- What steps need to be taken to ascertain whether client is a PEP
- At what point CDD need to occur and under what circumstances delayed CDD is permitted
- How to conduct CDD on existing clients
- What ongoing monitoring is required

Consequences and Conclusions:

How transformed into national law

- Criminal Code
- Professional Rules of Conduct

continued:

For companies

- Maintain records and data
- Upgrade IT infrustructure

Thank you for your attention !

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