

FATF-III

**FINANCIAL ACTION TASK FORCE
ON MONEY LAUNDERING**

**ANNUAL REPORT
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ACCOMPLISHMENTS OF FATF-III

1. Since July 1991, the FATF has agreed on three main priorities that should guide its work:
 - to define and carry out a systematic verification of the degree of implementation of its forty recommendations;
 - to undertake an in-depth assessment of laundering techniques and their implications for the recommendations;
 - to develop a well-focused and comprehensive external profile.
2. With regard to the first priority, the FATF has embarked on a two-pronged approach based on a mutual assessment procedure, on the one hand, and the self-evaluation procedure, on the other.
3. The Task Force has clearly defined the scope and methodology of its mutual evaluation procedure. Four countries -- France, Sweden, the United Kingdom and Australia -- volunteered to participate in the first round of mutual examinations during FATF-III. These evaluations provided the opportunity for a comprehensive analysis of the system set in place in each FATF member government to combat money laundering, its strengths and shortcomings, and the scope for further progress. FATF-IV will see a notable increase in the number of mutual evaluation examinations and it is the aim that all FATF members will be examined by the end of FATF-V.
4. As in 1990-1991, the Task Force has devoted considerable time and effort to the process of self-evaluation reporting. A significant amount of work has been carried out during this session to draw up a new and more sophisticated questionnaire. The enhancement of the self-evaluation process has prepared the ground for broad-based discussions within the relevant working groups. Beyond the educational value of this exercise, a synthesis of the implementation check-lists provided a comprehensive, and as accurate as possible, overview of the state of implementation of the recommendations within the FATF membership.
5. As for the second priority, the FATF considered the question of adjustments to, and/or expansion of, the recommendations to take account of the evolving money laundering trends. In consideration of the high priority attached to the actual implementation of the existing recommendations, the Task Force has decided not to introduce new recommendations for the time being. At the same time, FATF members are agreed on the need to draw up a number of interpretative notes to clarify the scope of existing recommendations so as to ensure their compatibility in a rapidly changing environment.
6. The third priority for FATF-III centered on the determination of the guidelines of a strategy for its external action. FATF member governments have continued to undertake direct contacts with financial centers which have close ties with them or which are geographically close to them. With a view to preserving the efficient functioning of the Task Force, the FATF has decided not to enlarge further its membership for the time being. However, the Task Force has actively pursued its vocation to disseminate knowledge about its work in priority geographical areas (including the Caribbean, Central and Eastern Europe and the Pacific) outside its present membership. In addition, significant progress has been made towards the identification of the most suitable expertise that could be made available to third countries, either directly or through co-operation with international organisations. Finally, during 1991-1992, the Task Force clarified and developed its relations with the international organisations involved in the fight against money laundering.

7. In June 1991, the FATF presidency rotated for the first time. Switzerland succeeded France, who had chaired the Group since 1989. In parallel, a small specialised secretariat unit was set up within the OECD. The FATF Presidency, supported by a Steering Group -- which includes representatives of the Presidency, the Presidency for the previous and the following year, and the chairmen of the working groups -- works with and through the secretariat.

8. At the 18-19 May meeting of the Council of the OECD at Ministerial level, Ministers welcomed "the progress achieved over the past few years in the international co-operative efforts, in particular through the work of the Financial Action Task Force (FATF), to prevent the utilisation of the financial system for the purpose of money laundering". They also "express their determination to further reinforce multilateral co-operation in this area and invite all countries to participate actively in the fight against money laundering on the basis of the FATF recommendations."

INTRODUCTION

9. In June 1991, the Task Force agreed to reconvene under the chairmanship of Switzerland. The Finance Ministers or other competent ministers of all FATF members decided that the Task Force would continue for at least the next three years to conduct four tasks:

- (a) self-reporting and mutual evaluation on the adoption and implementation of FATF recommendations by all members;
- (b) coordination and oversight of efforts to encourage non-members to adopt and implement the recommendations;
- (c) making further recommendations and evaluations of counter-measures while serving as a forum for considering developments in money laundering techniques domestically and worldwide, and to exchanging information on enforcement techniques to combat money laundering; and
- (d) standing ready to facilitate day-to-day cooperation between organisations concerned with combatting money laundering and between individual countries or territories.

10. In July 1991, the London Summit of the Heads of State or Government of the seven major industrialised countries welcomed progress achieved by the Task Force and invited all countries to participate in the international fight against money laundering and to associate themselves with the work of the FATF. It was agreed that the report of FATF-III should be transmitted to the next meeting of the Heads of State or Government of the Seven.

11. In addition to the members of FATF-II,¹ Iceland and Singapore joined the Task Force at the outset of the present session, thereby enlarging its membership to all OECD countries and other major financial centers.

12. Five series of meetings were held at the OECD headquarters in Paris, and a final meeting was convened in Lugano (Switzerland). Since its meeting in September 1991, a FATF secretariat was set up in the OECD. About 150 experts from various ministries, law enforcement authorities and financial supervisory and regulatory agencies have taken part in this co-operative effort during the past twelve months. Law enforcement specialists from Interpol and the Customs Cooperation Council, and representatives from the Council of Europe, the International Monetary Fund, the United Nations International Drug Control Programme, the World Bank and the International Organisation of Securities Commissions participated in FATF meetings on an ad hoc basis.

13. To facilitate the work of the Task Force and to take advantage of the expertise of its participants, three working groups continued with specific mandates focusing respectively on legal matters (working group 1, Chairman: United States), on financial matters (working group 2, Chairman: Netherlands), and on international aspects (working group 3, Chairman: United Kingdom). Their internal activity reports constitute the key background material to this report.

¹ The examination covered only the United Kingdom itself, not its various dependent territories.

I. DEFINITION AND APPLICATION OF A SYSTEMATIC VERIFICATION OF THE IMPLEMENTATION OF THE FORTY RECOMMENDATIONS.

(a) Continuation and enhancement of the self-evaluation procedure

(i) Reinforcement of the procedure

14. The Task Force decided to continue the process of annual self-evaluation by the members of their progress in implementing the forty recommendations of FATF-I. There was concern expressed about the self-evaluation method used in FATF-II. In FATF-II, members were asked to respond simply yes or no as to whether they had implemented or intended to implement each recommendation. This method did not produce a very informative or objective picture of actual progress made. Therefore, the first order of business for Working Groups 1 and 2 in FATF-III was to develop a comprehensive self-evaluation questionnaire keyed to each recommendation. The questionnaire elicited responses regarding objective indicators on not only whether a given recommendation had been implemented, but how and to what extent.

15. All FATF members responded to the questionnaire and most of them provided narrative comments on their responses. The Chairmen of Working Groups 1 and 2 synthesised the responses in a self-evaluation matrix which was made available to all the FATF members. From a review of the responses, it is possible to discern a view of the overall progress that has been made to date and areas where members need to take further action. Despite improvements in the format of the self-evaluation questionnaire, differences do remain in how FATF member governments interpreted questions and the exact measure of implementation must await the mutual evaluation process.

(ii) A global overview of the implementation among FATF members

Legal Matters

16. Based on a review of the responses to the self-evaluation questionnaire relating to the recommendations assigned to the Legal Working Group (recommendations 1 through 8 and 32 through 40), it appears that the members are generally making progress towards implementation of the FATF recommendations on criminalising money laundering, confiscation and formal and informal bilateral cooperation. Nevertheless, many gaps remain. In addition, in part due to the fact that the legal authorities in this area are relatively new, the number of actual prosecutions for money laundering and related forfeiture actions remains relatively low for many FATF members. However, the members report that the number of investigations and confiscation actions where there is bilateral co-operation is on the rise.

17. While all but two FATF member governments have signed the Vienna Convention, only ten of them have ratified it to date. Nevertheless, most are well on their way to enacting the legislation that will allow ratification. A slight majority have specifically enacted laws making drug money laundering a criminal offence and many others have legislation under consideration. Very few have criminalised money laundering beyond the narcotics predicate. Most members have legal authority in place for asset confiscation in drug money laundering cases. All but a few members relate that they have made the necessary adjustments to their financial secrecy laws to enable co-operation in domestic money laundering cases and co-operation in international cases, at least if made pursuant to a formal request for legal assistance. With regard to the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, its ratification by European members of the FATF will assist in the implementation of the FATF legal recommendations.

18. Less than half the FATF member governments have bilateral mutual legal assistance treaties or other co-operation agreements in place that provide for co-operation specifically in money laundering

matters, but most have general legal authority for providing mutual legal assistance that could be relied on if there is a formal request. Differences in predicates for the crime of money laundering remains a potential obstacle to co-operation, whereas differences in the knowledge standards or the range or type of person subject to prosecution seems less of an obstacle.

19. There remain many FATF jurisdictions in which corporations, as opposed to their employees, are neither subject to criminal liability nor administrative sanctions for money laundering.

Financial Issues

20. During FATF-III, all FATF member governments worked seriously towards implementation of the recommendations, leading to substantial progress regarding financial issues.

