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AML/CFT and Anti-Corruption Compliance Regulation: Two Parallel Roads?

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Abstract

The paper presents a comparative legal study of compliance regulation in the areas of AML/CFT and anti-corruption. The main question is whether existing experience of AML/CFT compliance regulation can/should be considered in the anti-corruption field. The author identifies distinctive features of two different approaches to regulation and the challenges arising from these, and then analyzes the role of international soft law, national laws and regulations, and compliance programmes of multinational companies. Special attention is paid to current trends in the regulation of anti-corruption compliance. One of these is the "privatization" of particular regulatory and supervisory functions by multinational corporations and companies providing certification services.

List of Abbreviations

APG	Asia/Pacific Group on Money Laundering
CFATF	Caribbean Financial Action Task Force
EAG	Eurasian Group on Combating Money Laundering and Financing of Terrorism
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FCPA	US Foreign Corrupt Practices Act
FIU	Financial Intelligence Unit
FSRBs	FATF-style regional bodies
GABAC	Task Force on Money Laundering in Central Africa
GAFILAT	Financial Action Task Force of Latin America
GIABA	Inter Governmental Action Group against Money Laundering in West Africa
IBA	International Bar Association
ICC	International Chamber of Commerce
MENAFATF	Middle East and North Africa Financial Action Task Force
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
OECD	Organisation for Economic Co-operation and Development
SFO	UK Serious Fraud Office
SMEs	Small and Medium-Sized Enterprises
UNCAC	United Nations Convention against Corruption
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

1. Introduction

Since the Financial Action Task Force (FATF) 40 Recommendations were published in 1990, Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) compliance has become one of the most regulated fields in the world. The active implementation of anti-corruption compliance in the business sector began in 2008, initially owing to the increasing application of the US Foreign Corrupt Practices Act (FCPA) after the global financial crisis and subsequently to the adoption of the UK Bribery Act in 2010. Now compliance is an emerging area in many countries.

In comparison with AML/CFT law, the international legal requirements regarding anti-corruption compliance are very general. Many countries do not have laws and regulations on anti-corruption compliance. Companies develop their compliance programmes based on international soft law, foreign law that has transnational application, and the compliance programmes of multinational corporations. Business ethics also have a significant influence on anti-corruption compliance, with more and more companies going beyond legal requirements to develop value-based compliance programmes.

The design and implementation of anti-corruption compliance management systems is a big challenge for companies, and especially for small and medium-sized enterprises (SMEs) that lack resources and guidance in this area. At the same time, the level of legal and reputational risk in the anti-corruption field is very high. Moreover, the lack of clarity in legal regulation can create legal uncertainty or even lead to judicial arbitrariness.

In the author's opinion, now is the right time to discuss the future of anti-corruption compliance regulation and development. In this regard, the following five main questions were selected for comparative legal research:

- Is corruption connected to money laundering and can/should the existing experience of AML/CFT regulation be considered in the anti-corruption field?
- Is current soft law regulation more suitable for implementing anti-corruption compliance in the business sector than the hard law regulation typical in AML/CFT compliance?
- What is the role of anti-corruption laws with transnational application in the implementation of anti-corruption compliance in foreign jurisdictions?

- What is the role of governments in the implementation of anti-corruption compliance?
- Should AML/CFT and anti-corruption compliance officers (units) coordinate their efforts?

The functional and analytical methods of comparative legal research were used as the most appropriate (Van Hoecke, 2015, p. 28-29). These methods allowed the author to research applicable international law, national laws, and regulations concerning the similarities and differences between AML/CFT and anti-corruption compliance regulation. The sources for the research include international conventions, international soft law, reports and other documents of international intergovernmental and non-governmental organizations, national laws and regulations of selected countries, and academic publications. Particular ideas and opinions are also based on the author's many years of practical experience in the field. These include working in the Russian Financial Intelligence Unit (FIU) and the Eurasian Group on Combating Money Laundering and Financing of Terrorism, and providing trainings for compliance professionals from various jurisdictions.

