FATF-IV

FINANCIAL ACTION TASK FORCE
ON MONEY LAUNDERING

ANNUAL REPORT
1992-1993

June 29, 1993

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SUMMARY

1. The fourth round of the Task Force, which was chaired by Australia, continued to focus on three priorities:

(i) monitoring the implementation by FATF members of the forty recommendations for combating money laundering set out in its first report;

(ii) keeping track of developments in money laundering methods and examining appropriate counter-measures;

(iii) carrying out its external relations programme to promote world-wide action against money laundering.

2. The monitoring of members' implementation of the Recommendations has been undertaken on the basis of the self-assessment and mutual evaluation procedures developed in the previous round. Further refinements were made to the annual self-assessment exercise and this now provides a comprehensive and objective analysis of the state of implementation of the Recommendations across the membership. The 1992-93 exercise showed that members were making significant progress in this area. In particular, nearly all members have now made drug money laundering a criminal offence or are in the process of doing so.

3. The mutual evaluations of FATF members, which provide a more detailed examination of the measures to combat money laundering, are well under way. The number of evaluations doubled in 1992-1993 and nearly half of the FATF member jurisdictions have now been evaluated. Summaries of the 8 evaluations carried out in FATF-IV (Denmark, the United States, Belgium, Canada, Italy, Austria, Luxembourg and Switzerland) are contained in the report. The evaluation process has proved to be a particularly effective monitoring mechanism which is of benefit not only to the country examined but to all members. The remaining evaluations are expected to be completed by the end of 1994.

4. The assessment carried out in 1992-1993 of developments in money laundering techniques confirmed the trend towards greater use of non-bank financial institutions for money laundering purposes. It also showed that businesses outside the financial sector were being used to an increasing extent.

5. As regards development of countermeasures, no new Recommendations were drawn up during FATF-IV. However, Interpretative Notes were agreed on the law enforcement technique known as "controlled delivery"; and on clarifying the application of certain existing Recommendations to insurance business. The FATF also continued its work on two initiatives begun in earlier rounds: preventive measures in the non-bank financial sector; and on the audit trail for fund transfers on electronic payment and message systems. On the latter issue, the FATF has established good

co-operation with SWIFT, the leading international funds transfer messages system, and substantial progress has been achieved in this field.

6. Two further policy initiatives were launched during the round. A major study was carried out on the use of shell corporations for money laundering. Active consideration is being given to ways of applying Recommendation 13 (which requires financial institutions to take reasonable measures to obtain information on beneficial customers) in this area. Work has also begun on measures to counteract money laundering through non-financial businesses. Both these initiatives will be pursued in FATF-V.

7. In the external relations field, the FATF has intensified its efforts to encourage non-member countries to take effective action against money laundering. The programmes undertaken in 1992-93 have involved contacts with countries from every continent, with a particular emphasis on the Caribbean, Central and Eastern Europe and Asia.

8. FATF members participated in the work of the Caribbean Financial Action Task Force which, in November 1992, endorsed the FATF Recommendations and agreed to establish its own process to monitor their implementation by its members. In Central and Eastern Europe, the FATF held seminars in Budapest (attended by officials from a number of states from the region) and Warsaw. A seminar for Asian and Pacific states was held during the FATF's September 1992 meeting in Sydney, Australia, and was followed by a major money laundering symposium for Asian countries in Singapore in April this year. Further initiatives are planned in various parts of the world in 1993-1994.

9. In carrying out its external relations mission the FATF has worked in close co-operation with other international bodies involved in the fight against money laundering, such as the Commonwealth Secretariat, the Council of Europe, the United Nations International Drug Control Programme, the Customs Co-operation Council and INTERPOL.

10. During its 1993-1994 round, which will be chaired by the United Kingdom, the FATF will carry out the review of its statute and future work which was agreed when its mandate was renewed by Ministers in June 1991. However, it has already been decided that the group will continue until at least the end of 1994 to complete the mutual evaluations of FATF members.

11. At its 2-3 June meeting, the Council of OECD Ministers reaffirmed "the importance of co-operative global action to combat money laundering". They also welcomed "the substantial progress made by members of the Financial Action Task Force in implementing effective counter-measures in their countries and look forward to the greater application of these measures in the non-bank financial sector".

INTRODUCTION

12. The Financial Action Task Force was established by the G7 Economic Summit in Paris in 1989 to examine measures to combat money laundering. In April 1990, it issued a report with a programme of forty Recommendations. Following a second round of the Task Force, Member governments decided in June 1991 that it should continue its work for a further period. The Task Force has twenty eight member jurisdictions and regional organisations, including all OECD countries and other major financial centres.

13. Australia succeeded Switzerland as the Presidency of the Task Force for the fourth round of its work. Six series of meetings were held in 1992-1993, the first in Sydney and the remainder at the OECD headquarters in Paris. As agreed in the previous round, membership of the FATF has not been expanded. The Task Force continued to draw together experts from a wide range of disciplines, including finance, justice and external affairs ministries, law enforcement authorities and financial supervisory and regulatory agencies. Meetings of the Task Force were also attended, on an ad hoc basis, by representatives from the Council of Europe, the Customs Co-operation Council, the International Monetary Fund, the International Organisation of Securities Commissions, Interpol, the United Nations International Drug Control Programme and the World Bank.

14. In addition to holding plenary meetings, the FATF has also continued to operate through three Working Groups, dealing respectively with legal issues (Working Group I, Chairman: Italy); financial matters (Working Group II, Chairman: the Netherlands and, for the last part of the round, France); and external relations (Working Group III, Chairman: the USA). Working Groups I and II met jointly on several occasions to discuss the draft mutual evaluation reports on FATF members and policy issues of mutual interest.

15. In line with the remit for the FATF agreed in June 1991, the Task Force has focused on three main areas of work:

(i) evaluating the progress made by FATF members in implementing the forty Recommendations for countering money laundering set out in the first FATF report;

(ii) monitoring developments in money laundering techniques and pursuing appropriate refinements to the counter measures; and

(iii) implementing an external relations programme to promote the widest possible international action against money laundering.

I. MONITORING THE PROGRESS OF FATF MEMBERS IN IMPLEMENTING THE FORTY RECOMMENDATIONS

16. The Task Force monitors the performance of its members using the two methods agreed in 1991: an annual self-assessment exercise; and the more detailed mutual evaluation process under which each member jurisdiction is examined once over the period 1991-1994.

(i) Self Assessment

17. The self-assessment process continued on the basis of separate questionnaires relating to the legal and financial Recommendations. Drawing on the experience of the 1991-1992 exercise, various improvements were made to the questionnaires to elicit more precise information from members and to ensure that all aspects of the Recommendations were covered. In particular, the questionnaire dealing with financial issues was substantially revised so that the state of the application of the relevant Recommendations in the various sectors of non-bank financial institutions (securities, insurance, etc.) could be more accurately assessed. As before, members were invited to supply any appropriate narrative information as well as answering the questions. Most took the opportunity to do so.

18. When all member jurisdictions had completed the questionnaires, the FATF Secretariat drew up two grids of the responses showing the state of implementation of the Recommendations across the membership. These were then discussed in the respective Working Groups. Although there inevitably remain some differences in interpretation of some of the questions, the exercise now provides a generally objective analysis of the performance of members.

(ii) State of Implementation

(a) Legal Matters

19. The responses to the questionnaire showed that members have made substantial progress in putting into place the necessary legal measures, although there is still some way to go before all members are in full compliance with the Recommendations.

20. Nearly all members have now made drug money laundering a criminal offence or are taking steps to enable them to do so within the next twelve months. In addition, whereas in the survey carried out in FATF-III, very few members had criminalised money laundering other than for drugs proceeds, ten members have now introduced measures making it an offence to launder the proceeds of any serious crime or any crime which generates significant proceeds and another eight are in the process of doing so. In addition to the ten members who have ratified the Vienna Convention, another eight expect to have done so within the next twelve months and another four have partially implemented its provisions.

21. Nearly all members have laws enabling the confiscation of the proceeds from, and instrumentalities of, criminal offences. Such laws almost uniformly provide for law enforcement authorities to freeze and seize assets subject to confiscation and most include measures for identification, tracing and evaluation of assets. In addition, three FATF members have now ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, which will come into force on 1 September 1993. The majority of the European members of the FATF expect to have ratified the Convention within the next twelve months.

22. There has also been encouraging progress in promoting mutual legal assistance between members on money laundering issues. The domestic law of most FATF members allows them to conduct

co-operative investigations with other jurisdictions regarding money laundering and asset seizure/confiscation. Nearly all these members have conducted such investigations, although statistics are not generally available. Similarly, the great majority of FATF members can provide legal assistance in relation to drug money laundering offences either under bilateral or multilateral legal assistance treaties or general provisions. However, so far only a minority of members have such arrangements for non-drug money laundering cases.

(b) Financial Issues

23. There was also continued progress in implementing the financial Recommendations, particularly in the case of several European Task Force Member governments who are required to comply with the provisions of the EC Money Laundering Directive. But, as with the legal Recommendations, full compliance has not yet been achieved. In particular, there is a considerable disparity in the state of implementation of the various recommendations between the banking sector and non-bank financial institutions.

24. The vast majority of members are in full or partial compliance with customer identification and record-keeping rules, although there are still important exceptions, in particular for fiduciary transactions and requirements for non-bank financial institutions to take reasonable measures to obtain information about the true identity of persons on whose behalf an account is opened or a transaction is conducted.

25. While a majority of FATF Member governments requires banks to pay special attention to complex, unusual, large transactions, only a quarter of them currently oblige non-bank financial institutions to do so. Most FATF members either permit or require financial institutions to report promptly their suspicions to the competent authorities, although many still allow these institutions to warn their customers that reports are being made. Some two thirds of FATF member governments require banks to pay special attention to business relations and transactions with persons from countries with insufficient anti-money laundering measures. In a large majority of members, banks fully or partially ensure that the FATF principles are also applied to their branches and majority-owned subsidiaries located abroad. Similar measures are applied by non-bank financial institutions only in a minority of FATF members.

