

Euan Grant argues that the question mark is superfluous and a financial NATO (or NATO+) is sorely needed to tackle all aspects of illicit financial flows into, and more importantly through, the UK and particularly the City of London, which is arguably the world's premier financial centre

Dirty Money - a phrase requiring definition and modernisation

The term, and its now grandmother "money laundering" need updating to take account of changes to international financial flows, legitimate or otherwise, since the birth of the Internet, which coincided with the rise of China into a major worldwide trading economy, the collapse of the Soviet Union and the subsequent looting of the rents from its huge natural resources. Perhaps this parallels national defence and security establishments, still required to maintain expensive and demanding legacy platforms while preparing for cyber competition and unmanned platforms, all driven by massive increases in computing power and the approach of Artificial Intelligence (AI).

A similar situation can be seen in law enforcement worldwide, especially in policing, where many senior commanders built their careers in combatting drugs trafficking and cash based money laundering from the explosion of cocaine and heroin and cocaine trafficking in the 1980s, accelerated, be it noted, by guerrilla conflicts in South America (particularly affecting the USA), and by the Soviet Union's invasion of Afghanistan (Europe). This was compounded by the long years of counter terrorism efforts since 9/11.

When money laundering operations became common in the USA from the 1970s, and a few years later in Europe, "organised crime" largely meant drugs, and "money laundering" meant suitcases stashed with cash. The perceptions have changed somewhat now, with a greater awareness of the significance of people trafficking, and contraband smuggling, particularly of

tobacco products. But the white collar criminality of systemic tax fraud and intellectual property theft, and to a certain extent wildlife crime, are still seen as separate issues, best left to specialist agencies such as tax services. The very considerable overlaps in intelligence needs and the opportunities for sharing both information and working practices, particularly proactive, are normally not developed. This is particularly the case where law enforcement procedures are geared to the criminal prosecution of offences, to a very high standard of evidence which often cannot be met.

The resemblance with defence professionals' challenges in adjusting to new threats from new potential adversaries is clear. Where these new forms of criminality and related handling of the proceeds are linked to trade with, or by nationals of, these potential competitor or adversary nations to the Western democracies, the term "organised crime" becomes somewhat obsolescent. A more accurate description would, in this writer's opinion, be "strategic organised crime", a term popularised by Mark Galeotti and Edward Lucas and one which should be much more widely used.

Strategic challenges require strategic solutions, not least because perpetrators often act as proxies for their nations' wider aims, and as such enjoy state protection, up to and including hostage taking in order to secure their release if held in another jurisdiction. Several Americans and Canadians are finding this out in Russia and China.

The United Kingdom - why it is so important

The City of London is easily the largest financial centre in Europe, offering a huge range of services provided by banks and professional service providers such as accountants and lawyers. These enablers are supported by a raft of company formation agents, and the links between these categories of enablers are close. As Tom Burgis in his 2020 book "Kleptopia" puts it "to marry into the City of London requires many ushers", not least the agents who register the now notorious shell companies and their close siblings Limited Partnerships, Scottish Limited Partnerships (SLPs) and the latter's Northern Ireland equivalents. This combines with the attractions of operating in the English language, the independence of the judicial system, the integrity of law enforcement and - not least - the desirability of educating offspring at British schools and universities.

This has attracted the attention of both the great and the not so good for decades now. The rapid acceleration of shell companies in the early 1990s was seen in the use of these structures

to buy high end properties through companies which in turn were often registered in the Channel Islands, the Isle of Man and the dependent territories, key links in chains which also involved the US states of Delaware and Wyoming - and others now - and in EU and other European countries, noticeably Cyprus and Malta following their entry into the EU.

In relation to the now notorious transfers of looted funds from ex Soviet States, Cyprus again was favoured alongside the three Baltic States, particularly Latvia. Particularly notorious examples were Banca di Economii in Moldova in 2015, where David Leask reported the use of SLPs. and Danske Bank Estonia, made public in 2018-9. Both were huge cases which involved extensive transfers through the UK to non EU corporate secrecy destinations and then back into the EU, typically to buy properties.
When Italian Mafia groups used shell companies to transact cross border VAT frauds following the introduction of the EU Single Market in 1993, it was noticeable that they used UK registrations, as did a number of corrupt European Commission officials purloining EU development funds. Oliver Bullough, author of the seminal "Moneyland", has pointed out the dramatic increases in UK company registrations from 1992. He is one of the few commentators to recognise the significance of EU cross border VAT fraud ("carousel fraud"), which is also a huge revenue risk in the ex- Soviet states and the modus operandi of which was central to the Russian tax frauds linked to the death of the lawyer Sergei Magnitsky.

