



**Financial Action Task Force  
on Money Laundering**

Groupe d'action financière  
sur le blanchiment de capitaux

**ANNUAL REPORT  
1999–2000**

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# FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

## ANNUAL REPORT 1999-2000

### SUMMARY

1. Portugal chaired the eleventh round of the Financial Action Task Force on Money Laundering (FATF). The 1999-2000 round of FATF marked officially the implementation of the priorities agreed to in the review of the FATF's remit from 1999 to 2004 and approved by the Ministers of the FATF member countries on 28 April 1998. The activities of the Task Force focused, therefore, on three main areas:

- to spread the anti-money laundering message to all continents and regions of the globe;
- to improve members' implementation of the Forty Recommendations;
- to strengthen the review of money laundering methods and counter-measures.

2. Major achievements of the twelve months included the admission of Argentina, Brazil and Mexico as full members of the FATF, the development of FATF-style regional bodies, the improvement of the anti-money laundering systems in FATF members, in particular Austria.

3. The FATF supported the various activities of regional bodies involved in the fight against money laundering, such as the Caribbean Financial Action Task Force (CFATF), the Council of Europe Select Committee of Experts on Evaluation of Anti-Money Laundering Measures (PC-R-EV) and the Asia/Pacific Group on Money Laundering (APG). A significant development occurred in Africa with the creation of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in Arusha, Tanzania, in August 1999.

4. The FATF continued its work in the area of monitoring the implementation of the Forty Recommendations. The period was used to remedy the most serious shortcomings identified during the second round of evaluations terminated in June 1999. On 3 February 2000, in accordance with its policy for members who do not comply with the Forty Recommendations, the FATF decided to suspend Austria as one of its members in June 2000 unless action was taken on the issue of anonymous passbooks. Following this unprecedented move, the Government of Austria took the appropriate steps to meet the conditions required by the FATF and thus avert suspension of membership. The evaluation reports of new members were also discussed.

5. The FATF completed its first phase of the important work on non-cooperative countries and territories. This work resulted in the publication of a report which describes the process and provides summaries of jurisdictions considered to be of concern.<sup>1</sup>

6. An in-depth assessment of the first two rounds of mutual evaluations was launched. As in previous years, the Task Force devoted a considerable part of its work to the monitoring of members' implementation of the Forty Recommendations on the basis of the self-assessment procedure. In the absence of mutual evaluations of current members during the period, the 1999-2000 self-assessment exercise was of crucial importance to follow-up compliance.

7. The review of current and future money laundering threats has continued to be an essential part of the FATF's work. Under the chairmanship of the United States, the annual survey of money laundering typologies focused on a number of major issues: the vulnerabilities of Internet banking;

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<sup>1</sup> See Annex A.

the increasing reach of alternative remittance systems; the role of company formation agents and their services; international trade-related activities as a cover for money laundering; and specific money laundering trends in various regions of the world.

8. The FATF undertook several other tasks: preparing a Reference Guide to Procedures and Contact Points on Information Exchange and examining the question of the transmission of information by members' anti-money laundering authorities to their tax administrations. To pursue the dialogue, begun several years ago with the private sector, the FATF held a third Forum with representatives from the international financial services industry and accounting professions.

## INTRODUCTION

9. The Financial Action Task Force was established by the G-7 Summit in Paris in July 1989 to examine measures to combat money laundering. In 1990, the FATF issued Forty Recommendations to fight this phenomenon. The Recommendations were revised in 1996 to reflect changes in money laundering trends. Until June 2000, membership of the FATF comprised twenty-six governments<sup>2</sup> and two regional organisations,<sup>3</sup> representing the major financial centres of North America, Europe and Asia. These members were joined by Argentina, Brazil and Mexico which had participated in the work of the FATF as observers since September 1999. The delegations of the Task Force's members are drawn from a wide range of disciplines, including experts from the Ministries of Finance, Justice, Interior and External Affairs, financial regulatory authorities and law enforcement agencies.

10. In July 1999, Portugal succeeded Japan in holding the Presidency of the Task Force for its eleventh round of work. Three Plenary meetings were held in 1999-2000, two at the headquarters of the OECD in Paris and one in Porto, Portugal. A special experts' meeting was held at the end of 1999 in Washington, D.C. to consider trends and developments in money laundering methods and counter-measures. Several meetings of specialised Ad Hoc Groups took place outside the regular meetings of the Plenary, including the Ad Hoc Group on Non-Cooperative Countries or Territories. In February 2000, an informal contact meeting took place between the OECD's Committee on Fiscal Affairs (CFA) and the FATF, and a Forum was organised with the private sector. Finally, a Technical Workshop on Estimating Drug Trafficking Proceeds was held on 23-24 February 2000.

11. The FATF fully supports the work of FATF-style regional bodies, namely the Asia/Pacific Group on Money Laundering (APG), the Caribbean Financial Action Task Force (CFATF), the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures of the Council of Europe (PC-R-EV) and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). The FATF President and Secretariat, as well as members, attended the meetings of such groups. Finally, the FATF co-operates closely with international and regional organisations concerned with combating money laundering, and representatives of such bodies participated in the work of the FATF. Representatives from the Asia Development Bank (ADB), the Commonwealth Secretariat, the European Bank for Reconstruction and Development (EBRD), the International Monetary Fund (IMF), the Inter-American Development Bank (IADB), the Inter-American Drug Abuse Control Commission of the Organisation of American States (OAS/CICAD), Interpol, the International Organisation of Securities Commissions (IOSCO), the Offshore Group of Banking Supervisors (OGBS), the United Nations Office for Drug Control and Crime Prevention (UNODCCP), the World Bank, and the World Customs Organisation (WCO) attended various FATF meetings during the year.

