

**FINANCIAL ACTION TASK FORCE
ON MONEY LAUNDERING**

REPORT

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INTRODUCTION

The Heads of State or Government of seven major industrial nations and the President of the Commission of the European Communities met in Paris in July 1989 for the fifteenth annual Economic Summit. They stated that the drug problem has reached devastating proportions, and stressed the urgent need for decisive actions, both on a national and international basis. Among other resolutions on drug issues, they convened a Financial Action Task Force (FATF) from Summit Participants and other countries interested in these problems, to assess the results of the cooperation already undertaken to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field, including the adaptation of the statutory and regulatory systems to enhance multilateral legal assistance. They decided that the first meeting of this Task Force would be called by France, and that its report would be completed by April 1990.

In addition to Summit Participants (United States, Japan, Germany, France, United Kingdom, Italy, Canada, and the Commission of the European Communities), eight countries (Sweden, Netherlands, Belgium, Luxemburg, Switzerland, Austria, Spain and Australia), were invited to join the Task Force, in order to enlarge its expertise and also to reflect the views of other countries particularly concerned by, or having particular experience in the fight against money laundering, at the national or international level.

France held the presidency of the Task Force. Several meetings were held in Paris and one meeting in Washington. More than one hundred and thirty experts from various ministries, law enforcement authorities, and bank supervisory and regulatory agencies, met and worked together. The work of the Task Force, in itself, has improved the international cooperation in the fight against money laundering: contacts were established between experts and law enforcement authorities of member countries, and a comprehensive documentation on money laundering techniques, and national programs to combat them has been compiled. As a result, Task Force countries have already improved their readiness and ability to fight against money laundering, and to cooperate to this end.

To facilitate the work of the Task Force, and to take advantage of the expertise of its participants, three working groups were created, which focused respectively on money laundering statistics and methods (working - group 1, presidency: United Kingdom), on legal questions (working - group 2, presidency: United States), and on administrative and financial cooperation (working - group 3, presidency: Italy). Their comprehensive reports constitute part of the background material of this report, and of possible future work.

Building upon this substantial preparation, the Task Force report begins with a thorough analysis of the money laundering process, its extent and methods (part I); then, it presents the international instruments and national programs already in place to combat money laundering (part II); and it devotes its most extensive and detailed developments to the formulation of action recommendations, on how to improve the national legal systems, enhance the role of the financial system, and strengthen international cooperation against money laundering (part III).

I - EXTENT AND NATURE OF THE MONEY LAUNDERING PROCESS

A - EXTENT

The financial flows arising from drug trafficking might theoretically be estimated directly or indirectly.

A direct estimation would consist of measuring these flows from the international banking statistics and capital account statistics for the balance of payments. This could be done through an analysis of errors and omissions and other discrepancies. The task force asked the IMF and the BIS to conduct this work. Their conclusion was that although deposits covered by international banking statistics may include a substantial amount of drug money, there is no way in which this aspect can be singled out and it probably accounts for only a small percentage of the totals. The data for banks' liabilities suffers from insufficient coverage of offshore financial centers.

Indirect methods estimate the value of production or sales of narcotics, based on the fact that financial flows arising from drug trafficking are initially the counterparts of flows of drugs themselves. The parties involved in illegal narcotics transactions inevitably come to hold cash or balances in financial institutions whose connections with illicit activity they will wish to conceal. There is currently insufficient information to evaluate, on the basis of estimates of the value of drug sales, the level of these balances resulting from money laundering.

Three indirect methods of estimation were used to assess the scale of financial flows arising from drug traffic. They are based on estimations of drug production or consumption, valued using the retail price of drugs. Only a part of the calculated amounts are profits available to be laundered: production estimates must be modified by estimates of local consumption and losses in the production and distribution chain.

1 - The first method is based on estimations of world drug production. The United Nations estimated drug trafficking proceeds⁽¹⁾ worldwide at \$ 300 billion in 1987. This estimation remains very uncertain.

The role of each kind of drug in the generation of proceeds available for money laundering is also difficult to assess. Estimates of US street yield are in the range of \$29 billion for cocaine, \$10 billion for heroin, and \$67 billion for cannabis. Some drugs generate huge profits for the organisations controlling the traffic, making money laundering of large amounts, through complicated financial channels, a necessity, while some others generate profits mainly for the retailers, who may facilitate the laundering of these profits through very simple financial operations, for instance by bartering drugs for stolen goods, and selling these goods for cash.

(1) For purposes of estimating the scale of money laundering as discussed above, "proceeds" means the value of the final sale of illegal drugs, without deduction of costs and without respect to whether payment is made with money or things of value.

For purposes of estimating the scale of money laundering as discussed above, "profits" means the value of drug sales less costs incurred by the traffickers (e.g. the cost of acquiring the drugs themselves, the cost of any precursor or essential chemicals, packaging materials, costs of transportation, costs of corruption, legal fees paid to defense lawyers, etc...).

Opium and its derivatives (e.g. heroin) originate mainly from Southeast Asia (the Golden Triangle) and Southwest Asia (the Golden Crescent) and Mexico. Proceeds from the sale of this multi-source drug are partly laundered through a sophisticated network of underground financial channels. Retail distribution networks are nonetheless largely controlled by persons located within Task Force countries.

Coca shrubs are cultivated in the Andean countries of South America (e.g. Bolivia, Colombia, Peru), and are converted into the most marketable form, cocaine hydrochloride, predominantly in Colombia. Several cartels are known to control the processing of cocaine hydrochloride in Colombia. Colombian nationals are also known to be involved in organising and controlling distribution networks in other countries. This means that there is a flow of funds destined to Colombia originating in Task Force countries.

