

The following is opinion and comment from Financial Crime News, relating to the US fight against financial crime, and is an extract from FCN's comprehensive USA Threat Assessment 2022. The TA was produced to provide a digestible, condensed and thought-provoking summary of US ML/TF/FC and PF threats and responses for financial crime fighters to contemplate.

**1.1 Introduction:** Before the fight against money laundering, came the war on drugs and then on organised crime. By targeting / disrupting and seizing the money (so the theory goes), the financial incentive behind these crimes should result in a material change in behaviour by criminal organisations.

**1.2 Brief History:** The American war on drugs is 50 years old, and the US government has spent more than **US\$1 trillion** in trying to enforce its drug policies through a law enforcement-led approach. In 1981, the federal budget for drug abuse was just over **US\$1 billion**, by 2020, that number had grown to **US\$34.6 billion**. According to the White House, the national drug control budget is estimated to hit a historic level of **US\$41 billion** in 2022, with the largest increases in funding requested to support drug treatment and drug prevention.

In 1989, the US persuaded OECD countries to establish the Financial Action Task Force to focus on money laundering and to “deputise” financial institutions and other private sector entities to help go after the money, in particular targeting drug trafficking by organised crime organisations, and later all financial crimes.

US FIs had been required to report certain threshold based reports to the US government under the 1970 Bank Secrecy Act (BSA), but by 1992, obligations on FIs were expanded to require the establishment of entire AML programmes, including SAR filing.

There was no private sector challenge to the 1992 requirements, unlike the challenge made against the original more limited BSA obligations. The US Supreme Court in 1973 (the same court that decided Roe v Wade), found by a majority verdict that the very limited reporting on bank customers to the government then, was not unconstitutional, (Articles 1, 4 & 5), though they made it clear expanding that reporting obligations could be<sup>1</sup>.

**1.2 US National Priorities:** The US announced it's AML/CFT National Priorities (identified by FinCEN) in 2021<sup>2</sup>: “(1)

<sup>1</sup> The provisions of the Bank Secrecy Act was challenged up to the US Supreme Court which heard the case as *The California Bankers Association v. Schulz*, Bankers, Civil Rights Campaigners and some customers complained that the new law imposed unreasonable and onerous new obligations which included micro fishing and retaining information, and by reporting these to the government, the regulations effectively made the banks the agents of the government in the surveillance of its citizens, and in doing so, contravened the 1st (Free Speech) 4th (Search) and 5th (Incrimination) Amendment rights. See: <https://thefinancialcrimenews.com/us-aml-act-2020-50-years-on-from-the-bsa-1970/>

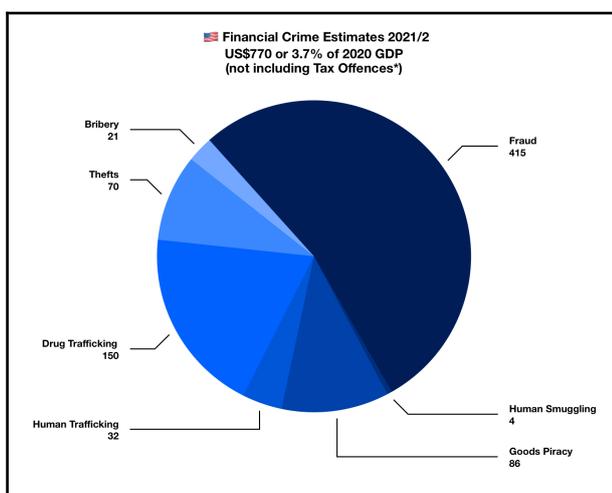
<sup>2</sup> See: FinCEN, Anti-Money Laundering and Countering the Financing of Terrorism National Priorities (Jun. 30, 2021), [https://www.fincen.gov/sites/default/files/shared/AML\\_CFT%20Priorities%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf)

**corruption**; (2) **cybercrime**, including relevant cybersecurity and **virtual currency** considerations; (3) foreign & domestic **terrorist financing**; (4) **fraud**; (5) **transnational criminal organisation** activity; (6) **drug trafficking** organisation activity; (7) **human trafficking** and **human smuggling**; & (8) **proliferation financing**.

The National AML Risk Assessment 2022 also included **“professional money laundering”** as a main threat (money brokers and Chinese ML organisations).

Additionally, there was a special focus on **wildlife trafficking**, but this was not included in the National Priorities.

Taking all available estimates for financial crime proceeds and aggregating them provides an overall estimate of **US\$770 billion** or **3.7%** of GDP and an estimated **US\$585 billion** available for laundering through the US financial system, and transnational organised crime proceeds at **US\$355 billion**.