12. Parts I, II and III of the report outline the progress made over the past twelve months in the following three areas:

- spreading the anti-money laundering message throughout the world;
- improving the implementation of the Forty Recommendations; and
- strengthening the review of money laundering methods and counter-measures

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<sup>2</sup> Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; Turkey; the United Kingdom and the United States.

<sup>3</sup> European Commission and Gulf Co-operation Council.

## I. SPREADING THE ANTI-MONEY LAUNDERING MESSAGE THROUGHOUT THE WORLD

13. As the primary objective of its current mandate, the FATF is committed to promoting anti-money laundering initiatives in all continents and regions of the globe and to building a world-wide anti-money laundering network. This strategy consists of three main components: enlarging the FATF membership, developing credible and effective FATF-style regional bodies, and increasing co-operation with the relevant international organisations.

14. The FATF continued its collaboration with these relevant international organisations/bodies rather than launch new initiatives, and participated in several anti-money laundering events organised by other bodies. To increase the effectiveness of international anti-money laundering efforts, the FATF and the other organisations and bodies endeavour to co-ordinate their activities through an annual co-ordination meeting and meetings of five regional ad hoc groups (Africa, Asia/Pacific, Caribbean, Central and Eastern Europe and South America). These meetings take place in the margins of the FATF Plenaries.

15. In addition, FATF accomplished considerable progress in its important work on non-cooperative countries and territories.

### A. FATF EXPANSION

#### *(i) General*

16. According to the objectives decided upon in the review of the FATF's future, the FATF has decided to expand its membership to a limited number of strategically important countries which could play a major role in their regions in the process of combating money laundering.

17. The minimum and *sine qua non* criteria for admission are as follows:

- to be fully committed at the political level: (i) to implement the 1996 Recommendations within a reasonable timeframe (three years), and (ii) to undergo annual self-assessment exercises and two rounds of mutual evaluations;
- to be a full and active member of the relevant FATF-style regional body (where one exists), or be prepared to work with the FATF or even to take the lead, to establish such a body (where none exists);
- to be a strategically important country;
- to have already made the laundering of the proceeds of drug trafficking and other serious crimes a criminal offence; and
- to have already made it mandatory for financial institutions to identify their customers and to report unusual or suspicious transactions.

18. The FATF has commenced the process of enlarging its membership when Argentina, Brazil and Mexico joined as observers in September 1999 at the first Plenary meeting of FATF-XI in Porto (Portugal). Latin America, for its relevance in the global economy, represents a region in which fighting money laundering is crucial. With the addition of these three countries to the world-wide network of anti-money laundering systems, the overall effort in the Americas is thus reinforced. The FATF will now consider the possible membership of other strategically important countries from regions in which the FATF wants to strengthen representation.

(ii) *First mutual evaluations of observer countries*

19. Following their written commitment made at Ministerial level to endorse the Forty Recommendations, to undergo two mutual evaluations and to play an active role in their region, Argentina, Brazil and Mexico were subject to a first mutual evaluation of their anti-money laundering systems in 2000. The principal objective of these evaluations was to determine whether these countries complied with certain fundamental anti-money laundering requirements, the implementation of which is a pre-condition to becoming a full member of the FATF. The required money laundering counter-measures are: to make the laundering of the proceeds of drug trafficking and other serious crimes a criminal offence; and to require financial institutions to identify their customers and to report suspicious transactions. Summaries of the first mutual evaluation reports of Argentina, Brazil and Mexico follow.

### **Argentina**

20. Given its now-stable and large economy, and its proximity to countries which are exposed to drugs, Argentina can be seen as having a risk of money laundering. The Argentine Republic is considered a transit country for narcotic drugs, due to its location close to the major production centres. This situation has led the Government to consider measures to control the area of the “triple frontier” (Argentina, Paraguay and Brazil), where there is evidence of a significant increase in the smuggling of narcotic drugs and their entry into the country. Recent high-profile investigations have shown evidence that drug cartels are active in Argentina, and underlined fears that it could become a growing international money laundering centre. While there was no indication of other sources of illegal proceeds, it is believed that bribery and contraband could also contribute to the money laundering which occurs in Argentina.

21. At the time of the evaluation visit (February 2000), Argentina's anti-money laundering regime was based on Drug Law no. 23.737 enacted on 10 October 1989, which criminalised narcotics-related money laundering, and a series of communications issued by the Central Bank of the Argentine Republic aimed at the prevention and detection of money laundering activities through the banking sector. Among other things, these communications require banking institutions and bureaux de change to identify customers; discontinue accounts with parties using obviously fictitious names; prohibit the payment by tellers of checks above 50,000 Argentine pesos<sup>4</sup> issued to third parties; report to the Central Bank personal data on account-holders where cash over 50,000 pesos is deposited monthly or 200,000 pesos annually; and report suspicious transactions.

22. On 13 April 2000, the Congress (House of Representatives and Senate) adopted the Bill on Money Laundering after several years of debate. The new legislation became law on 5 May 2000, and is now in force (Law 25.246). In addition to the extension of the money laundering offence to include all existing crimes in the Penal Code, the new Law creates the Financial Information Unit (UIF: *Unidad de Información Financiera*), an agency under the Ministry of Justice and Human Rights, which will lead Argentina's anti-money laundering effort. The UIF will be in charge of the analysis, treatment and transmission of information with a view to preventing and impeding the laundering of funds.