The total global crop of cannabis is extremely difficult to estimate, as it grows uncultivated in many of the producing areas. Nevertheless, in many countries, major cannabis import, wholesale, and retail distribution organisations provide a structure which may also be used for distribution of heroin and cocaine. Large cannabis seizures from offshore supply vessels, and bulk consignments of cannabis packed with heroin or cocaine are becoming more common in Europe. There is a rapid and troublesome growth in the size, power, and money laundering capability of some cannabis distribution organisations, raising the spectre of cartels developing in this area. Hence, in law enforcement and money laundering terms, cannabis trafficking constitutes a very serious problem requiring urgent attention.

Although a large part of heroin, cocaine and cannabis production is consumed in industrialized countries, important quantities are also consumed in producing countries, especially heroin, where they also generate profits.

Finally, psychotropic substances such as amphetamines/methamphetamines and LSD are produced in clandestine laboratories, including some within Task Force countries. Large amounts of cash are derived, although not on the same scale as for cocaine and heroin.

However, the production-based method of estimation does not provide for an identification of financial flows within individual countries. Accordingly, all that can be said for certain is that the bulk of proceeds arises at the retail level within the Task Force area.

2 - A second method of estimating laundered drug proceeds is based on the consumption needs of drug abusers. But the information regarding drug use obtained through surveys is frequently of doubtful reliability since the activity is illegal : sample populations surveyed for example in homes or schools may miss a significant proportion of drugs users.

3 - A third method of estimating uses data concerning actual seizures of illicit drugs, and projects the total amounts of drugs available for sale by the application of a multiplier to recorded seizures, which is estimated on the basis of a law enforcement seizure rate varying between 5 % and 20 % according to the type of drug considered, and which, on a weighted average, could be approximately of 10 %. This approach, too, raises significant methodological problems.

Using these methods, the group estimated that sales of cocaine, heroin and cannabis amount to approximately \$ 122 billions per year in the United States and Europe, of which 50 % to 70 % or as much as \$ 85 billion per year could be available for laundering and investment. One Task Force member estimated global profits at the main dealer level, which might be most subject to international laundering, to be about \$ 30 billion per year.

B - METHODS

It would be impossible to list the entire range of methods used to launder money. Nevertheless, the Task Force reviewed a number of practical cases of money laundering. It stated that all of them share common factors, regarding the role of cash domestically, of various kinds of financial institutions, of international cash transfers, and of corporate techniques. These common factors indicate clearly where the efforts of the fight against money laundering should focus.

1 - Cash intensiveness

The form of the money obtained through drug trafficking must be changed in order to shrink the huge volumes of cash generated : unlike the proceeds of some other forms of criminal activity, drug cash usually comes in the form of large volumes of mixed denomination notes, and at least in the case of heroin and cocaine, the physical volume of notes received from street dealing is much larger than the volume of the drugs themselves :

Drugs criminals are faced with major difficulties when in possession of large amounts of cash, and when large transactions cannot be performed in cash without arousing suspicion. A completely cashless economy where all transactions were registered would create enormous problems for the money launderers. Similarly, a rule that cash transactions were illegal above a certain amount for all but certain types of business regularly operating in cash would also create problems for launderers.

This is not to say that the cash intensiveness in one country is by itself correlated with the importance of money laundering. The cash intensiveness of Task Force economies varies greatly between countries. In countries like Switzerland, Germany, the Netherlands, Japan, Belgium and Austria, the cash/GDP ratio lies in the range 6,9 - 8,9 %, whereas at the other extreme are economies such as the UK and France with cash/GDP ratios at about 3 - 4 %. Important cash transactions are increasingly monitored in some countries, such as the United States and Australia, and were recently prohibited in France over 150.000 francs per transaction.

Another observation is that it is easier for the launderer if the cash in which he operates can be directly accepted abroad as a means of exchange. The US dollar in cash is acceptable as a means of exchange in large amounts in many parts of the world : Federal Reserve Board staff have estimated that adult residents of the US held only 11 - 12 % of issued U.S. notes and coins in 1984. The remainder were held by legitimate and illegitimate business enterprises, residents of foreign countries, and persons less than 18 years old.

a) Role of formal financial institutions

Banks and other deposit-taking financial institutions are the main transmitters of money both within the Task Force area and internationally. Clearly the stage of depositing money in institutions is a key one for money launderers. Whether a currency reporting system is in place, or whether the laws in the country only allow or require the reporting of suspicious transactions, many of the Task Force countries have measures in place which would make large cash deposits likely to be brought to the attention of the authorities. Therefore, deposits have to be disguised. In countries where there is cash transaction reporting, deposits have to be broken up into sizes which are lower than the threshold for that reporting ("smurfing"), in order to escape this reporting.

For criminals to avoid suspicion, the reduction of deposit size below reporting requirements is not enough. Deposits may be made in the name of a company whose beneficial owners do not have to be disclosed in the country in which it is headquartered. Those with signing authority for the company in a Task Force country -or receiving payments- do not necessarily know who the beneficial owners are. In some countries, bank accounts can also be opened in the name of trustees, and the beneficiaries under the trust may be kept secret. Deposits may be made by the legal profession in the name of clients to whom the rules of attorney confidentiality may apply.