The aim of this paper is to propose answers to the above questions, identify existing problems in regulation of anti-corruption compliance, and suggest possible solutions. In so doing the article develops ideas that the author previously presented in a short publication on the FCPA Blog (Ivanov, 2017).

2. Corruption and money laundering

Recent academic studies and reports from international organizations and groups illustrate the close connections between corruption and money laundering (Holmes (ed.) 2010; FATF, 2011). Corrupt officials often have to legalize criminal proceeds because of the close scrutiny over their incomes, assets, and significant purchases (Laundering the Proceeds of Corruption. FATF, 2011, p. 6). In some cases, criminals plan the receipt of a bribe and the laundering of this money in the framework of one scheme. The same shadow financial infrastructure has been used for payments between participants in a corrupt scheme and for the legalization of criminal proceeds.

Under international law, there is a clear linkage between corruption and money laundering. The United Nations Convention against Corruption (UNCAC 2003) established obligations for States Parties to criminalize the laundering of proceeds of corruption offences and to take measures to prevent corruption. The International standards on combating money laundering, the financing of terrorism, and proliferation (FATF, 2012b) stipulate that corruption and bribery should be covered as predicate offences.

Developing international standards for preventing and combating corruption was not included in the list of main objectives in the FATF Mandate adopted in February 2012 (FATF, 2012a). However, one of the tasks defined in paragraph 3 of the Mandate is to prepare guidance as needed to facilitate the implementation of relevant international obligations (e.g. continuing the work on money laundering and other misuses of the financial system in relation to corruption). De facto, therefore, preventing and combating corruption are on the FATF agenda. The FATF has already published reports and guidance aimed to support anti-corruption efforts (FATF, 2012c; FATF, 2011).

Understanding the connections between corruption and money laundering brings us to the idea that the experience of AML/CFT regulation could be considered for regulation in the area of anti-corruption compliance.

3. Hard law or soft law?

The global AML/CFT system is based on the classic "hard law" model of legal regulation. The International standards on combating money laundering, the financing of terrorism, and proliferation (FATF, 2012b) define a detailed and wide-ranging framework for AML/CFT compliance. In the UN Security Council Resolution 1617 (UNSC Res. 1617) adopted under Chapter VII of the UN Charter and then in the UN Global Counter-Terrorism Strategy adopted in the form of a General Assembly Resolution (UNGA Res. 60/288), the FATF Recommendations were recognized as comprehensive international standards. Governments, financial institutions, and companies around the world recognize these as the "gold standard" for AML/CFT compliance. There are 35 states and two regional organizations that are members of the FATF, and two states with observer status. The nine FATF-style regional bodies (FSRBs) comprise 185 members.[1] In general, the FATF's framework includes 204 states and territories representing all continents and legal systems.[2]

The prerequisites for FATF or FSRB membership are recognition and implementation of FATF standards, and willingness to cooperate with the FATF, FSRBs, and other member states. A recent example is the establishment of an international intergovernmental organization on the basis of the Eurasian Group on combating money laundering and financing of terrorism, one of the FSRBs, in 2011. Article 7 of the Agreement on the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) foresees that membership in the Group is open to countries of the Eurasian region that are taking active steps to develop and enforce AML/CFT laws consistent with FATF Recommendations and are willing to assume the obligation to participate in EAG mutual evaluation programmes (EAG, 2011, Art. 7).

The acts establishing other FSRBs that do not have the status of an international organization include very similar provisions. In 2002, members of the Asia/Pacific Group on money laundering (APG) included in the APG Terms of Reference a provision that all of them will implement the Eight FATF Special Recommendations on Terrorist Financing. In 2012, the APG agreed to adopt the new

[1] APG – 41 members, CFATF – 27 members, MONEYVAL – 34 members, EAG – 9 members, ESAAMLG – 18 members, GAFILAT – 16 members, GIABA – 15 members, MENAFATF – 19 members, GABAC – 6 members.