23. The Law also provides a legal and institutional framework for the operations of the UIF with the activities and financial and non-financial institutions relating to measures to combat money laundering. The persons falling into the scope of the Law will be required to identify their customers on the basis of reliable documents. When clients act on behalf of a third party, all the necessary measures will need to be taken to identify the person's identity or people for whom they act. This information will need to be filed according to the rules set by the UIF. In addition to the banks, the law applies to a wide range of entities.

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<sup>4</sup> The pegged currency rate is 1 peso = 1 US Dollar.



24. The provisions of the new Law 25.246 will clearly reinforce the fight against anti-money laundering in Argentina. A strong political commitment with that aim was repeatedly and forcefully stated during the on-site evaluation. However, it seems extremely important for that political will to attain its practical purpose, to give the new key element in the fight against money laundering, the Financial Information Unit (UIF), an adequate legal framework and the necessary material resources in keeping with its ambitious role, either directly or indirectly through co-operation with other institutions.

25. With the creation of the UIF and the establishment of a serious crimes basis for money laundering violations, Argentina seems poised to combat money laundering effectively. However, in order to be successful, Argentina will need to adopt an ambitious plan for implementation. First, Argentina will need to create increased public awareness of the problem of money laundering and the sanctions provided under the new law. The Secretariat for Planning for the Prevention of Drug Addiction and the Fight Against Narcotics Trafficking appears to be taking the initiative on this point. However, Argentina will also need to aggressively pursue training at all levels of the criminal justice system in order to make money laundering and forfeiture prosecutions a regular part of criminal cases and to ensure that adequate evidence is presented to support conviction.

26. Additionally, Argentina will need to find an effective means of increasing the frequency with which financial institutions file suspicious activity reports. This will likely require substantial outreach to the financial services industry and the inclusion of compliance with such reporting requirements as a criterion for examination during audits by the Central Bank. It may also require a demonstrated willingness of the UIF and the Public Prosecutor to sanction officials and entities who fail to report. In addition, Argentina may have to amend the charter of the Central Bank to permit that institution to regulate such other financial institutions as money remitters. Why this apparently relatively simple step has not been taken previously is unclear. Moreover, the success of the UIF may depend upon the willingness of the Argentine government to provide it with necessary start-up funds, which have yet to be established under the new law.

27. The system for preventing money laundering in Argentina can be described as a basic model in transition to a more perfected one by means of a new legal framework in order to match the FATF Recommendations. The evolution of the system seems to be granted by a full commitment at all levels, political, administrative and judicial, which implies an assertive awareness of the issue. This commitment has led to the application for FATF membership, to initiate and support the creation of a FATF-style regional body in South America and to pass a Law in Parliament that meets the FATF Recommendations.

28. Until now, the main deficiencies of the system were located in the limitation of the predicate offence of money laundering to cases of drug trafficking and the need to improve the preventive mechanisms of the system such as the reporting system, and the faculties of law enforcement agencies. Law 25.246 extends the scope of the money laundering offence to a wide range of predicate offences and creates a new financial intelligence which will regulate the good functioning of the reporting system. However, to be effective, the FIU will need to have sufficient staff because in the layout of the new law, the unit will assume regulatory, operative and sanctioning functions.

29. Despite the substantial exceptions to the applicability of Argentina's new anti-money laundering legislation, Law 25.246 provides a sufficient serious crimes money laundering basis for Argentina to meet the first pre-condition for plenary membership in the FATF. Similarly, the expansion of suspicious reporting requirements for financial institutions and the requirement of know your customer regulations are sufficient to establish the second essential pre-condition for full membership. Accordingly, the FATF recognises Argentina as a full member.

## Brazil

30. With its large and modern financial services sector and its location near some of the major narcotics producing areas of South America, Brazil is an obvious target for money laundering. Narcotics trafficking is considered to be the single largest generator of criminal proceeds, although other types of trafficking – in firearms and contraband – as well as illegal gambling are also important sources of illicit funds. Foreign criminal groups controlling such activity have given way in recent years to local groups of varying size, due to government crackdowns on criminal activity. Some regions of the country remain areas of particular concern for crime, however, including the border area with Colombia (the Tabatinga region) and the tri-border area shared between Argentina, Paraguay and Brazil (Foz do Iguaçu).

31. In order to respond to the threat of money laundering, Brazil has, in a relatively short time, developed and begun implementing a comprehensive anti-money laundering programme. Its efforts in this area are based on Law N° 9613 of 3 March 1998. This legislation defines the offence of money laundering, lays out the principal preventive measures (customer identification, record keeping, and suspicious transaction reporting), and creates the Brazilian financial intelligence unit (FIU). It also ensures that confiscation and provisional measures, as well as international co-operation in these areas, also apply to money laundering.

32. The money laundering offence covers both hiding or concealing illegal proceeds, as well as knowingly using such proceeds in any sort of economic or financial activity. This latter provision would allow Brazilian authorities to prosecute individuals who facilitate laundering operations. “Illegal proceeds”, according to the law, are those funds that are generated from a list of underlying offences, including, among others, narcotics trafficking, terrorism, smuggling, other types of trafficking, extortion, corruption, financial crimes and crimes committed by organised criminal groups.

33. An individual found guilty of money laundering automatically forfeits to the government any assets or property that may have been generated by the predicate offence. This provision has existed for a number of years as one of the consequences of a conviction for of certain crimes. Brazil also has the possibility of imposing provisional measures (seizure or freezing of assets or property) in relation to money laundering investigations, and the law extends the time during which such measures may be enforced (as compared with its use related to other offences).