26. Most members require banks to develop specific programmes against money laundering and, in the majority, the regulatory authorities ensure that the supervised institutions have adequate programmes in place. In nearly all members, the competent authorities supervising banks and other financial institutions co-operate with law enforcement authorities in money laundering investigations and prosecutions. Some member governments have designated competent authorities to deal with the implementation of the FATF Recommendations as far as other professions dealing with cash are concerned. Guidelines have already been established by half of the Member governments to assist banks in detecting suspicious patterns of behaviour. Some members have done so for non-bank financial institutions as well. A large majority of members have also taken measures to guard against the control or acquisition of financial institutions by criminals.

(iii) Mutual Evaluation

27. The mutual evaluation process is now well under way. The number of evaluations carried out doubled in the 1992-1993 round. Nearly half the FATF member jurisdictions have now been subject to this process. The procedures established in FATF-III, which involve on-site visits by a team of experts followed by the preparation of detailed reports for discussion and endorsement by the FATF, have proved to be a particularly effective monitoring mechanism.

28. The evaluations provide a very thorough scrutiny of the action taken against money laundering by the members concerned and identify possible improvements to their anti-money laundering systems. The process produces a consistent and analytical assessment across the FATF membership while taking into account the particular circumstances of each individual FATF member (such as the scale and nature of the money laundering problem; the degree of development of the financial system; and the state of advancement of the anti-money laundering framework). The evaluation reports and the discussions in FATF meetings have proved to be of benefit to the FATF membership as a whole as well as to the individual member examined.

29. Eight mutual evaluations were carried out in FATF-IV: Denmark, the USA, Belgium, Canada, Italy, Austria, Luxembourg and Switzerland. The summaries of the reports are as follows:

Denmark

30. Denmark does not have a major drug consumption problem, nor is it a major centre for money laundering activity. Nevertheless, the fact that Denmark is not free of criminal activity, including the sales of drugs, means that criminal proceeds are generated within the country. However, the requirement for Danish banks to report accounts to the taxation authorities and the high level of income and capital taxation in Denmark act as powerful deterrents to resident criminals using the financial system for money laundering.

31. Denmark has adopted a clear political attitude towards the philosophy of the FATF. However, Denmark has, until now, not separated money laundering as a problem which differs from other kinds of serious crime. In addition, there is no Danish law enforcement agency specialised in the fight against money laundering. Despite the lack of legislation specifically criminalising money laundering, the combination of existing laws with respect to a wide range of predicate offences together with the confiscation provisions provides a legal framework which the authorities have used on a number of occasions to punish the laundering of criminal proceeds.

32. The bulk of the anti-money laundering requirements for the financial sector is introduced in the Danish legislation by Act 348 of 9 June 1993 on measures to prevent money laundering. This Act implements the EC Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

33. With a view to preventing money laundering, the legislation requires the financial institutions to adopt internal rules of adequate control, communications procedures, training and institutions programmes for their employees. Financial institutions will ask their customers to provide proof of identity when establishing business relations with them. The requirement concerning proof of identity will also apply to occasional customers for every transaction above the equivalent value of ECU 15,000 and to transactions carried out on behalf of a third party. When there is a suspicion that a transaction is associated with money laundering, the financial institutions will have to investigate it closely, and at that same time, report it to the police only if the suspicion cannot be disproved. Information from the banks and the financial institutions passed on to the police in good faith will not be treated as a breach of confidentiality and will not involve these institutions in any liability.

34. An effective and complete implementation of the EC Directive is crucial to strengthen the Danish approach to money laundering. Concentrating on areas for enhancement, efforts should focus on the role of the Financial Supervisory Financial Authority which needs to be clearly defined in the anti-money laundering process. While the legislation to implement the EC Directive is comprehensive

with regard to banks and traditional financial institutions, the question remains as to how to address the use of non-traditional financial institutions for money laundering.

United States

35. The US has the most serious drug consumption problem and drug-related social problems of any industrialised country in the world. Money laundering takes place on a huge scale and the laundering of drug proceeds has increased enormously since the early 1980's. However, very large amounts of the proceeds of non-drug crimes are also laundered - in total almost as much (if not more) than drug funds. The US is also notable for the size and diversity of its financial system, which complicates the task of combating laundering. The scale of the informal financial sector, which is largely unregulated, is a particular problem since the launderers are increasingly using such institutions.

36. The US conducts a very vigorous programme against money laundering. Its strategy is based on aggressive prosecution of money laundering offences, a concentrated effort to prevent the use of financial institutions for laundering, with a particular emphasis on reporting of large currency transactions, and determined efforts to locate, seize and forfeit the proceeds of money laundering. The US is also very active in bilateral and multilateral initiatives in this field.

37. The US has had anti-money laundering legislation since 1970 and this is regularly revised and updated to respond to changes in the money laundering threat, most recently in an Act of October 1992. The key elements are the Bank Secrecy Act and the Money Laundering Control Act. The former, which applies to all deposit-taking institutions and other specified categories of activity, provides for the reporting of large cash transactions (which is mandatory for all businesses whether or not in the financial sector); identification of customers; and record-keeping requirements. Depository institutions are also required to report suspicious transactions and have anti-money laundering compliance programmes. These requirements are now in the process of being extended to other institutions. The money laundering offence itself is notable for the very wide range of predicate crimes which are specified in the legislation.

38. The US is very substantially in compliance with the forty FATF Recommendations, the main area of weakness being the non-bank financial sector where application of anti-money laundering measures is as yet far from comprehensive. There is a generally commendable legal framework for dealing with money laundering. Both the US authorities and the mainstream financial institutions are without question very strongly committed to the fight against money laundering. The dedication and professionalism of the agencies merits high respect, although the number of agencies involved in this field presents its own challenges.

39. Given the scale and nature of the money laundering problem faced by the US, there is clearly a need to ensure that the regulatory and law enforcement resources and systems available are organised and targeted to maximum effect. Reinforcement of the resources directed towards the informal financial sector would be consistent with the increased use of this sector by launderers. Concerns have also been expressed about the burdens imposed by the large currency reporting system in its present form and potential problems in running both this and suspicions reporting in tandem. The recently announced review by the US Treasury of the burdens and efficiency of the currency reporting system is therefore welcome.

Belgium

40. Belgium does not differ significantly from other European countries with regard to drug manufacturing, dealing and consumption. However, there is a risk that the Belgian financial system will, like others, find itself confronted with attempts at money laundering. This risk is accentuated by the fact that neighbouring countries have stiffened their legislation and that Brussels has consolidated its position as a financial centre. For this reason Belgium considered it necessary to adopt a certain number of measures aimed at combating money laundering in conformity with its international obligations.

41. Before the Act of 11 January 1993 on preventing the financial system being used for money laundering purposes, Belgium had already adopted anti-money laundering measures. First, the Act of 17 July 1990 made money laundering a criminal offence and provided for rules regarding confiscation. Second, on 17 July 1991, the Banking and Finance Commission issued a circular that requires credit institutions to observe certain requirements regarding the identification of customers, recordkeeping and internal procedures and increased diligence for unusual transactions. These measures were extended to stock brokerage companies as from September 1992.

42. The Act of 11 January 1993 on preventing the financial system from being used for money laundering went a long way towards completing Belgium's anti-money laundering machinery. The Act implements the provisions of EC Directive of 10 June 1991 in Belgium. It contains a set of preventive measures to be implemented by financial bodies. The Act also organises the collaboration of the financial bodies in the fight against money laundering by introducing a system for channeling information to an administrative unit called the "Financial Information Processing Unit". Financial bodies report suspicious operations to this Unit. The task assigned to the Unit is to collect reports from financial bodies and analyse them in the light of its own investigations. The Unit is empowered to ask the financial bodies to suspend an operation and, under certain circumstances, it can also inform the Crown Prosecutor.

43. The banking sector has made noteworthy efforts to combine its own action with those of the supervisory authorities. In particular, the Belgian Banking Federation and most credit institutions have set up remarkable training programmes. With regard to law enforcement matters, the Belgian anti-money laundering system will be reinforced by the creation of the Central Organised Economic and Financial Crime Enforcement Bureau.

44. The objectives defined in the FATF's Recommendations are being seriously and correctly pursued. While Belgium has recently acquired a coherent set of anti-money laundering measures, thanks to the Acts of 17 July 1990 and 11 January 1993, there is room for supplementary measures. Belgium should ensure that, in practice, rules against money laundering are implemented as fully as possible, especially in the case of individual currency agents and the non-financial professions.

Canada

45. Canada is primarily a drug consuming rather than producing country and the drugs situation is considered to be a serious social problem. It is estimated that drugs trafficking could generate several billion dollars a year. Like other financial centre countries, Canada's financial system has been used to launder foreign (particularly US), as well as domestically generated illicit funds. As legislation and programs were developed to combat money laundering within the sphere of traditional regulated financial institutions, the informal financial sector, particularly currency exchanges, has become a focus of concern.

46. Canada was quick to take action against money laundering. It was made a criminal offence in legislation enacted in 1988 and goes beyond drug trafficking to embrace a wide range of "enterprise crime" predicates. The legislation also enhanced the ability of the authorities to investigate, seize and obtain forfeiture of the proceeds of crime and provided for immunity from liability for reporting of suspicions. This was supplemented by new legislation and regulations brought into force earlier this year regarding record-keeping and customer identification by financial institutions and others. The federal Canadian financial services supervisor also took early action and issued money laundering guidelines which apply to all deposit-taking institutions it supervises. The Canadian banks have very active programmes of their own, although, as in other FATF members, the position in the non-bank sector is less well-developed. At the operational level, the Royal Canadian Mounted Police have had an anti-drug profiteering programme since 1981 and special integrated anti-drug profiteering units have recently been set up. Internationally, Canada has been very active in negotiating mutual legal assistance treaties.

47. Canada is substantially in compliance with the FATF Recommendations and is to be commended for the extensive list of money laundering predicates, although consideration might be given to extending this to cover all serious crimes or those generating substantial proceeds. Canadian law deals comprehensively at the domestic level with provisional measures against, and confiscation of proceeds of crime, although the requirement for the prosecution to give undertakings regarding payment of damages or costs in relation to restraint orders and freezing of assets does seem to be a constraint in practice. It would also be desirable if the authorities could act directly on requests from foreign countries to freeze and seize assets.

