THE PATH FORWARD

for effective public-private partnerships in drug control

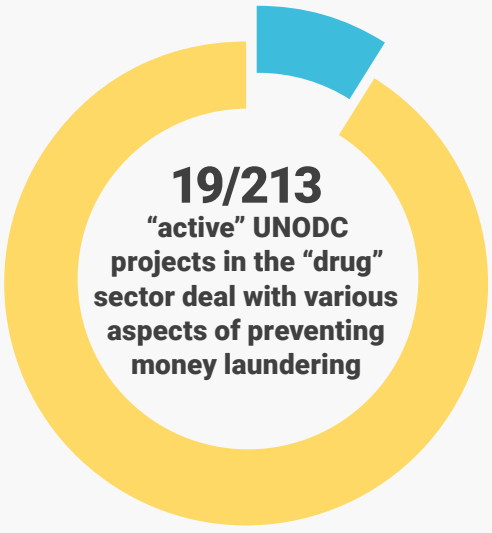
Combating the proceeds of narcotics trafficking

UNODC distributed an online questionnaire in November 2020, asking opinions on public-private partnerships (PPPs) in the area of anti-money laundering. Results included:

- **79%** said PPPs in drug control increased globally in the last 10 years
- **23%** were aware of close public-private sector cooperation in fighting money laundering in their nation
- **86%** of respondents said results would've been worse without a PPP
- **78%** said PPP cooperation in drug control was successful
- **47%** said PPP cooperation in the money laundering area was successful, and 50 per cent said it was neutral
- **38%** of respondents see greatest potential for future development of cooperation in drug-related money laundering

UNODC RESPONSE TO TRANSNATIONAL ORGANIZED CRIME

Ever since the adoption of the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the adoption of the United Nations Convention against Transnational Organized Crime, preventing money laundering to fight drugs and organized crime emerged as a key aim of UNODC's activities. Such efforts can only be successful through guaranteed cooperation with private financial institutions. With close private sector cooperation, UNODC and partners have delivered awareness-raising projects on preventing money laundering. Usually, these have formed part of broader programs to fight transnational organized crime and drug trafficking, improve border management, build capacity to respond to the threats posed by illicit drugs, or strengthen criminal justice or public security policy responses.



UNODC/WCO CONTAINER CONTROL PROJECT (CCP)

Close to 90 per cent of the world's cargo is nowadays containerized, with more than 750 million container movements registered in 2017, up from 470 million in 2009. Containers are used to transport drugs, counterfeit medicaments and precursor chemicals, as well as arms, nuclear and biological material.

The CCP assists national law enforcement agencies in developing their capacity to identify and inspect high-risk containers. This is important as in general, no more than 2 per cent of containers can be physically checked after arrival at a destination. However, customs and other control agencies are mindful of potential economic losses resulting from unnecessary delay and/or damage to cargo as a result of inspections. Such losses would negatively affect the economy as a whole, notably the private sector, thus calling for a targeted approach by authorities based on close local, regional and international cooperation, including the sharing of relevant intelligence information.

In short, some of the project's key objectives are to introduce risk-based profiling of containers, improved information exchange at the national, regional and international levels on container crime, facilitation of cooperation with relevant international agencies involved in regulating and monitoring worldwide container traffic, and the promotion of increased cooperation between law enforcement agencies and the private sector.

FINANCIAL ACTION TASK FORCE (FATF)

FATF is a global money laundering watchdog that develops standards and recommendations for coordinated money laundering responses, and releases trends, development and policy handbooks. Its members number 39, but it coordinates heavily with nine regional watchdogs to create a network of experts helping to shape global policymaking on anti-money laundering. Through both its members and this regional network, FATF has successfully committed over 200 jurisdictions worldwide to the "FATF Recommendations – International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation".