**2.1 Drug Trafficking:** While the number of drug abusers in the US had been decreasing from 1971 to now, recent research has shown rises in drug abuse and a recognition that the US is experiencing a new drugs epidemic. In 2019, the number of Americans aged 12 and older, who use illicit drugs, rose to 13%. This number is the highest it has been in 40 years. Many high schoolers find it easy to get drugs, and the COVID 19 pandemic has encouraged higher numbers of substance abuse.

Whilst US agencies announce regular drug busts, it’s unlikely that even with large amounts of interdicted product, there is serious pressure on criminal supply chains, with the overwhelming amount of illicit drugs getting through to market. The same could be said of arrests, prosecutions and convictions for those involved in **drug trafficking** - whilst significant offender cases exist, there are plenty of recruits available to replace them and to continue the trade. Drug trafficking will most probably continue to be a major concern for the foreseeable future.

**2.2 US Strategy on Drug Control:** The Biden Administration’s **Drug Control Strategy 2022**<sup>3</sup>, published in April 2022, advises that the focus is on 2 critical drivers of the drugs epidemic in the US namely untreated drug addiction and drug trafficking. The strategy instructs federal agencies to prioritise actions that save lives, get people the treatment they need, to go after drug trafficker's profits, and make better use of data to guide all these

<sup>3</sup> See: <https://www.whitehouse.gov/wp-content/uploads/2022/04/National-Drug-Control-2022Strategy.pdf>

efforts. Key targets by 2025 include reducing illicit drug supply to the US, for example, the supply of heroin down by 30% & cocaine by 10%; Increased targeting of Sinaloa or Jalisco New Generation (CJNG) cartels; Targeted narco traffickers and related asset freezes and seizures up by 365%; The number of defendants convicted in active drug related investigations (that incorporate FinCEN/SAR data) up by 14%; & The number of incident reports for precursor chemicals sourced from China or India, up by 125%. The US has successfully used similar strategies before in relation to addressing organised crime groups.

**2.3 Organised Crime:** The Italian Mafia were the most successful organised crime operation in the US in the 1970s and 1980s. As the second decade of the twenty-first century draws to a close, the Italian Mafia in the US are shadows of their former selves. Relentless investigations and prosecutions of members and associates, legalisation of gambling, increased competition (in particular) in drug markets, the dramatic decline of private sector unions, the disappearance of Italian neighbourhoods, and the emergence of new organised crime groups, have all contributed to the decline of the once all powerful Italian Mafia families.

US law enforcement have demonstrated that with the right tools and resources, it is

possible to target and successfully make a substantial impact in addressing transnational organised crime groups in particular. Notwithstanding this, it's less clear whether these efforts are more than a tactical success, or whether the many others ready to take their place, with little interruption in underlying criminal business activity, will unfortunately still continue with business as usual.

#### **2.4 US Strategy on Countering Organised Crime:**

In December 2021, the Biden Administration published details<sup>4</sup> on how increased sanctions would target drug traffickers alongside targeting transnational criminal organisations that benefit from this trade.

A new "**U.S. Council on Transnational Organised Crime**"<sup>5</sup> was being established to bring together 6 existing agencies and new authorities have been established, "**Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade**"<sup>6</sup>.

**2.5 Corruption:** The US has long championed tackling corruption, and the Biden Administration is redoubling efforts to combat corruption, in particular overseas. Whilst this is welcome and needed, more work is needed at home. According to Transparency International, the US is falling in it's Corruption Perceptions Index, and political parties (4.1), and the US Congress

<sup>4</sup> See: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/15/fact-sheet-the-biden-administration-launches-new-efforts-to-counter-transnational-criminal-organizations-and-illicit-drugs/>

<sup>5</sup> See: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/15/executive-order-on-establishing-the-united-states-council-on-transnational-organized-crime/>

<sup>6</sup> See: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/15/executive-order-on-imposing-sanctions-on-foreign-persons-involved-in-the-global-illicit-drug-trade/>

(3.7) are rated as the most corrupt US institutions (based on a scale 1-5, where 1 means not at all corrupt, 5 means extremely corrupt). This perception is influenced by election finance practices.

In 2010, the US Supreme Court ruled in *Citizens United v. Federal Election Commission* that companies and labor unions enjoy the same right to political speech as individuals. With this decision, many restrictions on money in American politics were undercut. Subsequently, so-called super PACs - political action committees that are financed in part by large corporations, their multibillionaire shareholders, or powerful unions - can pour hundreds of millions of dollars into political campaigns, as long as their efforts are independent of candidates. Many believe that the influx of large sums of money into American politics puts corporate interests first, and results in corruption. Some even go so far as to claim that corruption has been effectively legalised and enshrined in the system. This issue is not new, and campaign finance reformers, politicians, and academics alike have been arguing for decades that large sums of money imperils US democracy.

