

# Domestic reformulation of the moral issues at stake in the drive against money laundering

Gilles Favarel-Garrigues

► **To cite this version:**

Gilles Favarel-Garrigues. Domestic reformulation of the moral issues at stake in the drive against money laundering: the case of Russia. *International Social Science Journal*, Wiley, 2005, 57 (185), pp.529-540. hal-01020870

**HAL Id: hal-01020870**

**<https://hal-sciencespo.archives-ouvertes.fr/hal-01020870>**

Submitted on 8 Jul 2014

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

# Domestic reformulation of the moral issues at stake in the drive against money laundering: the case of Russia

Gilles Favarel-Garrigues

---

As it has developed since *perestroika*, Russian capitalism has suffered from a nefarious reputation at international level, particularly during the second half of the 1990s. The decision by the Financial Action Task Force on Money Laundering (FATF) in 2000 to place Russia on the first list of “non-cooperative countries or territories” represented, from this point of view, the outcome of international concern about the way capitalism was developing in the post-communist context and its close links with “organized crime”. However, the situation improved very rapidly from the standpoint of the FATF, since Russia was removed from the blacklist in 2002 and one year later became a full member of this intergovernmental body. In 2004, when questions were being asked in Western societies about the nature of the Russian political regime, the efforts being made to combat money laundering and the financing of terrorism were frequently cited as exemplary proof of the commitment of Russia to the values of Western nations and of international organizations.

In analyzing the case of Russia, I wish to show that the implementation of international standards against money laundering does not necessarily imply a commitment to common values, or even to a common vision of the objectives of this campaign. The Russian example highlights, on the contrary, the latitude afforded

to states to define the moral issues at stake in efforts to combat money laundering within their borders, in accordance with domestic concerns. This latitude is, in my view, intrinsically linked to the ambiguities in the formulation at international level of the moral objectives of anti-laundering.

For this reason it may be to dissociate analysis of the Russian case from more general consideration of the way international concern

about the laundering of dirty money is formulated. This article does not, however, set out to study in detail the activity of the FATF during the 1990s (Favarel-Garrigues 2003a, p. 161–173; Godefroy & Lascoumes 2004, pp. 151–175) but, more specifically, to analyze the debates on the moral basis of its action. Understanding the values underlying the idea of internationalizing the campaign against money

laundering will enable us to grasp the fundamental ambiguities that characterize the spread of international standards in this realm and lend themselves to domestic reformulation of the action pursued. Analysis of the implementation of international recommendations in Russia will seek, finally, to show how domestic debates on the definition of dirty money emerge and how they modify the objectives of the drive against money laundering at the national level.<sup>1</sup>

Gilles Favarel-Garrigues is a CNRS researcher at the Centre d'Etudes et de Recherches Internationales (CERI - Sciences Po) in Paris. His research is centred on the international management of transnational delinquency and on the transformation of penal policies and law-enforcement institutions in Russia. The list of his publications is to be found on the CERI site: [www.ceri-sciences-po.org/cerifr/cherlist/favarel.htm](http://www.ceri-sciences-po.org/cerifr/cherlist/favarel.htm). Email: [favarel@ceri-sciences-po.org](mailto:favarel@ceri-sciences-po.org).

## The moral foundations of the international campaign against money laundering

Research in the sphere of international relations generally regards combating money laundering as an issue of global governance, one of sufficiently serious global concern to justify international action (Williams & Baudin-O'Hayon 2002). This concern is based on moral considerations related to the economic and political dangers of global capital flows of illicit origin, associated in particular with drug trafficking and the activities of organized crime (Strange 1998). Dirty money threatens financial stability, both nationally (Fabre 1999) and internationally (Quirk 1996), and undermines the power of the state (Strange 1996, pp. 117–119). Most of the research that has examined anti-money-laundering programmes since the end of the 1980s does not question the moral foundations of these undertakings and seeks to assess how far the results achieved match up to the initial objectives. It praises the efforts to disseminate anti-laundering standards but denounces the superficial commitment, not to say duplicity, of “weak”, “corrupt” and “criminal” states as well as the frequent reluctance of private financial actors to play a part in the campaign. It also notes a tendency for the activities of the FATF to lapse into excessive routine, being mainly focused on the production of a calendar of self-assessment and mutual evaluation procedures (Williams & Baudin-O'Hayon 2002, pp. 138–143).

Criticism of the moral foundations of the campaign against money laundering developed in particular in the second half of the 1990s. It viewed the promulgation of anti-laundering standards as a partial and selective exercise in the management of transnational flows of capital of illicit origin, since half-hearted efforts were simultaneously made to combat “different kinds of illicit financial activities [that] have expanded dramatically alongside the financial globalization trend: [...] tax evasion, and capital flight” (Helleiner 1999, p. 54). The anti-laundering campaign resembled a “global prohibition regime”, in the words of Ethan Nadelmann (1990, pp. 479–526), which was less a response to the emergence of a natural threat

linked to the context of financial globalization than to the political desire to promote ideas bound up with complex interests (Helleiner 1999, p. 80). The exclusive focus on laundering was due to three factors according to Helleiner: the dominance of liberal ideology in the 1980s, which recognized the rationality of the practices of tax evasion and capital flight in the face of state interventionism; the interest of financial actors in preserving their reputation by denying any indulgence towards actors unanimously recognized as illegitimate (traffickers, criminal organizations, etc.); and, lastly, the determination of American political leaders to internationalize the war on drugs launched some years previously (Helleiner 1999, p. 57–62; on this last point, see Friman 1996).