48. Full acknowledgement needs to be given to the Canadian authorities' willingness to keep their anti-money laundering measures under review and to make improvements to the system. For example, legislation providing for the sharing of confiscated assets domestically and internationally, was enacted in June 1993. Two additional changes - the introduction of mandatory suspicions reporting and the establishment of more effective powers to deal with suspicious currency at the border - are currently under consideration. The evaluation supported the introduction of such measures, which would further strengthen the Canadian system.

Italy

49. Located at the crossroads between the Middle East, the Mediterranean and northern Europe, Italy is the focus of a very large-scale narcotics traffic. However, the amount of laundered funds does not derive exclusively from the volume of narcotics trafficking in Italy, but also comes from the proceeds of the illicit activities of the organised crime in Italy - based on associations (clans, families) that control the traffic of drugs, arms, smuggling, etc. This means that a large part of the illicit money is channeled into and retained in financial and/or commercial activities. Therefore, the fight against money laundering is centered on this phenomenon.

50. The Penal Code provides for the repression of money laundering in its various forms, in conformity with the relevant international instruments. In order to refine and extend the scope of the repressive legislation, a Bill is under discussion in Parliament. With regard to confiscation, the provisions of the Penal Code and other criminal laws allow for the seizure of the proceeds of crime with respect to all types of crimes.

51. The key element of the Italian financial legislation to combat money laundering is Act 197 of 5 July 1991. The aim of this Act is to control cash transactions and flows, through the requirement that cash (or cash equivalent) transactions above 20 million lire (the equivalent of roughly US$ 13,000) must be carried out only through authorised financial intermediaries. Act 197 also extends the obligation of

identifying and recording the identity of the customers to all financial institutions, and broadens the requirement of recording to all means of payment. In addition, financial intermediaries are obliged to report suspicious transactions to the police. Finally, financial companies are required to be registered with the Italian Foreign Exchange Office. In parallel, the Act 227 of 1990 introduces the requirement that cross-border movements of cash or cash equivalents above 20 million lire must be channeled through authorised financial intermediaries.

52. The Italian system deserves to be characterised as a coherent and comprehensive money laundering control scheme. From a legal and administrative point of view, Italy has implemented the FATF Recommendations. However, it seems too early to offer any kind of substantive judgement as to how the legislation is working or will work in practice. Indeed, some aspects of the Italian system, i.e. the intelligence task dedicated to the UIC, will only produce results in the future.

53. As numerous authorities are involved in the anti-money laundering programme, the necessity for strong co-ordination seems to be of paramount importance. This is crucial to the achievement of the best results in money laundering investigations. The situation is different when an organised crime aspect is involved. Recent cases ("Green Ice", "Seaport") in this latter field have shown excellent efficiency both at the Italian level and at the international co-operation level between law enforcement agencies. For purely money laundering enquiries, the most important organisational problem is to determine the co-ordinating point. The latter is represented by the magistrate in charge of the investigation, who may co-ordinate his work with that of other magistrates involved in the same investigation. With regard to police investigations, the Central Investigation Office is responsible for the co-ordination of the work carried out by provincial officers.

Austria

54. Austria is not a major drug consuming country, although it does have a growing drug problem. It is one of the transit points for the supply of drugs to markets further west in Europe and to North America. Cocaine and heroin smuggling is increasing and there is growing activity by trafficking gangs from Central and Eastern European states. Although some domestic money laundering takes place, at present the problem is mainly seen in terms of the misuse of the Austrian financial system to launder the proceeds of foreign crimes, with indications that Austrian financial institutions have been used by Colombian cartels among others.

55. Measures to combat money laundering are currently limited to two main instruments: a decree of the Austrian National Bank, issued in 1991, establishing specific identification procedures for clients of banks who are not Austrian residents, although these do not fully apply to security deposit accounts; and a due diligence agreement by the Austrian banking industry, which contains various provisions, including a requirement to sever business relations in cases where there is well-founded suspicion that the funds stem from crime. Tight banking secrecy means that suspicions cannot be reported to the authorities. To date, there is no money laundering offence per se and two categories of anonymous accounts are permitted.

56. The new system being drawn up will provide a much more comprehensive and potentially effective framework. Legislation has been introduced to create a specific money laundering offence, covering the proceeds of all serious crimes. This is to be welcomed, although, in addition to actual knowledge that proceeds derive from crime, it would be desirable if the offence covered cases of wilful blindness or even those where the person should have known the criminal origin of the funds. Legislation is also being drafted to amend the Penal Code concerning confiscation of proceeds from crime, extradition and mutual legal assistance. The Banking Law will be amended to introduce a

mandatory suspicions reporting system (with a central reporting point); provide for immunity from liability for reports made in good faith; and prohibit institutions from warning customers that reports have been made. There will also be enhanced customer identification and record-keeping requirements. Nonetheless, on current proposals, identification would still not be required for passbook and security deposit Schilling accounts held by Austrian residents - a very sensitive issue in Austria and the subject of much ongoing discussion and public debate.

57. It is too soon to make a final evaluation of the Austrian anti-money laundering system, given that the new measures have yet to be implemented. However, whilst acknowledging the progress represented by the proposed laws, the retention of the two classes of anonymous accounts is a matter of concern, running directly counter to a very important FATF Recommendation. Failure to take action in this area would compromise efforts to combat money laundering in Austria and overshadow what should otherwise be a generally commendable system.

Luxembourg

58. Luxembourg does not have a significant drug problem. However, like all international financial centers, it runs the risk of being used by money launderers, as is shown by past money laundering cases, which all had an international dimension, with Luxembourg being used at the intermediary stage of the laundering process.

59. Luxembourg has implemented most of the forty Recommendations of the FATF. It has criminalized narcotics money laundering; and has required banks and other financial institutions to know and record the identity of their customers engaging in significant transactions, including recording sizeable currency transactions at thresholds appropriate to that country's economic situation (client identity must be verified for transactions exceeding 500,000 FLux, roughly US$15,000). It has required banks and other financial institutions to maintain, for an adequate time, records necessary to reconstruct large transactions through financial institutions in order to be in a position to respond rapidly to requests for information from the appropriate authorities in drug-related money laundering cases.

60. Luxembourg has also created systems for identifying, tracing, freezing, seizing and forfeiting narcotics-related assets; and has co-operated, when requested, with the appropriate law enforcement agencies of other governments investigating financial crimes related to narcotics.

61. Luxembourg introduced specific anti-money laundering regulations as early as 1989, in particular the Luxembourg Monetary Institutes's circular 89/57. The Act of 5 April 1993 on the financial sector raised the legal status of these regulations to a single coherent text, applicable to the whole financial sector, thus codifying the requirements imposed on the financial sector by the FATF Recommendations and the 1991 EC Directive. A key point of the new law, central to the FATF Recommendations, is that it obliges financial professionals to take the initiative to inform the public prosecutor of any suspicion of a laundering offence. No professional secrecy obligation inhibits this obligation to inform the authorities and a financial professional who, in good faith, provides such information is protected from criminal and civil liability. A potential problem for Luxembourg is that, as controls discourage the use of the regulated financial institutions, money launderers might be attracted to other less regulated businesses. Another problem concerns the limitation of the predicate offences to those connected to drug trafficking. Efforts are therefore underway to impose on other vulnerable sectors obligations similar to those prevailing for the financial sector, and to extend the incrimination of money laundering to other criminal offences.

62. The concept of money laundering and the role of the financial institutions have undergone an important evolution in Luxembourg. To its credit, the local financial community acknowledges that to

maintain the Grand Duchy's reputation as a safe and sound banking environment, money laundering schemes do little to enhance the center's reputation. At the same time, the enactment of the Act of 5 April 1993 remains an important element in demonstrating Luxembourg's commitment to fighting money laundering and its desire to comply fully with the forty Recommendations of the FATF.

Switzerland

63. The domestic consumption and trafficking of drugs in Switzerland produces only a low level of laundering. On the other hand, as an international financial center, Switzerland is likely to be used for money laundering purposes. The authorities and the banking sector were consequently induced to take significant measures for fighting against this phenomenon.

64. Since 1990, the Swiss Penal Code contains the specific offence of money laundering. Every serious offence, not only drug trafficking, is considered as a predicate offence. The Penal Code also contains a general obligation, which applies to all intermediaries in the financial sector, to identify the customer as well as any possible beneficial owner of the funds. Moreover, the competent authorities are entitled to freeze, seize and confiscate the proceeds of all offences. The Swiss penal law is thus in full compliance with FATF Recommendations 4 and 5, and goes even further than the mere letter of the measures recommended.

65. The banking sector takes advantage of a notable experience in the fight against money laundering. Since 1977, the obligation to identify the contracting partners and beneficial owners of funds is anchored in a private law agreement, the Agreement on the banks' code of conduct with regard to the exercise of due diligence (CDB). This latter has been periodically reinforced, and it is considered as a minimum requirement for the application of penal measures and prudential supervision. The other requirements for banks are set out in a circular of the Federal Banking Commission, the bank supervisory authority. The Swiss banking sector thus applies the great majority of the FATF Recommendations on financial matters. In addition, a Bill introducing the right for financial sector professionals to pass on their money laundering suspicions to the penal prosecution authorities, will soon be submitted to Parliament. However, with regard to the non-banking financial sector, additional efforts will be necessary to implement the FATF Recommendations. In this context, the adoption of the draft Bill on the fight against money laundering in the financial sector, which is still confidential, in a shorter time limit than anticipated, appears as a necessity.

66. While Switzerland has not yet ratified the UN Convention, it already applies its provisions related to international assistance. Its very broad definition of money laundering has furthermore enabled Switzerland to ratify without difficulty, Convention No. 141 of the Council of Europe. With its Federal law of 1983 on International Mutual Assistance in Criminal Matters, Switzerland is finally equipped with a domestic law which allows it to co-operate in this field with all requesting States, even those to whom it is not bound by a bilateral treaty.

