

FINANCIAL ACTION TASK FORCE
ON MONEY LAUNDERING

---oOo---

REPORT

1990 - 1991

Paris, May 13 1991

SUMMARY

ACCOMPLISHMENTS OF FATF-2	p. 3
INTRODUCTION	p. 5
I - ASSESSMENT OF THE IMPLEMENTATION, AND ENHANCEMENTS TO THE EXISTING RECOMMENDATIONS	p. 6
A - LEGAL MATTERS	p. 6
B - ROLE OF THE FINANCIAL SYSTEM, AND INTERNATIONAL COOPERATION	p. 10
II - GEOGRAPHICAL EXTENSION OF THE FATF PROGRAM AGAINST MONEY LAUNDERING	p. 15
A - GEOGRAPHICAL EXTENSION	p. 16
B - MEASURES DIRECTED AT NON COOPERATIVE COUNTRIES	p. 20
III - FOLLOW-UP TO THE FATF	p. 22
A - FUTURE ROLE OF THE TASK FORCE	p. 23
B - INSTITUTIONAL ARRANGEMENTS	p. 25
CONCLUSION	p. 26

ACCOMPLISHMENTS OF FATF-2

The delegations agreed to continue FATF for a period of five years, with a decision to review progress after three years, and to reconsider the continuing need, mission, and work program for this specialised group.

The group agreed to four ongoing tasks for FATF-3 and its successors : (1) self-reporting and mutual assessment (monitoring and surveillance) on the adoption and implementation of FATF recommendations by all members ; (2) co-ordination and oversight of efforts to encourage non-members to adopt and implement the recommendations ; (3) making further recommendations and evaluations of counter-measures while serving as a forum for considering developments in money laundering techniques domestically and world-wide, and for the exchange of information on enforcement techniques to combat money laundering ; and (4) standing ready to facilitate Cupertino between organisations concerned with combating money laundering and between individual countries or territories.

The decision to continue was taken as part of a critical political commitment to implementation of the recommendations each member government has endorsed. Members agreed to continue the self-evaluation process begun in FATF-2 to measure their progress in implementing the 40 recommendations, and, in a decision that underscores the great importance attached to this process, the members agreed to initiate a process of mutual evaluation. The decision was that each member would normally be subject to being evaluated on progress measures three years after endorsing the FATF-1 recommendations.

These decisions, perhaps unique to bodies of this kind, assure the global community that the major financial centre countries are truly determined to adopt and implement effective countermeasures against money laundering.

The self-evaluation process begun in 1991 utilised a compliance grid which produced comprehensive evaluation of progress on legal and financial matters, although this was to some extent subjective, given the current lack of harmonisation of laws and therefore of responses. It was encouraging that the majority of members have substantially implemented the FATF-1 recommendations on legal matters. Substantial progress has also been made on complying with the recommendations relative to the role of the financial system, and strengthening international co-operation, but some countries need to make a greater effort in these matters.

FATF-3 will see a refinement and extension of the self-evaluation process, with an emphasis that goes beyond ratification of international conventions such as the Vienna and Strasbourg conventions and adoption of laws, to implementation and practice.

FATF-2 proved a useful forum for discussing the wide range of issues not yet concluded as action recommendations, issues which will be further explored by FATF-3. The legal issues group discussed possible refinements of existing recommendations, including those involving predicate crimes, corporate criminal liability, mutual legal assistance, and asset sharing. Similarly, the financial co-operation group, which included special presentations by financial enforcement officials of money laundering typologies and investigative practices, took note of the increasing use of non-bank and non-traditional financial institutions and other businesses and professions to convert the proceeds of drug and other crime. The group noted the need to continue monitoring new money laundering practices, and called for further work on developing a common action plan with respect to non-bank financial institutions and other businesses and professions.

A third working group charged with planning the future of FATF, which proposed an extension of the mutual evaluation process, also developed the plan of succession to the FATF Presidency, and outlined procedures for establishing a Secretariat within an existing international organisation. The recommendation was that FATF Presidency be supported in the future by a steering group, and would work with and through this Secretariat. The members agreed to negotiate the creation of a specialised Secretariat with the Organisation for Economic Co-operation and Development (OECD).

Finally, FATF-2 proposed that the organisation, acting through its Secretariat, and drawing upon the expertise of its members, should attempt to help guide the provision of technical assistance between members or to non-members, upon request by either, subject to the availability of resources among the members who agree to provide such assistance.

INTRODUCTION

In July 1989, in Paris, the Heads of State or Government of the seven major industrialised countries, and the president of the Commission of the European Communities, convened a Financial Action Task Force, the FATF, under French presidency, with the aim of fighting money laundering. In addition to summit participants (United States, Japan, Germany, France, United Kingdom, Italy, Canada, and the Commission of the European Communities), eight countries (Sweden, Netherlands, Belgium, Luxembourg, Switzerland, Austria, Spain and Australia), joined the Task Force in order to enlarge its expertise and also to reflect the views of other countries particularly concerned by, or having particular experience in the fight against money laundering, at the national or international level.

In April 1990, the Task force issued a report with a comprehensive programme of forty recommendations to fight money laundering. This report was endorsed by the Finance ministers or other competent ministers of all FATF members in May 1990.

At the Houston Summit of the Heads of State or Government of the seven major industrialised countries, in July 1990, the Task Force was, as agreed at the May meeting of Task Force Finance Ministers, reconvened for a second year, still under the chairmanship of France, to assess and facilitate the implementation of the forty recommendations, and to complement them where appropriate. It was agreed that all OECD and financial centre countries that would subscribe to the recommendations of the Task Force should be invited to participate in this exercise. All other countries were invited to participate in the fight against money laundering and to implement the recommendations of the FATF. It was agreed that the report of the second FATF should be completed before the next meeting of the Heads of State or Government of the Seven.

In addition to the initial members, experts of Denmark, Finland, Greece, Ireland, New Zealand, Norway, Portugal, Turkey, Hong Kong and the Gulf Co-operation Council participated in some or all the meetings, together with law enforcement specialists of Interpol and the Customs Co-operation Council. Almost all these participants¹ subsequently endorsed the report, and thus qualified for membership of the FATF.