This differential treatment of illicit transnational financial flows drew condemnation based on moral arguments: action against money laundering focuses on major forms of trafficking, organized crime and, more recently, terrorism, while leaving unpunished certain forms of economic delinquency committed by more socially reputable players, such as business leaders and political elites (Strange 1998, pp. 123, 133–134). This charge led to business circles being suspected of duplicity (Godefroy & Lascoumes 2004, pp.17–18) and was taken up outside the academic world, as underlined in France by the mobilization – albeit limited – of magistrates and non-governmental organizations. For the purposes of the present argument, this criticism highlights the existence of a conflict between plural forms of moral justification of the campaign against money laundering. It is important to analyze whether this divergence of approach reflects or produces conflictual tensions between the various parties responsible for drawing up or applying international anti-laundering standards.

A second set of criticisms concerns the political and social effects of international efforts in this field. They involve rejection of the hypothesis of a link between the spread of international anti-laundering standards and the erosion of state power. Contrary to what the vision of a zero-sum game might suggest, some authors consider that the implementation of international standards in this field increases the prerogatives of the state, which is thereby better equipped to regulate and arbitrarily repress

certain private financial transactions, at the expense of individual freedoms (Naylor 2002, pp. 133–195). On the basis of the observation that the USA plays a predominant role in the anti-money laundering campaign, other researchers take the view that the diffusion of international standards serves as an alibi for the extension of US law enforcement powers outside their territory and for the global dissemination at a distance of a series of law-enforcement and judicial techniques potentially prejudicial to public freedoms (Sheptycki 2000, pp. 135–176).

This critical literature is interesting in its rejection of the moral assumptions that traditionally legitimize, in the eyes of its promoters, the campaign against money laundering and in endeavour to understand the conflicts and power relations that come to the fore in the course of its development and implementation. Efforts in this domain should, in our view, be analyzed as the expression of a recent international preoccupation, based on a minimum consensus between a wide range of actors and entailing the simultaneous promotion of norms, institutions and professional practices designed to extend to all parts of the world. The exercise is all the more complex in that it necessarily depends on twofold cooperation – between states and between professions. International standards are drawn up in the first instance under the aegis of the G7 and entail the states concerned reaching agreement on the definition of this international concern, despite particular circumstances such as the existence of close links with offshore financial centres. To these oppositions must be added conflicts between the different administrations involved in anti-laundering, such as the Ministry of Finance, Ministry of the Interior, and Ministry of Justice. Finally, private financial actors, who find themselves having to implement the measures adopted, are also involved in the exercise to a greater or lesser degree. The anti-laundering drive depends by its very nature on a novel form of cooperation between governmental law-enforcement and judicial institutions and private financial agents, who are obliged to report any suspicions aroused by the transactions that pass before them (Favarel-Garrigues 2003a).

Nonetheless, critical analyses of action to combat money laundering do not take sufficient account of the processes whereby international

standards are implemented at the national level. Condemnation of the selective character of the fight against dirty money rarely leads to questions being asked about the margin of flexibility that states potentially have to modify the objectives set at international level. The implementation phase thus seems linked to a formal procedure that remains inconsequential or to an act of submission to norms imposed from outside. Yet there is no reason to believe in principle that international standards represent constraints for the states that have decided to apply them. From the standpoint of a sociology of norms, they can also represent resources for the national leadership responsible for their domestic adoption. By focusing on the margin of autonomy afforded to the agents responsible for applying government edicts, the sociology of the implementation of domestic public policies is substantially involved with this issue (Hill & Hupe 2002, Lascoumes 1990). It is addressed by research on the application of international norms and on the capacity of local actors to reformulate them (Hertel 2003, pp. 2–3; Katzenstein 1996, pp. 5–6). The topic likewise comes within the ambit of the very limited body of research devoted to the implementation of anti-money laundering efforts in countries such as Japan (Friman 1994, pp. 253–266) and France (Garabiol & Gravet 2001).

## **Factors of autonomy in the application of international standards**

The margin of autonomy afforded to states to reformulate the objectives of anti-laundering stems from two basic ambiguities inherent in the very definition of the criminalization of laundering and in the mode of assessment of the action undertaken. These uncertainties reflect the limits of the consensus to which the various stakeholders in the fight against dirty money subscribe.

Laundering is by nature an offence that is based on another, prior, offence. Since the G7 Arche Summit in 1989, which led to the creation of the FATF and the first financial intelligence units, such as the Tracfin cell in France, the drive against money laundering has been explicitly associated with the proceeds of drug trafficking.