34. The necessary framework for preventive measures has been established and is based on the active participation of the full range of Brazilian supervisory authorities<sup>5</sup>. The responsibility for oversight of financial and non-financial entities that fall outside of the jurisdiction of the major supervisory authorities has been given to the Council for Financial Activities Control (COAF – *Conselho de Controle de Atividades Financeiras*), the newly created financial intelligence unit. Through this framework, Brazil has developed and implemented the preventive measures concerning customer identification, record keeping, and suspicious transaction reporting for the financial sector, and the system appears to be producing its first money laundering investigations.

35. Brazilian anti-money laundering legislation lays the groundwork for formal and informal international co-operation. This co-operation is based on a growing network of international treaties and on the concept of reciprocal treatment of requests for legal assistance. The relative newness of the system – as far as applying co-operation to money laundering matters is concerned – means that the system has not yet been tested to any great degree. Nevertheless, informal exchanges of information have already occurred, and contacts to support such exchanges continue to be developed.

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<sup>5</sup> These authorities are the Central Bank of Brazil (BACEN), the Securities and Exchange Commission (CVM), the Superintendent of Private Insurance (SUSEP), the Secretariat for Complementary Providence (SPC), and COAF.

36. With regard to criticisms of the Brazilian anti-money laundering system, current secrecy provisions of the banking law pose a significant potential obstacle to the effectiveness of the system. These secrecy provisions apply to all banking information and may only be lifted through judicial authorisation. Law enforcement authorities are able, therefore, to obtain such financial information in conjunction with properly authorised investigations. The system for reporting suspicious transactions is affected by the secrecy provisions, however. Some portions of the reports necessarily fall under secrecy restrictions and may not therefore be accessed by COAF. Additionally, the information in these reports that is covered by banking secrecy may not be provided to a foreign jurisdiction unless requested by formal rogatory letter. Brazilian authorities recognise this potential problem and have proposed modifications to legislation that would maintain the protections of bank secrecy while permitting COAF to obtain access to such information.

37. As foreseen by the Law N° 9613 of 1998, suspicious transactions are submitted by financial institutions or entities to their respective regulatory authorities, or when there is no such authority, directly to COAF. This system takes advantage of already existing communication channels to facilitate the reporting process. It also, however, requires the supervisory authorities to remove information subject to bank secrecy provisions before forwarding it to COAF. The process appears not to have posed any problems in the functioning of COAF until now; however, the risk of duplication of work and dispersion of effort make this appear to be a less than ideal solution. Upon modification of bank secrecy restrictions – which will permit COAF to have access to all financial information relating to money laundering – the Brazilian government should consider streamlining the suspicious transaction reporting system to make COAF a direct recipient of all such reports.

38. The relative recent establishment of the Brazilian anti-money laundering system appears to be the reason that there have not yet been any successful prosecutions or convictions for money laundering. The lack of this kind of results at this point in the evolution of the Brazilian system is not yet a matter for concern. However, with slightly more than two years after the passage of Law N° 9613 of 1998 and a year since the first financial sector regulations were issued, the system will soon need to show some successful prosecutions and convictions if it is to be deemed effective and worthy of continued support by law enforcement, the financial sector and the public at large.

39. Despite these criticisms of potential weaknesses, the Brazilian anti-money laundering system is built on sound principles, and all authorities involved in implementing and overseeing it appear to be firmly committed to making it succeed. With regard to meeting the minimum requirements for acquiring full FATF membership, Brazil clearly complies with the essential FATF Recommendations. That is, it has established a money laundering offence for serious crimes (Recommendation 4); it has implemented customer and beneficial owner identification requirements (Recommendations 10 and 11); and it has established a mandatory suspicious transaction reporting system (Recommendation 15). Accordingly, the FATF recognises Brazil as a full member.

## **Mexico**

40. Mexico has a large population, an extensive financial sector, and due to its geographical position occupies a very important geographical position with respect to drug production, trafficking and consumption. Other criminal activities such as smuggling, financial crime, organised crime and trafficking in firearms and human beings also result in significant amounts of illegal proceeds. A wide variety of money laundering methods and techniques appear to be used, both within and outside the financial sector. Mexico has had a money laundering offence since 1990. However, in 1997 the Government decided to significantly reinforce its anti-money laundering regime through the adoption of several measures in the financial sector. Since that time Mexico has taken a number of further important steps to improve its anti-money laundering system. Almost all of the basic measures are now in place, and efforts now need to be concentrated on removing remaining loopholes, refining existing requirements, and working to make the system more effective.

41. The money laundering offence - Article 400 bis, Penal Code – is potentially very broad. It applies to all predicate criminal activity, it covers a wide range of physical acts which could amount to money laundering, and applies to laundering the proceeds of any foreign offence in Mexico. Unusually for a criminal offence, it also contains a provision that gives the court the discretion to reverse the burden of proof regarding the proof of the origin of the property alleged to have been laundered, once the prosecution provides sufficient evidence that the property has an illegal source. Few convictions have been obtained for the offence, and there are many cases before the courts and under investigation. Some of the difficulties, as in many other countries, include the need to prove: (a) that the property was proceeds of crime, (b) that the laundering took place for a specific purpose, or (c) that the defendant knew it was illegal proceeds. Another difficulty is associated with the use of the reverse onus provision. Some of these problems are likely to be overcome through further cases, combined with legal training. However consideration could be given to the introduction of a lesser offence based on negligence, with lesser penalties, and the need to prove that the defendant committed the money laundering for the specific purpose of concealing or disguising the ownership of the assets should be removed.

42. Basic provisions exist in the Penal and Penal Procedure Codes dealing with confiscation, and the powers to take provisional measures, including action against third parties that hold illicit property, are quite significant. More recently, Article 29 of the Organised Crime law extended these powers by allowing the onus of proof to be reversed in certain circumstances. However, there is no power to make an order for an equivalent value to the proceeds if they have been dissipated and this situation should be reviewed. Consideration should also be given to creating specialised law enforcement and prosecutorial units dedicated exclusively to investigating proceeds of crime cases.