[2] Ten states are members of the FATF and one of the FSRBs. Three (China, India, and the Russian Federation) are members of the FATF and two FSRBs.

FATF Standards (APG, 2012). In the Middle East and North Africa Financial Action Task Force (MENAFATF) Memorandum of Understanding, member states defined an objective to adopt and implement the FATF 40 Recommendations, which are recognized in the preamble as globally accepted international standards along with the related UN conventions and UN Security Council resolutions (MENAFATF, 2004).

There are effective mechanisms utilizing mutual evaluation in the FATF and FSRBs frameworks (FATF, 2013a). Three times a year the FATF identifies countries and territories with strategic AML/CFT deficiencies and divides them into two categories of jurisdiction: high-risk and non-cooperative. As a rule, listed jurisdictions cooperate with the FATF to improve their AML/CFT systems and present follow-up reports to the FATF Plenary. In case of non-cooperation, the FATF issues a public statement and calls on its members and members of FSRBs to apply counter-measures. The most recent public statement confirms the effectiveness of FATF mechanisms. The Democratic People's Republic of Korea is the only jurisdiction which does not cooperate with the FATF. The second jurisdiction mentioned in the statement, Islamic Republic of Iran, adopted an Action Plan to address its strategic AML/CFT deficiencies (FATF, 2017). Due to the efforts of the FATF and FATF-style regional bodies (FSRBs), the FATF standards have become, in the author's view, an international customary law.

The FATF standards are incorporated into national laws and industry-specific regulations, and all FATF and FSRBs members follow them in legal practice. National laws define the types of financial institutions and non-financial businesses and professions that have a binding legal obligation to implement AML/CFT compliance. The establishment of this obligation has had a double effect. On the one hand, it contributes to the development of corporate culture and the formation of a professional community of AML/CFT compliance practitioners. On the other, it allows supervisory bodies to punish financial institutions and other subjects for formal violations of AML/CFT law. As a result, supervisory bodies are able to revoke the licenses of financial institutions involved in criminal activities with the aim of cleaning the financial market. Legal acts also define the structure and detailed requirements of AML/CFT compliance programmes.

In contrast to the "hard law" of AML/CFT regulation, most national anti-corruption laws create incentives rather than obligations for companies to implement anti-corruption compliance management systems. In general, a company may not be penalized just because it does not have an anti-corruption compliance programme. Regardless of its industry, size, and ownership, a company's implementation of an anti-corruption compliance management system depends entirely on its shareholders and management. The main reasons for companies to implement such systems can be classified into three groups: moral considerations, legal obligations and incentives, and market requirements.

Moral considerations include the positions of different shareholders and CEOs who do not want to accept corruption in any form and require zero tolerance of it in a company.

Legal incentives include provisions of legal acts that give companies the opportunity to use a compliance programme as a defense to avoid criminal liability (UK) or mitigate punishment (Brazil, USA), and formal legal requirements to have a compliance programme in place (Russian Federation). However, the Russian anti-corruption law does not establish liability of legal entities for non-implementation of anti-

corruption compliance programmes (Russia's Federal Law 273 FZ 2008). Court decisions can also create legal incentives for companies. In May 2017, the German Supreme Court declared in its decision that an effective compliance management system and remedial action should be taken into account by calculating fines (1 StR 265/16(2017). This statement is important for the future judicial practice in Germany and implementation of compliance management systems in German companies.