67. The progress acccomplished by Switzerland in the fight against money laundering deserves recognition and many aspects of the Swiss system could serve as an example to other Member governments in their own implementation of the FATF's Recommendations.

Assessment

68. No final conclusions on the state of play across the FATF membership revealed by the mutual evaluation exercise can be drawn until all the examinations have been completed. However, some provisional observations can be made. The members examined during FATF-IV were at different stages in the development of their anti-money laundering framework. For example, some had had laws in the area for some years, while others were still in the process of enacting measures. But all were making generally good progress in their implementation of or were already substantially in compliance with the FATF Recommendations.

69. Most already had, or were proposing to enact, a money laundering offence which went wider than just the proceeds of drugs trafficking. All fully recognised the importance of enlisting the support of the financial community in the fight against money laundering and the banking sector was already well aware of the problem, although the position was more variable in the case of non-bank financial institutions. In all cases, the reports pointed to some areas where the anti-money laundering framework could be strengthened with a view to maximising the effectiveness of the counter-measures and preventing the exploitation of any weak links in the system by money launderers.

II. MONITORING DEVELOPMENTS ON MONEY LAUNDERING TECHNIQUES AND REFINEMENT OF THE FATF RECOMMENDATIONS

70. Money laundering is a dynamic activity. The criminals are constantly searching for new points of vulnerability and adjusting their laundering techniques as FATF members and other countries apply counter-measures. An essential element of the FATF's work is therefore to collect and share information on the latest developments and trends in money laundering methods and consider appropriate responses.

1992-1993 Survey of Laundering Trends and Techniques

71. It is rare for a genuinely new technique to be developed - and none were discernible in the monitoring exercise carried out in FATF-IV. But the exercise did reveal important trends in the pattern of money laundering and the increased utilisation of more sophisticated methods. Many methods mentioned in earlier exercises, such as the use of wire transfers, structuring of transactions ("smurfing"), were emphasised as subjects of continuing concern. However, it was noted that there was an increasing amount of laundering of the proceeds of non-drugs crimes, for example, arms smuggling and "white-collar" crime.

72. The trend towards greater use of non-bank financial institutions as a means of getting the proceeds of crime into the financial system ("placement") was confirmed. The use of bureaux de change, casinos, financial brokers, life insurance and postal money orders were all mentioned in cases submitted by FATF members.

73. Evidence was also presented of the increasing use of legitimate non-financial businesses, such as retail shops and import-export companies. (This was a major feature of the famous "Green Ice" operation against the Colombian cocaine cartels.) These businesses were used not only for the investment of the proceeds of crime (the final "integration" phase of a laundering operation) but also in earlier phases of placement and "layering" (conducting a series of transactions to hide the illicit origin of the money). Control over well-established existing businesses by money launderers provides a continuing means of facilitating their operations. The proceeds of crime can be commingled with those of the legitimate commercial activities of the company and false invoicing used to disguise the illicit origin of funds. Such businesses can also be used in drug trafficking operations themselves: shipments of drugs being sent together with the legitimate goods in which the companies were dealing.

74. Shell corporations continue to be widely used by money launderers, mainly, though not exclusively, those registered in offshore havens. Finally, the renewed recourse to physical movement of cash across international borders, using increasingly sophisticated methods of concealment, was noted.

Refinement of Countermeasures

75. In response to the findings from this exercise, the FATF launched various new studies of appropriate counter-measures as well as continuing the policy development work begun in early rounds, notably on the use of non-bank financial institutions for money laundering. As in FATF-III, it was decided not to add to, or modify, the original forty Recommendations for the time being. But FATF-IV agreed to adopt three further Interpretative Notes to the existing Recommendations and also carried out substantial work on other issues.

Interpretative Notes

(i) Controlled Delivery

76. FATF-III agreed an Interpretative Note stating that members should consider taking measures to postpone or waive the arrest of suspected persons and/or seizure of suspect funds to enable the identification of those engaged in suspected money laundering operations and gather evidence. In 1992-1993, the FATF looked further at the technique of controlled delivery - allowing shipments of or transactions involving items of a suspect origin to proceed under the surveillance of the authorities to identify and gather evidence against as many as possible of the criminals involved. The use of this technique in international drugs trafficking cases has been accepted for many years but it is equally applicable in those involving suspected money laundering. To promote the use of this technique, the FATF therefore adopted the following Interpretative Note to Recommendations 32, 33, 36 and 38 (which deal with exchange of information and co-operation between legal authorities):

" The controlled delivery of funds known or suspected to be the proceeds of crime is a valid and effective law enforcement technique for obtaining information and evidence in particular on international money laundering operations. It can be of great value in pursuing particular criminal investigations and can also help in obtaining more general intelligence on money laundering activities. The use of these techniques should be strongly encouraged. The appropriate steps should therefore be taken so that no obstacles exist in legal systems preventing the use of controlled delivery techniques, subject to any legal requisites, including judicial authorisation for the conduct of such operations. The FATF welcomes and supports the undertakings by the Customs Co-operation Council and INTERPOL to encourage their members to take all appropriate steps to further the use of these techniques."

(ii) Insurance

77. During 1992-1993, the FATF discussed modalities for implementing its Recommendations on financial matters (Recommendations 9-32) in specific sectors of non-bank financial institutions, particularly in the insurance industry.

78. With regard to the scope of application of the Recommendations, it was recognised that, while life insurance can be an instrument for laundering illicit funds, money laundering through non-life insurance or insurance products other than investment products, is rare. To take account of this, the following Interpretative Note was adopted to Recommendation 9:

> "The FATF Recommendations should be applied in particular to life insurance and other investment products offered by insurance companies, whereas Recommendation 29 applies to the whole of the insurance sector."

79. As far as the increased diligence of financial institutions is concerned, the following Interpretative Note to Recommendation 15 was agreed to clarify what was meant by the term "transactions" in relation to insurance:

> "The word "transactions" should be understood to refer to the insurance product itself, the premium payment and the benefits."

Shell Corporations

80. It was agreed in FATF-III that 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. The further work carried out on this issue in FATF-IV has focused on studying the ways in which shell corporations (and similar entities such as ghost or front corporations) can be employed in money laundering operations; and in discussing appropriate steps which would counter these abuses without prejudicing the legitimate use of such bodies. A survey of FATF members and a sample of non-FATF jurisdictions was carried out to obtain information on the form of beneficial ownership and conditions for incorporation of shell corporations; and the ability to find out who owns such bodies and provide this information to foreign and domestic law enforcement authorities. The legislation of the various FATF members differs significantly in this field of commercial law.

81. A key factor which makes shell corporations attractive to money launderers is the ability in many jurisdictions to conceal or obfuscate the true beneficial ownership of the entity. The FATF has therefore concentrated on the issue of transparency of ownership. The FATF Recommendations already place responsibilities on financial institutions to identify their clients and take reasonable measures to obtain information about beneficial customers, particularly in the case of domiciliary companies. Active consideration is being given to a possible Interpretative Note to these Recommendations or further guidance which would clarify the measures to be taken by financial institutions in obtaining identification information in respect of such clients. Consideration has also begun of the feasibility of specific methods to ensure that adequate records of owners of shell corporations are maintained and can be accessed by law enforcement authorities.

Use of Non-Financial Businesses for Money Laundering

82. The range of businesses which can be used - whether wittingly or unwittingly - by money launderers is a wide one. Those which deal with large amounts of cash or conduct some form of financial services activity in addition to their mainstream operations are potential targets. Work has begun on identifying businesses which carry out quasi-financial activities and will consider where application of the FATF Recommendations is appropriate and which are the relevant Recommendations. However, this is obviously a major and complex area which will need to be the subject of a long-term study.

Non-Bank Financial Institutions

83. The Task Force reviewed the tendencies of the use of the non-banking financial sector by money launderers. Bureaux de change, intermediaries in investment businesses and insurance companies were identified as having been used, or particularly vulnerable to being used, for money laundering. The results of this study will provide the basis for further work during FATF-V. In parallel, modalities for implementing the FATF financial Recommendations in the non-bank financial sector were discussed on several occasions.

Customer Identification

84. Work was also carried out on the specific problem of how best to conduct identification in cases where there is no face-to-face contact between the institution and its customer. In such cases, the provision of identifying documents poses real difficulties or is impractical and runs counter to the way in which transactions or business relations are conducted. It was agreed that further work should be done on this important issue in 1993-1994, bearing in mind the need to ensure both a level playing field for the various categories of financial institutions and a proper balance between flexibility and security.

Electronic Fund Transfers

85. In 1992-1993, the FATF addressed the issue of how to deal with money laundering cases that involve use of domestic and/or international electronic funds transfers. FATF members took note of the increased use of electronic payment and message systems in the money laundering process. They held meetings with SWIFT (the Society for Worldwide Interbank Financial Telecommunications) in order to discuss their concern that international funds transfers can be used to dissimulate the identity of the original ordering customer or the beneficiary. As a result, SWIFT responded to this concern by broadcasting a message to all the users of its system asking them to include these details in the messages they send. In turn, national authorities have also taken steps to encourage the users of the SWIFT system, within their respective jurisdictions, to follow the advice contained in the SWIFT broadcast. SWIFT and the FATF have also co-operated in studying what further improvements might be made to the audit trail left by electronic payment and message instructions.

III. EXTERNAL RELATIONS

86. In 1992-1993, the FATF intensified its efforts to promote the widest possible world-wide action against money laundering, based on the external relations plan agreed in the previous round. A series of initiatives were mounted in different parts of the world to disseminate the FATF programme and respond to requests from particular countries for provision of training and technical assistance. The Task Force has also continued to monitor progress by dependent, associate or otherwise connected territories of FATF members in adopting and implementing the forty Recommendations.

87. In carrying out its external relations programme, the FATF collaborates closely with other international and regional organisations with an interest in combating money laundering. These links have been strengthened and diversified during the past year and the FATF aims to develop an increasingly co-ordinated approach in the future.