43. Mexico has signed and ratified the Vienna Convention, and has entered into a wide range of international agreements, which provide the legislative basis for it to provide assistance. It can provide assistance without a treaty on the basis of reciprocity, and does not require dual criminality for requests made pursuant to treaties. The DGAIO has also entered into several financial information exchange agreements with other FIU and can exchange STR information with them, though these possibilities need to be broadened.

44. The key operational bodies in the Mexican anti-money laundering system are the Attached General Directorate for Transaction Investigations (DGAIO) of the Secretariat of Finance and Public Credit and the anti-money laundering unit of the General Attorney's Office (PGR). They are well resourced units, with a strong commitment to integrity. They have been very active in introducing and promoting the anti-money laundering laws and regulations, and occupy a central co-ordination and co-operation function. The DGAIO, in its role as the Mexican financial intelligence unit, receives all the different types of reports, including STR, and has access to a wide range of intelligence and commercial data, though this role could be made more efficient if it had on-line access to some of these databases. The system could also be made more efficient by creating a gateway through the bank secrecy laws so as to allow the STR to be sent directly to the DGAIO, and for criminal investigation requests to be sent directly to the financial institutions, rather than routing these through the Commissions which supervise the financial sectors. The fight against money laundering could be enhanced by a creation of a more co-ordinated strategic plan or strategy with objectives, combined with consideration as to how policy level co-operation and co-ordination can be further developed, both across government and with the financial sector.

45. The preventive measures in the financial sector are generally sound and comprehensive, covering most of the requirements in the FATF Recommendations, and the financial regulatory Commissions and the banking sector have actively implemented the laws and regulations. In certain respects, such as the introduction of "Know your customer" principles, Mexico has gone well beyond the minimum requirements. However, the scope of the anti-money laundering measures in the financial sector need to be extended to cover money remittance businesses and action needs to be taken in relation to the more than 5,000 unregulated money exchange establishments. The laws or

regulations also need to be amended to require all financial institutions to identify beneficial owners of accounts.

46. Mexico has introduced a comprehensive system of reporting, with obligations to report suspicious and unusual transactions, large value and cross-border transactions. The results from the STR system, which commenced in 1997, started at a very low level, and have substantially increased each year, though the number of reports from the NBFIs sector is still low. Although the mechanics of the reporting systems are working reasonably well, it takes too much time for an STR to reach the DGAIO from the time that they are initially found to be suspicious. This time period could be reduced by eliminating some of the intermediary steps, and requiring reports to be passed on more quickly. Increased specific and general feedback needs to be provided to assist reporting institutions in identifying transactions that are truly suspicious. Mexico receives a large number of cross-border reports for amounts greater than US\$ 20,000 each year, and this number has steadily increased over the last few years. These reports can be a source of valuable information, and consideration could be given to reducing the reporting limit for imported currency to US\$ 10,000, which will be the same as in a number of other FATF members, and in line with the proposed reporting obligation for currency exiting Mexico.

47. The financial regulatory Commissions and the DGAIO has been very active in preparing the regulations and the handbooks that are the basis for the internal controls and guidelines for financial institutions. A comprehensive programme of training has also been put in place by the Mexican Bankers Association, and the DGAIO has also participated actively. Similarly, the National Banking and Securities Commission (*CNBV – Comisión Nacional Bancaria y de Valores*) has created examiners manuals which extend to cover money laundering, and its on-site supervision, which occurs at least once a year, is already checking the anti-money laundering controls and policies that institutions have put in place. Measures are generally solid, though some additional refinements could be made.

48. Mexico fully meets FATF Recommendation 4, since it has a money laundering offence that extends to all predicate crimes. As regards Recommendations 10, 11 and 15, it is almost fully compliant with these Recommendations, since the obligations to identify customers and report suspicious transactions do not extend to money remittance businesses or to the unregulated money exchange establishments. Accordingly, the FATF recognises Mexico as a full member.

## B. DEVELOPMENT OF FATF-STYLE REGIONAL BODIES

### *(i) Existing regional bodies*

49. Active efforts have been made to support or foster the development of FATF-style regional bodies in all parts of the world. These groups, which have similar objectives and tasks to the FATF, provide the same peer pressure which encourages FATF members to improve their anti-money laundering systems. Such groups now exist in the Caribbean, Central and Eastern Europe, and Asia/Pacific, and in August 1999, a group was launched for Southern and Eastern Africa. Further groups are in the process of being established for Western and Central Africa, and also for South America.

### **Caribbean Financial Action Task Force**

50. The Caribbean Financial Action Task Force (CFATF), which is the oldest FATF-style regional body, has a membership of twenty-five States from the Caribbean basin.<sup>6</sup> It was established

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<sup>6</sup> The current CFATF members are: Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, the Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Turks and Caicos Islands, Trinidad and Tobago and Venezuela.

as the result of meetings convened in Aruba in May 1990 and Jamaica in November 1992. The main objective of the CFATF is to achieve the effective implementation of, and compliance with the nineteen CFATF and Forty FATF Recommendations. The CFATF Secretariat monitors members' implementation of the Kingston Ministerial Declaration through the following activities: self-assessment of the implementation of the Recommendations; an on-going programme of mutual evaluation of members; co-ordination of, and participation in, training and technical assistance programmes; plenary meetings twice a year for technical representatives; and an annual Ministerial meeting.