Five series of meetings were held in Paris. More than 160 experts from various ministries, law enforcement authorities, and bank supervisory and regulatory agencies, met and worked together during six months. To facilitate the work of the Task Force, and to take advantage of the expertise of its participants, three working groups were created, which focused respectively on the implementation of recommendations relating to legal matters (working-group 1, presidency : United States), on the implementation of recommendations pertaining to the role of financial systems and international co-operation (working-group 2, presidency : Belgium), and on external mobilisation and follow-up (working-group 3, presidency : United Kingdom). Their comprehensive reports constitute the key background material of this report.

Building upon this work, this report gives an assessment of the implementation of existing recommendations (part I), provides an overview of the geographical extension of the FATF program against money laundering (part II), and proposes guidelines as regards the follow-up to the second FATF (part III).

¹ The designations employed in this report do not imply the expression of any opinion whatsoever on the part of the group concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

I - ASSESSMENT OF THE IMPLEMENTATION AND ENHANCEMENTS TO THE EXISTING RECOMMENDATIONS

A - LEGAL MATTERS

On the mutual legal assistance matters, the group assessed the implementation of FATF recommendations 4 through 8 and 32 through 40 and discussed possible enhancements to existing recommendations.

Of particular concern to the group was that the recommendations be implemented in a way that would maximise co-operation in international money laundering cases.

1 - Global overview of the implementation

A legal issues surveillance grid was established, on the basis of answers by participants to a standardised questionnaire. Participants also provided a narrative explanation of the status of implementation. The participants were also requested to indicate how the differences in the scope and application of money laundering offences might affect mutual legal assistance.

All the FATF-1 participants have responded to the compliance grid and questionnaire.

All new participating countries and territories also responded.

However, the Task Force noted that, to some extent, the compliance grid format resulted in a subjective measure of progress of uncertain reliability, because there has been no harmonisation of the national answers.

Nevertheless, it is encouraging that the vast majority of the answers to the surveillance grid are positive, (A : measure already implemented, or B : measure soon to be implemented) and that very few answers "C" (measure whose implementation is not foreseen) were obtained.

The majority of FATF-1 members have substantially implemented the full range of FATF recommendations within the scope of legal questions. Most of these countries have added legislation or taken other steps in 1990 which places them in the substantial implementation category. It is encouraging to note that several new participants are in a similar situation.

A limited number of nations are still evaluating how best to effect implementation and have not introduced legislation or taken other steps towards implementation.

2 - Ways to facilitate the implementation of some recommendations

The Task Force discussed how to solve the difficulties that are still obstacles to a fully efficient international co-operation to combat money laundering. It has examined how to improve domestic legislation, as required by recommendations 4 to 8, in order to facilitate the mutual legal assistance (recommendations 32 through 40).

The FATF is based on the premise that meaningful progress against money laundering can only be made through international co-operation, by minimising both the barriers that remain in domestic laws and their effects on mutual assistance. It is clear that progress still needs to be made in these directions.

It was agreed that countries should periodically review their legislation and make whatever modifications that may be required to respond to changes in money laundering methods.

The Task Force determined to put forward refinements or extensions of existing recommendations, as discussed below.

a) Recommendation 4 (Working definition of money laundering)

This definition, based on the relevant provision of the Vienna Convention, is an important step to the harmonisation of legislation. All the participants who answered the surveillance grid are, or should be very soon, in compliance with recommendation 4.

b) Recommendation 5 (Predicate crimes)

Recommendation 5 provides in part that "...each country should consider extending the offence of drug money laundering to any other crimes for which there is a link to narcotics..." while recommendations 5 also sets forth the alternative possibility of criminalising based on all or specified serious crimes.

Very few countries have in fact enacted specific money laundering legislation in which all or most serious proceeds- generating offences were included as predicate crimes. Nonetheless, two international documents have been or are about to be completed which intersect with recommendation 5. Specifically, the Council of Europe convention on laundering, tracing, seizure and confiscation of proceeds of crime, and the European Communities proposed directive on the prevention of use of the financial system for the purpose of money laundering, on which a common position was reached on 14 February, 1991, and which will be finalised in the near future.

The Council of Europe convention requires parties to adopt measures to enable confiscation of the proceeds of any criminal offence. With respect to money laundering, it allows parties to declare that the offence of money laundering is limited to specified predicate offences.

The common position on the EEC directive provides for money laundering to cover drug offences and any other serious criminal activities designated as such for the purposes of this Directive by each member state.

Given the pervasiveness of money laundering in many fields of criminal activity, few countries expressed the sentiment that was expressed in FATF-1 that money laundering should be limited to drug crimes. Hence, important progress towards consensus was made in FATF-2 on this issue, although no agreement was reached on the scope of the predicates.

c) Recommendation 7 (Corporate criminal liability)

Recommendation 7 provides in pertinent part "... where possible, corporations themselves - not only their employees - should be subject to criminal liability". There was extensive discussion on this point. There was general agreement that the concept of corporate criminal liability, or at least, the availability of stringent civil or administrative actions is an important part of an effective anti-money laundering program. Yet, almost half of the FATF member countries do not have corporate criminal liability law and a number of these countries have only limited authority to respond with civil or administrative actions with respect to criminal offences by corporations. It was observed that constitutional or fundamental legal principles precluded a country from enacting corporate criminal sanctions. In other instances, it was simply a matter of no legislation having been enacted to criminalise corporate conduct. The intention to continue to study the issue with a positive mind was generally expressed.

d) Recommendations 33 to 40 (Mutual legal assistance and other forms of co-operation)

Most participants soon should be able to provide mutual legal assistance to each other in international money laundering cases. But the improvement of this co-operation further depends on the adaptation of the domestic legislation

Most FATF members have developed a network of bilateral and multilateral conventions to facilitate mutual legal assistance, as required by recommendation 34. Austria generally prefers multilateral agreements. Japan does not plan at this stage to develop bilateral or multilateral agreements, but notes that,

in its case, the conclusion of such bilateral or multilateral agreements are not prerequisite in rendering legal assistance.