Promising practices from the field

AN APPROPRIATE LEGAL FRAMEWORK CAN ADVANCE THE PARTNERSHIP

UNODC's discussions with experts made it very clear that different jurisdictions under different legal regimes allow for different methods by which a PPP in the field of combatting the proceeds of narcotics trafficking can work. Regardless of the predicate offense, the PPP is reliant on the same type of legal framework to permit sharing of information. The US is a quite unique jurisdiction, with articles 314a and 314b of its Patriot Act enabling information sharing in distinct ways. 314a allows for law enforcement agencies (LEAs) to bring targeted names to financial institutions with which to solicit information, and 314b allows financial institutions to share personal information with each other in the context of money laundering investigations – a.k.a. private-to-private information exchange. In other jurisdictions, legislation is more ambiguous. Private actors must seek legal authorization in order to share private-to-private intelligence regarding bad actors, accounts, or money mules. Experts generally agreed that the kind of information sharing between public and private institutions allowed by the US Patriot Act article 314b would help to enhance the quality of suspicious activity reports (SARs) and suspicious transaction reports (STRs) that are relayed back to financial intelligence units (FIUs) and LEAs.

MITIGATING IMPEDIMENTS TO INFORMATION SHARING WITH LEGAL INSTRUMENTS

Experts conveyed to UNODC that financial institutions entering into PPPs encounter complications in enabling the same level of information sharing across jurisdictions. One clear challenge they face is making sense of an amalgam of legislation, some parts of which can be more permissive than others, and of a lack of legislative coherence between governance of financial investigations and, for example, banking laws governing accounts. This can give the private sector institutions doubts over whether or not they have the correct legal basis to enable information sharing, with additional concerns around breaching tipping-off provisions in domestic legislation. This can, according to experts, often represent the biggest barrier to information exchange – but it can be rectified with appropriate legislation. As an example where a piece of legislation can help support an entity to mitigate the risks involved with its membership of a PPP, Australia's Anti-Money Laundering (AML) and Counter-Terrorism Financing Act 2006 includes a subset of rules (chapter 75) that exempt a reporting entity from certain AML obligations if the entity is investigating a serious offence. For example, if a LEA must conduct enhanced customer due diligence as part of its AML programme, it might require obtaining information from the customer. Rather than the LEA harbouring concerns that this will result in the customer changing its behaviour, chapter 75 enables certain LEAs to apply for an exemption. Without this mitigating legislation, the financial institution involved in the PPP could decide to de-risk that customer and close their accounts. But chapter 75 operates effectively as a mechanism whereby a PPP financial partner can continue to keep that account open for the benefit of law enforcement, until investigative operations wrap up.

BUILDING TRUST CAN HELP TO COMBAT A TENDENCY TO DE-RISK

A Caribbean task force expert reported to UNODC that such a legal provision also exists in the legislation of many of the region's jurisdictions. Yet through assessing the success of regional PPPs, it has found that financial institutions feel they don't get sufficient feedback from LEAs, around their levels of risk exposure when clients are under investigation, to feel comfortable about continuing the relationship with said clients. This lack of confidence has resulted in them de-risking the client, although legal provisions absolve them from any need to do so. Whilst in this case financial institutions who don't feel comfortable or convinced by the information they receive from LEAs move to mitigate risk for them and their clients, UNODC was also told that LEAs are often reluctant to share information until their partners have gained their full confidence. It is evident therefore that there is a structural problem in the conduct of financial investigations leading to pressures on correspondent banks to mitigate risks, and that the tendency for them to de-risk suspicious clients – thus far intractable – could be solved by effective PPPs in which clear communication can build trust and confidence between partners. Banks and other financial institutions need a level of comfort to be willing and able to mitigate high-risk sectors and jurisdictions, and LEAs and other partners must try and mitigate this tendency to de-risk for AML-related reasons, as it can have negative consequences for financial inclusion; withdrawal of services forces some customers to make payments using less regulated channels.

The expert working group that provided the basis for the content of this document was held in conjunction with the Co-Financing and Partnerships (CPS) Section of UNODC, with substantive technical and advisory support provided by the UNODC Prevention, Treatment & Rehabilitation Section.

