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# **The holy grail of money laundering statistics. Input and outcome of the Belgian AML system**

*Antoinette Verhage*<sup>1</sup>

## **Introduction**

In this contribution, following the footsteps of Levi (Levi, 1997; Levi & Maguire, 2004; Levi, 2005), Van Duyne (van Duyne & de Miranda, 1999), Harvey (Harvey, 2004; Harvey, 2007) and Fleming (Fleming, 2005), we aim to make an inventory of what is known in Belgium with regard to the outcomes of the Anti Money Laundering system (AML). Our goals are threefold: 1) to map the existing data and the extent to which this data are (public and) available; 2) to study the contents of these data with the aim to obtain insight in the functioning of the AML system and its effects in the field of law enforcement; and 3) to conclude and take stock of the proportion between input and outcome of the anti money laundering system.

Why do we aim to map the knowledge on the outcomes of the anti money laundering chain? Fighting money laundering is a national (cfr. the National Security Plan of the Belgian Police, 2008-2011) and international priority (on the level of the European Union, the US and international bodies like the OCED and IMF) and has been so for over two decades. It may seem obvious that there is a need for an evidence-based policy in this domain, which should be possible after ten to fifteen years of AML activities. After all, the input and effort that is demanded from public and private actors in the prevention and detection of money laundering is rather high (Commission of the European Communities, 2009; Verhage, 2009b).

During our PhD study (Verhage, 2009a), we found that gaining access to these sources is not a simple undertaking, implying that either the data are too sensitive to disclose, or that structured data are simply not available. For this reason, in this article, we take stock of the available information, combine the different sources and look for methods which may evaluate the functioning of the system. We will do this by making use of each phase in the AML chain, looking for data on each level of activity. We will start by giving a short description of the Belgian AML system and the motives behind its specific nature. After this introduction, we focus on the diverse methods for looking at effects of this system. We will describe why it is important to have a view on the effects of the AML system. Then we discuss the data that were found with regard to the AML system in Belgium, and

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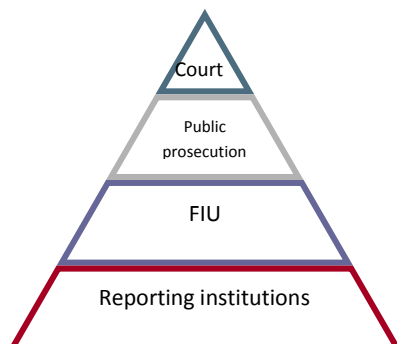
<sup>1</sup> The author is assistant at Ghent University, Faculty of Law, and has finalised her PhD research on anti-money laundering and compliance in 2009. I would like to thank Petrus C. van Duyne for his support and critical comments.

explain the difficulties in finding these data. To conclude, we will discuss the data that is needed in order to evaluate the AML policy.

## AML, the Belgian case

The AML system in Belgium was implemented in 1993<sup>2</sup> by establishing an administrative FIU (functioning as a filter between reporting institutions and law enforcement). It also transformed public and private organisations into ‘reporting institutions’, by imposing a number of obligations on organisations indicated by law. Through the years, the number of reporting institutions has grown (by the end of 2006, 30.500 organisations and individuals were obliged to report suspicious transactions), along with a steady rise in obligations and requirements concerning AML.

The AML legislation has resulted in an anti-money laundering enforcement chain, consisting of several phases, each phase operating quasi autonomously. After assessment and analysis of transactions and clients, the reporting institutions must report unusual or potentially suspicious transactions to the FIU. The FIU subsequently investigates these reports and differentiates between suspicious and non-suspicious files. The suspicious files will be sent to the public prosecutor’s officer, who, after analysis of the file, may decide whether to start an investigation or not. Finally, a small selection of these files may end in court.



With regard to financial institutions the Belgian AML regulator has introduced a relatively detailed interpretation of the EU guidelines. In Belgium, financial institutions are obliged to appoint an employee who is in charge of the implementation of AML legislation. Though this is not different from other European countries (as the appointment of a specific AML responsible staff follows in general terms from the second EU Directive<sup>3</sup>), the financial regulator in Belgium has chosen to detail this obligation relatively early in comparison with other countries and has issued a regulation in this respect in 2001. After six years, the detailed directives were converted into law.<sup>4</sup> This has led to the establishment of a specific function, the compliance officer, whose task is focused on (in general) the ‘integrity of banking’. More specifically, one of the assigned tasks in this respect is AML. As a result,

<sup>2</sup> Through the Law of 11 January 1993 on the prevention of the use of the financial system for the laundering of money and financing of terrorism, *B.S.*, 9 February 1993

<sup>3</sup> Council Directive [91/308/EEC](#) of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering

<sup>4</sup> Wet van 22 maart op het statuut van en de toezicht op de kredietinstellingen (*B.S.*, 19 april 1993). Bankwet.

we have witnessed the emergence of a new and rather professional sector of compliance officers, working in Belgian banks. They are tasked with implementing and leading the ‘battle’ against money laundering, but principally from their organisational point of view. In contrast with other European compliance officers, the Belgian compliance officer’s origins therefore need to be mainly ascribed to the development of AML legislation.

A second characteristic feature in the Belgian AML-system (though not exclusively Belgian) is the administrative nature of the FIU. In the early 1990s, when the AML legislation was developed, the Belgian legislator aimed for an FIU that was ‘not a police service, nor a service dependent of judicial authorities’<sup>5</sup>, but a go-between for financial institutions and law enforcement.<sup>6</sup> This administrative nature of the FIU not only has a filter-function, but also functions as a ‘black box’, in which decision making seems to lack transparency, based on the claim of protection of professional confidentiality. This may also be due to the FIU’s specific statute, which paves the way for confidentiality and hence secrecy. In view of aiming for effectiveness – the measurement thereof being the focus of this article – this secrecy is a significant obstacle.