An interesting example of a legal rule promoting anti-corruption compliance is the requirement of EU Directive 2014/95/EU that annual management reports of large companies include information necessary for an understanding of their positions and activities relating to, as a minimum, environmental, social, and employee matters, respect for human rights, anti-corruption, and bribery. The necessary information includes, among other things, descriptions of anti-corruption policies, due diligence, and risk management. In addition, Article 30 of EU Directive 2013/34/EU contains the obligation to publish annual management reports or — depending on national laws — to guarantee easy access upon request (Directive 2013/34/EU). Both Directives have been implemented into national legislation of EU member states, and the first annual management reports containing information about anti-corruption measures should be published in 2018. The EU Directive and the national laws adopted in EU member states to comply with it do not oblige companies to implement anti-corruption compliance programmes. However, firms that do not implement appropriate programmes should explain in the reports the reasons for not doing so (Directive 2014/95/EU). It is difficult to imagine an explanation that does not cause any reputational damage to a company, especially if its competitors demonstrate effective compliance programmes in their reports.

It will be possible to assess the real impact of the EU Directives and related laws after the management reports are published. At the moment, these legal changes are potentially a very effective tool for promoting a culture of integrity and creating positive incentives for companies to have effective compliance management systems.

Market requirements are the third set of reasons for a company to implement an anti-corruption compliance management system. This category includes, among others:

- requirements of counterparties to have a compliance programme in place
- requirements of counterparties to have a certified compliance programme
- requirements of counterparties to apply an anti-corruption clause to contracts
- participation in Collective Action initiatives.

There is a debate about whether implementation of an anti-corruption compliance management system should become a binding legal obligation for companies in particular industries or categories. Advocates of such a mandatory approach argue that existing legal incentives and market requirements primarily motivate large companies and their supply chains. These firms have long-term strategic plans, care about their business reputation, and have sufficient resources to invest in compliance programmes. By contrast, small and medium-sized companies, even in the same sectors or industries, may be more concerned with covering short-term costs, saving money, or simply surviving than with hypothetical reputational damage or even legal risk related to

corruption. For such enterprises, the risk of supervisory inspection and punishment in the near future can be a real motivation to have a compliance programme and take measures to prevent corruption.

The author participated in several working groups in the Russian Federation in which experts discussed the possibility of establishing such a legal obligation for a number of industries, as well as for companies using public funds. Although neither idea was implemented in Russian legislation, the author believes they have a logical basis and the general discussion should be continued. The relevant industries could be defined based on statistical data about corruption offences and the damage resulting from them. The impact of the decision about mandatory anti-corruption compliance could be similar to the establishment of obligations under AML/CFT law for financial institutions and designated non-financial businesses and professions. In addition, the idea of mandatory anti-corruption compliance for companies that use public funds can be justified if we take into account the benefits these businesses receive.

As a rule, national laws do not define in detail the structure and formal requirements for anti-corruption compliance management systems. In this regard, the international soft law of standards (including ISO 37001 concerning anti-bribery management systems) and guidance (from the Organisation for Economic Co-operation and Development (OECD), the International Chamber of Commerce (ICC), and others) is the main framework for companies drafting compliance programmes. Assessing the effectiveness of hard and soft law approaches to compliance regulation, and the pros and cons of each, is quite complicated. In general, the development of international law and international relations in recent decades clearly indicates that states prefer a more flexible approach. They adopt far more soft law instruments than multilateral conventions, and they tend to establish informal groups for cooperation instead of international intergovernmental organizations based on international treaties.

The FATF is an interesting and highly significant exception to this general trend. Established in 1989 as a task force within a framework of G7 cooperation, this body has all the distinctive features of an international intergovernmental organization apart from an international founding treaty. The FATF has more influence on national policies than many formal international organizations. As was discussed above, most countries have incorporated FATF standards in national laws.

In this regard, it should be mentioned here that ISO 37001 has a particular influence on governmental anti-corruption policies. Governmental agencies in Peru and also in Singapore officially adopted ISO 37001 (Grant-Hart, 2017, p. 1). In June 2017, the Market Supervision Commission of the Shenzhen Municipality in China published the Anti-bribery Management System Shenzhen Standard based on ISO 37001. It is the first anti-bribery standard adopted by a Chinese municipal authority to support the implementation of compliance programmes in the local companies (Fang, 2017, p. 1). Implementation of ISO 37001 in national laws, regulations and/or guidance can become a new trend in the national legal regulation of anti-corruption compliance.