21. As a general observation, compliance with the FATF recommendations is better as far as banks are concerned than for non-bank financial institutions.

22. Most recommendations regarding customer identification and recordkeeping rules are adhered to by a majority of FATF members. However, important exceptions remain. Notable weak spots are fiduciary transactions. A small majority of members requires financial institutions to obtain information about beneficial owners.

23. Presently, a majority of FATF members requires banks to pay special attention to unusual transactions. In about a quarter of them, financial institutions are required to report suspicions. In some members, they are only permitted while in others they are even forbidden to report suspicions. In about half of the members, financial institutions are allowed to warn their customers that information is being reported to the authorities. In slightly less than half of the members, when no report is made, banks are required to deny assistance to the customer. A majority of members requires banks to develop specific programmes against money laundering. In a majority of members, the supervisory authorities have ensured that the supervised institutions have such programmes in place.

24. In slightly over half of the members, banks pay special attention to transactions with persons from countries with insufficient anti-money laundering measures. In a large majority of members, banks ensure that the FATF principles are also applied to branches and majority-owned subsidiaries located abroad.

25. In nearly half of the FATF members, measures are in place to detect or monitor cross-border movements of cash. Some members operate a system where all currency transactions above a fixed amount are reported to a central agency for analysis for anti-money laundering purposes. In addition, five members have measures in place to deal with the problem of cross-border shipment of illegal-source currency.

26. In a large majority of members, the supervisory authorities co-operate with law enforcement authorities in money laundering investigations and prosecutions. About a quarter of the FATF member governments have already designated competent authorities to deal with the money laundering issue regarding other professions dealing with cash. In half of the members, guidelines have been established to assist financial institutions in detecting suspicious patterns of behaviour. In a majority of members, measures have been taken to guard against control or acquisition of financial institutions by criminals.

27. Lastly, a majority of FATF member governments has improved the scope of international information exchange relating to suspicious transactions and those involved in them.

28. In summary, the implementation of most of the financial recommendations is well underway. Progress in implementation will be given a significant boost by the requirement for the 18 Task Force

member governments who belong to the European Community/European Economic Area to comply with the provisions of the EC Money Laundering Directive before 1st January 1993.

(b) Definition and implementation of the mutual evaluation process

29. Following the conclusions of FATF-II, the Task Force defined its mutual evaluation procedure at the first FATF-III meeting on 24th and 25th September 1991. This procedure has been implemented for the country examinations carried out in 1991-1992. A number of lessons for future evaluations can be drawn from these first experiences.

(i) **Establishment of the mutual evaluation process**

30. The first part of this process relates to the selection of countries to be examined and the appointment of the evaluation teams. The Chairman of the FATF, on the advice of the Steering Group, selects in line with the agreed procedures, the FATF members to be examined in the coming year. In consultation with the country to be examined and the Steering Group, the Chairman of the FATF selects at least three examiners, taking into account the expertise and background of the examiners and their countries. Each evaluation team should include examiners from at least two countries.

31. The next steps in the evaluation procedure are, first, to assemble and process all the relevant information and, second, to proceed to an analytical assessment. In order to secure an objective assessment of the situation in a given country, the phase following the appointment of the examiners is devoted to the collection of quantitative and qualitative information. This is achieved on the basis of information provided by the examined country itself through its response to a comprehensive and standardised mutual evaluation questionnaire. The information gathering process is completed through a variety of interviews carried out by the examiners during an on-site visit. Thus, the Secretariat is in a position to write a confidential draft report in the light of the examiners' assessments and under their responsibility. The draft report containing a tentative evaluation, after having been submitted to the country concerned, is discussed in a joint meeting of the legal and financial working groups. The examiners present their report to the joint group and other FATF members are selected to lead the discussion from the floor. The purpose of this phase is to verify the validity of the facts and the state of implementation. This intensive peer review is a necessary means for reaching a clear and unbiased assessment of where the country stands and of the areas in which further efforts may be warranted. The report is then revised as necessary by the Secretariat in the light of these discussions and the conclusions are reflected in the final report, which is to be approved by the FATF plenary. The report itself remains confidential but an executive summary thereof is prepared and included in the annual report of the FATF.

(ii) **Summaries of the first country examinations**

France

32. The French authorities volunteered to form part of the first series of FATF mutual evaluation surveys and France was the first country to be examined, in January 1992.

33. France is not a producer of drugs, nor is it one of the main consumer countries. Nevertheless, the increasing importance of Paris as a financial centre brings with it a growing risk of the financial system being used as an intermediate stage in the laundering circuit before final investment.

34. France had rapidly equipped itself with a comprehensive system to prevent money laundering. A set of measures recently adopted reflect the determination of the French authorities to bring their country into line with the international standards laid down by FATF-I. The ratification of the Vienna Convention by France became fully effective as from 31st March 1991. The central element of the

French system, consisting of the Act of 12th July 1990 and the setting up of the TRACFIN unit,¹ has been complemented by other legal and operational measures. In addition, banking and insurance trade associations have issued recommendations for their members. Training programmes for employees have been set up to make these recommendations more effective.

35. The initiatives of France and its two years' presidency of FATF have contributed considerably to the success achieved so far. By adopting measures often more binding than those contained in the FATF recommendations and by introducing a system of compulsory reporting of suspicious transactions for all financial and non-financial professions, France has created a real model for the control of money laundering. However, because full implementation of the Act of 12th July, 1990 is so recent, the evaluation of the operational effectiveness of the French system cannot be definitive.

36. The French system might gain in efficiency if the concept of money laundering was extended to cover all serious criminal offences in addition to offences connected with drug trafficking. The efficiency of this model will also depend on the ability of recently created bodies (TRACFIN and OCRGDF)² to exploit available information regarding money laundering.

37. From the organisational standpoint, France has implemented a system among the most comprehensive developed so far. It is clear that French measures to combat money laundering do not result from a narrow interpretation of the FATF recommendations. Indeed in many respects, they go further than the FATF principles.

Sweden

38. Sweden was the second FATF member to be examined under the mutual evaluation programme. The examination took place in early 1992.

39. Sweden is by no means a major centre for either drug consumption or money laundering, although there is some evidence to suggest that it is starting to be used as a transit point in cocaine trafficking. Until recently, specific anti-money laundering measures were not considered necessary. However, in the light of international initiatives such as the FATF, in which Sweden has participated from the outset, and domestically the deregulation of the financial system, there is a widespread recognition of the need to develop a programme to combat money laundering.

40. Certain measures have already been taken. Sweden ratified the Vienna Convention in 1991 and the laundering of the proceeds of any illicit activities is a criminal offence. And the FATF recommendations have been mostly implemented as regards the legal aspects of the Swedish criminal justice system.

41. A more comprehensive anti-money laundering programme will be put in place with the full implementation in Sweden of the EC Money Laundering Directive through legislation to be presented to Parliament in the autumn. In particular, this should institute a mandatory obligation on financial institutions to report suspicious transactions to the authorities, an essential requirement in combating money laundering.

¹ Australia, Austria, Belgium, Canada, Commission of the European Communities, Denmark, Finland, France, Germany, Greece, Gulf Cooperation Council, Hong Kong, Ireland, Italy, Japan, Luxemburg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.

² TRACFIN: Treatment of information and action against clandestine financial circuits.

42. The capability of the enforcement authorities to deal with money laundering could also be developed. For example, the establishment of a new financial police team, as recently proposed, was considered by the FATF to be a useful step and the likely creation of a National Steering group on money laundering was welcomed. More emphasis could also be placed on tracing and confiscating laundered assets. As regards the financial sector, more training for bank staff, based on appropriate guidance from the Financial Supervisory Authority and the Swedish Bankers' Association, was recommended.

43. Although Sweden is at a relatively early stage in implementing the full range of anti-money laundering measures, the FATF concluded that the issues were being addressed seriously and that the Swedish authorities and financial sector were committed to developing an effective anti-money laundering programme.

United Kingdom¹

44. As one of the world's most important and sophisticated financial centres, the United Kingdom is an obvious target for money launderers. It has a vital interest in maintaining a "clean" reputation and therefore established at a very early state an effective legal and institutional system to combat money laundering.

45. Drug money laundering was made a criminal offence under legislation enacted in 1986 which also provided for the confiscation of the proceeds of drug crimes. This has been built on by further legislation. The UN Convention was ratified on 28th June 1991. The basic approach adopted by the United Kingdom is to concentrate resources on identifying and pursuing cases involving suspicious activities rather than the routine reporting of financial transactions. A key element of the United Kingdom system is the good co-operation both among the various enforcement authorities and between them and the financial institutions and supervisors, with a central clearing house dealing with disclosures of suspicious transactions from financial institutions. This provides an efficient and cost-effective system within the available enforcement resources.

46. The United Kingdom also places great emphasis on developing awareness of money laundering activity through training and education. This has been underpinned by the publication of money laundering guidance notes for various financial sectors, drawn up jointly by the relevant trade associations, the Central Bank and the enforcement authorities.

