Governing money laundering risk through professionalization

Eleni Tsingou, Copenhagen Business School and Norwegian Institute of International Affairs

Prepared for the Second International Research Conference on Empirical Approaches to AML and Financial Crime Suppression hosted by The Central Bank of the Bahamas, 27-29 January 2021.

Abstract

This paper focuses on the professionals in charge of controlling money laundering in the financial system. Anti-money laundering (AML) officers, both staff within financial institutions and those tasked with regulating and supervising them, shape their roles, define their tasks and delineate the boundaries of their jurisdictions. Following a more adversarial early relationship between the two groups, the dynamic between the official sector and those in charge of compliance in the private sector is more collaborative. The groups have carved out shared spaces where risk technologies, risk categories and risk reporting lines are negotiated and their governance agreed to. Key to these developments is the evolving professionalization of AML, promoted both through the role of professional associations such as ACAMS and the formalisation of training of the peer reviewers in charge of national mutual valuations. The paper presents some empirical findings from an ethnographic study of AML professionals in the private sector and is based primarily on participant observation at industry events and public policy events (in person, and in the past few months, online) with an emphasis on the work of ACAMS in Europe and North America.

Governance as compliance: the rise of anti-money laundering professionals

An increasingly professionalized compliance industry has emerged in response to the growth in activity in the global anti-money laundering (AML) regime. Where compliance had long been a 'necessary evil' of a back office activity for financial institutions, the global nature of the AML regime and the reputational and financial cost associated with AML failures gave a new urgency, and ample funding, to the compliance function.

The AML regime, designed to target the proceeds of crime as a means to tackle the underlying ill (be that drug trafficking, terrorism or, more recently, nuclear proliferation) developed at the intersection of professional knowledge and expertise in two distinct groups of officials, regulators and law enforcers, who have different training, policy goals and professional aspirations. Built in a top-down manner through the institutionalization and policy diffusion activities of the Financial Action Task Force (FATF), it relies on national legal and regulatory systems, and the organizations they regulate, to do take care of the doing of AML. In its daily workings, it is also based on regular interactions, socialization and even competition between those making the rules and overseeing their implementation, and those within

financial institutions who are in charge of compliance.

A focus on the 'compliance officer' in this field is not new (Favarel-Garrigues et al. 2008; Verhage 2009) but this paper looks at how the global AML compliance industry has developed and, crucially, professionalized, in parallel to the formal global AML regime. Since the 1980s, and especially in in the past 20 years, the AML compliance industry developed in four key ways. (1) It has grown dramatically, across all jurisdictions, both in terms of person power and in terms of financial resources. (2) It is a function that neatly benefits from technological capacity for systematizing database analysis, which has in turn led to fairly standardized technology infrastructures. (3) Personnel at the senior level has been heavily recruited in a 'revolving doors' fashion, particularly during the key milestones of the AML regime, mostly from law enforcement agencies (Favarel-Garrrigues et al. 2011) and 'Big 4' professional services firms, as compliance departments within financial institutions have looked for unique skills and expertise in the areas of investigation and forensic accounting. (4) As the regime developed, much transformation took place at the junior and mid-career levels where the compliance industry has been increasingly populated by a new professional group which follows harmonized training and acquires globally recognized qualifications in AML. The professional associations created to provide these services have built a global community of AML compliance experts through internationally recognized qualifications, as well as training, dissemination and networking events (in person and online). Though aimed at private sector practitioners, professional associations also provide space for public-private interactions where understandings of risk and best practice are discussed and jurisdictional boundaries drawn out.

The remainder of this paper is organized in five sections. The first section outlines key characteristics of the global AML regime focusing in particular on how aspects of AML public policy rely on private sector practice; this overview covers very familiar ground for participants at this event. The second section provides an overview of the paper's methods; the paper is based on research in Europe and North America, drawing primarily on participant observation at professional association conferences in Europe and North America. The third section provides some background on how the AML compliance industry has grown and professionalized. The fourth section provides a summary of empirical findings with a preliminary analysis of the governance role of AML compliance, showing how AML professionals are not simply rule adopters but are also responsible for making rules in practice.