Recommendations 37 and 38 (compulsory measures to be ordered by the way of mutual assistance, such as identifying the proceeds from a narcotic offence forfeiture, seizure...), will be applied very largely by all the states in the near future, as well as recommendation 40 dealing with extradition.

However, the issue of corporate criminal liability and differences in criminal offences led to a lengthy discussion on the concern about how the manner in which countries implement the FATF recommendations could actually inhibit mutual legal assistance in money laundering cases and co-operation in related extradition and confiscation matters.

Differences in criminal offences of money laundering very often create difficulties in implementing recommendations 32 through 38, which reinforce the need for a comprehensive mutual legal assistance system for money laundering and asset confiscation.

In a significant number of countries, the application of the principle of dual criminality would in all likelihood preclude extradition and mutual legal assistance if the request relates to a predicate not covered by the money laundering offence in the requested country. In the view of several countries, this result indicates another reason to enact money laundering offences that cover a wide range of predicate offences or all serious crimes.

It also was noted that in many countries the perpetrator of a crime cannot be prosecuted for laundering the proceeds of his crime. As far as possible, differences in approach to the liability of the perpetrator of the underlying offence should not inhibit the provision of assistance.

On the other hand, differences in corporate liability would affect mutual legal assistance in only a few countries. It was felt that a country that does not have corporate criminal liability should strive to honour a request for assistance in a case in which the requesting country is prosecuting a corporation for money laundering, e.g., by resorting to civil or administrative actions available under its laws.

Finally, it was pointed out that with respect to the different forms of international co-operation in criminal matters (mutual legal assistance, extradition, asset confiscation, etc.), different standards of dual criminality might evolve in national or international legislation or practice commensurate with the object and purpose of each specific type of co-operation.

For the purposes of mutual legal assistance, it was felt that participants should have an attitude of some flexibility in relation to the issue of dual criminality. Difficulties in practice, should not affect their readiness to provide one another with mutual legal assistance (apart from extradition).

To the extent that dual criminality remains a problem in progress towards facilitating mutual legal assistance and co-operation, the harmonisation of domestic legislation may be the surest way in the longer run. In the shorter term, bilateral and multilateral agreements in these areas are probably more achievable.

e) Recommendation 39 and international asset sharing

Recommendation 39 encourages arrangements for co-ordinating seizure and confiscation proceedings which may include the sharing of confiscated assets. Actually, very few cases of sharing of assets confiscated in international money laundering operations have occurred. This may result, among other reasons, from the difficulty in determining the "fair" share to be given to other countries. Public accounting rules may also discourage this.

Ways to further facilitate the implementation of recommendation 39, with regard to international asset sharing, remains a matter for further discussion in the FATF.

B - ENHANCEMENT OF THE ROLE OF THE FINANCIAL SYSTEM AND STRENGTHENING OF INTERNATIONAL COOPERATION

The group has assessed the implementation of recommendations 9 to 32. Substantial progress has been made to implement most of them, but some participating countries, should still devote great efforts on the furtherance and the completion of this process in the months and years to come (section 1).

Money launderers have increasingly turned to non-traditional financial institutions or other businesses or professions to convert the proceeds of their illegal activities into legitimate funds - as countries have tightened their control on traditional financial institutions or professions. Action should be undertaken to address this situation along the lines sketched out in section 2 a), and new money laundering practices should be updated regularly, with great care.

Relations with countries which do not or insufficiently apply the FATF recommendations require periodic exchange of information among law enforcement authorities (section 2 b).

The administrative systems to detect money laundering receive more support when they apply to cash movements at the border than when they consist in reporting all currency movements (section 2 c).

In general, more comprehensive co-operation is needed among all authorities involved in the fight against money laundering. Considerable progress has still to be made to exchange information at all levels (section 2 d).

1 - Global overview of the implementation.

As with legal matters, a "surveillance" grid has been established on the basis of voluntary answers by countries to a questionnaire. It is a useful gauge, but only a first attempt to get a global view of the implementation, since all the answers were not harmonised. A more thorough surveillance will result from a detailed examination of each country, as proposed in section III. At this time, the uncertain reliability of the answers led the group to the opinion that any publication of the grid would be premature.

When assessing the implementation status of recommendations 9 to 32 (enhancement of the role of financial system, and strengthening of international administrative co-operation), one has to give special attention to the answers of the 16 members of FATF-1, and to notice that only 18 recommendations (out of 24) are relevant for analysis, the remaining six calling for further study (n°s 11, 23, 24, 30, 31) or for an alternative approach (rec. n° 19).

It is very encouraging that, one year after the recommendations of FATF-1 have been drafted, the vast majority of the answers to the surveillance grid by the FATF-1 members are positive of which roughly half are measures "already implemented" (A) and close to half "measures soon to be implemented"(B), no later than Jan 1, 1993 in most cases.

Another interesting feature of the answers is that most of the negative ones apply to three recommendations (n°s 21, 23 and 24) which are considered difficult to implement by most countries, and are discussed below in this report.

It should also be noted that the EC Directive, which will be approved by mid 1991 and implemented before January 1, 1993, enforces 15 of the recommendations among its member countries, the remaining ones (21 to 25, 30 to 32) being either outside the objectives of the directive or unnecessary in the case of EC members (Rec. 19).

In summary, the implementation of most of the recommendations 9 to 32 appears already fairly good among members of FATF-1, and few cases of non compliance should remain by year-end 1992.

As regards these jurisdictions which participated in FATF-2 before being formal "members", it proved difficult for some to provide a detailed report, although the majority did so and the majority of these respondents reported substantial implementation of the recommendations.

2 - Ways of facilitating the implementation of certain recommendations

Law enforcement authorities of participating countries as well as representatives of Interpol and of the Customs Co-operation Council were invited to share, during a full-day meeting on March 15, their technical experience regarding the new money laundering practices they encounter, which countries or areas do not or insufficiently apply FATF recommendations, and the co-operation between them.

Their discussions helped to determine some ways of facilitating the implementation of recommendations 11, 21/22, 23/24, and 31/32.

a) New money laundering practices and implementation of recommendation 11.

As countries have significantly tightened their control on deposit taking financial institutions, money launderers have increasingly turned to other financial institutions and other professions and businesses which handle significant amounts of cash, to convert the proceeds of illegal activities into legitimate funds. It was noted that, as regards other financial institutions and professions, first steps have been taken.