According to the Centre for Responsive Politics<sup>7</sup>, amounts paid by so called "Super PACs" in the 2012 presidential election, was US\$600 million, & over **US\$1 billion** was spent in 2016. In the 2010 midterm elections

for congress, less than US\$100 million was spent. This rose to more than US\$300 million in 2014, and over **US\$800 million** in 2018.

## 2.6 US Strategy on Countering Corruption:

In December 2021, President Biden signalled a redoubled emphasis on anti-corruption as a national security priority via the issuance of a new US Strategy, which includes curbing illicit finance as one key pillar, as well as addressing "*deficiencies in the U.S. AML regime, (including by effectively collecting beneficial ownership information on those who control anonymous shell companies, and by increasing transparency in real estate transactions)*", & "*holding corrupt actors accountable*" as a second pillar<sup>8</sup>. Earlier in June 2021, the US used expanded Magnitsky sanctions which has now enabled the US to target foreign corrupt persons, for example OFAC issued sanctions on three Bulgarian citizens for their roles in large-scale bribery and influence peddling schemes, and also on 64 entities owned or controlled by them, signalling greater intent to use available tools in this area<sup>9</sup>.

There is no mention of domestic election finance in the US anti corruption strategy.

## 2.7 Tackling Other Important Financial Crimes that are US National Priorities:

Additional National Priorities include other financial crimes, such as **human trafficking and human smuggling**. The fastest growing crime is **fraud** fuelled by **cybercrime**, which

<sup>7</sup> See: <https://www.brennancenter.org/our-work/analysis-opinion/citizens-united-decade-super-pacs>

<sup>8</sup> See: <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>

<sup>9</sup> See: <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210602>

is rampant in the US, and has been targeted at US government COVID 19 relief programmes and social security fraud, and increasingly at the vulnerable through fraud types that come in many forms.

## 2.8 US Human Trafficking Prevention

**Strategy:** There is an updated version of the US National Action Plan to Combat Human Trafficking, originally released in 2020, which was published in December 2021<sup>10</sup>. A message from President Biden stated that, *"My Administration is committed to keeping the fight to end human trafficking at the forefront of our national security agenda. Any form of trafficking in people—from forced labor to sex trafficking—must not be tolerated, in the United States or anywhere around the world,"* and reiterates that *"its focus on the foundational pillars of the U.S. and global anti-trafficking efforts—prevention, protection, prosecution, and partnership remains unchanged."*

## 2.9 Child Exploitation Prevention Strategy:

There is also a US National Strategy for Child Exploitation Prevention and Interdiction Strategy, first published in 2010 and updated in 2016<sup>11</sup>, which identified innovative ways in which the federal government and its partners can address child exploitation, and reaffirms the Department of Justice's and its partners' *"unwavering commitment to ensuring that all children in America are able*

*to reach their potential in a nation that protects them from violence and abuse."*

## 2.10 US Human Smuggling Prevention

**Strategy:** In May 2022, Homeland Security Secretary Alejandro Mayorkas announced<sup>12</sup> the deployment of hundreds of personnel throughout Latin America and a multi-million-dollar investment to counter illegal human smuggling, as well as those attempting to cross legally, or to claim asylum. He stated that, *"we have brought an all-of-government effort to attack the smuggling organisations. It's not just Homeland Security Investigations, it's not just US Customs and Border Protection. But we're working very carefully with the FBI, a number of agencies within the DoJ, and, of course, our partners in Mexico."* He said *"I think it's scale and scope; it's tactics and strategy. It's really unprecedented,"* According to HSI, the US personnel has surged to over 1,300 throughout the Western Hemisphere, and over US\$50 million has been invested. DHS also set up a new intelligence gathering and law enforcement unit to monitor the movement of migrants, and helped establish a task force, led by the Justice Department, to investigate and prosecute human smuggling and trafficking networks.