Understanding the global AML regime

The highly developed legal and regulatory AML activity gives the impression of a state-driven, state-focused and thick institutional regime. Having gone from a a timid institutional beginning in the 1980s to a multi-level institutionalized regime in a short period of time, the AML framework is populated by inter-state cooperation mechanisms and institutions. The significance of state concerns has only intensified since the inclusion of terrorist financing in the AML framework after 2001 and the addition of proliferation of weapons of mass destruction in 2012.

The focus on states is a starting point in much of the International Relations and International Political

Economy literature on money laundering and fits with an understanding of the policy narrative of 'following the money' which straddles financial integrity and security arguments. Work has focused on the club-like organizational qualities of the Financial Action Task Force (FATF) (Drezner 2007), the hegemonic function of the United States (Simmons 2011), and regime formation based on prohibition norms and compliance processes (Andreas and Nadelmann 2006). Other state-centered analyses have looked at the mechanisms and consequences of global diffusion (Sharman 2011; Sharman 2008).

The policy priorities mirrored in the activities of FATF are derived from both AML prevention and enforcement goals. Prevention principles are essentially about the development of regulatory tools and the articulation of regulatory and supervisory rules and standards. They promote best practice, standardization and harmonization. Prevention is about process. Enforcement principles, on the other hand, are about the development of legal tools of investigation, confiscation, prosecution and punishment. Enforcement thus privileges results. FATF's competence and mandate are lopsided, focusing extensively on procedural standards. In public policy terms, the AML regime is most institutionalized, the policies clearest and the actors most transparent on the preventative regulatory side– yet the regime is at its most visible, to the public but also to the business line departments of financial institutions, when a failure occurs and enforcement takes over.

For those practicing AML, expertise needs to satisfy both sides and to deal with the potential competition between professional financial regulatory knowledge and professional legal enforcement knowledge. Questions of system and framework design arise relating to policy learning, peer reviews and feedback. The tensions between prevention and enforcement can also affect how actors define and deal with acceptable risks (be they reputational, financial or security risks). Nowhere is this more visible than within financial institutions, the actors seen to be at the receiving end of AML rules and left to practice what FATF preaches.

In the history of the AML regime, the role of the private sector, and in particular large financial institutions with significant international activity, is marked by compromise and opportunity. Following the criminalization of money laundering in the 1980s and the introduction of initial controls, the somewhat limited measures adopted can be interpreted as an acceptable compromise for financial institutions keen to safeguard capital mobility (Helleiner 1999). For financial institutions, these early measures were a mere extension of existing regulations on bank secrecy and did not threaten the growing rewards to be derived from international financial transactions. In the aftermath of the terrorist attacks of 2001, however, and following the addition of terrorist financing to the AML framework, measures became both more constraining and, in the perception of financial institutions, costly (Harvey, 2004).

As participants in the regime, financial institutions have straightforward obligations but also incentives to take AML seriously, primarily in relation to reputational and legal risk. They have established dedicated AML teams, engaged in AML training, and invested in compliance software. Predictably, from the early stages of the AML regime, and especially since the intensification of AML activity after 2001, there has been no shortage of complaining about the cost and lack of cost-effectiveness. Though sophisticated 'know your customer' systems can also help finesse a financial institution's business lines

activities, the benefits of customer profiling, even for financial institutions well placed to assess customer risk, may be exaggerated. Incentive structures for the private sector understood in purely financial terms have thus fluctuated based on the political salience of the issue with investment in AML activity continuing to grow through the financial crisis.

There are, however, some areas of concrete private sector growth as a result of developments in AML activity. AML policies, especially since preoccupations relating to terrorism and proliferation have been added to the mix, have spurred the emergence of a private intelligence industry, including intelligence-led policing. These private actors have the flexibility to work with a variety of relevant agents (journalists, insolvency experts and others), whereas public prosecutors have to maintain higher standards of neutrality. Moreover, the regime has led to the development of data-mining and other techniques which have given private sector actors a key public security role in the context of terrorist financing (de Goede 2012). For-profit growth can also be seen in the activities of firms offering AML-specific training, software and other tangible and 'for sale' AML expertise (Liss and Sharman 2015). These firms are directly linked to a further area of growth (if not profit): AML in-house compliance, with much of the work being done by AML compliance officers trained on the job, and following formal certification programs run by professional associations. These are, at first glance, the 'foot soldiers' of the AML regime. Yet the way in which this new professional group relates to its functions, trains and shares professional knowledge actors the public/private divide suggests that the AML compliance industry has carved a more proactive governance role for itself.