VARIABLES IN THE SUCCESS OF PPP INFORMATION-SHARING

UNODC's expert working group agreed that PPPs, despite being potentially complex to initiate because they are based on trust, can act as lightning rods towards efficient and effective financial investigations, which are much more targeted and yield much better outcomes than if PPPs are not employed. A key variable in their success is the type and specificity of the information shared, and this again depends on the levels of trust displayed amongst members of the partnership – particularly in the absence of the type of legal framework displayed in the US and elsewhere. Building trust between LEAs and reporting entities is central to the effectiveness of information sharing, as the private sector highly values specific, actionable intelligence. In terms of which information is beneficial to be shared, depending on the capacity of law enforcement agencies (LEAs) and specific differences between jurisdictions, both general and specific information on typologies, patterns and trends can be important in putting together a risk picture relevant for both private and public sector partners. In such a case, all partners will hope to be able to add elements to their risk framework and distill red flags that appear. Partnerships could exist, like joint investigative units, that enable or mandate the systematic exchange of information for a specific predicate offense or typology for which a mandate doesn't exist. Existing PPPs that facilitate information exchange between partners and increase the private sector's involvement in mitigating existing risks, identifying new risks and developing typologies include: the International Compliance Council, under the auspices of the Eurasian group on combating money laundering and financing of terrorism (EAG), a Financial Action Task Force-style regional body; the US Treasury's Financial Crimes Enforcement Network (FinCEN) Exchange; and the UK's Joint Money Laundering Intelligence Taskforce (JMLIT).

TYPOLOGIES ARE CRITICAL TO EXCHANGE...

One of the biggest challenges for financial institutions is what to look for in monitoring suspicious activity. Our experts recommended that public and private sector partners hold regular meetings to discuss different typologies. For financial intelligence units (FIUs) and LEAs, even those without legal basis to exchange operational information with their private sector partners, it made sense to exchange typologies with those partners and ensure they understood that the information requests they are given more or less relate to those typologies. One expert from a European FIU commented that the anti-money laundering (AML) task force that included the FIU realized, during the COVID-19 crisis in 2020, that criminals were trying to sell counterfeit or overpriced goods without delivering them. The European LEA had written typology papers on the predicate offences, but the papers did not really include AML typologies or indicators for the private sector. So the FIU analyzed the papers in order to identify AML typologies and indicators, and rewrote typology papers focusing on this. The FIU shared the papers with the relevant members of the private sector at national level, brought back their feedback to the task force, and designed new papers based on this feedback. In this example the FIU was not authorized to exchange operational information with private partners, but could share typologies and indicators to great success.

...BUT CAN BE IMPROVED TO DELIVER MORE TARGETED INFORMATION

A PPP can bring twofold benefit in terms of information sharing, allowing LEAs to exchange typologies of criminal activity, but also to share target information, allowing for more tangible investigations with measurable outcomes. If a PPP works in a low-capacity jurisdiction, then the ability to share typologies alone and strategically act on them is very beneficial. However, typologies can be very broadly descriptive and generic. These are of limited value to the private sector compared to the name of a person of interest, as the private sector can return detailed reports when the information shared by LEAs is specific. In larger and more technologically proficient jurisdictions in particular, the more specific the typologies shared by LEAs or FIUs, and the greater the move towards a shared, data-driven understanding of typologies, the greater the capacity of all PPP partners to be able to deliver results and successful outcomes to investigations. For those financial institutions with the technological and financial capabilities to implement more sophisticated technology, deploying tools like algorithms, machine learning and advanced data analytics can ensure target information is shared that goes above and beyond mere textual descriptions and gives more specific detail, and perhaps a set of thresholds. Experts from North American, Asia-Pacific and Eurasian regional bodies all told UNODC of cases in which government agencies in their jurisdictions provided successful examples of outcomes where typology has been exchanged in the form of specific leads and transactions using advanced technical information. Trust also develops between partners through demonstration of capability and information security.

Maximizing success and overcoming challenges

- Some PPPs have detected frustration on the part of both public and private sector, but particularly from large financial institutions who feel their financial integrity is often at risk from an anti-money laundering partnership and want more information from government in order to be effective partners via adding risk elements to their framework and distilling any red flags. A legal framework can help to advance these issues.

- Some financial intelligence units (FIUs) reported that the better the public-private sector relationship, the more accurate and timely the transmission of financial and other relevant information, and the longer that information is maintained beyond the designated time period as specified by law. In these cases, FIUs having a good relationship with reporting entities was stated as the key factor in PPPs' success. Building a relationship of trust, with both parties understanding each other's perspectives, can create a clear communication line between FIUs and reporting entities.