At the Ninth Summit of the Americas, which was hosted by the United States in Los Angeles in 2022, the gathering of nearly two dozen heads of states from the Western

<sup>10</sup> See: <https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf>

<sup>11</sup> See: <https://www.justice.gov/psc/national-strategy-child-exploitation-prevention-and-interdiction>

<sup>12</sup> See: <https://edition.cnn.com/2022/06/10/politics/alejandro-mayorkas-interview-cnn/index.html>

Hemisphere focused on stabilising the region and investing in it to, in part, stem the migration flow - an issue that has dogged US presidents for years. An agreement, dubbed the Los Angeles declaration, was signed by 20 Western Hemisphere nations. The agreement *"is centred around responsibility sharing and economic support for countries that have been most impacted by refugee and migration flows. Governments are expected to commit to expanding temporary worker programs, bolstering legal pathways like refugee resettlement and family reunification, providing support to countries hosting large migrant populations, and cracking down on human smuggling networks."*

**2.11 US Fraud Prevention Strategy:** At his March 2022 State of the Union Address, President Biden announced<sup>13</sup> new measures, *"to prevent, deter, and punish identity theft and other forms of pandemic fraud by serious criminal syndicates."* Also that, *"the DOJ will appoint a Chief Prosecutor to focus on the most egregious forms of pandemic fraud including identity theft by criminal syndicates; Heightened resources and enhanced penalties for egregious pandemic fraud in areas like PPP loans and UI; A new EO on preventing Identity Theft in Public Benefits Programs; Building on existing efforts to crack down on COVID 19 Fraud and Serious Identity Theft of Public Benefits; An Interagency*

*COVID 19 Fraud Enforcement Task Force; Initiative on Identity Theft Prevention and Public Benefits & Re-established Respect and Transparency with Oversight Community."*

**2.12 US Cybercrime Prevention Strategy:**

The US response to combatting cybercrime falls within a broader priority to ensure overall improvements in cybersecurity. In May 2021, President Biden announced<sup>14</sup> that the US, *"must improve its efforts to identify, deter, protect against, detect, and respond to these actions and actors,"* and, *"that protecting our Nation from malicious cyber actors requires the Federal Government to partner with the private sector."* He also stated that, *"incremental improvements will not give us the security we need....it is the policy of my Administration that the prevention, detection, assessment, and remediation of cyber incidents is a top priority and essential to national and economic security. The Federal Government must lead by example. All Federal Information Systems should meet or exceed the standards and requirements for cybersecurity set forth in and issued pursuant to this order."*

In May 2022, President Biden signed into law the Better Cybercrime Metrics Act<sup>15</sup>, which is an important measure to improve various aspects of the country's cyber defences. In March 2022, President Biden published<sup>16</sup> an Executive Order on Ensuring Responsible

<sup>13</sup> See: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-new-steps-to-combat-criminal-fraud-and-identity-theft-in-pandemic-relief-programs/>

<sup>14</sup> See: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>

<sup>15</sup> See: <https://www.whitehouse.gov/briefing-room/legislation/2022/05/05/bills-signed-s-233-and-s-2629/>

<sup>16</sup> See: <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>

Development of Digital Assets, stating that, *“we must mitigate the illicit finance and national security risks posed by misuse of digital assets. Digital assets may pose significant illicit finance risks, including money laundering, cybercrime and ransomware, narcotics and human trafficking, and terrorism and proliferation financing. Digital assets may also be used as a tool to circumvent United States and foreign financial sanctions regimes and other tools and authorities.”*

### **2.13 Other important crimes not expressly included as a National Priority: Arms trafficking,**

which is a predicate offence to money laundering, is considered important, but is not one of the US National Priorities. The flow and availability of arms supports **organised crime** and **drug trafficking** organisations in Mexico and the Northern Triangle (El Salvador, Honduras & Nicaragua), which has contributed to making this region, and the Caribbean, a much more violent and dangerous place. One resulting consequence is that the US is a magnet for **human smuggling**, with many in these regions, who are desperate to avoid the conditions they face, willing to risk paying criminals to help them find a better and safer place for themselves and their families in the US.

According to a White House Brief in June 2021, President Biden announced a five-part comprehensive strategy<sup>17</sup> to tackle the

persistent spike in gun crime cities across the country have experienced since the start of the pandemic. According to a briefing in February 2022, (President Biden Announced More Actions to Reduce Gun Crime And Calls on Congress to Fund Community Policing and Community Violence Intervention<sup>18</sup>), *“the Biden Administration [announced] additional actions to reduce gun crime and make communities safer. This plan builds on the steps the President has taken since the beginning of his Administration to stop the flow of guns being used in crimes, bolster federal, state, and local law enforcement, invest in community-based programs that prevent, interrupt, and reduce violence, expand opportunity, lower recidivism, and increase funding for community policing”.*

Whilst **Wildlife Trafficking** is not included as a National Priority it was included in the US National Money Laundering Risk Assessment 2022. The US issued its Strategy to Combat Wildlife Trafficking in 2014<sup>19</sup>. The National Strategy was further reinforced by the Eliminate, Neutralize, and Disrupt (END) Wildlife Trafficking Act, passed in 2016<sup>20</sup>, calling for a comprehensive and decisive approach to dismantle organised crime syndicates, including those associated with wildlife trafficking.