47. The United Kingdom authorities recognise that, as money laundering techniques evolve and further experience is gained, amendments to the existing legal framework may be necessary. Currently preparatory work is being carried out to implement such of the provisions of the EC Money Laundering Directive as are not already reflected in United Kingdom law. This will enable the authorities to apply basic customer identification and record keeping requirements to bureaux de change, which are increasingly being used for money laundering purposes but are not currently subject to regulation. It was suggested that the United Kingdom should also consider extending the scope of the money laundering offence to cover the proceeds of all serious crimes.

48. The FATF concluded that the United Kingdom continues to demonstrate a strong commitment to developing and maintaining an effective and comprehensive system to combat money laundering. Its approach to the problem of laundering, based on close cooperation between the authorities and financial institutions, could serve as a model for other countries.

Australia

¹ OCRGDF: Central Office for the prosecution of serious fraud.

49. Australia produces cannabis and amphetamines and heroin use is a major drug problem. Officials believe that the movement of funds offshore is the dominant disposition of Australian drug proceeds, although it is unclear whether wire transfers, movements of monetary instruments or cash are the most significant means of offshore movement.

50. Australia currently complies with thirty-nine of the forty FATF recommendations. Australia will ratify the UN Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances when implementing legislation is in place, which should be later this year. It has comprehensive regimes in place to confiscate the proceeds of crime and to attack money laundering, which is not confined to drug related money laundering but applies to all serious offences and tax evasion. Australia has also an extensive network of extradition and mutual assistance arrangements and has the capacity to exchange Cash Transaction Report information in appropriate circumstances.

51. The regime requires a wide range of institutions or cash dealers to report to a central agency -- the AUSTRAC¹ -- all cash transactions involving \$10,000 or more in Australian or foreign currency and any kind of transaction which is suspicious in the sense of relating to tax evasion, serious criminal activity or the proceeds of crime. The AUSTRAC also receives reports of the import and export of cash of \$5,000 or more in Australian or foreign currency. Cash dealers provide currency reports to AUSTRAC electronically and taxation and other law enforcement agencies are able to access all AUSTRAC data electronically. AUSTRAC is able to analyse its data to determine patterns and identify potential criminal activity. Cash dealers are also required to follow specified procedures in identifying signatories to accounts. From late 1992, cash dealers will also be required to report telegraphically and electronically transmitted international instructions for the transfer of funds to the AUSTRAC.

52. To the great credit of the professionals who manage her enforcement and financial system, a remarkable degree of co-operation among law enforcement agencies and between the financial and law enforcement communities characterises the Australian regime. There are some points of vulnerability within the system, but the review found that each of these points was well known to the authorities and, in most instances, proposed remedies were at hand. Officials are closely monitoring ongoing changes in Australia's drug markets and changes in the money laundering scenario to determine the need for corrective action.

53. While there are many unique aspects to the Australian situation and to its control system, the fact that it is one of two financial centres requiring reporting of financial data to a central agency, and the fact that it is the first government to adopt a national system for monitoring wire transfers, make Australia a learning laboratory.

(iii) **Appraisal**

54. The FATF is presently in the early stage of its mutual evaluation exercise. It is acknowledged that the main difficulty of this delicate procedure relates to the need to ensure a consistent standard of assessment across FATF members. However, there is a general consensus that the discussions on the first reports were of high quality. The selection of intervenors to lead the discussion from the floor proved to be very useful for stimulating a fruitful exchange of views and comments between the examined FATF member, the experts and the rest of the participants. This first set of examinations showed that the implementation of the FATF recommendations were either substantially achieved or well under way.

55. The need to ensure consistency of approach and the same degree of rigour in evaluating each individual FATF member's position is essential. To this end, FATF is in agreement that:

¹ Australian Transaction Reports and Analysis Centre (AUSTRAC) known as the Cash Transaction Reports Agency (CTRA) until 6th December 1992.

- the Secretariat must ensure consistency, both internally and across FATF members, of the first draft of the report (which is sent to the experts). This implies a need for very close co-operation between the Secretariat and the experts in the drafting phase;
- the particular circumstances of each individual FATF member (including the degree of development of the financial market and the state of advancement of the anti-money laundering framework) should be clearly identified in the report;
- the coverage of areas to be examined and the analytical assessment should be such as to ensure that a uniform treatment is applied to all FATF members.

56. To ensure that the procedure agreed by the Task Force is followed properly, a guidance note will be issued for examiners.

57. Finally, the consensual nature of all the different stages of the evaluation process should be emphasised.

II. KEEPING PACE WITH ON-GOING LAUNDERING TECHNIQUES AND REFINEMENT OF THE RECOMMENDATIONS

(a) Appropriate coverage of the money laundering techniques

58. The money laundering typologies have been studied carefully by Working Groups 1 and 2. The consensus was that no truly new methods had been discerned; the methods discussed in FATF-I and II continue to prevail although with more complex financial relationships, and more circuitous paths through financial institutions world wide. Virtually no financial institutions are immune as money launderers become increasingly sophisticated in their techniques. This in part reflects the success of FATF members in making money laundering more difficult by implementing counter-measures. It also paves the way for further work in the FATF to combat these more sophisticated laundering techniques.

Particular Issues Addressed

59. It was noted that the phenomenon of cross-border shipments of illegal-source currency, usually directed towards financial institutions in non-FATF countries and non-bank financial institutions both within and outside FATF countries, is on the increase. Sometimes, the currency is converted into gems, precious metals, or currency equivalent monetary instruments.

60. It was recognised that attention must be paid to transactions between banks and currency shipments between branches of the same bank as they may lead to information about money laundering transactions. For instance, an examination of international bank-to-bank bulk shipments of currency may lead to a bureau de change conducting large-scale money laundering operations. On the subject of bank-to-bank transactions, it was acknowledged that large-scale money laundering schemes usually involve a series of international funds transfers, generally by wire.

61. It was noted that payment orders effecting international fund transfers frequently omit the name of the true originator and beneficiary of the payment. Work is proceeding to try to find methods of ensuring an audit trail for such transactions.

62. A discussion took place on whether an increase in financial services both by banks and non-bank financial institutions in geographical areas of the country to a level not consistent with the local economy might be indicative of increased organised crime activity in the area.

63. Emphasis was put on the shift of money laundering activity to business sectors not yet fully covered by anti-money laundering laws and procedures. This is, in part, a reaction to tighter money laundering controls by banks. Sometimes, these businesses were not just victims of money laundering but willing participants. The issue of the background and financial relationships of majority or controlling shareholders of financial institutions was discussed.

64. Attention was given to the use of offshore shell corporations in money laundering schemes.

65. It was emphasised that the methods of money laundering in non-drug cases, e.g. customs fraud and bank fraud cases, are virtually identical to the methods employed in drug money laundering cases and often include the same criminal organisations.

66. It was noted that throughout the world there are certain lawyers that specialise in exploiting the secrecy laws of various countries to obscure the identity and the transactions of their clients, often to cover illegal activity, including money laundering. They frequently act as nominees for illegal entities so that the true identity of the beneficial owner can be shielded from law enforcement scrutiny. If illegal activity is detected, these lawyers avail themselves of the double-edged sword of financial institution secrecy and attorney-client privilege to prevent authorities from investigating the client's activities.

67. In the light of this typology discussion, FATF-III decided to adopt interpretative notes to the existing recommendations.

(b) Summary of the interpretative notes for the recommendations

68. The forty recommendations of 1990 represent the best possible result that could be achieved at that time. Nevertheless, it is clear that these recommendations do not represent the end of the task but that the FATF should periodically adapt them in the light of experience gained.

69. In parallel, all FATF member governments are busy implementing the recommendations, which is the top priority of the FATF. In order not to interfere with the ongoing process of the implementation of the existing recommendations, it was found advisable to postpone, for the time being, the adoption of modifications of, and/or any addition to, the forty recommendations. However, the Task Force decided to adopt interpretative notes to the existing recommendations. At a later stage, the FATF could consider on a consensus basis, elevating some or all of the topics covered by the interpretative notes and other additional topics suggested by the current typology to additional recommendations or amendments to the forty recommendations. It is understood that the interpretative notes do not add to or change the scope or the substance of the forty recommendations.

70. The relevant FATF-I recommendations should be read in conjunction with the following interpretative notes that are contained in the Annexes. In summary, they are:

Recommendation 5

71. FATF member governments should consider extending the crime of drug money laundering to one based on all serious offences and/or all offences that generate a significant amount of proceeds or on a wide range of enumerated serious offences.

Recommendation 11

72. This recommendation is generally understood as inviting FATF members to identify non-bank financial institutions and other business that have been used or are particularly vulnerable to be used in money laundering, and to exchange lists through FATF. These lists will be disseminated among the FATF members, but will remain confidential.

Recommendation 13

73. This recommendation provides that financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction is conducted if there are doubts as to whether these clients or customers are acting on their own behalf. This also applies where an attorney is acting as an intermediary for financial services.

Recommendation 15

74. Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, not only to transactions between financial institutions and their clients, but also to interbank and intrabank transactions.