Methods

To illustrate this development, the paper focuses on the micro processes of professionalization and looks at the work content of AML compliance. The research relies on participant observation in the period 2012-2020. Specifically, I engaged in participant observation at four large professional association conferences: the annual 'Anti-money Laundering and Counter-Terrorist Financing' European conference of the Association of Certified Anti-Money Laundering Specialists (ACAMS) (Amsterdam, June 2012), the inaugural 'Risk Management' conference of ACAMS (New York, January 2013), the annual 'Anti-Money Laundering and Compliance' conference of the Florida International Bankers Association (Miami, February 2014) and the 'Anti-Financial Crime and Public Policy' ACAMS conference (Washington DC, February 2020). As ACAMS intensified its regional work through local chapters, I also attended meetings (both conferences and networking events) of the Nordics chapter (2017, 2018 and 2019), Luxembourg (2020) and Latvia (2020).

The participant observation entailed following presentations for content but additionally, keeping field notes on questions from the audience, noting professional interactions during breakout sessions and formal networking times, as well as the activities of vendors and other exhibitors.

In addition to these live meetings, I have followed several training webinars and online networking events organized by ACAMS; this material provided information on training topics and training content, Q&As and on the record input from public and private sector participants (15 seminars over five years).

The following sections rely heavily on this material. Unless otherwise stated, observations on developments in the AML compliance function and its assessment apply to practices in both geographical fieldwork areas. The data was processed to make sense and analyze: professional development; work content of AML compliance; intra-organizational aspects; sectoral dynamics; public-private interactions; the regional and global landscape of work activity. The data has been analyzed to account for changes in the above over time. This work complements a broader project that focuses on the developing understandings of risk among AML professionals.

AML compliance: the coming of age of an accidental profession

AML compliance is a relatively new field both in terms of work content and with respect to the professionalization and designation of 'AML compliance officer' as a stand-alone career-track position. The growth of AML compliance is a direct result of the development of the AML regulatory regime since the mid-1980s. AML compliance was significantly strengthened after 2001 and the inclusion of terrorist financing in the AML regime. This growth maintained momentum through the financial crisis thanks to political pressure to bolster financial integrity. It has been further intensified both as a result of the use of financial sanctions as a foreign policy tool and a steady flow of historical money laundering scandals exposing past practices and shaking the reputations of financial institutions and national jurisdictions alike.

With the proliferation of public rules came an expectation of costs and responsibilities to be borne by the private sector. Rules and regulations (national and global) have been internalized in financial institutions. AML best practice has been learned through policy adoption, but also through learning in formally recognized environments that offer training and accreditation. These environments are organized to provide best practice scripts and to focus on the professionalization of the AML function.

Homogeneity is being promoted through investment in AML infrastructure and in the specification of certain skillsets for top management AML positions. Financial institutions embarked on AML compliance partly through 'importing' knowledge and skills. There are now a small number of software vendors that provide checklists for various types of AML, terrorist financing, proliferation, and other risks. With a large majority of financial institutions buying these products, the software leads to increased standardization of AML practice. Additionally, top banks in particular engage in 'revolving doors' hiring, by recruiting retired or senior law enforcement officials with an investigative background, regulators familiar with risk assessment and fines, or forensic accountants from the 'Big 4' professional services firms to senior AML compliance positions. Financial institutions have commonly hired former regulators but reaching out to senior officials in law enforcement is a new development.

While bringing in skills and infrastructure is important, the professionalization of AML is mostly happening among the junior and mid-level staff populating ever larger AML compliance departments. This group is at the center of claims to 'jurisdictions' (Abbott 1988) which establish what issues are relevant and should be addressed, what tasks are to be performed, and who has the right to and is responsible for performing them. In contrast to the cases often discussed in the sociology of professions

literature, however, this professional group did not emerge through formal university training, and recognition by states and markets of its usefulness. Rather, the development of this accidental profession is a story of opportunity for those literate in finance, accounting or law. Instead of deferring to the standards of their professions by university training to deal with the demand for compliance, they created their own. They did so through 'institutional work', where agents delimit their own field and boundaries, strategize to define their roles vis-à-vis others and use expertise as a tool to prevent others from encroaching on their turf (c.f. Currie et al. 2012; Lesfrud and Meyer 2012).