## **Anti money laundering: a construction of ‘danger’ without knowledge**

The international origins of the AML system are well-known and were analysed by several authors (Levi, 1996; Levi & Reuter, 2006; Van Duyne, 1997; Van Duyne *et al.*, 2005; Verhage, 2009b; Verhage, 2009a). They have also shown that the interests behind the implementation of the AML system were of a various nature: economic interests, competition between states and organisations, the war on drugs and – after 9/11 – the war on terror, all have influenced the way in which the anti-money laundering apparatus has been shaped and spread all over the world. The threat image of either the links between money laundering and a potential power-accumulation of organised criminal groups, terrorist groups, or the reputational hazards associated with money laundering, has resulted in a society in which anti-money laundering efforts and investments by private organisations (whose core-task is not crime fighting) are perceived as ‘normal’ or ‘standard’ business conduct (Sharman, 2008). The *compliance industry*, as illustrated in earlier contributions (Verhage, 2009c), adds to this threat perception (van Duyne, 2008) by emphasising the risk that is (or might be) associated with money laundering. As we illustrated in earlier contributions, this perception of threat also entails commercial advantages: the higher the risk associated with money laundering, the more AML investments, the higher the revenues of the compliance industry. This evolution is not typical for anti-money laundering, however. The last decades have shown an increasing intermingling of public and private actors in the field of crime control, to the extent that ‘professional careers and business interests rely upon the continued threat of crime’ (Zedner, 2003). This assessment led Bauman to the conclusion that *public* demand for security (and we count financial institutions, for the sake of the argument, as part of the public) is the result of ‘a remarkable transfer of anxiety’ (Bauman, 1998; 116, cited in Zedner, 2003). Everyone has to be afraid; in other terms: alertness to risk is of high commercial and

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<sup>5</sup> Belgische Senaat, 468-1 (B.Z. 1991-1992) Explanatory Memorandum to the bill on the prevention of the use of the financial system for money laundering 22 July 1992 p.39

<sup>6</sup> This system is not unique for Belgium: until recently the Netherlands had a similar administrative institution, functioning as a buffer for the processing of *unusual* transactions.

policy making importance. (Van Duyne, 2008) This tendency has been labelled as the ‘commodification of security’ (Loader, 1999). It is interesting to notice that in this state of fear few requests are made for empirical knowledge. On what knowledge have these fears been based?

One of the examples in this respect are the large accountancy firms. For example, in its 2009 Global Economic Crime Survey, Ernst & Young states that the (perceived) risk of money laundering victimization by companies has increased during the current financial crisis. Companies now estimate their risk of victimization as higher than during times of financial stability (Ernst & Young, 2009). Furthermore, of all the companies in the E&Y sample that experienced fraud in the past year (30%), 12% has reported falling victim to money laundering in the past year – money laundering even takes the fifth place on the incident list of financial crimes. This illustrates both the perceived impact of money laundering and the awareness of companies with regard to the incidence of this crime.

### **Do we need to know the outcome?**

In my recently finalised PhD research, I studied these diverse forces that impact on the battle against money laundering. One of the questions that became increasingly urgent during this study was the question to what extent the battle against money laundering is based on facts, instead of on imagery. It soon became clear that facts are surprisingly absent in the money laundering debate and scarce in the research literature. Apart from ‘educated guesses’ (Schneider & Enste, 2000; Unger, 2006) on the amount of money that is laundered, statistics are unconvincing with regard to the effect of the AML system (Reuter, 2009; Harvey, 2007; Sharman, 2008). A study, carried out in 2009 commissioned by the European Commission<sup>7</sup> concluded that reporting institutions within Europe also question the efficiency and effectiveness of the system. This is partly due to the lack of transparency and knowhow with regard to the outcome of AML policy (European Commission, 2008). My own research (Verhage, 2009a; Verhage, 2010) also showed that most reporting institutions are not provided with feedback on their reports, which leads to a system of blind reporting and uncertainty with regard to the quality of these reports.

In short, while financial institutions (and others) are obliged to invest large sums in AML, the authorities are lagging behind with regard to follow-up, feedback, transparency and the granting of access. This is also reflected in the fact that empirical research on the effects of the anti-money laundering system is very scarce, probably also because of the difficulties in gaining access to statistical information of the authorities (Van Duyne, 2007). It may be clear that conducting an evidence-based policy and knowledge-based AML strategy is largely impeded by this lack of data which seems to be due to the attitude of the authorities themselves. Before we further discuss this lack of data, we shortly explain the difference between process and impact effects of AML.

### **Process Effects**

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<sup>7</sup> Study on “Best practices in vertical relations between the FIUs and law enforcement agencies and Money Laundering and Terrorist Financing Reporting entities with a view to indicating effective models for feedback on follow-up to and effectiveness of Suspicious Transactions Reports”, 2008-2009.

Naturally, we need to have knowledge of the effects of a policy that demand large investments from society at large. However, apart from the ‘net’ effect of the anti-money laundering policy, this policy also has a symbolic goal. This symbolic goal, based on a moral fear of using criminal money in the legal economy, can also lead to general prevention and can be seen as a *process effect*. This implies that the knowledge of the process of AML in itself has led to an impact on the underlying phenomenon. The same symbolic effect can also be found in ‘regular’ policing, where the ‘net’ effect may also be limited (Ponsaers, 2009): (by far) not all crimes are recorded, let alone solved, nor all perpetrators are convicted, which could also lead to the assessment of the law enforcement apparatus in general as ineffective. Still, there is no debate on abolishing the traditional penal chain. Is the anti-money laundering system different?