(i) Disseminating the FATF Programme

88. An essential feature of the FATF's external relations strategy is its multi-disciplinary approach. Great emphasis is placed on gathering together all the relevant interests concerned - financial and regulatory; legal and judicial; and law enforcement - and promoting co-operation between them. As far as possible, the FATF also seeks to involve financial institutions as well as government agencies in its contacts with non-member countries.

89. Geographically, the FATF has concentrated its efforts on three regions during 1992-1993: the Caribbean area; Central and Eastern Europe; and Asia.

a) The Caribbean

90. FATF members have worked closely with the Caribbean Islands and Central American States since 1990 when a drug money laundering conference was held in Aruba. Subsequently a Caribbean Financial Action Task Force (CFATF) was formed. The CFATF process has gathered pace in 1992-1993 and major progress has been made in promulgating the FATF message in the region. A Ministerial Conference of the CFATF held in Jamaica in November 1992 formally endorsed and undertook to implement the forty FATF Recommendations and the nineteen Recommendations drawn up at the Aruba Conference in 1990. The CFATF also agreed on the need for a mechanism to monitor and encourage progress in this work, including a self-assessment and evaluation process. To further this aim and to facilitate the provision of training and technical assistance in the region, the meeting proposed the creation of a small CFATF Secretariat to be based in Trinidad and Tobago, which is taking over the Presidency of this body. A further meeting of the CFATF will be held in 1994 to evaluate progress.

b) Central and Eastern Europe

91. Central and Eastern Europe has been a particular focus for the FATF's external relations work during 1992-1993. The countries present an increasingly attractive target for money launderers as they liberalise their economic and financial systems. With the increasing presence of organised crime in the area, there is also a growing risk of domestic money laundering operations. The FATF has therefore been encouraging these states to implement effective anti-money laundering measures in the process of reforming their laws and financial systems.

92. At the occasion of the Council of Europe's money laundering conference in September 1992, FATF members held meetings with delegates from most Central and Eastern European countries to find

out more about the money laundering situations within these countries and discuss how the FATF might assist them. These contacts resulted in the FATF's organising two seminars in Hungary and Poland.

93. The first took place in Budapest in early February. In addition to representatives from Hungarian government agencies and commercial banks, delegations from Albania, Bulgaria, the Czech Republic, Poland, Romania and Slovakia attended as observers. In preparation for the seminar, FATF members held detailed discussions with Hungarian officials and bankers on the money laundering situation in Hungary and progress in developing counter-measures. The symposium covered all aspects of the anti-money laundering framework and resulted in the preparation of a set of recommendations to the Hungarian authorities on their next steps in this area.

94. A similar symposium took place in Warsaw in early March for officials from Polish government agencies and financial institutions. Again, the FATF held discussions with the relevant Polish agencies beforehand, including the Governor of the National Bank of Poland and other high-level officials, and produced recommendations for the Government of Poland.

95. Individual FATF members took part in other missions to particular Central and Eastern European countries and both the European Community and the Council of Europe have ongoing initiatives in the region.

96. The FATF and UNDCP are now initiating a dialogue with relevant policy makers in Russia. The FATF will also be following up the links established with Hungary and Poland to evaluate progress and provide further assistance as necessary.

c) Asia and the Pacific

97. Preliminary contacts with Asian and Pacific countries had been made in earlier FATF rounds. However, given the importance of this region, both in terms of the numbers of developed or emerging financial centres as well as drug producing countries, the FATF undertook two initiatives in the area during 1992-1993.

98. The Sydney meeting of the FATF in September included a programme for selected Asian and Pacific states. Representatives from Fiji, Indonesia, Malaysia, Nauru, Papua New Guinea, the Philippines, the Solomon Islands, Tonga and Taiwan took part in presentations and discussions on the money laundering situation in the region.

99. This was followed in April 1993 by the Asia Money Laundering Symposium. This was organised jointly by the FATF and the Commonwealth Secretariat, with the support of the UNDCP, and hosted by the Government of Singapore. The Symposium was attended by participants from fourteen non-FATF countries/regions and SEACEN, as well as nine FATF members, the UNDCP and INTERPOL. The Symposium concentrated on raising awareness of the money laundering problem and explaining countermeasures. The non-FATF members were asked to give serious consideration to implementing the forty FATF Recommendations, and interest was expressed in holding a follow-up Symposium in about a year's time.

d) Other Areas

100. In November 1992, FATF members met representatives of the Central African Republic, the Ivory Coast, Kenya, Morocco, Nigeria and Zimbabwe for discussions on the best way of pursuing anti-money laundering initiatives in Africa. Consultations are also taking place with selected regional organisations. The FATF is now drawing up proposals for a programme of action in Africa during the 1993-1994 Round of the Task Force.

101. In the Middle East, a conference on money laundering, organised jointly by the FATF, the Gulf Co-operation Council and the Saudi Arabian Monetary Authority, is planned for October 1993. In South America the FATF is continuing to follow the progress of the Organisation of American States' anti-money laundering initiative.

(ii) Implementation of FATF Recommendations by Dependent, Associate or Otherwise Connected Territories of FATF Members.

102. The FATF has continued to oversee the action taken by these non-member territories in implementing anti-money laundering measures. The reports provided by the FATF members who have links with these territories indicate that good progress is being made in a number of areas. Most are in the process either of enacting or implementing laws to make money laundering a criminal offence. However, it was agreed that the sponsoring FATF members should maintain their efforts to encourage these territories to put in place a comprehensive anti-money laundering system as soon as possible.

103. The FATF has begun consideration of how to evaluate progress by these territories. Some already take part in the FATF self-assessment survey or will be covered by the Caribbean FATF evaluation process. But these arrangements are not systematic or comprehensive at present.

Co-operation with Regional and International Organisations

104. While the Task Force is the only international body which specialises in and concentrates solely on the fight against money laundering, it works in close co-operation with other international organisations in this field. Representatives from the Council of Europe, INTERPOL, the UNDCP and the Customs Co-operation Council have regularly attended FATF meetings and participated in the planning and execution of the various initiatives carried out in 1992-1993 and contacts have also been maintained with the IMF and the World Bank. Close links have been established with the Commercial Crime Unit of the Commonwealth Secretariat and the FATF is also having discussions with the European Bank for Reconstruction and Development regarding anti-money laundering initiatives in Eastern Europe.

105. It is clearly important that the international community avoids overlap and duplication and draws strength from collective action. In conjunction with the other major organisations, FATF is therefore taking steps to promote a more co-ordinated approach in this area.

Assessment

106. The FATF has made substantial progress in its external relations agenda during round IV. Promoting money laundering awareness remains an important element of its work. But, in addition to seeking a firm commitment to implementation of the forty Recommendations, the FATF also wants to secure agreements by third countries to be evaluated on their progress in applying anti-money laundering measures. Clearly, results cannot be expected immediately and the FATF is at different stages in its dialogue with various regions. However, the Caribbean FATF process has shown that, over time,

substantive commitments can be achieved. The challenge for the future is to give substance to the contacts which have already been made, whilst spreading the FATF message to those parts of the world where even awareness of the money laundering problem remains at a very low level.

CONCLUSIONS

107. The FATF has made substantial progress in its work in 1992-1993 and last year's experience confirmed that it remains an effective and flexible forum for combating money laundering. Implementation of the forty Recommendations by FATF members is gathering pace and the monitoring mechanisms devised in round III provide a searching scrutiny of performance. The FATF's external relations efforts have been intensified and, as the Caribbean FATF process shows, have now started to produce firm commitments in important areas to action against money laundering. The FATF has also continued to undertake valuable work in refining and developing anti-money laundering counter-measures.

108. Nevertheless, there can be no cause for complacency nor any let up in the efforts of the Task Force to carry out its programme. There is still some way to go before all the Recommendations are implemented and it is essential that all members complete the process without further delay. There is also a need to be constantly on guard against new money laundering techniques and take prompt action to remedy any weaknesses revealed. In its external relations work, the Task Force, in co-operation with other international bodies, must maintain the momentum of its efforts to persuade all financial centres to join the fight against money laundering. There are still some areas where the FATF's message has not penetrated and others where further work is needed to reinforce the process. The more widespread the action against money laundering, the more effective it will be.

109. The 1993-1994 round of FATF, which will be chaired by the United Kingdom, will therefore have a full agenda. This will include the review of the future of the FATF, which will examine the statute and future operations of the Task Force.

FATF-IV

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

ANNEXES TO THE ANNUAL REPORT 1992-1993

June 29, 1993

CONTENTS

REPORT TO THE FATF FROM WORKING GROUP I (LEGAL MATTERS)
1992-93

I. Introduction

On 9-11 September 1992, FATF IV established the following mandate for Working Group I:

1. In consultation with Working Group II, continuation, updating and improvement of the balanced monitoring mechanism for:

a) self assessment:

i) questionnaire
ii) compilation and analysis of answers

b) mutual evaluation:

i) questionnaire;
ii) participation in discussion of the draft reports.

Working Group I covers Recommendations 1-8 and 33-40 and, jointly with Working Group II, Recommendation 32.

2. Monitoring of new money laundering techniques ("typology"), in cooperation with Working Groups II & III, including general lessons to be learnt from specific cases.

3. Complements and/or Interpretative Notes to the 40 Recommendations as necessary.

4. Further study of legal issues, including, inter alia, "predicate offences", "shelf corporations", corporate liability and controlled delivery; and discussion of practical aspects of legal cooperation between FATF members, (in particular, extradition and cooperation in the prosecution of defendants).

5. Input as necessary into WG II work (for example on electronic fund transfers)

In FATF IV Working Group I concentrated on four main areas:

(a) reviewing the progress of FATF members in implementing the 40 FATF Recommendations through analysis of the self-assessment questionnaires and participation in discussion of the eight mutual evaluation reports completed during the Round;
(b) monitoring of new money laundering techniques and counter-measures;
(c) further studies of the issues of shell corporations and controlled delivery;
(d) launching a study of ways of countering money laundering by non-financial businesses.