Even if identity requirements were comprehensive and uniform, it is possible that officials of banks may become corrupt and accept deposits from persons with false identities. Most reputable banks do not open accounts without knowing their customer. But they may be less careful about cash transactions in foreign exchange over the counter, or in providing cashier's cheques or wiring money for non-depositors. It is not believed that automatic teller machines (ATMs) operated by banks cause any particular difficulty at present. But automatic foreign exchange changing machines - already in use in Europe - can provide anonymity during the laundering process. Similarly, any future ATMs which automatically and anonymously convert low value notes into high value ones would also facilitate money laundering.

b) Role of informal financial institutions

It is of course not necessary for criminals to use licensed deposit-taking financial institutions or to establish companies to help deal with their problems. Informal and largely unregulated financial institutions, which can not legally accept deposits, can also be used. The first category of these are Bureaux de Change, which accept money in one currency and convert it into another. This still leaves the cash problem open, but a first transformation has taken place which makes it more difficult to detect the origin of the funds. If informal financial institutions provide this service, they may not record the identity of transactors. Cheque cashers who provide a service mainly after bank hours, if unscrupulous, can work in reverse : selling cheques at a premium for cash.

Informal bankers, including "Hawalla" bankers exist mainly in countries with direct connections with Asia. They are often involved in the gold bullion, gold jewelry or currency exchange business, and may be a member of a family with similar businesses in several countries, or, at the other end of the scale, a street corner confectionery shop. Bona fide employees of foreign banks may operate such systems outside banking hours.

3 - Cash shipments abroad

Drugs proceeds can be deposited abroad in jurisdictions where the banking system is insufficiently regulated and where the establishment of "letter box" companies is permitted. Such jurisdictions may include, for instance, small countries who wish to establish a financial services industry as a supplementary source of income -the sale of banking licenses can constitute a major source of revenue to the authorities- and employment for the population. Such jurisdictions are sometimes also tax havens.

These jurisdictions are part of the world payments system without any restriction. So long as this is the case, cash exports will tend to go to these countries for integration into the financial system there and return by means of wire transfers. This means that detection of the outflow of cash becomes especially important when internal avenues have been blocked.

4 - Corporate techniques

Drug dealers must conceal the true ownership and origin of the money while simultaneously controlling it. To this end, they can use various corporate techniques.

Offshore companies can be used by launderers in ways other than simply as depositories for cash. Launderers can set up or buy corporations, perhaps in a tax haven using a local lawyer or other person as a nominee owner, with an account at a local bank. They can then finance the purchase of a similar business at home through a loan from their corporation abroad (or the bank), in effect borrowing their own money and paying it back as if it were a legitimate loan.

The technique of "double invoicing" can be used whereby goods are purchased at inflated prices by domestic companies owned by money launderers from offshore corporations which they also own. The difference between the price and the true value is then deposited offshore and paid to the offshore company and repatriated at will. Variants of the "double invoicing" technique abound.

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All these techniques, however, involve going through stages where detection is possible. Either cash has to be exported over a territorial frontier and then deposited in a foreign financial institution, or it requires the knowing or unknowing complicity of someone at home not connected with the drug trade, or it requires convincing a domestic financial institution that a large cash deposit or purchase of a cashier's cheque is legitimate. Once these hurdles have been cleared, the way is much easier inside the legitimate financial system.

Hence, key stages for the detection of money laundering operations are those where cash enters into the domestic financial system, either formally or informally, where it is sent abroad to be integrated into the financial systems of regulatory havens, and where it is repatriated in the form of transfers of legitimate appearance.

II - PROGRAMS ALREADY IN PLACE TO COMBAT MONEY LAUNDERING

A - INTERNATIONAL INSTRUMENTS

Various international organisations or groups, including the Council of Europe⁽¹⁾, INTERPOL, among EEC members the Mutual Assistance Group between customs administrations and the TREVI group between ministers in charge of security, as well as the Customs Cooperation Council, have already devoted much attention to the money laundering problem. Besides, two international instruments currently address this issue from different viewpoints : the United Nations Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter "Vienna Convention"), and the Statement of Principles of the Basel Committee on Banking Regulations and Supervisory Practices (hereinafter Basel Statement of Principles), concerning the "prevention of criminal use of the banking system for the purpose of money laundering."

a) The Vienna Convention

This Convention, which was adopted in Vienna on December 20, 1988, focuses on drug trafficking in general, including of course, but not exclusively, drug money laundering. On this last issue, it lays firm ground for further progress in the following directions :

- it creates an obligation to criminalize the laundering of money derived from drug trafficking, thereby facilitating judicial cooperation and extradition in this field, which today are hampered, given the principle of dual criminality, by the fact that many countries do not presently criminalize money laundering ;
- several parts of the Vienna Convention deal with international cooperation. Its implementation would substantially facilitate international investigations ;
- it makes extradition between signatory States applicable in money laundering cases ;
- it sets out principles to facilitate cooperative administrative investigations ;
- it sets forth the principle that banking secrecy should not interfere with criminal investigations in the context of international cooperation.

⁽¹⁾ The Committee of Ministers to the Member States of the Council of Europe adopted on June 27, 1980, a recommendation concerning measures against the transfer and the sheltering of criminally originated funds.

More than eighty countries have signed this convention, including all Task Force countries. So far, only China, Senegal, the Bahamas and Nigeria have ratified it. Twenty ratifications are necessary for this convention to be brought into force. Given the complexity of the ratification and implementation process, in some countries, its entry into force could take several years.

b) The Basel Statement of Principles

This document, which was agreed to on December 12, 1988, states that public confidence in banks may be undermined through their association with criminals, and outlines some basic principles with a view to combat money laundering operations through the banking system, in the following directions :

- customer identification ;
- compliance with laws and regulations pertaining to financial transactions, and refusal to assist transactions which appear to be associated with money laundering ;
- cooperation with law enforcement authorities, to the extent permitted by regulations relating to customer confidentiality.

All Task Force countries, except Australia, Austria, and Spain, were part of the group that agreed to the Basel Statement of Principles. The bank regulators and supervisors of these three countries, however, have expressed that they consider this Statement as also applicable to their supervised banking systems.