The Eliminate, Neutralise, and Disrupt Wildlife Trafficking Act created a Presidential

<sup>17</sup> See: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>

<sup>18</sup> See: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/03/president-biden-announces-more-actions-to-reduce-gun-crime-and-calls-on-congress-to-fund-community-policing-and-community-violence-intervention/>

<sup>19</sup> See: <https://obamawhitehouse.archives.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf>

<sup>20</sup> See: <https://www.fws.gov/law/eliminate-neutralize-and-disrupt-wildlife-trafficking-act-2016>

Task Force on Wildlife Trafficking, (bringing together 17 federal departments and agencies to the “National Strategy”), the co-chairs of which include the Secretary of the Interior and the Attorney General.

A HSI report published in 2021, titled, the Illegal Trafficking of Wildlife and Other Natural Resources<sup>21</sup> reported on HSI activity and seizures and commitments, through its collaboration with interagency partners, to build on tackling 3 objectives: Strengthening enforcement; Reducing demand for illegally traded wildlife; and Building international cooperation, commitment, and public-private partnerships<sup>22</sup>.

In a White House Fact Sheet published<sup>23</sup> in June 2022, focussed on IUU fishing, which was vulnerable also to **human trafficking** through forced labor, two specific actions that will be taken are:

- *“The US, the UK, and Canada will launch an IUU Fishing Action Alliance aimed at increasing ambition and momentum in the fight against IUU fishing; and*
- *The U.S. Interagency Working Group on IUU Fishing, comprising 21 Federal agencies, will release its National Five-Year Strategy for Combating Illegal, Unreported, and Unregulated Fishing (2022-2026) by the end of July.”*

**3.1 Money Laundering:** Whether due to its economic size, population, wealth, levels & breadth of international trade or its importance as both a financial centre as well as the US dollar as a global currency, the US is considered to be a ML centre, with hundreds of billions of dollars in financial crimes generated domestically each year. Foreign illicit funds are destined to the US daily to invest in its currency, its securities markets or real estate, or is just transiting through the country (for example via trade or correspondent banking. The US is most likely the most exposed country to illicit finance and money laundering in the world.

In December, 2021, US Treasury Secretary Janet Yellen<sup>24</sup> at the Washington DC Summit for Democracy, stated that, *“in the popular imagination, the money laundering capitals of the world are small countries with histories of loose and secretive financial laws. But there’s a good argument that, right now, the best place to hide and launder ill gotten gains is actually the United States.”*

Consistent with this admission, the US Dept of State, included the US as a “Major Money Laundering Country” in the INCSR money laundering assessment published in March 2022 (INCSR Vol 2), along with 80 other countries.

<sup>21</sup> See: [https://www.dhs.gov/sites/default/files/publications/ice\\_-\\_illegal\\_trafficking\\_of\\_wildlife\\_and\\_other\\_natural\\_resources\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/ice_-_illegal_trafficking_of_wildlife_and_other_natural_resources_0.pdf)

<sup>22</sup> See: [https://www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/National\\_Strategy\\_for\\_Combating\\_Wildlife\\_Trafficking\\_-\\_Implementation\\_Plan.pdf](https://www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/National_Strategy_for_Combating_Wildlife_Trafficking_-_Implementation_Plan.pdf)

<sup>23</sup> See: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/27/fact-sheet-president-biden-signs-national-security-memorandum-to-combat-illegal-unreported-and-unregulated-fishing-and-associated-labor-abuses/>

<sup>24</sup> See: <https://home.treasury.gov/news/press-releases/iy0524>

**Goals and Priorities of National Strategy for Combating Terrorist and Other Illicit Financing - 🇺🇸**

**Close legal and regulatory gaps in the U.S. AML/CFT framework** that are exploited by illicit actors to anonymously access the U.S. financial system. This includes enhancing transparency for company formation and non-financed real estate transactions, addressing the uneven application of AML/CFT measures to certain non-bank financial institutions and key gatekeeper professions and sectors, as well as updating, as appropriate, regulatory requirements applicable to virtual assets activities.

**Continue to make the U.S. AML/CFT regulatory framework for financial institutions more efficient and effective.** Specifically, this will focus on optimising reporting requirements and applicable thresholds to sharpen the focus on detecting illicit finance activity and providing actionable information to law enforcement, continuing to make the supervisory process more risk- and outcome-focused, and adequately resourcing AML/CFT supervision for certain non-bank financial institutions.