In our opinion there is a difference in two aspects. First of all, where policing is supposed to lead to the protection of basic principles and democratic rights, and is surrounded with a large amount of checks and balances, the AML policy can be questioned with regard to these values. AML activities regularly balance on the borderline between the general and the individual interest, rubbing against the boundaries with regard to intrusion of privacy and due process. This is all the more pressing since these activities are mainly carried out by private organisations, implying less democratic controls and a potential higher risk with regard to breaches of privacy.

Secondly, the AML system in itself, by its focus on specific sectors (such as the financial institutions) and the risk-based approach that is inherent to AML, unavoidably leads to displacement effects. These displacement effects are different from those with common crime; they will concern the organisation of (financial) business, for which there is ample room of manoeuvre. The preventive effect of the system may therefore be questioned; there are numerous alternative ways to launder money. Reuter and Truman, for example, concluded in their assessment of the US system, that an expansion of the AML system will probably only “*marginally inconvenience those who need to launder the proceeds of their crimes*” (Reuter & Truman, 2004; 7). Furthermore, the general preventive effect is also very difficult to map. One way of studying this effect could be by asking banks for the number of clients they have refused based on their identification policies, or the number of transactions they have *not* carried out as a result of a money laundering alert. However, although Belgian financial institutions were very helpful during my PhD research, we may doubt whether they would be willing or allowed to share this kind of information, supposing they have this information available.

A second method to study the preventive effect of AML could be by assessing the price of illegal goods: if the AML system has a preventive effect, something must happen at criminal market level. It is to be expected that business costs will increase, at least by making money laundering more expensive. Consequently one would expect the prices of illegal goods to rise. However, as Reuter noted in 2009, an increase in money laundering controls and costs would only have a very small or no effect on the retail price of cocaine (Reuter, 2009). This is confirmed by the UN 2010 World Drug Report: since 1990, whether wholesale or retail, the prices of cocaine and heroin have come down globally (UN, 2010) The effects on the drug markets – if any – appear therefore to be marginal, which may be ascribed to the multiplicity of money laundering methods (displacement) and hence the difficulty to tackle all these methods in one AML regime. However this is little more than a plausible hypothesis: we have no data to substantiate this.

## Impact effects

Impact effects consist of the net effect of criminal cases that flow through the anti-money laundering chain and its impact on crime in general. It refers to the outcomes of the AML chain: prosecutions, convictions, confiscations, or other sanctions. The outcome of the AML chain should be measurable (ideal typically) by looking at data that are available of the functioning of the penal chain. This may seem to be an easy task. However, as stated above, the lack of access and the limited comparability of data can be major hindrances in this process. This is not only frustrating for researchers, also policymakers have (finally) come to this insight, albeit belatedly (Van Duyne, 2007). At any rate, in the 3<sup>rd</sup> EU directive on Money Laundering, we may discern some awareness of this defect: policymakers seem to have come to the understanding that an effective policy should be based on the existence of data to measure these policies. In the 3<sup>rd</sup> Directive, (which was just recently introduced in the Belgian AML legislation – through the law of 18 January 2010), the need for gathering basic data on money laundering and the effectiveness of its approach is emphasised. Countries are therefore obliged to gather these data, under Article 33 of the Directive:

*“1. Member States shall ensure that they are able to review the effectiveness of their systems to combat money laundering or terrorist financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems. Such statistics shall as a minimum cover the number of suspicious transaction reports made to the FIU, the follow-up given to these reports and indicate on an annual basis the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences and how much property has been frozen, seized or confiscated.”<sup>8</sup>*

In addition, in preparation of this obligation in the Directive and in the framework of the EU Action Plan 2006-2010<sup>9</sup>, a working group was established, aiming to gather basic data on money laundering with the goal of being able to monitor the implementation of legislation and support the prevention and combat of money laundering by both policymakers and practitioners (European Commission, 7 April 2009). The Financial Crime Subgroup, organised in the framework of the EU Action Plan Criminal Statistics 2006-2010, was composed of experts in the field of money laundering and was set up to advise the European Commission on the set of indicators on ML. The Subgroup established (not surprisingly) that basic data may be available on a national level, but these are often diverse, which hinders international comparisons. The Subgroup therefore aimed to introduce ‘efficiency indicators’ that would allow the assessment of AML policy. Based on 24 provisional indicators, EUROSTAT gathered information (by sending out requests to Member States in May 2008 – (Eurostat, 2009)) and made a first analysis in November 2008.

They concluded firstly that the data were not suitable for publication, as data are available for only a limited number of Member States. They pointed at the need to develop a better information flow within Member States, allowing data to become available to contact points for crime statistics.

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<sup>8</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

<sup>9</sup> This is the EU Action Plan 2006-2010 on “Developing a comprehensive and coherent EU strategy to measure crime and criminal justice”

Secondly, they concluded that data that are available, are not always clear, for example because counting units are different (European Commission, 7 April 2009). Their final report was expected by the end of 2009, but in February 2010, no information can be found on the EU website. An e-mail was sent to one of the members of the Subgroup, to ask for more information. Eurostat answered<sup>10</sup> by stating that they are indeed working on the collection of data on money laundering, but that problems of comparability and data quality have resulted in a delay of their work. They stated that a Working paper might be published on this subject in the future, and referred us to the activities of Europol in data gathering.

Europol, as the European police service responsible for the analysis of crime phenomena, has indeed made a round up of money laundering data in 2009.<sup>11</sup> However, these data are very rudimentary, stating that the number of suspicious transactions reports in EU member states has increased in 2007 to 602.450 reports (an increase of 6,2% in comparison to 2006).