Although it is not in itself a legally binding document, various formulas have been used to make its principles an obligation, notably a formal agreement among banks that commits them explicitly (Austria, Italy, Switzerland), a formal indication by bank regulators that failure to comply with these principles could lead to administrative sanctions (France, United Kingdom), or legally binding texts with a reference to these principles (Luxemburg).

In spite of the fact that the Statement of Principles is a recent text, and furthermore that it was very recently established as an obligation for banks, practical measures have already been taken in many countries, such as the appointment of a compliance officer in each bank, in charge of the application of the internal programs against money laundering. Most Task Force countries have set detailed guidelines for banks, making the Principles precise and practical obligations.

It should be noted that certain of these Principles have been applied in most countries for a long time, as for instance the principles of customer identification and retaining of records of transactions.

B - NATIONAL PROGRAMS

Awareness of the problem of money laundering is recent. However, national programs to combat it are already in place in some Task Force countries, although much remains to be done in most of them.

The group agreed to the following working definition to describe the process of money laundering conduct or behaviour :

- the conversion or transfer of property, knowing that such property is derived from a criminal offense, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions ;
- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from a criminal offense ;
- the acquisition, possession or use of property, knowing at the time of receipt that such property was derived from a criminal offense or from an act of participation in such offense⁽¹⁾.

1 - Money laundering offense

Money laundering is already a specific criminal offense in seven Task Force countries (Australia, Canada, France, Italy, Luxemburg, United Kingdom, United States), and there is pending legislation to create this offence in four additional Task Force countries (Belgium, Germany, Sweden, Switzerland). In the other Task Force countries (Netherlands, Spain, Austria, Japan), there is currently no specific money laundering offense, although, for some of them the general legislation pertaining to the proceeds of crime covers money laundering offenses.

Some differences appear in the scienter requirements, whereas most countries only criminalize intentional money laundering, other countries also criminalize negligence leading to money laundering.

The criminal penalties for these offenses are heavy fines, imprisonment up to 20 years, and sometimes prohibitions against engaging in certain professions.

⁽¹⁾ Most delegates consider that the final paragraph of the definition, drawn from the Vienna Convention, does not describe money laundering per se, but an economic aspect of crime which must be addressed in any comprehensive scheme against money laundering, whereas a few delegates understand this paragraph as being included in the concept of money laundering.

2 - Freezing, seizure and confiscation of assets

Most Task Force countries have provisional measures concerning freezing, seizure, and/or procedures for asset confiscation relating to drug offenses. However, not all the countries that have established money laundering offenses permit these procedures in relation to money laundering.

The definition of property subject to freezing, seizure and confiscation is generally similar from one country to another, because, in most countries, it also extends to all proceeds of crime, which would normally cover indirect as well as direct profits or proceeds of drug trafficking. In a few countries, it also extends to the property laundered, the instrumentalities used in the crime, or property of corresponding value.

Most Task Force countries allow freezing, seizure or confiscation of assets related to drug trafficking in execution of a formal request of a foreign state, in the framework of their domestic laws, or provided a treaty exists, and subject to additional conditions. Nevertheless, the existing domestic laws and mutual legal assistance treaties do not provide for each Task Force country to obtain freezing, seizure or confiscation of drug-related assets in all other member countries.

3 - Bank secrecy laws and reporting requirements

a) Customer identification

None of the Task Force countries allows anonymous accounts, although Austria allows limited forms of anonymous bearer accounts. Most Task Force countries require the identification of customers using safe deposit facilities. Only in some Task Force members (Australia, Luxemburg, Sweden, Switzerland) does the obligation to identify extend to the beneficial owners.

b) Internal records of transactions

All countries' banks must keep account books and records of transactions, for the purpose of prudential supervision, statistics and tax control. In a few countries, banks must also retain internal records of transactions (either all transactions, and/or large cash transactions and/or international transactions), for the purpose of combatting money laundering and other crimes.

The conditions of access of law enforcement authorities to these records are extremely varied among countries. In most cases, judicial proceedings are necessary to overcome bank secrecy rules.

c) Detection of suspicious transactions

The detection of suspicious transactions occurring through the financial system, in Task Force countries having specific detection programs, is broadly based on different systems, which can be complementary.

The responsibility for initially detecting suspicious financial flows falls mainly to financial institutions themselves. In some countries, such as Canada, banks have taken on this responsibility; in other countries, such as the UK, banks have been indirectly obliged to take on this responsibility in order to avoid possible prosecution for money laundering; while in other countries, such as the US and Australia, this responsibility has been imposed by regulation. The banker, to avoid the risk of being involved in money laundering operations, sets up internal programs to detect suspicious transactions, and declares his suspicions to the competent authorities. Under either system, when banks bring a questionable transaction to the attention of these authorities, they will be protected against judicial actions brought by their customers for failure to respect banking confidentiality. These systems also require confidential relations between bankers and these authorities. Although these systems are recent, the number of declarations -from several hundreds to several thousands each year- received by the competent authorities of countries which apply them, is an indication of their efficiency. In most other Task Force countries, bank secrecy rules do not allow bankers to make such declarations. In some other countries where the reporting of suspicious transactions is mandatory, such as the United States, failure to report suspicious transactions carries administrative penalties.

In addition to mandatory suspicious transaction reporting, competent administrative authorities in two countries rely on the systematic gathering and analysis of information related to cash movements. This is the system in place in the United States and Australia. In this system, financial institutions report routinely all deposits, transfers and withdrawals of cash over \$ 10,000. These reports, together with report of large international transfers of cash and similar instruments over \$ 10,000, are fed into a computerized database, with an artificial intelligence system, enabling the detection of questionable transactions. In the United-States, about 6 millions reports are made annually under this system, with a cost for the financial institutions estimated at US \$ 17 for each report. In the US, currency reports serve a number of purposes beyond identifying suspicious transactions. The reports are used in many ways to support investigations, prosecutions and confiscation.