Recommendation 23

75. The scope of this recommendation is not limited to currency, but also covers cash equivalent monetary instruments and other highly liquid valuables (e.g. precious metals and gems). To facilitate detection and monitoring of cash transactions, without impeding in any way the freedom of capital movements, FATF members could consider the feasibility of subjecting all cross-border transfers, above a given threshold, to verification, administrative monitoring, declaration or record-keeping requirements.

Recommendation 26

76. It would be useful for actively detecting money laundering if the competent authorities make relevant statistical information available to the investigative authorities, especially if this information contains specific indicators of money laundering activity (imbalance between the development of the financial services industry in a certain geographical area within a country and the development of the local economy, manifest changes in domestic currency flows without an apparently legitimate economic cause). However, prudent analysis of these statistical data is warranted especially as there is not necessarily a direct relationship between financial flows and economic activity (e.g., the financial flows in an international financial centre).

Recommendation 29

77. This recommendation should not be read as requiring the introduction of a system of regular review of licensing of controlling interests in financial institutions for money laundering purposes, but as stressing the desirability from a FATF point of view of a suitability review for controlling shareholders in financial institutions. Hence, where shareholder suitability (or "fit and proper") tests exist, the attention of supervisors should be drawn to their relevance for anti-money laundering purposes.

Recommendation 33

78. Subject to principles of domestic law, countries should endeavour to ensure that differences in the national definitions of money laundering offences, -- e.g., different standards concerning the intentional element of the infraction, differences in the predicate offences, differences with regard to charging the perpetration of the underlying offence with money laundering -- do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

Recommendation 38

79. Each FATF member government shall consider, whenever possible, establishing an asset forfeiture fund in its respective country into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes.

80. Each FATF member government should consider, whenever possible, taking such measures as may be necessary to enable it to share among or between other countries confiscated property, in particular, when confiscation is directly or indirectly a result of coordinated law enforcement actions.

Shell Corporations

81. FATF members should take notice of the potential for abuse by money launderers of shell corporations and should consider measures to prohibit unlawful use of such entities.

Deferred Arrests and Seizures

82. FATF member governments should consider taking measures, including legislative ones, at the national level, to allow their competent authorities investigating money laundering cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering. Without such measures the use of procedures such as controlled deliveries and undercover operations are precluded.

III. STRENGTHENING THE INTERNATIONAL ROLE OF THE FATF

83. FATF is not an international organisation, but a group of governments that has agreed to adopt and to implement a comprehensive set of recommendations with the aim of combating money laundering. While the overall centre of gravity of the FATF is to be the cooperation among member governments, it is clear that such an aim cannot be achieved in isolation.

84. Alongside the implementation and evaluation of the forty recommendations, therefore, the FATF must remain aware of the vital importance of developing a clear external strategy to ensure the widest dissemination of the FATF programme and cooperation between FATF and other countries to detect and to deter money laundering. FATF has approached this task through a range of activities.

(a) Ensuring the widest possible dissemination of the FATF programme

(i) **Implementation of the recommendations by dependent, associate and otherwise connected territories**

85. FATF members have taken responsibility for encouraging the implementation of the forty recommendations by those dependent, associate or otherwise connected territories with which they have constitutional, historical or geographical links. These territories form a diverse grouping. However, they include some of the more significant offshore centres, and other areas of financial activity.

86. In all cases the sponsoring FATF member government has sought the endorsement of the forty recommendations by the territory, and in general this has been given. For these small jurisdictions, the importance of having a reputation as a clean financial centre is recognised increasingly. Where the recommendations have been endorsed, the sponsor governments are continuing to encourage the territories to adopt appropriate legislation and introduce adequate institutional arrangements. The territories have also taken part in the self-evaluation process.

(ii) **Drawing up and overseeing implementation of the action programme for relations between FATF and third countries**

87. The FATF has also been drawing up an action programme for relations with third countries. A three-stage approach has been defined. Regional conferences are an effective means of introducing the issue of money laundering around the world. These can be followed up by regional initiatives, where collective commitment and peer pressure are key components of the effort. Finally, where key problems are identified, they can be tackled through bilateral initiatives between individual FATF member governments and particular third countries.

88. Significant regional initiatives have included the Caribbean Financial Action Task Force, which organised a technical workshop in Jamaica in May, to be followed by a ministerial conference in the autumn. This initiative has provided valuable opportunities for the FATF message to be spread across a key region.

89. The FATF has also made a presentation to the South East Asia Central Bank Board of Governors (SEACEN). That presentation included an assessment of money laundering trends both locally and in South East Asia and the Pacific Rim. SEACEN delegates devoted two sessions of their meeting to the discussion of money laundering and the FATF. Clearly, further work by the FATF alongside SEACEN would be extremely effective. In particular there is scope for the FATF to co-operate with the SEACEN training centre in Kuala Lumpur.

90. At present, the central and eastern European region is not one of the most significant centres of money laundering. However, as the economies of these countries become more integrated into the world

financial system and their currencies move to convertibility, they will become attractive to money launderers. At the same time, the reform and restructuring of the Eastern European financial sector presents an ideal opportunity for these states to take measures which would help them to protect themselves against money laundering. In 1991, the Task Force had already held a seminar for them on the work of the FATF under the auspices of the EC Commission. During FATF-III, the Steering Group of the Task Force met with the three PIT countries (Hungary, Poland, Czechoslovakia) in Paris. This dialogue should continue during FATF-IV. Other initiatives have included work in Africa and Latin America through the Organisation of American States.

91. Alongside these regional initiatives, FATF members have identified key countries around the world where bilateral initiatives are likely to lead to the most positive results. FATF members have encouraged a range of such countries to endorse the forty recommendations and take the necessary steps to implement them.

(b) The definition of a proper external profile

(i) **Clarification and improvement in the relations with international organisations**

92. Perhaps in part as a result of the FATF's pioneering activity, the last year has seen a growth in the number of international bodies who have taken an interest in money laundering. Nevertheless, the key to a coherent and effective campaign against the menace of money laundering lies in the effective co-ordination of the activities of all these bodies, and in ensuring that each has its own clearly identified role.

93. The FATF must lie at the heart of this process. It alone is dedicated to policy development. By providing a forum in which policy makers, regulators, and law enforcement agencies can discuss emerging developments freely and frankly, the FATF has been able to take a lead in defining measures to combat money laundering. Other organisations have the structure and resources to disseminate good practise on the ground, but the FATF can provide the appropriate policy steer, backed up by the high level political endorsement of national governments, the OECD Ministerial meeting and the Summit of the Heads of State or Government of Seven.

94. In its discussions with the United Nations International Drug Control Programme (UNDCP), the International Monetary Fund and the Council of Europe, the FATF is developing a working relationship which is intended to make the best use of the respective strengths of these organisations, while providing a coherent mechanism for implementing FATF policies. The FATF also works with the Customs Cooperation Council and Interpol, and has contact with the World Bank. Looking ahead, the prospects are for ever greater interaction and co-operation between the range of international organisations at work in this field.

95. The implementation of an action plan, involving FATF members and international organisations, will be at the heart of FATF's outreach programme over the next two years. FATF's aim is to ensure that international organisations can make use of its expertise in their respective fields of activity; and conversely that the experience and knowledge of the organisations is fed into the policy making process in the FATF.

(ii) **Other strategic issues**

FATF membership

96. Any discussion of the role and identity of the FATF must inevitably involve taking a view on its own membership. FATF now has twenty eight members. For an organisation that prides itself on its informality of procedure and ready ability to achieve consensus, this is clearly approaching the maximum

membership possible. The FATF has, therefore, decided not to accept any new members for the time being.

Expertise and technical assistance

97. FATF members represent a major source of expertise in all aspects of the fight against money laundering. The FATF is putting together a register of the expertise and technical assistance that each member can provide. When complete, this register will be able to function as a source for programmes of assistance to non-member countries developed by international organisations or by the FATF itself. The creation of this register will perhaps provide a long term support system for the continued extension of the FATF recommendations across the world. The FATF is also exploring with relevant international organisations what assistance they could offer in this area.

CONCLUSION

98. No segment of the financial industry and no country is immune from the risk of being penetrated by money launderers. The Financial Action Task Force groups a number of governments with a developed financial system. Their common purpose is, and will remain, their determination to pursue convergent and comprehensive money laundering strategies based on international co-operation, while preserving both the efficiency of the financial system and the freedom to engage in legitimate financial transactions.

99. FATF is the only body whose focus is exclusively on money laundering. Its substantive legitimacy stems from the political and moral obligation to implement the forty recommendations drawn up in 1990. On the one hand, this implies a continuing emphasis in the FATF in verifying the implementation of the recommendations in a fair and objective manner. On the other, it is crucial to keep abreast of the evolving money laundering techniques in a rapidly changing international environment. These priorities are complemented by an integrated strategy designed to address systematically the interface with non-member countries and to coordinate efforts fully with other relevant international bodies in its pursuit of worldwide mobilisation against money laundering.