**Enhance the operational effectiveness of law enforcement and other U.S. government agencies in combating illicit finance.** This requires regularly updating and communicating key illicit finance threats and risks, including the AML/CFT National Priorities, using targeted law enforcement authorities and continuing interagency coordination against priority illicit finance challenges, improving and expanding on public-private information-sharing efforts, and strengthening implementation of global AML/CFT standards.

**Enable the benefits of technological innovation while mitigating risks.** The U.S. government will provide regulatory and policy support for trustworthy digital identity solutions and to innovative technologies in AML/ CFT compliance, continue to enhance the use of artificial intelligence (AI) and data analytics in U.S. government efforts to detect and disrupt illicit finance, and promote U.S. technological leadership on payments that reflect U.S. standards, practices, and values.

Source: <https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf>

**3.2 US Illicit Finance Strategy:** The new US Strategy is called the Illicit Financing Strategy and states that *“To combat this illicit finance activity, the US must start at home and maintain an up-to-date AML/ CFT legal and operational framework and continue to lead globally on combating illicit finance. This will require the US to address both persistent and emerging illicit finance challenges and risks.”*

This strategy covers both AML and CFT. The US Treasury also published a new Sanctions Review in December, 2021<sup>25</sup>, considering how to modernise the USA approach and address the challenges it faces. The Russian invasion of Ukraine and the US response, using sanctions as a key tool, reflect the importance of sanctions in combatting many international bad actors.

Action taken to pass the Corporate Transparency Act 2020, and to take action to include professional “enablers” within the remit of regulated entities required to have AML programmes and file SARs, is a clear indication that the US is finally addressing these long term identified weaknesses, though effective coverage and successful implementation still remains to be seen.

**4.1 US Anti Crime Strategy:** President Biden announced new plans in July 2022 to tackle crime in a “Safer America Plan” proposing a **US\$37 billion** increase with **US\$13 billion** over the next five years to hire and train an additional 100,000 police officers<sup>26</sup>, US\$3 billion to help communities clear court backlogs, and set up task forces to share intelligence, to help reduce gun violence. The plan would also impose tougher penalties for fentanyl trafficking amid an epidemic of drug overdoses. To tackle organised retail theft, the plan calls on Congress to pass legislation to require online marketplaces (like Amazon) to verify third-party sellers’ information, and to impose liability on online marketplaces for the sale of stolen goods on their platforms. President Biden's plan also establishes a US\$15 billion grant program called “Accelerating Justice System Reform” that cities and states could use over the next 10 years to pursue strategies to prevent violent crime, and to ease the burden on police, by identifying non-violent situations that may merit a public-health response.

<sup>25</sup> See: <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>

<sup>26</sup> See: <https://www.reuters.com/world/us/biden-outline-37-bln-funding-request-crime-prevention-2022-07-21/>

**5.1 Co-opting the Private Sector:** A fundamental tenet of the fight against financial crime, is the role and contribution of the private sector, particularly financial institutions and especially banks. That others in the private sector are also being co-opted, in particular professional enablers (or at least some of them), is a long overdue reaction to financial crime in specific non-bank sectors. The private sector materially supports the fight against financial crime, despite its public reputation as one of the weaker points in the overall combatting financial crime system, spending tens of billions of dollars a year, with estimates for 2021 reported as high as **US\$40.7 billion** (with the average cost of compliance estimated at **US\$27.8 million** for mid/large firms & **US\$3.7 million** for small firms).

These costs have been driven by both an acute sense of responsibility, as well as the fear of fines and penalties and regulatory action which remain ever present, despite US based banks having likely some of the strongest AML/CFT programs in the world. Unintended consequences, which affect financial inclusion for legitimate customers and encourage bad actors to avoid the formal regulated financial system, remain real and concerning.

Attaining 100% regulatory compliance remains elusive for all those in the private sector, as does following up on all leads, and taking all available action against suspected criminality in the public sector.

Since 2000, there have been 44 material US levied AML fines (over US\$10 million), amounting to **US\$11.8 billion** representing 55% of total AML related fines globally during that period. Some of these amounts have been collected and reported in asset recovery figures, for example **US\$1.4 billion** from JP Morgan in 2014 in connection with the Madoff case.

Whilst the US AML/CFT strategy, like elsewhere, is predicated on the private sector performing their AML/CFF obligations to a high level, providing information and intelligence to law enforcement in the form of SAR's and other forms of intelligence and information sharing and cooperation, this is not how they are assessed. In reality, with all this activity strictly confidential, it is difficult to precisely evaluate the impact of the private sector's contribution, or publicly credit or measure their direct impact on the fight against crime.