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Although recent, there are signs that these programs against money laundering, in countries having such programs, have effective results, by creating increased risks for money launderers. For instance, in the United States, money laundering "commissions" asked by launderers, which amounted to 2 % to 4 % per transaction in the early 1980's, commonly reach 6 % to 8 % now.

III - RECOMMENDATIONS

A - GENERAL FRAMEWORK OF THE RECOMMENDATIONS

Many of the current difficulties in international cooperation in drug money laundering cases are directly or indirectly linked with a strict application of bank secrecy rules, with the fact that, in many countries, money laundering is not today an offense, and with insufficiencies in multilateral cooperation and mutual legal assistance.

1 Some of these difficulties will be alleviated when the Vienna Convention is in effect in all the signatory countries, principally because this would open more widely the possibility of mutual legal assistance in money laundering cases. Accordingly, the group unanimously agreed as its first recommendation that each country should, without further delay, take steps to fully implement the Vienna Convention, and proceed to ratify it.⁽¹⁾

2 Concerning bank secrecy, it was unanimously agreed that financial institution secrecy laws should be conceived so as not to inhibit implementation of the recommendations of this group.

3 Finally, an effective money laundering enforcement program should include increased multilateral cooperation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

Nevertheless, this should not be the end point of our efforts to fight this phenomenon. Additional measures are necessary, for at least two reasons :

- the need for rapid and tough actions

As the purpose of the Vienna Convention is the fight against drug trafficking in general, including of course, but not exclusively, the fight against drug money laundering, some countries could have difficulties in ratifying and implementing it for reasons that are not related to the issue of money laundering. It remains crucial, whatever the difficulties may be on legal and technical grounds, to ratify and implement the Convention fully and without delay.

Rapid progress on the issue of money laundering is necessary. Hence, the Task Force's recommendations include important steps that are implied by this Convention. Furthermore, even on the topics mentioned by the Vienna Convention, it seemed to the group that the growing dimension and increasing awareness of the problem of money laundering, would justify a reinforcement of its provisions applicable to money laundering issues.

(1) However, the Task Force did not undertake to determine what steps would be adequate to meet the requirements of the Vienna Convention. So, the adoption of the proposals and recommendations of the Task Force would not necessarily constitute full compliance with the obligations assumed by Task Force countries as parties to the U.N. Vienna Convention.

- the need for practical measures.

Any discrepancy between national measures to fight money laundering can be used potentially by traffickers, who would move their laundering channels to the countries and financial systems where no or weak regulations exist on this matter, making the detection of funds of criminal origin more difficult. To avoid such a risk, these national measures, particularly those concerning the diligence of financial institutions, have to be conceived in a way that builds upon and enhances the Basel Statement of Principles, and to be harmonized in their most practical aspects, which is not provided for in the Statement.

On these bases, we recommend action steps that, in our view, could constitute a minimal standard in the fight against money laundering for the countries participating in this Task Force, as well as for other countries. Some of these recommendations reflect the view of a majority of delegates, rather than unanimity, so that they are not limited to the weakest existing solution in the participating countries on each topic. Cases where a minority held a significantly different view are also mentioned. Accordingly, the minimal standard we recommend can be viewed as rather ambitious. Nevertheless, it should in no way prevent individual countries from adopting or maintaining more stringent measures against money laundering. Furthermore, as money laundering techniques evolve, anti-money laundering measures must evolve too : our recommendations will probably need periodic reevaluation.

These action steps against money laundering focus on improvements of national legal systems (B), enhancement of the role of the financial system (C), and the strengthening of international cooperation (D).

**B - IMPROVEMENT OF NATIONAL LEGAL SYSTEMS
TO COMBAT MONEY LAUNDERING**

1 - Definition of the criminal offense of money laundering

4 Each country should take such measures, as may be necessary, including legislative ones, to enable it to criminalize drug money laundering as set forth in the Vienna Convention.

However, the laundering of drug money is frequently associated with the laundering of other criminal proceeds. Given the difficulty to bring evidence of drug money laundering specifically, an extension of the scope of this offense, for instance to the most serious offenses, such as arms trafficking, etc., might facilitate its prosecution.

5 Accordingly, each country should consider extending the offense of drug money laundering to any other crimes for which there is a link to narcotics ; an alternative approach is to criminalize money laundering based on all serious offenses, and/or on all offenses that generate a significant amount of proceeds, or on certain serious offenses.

6 The group agreed that, as provided in the Vienna Convention, the offense of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances. Some delegates consider that the offense of money laundering should go beyond the Vienna Convention on this point to criminalize activity where a money launderer should have known the criminal origin of the laundered funds. As already mentioned, a few countries would impose criminal sanctions for negligent money laundering activity.

7 In addition, the group recommends that, where possible, corporations themselves -not only their employees- should be subject to criminal liability.

2 - Provisional measures and confiscation

The Vienna Convention provides for provisional measures and confiscation in cases of drug trafficking and laundering of drug money. These measures are a necessary condition to an effective fight against drug money laundering, notably because they facilitate the execution of sentences and help reduce the financial attractiveness of money laundering.

8 Accordingly, countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offense, or property of corresponding value.

Such measures should include the authority to : 1) identify, trace, and evaluate property which is subject to confiscation ; 2) carry out provisional measures, such a freezing and seizing, to prevent any dealing, transfer, or disposal of such property and 3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered by parties, where parties knew or should have known that as a result of the contract, the state would be prejudiced in its ability to recover financial claims, e.g., through confiscation or collection of fines and penalties.