51. Pivotal to the work of the CFATF is the monitoring mechanism of the mutual evaluation programme. In this regard, the CFATF Council of Ministers endorsed, in October 1999, the revision of new mutual evaluation procedures. The CFATF Ministers also agreed on a policy framework for the application of sanctions for breaches of the Memorandum of Understanding, and the need to amend the nineteen CFATF Recommendations based on the revision of the Forty FATF Recommendations in 1996. The 1999 CFATF Council meeting adopted seven mutual evaluation reports (St. Vincent and the Grenadines, Antigua, Barbuda, Bermuda, St. Lucia, Jamaica, Turks and Caicos, and British Virgin Islands) and it is expected that a further six reports will be completed during 2000. At the CFATF Plenary meeting in March 2000, twelve members which had been evaluated, provided reports on action they have taken to counter the weaknesses identified in their evaluation reports.

52. The FATF continues to support the significant progress which has been made by the CFATF over the past twelve months. Spain has joined the CFATF as a COSUN (Cooperative and supporting Nation).<sup>7</sup> Mexico has begun the process of taking the necessary steps to become a COSUN. The CFATF will also continue its typologies activities with work on free trade zones, and will also organise a conference on international financial service centres at the end of 2000, which has been generously supported by the Government of Switzerland.

### **Asia/Pacific Group on Money Laundering**

53. The Asia/Pacific Group on Money Laundering (APG) currently consists of nineteen members<sup>8</sup> from South Asia, Southeast and East Asia and the South Pacific. During 1999-2000 the APG held two plenary meetings. One meeting was held in August 1999 in Manila and was hosted by the Asian Development Bank and the Republic of the Philippines. The other meeting was held in Sydney on 31 May- 2 June 2000 hosted by Australia. These meetings resulted in an expansion of the APG Terms of Reference which included distinctive membership criteria, a commitment to implementing the FATF 40 Recommendations, a budget for the APG Secretariat and a requirement that each APG member commit itself to a mutual evaluation. The APG also agreed on a strategic plan which includes, among other initiatives, self-assessment exercises, a training and technical assistance strategy and typologies workshops. The two APG plenary meetings noted the enactment of anti-money laundering legislation in several jurisdictions.

54. In March 2000, the APG conducted its third typologies workshop in Bangkok, Thailand which received a report on underground banking and alternative remittance systems, examined the use of false identities for money laundering purposes and identified some other current money laundering methods being used in the region. The APG will continue and expand its typologies work in close consultation with the FATF and other regional bodies.

55. The FATF welcomes the progress made by the APG, in particular its commencement of a mutual evaluation program. At the Sydney meeting, the APG approved its first mutual evaluation

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<sup>7</sup> The other CFATF COSUNs are: Canada, France, Netherlands, United Kingdom and United States.

<sup>8</sup> The members of the APG are: Australia; Bangladesh; Chinese Taipei; Fiji; Hong Kong, China; India; Japan; Malaysia; New Zealand; Pakistan; Republic of Indonesia; Republic of Korea; Republic of the Philippines; Samoa; Singapore; Sri Lanka; Thailand; United States of America and Vanuatu.

report (of Vanuatu), which was jointly conducted with the OGBS. The APG Secretariat is in the process of drafting a mutual evaluation schedule for all its members. A mutual evaluation training project will be conducted in order to increase the skills needed to conduct mutual evaluations.

### **Council of Europe (PC-R-EV)**

56. The Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV) was established in September 1997 by the Committee of Ministers of the Council of Europe, to conduct self and mutual assessment exercises of the anti-money laundering measures in place in the twenty-two Council of Europe countries which are not members of the Financial Action Task Force.<sup>9</sup> The PC-R-EV is a sub-committee of the European Committee on Crime Problems of the Council of Europe (CDPC).

57. Since the publication to the last FATF Annual Report, the PC-R-EV has pursued its significant mutual evaluation programme with nine further on-site visits. Reports were debated and adopted on seven countries at its two plenary meetings: In February 2000, reports were adopted on Liechtenstein, Poland and Romania; in June 2000, reports were adopted on Bulgaria, Croatia, Estonia and the "Former Yugoslav Republic of Macedonia". Of the nine on-site visits, four took place between February 2000 and the publication of this report, and the related reports are yet to be debated: Latvia, Moldova, San Marino and Ukraine. The evaluation of the Russian Federation will take place between 26-30 June 2000, and those of Albania and Georgia will take place in late 2000. Summaries of all adopted PC-R-EV reports since the beginning of the evaluation process appear at Annex B.

58. The PC-R-EV has in the last year put in place a mechanism for oral progress reports to be given to the plenary by all countries one year after their report was adopted. At its February 2000 meeting, the PC-R-EV held its second typologies exercise on the theme of money laundering and organised crime.

59. The PC-R-EV has worked on widening the pool of suitably experienced evaluators within the PC-R-EV countries and further improving the quality of the mutual evaluation process. In this way, the Council of Europe also contributes fully and effectively to the development of the world-wide anti-money laundering network.

### **The Eastern and Southern African Anti-Money Laundering Group (ESAAMLG)**

60. The ESAAMLG, an FATF-style body for fourteen countries in the region,<sup>10</sup> was launched at a meeting of Ministers and high level representatives in Arusha, Tanzania, on 26-27 August 1999. A Memorandum of Understanding (MoU), based on the experience of the FATF and other FATF-style regional bodies was agreed. Pending the establishment of a permanent secretariat, the Tanzanian Government has been responsible for advancing the work of the Group.

61. Following the signing of the MoU by seven countries in the region (Tanzania, Uganda, Malawi, Seychelles, Mauritius, Mozambique and Namibia), the ESAAMLG has now been formally established. All its members are Commonwealth countries, committed to the Forty FATF Recommendations. On 17-19 April 2000, the ESAAMLG held its first meeting of the Task Force of senior officials in Dar es Salaam, Tanzania.