During 1992-93 the Group met 5 times (9 September 1992, 20 January 1993, 30 - 31 March 1993, 12-13 May 1993 and, in conjunction with Working Group II 28 June 1993). A sub-group meeting on money laundering typologies was also held on 16 November 1992.

II. Reviewing Progress in Implementing Anti-Money Laundering Measures

At the 9 September meeting the Working group agreed to make various revisions to the legal matters self-assessment questionnaire so that it now covers all the relevant FATF Recommendations. All member governments completed the questionnaire. The Secretariat then produced a compilation of the answers which was discussed at the meeting of the Group on 31 March. A revised compilation, incorporating amendments proposed by FATF members, was then re-circulated at the meeting on 12 May. This compilation was approved by all members.

The analysis of responses indicated that FATF members have continued to make substantial progress in implementing the legal Recommendations. For example, 10 members have now fully implemented the Vienna Convention and another 8 expect to have done so within the next 12 months. A further 4 members have partially implemented the Convention. Similarly, nearly all members have criminalised drug money laundering or expect to do so over the next year. Moreover, an increasing number of members have decided to go beyond a purely narcotics-based offence and to criminalise the laundering of the proceeds of all serious crimes or offences which generate a significant amount of proceeds. 10 members have already introduced such measures and another 8 are in the process of doing so. There has also been encouraging progress in promoting mutual legal assistance between members on money laundering issues.

The Group also participated jointly with Working Group II in the discussion of the draft mutual evaluation reports on Denmark, US, Belgium, Canada, Italy, Austria, Luxembourg and Switzerland. These reports were endorsed, subject to amendment, and forwarded to the plenary.

III. Monitoring New Money Laundering Techniques and Countermeasures

As in previous FATF Rounds, a major element in FATF IV was the refinement and updating of assessments of money laundering techniques.All members were invited to submit written case histories or synthetic analyses illustrating developments in this area. 20 members contributed to this exercise. An expert sub-group, attended by representatives from most FATF members together with INTERPOL, UNDCP and the CCC, was convened on 16 November 1992 to discuss this material and present othercases. A typology paper, incorporating these examples and the conclusions of the sub-group, was then prepared and discussed at a joint meeting of Working Groups I and II on 19 January. The paper was endorsed subject to minor changes.

The exercise revealed no genuinely new money laundering techniques. However, it indicated various significant trends. The use of shell corporations and wire transfers as methods of laundering money were emphasised as a subject of continuing concern. The trend towards increasing use of non-bank financial institutions for placement activity also appeared to be continuing. There was also increased evidence of the use of non-financial businesses for the placement and layering as well as the integration of the proceeds of crime, and in drug-trafficking operations themselves. Finally, the renewed recourse to the physical movement of cash across international borders was noted. As regarded law enforcement counter-measures, the use of controlled delivery and other types of undercover operations were emphasised as valuable and important techniques.

IV. Shell Corporations

The use of offshore shell corporations in money laundering schemes had been noted in FATF III and it had been agreed that FATF members should take notice of the potential for abuse by money launderers of these bodies and should consider measures to prohibit unlawful use of such entities. Further work on this subject was carried out in FATF IV. The US delegation presented a detailed study on the ways in which shell corporations (and similar entities such as ghost and front companies) could be used to facilitate laundering. Working Group I also carried out a survey in FATF members and a sample of non-FATF jurisdictions of the conditions of ownership and incorporation for shell corporations; and of the ability to obtain information about such ownership and provide it to foreign and domestic law enforcement.

In the discussion of ways to counter the use of shell corporations for money laundering, the importance of transparency regarding the beneficial ownership of these bodies was highlighted. It was noted that the FATF Recommendations already covered the responsibilities of financial institutions to identify their clients, including beneficial owners. A general discussion was held on the need for on Interpretative Note in this area and a draft of such a Note was presented to the joint meeting of Working Groups I and II on 12 May. At this meeting it was agreed that further consideration should be given to this subject at a meeting of Working Group II in June and, as appropriate that Working Group I would have the opportunity to examine further the legal aspects of the issue.

Working Group I also considered the feasibility of other mechanisms to ensure that adequate records of the owners of shell corporations were maintained and available to law enforcement authorities in money laundering investigations.

V. Controlled Delivery

Working Group I had considered the issue of and adopted an Interpretative Note on deferred arrests and seizures in FATF III. In 1992-93 further work was carried out on the technique of controlled delivery. The Group agreed that this was an important law enforcement countermeasure against money laundering, particularly at the international level and adopted an Interpretative Note concerning removal of legal impediments to the use of this technique. The text of the Interpretative Note and supporting explanation is attached.

VI. Use of Non-Financial Businesses for Money Laundering

The Group held three discussions on the question of what countermeasures might be introduced to combat money laundering through non-financial businesses. It was recognised that this was a complex area which needed to be the subject of a long term study, extending into future FATF Rounds. It was noted that a wide variety of businesses could be used - whether willingly or without their knowledge - for money laundering purposes. Vulnerable businesses ranged from ones which carried out activities similar to those conducted by financial institutions to businesses which dealt with large amounts of cash.

It was agreed that in its work the Group should concentrate first on the quasi-financial businesses and: (i) examine how to identify such businesses; (ii) in what sectors or in what circumstances thesebusinesses should be subject to the FATF Recommendations; and (iii) what were the appropriate Recommendations for such businesses. In relation to the first item, the Group considered an approach based on the types of activity conducted rather than the sector or entity involved, including the implications of such an approach for the selection of the anti-money

laundering requirements to be applied. The Group considered that this approach merited further study along with other possible alternatives.

The work on use of non-financial businesses for money laundering will be pursued in Round V of FATF.

REPORT FATF IV - WG II

Report to the FATF from Working Group II (Financial Matters)

1992-1993

I. INTRODUCTION

On 9-11 September 1992, FATF-IV established the following mandate for Working Group II:

1. Continuation, updating and improvement of the balanced monitoring mechanism for, in consultation with Working Group I:

(a) self assessment:
- (i) questionnaire;
- (ii) compilation and analysis of answers;

(b) mutual evaluation:
- (i) questionnaire;
- (ii) participation in discussion of the draft reports.

Working Group II materially covers the topics of Recommendations 9-31. (Working Group I covers Recommendations 1-8 and 33-40); Recommendation 32 is covered by both Working Groups.)

2. Collection and dissemination among members of members' (updated) lists of non-bank financial institutions and other businesses that have been used, or are particularly vulnerable to being used, in money laundering.

3. Regulatory coverage of non-bank financial institutions.

4. Monitoring of new money laundering techniques ("typology") in co-operation with Working Groups I and III, and under the leadership of Working Group I, including general lessons to be learnt from specific cases.

5. Complements and/or interpretative notes to the 40 Recommendations as necessary.

6. Collection and dissemination among members of members' guidelines for assisting financial institutions in detecting suspicious patterns of behaviour by their customers, and consideration of the feasibility and utility of collecting suspicious or unusual transaction reports currently used in member countries in a standardised form and developing a standardised transaction reporting format.

7. Consider the feasibility and utility of measures dealing with money laundering cases that involve use of domestic and/or international electronic funds transfers.

8. Input, as necessary, into WGs I and III work (for example, shell corporations: standards of incorporation, recordkeeping by attorneys and other intermediaries, and due diligence by financial institutions).

During 1992/1993, the Working Group met six times (9-10 September 1992, 17 November 1992 (volunteer meeting), 20 January 1993, 31 March 1993, 12 May 1993, 28 June 1993. These meetings enabled Working Group II to address the issues contained in its mandate.

II. ACCOMPLISHMENTS

1. Monitoring Mechanism

(a) Self-assessment

During the 9-11 September 1992 FATF meetings, a revised self-assessment questionnaire was agreed upon. All countries have filed their answers to the questionnaire. The Secretariat has distributed a detailed compilation of answers to the questionnaire. During its 31 March 1993 meeting the Working Group discussed this compilation. As the answers filed are supposed to reflect the current state of implementation, several members subsequently updated the information contained in the compilation. An analysis, based upon the filed answers to the questionnaire as updated, was circulated.

(b) Mutual evaluation

During the 9-11 September 1992 FATF meetings, a revised mutual evaluation questionnaire was agreed upon. The Plenary adopted the programme for FATF-IV which included the mutual evaluation schedule. During a joint meeting on 30 March 1993, Working Groups I and II discussed the draft reports on Denmark and the United States. These groups jointly discussed draft reports on Belgium, Canada and Italy on 13 May 1993, and draft reports on Austria, Switzerland and Luxembourg on 28 June 1993. After having made some amendments, the working groups advised the Plenary to accept the reports.

2. Collection and dissemination among members of members' (updated) lists of non-bank financial institutions and other businesses that have been used, or are particularly vulnerable to being used, in money laundering.

A large majority of FATF members participated in an exercise to identify types of non-bank financial institutions[1]) and other businesses that have been used, or are particularly vulnerable to being used, in money laundering. A compilation of lists of such institutions was made by the Secretariat based on members' contributions. This compilation was discussed in a volunteer meeting of the Working Group on 17 November 1992 and subsequently during working group meetings on 20 January and 31 March 1993.

The Working Group identified categories which were often, sometimes, and occasionally mentioned. Within the main categories of non-bank financial institutions, bureaux de change), intermediaries in investment business, and life insurance companies were often mentioned by FATF members. Other categories of non-bank financial institutions, such as postal financial services, finance

[1] It is noted that FATF leaves the definition of "bank" or "credit institution" to individual members. Consequently, the definition of bank, and also of "non-bank financial institution" may vary between members. Members with a broad definition of "bank" may identify fewer non-bank financial institutions.

companies, collective investment schemes, and credit card companies were sometimes quoted. Leasing and factoring companies and money transmitters were occasionally quoted.

The issue of non-financial institutions and businesses was referred to Working Group I (legal issues). The first FATF-V Plenary could consider whether the compilation of lists of non-bank financial institutions would be the basis for further action. This action would concern some of the most often mentioned sectors on specific recommendations, particularly no. 15 (complex, unusual large transactions, and unusual patterns of transactions, which have no apparent economic or visible lawful purpose); no. 16 (suspicion that funds stem from a criminal activity); nos. 20/26 (programmes against money laundering); and no. 28 (guidelines which will assist (non-bank) financial institutions in detecting suspicious patterns of behaviour by their customers).