Still now, with more than 3 million SARs filed a year, (recognising some are likely so called defensive SARs), FinCEN considers the contribution of the private sector, through the filing of SARs and other BSA reports, as being highly valuable, with 1 in 4 FBI & IRS - CI investigations using BSA data which includes SARs. For some crimes its higher. For example, FinCEN reported in 2020 that 60% of FBI investigations into organised crime use BSA data, and 20% of FBI's international terrorism investigations use BSA data. The IRS-CI reports that 24% of its investigations into criminal tax, money laundering, and

other BSA violations are directly initiated by or associated with, a BSA report.

Whilst some remain sceptical about the benefits against the costs, FinCEN initiated a “BSA Value Project”, in 2019, and the final results of this project is awaited, which should provide a basis of a more informed discussion.

It is astonishing that what has been found and shared, which is, according to FinCEN, the FBI and IRS, highly useful, is still not formally taken into consideration when assessing whether a bank is considered to have missed something, or is not in compliance with applicable regulations. Whilst complying with regulations is important, how well a bank, or other reporting institution, contributes to fighting financial crime is evaluative, and should be a priority consideration.

There will always be misses for all stakeholders in the crime combating chain. Identifying criminal proceeds and money laundering is not a straightforward task.

Taking the estimated **3.7%** of GDP as financial crime proceeds (US\$770 billion) and an estimated **US\$585 billion** available for laundering through the US financial system, which processed<sup>27</sup>, in 2018, 174.2 billion non cash retail payments valued at US\$97 trillion, (making an average payment value of US\$560) and commercial payments of US\$840 trillion in 2020 (mainly wholesale payments between FIs).

Based on these figures estimated illicit funds represent over **a billion** (US\$1.044 billion) transactions a year or **1 in 220 (0.6%)** by volume and value for retail payments but **only 1 in 2,220** in value for all payments. Banks and other financial institutions have filed SARs representing suspected criminal proceeds in the trillions of dollars and tens of thousands of SAR suspects (see Section 10.6.8 above).

With over 3 million SARs filed in 2021, it’s reasonable to suspect the numbers of suspects and amounts identified as suspicious are many multiples in excess of those reported, and in particular, in excess of the likely estimates for financial crime and money laundering.

## 5.2 Co-Opting More of the Private Sector:

That this could be supplemented, with more highly useful information and intelligence from the private sector, appears to be central to the Biden Administration’s approach to combating illicit finance, especially bringing “professional enablers” and “virtual assets service providers” into the regulated sphere.

Whilst financial services, casinos and professional enablers have long been considered vulnerable, and therefore sectors that should be regulated, 20 years after these international norms were accepted, it is worthwhile considering whether in addition to “virtual asset service providers”, other additional sectors should also be “deputised” to make their contributions.

<sup>27</sup> See: <https://www.federalreserve.gov/paymentsystems/2019-December-The-Federal-Reserve-Payments-Study.htm>

Bringing in more private sector actors, like social media platforms, to support information and intelligence sharing with law enforcement makes sense, especially if law enforcement can show that additional high quality information could be obtained. Also **gun dealers**, and the **gun manufacturers**, **private military or security firms**, as well as **professional lobbyists** may warrant inclusion. However, it should be considered whether the full AML/CFT and SAR programme model is the appropriate model.

**6.1 Following The Money:** Following the money and disrupting the motivation for these crimes is the rationale behind AML strategies the world over, proposed first by the US. Whilst successful law enforcement action against predicate crimes, such as achieving convictions for drug trafficking and organised crime, are substantial, they are less so for other predicate crimes. Money laundering convictions which was conceived as an alternative way to target criminal behaviour (in many ways how using tax crimes was used against Al Capone) show that there are less than 1,000 ML convictions a year in the US, and asset recoveries are now less than 1% of estimated criminal proceeds (**US\$1.4 billion** against estimated proceeds - by consensus in excess of **US\$400 billion**).

Despite considerable efforts and the deployment of significant resources over many decades, the US outcomes are still

stubbornly similar to those from many third countries, particularly OECD countries, when it comes to money laundering outcomes, for example asset recoveries at below a 1% of estimated criminal proceeds.

### **7.1 Increasing Funds to Combat Illicit funds:**

The Biden Administration is clearly making a genuine attempt to step up its response and across the board with new and refreshed strategies and additional funding. As mentioned above, drug control, for example, should see increases of **US\$6 billion** to **US\$41 billion**, and increased funding for law enforcement is set to increase by **US\$37 billion**, with **US\$13 billion** over the next five years to hire and train an additional **100,000** police officers<sup>28</sup>,

Whilst these are significant sums, the largest increase in funding appears to be going to the US Inland Revenue Service (IRS), with the US Senate recently passing the Inflation Reduction Act in August 2022, which provides for **US\$79.6 billion** in new funds, of which **US\$45.6 billion** is to be allocated for enforcement, raising the enforcement budget from **US\$68 billion** to **US\$111.7 billion**.