C - ENHANCEMENT OF THE ROLE OF THE FINANCIAL SYSTEM

In addressing the subject of money laundering, the group has kept in mind the necessity to weigh the impact of its recommendations on financial institutions, and to preserve the efficient operation of national and international financial systems.

1 - Scope of the following recommendations

The entry of cash into the financial system is of crucial importance in the drug money laundering process. This may occur through the financial system (banks and other financial institutions), and also through certain other professions dealing with cash, which are unregulated or virtually unregulated in many countries.

9 Accordingly, recommendations 12 to 29 of this paper should apply not only to banks, but also to non-bank financial institutions.

10 For maximum effectiveness, these recommendations need to cover as many organisations as possible that receive large value cash payments in the course of their business. Therefore, the appropriate national authorities should take steps to ensure that these recommendations are implemented on as broad a front as is practically possible.

Nevertheless, excessive variation among the national lists of these non-bank financial institutions and other professions dealing with cash, subject to the following recommendations, could potentially facilitate the activity of money launderers. To avoid that, some delegates prefer that a common, minimum list of these financial institutions and professions be accepted by all the countries. As examples of non-bank financial institutions, savings societies including postal savings societies, loan societies, building societies, security brokers and dealers, credit card companies, check cashers, transmitters of funds by wire, money changers / bureaux de change, sales finance companies, consumer loan companies, leasing companies, factoring companies, and gold dealers were mentioned.

11 It was agreed that, a working group should further examine the possibility of establishing a common minimal list of non-bank financial institutions and other professions dealing with cash subject to these recommendations.

2 - Customer identification and record keeping rules

Crucial in the fight against money laundering through the financial system, are the ability of financial institutions to screen undesirable customers, and the ability for law enforcement authorities to conduct their enquiries on the basis of reliable documents about the transactions and the identity of clients.

12 Hence, financial institutions should not keep anonymous accounts or accounts in obviously fictitious names : they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safedeposit boxes, performing large cash transactions).

Furthermore, layering of funds of illicit origin is often facilitated by nominee accounts in financial institutions and shareholdings in companies, where beneficial ownership is disguised.

13 Hence, 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 any doubts as to whether these clients or customers are not acting on their own behalf, in particular, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc., that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

14 Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the account is closed.

These documents should be available to domestic competent authorities in the context of criminal prosecutions and investigations.

3 - Increased diligence of financial institutions

Identification of customers is generally not sufficient to allow financial institutions and law enforcement authorities to detect suspicious transactions.

15 Hence, financial institutions should pay special attention to all complex, unusual, large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

Where financial institutions suspect that funds stem from a criminal activity, bank secrecy rules or other privacy laws which are presently enforced in most countries prohibit them to report their suspicions to the competent authorities. Thus, to avoid any involvement in money laundering operations, they have no other choice, in that case, than denying assistance, severing relations and closing accounts in accordance with the Basle Statement of Principles. The consequence is that these funds can flow through other, undetected channels, which would frustrate the efforts of competent authorities in the fight against money laundering.

16 To avoid this risk, the following principle should be established: if financial institutions suspect that funds stem from a criminal activity, they should be permitted or required to report promptly their suspicions to the competent authorities. Accordingly, there should be legal provisions to protect financial institutions and their employees from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report in good faith, in disclosing suspected criminal activity to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

There is a divergence of opinion within the Task Force on whether suspicious activity reporting should be mandatory or permissive. A few countries strongly believe that this reporting should be mandatory, possibly restricted to suspicions on serious criminal activities, and with administrative sanctions available for failure to report.

If financial institutions, while making these reports, warned at the same time their customers, the effect might be similar to a refusal to handle the suspected funds : the suspected customers and their funds would flow through undetected channels.

17 Hence, financial institutions, their directors and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.

18 In the case of a mandatory reporting system, or in the case of a voluntary reporting system where appropriate, financial institutions reporting their suspicions should comply with instructions from the competent authorities.

19 In countries where no obligation of reporting these suspicions exist, when a financial institution develops suspicions about operations of a customer, and when the financial institution chooses to make no report to the competent authorities, it should deny assistance to this customer, sever relations with him and close his accounts.

The group also discussed what actions financial institutions should take when they learn from competent authorities, even in an informal way, that criminal proceedings, including international mutual assistance requests and/or appropriate freezing orders, are pending or imminent. Further examination of the intricate legal and practical aspects of this question would be useful, to avoid a premature withdrawal of funds which would unduly impair the criminal proceedings.

Staff in financial institutions are still only beginning, in most countries, to become aware of money laundering. This is of great help to money launderers. In some countries, complicity of staff may be also a problem.

20 Hence, financial institutions should develop programs against money laundering. These programs should include, as a minimum :

a) the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees ;

b) an ongoing employee training program ;

c) an audit function to test the system.

4 - Measures to cope with the problem of countries with no or insufficient anti money laundering measures.

The strengthening of the fight against money laundering in some countries could lead to a simple move of the money laundering channels to countries with insufficient money laundering measures, in a process akin to regulator shopping.

Frequently, a money laundering operation would involve the following stages :

- drugs cash proceeds would be exported from regulated countries to unregulated ones ;
- this cash would be laundered through the domestic formal or informal financial system of these havens ;
- the subsequent stage would be a return of these laundered funds to regulated countries with safe placement opportunities, particularly through wire transfers.

While sovereignty principles make it difficult to prevent this type of displacement of money laundering channels, and other laundering operations using regulation havens, the following principles should be applied by financial institutions in regulated countries :

- 21 - financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.
- 22 - financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply these recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these recommendations.