3. The application of the FATF Recommendations to non-bank financial institutions

During its volunteer meeting on 17 November 1992, and during its meeting on 31 March 1993, the Working Group discussed modalities for implementing the FATF Recommendations on financial matters (9-32, except recommendations 12 and 13 which are subject to a specific study on identification: see item 5 of this report) in three specific sectors of non-bank financial institutions: the securities (intermediaries in investment business) and insurance industries, and the bureaux de change. The discussions were structured on the basis of papers presented by the United Kingdom (securities), the Netherlands (insurance), and the United States (bureaux de change). A report has been prepared on the basis of the discussions of the Working Group, identifying relevant particulars of these sectors and containing proposals for clarifications and interpretative notes to Recommendations 9 and 15. The two interpretative notes are related to the insurance sector and they read as follows:

Recommendation 9: **"The FATF Recommendations should be applied in particular to life insurance and other investment products offered by insurance companies, whereas Recommendation 29 applies to the whole of the insurance sector."**

Recommendation 15: **"The word "transactions" should be understood to refer to the insurance product itself, the premium payment and the benefits."**

4. New money laundering techniques

On 19 January 1993, a joint meeting of Working Groups I and II discussed and adopted the draft report that had been prepared by the 16 November 1992 typologies Sub-Group meeting. The report of Working Group I (legal issues) covers this issue in more depth.

5. Complements and/or interpretative notes to the 40 Recommendations as necessary

The Working Group saw no need for additional recommendations. As noted under 3 above, two interpretative notes are suggested for the implementation of the recommendations in the insurance sector.

In parallel, the Working Group noted that many transactions or entries into business relations between financial institutions and their customers involve no face to face contact between the two parties. In such cases, the provision of identifying documents poses real difficulties or is impractical and runs counter to the way in which transactions/business relations are conducted in these cases. A non paper on customer identification requirements for certain transactions with financial institutions set out an analytical view of the general identification requirements in cases where there is no face to face contact between the

institution and its customer. Although the Working Group recognised the importance of this subject, it was decided not to adopt interpretative notes. It was agreed to further work on the issue of identification requirements (Recommendations 12 and 13) during FATF-V, bearing in mind two specific elements: the need to establish a level playing field between categories of financial institutions and a balance between flexibility and security.

6. Suspicious and unusual transactions guidelines and reporting formats

The Working Group noted that point 6 of its mandate contains two aspects:

(a) collection and dissemination among members of members' guidelines for assisting financial institutions in detecting suspicious patterns of behaviour by their customers; and

(b) consideration of the feasibility and utility of collecting suspicious or unusual transaction reports currently used in member countries in a standardised form and developing a standardised transaction report format.

With regard to point (a), members were asked to provide the Secretariat with updates and new elements that could be useful to other members who are also in the process of developing guidelines for assisting financial institutions in detecting unusual or suspicious patterns of behaviour by their customers (the implementation of recommendations 15, 16, 20/26 and 28). The Secretariat has made a compilation of members' updates.

With regard to point (b), the Italian delegation and the Secretariat have drafted a brief questionnaire on the issue of standardisation. It contains two main questions:

- what are the view of the members on which information should as a minimum be contained in a suspicious or unusual transaction report?

- what actual measures have been taken by the authorities to ensure that financial institutions provide this information?

This questionnaire will be used to address the feasibility and utility of this standardised transactions reporting format during FATF-V.

7. Electronic funds transfers

Following on from analysis presented to the FATF by various law enforcement authorities showing that many major money laundering cases in recent times have involved the use of electronic payment arrangements, the FATF mandated an ad hoc group to study the use made of the world's electronic funds transfer systems in the money laundering process. The ad hoc group concluded that it had become relatively easy to transfer funds through the international banking system in such a way that the identity of the original ordering customer or the ultimate beneficiary is concealed.

The ad hoc group was mandated to hold discussions about this issue with the Society for Worldwide Interbank Financial Telecommunication SC (SWIFT) - the principal carrier of cross-border electronic payment messages. These resulted in the Chairman of SWIFT sending a broadcast to all users of the SWIFT system on 30 July 1992 asking them to ensure that they key fields for the ordering and

beneficiary customers in the important MT100 message type are completed with names and addresses.[2] A subsequent follow-up letter was sent to all user organisations on 30 October 1992 by the Chief Executive Officer of SWIFT. FATF member governments have also taken steps to encourage the users of the SWIFT system within their own respective jurisdictions to follow the advice contained in the SWIFT broadcast.

Further discussion with SWIFT has resulted in their agreeing to redraft the instructions for completion of the ordering institution field in the MT100 message type and to issue a Usage Guideline on identifying the ordering parties in the MT100. The purpose of this is to ensure that, regardless of however many messages are sent to achieve a particular payment, details of the financial institution which initiated the payment for the ordering customer are identified throughout the payment chain.

These two initiatives are aimed at ensuring that using the SWIFT system to give payment instructions does not provide money launderers with a means of breaking the audit trail. FATF member governments would determine if it is appropriate and technically feasible that payment messages in their respective national electronic payment systems contain information on the ordering and beneficiary customers and the institution that originated the payment instruction.

8. Input into the work of other working groups

On 19 January 1993, a joint meeting of Working Groups I and II had a presentation by the United States on the subject of shell corporations, followed by a preliminary discussion of the issues. On 30 March 1993, Working Groups I and II had a further presentation on this subject. The issue of shell corporations was discussed again during the FATF May and June meetings.

[2] In the case of the ordering customer, if it is not possible to include the name and address, the account number may be included instead.

REPORT TO THE FATF FROM WORKING GROUP III (EXTERNAL RELATIONS) 1992-93

I. Introduction

The mandate for Working Group III was adopted at the FATF meeting on 10 - 11 September 1992. The work of the Group during 1992-93 has concentrated on implementing of the action programme for external relations set out in the report of FATF III. The Group mounted a large number of activities to promote the widest possible global mobilisation against money laundering, and encourage non-Member governments both to commit themselves to implement the FATF Recommendations and agree to assess their progress in doing so. In response to requests from particular third countries, Working Group III has also provided training and technical assistance through the services of FATF Members and others. The Group has also developed its co-operation with the international and regional organisations with an interest in money laundering. Finally, the Group has continued to monitor the contacts between relevant Member governments and their dependent, associate or otherwise connected territories regarding their implementation of Task Force Recommendations.

II. Outreach Programme

In carrying out its programme of contacts with third countries the Group decided to create various sub-groups of particular FATF members to advise on the best approach for developing contacts with selected regional areas. Under the general direction of the Group, these sub-groups have organised and carried out various seminars and training programmes.

a) Central and Eastern Europe

Central and Eastern Europe has been a particular focus for the FATF's external relations work during 1992-93. Although this area is not at present a major money laundering centre, the countries are becoming an increasingly attractive target for money launderers as they develop their financial systems, open their economies and move towards convertibility of their currencies. With the spread of organised crime gangs in this part of Europe, the area could also see the development of domestic money laundering operations, making use of the financial systems in other countries as well as their own. Hence it is very important that they take the opportunity of the reform and restructuring of their laws and systems to put in place measures to protect themselves against money laundering.

The Council of Europe held a major money laundering conference in Strasbourg in September 1992, attended by representatives from most Central and Eastern European countries, including Russia and certain Newly Independent States. In the framework of this conference members of Working Group III met delegates from Hungary, Poland, the (then) Czech and Slovak republics, Bulgaria, Romania, Russia, Latvia, Croatia and Slovenia. The purpose of these meetings was to find out more about the money laundering situations within these countries and discuss how the FATF might assist them.

These contacts led to requests for both policy seminars and more detailed training programmes from Hungary and Poland. The first seminar took place in Budapest on 4-5 and 8-10 February. In addition to representatives from financial, legal, prosecutorial and law enforcement interests from Hungary (including commercial banks), delegations from Albania, Bulgaria, the Czech Republic, Poland, Romania and Slovakia attended the policy seminar as observers, thanks to financial support from the Council of Europe. The seminar and training programme were carried out by delegations from 9 FATF members, together with officials from the Council of Europe, INTERPOL and the UNDCP and

included representatives from banks and other financial institutions. Prior to the policy seminar, the FATF presenters met with relevant Hungarian Ministries and agencies for detailed discussions on the money laundering situation in Hungary and progress in developing counter-measures. The seminar and training programme provided a thorough exposition of anti-money laundering measures, with individual sessions for financial, regulatory, legal and law enforcement groups. The outcome was the preparation of a set of recommendations to the Hungarian authorities on their next steps in this area.

The symposium in Warsaw, held on 2-4 March, followed a similar pattern, although in this case participation was limited to officials from Polish government agencies and financial institutions. The experience gained from the seminar in Budapest enabled the refinement and compression of the programme. Again, the FATF presenters had the opportunity for discussions with the relevant Polish agencies before the start of the seminar and there was also a meeting with the Governor of the National Bank of Poland and other high-level officials, and recommendations were made to the Polish authorities resulting from the symposium.

In addition to these two events, during the year individual FATF members also took part in missions to particular Central and Eastern European countries organised by the Council of Europe or on a bilateral basis. The European Community has incorporated in its Association agreements with Eastern European countries specific clauses committing them to apply the FATF recommendations. A PHARE pilot programme of assistance to six countries in the region is being set up in the field of drugs. This programme covers money laundering. The FATF and UNDCP have also begun preparations for a money laundering seminar in Moscow in September for Russia and other members of the CIS.

b) Asia and the Pacific

Contacts with Asian and Pacific countries had been made in earlier FATF Rounds through a conference organised by Japan, together with the Economic and Social Commission of the United Nations for Asia and the Pacific, in February 1991 and FATF representation at a meeting of South East Asian Central Banks Board of Governors in Jakarta in October 1991. Given the importance of this region both in terms of the numbers of developed or emerging financial centres and the drug producing countries, it was decided to hold two meetings in the area during 1992-93.