Today, non-traditional financial institutions or other businesses or professions are involved in a growing number, possibly a majority, of money laundering cases, estimated from the number of seizures in the cases unveiled in some countries.²

Non-traditional financial institutions or professions provide "bank-like" services, thus running the risk that they can be used by money launderers in ways similar to traditional financial institutions or professions, while not being subject to the same regulations and controls.

In order to facilitate a wider implementation of regulations against money laundering, a report was prepared on a typology of money laundering practices for non-traditional financial institutions or professions, by the US Customs Service on the basis of the information on actual cases made available by the United States, the United Kingdom and the Hong Kong competent authorities.

The group, reflecting the opinion of law enforcement specialists, made it clear that the FATF should not try to make an exhaustive, single list of all non-traditional financial institutions or professions that might be involved in money laundering practices, but should rather seek to address them as a whole, and mention, as an example, some "high risk" professions or institutions that could possibly be used in the cash-placement stage of the money laundering process.

These professions or institutions can be classified under four broad headings :

² Countries participating in the FATF process reported numerous incidents in which money launderers were utilising the non-traditional systems within their respective countries. Examples of these incidents include : (a) cash from cocaine crack sales deposited into a bureaux de change, funds transferred abroad for collection in US dollars, funds collected abroad in US dollars ; (b) cash from drug sales used to purchase gambling chips in a casino, proceeds returned in the form of "winnings" through a casino check, casino check deposited into bank account represented as "winning" ; (c) drug cash used to purchase antique firearms and art from auction houses and private individuals abroad, property returned and sold through domestic auction houses, fund transferred abroad and then returned to purchase real estate ; and, (d) a solicitor accepting drug cash from drug trafficking client, placing the funds into the solicitor's trust account, the solicitor utilising the funds in the trust account to purchase real estate in the solicitor's name on behalf of the drug trafficking client. Variants of these schemes abound.

1 - organisations whose prime function is to provide a form of financial service but which, at least in some FATF member countries, fall outside the scope of the regulated financial sector. For example, bureaux de change, cheque cashers and money transmission services, including those provided through correspondent relationships outside the formal banking sector.

2 - Organisations whose primary purpose is to offer some form of gambling activity. For example : casinos, lotteries and various games of chance.

3 - Organisations whose primary function is to buy and sell high value items. For example : precious metal and gem dealers, auction houses, real estate agents ; automobile, aeroplane and boat dealers.

4 - Professionals who, in the course of providing their professional services, offer, in some countries, client account facilities. For example : lawyers, accountants, notaries and certain travel agents.

This typology ought to facilitate the implementation of recommendation 11 with the degree of flexibility that is necessary from one country to another, given the differences in the use of cash and in the effective role of each profession.

Outside the formal financial sector, professions which provide any of the financial services listed in the annex of the Second Banking Co-ordination Directive of the European Community, as well as life-insurance coverage, should be subject as far as possible to recommendations 12-22 and 26-29. However, recommendation 27 is not intended to oblige member countries to establish one supervisory institution for each and any of these professions : the nature of regulations and the means to ensure compliance are to be decided by each country. The group considered that the organisations cited under heading n° 1 of the typology, and the professionals cited under heading n° 4 of the typology, belonged to this category. However, with respect to the professionals, law and practices relating to professional confidentiality restrict in many countries the possibility of implementing some recommendations.

Some other types of business or professions can also be used in the cash placement stage of money laundering, for instance those cited under headings n° 2 and 3 of the typology, although their effective role is different from one country to another. For such activities, it would be extremely difficult for governments to ensure across the board compliance with the relevant FATF recommendations. But there are steps that governments could take to raise awareness among those businesses most at risk and to combat their being used by launderers : dialogue with professional organisations which represent them, issuance of guidance notes - especially on how to recognise suspicious transactions - and, for some of these professions as designated by each government, implementation of the customer identification and record keeping requirements above a specific size of transaction, and, where possible, implementation of a suspicious transaction reporting scheme.

While offering such guidance to facilitate the implementation of recommendation 11 by governments, the group felt it wise not to add anything to the existing recommendations 9 to 11, considering that money laundering is an evolving process and that discrepancies in the actual field of activity for the same business exist between countries. With this in mind, the importance was stressed of identifying and regularly updating "vulnerable businesses/professions", i.e. businesses or professions with a potential for misuse by money launderers, and to exchange information about them. To this end, it was suggested that, in the future, the FATF keep itself informed about the evolution of money laundering practices and exchange information about actual cases of money laundering.

b) Implementation of recommendations 21/22.

The Group has thoroughly examined how useful it would be to refine recommendations 21 (relation with countries which do not or insufficiently apply these recommendations) and 22 (application of the recommendations to branches and majority owned subsidiaries located abroad).

The Group observed that one way to facilitate the implementation of recommendation 21 would be to establish an internationally agreed "black list" of countries which do not or insufficiently apply the FATF

recommendations. But the group felt, and law enforcement authorities confirmed, that the FATF should not attempt to produce, for the time being, a public common minimal list. Each country will be in a position to decide which jurisdictions must receive special attention, based on the answers given by its own financial institutions in accordance with recommendation 22. The absence of any list of "regulatory havens" makes it difficult however for financial institutions to focus their special attention in the sense required by recommendations 21 and 22.

Geographical zones where money laundering schemes develop, or might develop, are, in some cases, well-known and, in any case, can be characterised by some criteria. Such criteria include the lack of any legal requirement for institutions or professions to maintain records for the identification of their clients or the transactions performed, the absence of a legal permission for law enforcement authorities to have access to these records, and the impossibility for them of communicating these records to law enforcement authorities of others countries.

c) Administrative Systems to detect money laundering (recommendations 23, 24).

Recommendation 23

Some countries strongly support the implementation of measures to detect or monitor important cash movements at the border to address the problem of cross border shipments of illegal source currency, either through a system of mandatory reporting of these movements, or through the possibility of freezing suspected assets³ or through any other means that does not restrict the freedom of capital movements. Other countries emphasise that the information gathered in such a fashion should only be used to fight money laundering practices. This issue should be addressed again in the future.

