

Money Laundering, Mafia and the Criminal Law Response, 1980-1990 — overview and summary

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

In February 1987 the police in Bellinzona seized about 100 kilograms of morphine base and heroin, at that time the largest drug seizure ever made in Switzerland. The public prosecutor of the Sopraceneri followed the money behind the drugs and, by November 1988, announced that between CHF 1.5 and 2 billion of drug proceeds had passed through Swiss bank accounts. One of the companies under suspicion was a Zurich gold and currency dealer whose vice-chairman was the husband of the Federal Councillor in charge of the Federal Department of Justice and Police.¹ Within five weeks Elisabeth Kopp, the first woman ever elected to the Swiss government, had announced her resignation. Fifteen months after that, on 23 March 1990, the Federal Assembly adopted the first Swiss criminal provisions against money laundering, Articles 305bis and 305ter of the Criminal Code, which entered into force on 1 August 1990.² A seizure on the southern border, a Ticino prosecutor's investigation and a political crisis in Bern had together produced a new branch of Swiss criminal law.

This chapter asks why the decade from 1980 to 1990 turned the Swiss financial centre, and Lugano in particular, from a place where the origin of money was largely the client's affair into a jurisdiction that punishes the laundering of criminal proceeds and expects its banks to know whose money they hold. The argument is that the change came from the border. Lugano's banks had grown on Italian flight capital, which Chapter D.II describes, and the Chiasso scandal of 1977, which Chapter D.III analyses, had already produced the banks' first code of due diligence. In the 1980s, however, the same channels that carried Italian savers' cash north began to carry the proceeds of heroin trafficking, Mafia extortion and political corruption. The cases that exposed this were investigated in large part by prosecutors in Lugano and Bellinzona working with Italian magistrates, above all Giovanni Falcone in Palermo. Their experience shaped the

federal legislation of 1990 and 1994 and, through it, the anti-money laundering law that governs every financial intermediary in Ticino today.

The chapter proceeds in ten steps. It begins with the situation of Lugano's banks around 1980 and the gaps in the law. It then treats the Pizza Connection, the cooperation between Ticino prosecutors and Falcone, the collapse of Banco Ambrosiano with its Swiss and Lugano links, and the Lebanon Connection with the Kopp affair. Three sections follow on the legislative answer: the criminal provisions of 1990, the second package of 1994 with the offence of participation in a criminal organization and the right to report, and the law of mutual assistance between Switzerland and Italy. A further section follows the Italian corruption investigations known as *Mani Pulite* (clean hands) into Swiss accounts and the reputational crisis of the 1990s. The last section describes the modern framework within which a Swiss financial institution organizes its defence: the Anti-Money Laundering Act of 1997, the reporting duty and the Money Laundering Reporting Office, corporate criminal liability and the rules on confiscation. Chapter G.III continues the story of organized crime and money laundering in Ticino into the present, while Chapter H.IV treats cross-border judicial assistance from the perspective of today's litigator. Because this is the last chapter of Part D, it closes with a conclusion of the Part.

1 Conclusion

Between 1980 and 1994 Swiss law acquired the instruments that the cases of the 1980s had shown to be missing. In 1980 a Lugano bank could accept cash from Italy with no other obligation than to identify its contracting partner under a private agreement among banks, and a person who helped a heroin trafficker to place his proceeds was punishable only as an accessory to the drug trade. By 1994 money laundering was a criminal offence, financial professionals who failed to identify the beneficial owner were criminally liable, participation in and support of a criminal organization were punishable, the confiscation of criminal proceeds had been extended, and bankers had a legal right to report their suspicions without breaching banking secrecy. In 1997 the Anti-Money Laundering Act added the duty to report and a reporting office, and in 2003 the undertaking itself became criminally liable for inadequate organization.

The impulse for this transformation came to a large extent from Ticino. The Pizza Connection was investigated by prosecutors in Lugano in cooperation with Giovanni Falcone. The Lebanon Connection began with a seizure in Bellinzona and was investigated by the prosecutor's office of the Sopraceneri before it reached Zurich and the Federal Council. The draft

of the money laundering offence was written by the former prosecutor of the Sottoceneri, Paolo Bernasconi. Carla Del Ponte, who had survived the bomb at Addaura in 1989 with Falcone, became Attorney General of Switzerland in 1994. The Federal Council itself named the Pizza Connection, the Lebanon Connection and the Banco Ambrosiano affair as the events that had made the link between money laundering and the Swiss financial centre a matter of public and international concern.

The new law drew a line between criminal money and undeclared money that defined Lugano's business for the following two decades. Mutual assistance was granted for drug trafficking, Mafia offences, fraud and corruption, and refused for tax evasion. The *Mani Pulite* investigations of the 1990s tested this line in a large number of Swiss accounts and made the Ticino bank account a symbol of Tangentopoli in the Italian press. The line lost most of its practical significance only after 2015, when Switzerland made aggravated tax misdemeanours a predicate offence of money laundering and agreed to exchange information automatically with Italy. The modern framework of the AMLA, Article 102 SCC and the confiscation rules of Articles 70 to 72 SCC is the legal form that the lessons of the 1980s have taken. For a Lugano institution it defines both its duties and its defence.