The hard law approach can be criticized for its strict and sometimes formalistic regulation, which requires companies to have a lot of internal documents and procedures. For small enterprises, such as real estate agencies or jewellery stores, it is not easy to implement the

numerous requirements under AML/CFT law.

However, in discussions with the author, some business professionals have said that in particular cases it is better to have clear rules to follow. The soft law approach gives companies more freedom to manoeuvre in designing and implementing anti-corruption compliance programmes, but also more responsibility. Moreover, many companies are unable to develop compliance programmes using general international guidance and have to spend considerable sums on external lawyers and consultants. In general, the compliance function is becoming more expensive, with one recent study on costs of compliance showing that 53% of respondents expect their compliance budget to increase in the year ahead (Thomson Reuters, 2017, p. 9).

In the author's opinion, the soft law approach creates two serious problems for companies. The first is that they develop compliance programmes based on soft law but can be penalized under hard criminal and/or administrative law for non-prevention. Secondly, in the absence of clear legal rules and criteria, a judge's subjective assessment of an anti-corruption compliance programme will play a critical role. In countries with corrupt judicial systems such legal uncertainty could encourage other corruption offences, such as the extortion of a bribe by a judge in return for a positive assessment of a compliance programme.

Hard and soft law regulations are not mutually exclusive. Soft law can bring additional specific content into a general legal framework. Notwithstanding this, a scope of legal obligations for purposes of legal certainty should be defined in the hard law.

4. National law or foreign law?

As previously mentioned, almost all countries have adopted national AML/CFT laws. Financial institutions and designated non-financial businesses and professions have binding obligations to implement AML/CFT compliance systems that are fully in accordance with these laws.

By contrast, many countries do not have national laws and regulations that set out formal requirements for anti-corruption compliance. In such jurisdictions, the FCPA and the UK Bribery Act in effect replace national laws, and companies develop compliance programmes under the influence of and in accordance with these Acts, together with the regulations and guidance adopted by the US and/or UK authorities. The risk of individual liability, especially after the release of the Yates Memo in the United States (U.S. Department of Justice, 2015) is an additional factor encouraging companies to integrate FCPA requirements into compliance programmes.

However, local lawyers often do not have sufficient knowledge of US and UK laws and are not able to draft a high-quality compliance programme based on a single foreign legal act outside of the general legal framework of a foreign country.

To reduce time and costs, suppliers and third parties in countries outside the UK and US often take into consideration or even copy the compliance programmes of multinational companies. But such programmes do not always take into account the national and local specifics of various countries. In a 2017 survey by Control Risks, 55% of respondents said that their global compliance policy applies worldwide, without any local exceptions (Bray, 2017).

In the author's opinion, the absence of national laws and regulations on anti-corruption compliance causes two problems. A compliance programme designed solely in accordance with a foreign law or copied from that of a foreign multinational company might not always be sufficient for the local business environment. In addition, the quality of the compliance programme may not be good enough to protect a company in a foreign court.

Moreover, the transnational application of foreign anti-corruption law creates the risk of multiple investigations, prosecutions, and even double or triple penalizations of companies for a single corruption offence. Although Pieth (2011, p. 19) assessed the risk of double jeopardy in law enforcement for foreign bribery as not very serious, he said the risk will increase with greater activity by law enforcement agencies. Statistical data show a very active application of the FCPA (Miller & Chevalier, 2017) and the UK

Bribery Act (SFO, 2017a) towards companies from various countries and industries. A recent report from the International Bar Association (IBA) Anti-Corruption Committee confirmed the risk of multiple legal actions and highlighted that discussions on the resolution of conflicts between jurisdictions are necessary (IBA Anti-Corruption Committee, 2017, p. 26). The doctrine of double jeopardy present in many countries' constitutions and other laws comes into question when two different sovereigns can prosecute a person or company for the same conduct (Bowes QS, M., et al, 2016, p. 8).