Recommendation 24

A large majority of the participating countries continue to consider that the implementation of a system to report all important currency transactions is difficult to envisage. They feel that at least similar results can be attained through the less burdensome system of a properly implemented suspicious transactions reporting scheme. Countries which have a currency transactions reporting scheme believe that it is an essential complement to suspicious transactions reporting.

d) Co-operation between law enforcement authorities, outside mutual legal assistance, and ways to improve bilateral exchanges (rec 31 and 32).

Law enforcement authorities reported that they are sometimes faced with legal or technical difficulties when co-operating - such as the right to privacy, confidentiality privileges or the sensitivity of some countries to tax-related issues. It was pointed out that a number of international agreements already provide an adequate basis for co-operation, but that, even in cases where such agreements exist, satisfactory co-operation does not always exist in practice.

The reasons for these shortcomings range from differences in the definition of the predicate offence (underlying crime), sometimes the absence of personal relations with their counterparts, to refusals to answer the questions from another country. All these elements hamper the efficiency of bilateral co-operation among administrative authorities.

Strong efforts should therefore be made to improve the co-operation among law enforcement authorities, enabling a more efficient implementation of recommendations 31 and 32.

³ This way of implementing recommendation 23 would consist in measures whereby cash, monetary instruments, precious metal/stones, and other valuable movable property, which are to be imported to or exported from their jurisdiction, may be seized/detained by the competent law enforcement/judicial authorities pending investigation and/or proceedings to freeze such property where there are reasonable grounds to believe that such property directly or indirectly represents the proceeds of a criminal activity.

"Contact lists" should be made available for instance through the UNIDCP (United Nations International Drug Control Program). Countries should also communicate to each other intelligence information, either in the framework of a legally organised co-operation, or informally - in which case the information should be used according to guidelines to be specified.⁴

If was felt that law enforcement authorities and other relevant experts should regularly meet to exchange their views about money laundering practices and geographical networks. Their findings should be reported to the FATF.

Interpol and the Customs Co-operation Council could have a special responsibility for gathering and disseminating this information. In addition, to help identifying geographical networks involved in money laundering, the FOPAC (Fonds provenant des activités criminelles), a division of Interpol which collects data about proceeds of criminal activities, could provide a good basis for such exchanges, in co-operation with the CCC.

Furthermore, exchanges of information on suspicious transactions, persons or corporations, should take place between Interpol and the Customs Co-operation Council. This information should then be disclosed to their members at their request, with the appropriate level of confidentiality.

II - GEOGRAPHICAL EXTENSION OF THE FATF PROGRAM AGAINST MONEY LAUNDERING

Money laundering channels, at least those on a broad scale, generally involve international operations. This enables money launderers to use differences in national laws, regulations and enforcement practices.

For instance, a money laundering operation could involve the following stages : money from illegal activities e.g. drugs cash proceeds would be exported from regulated countries to unregulated ones ; then the cash can be placed through the domestic formal financial system of these " regulatory havens " ; the subsequent stage could then be a return of these funds to regulated countries with safe layering and integration opportunities, particularly through wire transfers. Of course, informal financial systems in "regulatory havens" are also a cause of concern

This type of money laundering operation, based on cash shipments abroad, probably plays an important role. However, once drug cash has been introduced into the formal financial institution, other techniques may be used by launderers to transfer funds abroad, using offshore companies. For instance, using the technique of "double invoicing", goods may be purchased at inflated prices by domestic companies owned by money launderers, from offshore corporation which they also own. The difference between the price and true value can be deposited offshore and paid to the offshore company. It then can be repatriated at will. Variations of the "double invoicing" technique bound . Some regulatory havens make it easy to set up shell companies, and to keep company ownership anonymous in the hope of attracting both license revenue and business for their own firms.

When the funds are repatriated after laundering abroad, the detection of their criminal origin is extremely difficult. Even if detected, differences in national laws, regulations and enforcement practices seriously impair the efficiency of enquiries and law enforcement measures.

⁴ The information passed on to authorities of other participating countries should be used only for anti-money laundering purposes, and for the investigation of the underlying offences, and could be submitted to restrictions. In practice, informal exchanges could reveal themselves very useful for implementation of recommendations 31 and 32.

This has been the rationale behind the effort to extend world-wide the FATF program against money laundering, and to give special attention to relations with countries which have a significant financial system, but do not or insufficiently apply this program.

A - GEOGRAPHICAL EXTENSION

The Houston Summit recommended that "all OECD and financial centre countries that subscribe to the recommendations of the Task Force should be invited to participate in the FATF", and appealed to "all other countries to participate in the fight against money laundering and to implement the recommendations of the FATF".

The first step to broaden the geographical coverage is an effort throughout the world to present and explain the FATF recommendations, with a view towards obtaining formal endorsements, and, as far as possible, universal effective implementation to these recommendations. This world-wide mobilisation against money laundering was launched in three directions.

1 - OECD countries and other major financial centres

a) The nine OECD countries which had not participated in the FATF-1 (Denmark, Finland, Greece, Iceland, Ireland, New-Zealand, Norway, Portugal, Turkey), were invited to participate in the FATF-2, provided they accepted the existing recommendations. All these countries, except Iceland, took part to the meetings of FATF-2, in order to help them clarify what would be at stake if they endorsed the recommendations, and to share with them experiences in the field of fighting money laundering. A meeting, on December 17, was specially devoted to briefing them.

At this stage, Denmark, Finland, Ireland, New-Zealand, Norway, Portugal and Turkey have endorsed the FATF recommendations, and thus qualified for membership.

b) In addition, the FATF decided that the three most important off-shore banking centres and areas, Hong-Kong, Singapore and the Gulf, would be invited, under the same conditions, to participate.

Hong-Kong attended FATF meetings and participated actively. It endorsed the recommendations, thus qualifying for membership. It has already taken major steps to implement the recommendations.

In order to reach a number of financial centre countries in the Gulf, it was decided to invite the Gulf Co-operation Council (composed of Saudi Arabia, Bahrain, the United Arab Emirates, Oman, Qatar and Kuwait) to participate, rather than invite the individual countries in the area at this time. A representative of the GCC did participate in one of the meetings, but because of the situation in area, has not been able to co-ordinate a decision on endorsement of the recommendations among the GCC member countries as yet. The GCC will continue to be invited to future sessions.