It is not a coincidence that the new EU European Public Prosecutors Office (EPPO), due to commence operations in November 2020, has carousel fraud as the only specifically defined crime within its otherwise generic remit to investigate defrauding of the EU budget, including corruption of officials. The EPPO will have the power to compel prosecutors and law enforcement agencies in participating Member States to investigate such crimes. Given their cross border nature, this will inevitably involve the need for mutually beneficial cooperation with the UK and, for the large number of US dollar transactions, the USA. Hence the argument for a financial NATO or NATO+, not least because many of the transactions will have links to Russia and China.

The question might be asked, why a financial NATO - a phrase independently used by Ben Judah, a longstanding writer on Russia and its UK presences- and not a financial Brexit arrangement with the EU? The answer is that the suspicious transactions increasingly flow to, from and through countries outside Europe and the EU, but which certainly are of interest to NATO collectively and the US as the nation of the world's reserve currency. Frankly, the clout of the US, imperfect as it is as the FINCEN leaks have just revealed, is nonetheless essential for meaningful and coordinated action.

One of the disclosures from the leaks, which still need to be studied at both strategic and operational levels, is that the huge amounts of information reported by banks and other institutions can all be acted upon in a timely way. And similarly, the Five Eyes countries need the support of NATO allies in the EU. As Danske Bank and Banca di Economii showed, and as the former merchant banker Tom Keating has pointed out, the impression sometimes given that illicit financial flows from state protected strategic organised crime are largely a Anglosphere problem is wholly inaccurate. Many of the suspect funds enter the UK from a "low risk" third country, such as Austria for transfers from Russia via the Baltic States. The modus operandi used in the Danske Bank case were well known from other examples many years before the situation became publicly known.

The good news - what is the UK doing?

The UK has taken something of a lead following then PM David Cameron's commitment to introduce a publicly available register of the details of company directors and persons of significant control. This had severe problems in implementation, as the regulatory body, Companies House, was not resourced for the significantly increased workloads, and is largely a regulatory body, not an investigative one. It was essentially dependent on third parties such as the police, the National Crime Agency and HM Revenue & Customs to verify the accuracy of information submitted, especially the directors, company secretary and persons of significant control. It did not require proof of identities.

This loophole, a crucial one, will hopefully now be closed following the September 2020 announcement by the UK government of legislation requiring such proof before persons can be registered. Once enacted, this will potentially be a significant deterrent to registration using false details, stolen identities or the use of frontmen as "straw man" directors. The provided details, presumably passports, foreign ID cards and driving licences, would be quickly searchable by a range of agencies and discrepancies quickly identified.

These agencies have access to international databases such as those of Europol and, currently, the EU's Europol and Schengen Information System - SIS - and these provide early notification of suspicions. That does come with significant caveats. The EU, collectively and individually, needs the UK, and vice versa, but simply entering discrepancies into a database is very far from necessarily acting upon it, particularly where white collar crimes which do not attract the same degree of attention as violent ones, terrorism or drugs trafficking do. The devil will be in the detail of how regulators, law enforcement agencies and foreign intelligence and domestic security agencies cooperate at national and international levels in taking action to sanction negligent or culpable corporate enablers, bank staff at levels of high responsibility, and

to take meaningful civil and criminal enforcement action against the sources of illicit funds. This is no small task indeed, pre Pandemic, and even more so after it.

Any such hoped for deterrent impact would likely be seen in fairly early and significant reductions in registrations of new companies and, initially, a rise in changes to details for existing ones, and then later a falling off in variations there too.

The impact would most likely be felt most by solicitors, accountants and company formation agents who would, in practice, be those who would obtain and submit proof of identity, similar to those required by banks. They would clearly be liable to prosecution if they failed to obtain these details and take reasonable steps to ensure that they were genuine. For solicitors and accountants, the prospect of sanctions by their professional body would be another and significant factor to consider, one requiring a lower standard of proof.

Caution should be used in measuring success solely, or even mainly, through criminal convictions in the UK or other countries of any financial NATO, Such cases are complex, resource intensive and require high burdens of proof. There are real dangers that only small players acting on behalf of the true instigators are prosecuted or otherwise sanctioned, e,g by civil penalty. Those currently convicted in the cases of the murders of Daphne Caruna Galizia in Malta and Jan Kuciak and his fiancÃ©e in Slovakia are accepted as not being the instigators of the crimes. Jan Kuciak, it should be noted, was investigating VAT carousel fraud.

There will also be a real possibility of "displacement", where the crimes merely appear in other countries. Any successes in the UK are likely to result in real reductions in such activity, given that many other countries do not have the enabling structures and attractions of the UK. But some do, and would likely see increases in problems there, cases which they are unable or, in some cases, unwilling to deal with.
The UK and other countries are already seeing decreases in cooperation from Dubai - the equivalent of London for the Middle East and much of South Asia and Africa, and which has long been a haven for strategic criminal money - and this will certainly be the case in the near future with Hong Kong. These are strategic territories and will play by big boys' rules. Their own rules. Which requires a collective strategic response. An Alliance type response. NATO fulfilled its purpose throughout the forty years of the Cold War and tackling this kind of dirty money will be another long haul.

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