The UNCAC (Article 42.5) and the OECD Anti-Bribery Convention (Article 4.3) contain general provisions regarding consultations between States Parties to the conventions and coordination of their actions when they exercise jurisdiction in respect of the same conduct. UK and US anti-corruption laws define particular rules and procedures aimed to prevent double prosecution but there is always room for prosecutorial or judicial discretion in both countries (Bowes QS, M., et al, 2016, pp. 9-12). Ideally, law enforcement authorities in different countries should negotiate and try to find a solution to avoid double penalization. The UK Serious Fraud Office has closed one investigation without charge, where double jeopardy was a factor (amongst others) (SFO, 2017b). However, the level of cooperation between law enforcement authorities depends on many factors, including political relations between countries. Given the significant fines for violations of anti-corruption laws, economic interests can also influence states' positions regarding the application of a double jeopardy principle.

5. Responsibility of regulators or "privatization" of regulation?

The different approaches to regulation in the areas of AML/CFT and anti-corruption compliance create different mechanisms for implementation and evaluation.

In the classical model of AML/CFT regulation, central banks or other governmental agencies (regulators), and in some cases financial intelligence units (FIUs), are responsible for providing financial institutions and companies with guidance and clarifications in response to written requests. Usually regulators also have supervisory functions. Where compliance is mandatory, proper supervision is necessary to guarantee that all market participants play under the same rules.

Although regulators can create additional bureaucracy, they share responsibility for the quality of AML/CFT compliance. For example, for several years, Russian organizations under obligation to report had to get regulatory approval of their internal control rules for preventing money laundering and financing of terrorism. Once financial institutions and companies had achieved the necessary level of experience, the approval requirement was excluded from the AML/CFT law (Russian Federal Law 115-FZ 2001). Official clarifications of regulators are always considered during supervisory inspections and judicial procedures. Regulators can cooperate with business associations to improve regulatory framework and law enforcement.

In anti-corruption compliance, by contrast, governmental agencies, as a rule, do not have the amount of regulatory and supervisory functions typical of AML/CFT regulation. In many cases, implementation of anti-corruption compliance is heavily influenced by multinational enterprises. Their compliance programmes are primarily designed to be in accordance with the aforementioned FCPA and the UK Bribery Act, and suppliers to multinationals have to follow these programmes themselves.

Moreover, public supervision of anti-corruption compliance programmes is being replaced by private certification of compliance management systems and compliance officers by a number of certification services providers in various countries. Guidances issued by various international institutions recommend external reviews of the effectiveness of anti-corruption programmes (Neiger, 2015, p. 33). After the ISO 37001 standard was published, many organizations, including market leaders,

started seeking certification services (Grant-Hart and Trevley, 2017). In due diligence it is becoming good practice, or even an important step, to request a certificate from a potential partner before establishing business relations. As a result, companies pay initially to design a compliance programme and then again to obtain certification. We can speak about the "privatization" of particular regulatory and supervisory functions by multinational corporations and companies, providing certification services.

When companies use such certificates in their business relationships, the question of the legal significance of certification is not so important. It is a company's responsibility to decide whether or not it trusts the certificate presented by its counterparty. This decision may consider the standards used for certification and the business reputation of the certificate issuer.

However, questions may arise if a company wants to use a certificate in judicial proceedings in order to confirm the effectiveness of its compliance programme. Although courts may take such certificates into account in criminal, administrative, or civil procedures, they are not obliged to do so. In the absence of legal criteria for deciding whether a certificate issued by a particular service provider may be considered, a court most probably has to assess the business reputation of the provider. This can be quite challenging, and the question may also arise as to whether a certificate issued by a foreign provider should be accepted.

If the court does decide to take a certificate into consideration, another issue emerges. This is because the various certification service providers certify an anti-corruption compliance programme against one or several of the many standards and guidances published by international intergovernmental and non-governmental organizations. It is an open question for the court which standards are sufficient for the particular company. In the author's opinion, the legal significance of certification needs clarification in national anti-corruption, criminal, administrative, and civil procedure laws.