Singapore has yet to endorse the FATF-1 recommendations, and formally accept the invitation. However, discussions have commenced and hopefully, they will lead to Singapore endorsing the recommendations and joining the group. It is, of course, appropriate that a country which has such eminence as a financial centre should join in the international effort against money laundering which membership of the Task Force provides. Singapore representatives have recently informally indicated their intention to participate, on the same basis as others.

2 - Other financial centres

Specific countries or territories were identified as being particularly exposed to money laundering, due to the importance of their international financial activities, to their geographical location -territories close to important drug producing, transit or consuming countries-, or, in some cases, to the low degree of regulation of their financial system, or to the involvement of one or several of their financial institutions in

past money laundering operations. Contacts with these financial centres were undertaken by FATF members having close ties with them, or being geographically close to them.

Some of these centres are related to FATF members. The Netherlands confirmed that their endorsement of the FATF recommendations also covered the Netherlands Antilles and Aruba and that the Kingdom had full responsibility for the territories. Jersey, Guernsey and the Isle of Man are Crown Dependencies of the United Kingdom. They have all introduced legislation to trace, freeze and confiscate the proceeds of drug trafficking, including the criminalisation of drugs money laundering. Guernsey and the Isle of Man have endorsed the recommendations of the Task Force and Jersey has confirmed that it is fully committed to preventing the use of the Island by those engaged in drug money laundering.

The contacts with other financial centres led to the following results.

a) Cayman Islands, Montserrat, Anguilla, British Virgin Islands, Turks and Caicos Islands and Bermuda, which are all British Dependent Territories, have been sent the Task Force recommendations and encouraged to endorse them. They have been asked to provide details of legislative and other measures which they have taken or are intending to take to combat money laundering. They have all introduced legislation to trace, freeze and confiscate the proceeds of drug trafficking, including the criminalisation of drugs money laundering. The legislation is very similar to that in the UK. They have confirmed, in general terms, that they support the FATF recommendations. They are currently working on detailed responses to the recommendations and considering the need for administrative measures in the context of local budgets and resource constraints.

b) Gibraltar - The authorities in Gibraltar, which is also a British Dependent Territory, have been sent the FATF report and encouraged to endorse its recommendations. They, also, are working on a detailed response which will describe the legislative and administrative measures that they have already taken, and are intending to take, to combat money laundering.

c) Liechtenstein - Liechtenstein is an independent state with special relationship to Switzerland mainly due to treaties on customs and monetary policy. Switzerland assumes however no responsibilities for Liechtenstein in regard to almost all of the issues in the scope of the FATF. According to its own assessment, Liechtenstein already applies a large number of the FATF recommendations. The majority of the rest will be implemented by or in connection with the planned bill criminalising money laundering inspired by the Swiss legislation and entering the parliamentary process this year.

d) Monaco - Monaco is an independent state with a special relationship with France. It is preparing for the near future a complete set of texts, very close to the French ones, to fight money laundering.

The government of Monaco has officially expressed its intention to implement the FATF recommendations.

e) Andorra - Andorra is a territory under co-principality of the President of the French Republic and the bishop of Seo d'Urgell, Spain. The Bishop co-prince has been officially informed by the Spanish authorities of the 40 recommendations and has received an offer to get the necessary explanatory background. Following a request by the French co-prince, the Bishop of Seo d'Urgell has officially agreed to incorporate the FATF recommendations into local regulations. The implementation will have to take into account the specificities of the status of Andorra. Andorra has taken steps to give effect to provisions of the Vienna Convention. At this stage, bank regulations in Andorra are incomplete, and there is no banking supervisory authority. However, Andorran banks have established a code of conduct. The implementation of the FATF recommendations in Andorra will be conducted in co-operation with the relevant Andorran bodies, with a close involvement of the French authorities, and of the Spanish competent authorities upon request.

These contacts with financial centres will have to be continued, in order to obtain from those who have not done so a formal endorsement of the recommendations, to help the implementation if necessary,

and to ensure that this implementation is effective. Furthermore, other financial centres might be identified in the future as requiring the same approach.

3 - Regional mobilisation

In order to provide for the widest coverage of the FATF program, other countries or territories were or will be contacted through a process of mobilisation on a regional basis. This process, launched by the FATF and undertaken by various countries or regional organisations, is only a first step. As with the financial centres, the aim is to assess where the countries or territories of the regional area stand in the fight against money laundering, to obtain as soon as possible full endorsement of the recommendations by most of them, to help implement these recommendations if necessary, and to ensure that this implementation is effective.

This first step takes the form of meetings associating some FATF members, and most or all countries or territories of the region concerned. In these meetings, the FATF report is presented in detail (it had been already transmitted in June 1990 to all countries having an embassy in Paris by the FATF secretariat) and the regional countries and territories express their views on the report.

The meeting for Asia was organised by Japan, together with the Economic and Social Commission of the United Nations for Asia and the Pacific (ESCAP). It was held in Tokyo on February 13 to 15, 1991. Forty five countries or territories (see list in Annex) sent delegates to this meeting. The general feeling was that the success of the fight against money laundering depends crucially on the harmonisation of national programs. The participants called for an early endorsement of the FATF report by the countries and areas concerned.

The meeting for countries of central and eastern Europe was organised by the Commission of the European Communities, in Brussels, on March 4, 1991. Poland, Czechoslovakia, Hungary, Bulgaria, Romania and Yugoslavia sent delegates, together with several FATF members. These countries expressed their readiness to fight money laundering, and shared the view that the design of their new financial systems should include from the beginning regulations in this regard. However, some countries expressed reservations regarding the declarations of suspicious transactions : it was underlined that strong bank secrecy was essential to obtain the confidence of the population in the new financial system, because in the old system, a general obligation existed to report any suspicion of any illegal activity. The delegates will encourage their governments to endorse as soon as possible the FATF recommendations.