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<sup>9</sup> The membership of the Committee is comprised of the Council of Europe member States which are not members of the FATF: Albania, Andorra, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Moldova, Malta, Poland, Romania, Russian Federation, San Marino, Slovakia, Slovenia, "The Former Yugoslav Republic of Macedonia" and Ukraine.

<sup>10</sup> Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

## **Other initiatives**

62. At the December 1999 Summit of the Heads of State and Government of the Economic Community of West African States (ECOWAS) in Lomé (Togo), it was decided to establish an inter-governmental group against money laundering. It was also agreed that a further Inter-Ministerial meeting would need to be held in Senegal to launch the group.

63. On 3 February 2000, it was announced that Finance Ministers from thirty-four Western Hemisphere countries, meeting under the auspices of the Hemispheric Financial Affairs Committee in Cancun, Mexico, had called upon all member countries to support and participate in financial action task forces, either the CFATF or the new South American Financial Action Task Force, whose creation Argentina and Brazil have pledged to lead. In addition, MERCOSUR has clearly expressed its support for the creation of this new group at its April 2000 meeting in Buenos Aires.

## **C. OTHER INTERNATIONAL ANTI-MONEY LAUNDERING INITIATIVES**

### **United Nations**

64. In early 1999, the United Nations started the negotiation of a Convention against Transnational Organised Crime with the aim of adopting a comprehensive set of measures to improve international co-operation against organised crime in November 2000. Among the important provisions of the draft convention are measures against money laundering. In particular, the draft convention currently contains an article requiring nations to criminalise money laundering (Article 4). The FATF endorses this requirement for appropriate serious offences. The draft convention also contains an article which would require States to develop comprehensive anti-money laundering domestic regulatory and supervisory regimes (Article 4 bis). The FATF attaches specific importance to a version of draft Article 4 bis which would require each State Party within its means, to develop the domestic regulatory and supervisory regime under the terms of the article on the basis of the 40 Recommendations of the FATF (as revised in 1996) and other relevant initiatives such as the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money Laundering Group, the European Union, and the Organisation of American States.

65. The Global Programme against Money Laundering (GPML) is a research and technical co-operation initiative implemented by the UN Office for Drug Control and Crime Prevention (ODCCP). Its aim is to increase the effectiveness of international action against money laundering through comprehensive technical co-operation services offered to governments. The Programme is carried out in co-operation with other international and regional organisations. In the context of the GPML, the UNODCCP organised a number anti-money laundering training and technical co-operation initiatives in 1999-2000, including a sub-regional seminar on the prevention of money laundering in the financial sector, in May 2000 in Abu Dhabi, United Arab Emirates, at which the FATF Secretariat made a presentation.

### **Offshore Group of Banking Supervisors**

66. The conditions for membership of the Offshore Group of Banking Supervisors (OGBS)<sup>11</sup> include a requirement that a clear political commitment be made to implement the FATF's Forty Recommendations. In addition, the following members of the OGBS, which are not members of the FATF or the CFATF, are formally committed to the Forty Recommendations through individual

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<sup>11</sup> The Membership of the OGBS includes Aruba; Bahamas; Bahrain; Barbados; Bermuda; Cayman Islands; Cyprus; Gibraltar; Guernsey; Hong Kong, China; Isle of Man; Jersey; Labuan; Macao, China; Malta; Mauritius; Netherlands Antilles; Panama; Singapore and Vanuatu.



Ministerial letters sent to the FATF President during 1997-1998: Bahrain, Cyprus, Gibraltar, Guernsey, Isle of Man, Jersey, Malta, Mauritius and Vanuatu.

67. The on-site evaluations of Jersey, Guernsey and the Isle of Man were carried out during the summer of 1999. The mutual evaluation reports of the three jurisdictions will be discussed and approved at the annual meeting of the OGBS in Basle in September 2000. The mutual evaluation of Vanuatu was conducted by a joint team comprised of APG and OGBS members and will also be considered at that meeting. Another member of the OGBS -- Bahrain -- was subject to an on-site evaluation in June 2000 by a joint FATF/GCC/OGBS mutual evaluation team.

#### **Organization of American States/Inter-American Commission for Drug Abuse Control (OAS/CICAD)**

68. The CICAD Group of Experts to Control Money Laundering has continued to monitor implementation of the Buenos Aires Plan of Action.<sup>12</sup> The CICAD Group of Experts, plans at its upcoming meeting to be held in Washington D.C. July 11-13, 2000 to consider the following major topics: a) Typologies Exercises; b) Financial Intelligence Units and Model Legislation for their establishment; and c) Training Activities.

69. Furthermore, the Plan of Action of Buenos Aires and its future will be considered and the countries will be informed of the possible establishment of an entity having FATF characteristics for South America and its impact on the Group of Experts.

70. The Inter-American Drug Abuse Control Commission, at its twenty-sixth regular session held in Montevideo, Uruguay in October of 1999, made express reference to the report of the Group of Experts on the desirability of an Inter-American Convention on Money Laundering. The report of the Experts was subsequently approved by the General Assembly of the OAS at its thirtieth regular session held in Windsor, Canada in June 2000. The report states that while there is no technical impediment to the creation of an inter-American convention its consideration should await the results of the work of the United Nations on the Draft Convention against Transnational Organised Crime as well as the results of the OAS/CICAD's first round of the Multilateral Evaluation Mechanism which will provide more information on the situation and as to whether a hemispheric convention is warranted.