A growing number of AML compliance officers are now certified, the vast majority of them through one organization, the Association of Certified Anti-Money Laundering Specialists (ACAMS). ACAMS was established in 2001 and is headquartered in Florida, USA. It is a membership organisation, counting over 75,000 members globally (a third of which joined in the past 5 years). Though stronger in the USA, it now operates chapters in all world regions, offering local, national, regional and global community building. It provides specialised training through seminars, workshops and online activities. It also organises multiple events, from an annual bash focusing on the USA and regular conferences in Europe, Asia, Latin America and the Middle East, to thematic conferences on risk management, public policy and fintech. Most participants to these events are compliance officers in training or certified but some come from the public sector. The training is expensive but the cost is ordinarily borne by employers. Certification requires commitment but the level of difficulty is set so as to be accessible, with courses and discussions deliberately practical. ACAMS certification (Certified Anti-Money Laundering Specialist or CAMS), or the willingness to be certified, is now a common recruitment requirement. The qualification is both globally harmonised in that the examination and related professional skills are uniform and also customised in that training and examinations are offered in different languages. My participant observation shows that in the earlier part in the early years, the learning environment in ACAMS training events was, despite much emphasis on the practical, a fairly top-down affair and quite repetitive, more conference-style than classroom. This has changed in the past five years, with greater focus on interpretation, negotiation and learning through public-private actors.

Membership associations in general and ACAMS in particular play an important role in the professionalization process not only through recognised qualifications but also through socialisation. ACAMS provides a venue which delimits the boundaries of the function, sets parameters for what is permissible, highlights behavioural expectations and responsibilities and helps foster a professional identity, including by building peer networks. ACAMS, in short, helps thicken institutionalisation on the private sector side. It also provides a setting for ongoing conversations on the use of technology, understandings of risk and risk categories, and the role of the different actors in the regime (private and public) in providing content, interpretation, boundary delimitation and points of interaction.

The role of ACAMS and membership associations more generally is important in the next steps of the professionalization process. Professional associations act as venues that enable social interactions which define appropriate conduct, behavioral responsibilities, and membership credentials (Greenwood et al. 2002). By establishing shared standards and some heavy-duty moral values, at least in the case of AML, these venues shape a community identity. AML compliance professionals will seek things that look the

same, and form status groups accordingly. This crystallizes a sense of identity further, and creates peer networks across institutions and legal jurisdictions. It helps with jostling for position within a financial institution when trying to make the compliance case to top management, but can also blind AML professionals to lapses in the practices of other professionals in their network (cf. Gabionetta et al. 2014).

A short summary of findings

This section provides a short overview of key trends based on the empirical findings.

<u>Professional development</u>

ACAMS is helping define who is an AML professional. The AML professional is certified or attends regular training (and increasingly, someone who is willing to also self-fund some of their own training). They also engage in extensive networking and have a good relationship with peers (both in the public and the private sector).

ACAMS condones professional development through regular career progression, either through in-house promotion or, most likely, a new position at a different institution. This is an industry with a high turnover. An accomplished AML professional has experience in both the public and private sectors.

Three main trends can be identified in the content of professional skills in this period: (i) the advanced AML professional may have a broader financial crime professional profile - the more junior AML professional may be initially a data specialist; (ii) the number of AML professionals is growing but the training focus is much deeper and no longer predominantly about manpower; and (iii) the training has become less about 'control' and more about 'behaviour monitoring'.

<u>Work content of AML compliance</u>

For a long time, work content has been primarily about procedures and documentation, keeping the institution out of trouble but also protecting one's own position from potential liability. This morphed into what can be described as 'routine work', something that is replicated to a great extent in the approach to sanctions monitoring and compliance. Over time, the approach became quite granular and, to some extent, comparative through the work of ACAMS, leading to a lot of 'how' questions: How is an issue identified and differentiated? How is it reported? How is the relevant programme or technology selected?