- PPP partners should strive to create an equal-partnership platform where there is room for critique, free and open dialogue and suggestions. Concrete feedback is the most helpful and easiest to implement. For example, rather than "we would appreciate more collaboration", it is more useful if specific capacity-building collaboration is outlined – "help us develop red flag indicators", "provide us with case studies", "connect us with investigators who have worked these cases before", etc.

- Some PPP task force environments are in large groups. Here, it's important to think of ways to give all participants a voice. Smaller breakout groups, asking people to submit anonymous thoughts or comments, or giving everyone dedicated allotted time to share their thoughts, are possible methods of obtaining higher levels of engagement and contribution from quieter members of a task force.

- It can be helpful in PPPs to have two forms of collaboration. One is with senior-level representatives who can agree to the parameters of the partnership and provide the commitment needed for its success. The second is with technical staff who are working to problem-solve, thus can provide current intelligence and discuss trends and successful investigative strategies. The combination of their on-the-ground knowledge with the executive authority to act upon staff recommendations can lead to productive partnerships.

CASE STUDY: BLOCKCHAIN USED TO EFFICIENTLY LOCATE AND SEIZE ILLICIT CRYPTOCURRENCY PROCEEDS

In November 2020, the U.S. Department of Justice (DOJ) filed a civil forfeiture complaint against the largest-ever seizure of bitcoin digital assets, collectively worth more than US$1 billion. The Internal Revenue Service (IRS)' law enforcement agents used transaction monitoring and blockchain analysis tools to identify and trace, from evidence on the blockchain, 54 previously undetected bitcoin transactions executed from the largest cryptocurrency wallets with connections to Silk Road, the first major digital darknet market for illicit goods and services including illegal drugs. The investigators also found that a hacker stole those funds from Silk Road. The tools and investigative assistance provided, by Chainalysis, are designed for compliance officers at financial institutions, law enforcement officers, government agencies and analysts. According to Chainalysis data, Silk Road accounted for nearly 20 per cent of total bitcoin economic activity at its peak in 2013, before it was shut down by law enforcement agencies that same year.

Following the investigation, the seized bitcoin was seamlessly transferred to a government-controlled wallet. If forfeited, this wallet will be moved to the Treasury Forfeiture Fund, which finances innovative law enforcement programmes, like blockchain analysis tools development and training, which help agents identify and seize more illicit funds. In 2021, US law enforcement agencies filed similar civil forfeiture actions against cryptoassets related to terrorism financing and North Korean hacking activities with the help of Chainalysis tools and investigative assistance.

This case is an example of how investigators, with the right tools, can leverage the transparency of cryptocurrency to follow illicit financial flows. One challenge Chainalysis has faced is that some partner agencies have been slow to understand how cryptocurrency fits into their missions, and have had to develop investigative and analytical capabilities around this relatively new asset case. As agencies have seen how blockchain analysis tools can vastly augment investigative and data analysis capabilities, these entities have recognized the tools' importance in financial investigations into money laundering, fraud, darknet marketplace transactions, and other illicit transactions.

While this case is remarkable in the value of funds seized, it also shows that the PPP between government agencies and blockchain analysts allowed for the use of that technology not only for proactive case building, but also to locate and seize illicit proceeds, even years after it was generated. Additionally, it is notable that the US$1 billion seizure was sent and confirmed within minutes. Unlike other cases involving fiat currency or personal property, where the government's transfer of possession can take days or even months, cryptocurrency harnesses the power of technology to transfer funds in minutes.

Success stories from around the world

JOINT MONEY LAUNDERING INTELLIGENCE TASKFORCE (JMLIT), UNITED KINGDOM (UK)

This PPP has proven extremely successful in the UK, held as a leading global example of an effective financial information-sharing partnership across the legal gateway of the UK's Crime & Courts Act 2013, section 7. A suspicious activity report (SAR) filed to the UK financial intelligence unit (FIU) that originates within JMLIT is 60 times more effective than a generic SAR filed by a given regulated entity, according to information from the Future of Financial Intelligence Sharing provided to UNODC by JMLIT partner Western Union (WU). The PPP involves financial institutions, law enforcement agencies and regulatory bodies. It meets weekly to exchange tactical intelligence, with six additional strategic expert working groups meeting on a quarterly basis.