Interestingly, tax evasion, is not included as a US National Priority, despite the US being ranked as the No 1 country by the Tax Justice Network in it's 2022 Financial Secrecy Index<sup>29</sup> (1 being the worst), and considered a haven for tax cheats from around the world. Notwithstanding this, the funding to be spent

<sup>28</sup> See: <https://www.reuters.com/world/us/biden-outline-37-bln-funding-request-crime-prevention-2022-07-21/>

<sup>29</sup> See: <https://taxjustice.net/2022/05/18/the-financial-secrecy-index-2022-in-the-tax-justice-network-podcast-the-taxcast/>

is likely focussed on replacing the 20,000 staffers it has lost since 2010 and targeting wealthy Americans<sup>30</sup>, which is estimated could bring in an additional **US\$700 billion** over 10 years.

**8.1 Final Remarks:** The US is possibly the most exposed of any country to the threats posed from financial crime and money laundering as a major source, transit and destination country. It is also the country that probably does most (by scale) to try to counter this threat, and is possibly the only country that stands up regularly against foreign financial criminality, particularly when it involves the US in some way, as it often does. The difference between the threat and the response, is the risk that remains.

Whilst the results from decades of effort to combat drug trafficking, organised crime and other predicate crimes (including money laundering) remain much less than expected, its still clear that without them, the levels of financial crime would be intolerable, and the effects on society, and harms that are inflicted on already too many, would be visited on even more.

As the US doubles down on tackling illicit finance, it appears to now be doing so with greater intent, as evidenced by the number of new and or refreshed strategies, an increased focus on addressing harms (for example in the new Drug Control Strategy), committing substantial additional resources, and a welcome willingness to address long

standing weaknesses (such as on corporate transparency and professional enablers).

It is nevertheless, still reasonable to question whether these new “Strategies”, will make enough of a difference.

In the new Drug Control Strategy, clear targets have been set by which the “difference” can be measured, and as such success or failure of the Strategy can be judged. Examples of key targets by 2025 include:

- Reducing the supply of heroin down by **30%** & cocaine by **10%**;
- Increased targeting of Sinaloa or Jalisco New Generation (CJNG) **cartels**;
- Targeted narco traffickers and related asset freezes and seizures up by **365%**;
- The number of defendants convicted in active drug related investigations that incorporate FinCEN/SAR data is up by **14%**; and
- The number of incident reports for precursor chemicals sourced from China or India up by **125%**.

Targets are useful, as they focus activities and clarify the purpose of all the activity.

In FCN’s opinion, what’s missing from many of the new and/or refreshed US strategies, are smart targets. For example, like those for drugs, which are aligned to the outcomes needed and/or expected, which include

<sup>30</sup> See: <https://news.bloombergtax.com/daily-tax-report/biden-backs-irs-funding-boost-to-crack-down-on-companies>

harms reduction and targeting criminals. Targets to reduce harms and increase convictions for money laundering, and asset recoveries (which have seen recent declines) should be more evident across all crimes that are highlighted as National Priorities.

A key consideration could be the increase in financing going into the IRS. It's likely that, for example, asset recoveries for Americans evading tax, will grow substantially, with expectations of tens of billions of dollars a year collected. This for a crime that is not one of the US National Priorities.

Surely a target for asset recoveries, currently at US\$1.4 billion, to exceed at the very least **US\$5 billion** (which represents just 1% of estimated criminal proceeds) a year by 2025, is a good place to start, but to then at least double this to **US\$10 billion** (just 2%) by 2030 (excluding from tax and from fines and penalties) with each "strategy" contributing, should and could be a realistic and necessary target.

A key differentiator in the new US Strategy is the idea at its core, being, *"to encourage continued efforts to modernise the U.S. AML/CFT regime so that the public and private sectors can effectively focus resources against the most significant illicit finance risks"*.

Perhaps implicit in this core idea though, is that both public and private sectors need to meaningfully work more closely together, be innovative and embrace new ways of working.

The US has identified the most significant illicit finance risks, which are set out clearly in the US National Priorities. Whilst it's encouraging to see how these strategies are set out for drugs and what targets are expected to be achieved, in the true spirit of cooperation and achieving effective results, it will be crucial to identify and agree how the public and private sectors' resources can be aligned to achieve the desired outcomes to address the US National Priorities and meet the strategy objectives.

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