In recent years, there has been a clear trend away from box-ticking compliance and to more analytical frameworks. The evidence suggests that this reflects professional maturity, the solid qualifications and growing skill levels of those who choose AML as a profession, and also, a recognition that resources are finite. This has led to increasingly sophisticated conversations about risks: what risks can be managed, and what type of risk management is appropriate when differentiating between reasonably similar profiles. It has also led to frank discussions about frameworks for understanding what constitutes 'value for money'. In parallel, the work of the AML professional can now benefit from an array of technological resources, with the main challenge being combining data points.

The pandemic has brought to the fore a familiar 'fearful' discourse, with strong emphasis on the opportunities for fraud afforded to criminals by financial assistance programmes etc. But it has also led to discussions about business continuity planning that have placed greater emphasis on the value of employees, and is reinforcing discussions on value for money and effectiveness.

Intra-organizational aspects

Corporate governance and internal reporting issues have dominated the conversation on intra-organizational issues throughout this period. Questions of 'corporate culture' are frequently raised, and not only in the aftermath of historical scandals. While some practitioners themselves often express exasperation with corporate activity and their own (somewhat marginal) role in the corporate governance structure, the line from ACAMS, on the whole, strikes a more conciliatory tone. The message is twofold: (i) those at the top are often allies but many others in the corporate structure need to understand compliance and (ii) the answer is training for AML, beyond the AML professional. The AML professional needs to understand banking and others in the bank need to understand AML.

In practice, ACAMS also equips the AML professional with specific tools and scripts that can reinforce their position and autonomy within the organisation on an array of issues:

- Information sharing within the organisation;
- Risk-management and a better allocation of resources, de-prioritising low risk matters or removing costly to manage activity;
- Delineation of an institution's risk appetite;
- Strong line on people managing technology over technology investment alone;
- Activities for reinforcing cooperation with business lines and other corporate divisions, including data officers.

Sectoral dynamics

The picture within the sector (and often across jurisdictions) is consistently one of solidarity. In the Nordics, for example, where scandals have occurred, the blame lies with a 'naïve' and outdated culture of 'trust'. In general, there is no clear line as to when the industry is supposed to cooperate and when it is meant to compete. This confusion is seen in the non-conclusive approach in ACAMS work on a number of issues, from the role and the protection of whistle-blowers, to the role of the third party providers in the use of artificial intelligence tools. The evidence hints at a reluctance to take the lead (or indeed address) questions of liability, although this is not explicit.

At the same time, ACAMS has been a supportive hub (or at least an advertising platform) for sectoral initiatives that pool resources to streamline customer experiences (as in the case of the recent initiatives in the Nordics and the Netherlands on KYC and transaction monitoring utilities).

Public-private interactions

In the world of ACAMS, public-private interactions are also collegial. Having spent time in the public sector is seen as highly beneficial to the skills and career of an AML professional and although the regulatory side is frequently seen as confusing, burdensome, or simply lagging behind, there has been, for some time, talk of a good understanding between the two sides. The same can not always be said of law enforcement-housed financial intelligence units, and there seems to be some consternation about who plays the role of the 'investigator' in the regime.

ACAMS provides the venue for some conversations on risk and risk management to evolve (albeit very slowly): What is the material difference of incremental improvements to the system when the implementations costs are high? If the pandemic is not the right moment to take the risk-based approach, what is? Other conversations about high policy, however, are hardly ever approached. Bigger societal questions about the trade-offs between privacy and law enforcement are largely absent.

The regional and global landscape of work activity

FATF, peer review, sanctions and, increasingly, reputation manager (for countries) all dominate ACAMS discussions on the regional and global landscape. ACAMS has been a useful setting for governance updates, be it the development of directives, the state of mutual evaluations or the recent activity on AML consolidation in the European Union.

ACAMS policy discussions are also used, however, to take one's cue about less settled matters. They identify areas where flexibility is not forthcoming (proportionality, a more risk-based implementation of the risk-based approach) and where there is room for manoeuvre (persisting regulatory arbitrage on fintech, for example). But they also show areas where the AML professional can take the lead through innovation or because of inertia. Questions of technology, liability and de-risking fall in this category.

Indicative reference list

Abbott, A. (1988). The system of professions. Chicago: University of Chicago Press.

Andreas, P., & Nadelmann, E. (2006). Policing the globe: Criminalization and crime control in international relations. New York: Oxford University Press.