In short, although there are some – very recent – attempts by policy makers to map both the phenomenon of money laundering and its combat, it still is surprising that after almost two decades of AML no valid data are available. Equally surprising, it took an equal amount of time for the European Commission to become aware of this serious data deficiency. Hence, no one knows the magnitude of the crime that is being fought, nor can anyone tell us what the effects are of this intrusive, encompassing and costly AML-system. On the other hand, the fact that the 3<sup>rd</sup> Directive mentions the need for statistics and the initiatives that are taken with regard to the gathering of these statistics, must be seen as a step in the right direction.

Today, however, the absence of data seems to confirm Van Duyne's analysis of a *camera obscura* with regard to policy formulation (Van Duyne, 2007): policy makers acknowledge to be unaware of the effects of the AML system, and the question may well be: do policymakers really want to know what the effects are?

## **Outcome of data search: finding pieces of the puzzle**

The search for data on (anti) money laundering is comparable to making a puzzle: each small piece needs to be searched for, in order to get the larger picture, and almost unavoidably one or more pieces are mysteriously missing. In the following sections we will describe our search for these data and the results thereof. To be clear: in this paragraph we will look at outcome effects on the level of the criminal law enforcement chain. We have made use of the FIU statistics, the statistics of the Public Prosecutor's Office and police statistics to gain an insight in the AML chain. How do the pieces of the puzzle connect?

To avoid confusions: the counting units discussed differ according to the phase of the criminal law chain.

- in the first phase, the counting unit is 'report' ('reports' are sent from reporting institutions to the FIU);

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<sup>10</sup> E-mail, Eurostat, on 15/2/2010

<sup>11</sup> <http://www.europol.europa.eu/index.asp?page=news&news=pr090622.htm>



- in the second phase, the FIU merges these reports into ‘files’, and sends a selection of these files to the Public Prosecutor. From this phase on, we will refer to ‘files’ as counting unit.

To remain within the metaphor of the puzzle: not only is it uncertain whether all the pieces are complete, the pieces there are differ in dimensions, one a bit thicker than the other.<sup>12</sup> This disorder may confuse the reader as much as it confused the author in the first place.

### **Phase 1: input to the FIU**

The first phase of the AML chain consists of (public and private) organisations that report a-typical (unusual) or suspicious transactions to the FIU. In Belgium, where a risk-based approach has been adopted with regard to AML reporting (CBFA, 2005) this implies that each organisation is supposed to investigate a transaction before reporting this to the FIU. After all, the risk of the transaction needs to be clarified in advance. A second impetus for the in-house investigation of transactions can be found in the self-protective reflex of the organisations. Banks, for example, are very reluctant to simply report each a-typicality pro forma to the FIU. An internal investigation allows them to filter out the ‘genuine’ risky transactions and many financial institutions will be inclined to invest in this investigation phase. On the other hand, other financial and non-financial institutions, which are less controlled or less regulated, may choose to report quasi automatically. And there are others who are known for the low number of reports to the FIU (for example, in 2008, real estate agents or diamond dealers have each reported 1 suspicious transaction to the FIU (CTIF-CFI, 2009)). The image and background of these reporting institutions and their attitude towards reporting is therefore very diverse, as is their investment in preventing and investigating money laundering. The reports that are made by the financial institutions (banks) are the ones that are most transmitted in the form of files to the Public Prosecutor: 64,7 % of the files that were sent to the Public Prosecutor were based on reports stemming from financial institutions, while the exchange offices, although once having reported the largest amount of suspicious transaction reports, now only contribute 19,8% of the files. The same can be noted for the amounts of money that are involved (banks are responsible for 79% of the total amount of money involved in the transmitted files).

The total number of reports to the FIU has increased during the last years: in 2004 11.234 reports were counted, while in 2008, 15.554 reports were submitted to the FIU (CTIF-CFI, 2009). The majority of the reports to the FIU are made by exchange offices and financial institutions (banks): together they represent 81% of all reports. Casinos take the third place in reporting. Important to note here is that the Belgian FIU provides statistics for *files* instead of reports: different reports by diverse institutions with regard to the same transaction(s) or client(s), are merged into a file. These files are therefore the counting unit for the transmission to the public prosecutor’s office.

### **Transmission to the Public Prosecutor or dismissal by the FIU**

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<sup>12</sup> In the Netherlands too, the chain for processing laundering cases starts with reports at the level of transaction, then these are bundled into files and after sent to the PPO the counting unit becomes the single offender.

The percentage of reports that have led to a file being sent from the FIU to the Public Prosecutor's office (which could be seen as an indicator of the seriousness of the file) has decreased in 2008. In 2008 only 19,2% of all files were transmitted by the FIU to the Public Prosecutor's office.<sup>13</sup> This could be a first indication that an increase in reporting obligations does not necessarily lead to a more effective system, when counting the files that reach the public prosecutor's office.

**Table 1**  
**Overview of phase 1 and 2 of the AML chain**

	2004	2005	2006	2007	2008
<b>reports (total)</b>	11.234	10.148	9.938	12.830	15.554
<b>reports merged into files</b>	3.163	3.051	3.367	4.927	4.875
<b>average nr of reports in 1 file</b>	3,6	3,3	3,0	2,6	3,2
<b>files FIU → PP</b>	664	686	912	1166	937
<b>% files to PP</b>	21,0%	22,5%	27,1%	23,7%	19,2%
<b>% dismissal by FIU<sup>14</sup></b>	68,8%	73,9%	71,6%	68,2%	61,0%

Source: CTIF-CFI, 2009. Columns do not add to 100 % if files are not finalised.

We think that more detailed data are needed in order to project these statistics against a proper context and to make an interpretation of what these figures really mean. Again, we must conclude that these data are lacking. Although these aggregate data are gathered on the level of the FIU, no access was given to the raw database.<sup>15</sup>

The FIU has dismissed more than 60% of its files in 2008. The annual report mentions that the FIU has dismissed a total of 22.108 files (on a total of 34.878), since the start of its activities since 1993, which amounts to 63% (42,8% of the total number of reports).