100. One of FATF's crucial advantages, as the key money laundering policy making body, lies in its highly flexible structure. This puts the Task Force in an excellent position to take the lead in tackling the increasingly global character of the money laundering phenomenon. FATF-IV, under the presidency of Australia, will carry forward this role, extending and refining the work of the Task Force both geographically and technically.

FATF-III

**FINANCIAL ACTION TASK FORCE
ON MONEY LAUNDERING**

**ANNEXES TO THE ANNUAL REPORT
1991/1992**

JUNE 25, 1992

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REPORT OF WORKING GROUP I (LEGAL)

The work of Working Group I (WG I) in FATF-III centered on three areas (1) discussion of emerging trends and typologies of money laundering; (2) framing complements to or interpretations of the original forty recommendations of FATF-I necessary to meet the challenges posed by these trends and typologies; and (3) refinement and implementation of the self-assessment and mutual evaluation monitoring mechanisms.

Typology

WG I was given the assignment of working with the law enforcement agencies of the member countries to refine and update the assessments of money laundering typologies made in FATF-I and FATF-II. It was generally recognised that no discussion of complements to, or interpretations of, the original recommendations could be advanced without reference to how money is currently being laundered.

To this end, the Chairmen of WG I and WG II convened a Subgroup of members to prepare for a presentation on typology and to begin discussion of possible complements. This Subgroup, consisting of Italy, Luxembourg, the United Kingdom, the United States, and Switzerland, as well as Interpol and the Customs Cooperation Council, met for two days in early January and produced a report.

A full discussion of typologies and trends among all the members took place at a joint session of WG I and II in late January. The Chairman of WG I solicited examples of recent cases reflecting new methods and current variations of recognised methods from the members. Australia, Canada, Hong Kong, Italy, the Netherlands, the United Kingdom, the United States, Singapore and Switzerland submitted case examples. A typology paper was produced incorporating these case examples and the discussion on typologies.

With the backdrop of the typology session and the work of the Subgroup, WG I and II began discussions of possible complements to the forty recommendations in their January and February sessions. Complements were discussed relating to the predicates of money laundering: legal cooperation in the face of differences in national definitions of money laundering; the problem of cross-border shipment of illegal source currency; deferring arrests to facilitate policy methods such as controlled deliveries; sharing and earmarking of confiscated assets; abuse of attorney-client privilege; and the problem of shell corporations.

Interpretative Note

At the Plenary Session in February, it was decided that no new complementary recommendations would be put forward in FATF-III in view of the fact that many members were still in the midst of implementing the original forty recommendations. Therefore, Working Groups I and II were tasked with drafting an interpretative note based on the discussions of complements which had taken place in the groups up to that time. This interpretative note, as refined in subsequent working group sessions in March and April, is in Annex IV below.

The interpretative note and the comparable note drafted by WG II are to be read side-by-side with the original forty recommendations. In the next sessions of FATF as the trends and typologies continue to support the concepts set forth in the interpretative note or support other complementary topics, FATF will consider adapting additional recommendations of the same standing as the original forty recommendations.

There was one topic discussed in WG I which the Group did not agree to include in the interpretative note but did agree should be discussed in the WG report and perhaps be put forward to the Plenary for discussion -- the issue of attorney-client privilege as it impacts on money laundering cases.

The Group noted that throughout the world there are certain lawyers who specialise in exploiting the secrecy laws of various countries to obscure the identity and the transactions of their clients, often to conceal illegal activity, including money laundering. Money launderers and their clients are increasingly relying on these attorneys to assist them in their criminal ventures. In some instances attorneys are used to establish shell corporations through which monies can be laundered, while in other instances, monies are actually being laundered through attorney-client trust accounts.

The group agreed that the fact that a person acting as a financial advisor or nominee is an attorney should not in and of itself be sufficient reason for such a person to be able to invoke an attorney-client privilege. Moreover, in order to ensure that false claims of attorney-client privilege are not being used to afford protection to money launderers and/or to obstruct money laundering investigations, competent authorities should examine carefully the validity of any claim by attorneys of such privilege. The attorney-client privilege must be pierced where the privilege has been falsely asserted to shield criminal activities of money launderers.

Monitoring Mechanisms

In the September Working Group session, WG I developed a questionnaire for the members to complete to facilitate the review through the self-assessment process of the current state of implementation of those of the forty recommendations assigned to WG I (recommendations 1-8 and 33-40). The members were then asked to complete the questionnaires and submit them to the chair with narrative comments as necessary. All but two members did so. The response and the methodology for the matrix was discussed in the February Working group session. The chair compiled the responses in a matrix. Each member's responses as they appear on the matrix were approved by that member.

Also in the September session, WG I developed questions for inclusion in the mutual evaluation questionnaire to be completed by each member prior to on-site visits by mutual evaluation teams. WG I twice met in joint session with WG II to discuss the reports of the mutual evaluation teams on the four countries mutually evaluated this session, France, Sweden, Australia and the United Kingdom.

As illustrated by the matrix of answers to the self-assessment questionnaire, it is apparent that, to an ever-increasing degree, FATF member countries are becoming compliant with those of the forty action recommendations that pertain to WG I. In this respect, substantial progress has been made over the past two years. The challenge for the future will be to ensure that the original recommendations keep pace with the current trends and typologies of money laundering, and that FATF member and non-member countries continue regularly to refine their laws and the rigor with which they are enforced so that loopholes do not develop through which money launderers can escape the coordinated efforts of law enforcement worldwide.

REPORT OF WORKING GROUP II (FINANCIAL)

I. Introduction

On September 24 and 25, 1991, FATF III established the following mandate for WG II:

1. Establishment of a balanced monitoring mechanism for, in consultation with WG I (Legal):
 - (a) self assessment:
 - i) questionnaire;
 - ii) compilation and analysis of answers.
 - (b) mutual evaluation:
 - i) questionnaire;
 - ii) list of examiners with expert knowledge in financial matters
 - iii) procedures, in co-operation with WG III (leadership) and WG I;
 - iv) discussion of the draft reports.
2. Regulatory coverage of non-banking financial institutions as well as other sectors.
3. Monitoring of new money laundering techniques in co-operation with and under the leadership of WG I, including general lessons to be learnt from specific cases.
4. Development of co-operation with other international organisations and committees (IOSCO, Basle Committee on Banking Supervision).
5. Establishment of list of suspicious transactions for guidelines (rec. Nr. 28).
6. Complements to the forty recommendations if necessary.

II. Accomplishments

1. Monitoring mechanism

(a) Self assessment

During the September 24 and 25, 1991 meeting, a self-assessment questionnaire was agreed upon. All members have filed their answers to the questionnaire. The chairman of WG II has distributed a compilation of answers given to the questionnaire. During its February 20, 1992 meeting, the Working Group discussed this compilation. As the answers filed are supposed to reflect the current state of implementation, several members have subsequently updated the information contained in the compilation. An analysis was produced based upon the filed answers to the questionnaire as updated.

(b) Mutual evaluation

The September 24 and 25, 1991 meeting paved the way to agreement regarding a questionnaire for the Mutual Evaluation Procedure. Meanwhile, a list was made of examiners with expert knowledge in financial matters. During a joint meeting on March 30 1992, Working Groups I and II were able

to discuss the draft reports on the first two countries under the Mutual Evaluation Procedure: France and Sweden. The draft report on the United Kingdom and a document concerning the report on Australia were discussed in a joint meeting on May 13 1992. After having made some amendments, the working groups accepted the report on the United Kingdom and asked the Secretariat to write the report on Australia in line with the discussion.

2. Non-banking financial institutions and other sectors

In view of the fact that FATF in its first two sessions, consciously or unconsciously, focused its attention primarily upon banks, WG II was mandated to pay special attention to non-bank financial institutions. Experts from three different representative non-bank financial sectors (bureaux de change, insurance and securities), and experts with a specific regulatory background in respect of these sectors, were invited to give a discourse upon the issue of money laundering in their sector to the seminar, in order to raise the level of awareness of WG II members as to the specifics of these sectors. On February 19 1992, this seminar on non-bank financial institutions was convened.

3. New money laundering techniques

At the first plenary meeting of FATF-III in September 1991, FATF assigned the task of continuing to monitor typologies and trends in money laundering to WG I, in coordination with WG II. From the beginning of FATF the understanding of how money laundering takes place has been essential to the development of effective countermeasures and it will continue to be important as FATF works towards implementation of the forty recommendations and possible complements.

