Time to turn the wheel

Introduction

My name is ***Stijn Wortelboer***, Dutch resident. Since 2005, I have been working as compliance officer for corporate service providers in the Netherlands, also referred to as 'Trust companies'.

In 2016 we started ***FirmQ***, an online compliance back office for financial institutions. We serve online payment service providers, trust companies, asset managers, and investment funds in The Netherlands and Luxembourg. More details can be found on my LinkedIn page: https://www.linkedin.com/in/stijn-wortelboer-948b82117/ and on our website: www.firmq.com

FATF Invitation

Your request for input regarding public consultation on Beneficial Ownership (UBO) registration is highly appreciated. As a compliance officer I do review client compliance files on a daily basis. Clients of Dutch trust companies are mostly international structures with a high-risk integrity profile. Over the years, I have reviewed thousands of these 'high-profile' client structures.

During those years I have noticed that legislation has become more detailed, more strict, and more demanding. The supervisory authorities have intensified their controls on financial institutions and have already issued hefty fines for shortcomings in policies & procedures. At the same time the bureaucratic burden for the financial industry has become enormous. Rough estimations show that Dutch banks alone employ already around 10.000 compliance- and risk officers.

But is it effective? I believe not. On the contrary, it creates an institutionalized sense of false security. We believe we are fighting financial criminality, but in fact, we are merely window dressing.
The mandatory UBO register based on the definition of more than 25% interest seems to be a powerful instrument. However, if it remains unclear who exactly are the minority beneficiaries, fraudsters still have all kinds of options to easily circumvent the rules.

Content

In this essay, I will first highlight the actual problems caused by the current governmental 'Anti-Money Laundering and Counter Finance terrorism' (AML/CFT) policy and explain the structural damage it in my opinion creates.
Secondly, I will propose a clear and effective solution, that can fundamentally change our view on AML/CFT.
Finally, I will suggest an achievable roadmap to realize our original goals.

Note: The content of this essay is only a summary of a detailed study on how AML/CFT legalization could be improved. Please consider this input as an invitation for more elaborated discussions. I will gladly share with you the outcome of more specific details of our analyses and underlying reviews.

I. Problems to be solved

Derisking

Banks have chosen to get rid of the aforementioned high-profile clients. Yet the costs of the required client research and potential penalties for inadequate monitoring procedures do not outweigh the benefits.

Problem:

- This means that any client with an increased integrity risk-profile has no or limited access to payment facilities. The FATF has warned already in 2016 for this tendency, called 'derisking'.

Ineffective client (transaction) monitoring

Every single service provider, such as banks, insurance companies, bookkeepers, real estate agents, etc., has the obligation to maintain an accurate risk-based client file, which allows this service provider to perform ongoing client (transaction) monitoring.

Problem:

- It means every single service provider is doing the same job, with different levels of experience, expertise and organizational capacity.
- Furthermore, transaction monitoring is only effective if the whole picture is clear. In fact, all service providers should have access to all other relevant aspects of the specific transaction in order to understand the reasoning, underlying the transaction.
- Supervisory and intelligence units are overloaded with millions of 'unusual transactions' of which almost 96% appears to be regular.
- However, if a transaction is considered to be illegal, the actual investigation is complicated, because of the wide distribution of relevant data.

Evasion of control

It seems wise to exclude criminals from the financial- and payment facilities, but in fact it actually increases the chance of evasion towards less controlled jurisdictions.

Problem:

- Instead of monitoring what takes place, it encourages (financial) criminals to create alternative routes in order to avoid supervision.
  Example: A foreigner can have a Dutch company, having its address in a multi-company building, with a local director and a bank account in a jurisdiction outside the EU. Except the annual tax filings, there is not a single authority that supervises this company.
  Example: Bear in mind the EU ban on Russian oil. India buys this oil, refines it and sells the end product to EU countries.
- Unless all minority beneficiaries of a legal entity are registered, it remains unclear who is ultimately calling the shots. A threshold of more than 25% is nothing more than an invitation to built alternatives to stay out of sight.
  Besides, as long as different interpretations of the regulations are being used by supervisory authorities, it is a bureaucratic nightmare for the service providers , who are obliged to register the UBO's.

Segregated and overload supervision

Because each market segment has its own supervisors, it is clear that the control on compliance files may differ as well. In addition to this, the expertise of the supervisory authorities cannot be focused on either core business or compliance activities.

But even more importantly: each service provider must be supervised on both aspects, which automatically lead to less supervisory capacity. Supervisors are overloaded and as a result their agendas are determined by what is deemed to be the greatest risk.
Problem:

- Supervisory capacity is under pressure, lacks optimal expertise and is therefore less effective.