In general we see that the number of files that was dismissed at the level of the FIU has decreased. However, the number of files transmitted to the Public Prosecutor's office has also decreased due to number of files that is still pending at the level of the FIU (more than 2.600 files in 2008 – which is more than twice as much in comparison with 2004; CTIF-CFI, 2009).

When looking at the *content* of the files that were sent to the Public Prosecutor, the main category in which files are transmitted concerns racketeering (15,6%) or illegal trade in goods (14,4%) – both concerning legal goods and services (such as cars, jewellery) and illegal goods (stolen goods, weapons).

## **The police: repressive approach**

<sup>13</sup> The FIU mentions in their overview that 32% of all *reports* and 19,2% of all *files* were sent to the public prosecutor's office (CTIF-CFI (2009). From this we can derive that 19,2 % of the files consist of 32% of the total number of reports.

<sup>14</sup> The difference between the dismissal% and the % of transmitted files are files that are still being handled by the FIU: 3,6% in 2005 and 19,8% in 2008.

<sup>15</sup> A letter to the FIU asking for these data in 2009, was answered by a letter from the FIU stating that the FIU was not able to further assist in this research.

The police statistics for 2008 show that in that year, 661 files on money laundering were registered at national level. To compare: the statistics for the Brussels police state that 153 files were registered for the judicial district of Brussels.<sup>16</sup>

The activity report of the Federal Police for 2008 states that in that year 732 new investigations were started with regard to money laundering (one of the prioritized phenomena).<sup>17</sup> How this relates itself to the overall crime statistics, is not clear. From those files, 75 suspects were referred to an examining magistrate. In total, 88 criminal groups were identified as working in the domain of money laundering.

The section financial-economic crime of the Federal Police (CDGEFID) mentions that 20% of their independent, operational files concern money laundering (Federale Gerechtelijke Politie, 2009). Typical for 2008 is, that the majority of their files were started on the basis of a detection of a predicate offence, rather than on the basis of a report by the FIU, which is something that is handled by the FGP's (Federale Gerechtelijke Politie, 2009).<sup>18</sup> In the same activity report, the CDGEFID states that in 2008 for over 11 million euro was seized – however, there are no statistics on the amount of money that was actually forfeited, which would give a more realistic picture. This implies that we do not know what the net effect of these confiscations is.

The COIV (the Central Organ for Confiscations and Forfeitures) should be able to communicate these statistics. They are, after all, also expected to publish an annual report. Unfortunately they have not made their report available at their website. An e-mail, sent to the COIV asking for the most recent version of the annual report or other statistics on this topic, was never answered. We were, however, able to find some information in the FATF mutual evaluation of Belgium. The statistics that were provided for this evaluation showed that in 2003, in 25 files confiscations took place, to an amount of 56.039.846 Euro (FATF, 2005). But here the same remark is made: we do not know how much money was truly confiscated and how much has been returned. In this respect, in a recent interview, even the president of the FIU in Belgium emphasised the fact that the amount of money that is actually recovered by the Belgian State is very small (or, in his words “*next to nothing, especially when compared to the illegal financial flows*” (De Standaard, 28 May 2010).

## **Public Prosecutor's Office: the mountain brings forth a mouse?**

We have concluded that the data on police level is rather limited. We therefore turn to the organisation of the Public Prosecutor for more insight. Unfortunately, here we are faced with comparable problems. First of all we must remark that the statistics of the public prosecutor's office do not differentiate between ‘fencing’ and ‘money laundering’. Both crimes are covered by one denominator: “fencing and money laundering”. This makes studying the figures of money laundering very difficult. One of the possible ways to solve this problem would be to ask for the raw data to make an independent analysis. However, gaining access to these data may take a long time, which was not available while drafting this chapter.

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<sup>16</sup> [http://www.polfed-fedpol.be/crim/crim\\_stat\\_nl.php](http://www.polfed-fedpol.be/crim/crim_stat_nl.php)

<sup>17</sup> In total, the federal police is active in 1377 investigations. Activity Report Federal Police 2008; [http://www.polfed-fedpol.be/pub/jaarverslag/pub\\_jaarverslag2008\\_nl.php](http://www.polfed-fedpol.be/pub/jaarverslag/pub_jaarverslag2008_nl.php)

<sup>18</sup> FGP = decentralised directorate of the Federal Judicial Police, present in each judicial district

Secondly, statistics that are available require some analysis when one wants to look at specific criminal categories. Sometimes this requires the combination of several tables or sets of data.

Furthermore, the public prosecutor does not only receive files from the FIU. Also police departments or other special investigation services (such as the tax inspection) can send money laundering files to the public prosecutor's office. But the FIU report mentions the results of only the laundering files that they have transmitted to the Public Prosecutor. This allows us to refine the data that we have found and enables a comparison between money laundering files 'in general' (stemming from all possible sources) and money laundering files that result from the reporting obligation to the FIU (the outcome of the AML chain).

#### *a. Money laundering files 'in general'*

##### *National statistics*

In this section I will discuss both the general statistics (national measurements) and the statistics for the Brussels Public Prosecutor's Office. We have studied the statistics for the judicial district of Brussels since this is the court where most of the financial-economic crime cases are handled (35% of the files transmitted by the FIU were sent to the court district Brussels).<sup>19</sup>

In 2008, in Belgium, 4.115 files were started with regard to 'fencing and money laundering' (0,58 % of the total input at the level of the Public Prosecutor). In 2008, the FIU sent 5.045 reports to the Public Prosecution Office, divided over 937 files. This implies that the majority of cases with regard to 'fencing and money laundering', is not stemming from the FIU. This may however, partly be explained by the fact that two types of crime are combined in one denominator in this statistic.