2 In five sentences

In the 1980s the channels that carried Italian flight capital to Lugano also carried the proceeds of heroin trafficking, Mafia extortion and political corruption, at a time when Swiss law contained no money laundering offence. The Pizza Connection, investigated by Ticino prosecutors such as Paolo Bernasconi and Carla Del Ponte together with Giovanni Falcone, and the Lebanon Connection, uncovered after a drug seizure in Bellinzona in 1987, exposed the Swiss financial centre and led in December 1988 to the announced resignation of Federal Councillor Elisabeth Kopp, who was later acquitted of breach of official secrecy. On the basis of a report by Bernasconi, Parliament adopted Articles 305bis and 305ter SCC on 23 March 1990, in force from 1 August 1990, and added in 1994 the offence of criminal organization (Art. 260ter SCC), the right to report (Art. 305ter(2) SCC) and a new confiscation law. Mutual assistance with Italy, governed by the European Convention of 1959, the IMAC of 1981 and the bilateral agreement of 1998, enabled the cooperation of Lugano, Palermo and Milan in the Mafia and *Mani Pulite* cases, while simple tax evasion remained outside criminal mutual assistance and reached Italy only through the administrative assistance and automatic exchange introduced after 2015. Today the AMLA of 1997 with its reporting duty to the MROS, corporate

liability under Article 102 SCC and the confiscation rules of Articles 70 to 72 SCC form the framework within which every financial institution in Lugano organizes its defence.

3 Conclusion of Part D

Part D has followed the rise of Lugano to the rank of Switzerland's third financial centre between 1914 and 1990. Chapter D.I described Ticino during the First World War, the pressure of Fascist irredentism on the canton and the exiles who found refuge there. It traced the first wave of capital flight from Italy under Fascist currency controls, the Banking Act of 1934 with its Article 47 on banking secrecy, the Second World War at the southern border with its refugees and its Italian Jews, and the findings of the Bergier Commission on Italian assets in Swiss banks. The chapter showed that the legal foundation of Lugano's later growth, banking secrecy protected by criminal law, was laid in a decade of crisis and dictatorship.

Chapter D.II described the lira economy of the post-war decades. Italy's economic miracle created wealth, while its taxes, its currency controls and its political risks gave that wealth a reason to cross the border. Cash couriers carried banknotes into Ticino, new banks and Italian bank subsidiaries opened in Lugano and Chiasso, fiduciaries managed numbered accounts and domiciliary companies, and Lugano became the third financial centre of the country. Chapter D.III showed the risk that this growth carried. The Chiasso scandal of 1977, in which the local branch of Credit Suisse had channelled Italian client money through a Liechtenstein entity into Italian companies with losses of about CHF 2.2 billion, led to the banks' due diligence agreement of 1977, the beginning of Swiss know-your-customer rules.

The present chapter has shown how the same border channels were used by organized crime in the 1980s and how the criminal law responded. The Pizza Connection, the Lebanon Connection, the Banco Ambrosiano affair and the Kopp affair produced the money laundering offences of 1990, the criminal organization offence and right to report of 1994, and the Anti-Money Laundering Act of 1997. Taken together, the four chapters describe a financial centre that grew because Italian money needed a safe place across the border and that learnt, through a series of scandals, that the legal protection of that money had to stop where criminal proceeds began.

Part E turns to private banking and wealth management in Lugano today. Chapter E.I describes the banking sector of Ticino, its institutions, its numbers and its business models after the consolidation of recent decades. Chapter E.II follows the end of the distinction on which Lugano's business

had rested since 1990, from the Italian tax amnesties of 2001 to 2009 through the Roadmap of 2015 to the automatic exchange of information with Italy. Chapters E.III to E.V treat the independent asset managers, trustees and fiduciaries under the Financial Institutions Act, the rules on serving Italian clients from Switzerland, and the planning of Italian families' succession and residence. The legal framework described at the end of this chapter, from the AMLA to Article 102 SCC, is the regulatory ground on which all of these businesses operate.

4 Notes

1. "Des milliards dans la machine à laver", L'Impartial, 5 November 1988, 1–2, <https://doc.rero.ch/record/110574/files/1988-11-05.pdf?version=1>. ↩
2. Swiss Criminal Code of 21 December 1937 (SCC), SR 311.0, Art. 305bis, inserted by the Federal Act of 23 March 1990, in force since 1 August 1990 (AS 1990 1077), at <https://www.droit-bilingue.ch/de-en/3/31/311.0-305bis-372.html>; Art. 305ter SCC in Federal Banking Commission archive, <https://www.finma.ch/FinmaArchiv/gwg/e/themen/pdf/STGBArt305ter.pdf>. ↩

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