The criminalization of laundering ought, then, to be based on offences connected with drug trafficking. The FATF, however, recognizes that this linkage is reductive since there are criminal organizations that are not involved in drug trafficking and since drug dealers may also be simultaneously engaged in other illicit practices (FATF-III 1992, p. 35).<sup>2</sup> Throughout the 1990s, the FATF progressively reduced its emphasis on combating the laundering of drug-money, previously the main focus of its work, relative to the proceeds of other “serious crimes” (FATF-V 1994, p. 3), in particular “corruption, organized crime and fraud” (FATF-VIII 1997, pp. 6–7). For this reason, FATF recommendation n° 5 of 7 February 1990, on the criminalization of money laundering, leaves it open to states to extend criminalization to “any other crimes for which there is a link to narcotics”, to “all serious offences” and to “all serious offences and/or (...) all offences that generate a significant amount of proceeds” (FATF-I 1990, p. 20). The list of predicate offences whose proceeds are liable to be laundered can thus vary considerably from one country to another. In addition, the domestic ranking of targets has been further complicated since the FATF expanded its mandate in October 2001 to include the combating of terrorist funding in all its forms, extending beyond laundering practices, despite the disagreement of the experts on the advisability of this linkage, moreover expressed within the FATF before the events of September 11 (FATF-XII 2001, pp. 16–17).

This lack of definition has not prevented the FATF from underlining the fact that certain forms of transnational delinquency lie outside its remit. This is true in particular of tax fraud, which was explicitly excluded from the scope of its work when its mandate was renewed in 1994 (FATF-V 1994, p. 6). The FATF draws a distinction between “serious profit generating criminal activities” and fiscal and revenue offences together with capital flight and non-declaration of income derived therefrom (FATF-XII 2001, Annex B, pp. 6–7). The revision of the FATF’s 40 recommendations in June 2003 resulted in a more detailed specification of the predicate offences relating to the criminalisation of laundering but did not lead to the explicit inclusion of fiscal offences (FATF-XIV, Annex A, 2003, p. 13). This choice has

surprised many observers since the late 1980s, and not only within critical academic circles. Firstly, the laundering of capital deriving from tax offences can seem wholly illegitimate, even to those sensitive to the interests of the business community. Michel Camdessus, then Director of the IMF, contested the logic of the FATF at one of its plenary meetings: tax fraud and money laundering were, in his view, intimately linked, since “money that has evaded taxes must be disguised, and laundered money must be kept hidden from the tax authorities” (FATF-IX 1998, p. 40). Moreover, the practice of anti-laundering has led the FATF to modify its position, on the pragmatic grounds that “criminals can avoid suspicious transaction reporting requirements by stating that their affairs relate only to tax matters” (FATF-X 1999, p. 33). The refusal to give criminals a “fiscal excuse” has led the FATF to encourage banks to extend their reporting of suspicious transactions to laundering operations manifestly linked to tax manoeuvres masking criminal proceeds (FATF-X 1999).

The attitude of the FATF is on the whole explained by the reluctance of financial administrations and banks to engage in a campaign that could be prejudicial to the tax optimization strategies of businesses. It would, however, be over-simplistic to see the fight against money laundering in terms of an opposition between two clearly defined camps, on the one hand the agents of coercion intent on stamping out all forms of criminality and on the other the financial stakeholders, public and private alike, rejecting the inclusion of tax offences in defence of the interests of the business community. On the one hand, financial stakeholders may consider that stepping up the fight against transnational tax fraud could induce governments to relax the fiscal pressure on companies: this idea is put forward in a 1996 IMF report (Quirk 1996), which was the basis for the remarks by Mr Camdessus referred to above. On the other, the representatives of law-enforcement circles may take the view that, by attacking tax fraud, anti-laundering could lose its identity, which is bound up with the dismantling of “criminal organizations” (Garabiol & Gravet 2001). It would thus appear that the campaign against money laundering is not constituted by two opposing visions of the morality of the drive against money

laundering, linked to a divergence of professional ethos. The game is more complex, since it is also based on opposing approaches to action, which lead to instrumentalization of the stakes underlying the drive against money laundering.