The output of the Public Prosecution Office (national measurement) shows that in 2008 4.220 files on money laundering and fencing were handled in Belgium, which adds up to 0,6% of the total output. In general, 52% of these cases were dismissed by the public prosecutor.

##### *Statistics for the Brussels Public Prosecution*

For a better view on the relationship between input and output of money laundering cases, we refer to longitudinal statistics, in which a cohort of cases is followed throughout time.<sup>20</sup> These statistics entail the decisions that were made with regard to files that were started in one year (in this case, 2003). The statistics are followed during five years, which implies that we are able to get a view on the handling of files in the course of time. A disadvantage of the longitudinal study is, however, that it only allows for a marginal insight in the flow of files; they can be searched by looking for the type of crime that is studied, and shows us a limited number of decisions. This implies that we see the total of files, and a number of decisions that were taken in the totality of these files, but that a large part of the decisions are missing in the statistics (in the graph these are referred to as 'missing data'). This implies that these data are not able to give us a complete view on the decision making process.

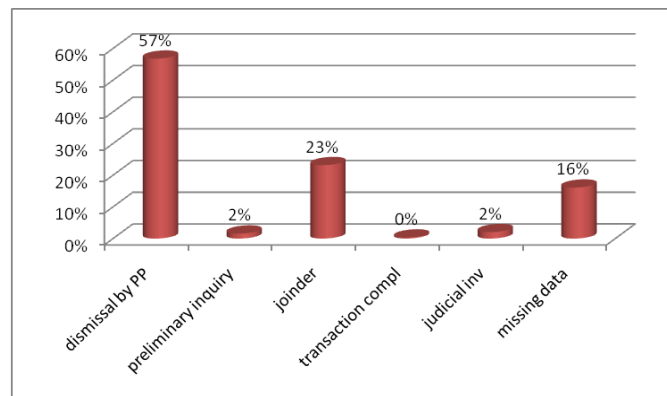
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<sup>19</sup> The FIU report of 2008 also mentions that most files are sent to the Brussels public prosecutor (CTIF-CFI, 2009). We are aware of the fact that this may lead to a bias, but at the same time, these statistics provided the most details.

<sup>20</sup> [http://www.just.fgov.be/statistique\\_parquets/jstat2008](http://www.just.fgov.be/statistique_parquets/jstat2008)

In the longitudinal study, when looking at the district of Brussels, we see an input of 1.523 files in 2003 (0,76% of the total input).<sup>21</sup> In 2008, almost 60% of the files stemming from 2003 are dismissed. Out of these 865 dismissals, again over 60% are dismissed for ‘opportunity’ reasons or for the sake of expediency (37% is dismissed for technical reasons).<sup>22</sup> This implies that fencing and money laundering is in the sub-top-list of crimes dismissed for ‘expediency reasons’. Dismissals for reasons of expediency may be related to the fact that the crime is not a priority for the Public Prosecution, or that the damage is relatively small, or the societal impact is rated as limited. Crimes that are even more often dismissed for these reasons are environmental infractions, drug crimes, public disorder or fiscal fraud.

In 2008 the figures state that 24 cases are still in preliminary investigation, 353 are merged with other files, 5 cases have resulted in a completed finalisation by the public prosecutor, and 31 are still in judicial investigation. The results of the other files (245) cannot be derived from the statistics.



**Figure 1: Outcome ‘fencing and money laundering’ cohort 2003 - Public Prosecution Office Brussels.**

Source: Annual Statistics

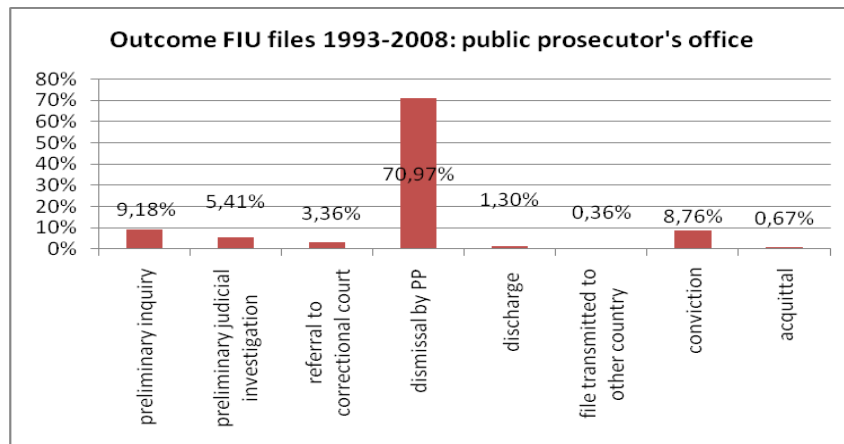
*b. Money laundering files resulting from the AML chain*

In the FIU annual report, statistics are provided for the period 1993-2008, based on the results of files sent by the FIU. This implies that the scope is more accurate: these statistics cover only money laundering cases (not fencing), resulting from the reporting duty in anti-money laundering. The statistics are not presented per year, which may create a confusing image. In the judicial district of Brussels, from 1993 – 2008, 3.606 files were started as a result of FIU-reporting. The majority of these files were dismissed by the Public Prosecutor (71%) and a small proportion was discharged by the *raadkamer*<sup>23</sup> (Chambers of Deliberation) (1,3%). In Brussels, 8,8 % of all files on money laundering resulted in a conviction since 1993 (CTIF-CFI, 2009).