Bernards, N. & Campbell-Verduyn, M. (2019). Understanding technological change in global finance through infrastructures. Review of International Political Economy, 26:5, 773-789.

Campbell-Verduyn, M., Goguen, M. & Porter, T. (2019). Finding fault lines in long chains of financial information. Review of International Political Economy, 26:5, 911-937.

Currie, G., Lockett, A., Finn, R., Martín, G., & Waring, J. (2012). Institutional work to maintain

professional power: recreating the model of medical professionalism. Organization Studies, 33, 937–962.

de Goede, M. (2012). Speculative security: The politics of pursuing terrorist monies. Minneapolis: University of Minnesota Press.

de Goede, M., & Sullivan, G. (2016). The politics of security risks. Environment and Planning D: Society and Space, 34(1), 67–88.

Drezner, D. W. (2007). All politics is global: Explaining international regulatory regimes. Princeton: Princeton University Press.

Eren, C. (2020). Cops, Firefighters, and Scapegoats: Anti-Money Laundering (AML) Professionals in an Era of Regulatory Bulimia. Journal of White Collar and Corporate Crime, DOI: 10.1177/2631309X20922153.

Favarel-Garrigues, G., Godefroy, T., & Lascoumes, P. (2008). Sentinels in the banking industry: private actors and the fight against money laundering in France. British Journal of Criminology, 48(1), 1–19.

Favarel-Garrigues, G., Godefroy, T., & Lascoumes, P. (2011). Reluctant partners? Banks in the fight against money laundering and terrorism financing in France. Security Dialogue, 42(2), 179–196.

Gabbioneta, C., Prakash, R., & Greenwood, R. (2014). Sustained corporate corruption and processes of institutional ascription within professional networks. Journal of Professions and Organization, 1(1), 16–32.

Greenwood, R., Suddaby, R., & Hinings, C. R. (2002). Theorizing change: the role of professional associations in the transformation of institutional fields. Academy of Management Journal, 45(1), 58–80.

Harrington, E. B., & Seabrooke, L. (2020). Transnational Professionals. Annual Review of Sociology, 46: 399–417.

Harvey, J. (2004). Compliance and reporting issues arising for financial institutions from money laundering regulations: a preliminary cost benefit study. Journal of Money Laundering Control, 7(4), 333–346.

Helleiner, E. (1999). State power and the regulation of illicit activity in global finance. In R. H. Friman & P. Andreas (Eds.), The illicit global economy and state power (pp. 53–90). Oxford: Rowman & Littlefield.

Kampourakis, I. (2020). Whistleblowers as regulatory intermediaries: Instrumental and reflexive considerations in decentralizing regulation. Regulation & Governance, DOI:10.1111/rego.12361.

Kurtz, M., & Schrank, A. (2020). The Social Construction of the Regulatory Burden: Methodological and Substantive Considerations. Social Forces, DOI:10.1093/sf/soaa046.

Lefsrud, L. M., & Meyer, R. E. (2012). Science or science fiction? Professionals' discursive

construction of climate change. Organization Studies, 33, 1477–1506.

Liss, C., & Sharman, J. C. (2015). Global corporate crime-fighters: private transnational responses to piracy and money laundering. Review of International Political Economy, 22(4), 693–718.

Power, M. (2005). The invention of operational risk. Review of International Political Economy, 12(4), 577–599.

Sharman, J. C. (2008). Power and discourse in policy diffusion: anti-money laundering in developing states. International Studies Quarterly, 52(3), 635–656.

Sharman, J. C. (2011). The money laundry: Regulating criminal finance in the global economy. Ithaca: Cornell University Press.

Seabrooke, L., & Tsingou, E. (2020). Revolving doors in international financial governance. Global Networks, DOI: 10.1111/glob.12286.

Simmons, B. (2001). The international politics of harmonization: the case of capital market regulation. International Organization, 55(3), 589–620.

Verhage, A. (2009). Between the hammer and the anvil? The anti-money laundering complex and its interactions with the compliance industry. Crime, Law and Social Change, 52(1), 9–32.

Williams, J. (2013). Regulatory technologies, risky subjects, and financial boundaries: Governing 'fraud' in the financial markets. Accounting, Organizations and Society, 38: 6–7, 544-558.