The second major source of autonomy for states engaged in the implementation of international standards is connected with the absence of consensus on the assessment of the results of action against money laundering. The question of the evaluation of international action or of the activity of an international organization is never self-evident, since the act of defining the objectives to be pursued has fundamental political implications where competing visions clash in formulating the problem to be resolved and the appropriate solutions for doing so. In the case of anti-laundering, the positions that polarize conceptions of the action to be undertaken are grounded in moral arguments. Some consider that this policy should produce legal outcomes. While not overlooking the special difficulty of money-laundering cases, which involve proving that suspect capital derives from a prior offence, they take the view that the number of cases brought to court, the number of convictions, and the volume of assets confiscated are relevant indicators of the success or failure of the action undertaken (Garabiol & Gravet 2001). This position underpins several FATF recommendations aimed at harmonizing national law-enforcement and judicial practices so as to facilitate international cooperation in this field and at simplifying investigations by encouraging the adoption of undercover policing techniques such as controlled delivery (FATF-VII 1996, p. 9) or introducing the possibility of reversing the burden of proof or facilitating the confiscation of a suspect's assets during legal proceedings (FATF-VIII 1997, p. 20). The other vision that developed simultaneously during the 1990s considers that the judicial outcome of the action undertaken cannot be taken as an indicator of its success or failure. The impact of national anti-laundering provisions is related above all to their preventative character. According to this reasoning, as articulated for example by the IMF, requiring the employees of banking institutions to report transactions that seem to them suspect dissuades clients from using their services. Anti-laundering is thus less like a criminal justice

policy than like an effort to regulate financial practices by encouraging clients and banking institutions to alter their habits.

In this respect, too, the opposition should not be represented simplistically as a struggle between two unified blocs, defending their vision of the desired results of the drive against money laundering. Some of the parties involved can opt for behaviour consistent with a moral vision of anti-laundering to which they do not necessarily subscribe, in the name of their professional interests. Members of the banking community have very often shown their hostility to the tasks they were called upon to carry out as part of the fight against money laundering. Once required to contribute actively to the campaign by submitting their suspicious transaction reports, they have begun to ask to be kept informed of the legal consequences of their involvement. They are irritated to find that they bear most of the cost of implementing anti-laundering measures, by taking on new tasks and assuming considerable professional risks, without benefiting from what they see as valuable feedback on the judicial value of the information they communicate (FATF-VII 1996, p. 9).

Although these fundamental debates remain wholly relevant, a particular conception of action to combat money laundering gradually came to dominate at the international level in the course of the 1990s. It associated the anti-laundering efforts with a policy of regulating financial transactions through the exclusion from international channels of operators regarded as illegitimate by most of the professionals involved in this international campaign. Reflecting unanimous indignation at relatively clearly defined transnational threats (drug trafficking, transnational organized crime, terrorism), this policy is aimed as much at potential networks of undesirables as at a range of illegal practices. The need to dismantle such criminal organizations justifies the involvement of private-sector business and financial agents (bank employees, insurance companies, estate agents, lawyers, antique dealers, etc.). The operators targeted are not only individuals, however, but include financial institutions, even micro-states suspected of complicity with criminal circles. The imposition by the FATF of sanctions on the island of Nauru in the Pacific illustrates the approach adopted by this body and also



At the annual meeting of the IMF in Prague, Czech Republic, September 2000. Gilles Leimdorfer/REA

the difficulty of reaching an international consensus on the definition of illegitimate offshore centres.

This policy, justified in these terms, is today implemented in the main by financial institutions, which since the late 1980s have consistently asserted their pre-eminent role within the anti-laundering regime. The policy favours preventive and persuasive responses, given the complexity of dealing with dirty money affairs through the courts. At national level, the institutional anti-laundering mechanism is usually affiliated to finance ministries. This policy has, moreover, been supported since 2001 by the IMF and the World Bank, which are involving themselves increasingly in the fight against laundering and the financing of terrorism, despite their statutory inability to assume at least initially, responsibility for the law-enforcement and judicial aspects of anti-laundering (Favarel-Garrigues 2003b, pp. 41–42). Its out-

come has been the development of private engineering firms specialised in the provision of services (in-house training, specialised software) related to professional risks reduction in the anti-money-laundering context.

This approach, based on the exclusion of illegitimate operators, rests ultimately on a discretionary conception of anti-laundering activities. This applies not only to states but also to financial institutions. Indeed, in most countries, reporting on suspicious transactions is not automatic but is left to the discretion of the financial actors concerned. The Russian case shows that the ambiguities inherent in international efforts to combat money laundering open up new debates on the morality of the action to be undertaken, in accordance with domestic pre-occupations, or more precisely on the identity of the illegitimate parties that the institutional mechanism for combating dirty money is designed to exclude from financial channels.

## Domestic resources for combating money laundering

The inclusion of Russia in 2000 in the list of “non-cooperative countries or territories” provoked strong reactions in that country. For the Russian Government, the arbitrary nature of this blacklisting was clear: Ukraine apart, none of the other post-Soviet states appeared on this list, whereas they were equally lacking in anti-laundering mechanisms. The FATF’s decision was interpreted as the outcome of a smear campaign launched in the United States. Among other political and financial affairs, the 1999 Bank of New York (BONY) scandal was particularly worrying to American leaders. Directly linked as it was to accusations of laundering, it seemed to implicate the Russian President and his entourage and involved the misappropriation of IMF funds. The stir created by this affair, however, was not unconnected with its political exploitation in the United States. At a time when the date of the next American presidential election was approaching, the evocation of a “Russiagate” served to fuel the debate on the Clinton Administration’s policy towards Russia, which had for a number of years been regarded by some as too understanding in its approach (Webster & de Borchgrave, 1997, p. 7). In this context, the Russian President’s vetoing of the first anti-laundering law submitted for his signature at the end of 1999 seemed to confirm the idea that the Russian Government did not wish to involve itself in this campaign, doubtless in order to defend personal interests directly related to funds of illicit origin.