<sup>21</sup> [http://www.just.fgov.be/statistique\\_parquets/jstat2008/n/home.html](http://www.just.fgov.be/statistique_parquets/jstat2008/n/home.html) Tabel 6 Instroom van zaken in de loop van 2008 per rechtsgebied en per type tenlastelegging (N en %) 2,66% of the dismissals are registered as ‘other’ in the statistics and can therefore not be counted as either policy or technical dismissals

<sup>23</sup> After a *judicial* investigation (which is carried out by an examining magistrate), the *raadkamer* (not the public prosecutor) decides on either discharge (dismissal) or referral to correctional court

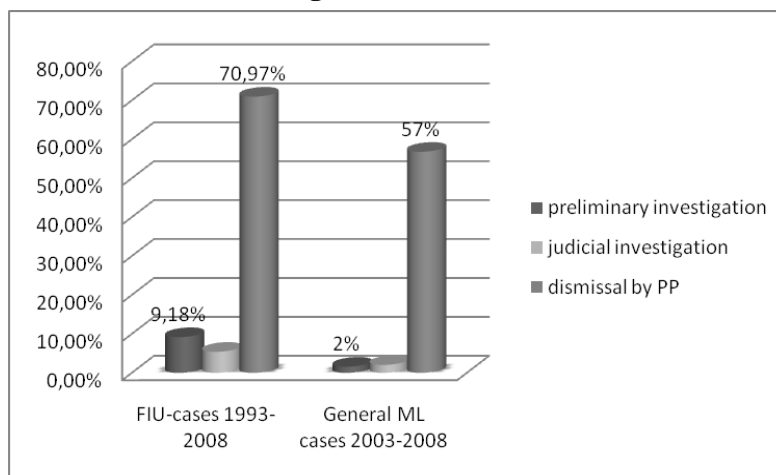
**Figure 2.**  
**Outcome FIU 1993-2008, in % of total FIU files sent to PP.**



Source: CTIF-CFI, 2009

When we compare both types of findings, taking into account that this concerns different statistics and different counting units, we get the following procedural outcome: the FIU files are dismissed more often in comparison with the ‘general’ fencing and money laundering (lumped together) cases. Explanations for this can be various: the inclusion of ‘fencing’ in the Public Prosecution’s statistics might of course have an impact on the way in which these cases are dealt with. It is plausible that ‘general’ money laundering cases may be more often linked to other, more serious types of crime, which could have an effect on the priority which is assigned to it by the Public Prosecution’s office. But these cases cannot be singled out. It is clear that more research or at least better statistics are needed in order to understand more fully the mechanisms behind these statistics of the mountain and the mouse (and subsequently streamline the statistics that are available).

**Figure 3**  
**Comparison results FIU-files - general ML files – In % of total outcome per type of input (FIU or general ML files)**



## Court decisions

The annual report of the FIU states that in the period 1993-2008 10.146 files were transferred by the FIU to the Public Prosecution's Office. In 1209 of these files, the Courts came to a conviction (11,9%) . 'Conviction' can imply a prison sentence, but also a confiscation order of criminal assets and/or a fine. The statistics on convictions in Belgium (on [www.just.fgov.be](http://www.just.fgov.be)) that are available in the public domain are not detailed enough and hence do not allow the singling out of the money laundering cases, let alone to discern which decisions were taken in these cases, which leaves us with a very unclear picture and leaves us no room to check for the statistics that are provided in the annual report of the FIU. We have asked the department of Justice for more detailed statistics, but they have informed us that statistics on specific money laundering offences are grouped under a more general code, which does not allow for a more detailed view. The Justice Department has, however, provided us with some statistics with regard to convictions under code 505 of the Criminal Law (fencing *and* money laundering). In these figures, the number of convictions with regard to fencing and money laundering are counted, not the number of persons that are convicted. The statistics from 1999-2005 show a relatively stable amount of convictions, but apart from that, provide very little insight in the mechanisms of investigation and conviction. Furthermore, these statistics do not allow for a comparison with the numbers that are given in the FIU report.

**Table 2**  
**Sentences in relation to art. 505 Criminal law**

	1999	2000	2001	2002	2003	2004	2005
<b>Confinement/treatment</b>	4	6	8	4	6	3	6
<b>Sentence</b>	1646	1783	1963	1941	1910	1987	1813
<b>Suspension of enforcement of sentence</b>	328	315	319	406	270	181	187

(Source: FOD Justitie, Service de la Politique Criminelle, 2010)

Though we had to be patient, finally the department of Justice has promised us that it should be possible to differentiate for money laundering with regard to convictions in the course of the next few months.<sup>24</sup>

## A modest result

All in all, after 15 years of AML reporting, investment and investigations, the outcome seems very modest (CTIF-CFI, 2009), while the way the data are handled and the results presented defies further analysis. The same outcome was observed in other countries, where convictions rates seem to remain relatively low too (Levi & Reuter, 2006; Harvey, 2007). This also implies that – based on these statistics – the expected 'general preventive' effect of the AML system might be modest as a result; the chance of getting caught seems rather low, and the chance of getting convicted even lower. Others have also concluded that the AML system has not resulted in more costly or more dangerous money

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<sup>24</sup> E-mail, FOD Justitie, 26/2/2010

laundering (Blickman, 2009). This not only raises questions with regard to the effects of the system, but also with regard to the priority that the authorities give to money laundering (in contradiction with the threat image they are spreading) and their curiosity about the effect of their own policies.

## **Conclusion: what do we need to assess AML policy?**

### *The lack of proper statistics*

After this expedition for money laundering statistics, we deduce a number of conclusions from our search for the outcome of the money laundering chain.

We can only establish that the priority that needs to be given to (anti) money laundering which is preached by the authorities, is not practised by the authorities themselves.