On January 8-9, the chairmen of WG I and II convened a subgroup of experts, the subgroup on Typology, to produce a paper on typology and discuss possible complements to the original forty recommendations, in preparation for the January 30-31 meetings of the working groups. The discussion of typologies extended to money laundering based both on drug- and non-drug related crimes. In attendance were representatives from Italy, Luxembourg, Switzerland, the United Kingdom, the United States, the Customs Cooperation Council and Interpol. On January 30 1992, WG I and II held both joint and separate meetings on money laundering typologies. The meetings were also attended by representatives from Interpol and the Customs Cooperation Council. Delegates discussed recent cases and trends. A number of members, including Hong Kong, Italy, Singapore, Switzerland and the United States, provided the working groups with a description of new cases, typologies and emerging trends on which the discussion could be based. The consensus of the discussion was that no truly new methods had been discerned; the traditional methods continue to prevail with more sophisticated variations, including more complex financial relationships, and more circuitous paths through financial institutions world-wide. Virtually no financial institutions are immune. In general, the schemes make prevention, detection and prosecution an even greater challenge for governments and financial institutions than was the case two years ago at the beginning of FATF. This increased sophistication is in part a testimony of the success of FATF. However, in the face of this increased sophistication, the need for continued close cooperation and communication between financial institutions and government authorities was stressed throughout the discussion. This was confirmed in a presentation to WG I and II by an official of the Standard Chartered Bank, London, on the measures this group of banks has taken against money laundering.

4. Co-operation with other international organisations and committees

WG II decided to establish a list of contact persons with the IMF, IBRD, IOSCO, the Basle Committee on Banking Supervision and the Offshore Group of Banking Supervisors. It furthermore decided to invite representatives of these organisations on an ad hoc basis to participate in WG II meetings.

5. List of suspicious transactions

According to FATF recommendation 28, the competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. In this connection, WG II decided to make a compilation of the relevant information as it is presently being used by members. Responding to a request of the chairman of the working group, eleven countries have so far submitted views on what should or could constitute "suspicious transactions" (Australia, Belgium, Greece, Hong Kong, Italy, Luxembourg, New Zealand, Sweden, Switzerland, the United Kingdom and the United States). On the basis of these contributions from members, a confidential compilation was made.

The attention of the Working Group was drawn to the possibility of collecting suspicious or unusual transaction reports currently used in member countries in a standardised form and developing a standardised transaction reporting format. This issue will be proposed for WG II's mandate under FATF-IV.

6. Complements to the 40 recommendations

6.1 Interpretative Note

In recognition of the need for flexibility of the FATF I recommendations in view of the changing environment, and in particular in view of new money laundering techniques and typology, the Plenary in its meeting on 20 February 1992, requested WG I and II to produce an Interpretative Note for adoption as an annex to the FATF I recommendations.

This Interpretative Note will be presented as a supplement to the FATF I recommendations. It will be open to changes in the future if and when these are considered necessary or desirable to effectively counter money laundering. It is emphasised that its contents do not add to or change the scope or substance of the forty recommendations as agreed by FATF I. Consequently, the Interpretative Note does not imply any interference with the implementation of the forty recommendations in progress in most FATF countries. Within the next two years the FATF could consider elevating some or all of the topics covered by this Interpretative Note to additional recommendations or amendments to existing recommendations, and address the specific language of these recommendations.

6.2 Other issues discussed

The Working Group discussed the issue of electronic funds transfers.

The Working Group noted that in some countries the central bank advises investigative authorities of domestic currency flows. The group acknowledged that this has been useful in some countries to actively detect money laundering, but noted that such tracking would not be feasible in every country.

The Working Group stressed the fact that some shell corporations (legal entities bought solely for their status as a legal entity) are being used by money launderers as a front to hide their activities, and that countries, while implementing recommendations 13 and 15, should be aware of this potential for abuse.

The Working Group discussed the feasibility of introducing prudential supervision for all non-bank financial institutions. The Group recognised that, from a FATF point of view, a good case could be made that all non-bank financial institutions should be licensed and regulated, in order to get a handle on money laundering by these institutions. However, the Group also recognised that this

could be a very expensive and burdensome undertaking for government authorities and that it would be unusual to institute supervision of financial institutions for non-prudential purposes.

The general feeling of the Group was that while appropriate anti-money laundering controls must cover this sector, it would be unrealistic to expect countries to introduce a system of prudential supervision of non-bank financial institutions solely for this purpose.

The Working Group discussed the issue of so-called omnibus or trust accounts. In these bank accounts (frequently held by securities brokers, law firms, investment managers, etc.) monies of different clients are intermingled; this causes anonymity of these clients. An additional problem is that ownership regularly changes. The Group recognised that this issue is troublesome in terms of effective implementation of recommendation 12; the Group therefore calls for special attention to the beneficial owners of these accounts. The few members that have already addressed this issue were asked to share information about their approaches and findings with the Group.

7. Currency transaction reporting

During the March 30 and 31, 1992 meeting of the Working Group, Australia and the United States made presentations of their Currency Transaction Reporting systems. Documentation on the Australian and U.S. systems was distributed and is available for FATF member governments through the Secretariat.

REPORT OF WORKING GROUP III (EXTERNAL RELATIONS)

Introduction

The Mandate for Working Group III was adopted at the FATF meeting on 24 and 25 September. Part one of this report details the progress made by the Working Group, and makes a number of general recommendations for future activity by the FATF. Part two is an action plan for the further development of relations between the FATF and other countries and organisations.

Part One: The Activities of the Working Group

A. Co-ordination and Oversight of self-reporting on progress in implementing Task Force recommendations by dependent associate or otherwise connected territories of FATF members

A1. A list of those dependent and associate and otherwise connected territories identified by the Working Group members was drawn up. In each case the "sponsor" country agreed to send to the territory a copy of the FATF report and recommendations, and copies of the self-assessment questionnaires. The territories were asked whether they would endorse the FATF recommendations, and were also asked what steps they were taking to implement the Vienna Convention and FATF recommendations.

Conclusions

A2. All the dependent, associate or otherwise connected territories of FATF members that were approached have, in broad terms, welcomed the FATF initiative. Responses to the initiative have varied from territory to territory, but a start has been made. The Working Group recommends that all FATF members continue to do all they can to encourage the territories with whom they are connected to take forward the FATF recommendations within their own jurisdictions, and to ensure that the spirit of the recommendations is respected as well as the letter, and to encourage them to participate in appropriate regional initiatives.

B. Drawing up and overseeing implementation of action programme for contacts between FATF and third countries

B1. The Working Group identified a three-stage approach for contact with third countries: regional conferences were an effective means of introducing the issue around the world; these could be followed up by regional initiatives, where collective commitment and peer pressure were key components of the effort; finally, key problem countries could be tackled through bilateral initiatives with FATF member governments within the overall FATF external relations strategy.

B2. In the Caribbean area, the Caribbean FATF is holding two conferences this year with FATF sponsorship following on the recommendations of the 1990 Aruba conference. In Latin America the OAS is conducting a money laundering initiative. International organisations such as the IMF, OECD and World Bank were providing advice to Eastern Europe on financial systems, and they were prepared to take money laundering into account. The EC Commission has carried out missions to Eastern Europe in order to set up the basis for cooperation in this field. The Council of Europe has also made specific presentations to Eastern Europe on Narcotics Money Laundering. In Asia, the FATF made a presentation to the South East Asia Central Bankers' Board of Governors (SEACEN), and to the Commonwealth Economic Crime Conferences in Barbados, Oxford and Hong Kong. Australia and New Zealand have also been active in the South Pacific. In Africa, the African Development Bank organised a discussion on

money laundering in the context of their annual meeting in Abidjan; several African countries were also identified as appropriate for bilateral contact by FATF members. The Gulf Cooperation Council has promoted compliance with FATF recommendations by its six Gulf State members.

Conclusions

B3. Experience suggests that regional initiatives, as exemplified by SEACEN and the Caribbean FATF, offer considerable potential for spreading the FATF message. Regional conferences offer the opportunity for expert input to reach a wide audience efficiently. If the conferences are followed up effectively, peer pressure has the potential to add momentum to the process of reform and development. Accordingly the Working Group recommends that the FATF should encourage regional initiatives and regional conferences to expand the FATF consensus among non-member countries. Given the policy-oriented nature of the FATF, this encouragement may best take the form of providing expert speakers, and diplomatic suasion to cooperate with FATF by securing agreement among members of these regional groups, including support through embassies and consulates.

B4. Anti-money laundering initiatives can only be successfully pursued where there exists appropriate legal underpinning. It is important therefore that the early stages of developing a policy to combat money laundering involve the drafting of effective legislation. Otherwise the potential of the launderers to exploit the financial system will rapidly outstrip the capacity of the authorities to prevent them.

C. Identifying what technical assistance is available from what sources to help countries combat money laundering and to facilitate access to that assistance

C1. It has been accepted that the FATF is a policy making body, and should not itself provide technical assistance. However, the Working Group asked all members to provide the FATF Secretariat with a brief account of the technical assistance that they were in a position to offer to third countries in the field of money laundering.

C2. A second source of technical assistance is the various international organisations who are active in the fields of financial reform and the combatting of drug trafficking. Chief among these are the United Nations International Drug Control Programme, the European Commission, the IMF, the World Bank and the Council of Europe. Representatives of these bodies discussed the opportunities for mutual cooperation at the February meeting of Working Group III. They operate across a wide span, from high-level policy makers to the training of banking staff, and can offer assistance with problems that range from structural weaknesses in a national financial system, to the shortage of microcomputers within a banking supervisor, from the provision of new legislation, to advice to customs officials. Contacts have also taken place with Interpol and the Customs Cooperation Council.