Within the context of relations between regulated and unregulated countries, the study of a system to monitor cash movements at the border is of special importance (see point 5 hereunder).

5 - Other measures to avoid currency laundering

It was recognised that the stage of drugs cash movements between countries is crucial in the detection of money laundering. A few delegates strongly support the proposal that a system of reporting of all large international transportations of currency or cash equivalent bearer instruments to a domestic central agency with a computerized data base available to domestic judicial or law enforcement authorities should be established for use in money laundering cases. But this opinion is not shared by the majority of the group.

- 23 Nevertheless, the group acknowledged that the feasibility of measures to detect or monitor cash at the border should be studied, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

The detection of suspicious cash operations also could potentially be facilitated if law enforcement authorities were in a position to be informed and to analyze all large cash transactions occurring within their country.

For that purpose, one suggested solution is that these transactions be routinely reported by financial institutions to competent authorities.

However, the efficiency of such a system, which currently exists in two participating countries, is uncertain. The majority of the group was not convinced of the cost effectiveness of this system at this time, and expressed fears that it could lead financial institutions to feel less responsible for the fight against money laundering. On the other hand, it is the view of a few members that a comprehensive program to combat money laundering must include such a currency reporting system together with the reporting of international transportation of currency and currency equivalent instruments.

24 Nevertheless, the group agreed that countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerized data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.

25 Furthermore, given the crucial importance of cash in drug trafficking and drug money laundering, and despite the fact that no clear correlation could be established between the cash intensiveness of a country's economy, and the role of this economy in international money laundering, countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.

6 - Implementation and role of regulatory and other administrative authorities

Effective implementation of the above recommendations must be ensured.

But the authorities supervising banks and other financial institutions have currently, in many countries, no competence to participate in the fight against criminal activities, because their mission is primarily a prudential one, and because of professional secrecy or other rules.

26 Accordingly, in each member country, the competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should cooperate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.

27 The effective implementation of the above mentioned recommendations in other professions dealing with cash is hampered by the fact that, in many countries, these professions are virtually unregulated. Hence, competent authorities should be designated to ensure an effective implementation of all these recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.

28 The establishment of programs to combat money laundering in financial institutions and other professions dealing with cash, would require the support of these competent authorities, particularly to make these institutions and professions aware of facts that should normally lead to suspicions. Accordingly, the competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.

29 Furthermore, the competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.

The group acknowledged the risk that, outside the financial sector, industrial or commercial companies also could be acquired by criminals with the aim to use them for money laundering purposes.

D - STRENGTHENING OF INTERNATIONAL COOPERATION

The study of practical cases of money laundering clearly demonstrated that money launderers conduct their activities at an international level, thus exploiting differences between national jurisdictions and the existence of international boundaries. Therefore, enhanced international cooperation between enforcement agencies, financial institutions, and financial institution regulators and supervisors to facilitate the investigations, and prosecution of money launderers, is critical.

1 - Administrative cooperation

a) Exchange of general information

A first step is to improve the knowledge of international flows of drug money, noticeably cash flows, and the knowledge of money laundering methods, to enable a better focus of international and national efforts to combat this phenomenon.

30 Accordingly, national administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the IMF and BIS to facilitate international studies.

31 International competent authorities, perhaps Interpol and the Customs Cooperation Council, should be given responsibility for gathering and disseminating information to competent authorities about the latest developments in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

b) Exchange of information relating to suspicious transactions

Present arrangements for international administrative cooperation and international exchange of information relating to identified transactions are acknowledged to be insufficient. At the same time, this exchange of information must be consistent with national and international provisions on privacy and data protection. Furthermore, several countries consider that exchange of information relating to individual money laundering cases should take place only in the context of mutual legal assistance.

32 It was agreed that each country should make efforts to improve a spontaneous or "upon request" international information exchange relating to suspicious transactions, persons and corporations involved in those transactions between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

2 - Cooperation between legal authorities

a) Basis and means for cooperation in confiscation, mutual assistance, and extradition

A necessary condition to improve mutual legal assistance on money laundering cases, is that countries acknowledge the offense of money laundering in other countries as an acceptable basis for mutual legal assistance. The group agreed that countries should consider extending the scope of the offence of money laundering to reach any other crimes for which there is a link to narcotics, or to all serious offenses, and let the definition for this wider money laundering offense open between different options. Furthermore, it agreed that :

- countries should adopt a definition covering the offense of drug money laundering compatible with the definition of the Vienna Convention.

33 - countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions -i.e. different standards concerning the intentional element of the infraction- do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

34 Furthermore, international cooperation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.

35 The current works in the framework of the Council of Europe, concerning international cooperation as regards search, seizure and confiscation of the proceeds from crime, could constitute the basis of an important multilateral agreement on this matter. Accordingly, countries should encourage international conventions such as the draft convention of the Council of Europe on confiscation of the proceeds from offenses.

b) Focus of improved mutual assistance on money laundering issues

Experience of international cooperation on money laundering issues shows that improvements are necessary on the following topics :

36 - Cooperative investigations - Cooperative investigations among appropriate competent authorities of countries, should be encouraged.

37 - Mutual assistance in criminal matters - There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.

38 - Seizure and confiscation - There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity.

39 - Coordination of prosecution actions - To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

40

- Extradition - Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offense or related offenses. With respect to its national legal system, each country should recognize money laundering as an extraditable offense. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgments, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

CONCLUSION

The delegates to the Financial Action Task Force agreed that the presidency of the Task Force would address this report to finance ministers of participating countries, which would submit it to their Heads of State or Government, and circulate it to other competent authorities.

