

Abstract

Both in the US and in Europe anti money laundering policy switched from a rule- to a risk-based reporting system in order to avoid over-reporting by the private sector. However, reporting increased in most countries, while the quality of information decreased. Governments drowned in data because private agents feared sanctions for not reporting. This "crying wolf" problem' (Takats 2007) did not happen in the Netherlands, where the number of reports diminished but information quality improved. Reasons for this can be found in differences in legal institutions and legal culture, notably the contrast between US adversarial legalism and Dutch cooperative informalism. The established legal systems also provide for resistance to change. Thus lowering sanctions in order to reduce over-reporting may not be a realistic option in a legal system which traditionally uses deterrence by fierce criminal and private legal sanctions. Furthermore, a risk-based approach may not be sustainable in the long run, as litigation may eventually replace a risk-based approach again by a rule-based one, now with precise rules set by the courts.