C3. The international bodies all expressed a willingness to assist the FATF, and saw its role as one of channeling requests from countries and regions to them, and of overseeing the whole process.

D. In conjunction with the FATF Secretariat, to evaluate methods for establishing a database of the laws and regulations of FATF participants in the field of money laundering

D1. The Working Group noted that much of the data for this exercise would emerge from the self-assessment and mutual evaluation processes, and could begin with the full establishment of the Secretariat in June 1992.

D2. The Working Group therefore recommends that this exercise should be taken forward under the next presidency of the FATF.

Part Two: An Action Plan for External Relations

Introduction

The FATF is not a formal international organisation, but a group of governments who have agreed to elaborate and to adopt a comprehensive set of recommendations with the aim of combating the menace of money laundering. While the principal thrust of the FATF is based on cooperation among member countries, it is clear that a global strategy is needed if the fight against money laundering is to succeed.

Principles

The FATF seeks to cooperate with other bodies that have a role to play in combating money laundering. The Working Group has discussed with several international organisations their activities and expertise. These included the UNDCP, the IMF, and the EC Commission. The FATF is different from all these organisations because it is solely concerned with policy development. This unique feature must be recognised in the FATF's external relations.

Money laundering is an international menace. It must be tackled internationally. Action to eradicate the problem in a single country is likely to lead to its rapid reemergence in another, probably nearby, country. Where suitable regional structures exist therefore, money laundering may most effectively be tackled at the regional and global levels. The initial stages of the external activities of the FATF, raising awareness of the nature and scope of the problem, should therefore be conducted where appropriate on a regional basis. The experience of the Caribbean FATF and SEACEN demonstrate how this can be taken forward. However, where appropriate regional bodies do not exist, or do not appear to be adequately equipped for this function, it may be better to target individual problem countries. Experience in Africa indicates that this may be the way forward there.

While the need to raise the awareness of the problems of money laundering is common to all countries, their requirements for assistance and expertise vary widely.

Because of their status as lightly regulated offshore havens with sophisticated financial sectors and favourable tax regimes, some jurisdictions have attracted unwelcome flows of illegal money. The needs of those states are likely to include more sophisticated legislation, training in identification of complex laundering operations, and treaties to provide for international cooperation in apprehending and prosecuting money launderers. This is the position in some Caribbean states and territories.

Other states, particularly some in Central and Eastern Europe, are developing wholly new financial sectors within industrial economies. These are countries whose basic needs extend beyond assistance in combating money laundering, and where FATF activity is likely to form part of a wider operation to develop and safeguard the financial sector. A key problem is how to develop supervisory and regulatory systems against a background of mistrust of state interference of any sort. Furthermore, the convertibility of domestic currencies provides new routes for money laundering, and the opening of borders allows increased flows of cash across borders. So assistance for these countries must cover banking supervision and customs controls to combat illicit activities, as well as basic training and new legislation.

A third group of countries includes those where there is as yet no money laundering problem, but where the local systems are sufficiently undeveloped that they might be targeted by money launderers driven out of other jurisdictions. Many African countries might fall into this category. Here the need is

for constant vigilance, and close cooperation with international organisations who are in a position to take early action against the incipient threat.

Finally, there is the special case of the major narcotics producer countries. For these countries the problems will tend to involve flows of money that have already entered the international financial system. This is an area where, as yet, the FATF has been less active, although FATF-endorsed approaches have been made to Latin American governments by the OAS. The overall situation is changing in these countries, and organisations such as the OAS are increasing their activities.

Once the issue of money laundering has been identified by a non-member country as an area where assistance is needed, the FATF should discuss with that country its specific problems, and seek to identify the best sources of expertise and assistance. The FATF should, in effect, act as a clearing house for requests for assistance.

The methods adopted by money launderers change over time, and it will be an important part of the future activity of the FATF to keep up with developments, and to counter them. At the same time the extent of the problem in non-member countries will change, as will the activities of international organisations providing technical assistance. These changes will need to be monitored. For this purpose some sort of feedback mechanism will need to be developed.

We could invite feedback at the regional level from those bodies through whom the FATF has spread its message. The organisations could send representatives to meetings of the FATF or its Working Groups to talk about progress in their area. The international organisations offering technical assistance could do likewise.

Creating a Dialogue

The first priority for the FATF in raising awareness of the importance of countering money laundering should be to identify appropriate regional fora through which to operate. In some parts of the globe, the appropriate mechanism is already developed. The Caribbean Financial Action Task Force is clearly the best body for the promulgation of the FATF message to the Caribbean region. In South America the Organisation of American States (OAS) appears best suited to introducing the FATF's work to the countries of Central and South America. The FATF should do all that it can to support the conferences organised by Jamaica to counter money laundering in the Caribbean region. The OAS should be encouraged to promote its draft anti-money laundering legislation widely among its membership, and to stress to all its members the dangers inherent in allowing money launderers access to their financial sectors.

SEACEN represents the Central Banks of the principal financial centres of South East Asia. SEACEN has already discussed the work of the FATF, and is keen to support it. It provides a good forum for the continued spreading of the FATF message among the countries of South East Asia. The Commonwealth Secretariat together with the Drug Control Programme of the Colombo Plan, and the UNDCP, have a role to play in bringing the FATF message to the attention of countries in the region, not least through workshops such as that being organised in Bangkok in the autumn. The Gulf Cooperation Council is a member of FATF, and active in combating money laundering among GCC member countries. The GCC might be best placed to take forward the FATF message in the Gulf region.

The African Development Bank has already hosted one discussion at Abidjan (Côte d'Ivoire) on money laundering. It would probably be the organisation with the most appropriate membership to spread FATF policies among the countries of Africa. It has not, however, shown great enthusiasm. The ADB should be encouraged politically to follow up the Abidjan conference with further work to counter money laundering within Africa. However, the evidence suggests that individual approaches may be more immediately productive, and so at the same time, FATF members should continue to pursue

bilateral efforts to address the issue with those countries identified as being of particular concern, alongside any regional efforts.

In Central and Eastern Europe, and the former Soviet Union, the Council of Europe has been organising a number of seminars and conferences, including a number on narcotics and money laundering. The FATF should continue its work with the Council of Europe to raise the awareness of this issue among the countries of Central and Eastern Europe, including the Republics of the former Soviet Union. The EC Commission and the IMF have also been active in Central and Eastern Europe, and have developed programmes of work involving the governments and Central Banks of the region. Where contacts have been made, and programmes of assistance are being developed, FATF members should cooperate with each other and the various international bodies in the identification, organisation and provision of expertise.

Between them the organisations identified in the preceding paragraphs cover almost the whole globe. The External Relations Working Group of the FATF should establish close working relationships with these bodies, and ensure that FATF policies and recommendations to combat money laundering are included in their work within the financial sector. This involvement should, as appropriate, cover the provision of expert speakers for regional conferences, the supply and evaluation of self-assessment questionnaires, and contact points for further work.

Technical Assistance

There is a range of expertise and assistance available from international organisations and within FATF member states. The FATF is uniquely placed to act as a clearing house, identifying appropriate sources of assistance in response to approaches from individual countries.

The United Nations International Drug Control Programme (UNDCP), based in Vienna, has some 16 field officers in place around the world. It also has a central training unit, and has recently created a post with special responsibility for money laundering. The UNDCP is in a good position to move rapidly to assist the FATF: it could provide training, draft legislation and supply equipment, such as microcomputers. Geographically, UNDCP operates within developing countries, and currently also in Central and Eastern Europe. The Council of Europe also has programmes in Central and Eastern Europe.

The International Monetary Fund operates at a senior policy level, and is well placed to influence countries at central Bank Governor level. The IMF has expertise in the working of financial systems, and could help the FATF's effort by identifying serious weaknesses within banking systems. The World Bank is similarly placed.

The EC Commission is active in Eastern Europe. In addition to raising awareness of the problem, the Commission is planning to provide technical assistance to the countries to help with the adoption of appropriate legislation in this field and, once this legislation is adopted, the setting up of education and training programmes in cooperation with professional organisations across the financial area.

FATF Member Governments are providing the Secretariat with information about technical assistance that they can offer. This will help establish a database of expertise and assistance that can be made available.

The FATF's approach should be to advise non-members that once they have assessed the problem of money laundering as it affects them, they should establish a list of their needs. The FATF will discuss and refine this with list them, and identify the best sources of assistance and expertise,

whether from an international organisation or from a member state. The FATF should be in a position to cover all requests from non-members.

Feedback

Clearly it is not sufficient to point countries in the direction of some source of assistance, and do nothing more. The FATF will need feedback, both from the countries seeking assistance and the bodies providing it. It is only in this way that the FATF can monitor the effectiveness of its activities and its success (or otherwise) in preventing the growth of money laundering. As part of its regular activities, therefore, the FATF should seek regular reports from those active in the field, and serve as central point for information, as well as assistance.