However, this image evolved rapidly. The Russian Government made clear its desire to be removed from the list by ratifying the Strasbourg Convention on anti-laundering in April 2001, and then by adopting an anti-laundering law in keeping with international requirements in August of the same year. Russia was nevertheless maintained on the FATF list in view of the lack of conclusive proof of implementation. The reshaping of diplomatic relations between Russia and the USA following 11 September 2001 undeniably accelerated the ongoing process of rehabilitation. The emphasis placed on the fight against the financing of terrorism gave

Russia the opportunity to present itself as a reliable, legitimate and supportive interlocutor of the USA. After ratifying the International Convention for the Suppression of the Financing of Terrorism, Russia became a member of the Egmont group, an intergovernmental body made up of all the national financial intelligence units. Finally removed from the list in October 2002, Russia became a full member of the FATF less than a year later.

This development shows that the implementation of international anti-laundering standards undoubtedly constitutes a high diplomatic stake for Russia. The only G8 State not to have appropriate legislation in place at the end of the 1990s, Russia is intent on preserving its privileged status as a member of this club, which enables it to maintain close relations with the richest countries in the world at a time when its economic and military power has been considerably degraded. This concern seems to outweigh Russia’s desire to preserve its “international reputation”, which is how the FATF chooses to construe the development. The use of such terminology is moreover directly linked to the objectives of a “blacklist” designed to discredit a state by publicly naming and shaming it. It presupposes that implementation of the recommendations of the FATF is synonymous with subscribing to the indisputably legitimate objectives governing international action in this field. However, the Russian example shows that the implementation of international standards is something more than a mere exercise in compliance.

The debates surrounding the drive against money laundering in Russia are bound up with more general currents of opposition to the “moralization” of capitalism, as it has developed in this country since *perestroika*. What is “dirty money” in the post-communist context? The priority targets of action to combat money laundering at the international level call forth unanimous condemnation in a society only recently confronted by the accessibility of illegal substances, by an upsurge in predatory and violent forms of delinquency and by the terrorist attacks carried out in connection with the war in Chechnya. But for a large part of the population, “dirty money” in Russia also includes the assets of members of the business community, who stand accused of enriching themselves by illegal or immoral means on the backs of the population.

Contrary to their Western counterparts, Russian business circles, which are of recent formation, suffer from a significant deficit of social legitimacy, which post-communist political leaders can readily exploit, provided they did not play a direct role in the implementation of the major economic reforms at the start of the 1990s, following the example of liberal personalities such as Egor Gaidar and Anatoly Chubais. Even when simultaneously adopting measures favourable to the development of private enterprise and the financial sector, successive Presidents Boris Yeltsin and Vladimir Putin, along with Prime Ministers such as Evgueni Primakov and Mikhail Fradkov, the former head of the Federal Tax Police, have frequently echoed in their speeches this hostility to the new wealthy classes.

The case of Vladimir Putin is obviously crucial in this context, since the period in which his major federal political responsibilities have been exercised (Prime Minister in 1999, then President from 2000 onwards) coincides with the process of proscription, rehabilitation and co-operation that has characterized Russia's relations with the West with respect to anti-money laundering. The current Russian President has been engaged since 2000 in an enterprise aimed at monopolizing political power and restoring the authority of the state, which has led him to set limits to the activities of the business community. The latter is free to develop but is encouraged to repatriate capital invested abroad, to pay taxes owing, to contribute to social policies and to refrain from developing political ambitions liable to undermine the legitimacy of those who currently exercise power. Control over business circles is exercised mainly by exploiting the state of generalized legal vulnerability that besets them in a context of social resentment towards them. For various reasons that cannot be expanded on here, the acquisition of wealth in the Russian setting relies almost automatically on recourse to illegal practices, notably in respect of taxation. Exploitation of the legal vulnerability of entrepreneurs takes the form of instituting targeted and high-profile legal proceedings, which simultaneously constitute signals addressed to the profession as a whole. Any business leader can identify with the fate of Mikhail Khodorkovsky, convicted of unlawful practices that are

extremely widespread (Favarel-Garrigues & Rousselet 2004, pp. 98–105).

Given their social illegitimacy and the state of legal vulnerability that characterizes their activity, Russian business circles have attempted since the early 1990s to promote the ideas of amnesty, moratorium or legalization of capital of illicit origin. According to them, recourse to illegal practices was limited in time because it corresponded to a phase of primitive capital accumulation in a context of failing (tax, legal, and accounting) institutions. Capital flight and tax evasion were to be explained in particular by the state of legal insecurity affecting business circles. What is needed, then, is to guarantee impunity for past practices so as to encourage entrepreneurs to invest more capital in the national economy (Solongo 2001, pp. 15–17).