A meeting of the Caribbean Islands and Central American States (see list in Annex), was organised in Aruba as early as June 1990. The experts welcomed the FATF report, added some recommendations to address specific regional issues, and urged their governments to endorse and implement the FATF program. A second meeting should take place in Kingston, Jamaica, in June 1991, with a view to formally endorsing the FATF report.

A meeting for Africa (see in annex list of participating countries) has taken place in Abidjan, Ivory Coast, on May 9, 1991, just after the annual meeting of the African Development Bank. During this meeting, it appeared clearly that it was in the interest of all African countries to participate in the fight against money laundering. Participants welcomed the FATF recommendations, and will submit them to their governments for endorsement.

A meeting with countries of Latin America , organised at the initiative of the United States under the auspices of the Organization of American States, will take place in Washington on May 21 to 24.

This process of regional mobilisation will have to be pursued in the future, in a flexible way, with a view to ensuring, as far as possible, world-wide implementation of the FATF program. This will require formal endorsements of the report, as well as follow-up procedures to ensure that the implementation is effective. For many countries, technical assistance might also be necessary.

B - MEASURES DIRECTED AT NON COOPERATIVE COUNTRIES

1 - The problem of "regulatory havens" and non co-operative countries or territories and existing measures to address it

The issue of how to cope with the problem of countries with no or insufficient anti- money laundering measures, was addressed in last year's report of FATF, through recommendations 21 (special attention by financial institutions to transactions and business relations with persons located in "regulatory havens"), 22 (extension of the vigilance principles applicable to financial institutions, to their branches and subsidiaries located abroad) and 23 (detection or monitoring of cash at the border).

There was also general agreement that the wider the geographical extension of the FATF program, the easier the measures to deal with non co-operative countries or territories could be implemented. For instance, to be able to implement satisfactorily recommendation 21, financial institutions would need to know which countries or territories are to be considered as "regulatory havens", in order to focus their vigilance on a small number of transactions and business relations.

In the process of geographical extension of the recommendations, it appeared clearly that some countries or territories could remain reluctant to join in the international effort against money laundering. The motivations for this reluctance are generally easy to understand. Some jurisdictions who wish to establish a financial services industry as a supplementary source of income for the national finances - through the sale of authorisation for shell companies and banking licenses - and to create employment for the population, use their lack of regulations as a competitive advantage. In addition, there are administrative costs in applying anti-money laundering sanctions. "Regulatory havens" may therefore be motivated by a wish to supplement their budgetary receipts, gain a marketing advantage for their financial services industry, or avoid imposing a cost on their financial services industry, or any combination of all three. Finally, extreme cases, where governments co-operate with their financial institutions in large scale money laundering operations, cannot be excluded.

These kinds of motivations to avoid taking measures against money laundering, reflect clearly a short term view : a money laundering operation, once detected, can put at risk the whole financial system in these countries or territories, through the loss of credibility and confidence.

However, the problem of "regulatory havens" and non co-operative countries or territories in the fight against money laundering remains crucial, and deserves special attention.

2 - Additional measures

Some non co-operative countries or territories can already be identified, in particular those having denied assistance, in enquiries about international money laundering operations. The FATF devoted a special meeting to an exchange of views on this matter (see par. I-B 2b) : it was agreed that no "black list" of non co-operative countries or jurisdictions would be established, and that the results of this exchange of views would principally serve, at this stage, to help national efforts against money laundering. In order to lead these countries to more co-operative behaviour, it was felt that, for the time being, public and peer pressure could be sufficient, although FATF members could of course decide to go further on an individual basis, provided the Task Force was kept informed.

Public pressure could be exercised, in a "soft" way, through the publication of a "white list" of countries or territories which have implemented FATF recommendations and can thus be considered as fully participating to the international effort against money laundering. This publication would also facilitate national efforts to detect suspicious transactions. However, it was felt that it was too early to make a definitive assessment of which countries have satisfactorily implemented the FATF. This procedure cannot be envisaged before all countries have been given time to implement the FATF program, as a consequence of the geographical mobilisation program described above, and before a thorough review of the degree and quality of this implementation has been conducted, through the assessment process described under part III-

A. Furthermore, although a narrow majority of task force members would favour this course, there is at this stage no consensus on it.

Should this peer and public pressure prove insufficient, additional measures might be envisaged in the future.

Several types of measures were mentioned. For instance, an upgrading of the implementation of recommendation 21 might be considered, in order to submit all transfers/payments with these jurisdictions to a specific examination, which would at least increase the cost of transactions with them and thus compensate for the competitive advantage of the financial institutions located in the non co-operative country or territory. A systematic declaration to competent authorities of these transfers/payments might also be considered. The efficiency of these measures would of course be greater, if they were decided and implemented in a co-ordinated way, within the FATF.

III - FOLLOW-UP TO THE SECOND FATF

The group discussed arrangements which could ensure a full implementation of its program. The consensus was to maintain the group for the time being, to conduct four tasks :

1 - self-reporting and mutual assessment (monitoring and surveillance) on the adoption and implementation of FATF recommendations by all members ;

2 - co-ordination and oversight of efforts to encourage non-members to adopt and implement the recommendations ;

3 - making further recommendations and evaluations of counter-measures while serving as a forum for considering developments in money laundering techniques domestically and world-wide and for the exchange of information on enforcement techniques to combat money laundering ;

4 - standing ready to facilitate co-operation between organisations concerned with combating money laundering and between individual countries or territories.

A - FUTURE ROLE OF THE FATF

1 - Process of future assessments

a) Assessment among FATF members

The procedures adopted this year to assess the implementation among task force members, helped to determine guidelines for future assessments.

In the future, the essential objective should be to maintain the informality which the FATF has adopted and to avoid a rigid bureaucratic approach. The procedure could be for FATF members to complete answers to a standard questionnaire each year concerning the status of their implementation of the FATF recommendations. Surveillance grids could be used -provided they would be filled in a harmonised way, that is two countries in the same situation would give the same answer-, but FATF members would have to supply information supporting their responses on implementation status and the effect of their measures as well as explain their co-ordinated strategy against money laundering against the background of their particular characteristics. Consideration might also be given to more detailed surveillance grids, focusing on the key elements of the core recommendations.