6. Are AML/CFT and anti-corruption compliance completely different?

The traditional understanding that AML/CFT law establishes obligations only for the banking and/or financial sectors is undergoing significant change as a wider range of businesses are involved in preventing money laundering and the financing of terrorism. The FATF Standards include in the definition of "designated non-financial businesses and professions" real estate agents, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals and accountants, and trust and company service providers (FATF, 2012, pp. 116-117). In addition, EU Member States must apply the fourth EU Anti-Money Laundering Directive (Directive (EU) 2015/849) to all persons trading in goods if they make or receive payments in cash in an amount of 10,000 EUR or more.

As a rule, anti-corruption law does not define particular types of businesses that have to implement anti-corruption compliance programmes. When financial institutions and other subjects with AML/CFT obligations start thinking about an anti-corruption compliance programme, they have to decide how these two types of compliance should coexist. There are two polar options: a "Chinese wall" between AML/CFT and anti-corruption compliance, or one person (unit) with responsibility for both types of compliance. The compromise position is for different persons (units) to have responsibility for AML/CFT and anti-corruption compliance functions while also cooperating and coordinating their activities.

At first glance, AML/CFT and anti-corruption compliance are different. An Ernst & Young study of the insurance sector in Germany indicated that only 29% of respondents include AML/CFT in the compliance function of their companies, while 94% include anti-corruption and conflict of interest (EY, 2014, p. 10).

AML/CFT compliance is more technical and based on binding legal obligations. Put simply, the main role of an AML/CFT officer is to analyze available information and identify and report suspicious financial transactions to FIUs. The primary purpose of an anti-corruption compliance management system, meanwhile, is to influence the behavior of

employees and prevent their involvement in corruption. Anti-corruption compliance programmes include policies that do not exist in AML/CFT compliance: on gifts and hospitality, charitable and political donations, conflict of interest, procurement, and hotlines for whistle-blowers. Such programmes, as a rule, also include voluntary obligations developed in accordance with corporate culture and values.

Despite these differences, recent studies include both AML/CFT and anti-corruption in the concept of compliance (Rotsch (ed.) 2015, Petsche and Mair (eds.) 2012, Petsche, Toifl, Göres, and Prebil (eds.) 2014).

Moreover, several elements of AML/CFT and anti-corruption compliance are quite similar. In each case, companies have to conduct due diligence, which includes identification of politically exposed persons (PEPs), assessment and mitigation of risk, taking into account international and national sanction lists, paying special attention to suspicious transactions and business activities, disclosure information in particular cases to governmental authorities, and providing training for employees. At the same time, several definitions and obligations in AML/CFT differ from those related to anti-corruption compliance.

In the framework of AML/CFT compliance, organizations have to identify customers, representatives of customers, beneficiaries in particular transactions, and beneficial owners of customers. They also have to conduct customer due diligence. In anti-corruption compliance, companies should as a rule conduct due diligence of counterparties, the definition of which is broader than that of a customer. The identification of beneficial owners is also of critical importance for both types of compliance (FATF, 2014, p. 3; FATF, 2016, p. 1).

In AML/CFT law, the definition of PEPs includes senior-level public officials (FATF, 2013b, p. 4-5), while in anti-corruption compliance, companies pay special attention to relations with any public official. Moreover, the definition of a public official varies from country to country.

The risk catalogue in AML/CFT is much broader than in anti-corruption compliance because AML/CFT regulation is aimed at preventing and combating the legalization of proceeds from various types of crime. However, the crime of corruption has many connections to money laundering. In this regard, the connection of a customer or beneficial owner to a jurisdiction with a high level of corruption is usually included in AML/CFT risk catalogues. In both types of compliance, special attention is paid to public enterprises, cash-intensive businesses, front companies, and financial havens.