The group agreed that decisions from the Summit of the Heads of State or Government of seven major industrial nations, which convened the Financial Task Force, would be crucial for the implementation of the recommendations and further work and studies. Political impetus would also be particularly necessary to crystallize strong coordinated overall international action, and to define the best ways to associate other countries, including drug producing countries, to the fight against money laundering.

While discussing the most adequate ways by which the follow-up to its works could be organized, the group emphasized that the wider the number of countries applying these recommendations (including countries which have weak or no regulations against money laundering) the greater their efficiency would be. It considered that a regular assessment of progress realized in enforcing money laundering measures would stimulate countries to give to these issues a high priority, and would contribute to a better mutual understanding and hence to an improvement of the national systems to combat money laundering.

**SYNOPSIS OF
THE FORTY RECOMMENDATIONS
OF THE REPORT**

A - GENERAL FRAMEWORK OF THE RECOMMENDATIONS

- 1 Each country should, without further delay, take steps to fully implement the Vienna Convention, and proceed to ratify it.
- 2 Financial institution secrecy laws should be conceived so as not to inhibit implementation of the recommendations of this group.
- 3 An effective money laundering enforcement program should include increased multilateral cooperation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

B - IMPROVEMENT OF NATIONAL LEGAL SYSTEMS TO COMBAT MONEY LAUNDERING

Definition of the criminal offense of money laundering

- 4 Each country should take such measures, as may be necessary, including legislative ones, to enable it to criminalize drug money laundering as set forth in the Vienna Convention.
- 5 Each country should consider extending the offense of drug money laundering to any other crimes for which there is a link to narcotics ; an alternative approach is to criminalize money laundering based on all serious offenses, and/or on all offenses that generate a significant amount of proceeds, or on certain serious offenses.
- 6 As provided in the Vienna Convention, the offense of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.
- 7 Where possible, corporations themselves -not only their employees- should be subject to criminal liability.

Provisional measures and confiscation

- 8 Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offense, or property of corresponding value.

Such measures should include the authority to : 1) identify, trace, and evaluate property which is subject to confiscation ; 2) carry out provisional measures, such a freezing and seizing, to prevent any dealing, transfer, or disposal of such property and 3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered by parties, where parties knew or should have known that as a result of the contract, the state would be prejudiced in its ability to recover financial claims, e.g., through confiscation or collection of fines and penalties.

C - ENHANCEMENT OF THE ROLE OF THE FINANCIAL SYSTEM

Scope of the following recommendations

- 9 Recommendations 12 to 29 of this paper should apply not only to banks, but also to non-bank financial institutions.
- 10 The appropriate national authorities should take steps to ensure that these recommendations are implemented on as broad a front as is practically possible.
- 11 A working group should further examine the possibility of establishing a common minimal list of non-bank financial institutions and other professions dealing with cash subject to these recommendations.

Customer identification and record keeping rules

- 12 Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names : they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safedeposit boxes, performing large cash transactions).
- 13 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 any doubts as to whether these clients or customers are not acting on their own behalf, in particular, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc., that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).
- 14 Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.
- Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the account is closed.
- These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

Increased diligence of financial institutions

15 Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

16 If financial institutions suspect that funds stem from a criminal activity, they should be permitted or required to report promptly their suspicions to the competent authorities. Accordingly, there should be legal provisions to protect financial institutions and their employees from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report in good faith, in disclosing suspected criminal activity to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

17 Financial institutions, their directors and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.

18 In the case of a mandatory reporting system, or in the case of a voluntary reporting system where appropriate, financial institutions reporting their suspicions should comply with instructions from the competent authorities.

19 When a financial institution develops suspicions about operations of a customer, and, when no obligation of reporting these suspicions exist, makes no report to the competent authorities, it should deny assistance to this customer, sever relations with him and close his accounts.

20 Financial institutions should develop programs against money laundering. These programs should include, as a minimum :

a) the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees ;

b) an ongoing employee training program ;

c) an audit function to test the system.

Measures to cope with the problem of countries with no or insufficient anti money laundering measures.

21 Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

- 22 Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply these recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulation prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these recommendations.

Other measures to avoid currency laundering

- 23 The feasibility of measures to detect or monitor cash at the border should be studied, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.
- 24 Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerized data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.
- 25 Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.

Implementation, and role of regulatory and other administrative authorities

- 26 The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should cooperate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.
- 27 Competent authorities should be designated to ensure an effective implementation of all these recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.
- 28 The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.
- 29 The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.

D - STRENGTHENING OF INTERNATIONAL COOPERATION

Administrative cooperation

a) Exchange of general information

30 National administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the IMF and BIS to facilitate international studies.

31 International competent authorities, perhaps Interpol and the Customs Cooperation Council, should be given responsibility for gathering and disseminating information to competent authorities about the latest developments in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

b) Exchange of information relating to suspicious transactions

32 Each country should make efforts to improve a spontaneous or "upon request" international information exchange relating to suspicious transactions, persons and corporations involved in those transactions between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

Cooperation between legal authorities

a) Basis and means for cooperation in confiscation, mutual assistance, and extradition

33 Countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions - i.e. different standards concerning the intentional element of the infraction - do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

34 International cooperation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.

35 Countries should encourage international conventions such as the draft convention of the Council of Europe on confiscation of the proceeds from offenses.

b) Focus of improved mutual assistance on money laundering issues

36 Cooperative investigations among appropriate competent authorities of countries, should be encouraged.

37 There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.

- 38** **There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity. There should also be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.**
- 39** **To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.**
- 40** **Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offense or related offenses. With respect to its national legal system, each country should recognize money laundering as an extraditable offense. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgments, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.**