The responses to the questionnaires would be circulated to all members by a Secretariat. The Secretariat would simultaneously circulate a summary of the various responses. This would form the self-reporting stage of the procedure.

There would then be a yearly meeting of the FATF members to consider the responses and discuss any problems arising out of them. Individual members would be chosen for examination by the FATF with the examination carried out by selected other members of the FATF, according to an agreed protocol for examination and agreed selection criteria. The objective would be to examine every FATF member by the end of 1996. Each year the FATF would select the members to be examined in the following year. Unless they wished to be examined earlier, members would not be subject to being examined until three years after their endorsement of the FATF-1 recommendations, except if the group decides otherwise, in exceptional circumstances. Each year a final assessment report would be prepared by the Secretariat under the supervision of the FATF. This would complete the mutual assessment process.

Assessment reports concerning individual countries would in principle not be published, but executives summaries would be.

During FATF meetings, particular questions related to FATF tasks might be discussed. Regular yearly meetings could be augmented by special meetings by agreement of the FATF. Working groups could also be established by the FATF if required.

b) Mobilisation and assessment in non member countries or territories

The contacts with "other financial centres" and "regional areas", as described above (part II-B : "geographical coverage") could be continued, for the time being, along the following lines : they would be pursued by individual FATF members, or in appropriate cases by steering groups of FATF members with the support of the Presidency/secretariat. Relevant FATF members would remain responsible for their associated or dependant territories as appropriate. Individual FATF members, or regional steering groups in appropriate cases, would also maintain contact with non-member financial centres and regional areas. Reports would be made on developments in the relevant countries or territories. The annual meetings of the FATF would provide the opportunity to review progress and consider solutions to any problems.

An important part of this assessment process would be, upon request, the provision of technical assistance, in particular in drafting laws and regulations, and adapting bank supervisory and law enforcement authorities' structures. This could be provided by individual task force members, or by the secretariat, within the limits of its resources.

Non-FATF members which subscribed to the FATF-1 recommendations, might join in the self-reporting process and complete the questionnaire on their adoption and implementation of the FATF recommendations. Such jurisdictions would be invited to attend the meetings at which their reports are discussed.

2 - Other tasks

In addition to the ongoing self-reporting/mutual assessment and co-ordination/oversight work, the FATF should also keep under review developments in money laundering trends and techniques and share information on legal, financial and enforcement counter-measures. Issues with regional or global implications could be discussed at the annual FATF meetings and consideration might be given to the development of further recommendations where appropriate.

FATF meetings will also provide the opportunity for informal exchange of information between members.

In this regard, the FATF would not be used as a formal intermediary for exchanges of information relating to suspicious transactions, or persons and corporations involved in these transactions ("hot information") : the exchange of "hot information" should take place, either bilaterally or through multilateral existing institutions, according to FATF recommendations. However, should difficulties arise in this matter, either between FATF participants, or between participants and non-participants, there should be a possibility

for task force members to raise this issue in the FATF, in order to enable it to find a solution acceptable for all parties.

B - INSTITUTIONAL ARRANGEMENTS

The FATF could continue to function as an ad hoc group for the time being, reporting to finance Ministers or other competent Ministers and authorities. It should remain as flexible and informal as it is now. The question of the continuation of the FATF, and of its statute and future works should be addressed again in three years.

1 - Presidency

The FATF would continue to meet under the Presidency of an individual member. The Presidency would rotate on a yearly basis. The Presidency might run from 1 September to 31 August with the FATF making an annual report to Ministers or other competent authorities, enabling the FATF to report to suitable Ministerial and international fora in May-July. The President would be chosen by the FATF, taking into account as much as possible geographical locations and membership of various international groupings. A steering group would be set up including representatives of the Presidency, the Presidency for the last year and the next year, plus the chairmen of working groups, if any.

2 - Secretariat

The OECD could be invited to act as a secretariat for the FATF. The criteria used for this choice were : experience in areas related to those covered by the FATF ; multi-disciplinary nature ; and compatibility with the aims of the FATF. The OECD has confirmed that it has no difficulty in acting as a secretariat for a body which contains non-OECD members. The group is also grateful to UNIDCP for its offer to provide secretariat facilities.

The OECD would limit itself to secretariat functions, collating, co-ordinating and summarising responses from FATF members and supporting the FATF presidency. It could conduct studies by further decision of the FATF. It would not become involved in any enforcement activity.

The size and cost of this secretariat should be extremely limited, probably in the range of 2 to 4 millions francs each year. The burden sharing between FATF participants might be based on the standard OECD contribution formula. Countries, which are in a position to do so, might consider paying their contribution with a part of the funds stemming from assets seized in money laundering operations involving international co-operation.

3 - Future membership of the FATF

The FATF membership should not be further widened, in order to preserve the efficiency of the Task Force. However, countries who were invited to participate in this year, but who did not endorse the recommendations, would still be able to join.

Competent international organisations could be invited to participate as observers, at the discretion of the Presidency. They include the UNIDCP, the IMF, Interpol and the Customs Co-operation Council, the Bank of International Settlements and related committees, and the Council of Europe. Regional organisations wishing to play a role in the fight against money laundering could also be invited.

CONCLUSION

Relevant Ministers or other competent authorities of member jurisdictions will circulate this report to their Heads of State or Government. Their decisions, as well as further guidance from the Summit of the

Heads of State or Government of the seven major industrial nations, will be crucial as regards the follow-up to the task force.

In order to ensure the success of the FATF program against money laundering, a high degree of mobilisation in industrial and other financial centre countries or territories is essential. This implies that those countries or territories which have not done so already, fully implement without delay the recommendations. This implies also the pursuit of the external mobilisation effort which has been launched by the FATF-2, and a reinforcement of joint actions to deal with non co-operative countries or territories, in order to ensure that no financial centre can put at risk the effectiveness of the fight against drug trafficking and other serious crimes.

The political commitment to fight money laundering, which enabled the establishment of an internationally agreed far-reaching program against money laundering in a record time, does not permit any abatement in the efforts of the Task Force, until the success of this program has been ensured. This success will provide a decisive contribution to the fight against criminal activities and above all against drug trafficking, and will improve the soundness of the international financial system.