The identification of suspicious transactions is probably not the main priority for anti-corruption compliance in the way it is for AML/CFT. Nonetheless, careful analysis of financial transactions can also be an effective way to prevent corruption.

The scope of reporting obligation in anti-corruption compliance depends on a country's legal provisions. National criminal law can establish obligations to report corruption offences relating to serious or organized crime or having a particular threshold of imprisonment as a liability. In other cases disclosure of information depends on the compliance policy. In AML/CFT compliance, financial institutions and designated non-financial businesses and professions are obliged to report controlled transactions in accordance with national laws and to report suspicious transactions as defined in the AML/CFT compliance programme. So both types of compliance include a

combination of binding obligations to report and discretionary reporting.

The similarities in compliance programmes described above create a good opportunity for cooperation between compliance officers or units responsible for AML/CFT and anti-corruption compliance.

Conclusion

This study demonstrates that AML/CFT and anti-corruption compliance aim to prevent two closely connected types of crime. However, the approaches to regulation of these two types of compliance in international and national laws differ significantly. In the author's opinion, the existing experience of AML/CFT regulation should be taken into consideration for the future development of anti-corruption compliance regulation.

The strict AML/CFT regulatory framework consisting of international law, national laws, and regulations gives fewer opportunities to modify and adapt existing requirements to each particular company. At the same time, this framework has clear rules and is accordingly more predictable. National legal acts are based on international law but take specifics of countries and industries into account.

Regulation of anti-corruption compliance in most countries is more flexible. It develops under the influence of international soft law, national laws of several jurisdictions, judicial practices, and compliance programmes of multinational corporations. However, designing and implementing compliance programmes in accordance with international soft law and foreign laws is challenging, especially for SMEs. The compliance programmes of multinationals are not always localized or applicable in various jurisdictions with challenging business environments.

To support implementation of anti-corruption compliance in various jurisdictions, the international community could initiate the codification of existing international standards. Such a process has enabled the progressive development of many branches of international law. In national hard law at least, general formal requirements for anti-corruption compliance programmes should be defined. Industry-specific guidance can play a supportive role. The idea of mandatory anti-corruption compliance for particular industries or types of companies can be the subject of broad discussion with the involvement of various stakeholders.

The transnational application of national anti-corruption laws to foreign companies has a particularly positive effect by creating incentives for businesses to implement anti-corruption compliance programmes. At the same time, foreign anti-corruption law should not replace national law.

The downside of this trend is the increased risk of double jeopardy, when a company can be penalized in several

jurisdictions for a single corruption offence. This situation has to be regulated within international law. In the author's view, elaborating additional protocols to the UNCAC and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) for this purpose can be a good solution and can develop general provisions of these instruments.

Governmental agencies responsible for AML/CFT regulation and supervision can create additional reporting obligations and paperwork for companies. At the same time, they can provide necessary information and support, and in certain cases share responsibility for the quality of compliance programmes. Certification under ISO 37001 looks like an attempt to replace supervision in the field of anti-corruption compliance. In the author's opinion, it is comparable with supervision in the AML/CFT field. If this process becomes increasingly common, then clarifying the legal significance of certification is of critical importance. Otherwise, the "privatization" of regulation can create legal uncertainties and risks for companies.

The "technical" part of an anti-corruption compliance programme is very similar to corresponding parts of AML/CFT compliance programmes. In the author's opinion, AML/CFT and anti-corruption compliance functions can be exercised by one compliance unit or department. This would avoid the unnecessary duplication of procedures (due diligence, risk assessment, analysis of transactions, training) and reduce the cost of the compliance function. In SMEs, one compliance officer can be responsible for both types of compliance. At the very least, cooperation between AML/CFT and anti-corruption compliance officers (units) in a company can create opportunities to prevent crime in a more effective way. The harmonization of AML/CFT and anti-corruption laws, and unification of definitions could be very helpful for financial institutions and companies with obligations under AML/CFT law.

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