The debate on the way post-communist capitalism has developed continues to shape the Russian political scene. Denunciation of its immorality forms part of the argumentative repertoire of political parties such as the Communist Party or of the heads of law-enforcement and judicial administrations. The defenders of a view more sympathetic to the modes of capital accumulation in Russia are the entrepreneurs, individually or collectively, and the heads of economic and financial administrations, who, however, lack a powerful political organization. Discredited within the population, the Union of Right-Wing Forces was not successful in gaining seats in the State Duma at the last federal legislative elections in December 2003.

In such a context, the prospect of creating an anti-laundering mechanism provided the President, his entourage and his party with a valuable resource for arbitrating in the conflicts between polarized visions of the morality of the post-communist mode of capital formation. This political resource has a number of facets, linked to the content of international recommendations that Russia is called upon to apply: the choice of ministry to which the financial intelligence unit should be affiliated; the definition adopted for the criminalization of laundering; and the mode of assessing the results of the campaign against dirty money.

The allocation of the institutional resource constituted by the financial intelligence unit gave rise to competition between three separate administrations: the Ministry of the Interior,

the Federal Tax Police, and the Ministry of Finance. The Ministry of the Interior claimed greater experience, since it had coordinated the activity of a specialized institution, the Inter-ministerial Centre for Countering the Legalization (laundering) of Illicit Proceeds, established in 1999. The purpose of this Centre, conceived as both a financial intelligence unit and a law-enforcement structure, was clearly coercive. Its staff declared war on money laundering, associated in their view more with economic offences than with illegal trafficking. Moreover, they reproached Western anti-laundering mechanisms with inefficiency, intrinsically linked in their view to the institutional dissociation of the processes of intelligence gathering and criminal investigation. The Federal Tax Police, the second candidate, constituted a separate administration, distinct from the Ministry of the Interior. Its prerogatives had increased constantly since its establishment in 1992. Whereas it had initially been set up to combat tax-related offences, this second police force represented at the start of 2000 a service specializing in the repression of diverse forms of economic crime (Gregory & Brooke 2000). It could claim greater technical and operational specialization in comparison with the Ministry of the Interior and a less tarnished public image. Prior to its abolition in 2003, the Federal Tax Police seemed particularly feared in business circles: placing in jeopardy the survival of the businesses it investigated, it seemed to select its targets on arbitrary grounds, possibly linked to vested political or economic interests. In contrast to this coercive vision of anti-money laundering, an alternative position gradually emerged, defended by the Ministry of Finance from 1999 onwards. The latter argued the case for the financial intelligence unit to be placed under its responsibility, in accordance with the practice in most Western countries. It based its claim on condemnation of the tensions existing between the two police forces and business circles, and pointed out that the involvement of law enforcement services ran the risk of encouraging recourse to techniques of tax evasion and capital flight.

In the Russian context, the question of defining the criminalization of money laundering crystallized the moral issues at stake in implementing international recommendations in

this field. The decision on whether or not to integrate forms of economic delinquency common within the Russian business community was liable to modify radically the objectives of anti-laundering and the definition of its targets. Here again, the two police forces adopted positions favourable to a broad conception of action to combat money laundering, based on moral considerations. The Ministry of Finance defended a more restrictive approach, enlisting the support of business circles weakly mobilised at the time together with that of its Western counterparts, international financial institutions and the FATF. Interviewees in my research frequently noted that the US Government made strenuous efforts to convince political leaders in both Russia and Ukraine to adopt a restrictive definition of money laundering. A number of international organizations adopted a public stance on this question, following the example of the FATF: "It is necessary to address the apparently common view that money laundering is an issue primarily related to economic, fiscal and revenue offences, as well as capital flight and non-declaration of income derived therefrom. (. . .) Priority needs to be afforded to investigations and prosecutions of money-laundering cases which arise in the context of drug trafficking, organized crime and other serious profit-generating criminal activities" (FATF-XII, Annex B, 2001, pp. 6–7). This position was shared within the United Nations, which rejected the lumping together of laundering practices and "economic and financial operations, which could not be immediately classified as criminal" (Solongo 2001, p. 21), and by the IMF.

The Presidential Office finally opted in favour of the Ministry of Finance, assigning to it the financial intelligence unit and excluding tax offences from the criminalization of laundering, without however completely rejecting the competing conception of the fight against dirty money. From a formal point of view, the anti-laundering mechanism is therefore dedicated to combating "criminal" and "terrorist" organizations. This has been the case more particularly since efforts to combat the financing of terrorism have moved to the top of the international agenda. This institutional mechanism, however, represents a source of concern within Russian business circles. According to some, it constitutes a regulatory instrument that could ultimately

be used to crack down on certain personalities and above all to intimidate the business community by centralizing information on bank transactions and institutions. In support of this assertion, it is pointed out that the financial intelligence unit is staffed by agents from various Russian enforcement services, who maintain close links with their former colleagues. Moreover, this unit transmits information to the judicial police specialised in combating economic and fiscal criminality, created shortly after the disbanding of the Federal Tax Police. Finally, the imprecision and porosity of legal terminology provide grounds for thinking that the anti-laundering body will continue to deal with revenue offences insofar as these are frequently linked to other illicit practices that can provide a legal basis for the criminalization of money laundering.