WU told UNODC that, thanks to JMLIT and section 7 of the Act, it receives not only subpoenas or tactical information to conduct internal investigations, but also the context of the investigation – what law enforcement agencies (LEAs) are looking for, connections between bad actors, and links between money laundering at local and international levels. This helps WU conduct internal research, connect dots within the criminal activities that LEAs are investigating, and report directly back to those LEAs in a more efficient manner. WU having provided data and the context of internal investigations to LEAs also improves the LEAs' efficiency in turn, creating benefits for both sides.

FINTEL ALLIANCE, AUSTRALIA

The Australian Government's Australian Transaction Reports and Analysis Centre (AUSTRAC), both a regulatory body and an FIU for anti-money laundering (AML), launched the Fintel Alliance in 2017. This is a PPP consisting of 29 governmental and private sector partners working together to enhance the resilience of the financial sector to criminal infiltrations and support the law enforcement investigations of serious crimes. Partners in this alliance include banks, remittance service providers, gambling operators, law enforcement agencies and security agencies.

The Fintel Alliance operates on multiple different operational contexts. It also deals with several different predicate offenses besides drug trafficking. It has two information-sharing hubs where partners collaborate. The first one is the Operations Hub, which is a physical space where partners exchange and assess financial intelligence face to face in real time, combining data with tracking tools and best-practice methodologies from their organizations. The second is the Innovations Hub, where partners can co-design and test new technology solutions that facilitate financial intelligence gathering at an operational level.

Private sector entities involved are considered as important partners who regularly provide useful information. They often ask for quid pro quo assistance on typology information, better running their monitoring systems or building their crime profiles. In some cases, financial institutions involved in the Fintel Alliance have been fined by AUSTRAC for AML breaches, yet the maturity of the relationship between the partners involved has meant that they have continued their substantial involvement in the PPP.

Sometimes the private sector partners come up with typologies and provide them to the Alliance, in cases where they are the first to see certain new forms of fraud or other crimes. One such case in Australia regarded fraudulent transactions around government support payments for the consequences of Covid-19, which were identified using a SAR. The subsequent law enforcement response was deemed very successful, and this private sector detection of suspicious activity also supports other private sector partners to act similarly using the same methods.

In a highly sensitive organised crime operation headed by the Australian Federal Police and United States (US) FBI and involving 33 countries in order to find undetected funds, drugs, and firearms, the Fintel Alliance was engaged late on in the process, just as search warrants were about to be executed in Australia. Despite this it was engaged successfully; the banking partners in the Alliance, through being given certain typologies, were able to identify assets, accounts, hidden properties, and undetected financial flows of over AUS$3 million, which the police recovered. Some 50 urgent request notices were sent by the police to the financial institutions, compelling them to provide information. The banks identified individuals and helped search warrants be executed properly. The operation, apart from being very successful for law enforcement, showed that the role of the PPP was fundamental in an environment of close collaboration, and generated good results such as the identification of extra funds and assets unbeknownst to the police beforehand.

FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN) EXCHANGE, UNITED STATES (US)

The FinCEN Exchange is an information-sharing PPP between US law enforcement agencies, security agencies, financial institutions and FinCEN, designed in order to enable the private sector to better identify risks and provide FinCEN and law enforcement with critical information to disrupt crimes in the US such as the trafficking of synthetic opioids and the subsequent laundering of the sales proceeds.

FinCEN issued an advisory in 2019 to alert financial institutions to such illicit financial schemes and mechanisms amongst transnational criminal organizations (TCOs), foreign fentanyl suppliers, and Internet purchasers, and to assist the institutions in detecting and reporting related activity. It highlights the typologies and red flags, derived from sensitive financial reporting, which are associated with the sale of these drugs by foreign suppliers; methods used by TCOs to launder the proceeds; and financial methodologies associated with the sale and procurement of fentanyl in the US over the Internet.

This detailed advisory has made it harder and more costly for criminals to (i) commit these crimes; (ii) hide and use their illicit money; and (iii) continue fuelling the US' opioid epidemic. To complement this advisory, the US federal Office of National Drug Control Policy, with the input of FinCEN and other interagency partners, released advisories on how businesses can protect themselves and curb drug production and trafficking through public-private collaboration.