First of all, it is clear that gathering (detailed) data on both the phenomenon of money laundering (occurrence) and its approach (prosecution and conviction) is very difficult. In some cases, various scattered fragments are found, but putting these together, one ends up with more questions than answers. Attempting to do quantitative money laundering research looks in this respect like ‘statistical criminal archaeology’. In this sense, Belgium can be added to the countries that are working in a *camera obscura* (Van Duyne, 2007). The fact that policymakers on a European level have given an impetus for a more elaborately structured data collection is a step in the good direction, albeit after two decades. However, the question (and doubts) remains to which extent this will succeed and to which extent these data will be made accessible publicly, for example for research and what quality these data will have. Nonetheless, we applaud the fact that this topic is now discussed on a European level hoping it will not run aground.

Secondly, in spite of the efforts in recent years, it may be considered surprising – to say the least – that the result of the AML system is unknown. Surprising, because money laundering is considered a serious offence for which reason it has a high priority rating. But how seriously is it taken? First of all, we refer to the alleged threat that is attributed to money laundering (potentially infiltrating the legal economy, resulting in a disruption of the financial flows). In case of such an important threat, one would expect policy makers to be very interested in the effects of a system that aims to reduce this threat and risk. Secondly, the widening of obligations and the broadening of the number of organisations that are obliged to these obligations, suggests the great importance of the AML system for governments and nation states. The costs of AML for banks (and other institutions) are high – as calculated recently by the European Commission: banks invest about 10% of all their financial services regulatory costs in AML compliance (Commission of the European Communities, 2009). These costs are likely to be passed on to the customers as far as it concerns the obliged institution and to the tax payer in all other aspects. This is even the more reason why such a system asks for transparency and control.

Against the background of such high societal and economic costs, governments might be expected to show more interest in the effects of such investments and willing to invest in methods of measurement.



### *Lack of insight in effects may hamper effectiveness*

Gaining insight into the effects of the AML chain is important in developing a more evidence-based policy. Naturally such insight could also be used with regard to enhancing effectiveness of the system. The lack of feedback within the system which we referred to earlier (resulting in reporting institutions that are not aware of the relevance of their reports and hence do not know how to do a good job), results in a potentially ineffective system, as the system lacks well-founded information (Gelemerova, 2009). An investment in acquiring insight in the functioning of the AML chain would therefore also imply an investment in the quality of the system and the value of its functioning. This is confirmed by the FATF, in their statement on the risk-based approach in money laundering (FATF, 2007). In their opinion, in a risk based-policy, sharing information and expertise between reporting institutions and authorities is of utmost importance. Reporting institutions might, after all, in the absence of information, make the wrong assessments and over- or underestimate risks.

The same applies to the gap between the private reporting institutions and law enforcement: criminal investigation and prosecution. As a result of the obligation of reporting institutions to investigate transactions, the knowledge, know-how and expertise develops. But in a system with no feedback this developed expertise is likely to remain within the private sector and subsequently to stagnate. This may lead to the outcome that the authorities display limited interest for this expertise: there is only an interest in the output in the form of suspicious activity reports. The outsourcing of investigations to other (private) actors in the AML chain may therefore have an unwanted effect.

Furthermore, transparency should prevail in any system that may impact personal and private spheres. Democratic checks and balances are specifically important in case of the anti-money laundering system: clients are largely unaware of the checks and procedures that are carried out while their transactions are passing through the financial channels. Blacklists are used during these checks that are provided by private organisations while the rights of people on these blacklists are very unclear.

### *What we need*

In order to build a transparent policy, there is a need for data. First and foremost, reliable data should be available and easily accessible, for both researchers and practitioners. In addition, as Van Duyne and De Miranda have already noted (Van Duyne & De Miranda, 1999), international data are indispensable in this respect; money laundering is an international phenomenon, enforced on an international level, which automatically implies that international and comparative research is a *conditio sine qua non*. This does not only point at the need of a proper availability of data, but also at a streamlining and harmonisation of data gathering and processing. Different counting units (for example files versus suspicious transaction reports), different registration methods and -systems and different criteria for what is considered to be 'suspicious' hinder comparability and hence transparency. This is underlined by the current difficulties of Eurostat in gathering conclusive statistics.

When we want to measure effectiveness and efficiency, feedback between law enforcement actors and FIUs is also needed. This does not only involve feedback on the statistics of investigations, prosecutions and convictions, but also on the relationship between suspicious transaction reports and criminal files (as is provided by the German FIU) and a feedback on financial intelligence. Ideally, the

FIU should also provide this information to the reporting institutions. Hiding behind the professional secrecy may be an easy way out to such feedback task: the example of the German FIU's annual report shows that a general feedback on reporting quality is possible without harming these principles.<sup>25</sup>

Thirdly, and here we must search our own role as researchers, more qualitative research can also shed a light on effectiveness of the AML system. Statistics, after all, need context and interpretation and this is even more true in a system that is characterised by diversity and change. A qualitative approach, in which several types of reporting institutions and sectors are involved, could shed a light on potential displacement effects of the AML system. At least it could clarify how the crime-enterprises have reacted to the AML pressure. Another possibility is to survey clients and staff (first line employees) of reporting institutions, to get an idea on the number of clients that is refused and hence remains out of the financial circuits – to measure a potential preventive effect. This implies that the volume of basic research has to expand.

To round up, we hope that in the near future, given the declarations of risk and knowledge based enforcement, the search for money laundering statistics will no longer be comparable to the quest for the holy (data) grail. This implies that we need solid, reliable data also in addition to transparent and accessible databases and services. Only then will we be able to tell whether there is or is not 'much ado about nothing'.

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<sup>25</sup> See for example 2005 Financial Intelligence Unit (FIU) Germany:  
[http://www.bka.de/profil/zentralstellen/geldwaesche/pdf/fiu\\_germany\\_annual\\_report\\_2007.pdf](http://www.bka.de/profil/zentralstellen/geldwaesche/pdf/fiu_germany_annual_report_2007.pdf)

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