A number of factors support the hypothesis that the anti-laundering mechanism constitutes a valuable resource in the political management of the business community. Its instrumentalization is wholly in line with government action based on the exploitation of the legal vulnerability of Russian economic and financial elites. During the debate on capital flight, Vladimir Putin made no bones about alluding to the information-gathering activity of the recently created financial intelligence unit, even if he gave an assurance that the state would not seek to identify the origin of funds repatriated to Russia.<sup>3</sup> Similarly, the director of the anti-laundering unit, Victor Zubkov, makes frequent pronouncements on capital flight and makes explicit use of intimidation, as a recent incident underlined. In May 2004, the Russian Central Bank announced its decision to revoke the licence of a banking institution suspected of infringing anti-laundering legislation. Victor Zubkov followed this up with a declaration that his service had a list of ten banks suspected of contributing to money laundering operations. In a context where the banking sector is experiencing many difficulties, this declaration prompted the frenzied circulation of blacklists, led certain institutions to denounce their competitors and aroused a great deal of anxiety among many customers. In the face of such public panic, Victor Zubkov withdrew his statement and Vladimir Putin publicly called on the banking authorities not to initiate multiple licence-

revoking procedures simultaneously and to show greater concern for the customer.

A number of lessons can be drawn from this affair, which calls to mind the policy adopted towards “oligarchs”, governors, and senior civil servants (Favarel-Garrigues & Rousselet 2004, pp. 99–103). It shows first that, in a context of widespread legal vulnerability, the imposition of an exemplary sanction constitutes a signal directed to the banking profession as a whole. The reactions of the latter moreover underscore the weakness of the corporate defence of professional interests in the Russian context. The sanction applied to one establishment leads banking institutions to become divided among themselves, or even to mutually denounce one another, and not to mobilize collectively in defence of their professional interests. This mode of government relies on the dominant view of business circles among the Russian population and furthermore confers on the President the role of benevolent arbiter, seeking to moderate the activism of government monitoring organizations.

The fears of business circles are closely linked to the last of the issues posed by the implementation of anti-money-laundering measures in Russia, which concerns ways of assessing the action undertaken. It is too early to distinguish clearly the direction in which Russia is moving in this field, but it is plausible to think that results-based accountability will produce a strong emphasis on combating dirty money, in keeping with the modes of assessment prevalent within Russian law-enforcement services. Within the financial intelligence unit, it is thought that the amount of money recovered, the number of cases brought to court, and the number of convictions secured are relevant indicators for assessing the activity of the new structure. As for business circles, they have no doubt as to the coercive role of the anti-laundering mechanism, even if it has so far resulted more in the withdrawal of licences from banking institutions than in individual convictions in the courts. This belief is based on the resources assigned to anti-laundering institutions and on the personality of those heading them. With a staff of 250, the financial intelligence unit is headed by Victor Zubkov, a former colleague of Vladimir Putin in the St Petersburg City Hall, and subsequently First Deputy Finance Minister. The new Federal Service of

Economic and Tax Crimes, to which the financial intelligence unit must transmit suspect files, has moreover been entrusted to Sergei Verevkin-Rakhalsky, who, like the President, spent part of his career within the security services before becoming the first Deputy Director of the Federal Tax Police. In this capacity, he was in charge of the files of the “oligarchs”, according to a daily newspaper close to business circles.<sup>4</sup> Whatever the truth of this assertion, which itself reveals the fears being expressed within the business community, the personality of those in charge of the anti-laundering mechanism and the resources assigned to them indicate that the implementation of international standards will not be exclusively guided by diplomatic considerations.

As pursued at international level since the late 1980s, the crackdown on money laundering may be seen as being aimed at excluding operators generally held to be illegitimate from international financial channels. It is based on moral considerations linked to the threats posed by criminal networks and transnational terrorists. The minimum consensus on which this policy rests leads to the worldwide dissemination of norms, institutions and professional practices, but also affords a large measure of autonomy to states applying them, in terms of the definition of

the offences criminalized and the effectiveness of the measures adopted. The Russian case underlines the paradoxes of a policy that focuses on relatively ill-defined targets, such as “criminal organizations”. According to the Presidency of the FATF, Russia today constitutes one of the driving forces behind the international effort to combat laundering, being particularly well-placed to extend the fight to the post-Soviet area and even China. However it would appear that Russian activism in this field does not necessarily imply commitment to the international objectives of the campaign against money laundering. The adoption of international recommendations is combined with reformulation of these objectives, in accordance with domestic political preoccupations linked to tax evasion and capital flight. Redefinition of the moral issues at stake in the drive against money laundering can mean that the objectives governing their implementation are far removed from international recommendations. A comparative analysis of the implementation of international anti-laundering standards would make it possible to base generalizations on this conclusion or, on the contrary, to identify those factors specifically linked to the diplomatic manoeuvring of Russia in the international arena.