Summary

The FATF should, in short:

- a. raise awareness of the problem of money laundering, where appropriate, at the multilateral and regional level, but also bilaterally through its offices and members;
- b. serve as a clearing house for the processing of requests for technical assistance and expertise; and
- c. monitor the progress of work in non-member countries, to inform current and future work.

CONTRIBUTION OF WG I (LEGAL) TO THE FATF-III INTERPRETATIVE NOTE

Recommendation 5

Methods to launder money in non-drug cases are virtually identical to the methods employed in drug money laundering cases and often involve the same criminal organisations. In addition, drug organisations often engage in other criminal conduct which produce proceeds to be laundered. In all cases, it is often difficult to prove a direct link between the money launderer and the narcotics-related offences. Therefore, in criminalising money laundering, other formulations to criminalise non-narcotics based money laundering offences are preferable to requiring proof that the underlying offence be narcotics-related or linked to narcotics. **"Countries should consider extending the offence of drug money laundering based on all serious offences and/or on all offences that generate a significant amount of proceeds or on a wide range of enumerated serious offences."**

Recommendation 33

Differences in national definitions of money laundering should not serve as impediments to mutual legal assistance in money laundering cases. It is the consensus of the FATF that there should be an expansive and flexible system of mutual assistance based on the goal that form does not take precedence over substance. To this end: **"Subject to principles of domestic law, countries should endeavour to ensure that differences in the national definitions of the money laundering offences -- e.g., different standards concerning the intentional element of the infraction, differences in the predicate offences, differences with regard to charging the perpetrator of the underlying offence with money laundering -- do not affect the ability or willingness of countries to provide each other with mutual legal assistance."**

Recommendation 38

Even though it is recognised that it is best left to each country's domestic legislation to resolve the matter of how to handle confiscated assets at the national level, it is nevertheless agreed that:

(1) To increase the funds available to combat narcotics trafficking and money laundering: **"Each country shall consider, when possible, establishing an asset forfeiture fund in its respective country into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes."**

(2) To foster maximum co-operation in money laundering forfeiture actions which transverse international borders: **"Each country should consider, when possible, taking such measures as may be necessary to enable it to share among or between other countries confiscated property, in particular, when confiscation is directly or indirectly a result of coordinated law enforcement actions."**

Shell Corporations

Shell corporations create formidable roadblocks in money laundering cases not only for government authorities but for financial institutions attempting to determine their client's true identity or the beneficial owner of accounts and/or to detect suspicious activity. Therefore: **"Countries should take notice of the potential for abuse by money launderers of shell corporations and should consider measures to prohibit unlawful use of such entities."**

Recommendation 23

The phenomenon of cross-border shipments of illegal-source currency is increasing and growing more complex. Currency from the sale of drugs is also frequently converted into gems, precious metals, other highly liquid commodities, and cash-equivalent monetary instruments. The need for immediate action with respect to such property in the course of international transportation is of critical importance to law enforcement. Therefore: **"If a country discovers an unusual international shipment of currency, monetary instruments, precious metals, or gems, etc., it should consider notifying, as appropriate, the Customs Service or other competent authorities of the countries from which the shipment originated and/or to which it is destined, and should co-operate with a view toward establishing the source, destination, and purpose of such shipment and toward the taking of appropriate action."**

Deferred arrests and Seizures

In money laundering investigations, there is frequently the need to postpone or waive (1) arrest of suspected persons or (2) seizure of assets, e.g., for the purpose of identifying other persons involved in such activities or for gathering evidence. Therefore: **"Countries should consider taking measures, including legislative ones, at the national level, to allow their competent authorities investigating money laundering cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering. Without such measures the use of procedures such as controlled deliveries and undercover operations are precluded."**

WG II CONTRIBUTION TO THE INTERPRETATIVE NOTE

This memorandum forms the contribution of Working Group II (Financial) to the Interpretative Note and covers those recommendations that have been assigned to it. It encompasses the conclusions reached within the Group as to the implications of the analysis of new money laundering trends and typology for the existing recommendations, as far as these conclusions are or could be of operational significance to the implementation of the recommendations concerned.

The relevant FATF I recommendations should be read in conjunction with the considerations below:

Recommendation 11

According to recommendations 9 and 11, the recommendations 12 to 29 have a much broader scope than just the banking industry. Recommendation 11 adds that a Working Group should examine the possibility of establishing a common minimal list of non-bank financial institutions and other professions dealing with cash subject to these recommendations.

Yet the lists of individual countries are so different that making a common list does not make much sense. Therefore, this task of establishing such a common list has lost its meaning. At the same time recent trends in money laundering show a shift from banks to non-banks and other professions dealing with cash and money laundering through these institutions beyond the cash placement stage. Therefore, recommendation 11 is generally understood as to invite countries to identify non-bank financial institutions and other businesses that have been used or are particularly vulnerable to be used in money laundering, and to exchange lists through the FATF. These lists will be disseminated among the members, but will remain confidential.

Recommendation 13

Recommendation 13 provides that financial institutions should take reasonable measures to obtain information about the true identify of the persons on whose behalf an account is opened or a transaction is conducted if there are doubts as to whether these clients or customers are acting on their own behalf.

If the customer is an attorney and there are doubts as to whether the attorney is acting on his own behalf, then the question could arise - given the attorney-client privilege - whether recommendation 13 applies. In order to answer this question, it should be acknowledged that persons being attorneys do not by definition always act as such, i.e. they do not necessarily provide typical attorney services. They can also act outside the scope of the traditional attorney-client relationship, e.g. when acting as intermediary for financial services. In fact observance of new money laundering typology shows that in some cases attorneys have been used as an intermediary for financial services to obscure the identity and transactions of their clients. A bank or other financial institution should know the identify of its own customers, even if these are represented by lawyers, in order to detect and prevent suspicious transactions as well as to enable it to comply swiftly to information or seizure requests by the competent authorities. Accordingly recommendation 13 also applies to the situation where an attorney is acting as an intermediary for financial services.

Recommendation 15

This recommendation requires that financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions.

In the interpretation of this requirement, special attention is required not only to transactions between financial institutions and their clients, but also to transactions and/or shipments especially of currency and equivalent instruments between financial institutions themselves or even to transactions within financial groups. As the wording of recommendation 15 suggests that indeed "all" transactions are covered, recommendation 15 must be read to incorporate these interbank transactions.

Recommendation 23

Clarification:

Observation of new money laundering techniques and typology suggests that the phenomenon of cross-border shipments of illegal-source currency, usually destined for financial institutions both within and outside FATF countries, is on the increase. Thus, on the one hand, the need to be alert to such shipments is emphasized. On the other hand, concerns remain about the practicability of cross-border detection/monitoring measures, especially for countries with open and frequently crossed borders, and about the reconciliability of those measures with the principle of the free flow of legitimate capital. Nevertheless, it would seem that countries should interpret recommendation 23 in a fashion reflecting the extent of the problem and take appropriate measures best suited for their specific situation. It is further understood that the scope of the recommendation is not limited to currency, but also covers cash equivalent monetary instruments and other highly liquid valuables (e.g. precious metals and gems), and that evidently "without impeding in any way the freedom of capital movements" should be read as a proviso against impediments to the free flow of legitimate goods and capital.

Suggestion:

To facilitate detection and monitoring of cash transactions, without impeding in any way the freedom of capital movements, members could consider the feasibility of subjecting all cross-border transfers, above a given threshold, to verification, administrative monitoring, declaration or record keeping requirements.

Recommendation 26

The second sentence of recommendation 26 invites the competent authorities to cooperate and lend their special expertise spontaneously or upon request with other judicial or law enforcement authorities in money laundering investigations and prosecutions.

In respect of this requirement, it should be noted that it would be useful to actively detect money laundering if the competent authorities make relevant statistical information available to the investigative authorities, especially if this information contains specific indicators of money laundering activity. For instance, if the competent authorities' statistics show an imbalance between the development of the financial services industry in a certain geographical area within a country and the development of the local economy, this imbalance might be indicative of money laundering activity in the region. Another example would be manifest changes in domestic currency flows without an apparent legitimate economic cause. However, prudent analysis of these statistical data is warranted, especially as there is not necessarily a direct relationship between financial flows and economic activity (e.g. the financial flows in an international financial centre with a high proportion of investment management services provided for foreign customers or a large interbank market not linked with local economic activity).

Recommendation 29

It is generally understood that a system of regular review providing for periodical revision of initial licensing (as opposed to a system providing only for review in cases of changes in ownership or control) would be difficult to undertake and dubious in its effectiveness. Recommendation 29 therefore should not be read as to require the introduction of a system of regular review of licensing of controlling interests in financial institutions merely for anti-money laundering purposes, but as to stress the desirability of suitability review for controlling shareholders in financial institutions (banks and non-banks in particular) from a FATF point of view. Hence, where shareholder suitability (or "fit and proper") tests exist, the attention of supervisors should be drawn to their relevance for anti-money laundering purposes.