GDPR violations
Recently the EU court decided that public access to the UBO register is a violation of privacy rights. We all knew that this was the case, but governments nowadays tend to cross legal limits and then wait until the judiciary rules on it and forbids it.
Problem:

- This concerns a fundamental conflict of interest between crime fighting and civil rights.

Conclusion
The current AML/CFT policy costs a fortune, weighs heavily on our economy, disregards our democratic principles, and does not lead to the intended crime fighting results.

II. Solution

So now what? What should we do?
I am a passionate advocate for a fundamental redesign of our licensing system, which I believe is the most efficient and effective method possible.

1. *Back to core competence*

Basically, the core business of banks is lending money and transfering payments. The same applies for insurance companies regarding issuing insurance policies, for accountants to do bookkeeping and for real estate agents to arrange real estate deals. Needless to say, client research, risk analysis or transaction monitoring is not part of their core competence.
These kinds of services should be taken care of by specialized compliance service providers (CSPs).

CSP's are specialized in this field of expertise. They provide extensive and enhanced client research, ongoing monitoring of all transactions, and highly sophisticated risk analyses. They have access to state-of-the-art intelligence and software applications, and have the resources to apply them effectively.

2. *Centralized files*

Since the CSPs will be responsible for all client compliance files, the other (financial) service providers, such as the banks, insurance companies and bookkeepers, have to outsource this task to the CSPs. The only requirement left for them is to upload all client transactions to the compliance records of their clients in the CSP systems.

This means that the CSP is able to monitor all transactions related to each client. This in combination with the fact that the client has to disclose all relevant details, such as every single shareholding interest, will improve the accuracy of the client (transaction) monitoring significantly. Obviously UBO registers are no longer required.

3. *Splitting license requirements*

The existence of CSPs allow supervisory authorities to split the license applications accordingly. Meaning, banks must have a banking license and CSPs a compliance license.

Supervisory activities will therefore become segregated as well. Only one department within the Dutch Central Bank is responsible for supervision on CSPs. This approach allows the supervisor to allocate its capacity much more efficiently. I expect in time, we will have approximately 30 CSPs in the EU, using a compliance license issued by the ECB.

4. *Privacy sensitive*

The new system changes the essence of compliance files. From now on, the client is in charge of the compliance files instead of the financial service providers. All privacy sensitive data will be stored in one place instead of widespread with all the companies that provide services to the client.

If a person or entity wants to purchase services and participate in the financial system, it must have a compliance passport, hosted by one of the licensed CSPs. Important to emphasize here is the fact that the CSP works for the client and has the fiduciary duty to serve the client's interest.

5. *Chinese walls*

Both clients and service providers will likely be concerned that their commercial interests are being disclosed to others.
This is an understandable, but unnecessary concern, since none of the service providers have access to the compliance files, and can thus not see more than their 'own' transactions as well as the mandatory risk based output.
The client owns the client compliance file including all details and data, but at the same time the mandatory risk-based output remains undisclosed.

III. Roadmap

Naturally, I do understand that this new system requires years and years of study, testing, trials and controls. This does mean that the day, when banks will be no longer responsible for compliance files and transaction monitoring, is still decades away.

I propose a two-track policy:

1. FirmQ has already built the software and online back office to provide CSP services to high-profile financial institutions in The Netherlands and Luxembourg. We monitor client compliance files on a 24/7 basis, and we continuously keep track of all changes in beneficial ownership and economic developments.

   We invite supervisory authorities to assess our files and our systems. We would further welcome a trial license application to become a certified CSP.
   This new initiative will certainly lead to more transparency than any UBO register ever will achieve.

2. At the same time, we could start with regular service providers, such as telecom companies, real estate agents or even jewelry store owners. These companies have clearly no expertise regarding compliance files and integral transaction monitoring. They would be very grateful if they could simply connect to the CSP system with the request to offer services to the client.

   The CSP in turn provides confirmation that the client has been identified and that all personal details are safely kept. No passport copy or other sensitive details will be shared with the service provider. The service provider only has to upload the services and/or transactions it renders to the client.

   If the government would allow these service providers to outsource their compliance obligations, it will immediately generate much more efficiency and subsequently lead to a much more effective AML/CFT policy.

These two actions can safely be introduced without causing any harm to the existing rules and regulations. In fact, we can only benefit and have nothing to lose, because if we do not fundamentally change our current AML/CFT policies, we will ultimately find ourselves at a dead end.

Stijn Wortelboer The Hague, 6 December 2022