The meeting of the FATF in Sydney in September provided the opportunity to organise a programme in parallel for selected Asian and Pacific states. Representatives from Fiji, Indonesia, Malaysia, Nauru, Papua New Guinea, the Philippines, the Solomon Islands, Tonga and Taiwan attended the sessions at which there were presentations and discussions on the money laundering situation in the region.

This was followed in April 1993 by the Asia Money Laundering Symposium organised jointly by the FATF and the Commonwealth Secretariat, with the support of the UNDCP and hosted by the Government of Singapore. This was a major conference involving participants from 14 non-FATF countries/regions and SEACEN, 9 FATF members (including the 7 FATF sponsors), UNDCP and INTERPOL. The Symposium concentrated on raising awareness of the money laundering problem and explaining countermeasures. Separate detailed sessions were held for financial and regulatory; legal and judicial; and law enforcement groups. A written statement of the conclusions of the Symposium was produced and the non-FATF members were asked to give serious consideration to implementing the 40 FATF Recommendations. The value was recognised of holding a further Symposium in about a year's time.

c) The Caribbean

FATF members have worked closely with the Caribbean Islands and Central American States since 1990 and a Caribbean Financial Action Task Force (CFATF) has been established. The CFATF process has gathered pace in 1992-93 and major progress has been made in promulgating the FATF message in the Caribbean region. With the support of FATF members, a Ministerial Conference of the CFATF was held in Kingston, Jamaica in November 1992. At this meeting the CFATF members formally endorsed and agreed to implement the 40 FATF Recommendations and the 19 Recommendations drawn up at the Aruba Conference in 1990. It was also agreed that there needed to be a mechanism to monitor and encourage progress in this work, including a self-assessment and mutual evaluation process. To further this and to facilitate the provision of training and technical assistance in the region, the meeting proposed the creation of a small CFATF Secretariat to be based in Trinidad and Tobago, which is taking over the Presidency of this body. Another meeting of the CFATF will be held in 1994 to evaluate progress. The FATF sponsoring countries (Canada, France, Netherlands, UK and US) are now discussing arrangements for the ongoing operations of the CFATF.

d) Africa

Working Group III has given continued attention to the mechanisms for pursuing anti-money laundering initiatives in Africa, given the absence of any clearly suitable continental body with whom the FATF can work. In November 1992 members of Group met representatives of the Central African Republic, the Ivory Coast, Kenya, Morocco, Nigeria and Zimbabwe for discussions on the best way forward. The FATF Secretariat is also in contact with selected regional organisations. Proposals for FATF activities in Africa during Round V of the Task Force are being drawn up, taking account of these consultations.

e) Other Areas

In the Middle East the Gulf Co-operation Council has continued to encourage compliance with FATF Recommendations by its six Gulf State members. A conference on money laundering, organised jointly by the FATF, GCC and the Saudi Arabian Monetary Authority, is planned for October 1993.

In South America, as in previous Rounds, the FATF has not pursued any direct contacts, given the well-established initiative of the OAS in this area.

III. Co-ordination and Oversight of Liaison between Relevant Members and their Dependent, Associate or Otherwise Connected Territories.

At its meeting in April 1993 the Group received reports from "sponsor" members on the action taken by these territories in implementing anti-money laundering measures. The conclusion was that progress is being made in a number of areas but the FATF "sponsors" need to continue their efforts to encourage early action.

The Working Group has also begun consideration of how to evaluate progress by these territories. Certain have completed self-assessment questionnaires (and some are also involved in the CFATF process) but there is currently no comprehensive and systematic mechanism.

IV. Co-operation with Regional and International Organisations in Furthering the Objectives of the FATF

During Round IV the FATF has further developed the good relations established with other organisations most closely involved in combating money laundering. Representatives from the Council of Europe, INTERPOL, the UNDCP and CCC have regularly attended meeting of Working Group III and participated in the planning and execution of the various external relations initiatives carried out in 1992-93. FATF members have also taken part in money laundering events organised by these bodies and the Chairman of Working Group III was invited to make a presentation at the November 1992 meeting of the United Nations General Assembly's Third Committee devoted to action against drugs trafficking and money laundering.

The Round has also seen FATF extend the range of organisations with whom it has worked. There was close co-operation with the Commercial Crime Unit of the Commonwealth Secretariat in respect of the Asia Money Laundering Symposium. The FATF has also developed links with the European Bank for Reconstruction and Development regarding anti-money laundering initiatives in Eastern Europe. A representative from the Bank attended the Symposium in Budapest and the Chairman of Working Group III visited the Bank in May for discussions on further co-operative efforts in this area.

With the number of international organisations engaged in anti-money laundering work, particularly in some areas of the world, particularly Eastern Europe, it is clearly important to make best use of the available resources and avoid overlap and duplication of efforts. In conjunction with the other major organisations, FATF through Working Group III is taking steps to institute a co-ordination mechanism, starting with the production of a calendar of all the money laundering initiatives planned by the various bodies.

V. Conclusions

The Group has made substantial progress in its external relations agenda during Round IV. Building on the contacts established in previous Rounds, the Group has continued its mission of promulgating the FATF message. Promoting money laundering awareness remains an important feature of its work but emphasis is placed not only seeking a firm commitment from third countries to implementation of the 40 Recommendations but also an agreement to be evaluated on progress. Clearly results cannot be expected immediately and the FATF is at different stages in its contacts with various regions. However, the CFATF process has shown that, over time, substantive commitments can be achieved. The challenge for future Rounds will be to ensure that there is proper follow-up to the actions already taken whilst finding a way to reach those parts of the world where even awareness of the money laundering problem remains at a very low level.

INTERPRETATIVE NOTE

CONTROLLED DELIVERY OF FUNDS SUSPECTED OR KNOWN TO BE THE PROCEEDS OF CRIME

1. In its third report the FATF called on member governments to consider taking the necessary measures to allow their competent authorities investigating money laundering cases to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering. This was with the specific intention of enabling the use of procedures such as controlled delivery and undercover operations. In its fourth round the FATF has carried out further studies on the issue of controlled delivery.

2. Controlled delivery is a technique whereby, when law enforcement agencies become aware of a shipment of, or a transaction involving, items of an illegal or suspected illegal origin, those items are not seized immediately. Instead, law enforcement interests are better served by allowing the shipment/transaction to proceed under the close, covert surveillance of the authorities in order to gather evidence and identify those involved. Arrests and seizures are then made at a later stage as appropriate. Application of controlled delivery techniques to international transportation of illegal drugs has been accepted in law enforcement circles for many years. Provisions for their international use are included in the 1988 Vienna Convention.

3. The FATF considers that controlled delivery is an equally valid technique in money laundering cases involving shipments of or transactions involving funds[3] suspected to be the proceeds of crime, whether at the domestic or international levels. Indeed, it is arguably of greater utility from an evidential standpoint in such cases than in those involving drugs trafficking. In the latter, it is easy to establish if the substances are illegal. However, it may not be readily apparent whether or not particular funds are the proceeds of crime. Further investigations are generally necessary to determine this and controlled delivery is a very effective method in this context. Even where it is clear that funds are of criminal origin, a controlled delivery operation, subject as necessary to the requisite legal authorisation, can be of great value in helping to identify and gather evidence against as many as possible of the criminals involved. In particular, it offers a route to the higher level criminals and the beneficial owners of the funds.

4. Controlled delivery is an important counter-measure against money laundering at the international level. The FATF's work on money laundering methods has indicated that there is an increasing return to cross-border movement of the proceeds of crime, especially those from drugs trafficking. This trend can be expected to continue as the various FATF members (and other countries) implement the FATF Recommendations as regards preventing and detecting the use of their financial systems for the purpose of money laundering. The major money laundering organisations have shown that they are sensitive to national law enforcement initiatives. The enforcement of anti-money laundering measures by countries provides a disincentive for criminals to use their financial systems and instead to move funds generated from crimes in those countries to countries which do not yet have adequate anti-laundering measures and whose financial systems can consequently be penetrated with less risk.

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[3] The term funds covers not only currency but all types of monetary and financial instruments.

5. Application of controlled delivery techniques to international movements of funds can obviously be of value in obtaining information and evidence concerning particular money laundering operations. At a more strategic level, it can also provide useful intelligence on the international flows of illegal funds, identifying countries whose financial systems are perceived by money launders as particularly vulnerable. In this context, the application of the techniques to suspicious international inter and intra bank bulk cash transactions as well as particular cross-border consignments of cash by money launderers is important. Use of controlled delivery techniques is of particular value in countries or territories which have yet to implement the full range of anti-money laundering measures as, for this reason, they are the most likely targets for illegal currency flows.

6. Clearly there needs to be effective co-operation between law enforcement agencies in the various countries concerned if international controlled deliveries are to be successful. An essential precondition is that countries should permit controlled delivery whether under their general law or specific legal provisions. This is already the case in the majority of FATF members, subject to the law enforcement agencies having any necessary permission from legal/judicial authorities to conduct the operation.

7. The Customs Co-operation Council has endorsed a recommendation that its members be encouraged to use controlled delivery techniques and both it and INTERPOL consider it would be helpful if the FATF were to encourage action by these organisations in this area.

8. In the light of the above considerations and in furtherance of FATF Recommendations 32, 33, 36 and 38 (including the Interpretative Note to this Recommendation), the Interpretative Note on deferred arrests and seizures as well as Article 9 of the Vienna Convention, the FATF has therefore adopted the following Interpretative Note.

" The controlled delivery of funds known or suspected to be the proceeds of crime is a valid and effective law enforcement technique for obtaining information and evidence in particular on international money laundering operations. It can be of great value in pursuing particular criminal investigations and can also help in obtaining more general intelligence on money laundering activities. The use of these techniques should be strongly encouraged. The appropriate steps should therefore be taken so that no obstacles exist in legal systems preventing the use of controlled delivery techniques, subject to any legal requisites, including judicial authorisation for the conduct of such operations. The FATF welcomes and supports the undertakings by the Customs Co-operation Council and INTERPOL to encourage their members to take all appropriate steps to further the use of these techniques."