*Translated from French*

---

## Notes

1. This article is based on several series of interviews with actors in the anti-laundering fight in Russia as well as within specialized international organizations since 1999 (see Favarel-Garrigues 2003c).

2. Reference to the Annual Reports of the FATF is made, in accordance with customary practice, by means of Roman figures and date of publication. See: <http://www1.oecd.org/>

the FATF/FATDocs\_en.htm# Annual.

3. *Kommersant*, 20 June 2002.

4. *Nezavisimaia Gazeta*, 26 March 2003.

---

## References

FABRE, G. 1999. *Les prospérités du crime. Trafic de stupéfiants, blanchiment et crises financières dans l'après-guerre froide*. Paris: Editions de l'Aube.

FAVAREL-GARRIGUES, G. 2003a. “Crime organisé transnational et lutte anti-blanchiment”, In: Laroche, J., ed., *Mondialisation et gouvernance*

*mondiale*. Paris: IRIS / PUF, pp. 161–174.

FAVAREL-GARRIGUES, G. 2003b. “L'évolution de la lutte

- anti-blanchiment depuis le 11 septembre 2001”, *Critique internationale*, 20, 37–47.
- FAVAREL-GARRIGUES, G. 2003c. “La création d’un dispositif anti-blanchiment en Russie”, In: Favarel-Garrigues, G., ed., *Criminalité, police et gouvernement: trajectoires post-communistes*. Paris: L’Harmattan, pp. 135–161.
- FAVAREL-GARRIGUES, G. AND ROUSSELET, K. 2004. *La société russe en quête d’ordre*. Paris: Autrement.
- FRIMAN, H. R. 1994. “International pressure and domestic bargains: regulating money laundering in Japan”, *Crime, Law and Social Change*, 21(3), 253–266.
- FRIMAN, H. R. 1996. *Narcodiplomacy: Exporting the US War on Drugs*. Ithaca, NY: Cornell University Press.
- GARABOL, D. AND GRAVET, B. 2001. *La Lutte contre le recyclage de l’argent du crime organisé*. Paris: IHESI.
- GODEFROY, T. AND LASCOUMES, P. 2004. *Le capitalisme clandestin*. Paris: La Découverte.
- GREGORY, F. AND BROOKE, G. 2000. “Policing economic transition and increasing revenue: a case study of the Federal Tax Police Service of the Russian Federation 1992–1998”, *Europe-Asia Studies*, 52(3), 433–455.
- HELLEINER, E. 1999. “State power and the regulation of illicit activity in global finance”, In: Friman, H. R., and Andreas, P., ed., *The Illicit Global Economy and State Power*. Lanham: Rowman & Littlefield, p. 53–90.
- HERTEL, S. 2003. Bridging the Divide: Transnational Advocacy on Labour & Economic Rights – Lessons from the Field. Paper prepared for a panel on “Transnational Labour Rights in Latin America: Regional & Extra-Regional Perspectives”, at the 2003 meeting of the Latin American Studies Association, March 27.
- HILL, M. AND HUPE, P. 2002. *Implementing Public Policy: Governance in Theory and Practice*. London: Sage.
- KATZENSTEIN, P. 1996. *The culture of national security: Norms and identity in world politics*. New York: Columbia University Press.
- LASCOUMES, P. 1990. “Normes juridiques et mise en oeuvre des politiques publiques”, *L’année sociologique*, 40, 43–71.
- NADELMANN, E. “Global prohibition regimes: the evolution of norms in international society”, *International Organization*, 44(4), 479–526.
- NAYLOR, R. T. 2002. *Wages of Crime. Black Markets, Illegal Finance and the Underworld Economy*. Ithaca, NY: Cornell University Press, p. 247–286.
- QUIRK, P. 1996. *Macroeconomic Implications of Money Laundering*. Washington, DC: International Monetary Fund.
- SHEPTYCKI, J. 2000. “Policing the virtual launderette. Money laundering and global governance”, In: Sheptycki, J., ed., *Issues in Transnational Policing*. London: Routledge, pp. 154–160.
- SMOUTS, M. -C. 1995. *Les organisations internationales*. Paris: Armand Colin.
- SOLONGO, D. 2001. *Russian Capitalism and Money-Laundering*. New York: United Nations.
- STRANGE, S. 1996. *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press.
- STRANGE, S. 1998. *Mad Money*. Manchester: Manchester University Press.
- WEBSTER, W. AND DE BORCHGRAVE, A., eds, 1997. *Russian Organized Crime*. Washington, DC: Centre for Strategic and International Studies.
- WILLIAMS, P. AND BAUDIN-O’HAYON, G. 2002. *Global governance, transnational organized crime and money laundering*. In: Held, D., and McGrew, A., eds, *Governing Globalization. Power, Authority and Global Governance*. Cambridge: Polity Press, pp. 127–144.