71. As for its Model Regulations, CICAD approved changes, subsequently adopted by the twenty-ninth OAS General Assembly to expand the predicate offences giving rise to money laundering offences as well as to include "off shore" banks as entities required to comply with banking regulations.

72. CICAD has developed a Multilateral Evaluation Mechanism (MEM), to evaluate the effectiveness of anti-drug and related arrangements, including work on indicators on the effectiveness of certain anti-money laundering measures. The MEM process has commenced with countries responding to a detailed assessment questionnaire and the results will be discussed at the Summit of the Americas meeting to take place in Quebec in 2001.

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<sup>12</sup> In December 1995, the Ministers responsible for addressing money laundering in the States of the Western hemisphere met in Buenos Aires where they endorsed a Statement of Principles to combat money laundering and agreed to recommend to their Governments a Plan of Action reflecting this Statement of Principles for adoption and implementation. The Plan of Action specifically provided that the Governments intended to institute on-going assessments of the implementation of the Plan of Action within the framework of the OAS. This and other activities identified in this Plan were remitted to the CICAD for action.

## **Various international anti-money laundering events**

73. In addition to regular attendance at meetings of other international or regional bodies during 1999-2000, the FATF President and Secretariat continued to receive and indeed accepted several invitations to participate in various international anti-money laundering events. In October 1999, the FATF President gave a presentation to the money laundering component of the 9th International Anti-Corruption Conference in Durban, South Africa. In November 1999, the President also addressed a conference in Brasilia, sponsored by Brazil and the United Nations for over 800 magistrates. In March 2000 in London, he made a presentation on the "Globalisation of the Fight Against Money Laundering" at the Chatham House Conference on "Economic Crime in a Globalised World". The President participated in the 4<sup>th</sup> Meeting on Narcotics sponsored by the European Union and Andean Community and held in Lima, Peru in March 2000. In May 2000, the FATF President gave the keynote speech at the International Law Enforcement Academy (ILEA) seminar on international money laundering and related crimes which took place in Kanchanaburi, Thailand. Finally, in June 2000, the FATF President addressed the Annual Meeting of the International Association of Insurance Fraud Agencies, in Orlando, United States.

74. During the period, the FATF Secretariat also participated in several other international events, including the Frankfurt Conference on Money Laundering, on 23 July 1999 in Germany; the annual Conference of the International Financial Services Association (IFSA) in San Antonio, Texas in October 1999; the meeting of the Section for Economic and Monetary Union and Economic and Social Cohesion of the Economic and Social Committee of the European Union on 10 January 2000 in Brussels; the International Law Congress in Nicosia, Republic of Cyprus on 11 April 2000; and a seminar on International Co-operation on Money Laundering Investigations on 18-19 May 2000 in St. Petersburg, Russian Federation.

## **D. NON-COOPERATIVE COUNTRIES OR TERRITORIES**

75. Since the end of 1998, the FATF has embarked on substantive work on the problems raised by countries and territories which do not co-operate in the combat of money laundering. The work which FATF has undertaken on non-co-operative jurisdictions is fully in line with measures elaborated by the international community to consolidate the international financial system and render it more transparent. The aim of the work is to enhance the level of protection for the world financial system and to prevent the circumvention of the anti-laundering measures introduced over the last ten years.

76. Recent years have seen a considerable increase in the number of jurisdictions which offer financial services without appropriate regulation or control, coupled with very strict banking secrecy. Over the last ten years, many countries have developed measures to combat money laundering. However, any weak link in international arrangements jeopardises the entire international financial system.

77. To ensure transparency and sound operation in the international financial system, and the effective prevention of financial delinquency, it is increasingly desirable that all financial centres across the world have comprehensive controls, regulations and supervisory arrangements in place and that all financial agents assume anti-money laundering obligations. In this respect, disseminating the Forty Recommendations is the FATF's main task. In the shorter term, it would be appropriate for all countries or territories forming part of the international financial system to amend their rules and practices which hamper anti-money laundering measures conducted in other countries.

78. To tackle this question, FATF has established an Ad Hoc Group to discuss in more depth the action to be taken with regard to these countries and territories. In 1999-2000, the Ad Hoc Group met in the margins of all FATF Plenary meetings, and autonomously on 16-17 November 1999 in

Washington, D.C. and on 24-25 May 2000 in Paris. The scope of the work extends to all major financial centres, offshore or onshore, whether they are FATF members or not.

### **Establishing criteria**

79. A priority task was to define the detrimental rules and practices which impair the effectiveness of money laundering prevention and detection systems, in other words, to adopt criteria for defining non-co-operative countries and territories. The criteria agreed by the FATF, twenty-five in all, cover prevention, detection and penal provisions.<sup>13</sup> The criteria address the following issues: loopholes in financial regulations that allow no, or inadequate supervision of the financial sector, weak licensing or customer identification requirements, excessive financial secrecy provisions, or lack of suspicious transaction reporting systems; weaknesses in commercial requirements including the identification of beneficial ownership and the registration procedures of business entities; obstacles to international co-operation, regarding both administrative and judicial levels and inadequate resources for preventing, detecting and repressing money laundering activities. The criteria are consistent with the international anti-money laundering standards set out in the Forty Recommendations of the FATF.

### **Identifying non-co-operative countries and territories**

80. The second stage in this work was to identify jurisdictions which meet the criteria, and a number of jurisdictions were reviewed between February and June 2000. Summaries of the outcome of these reviews are contained in the June Report (See Annex A).

### **Next steps**

81. The FATF will consider further steps to encourage constructive anti-money laundering action. In this respect, FATF will continue a dialogue with the identified non-co-operative jurisdictions to encourage them to remedy deficiencies identified in the June Report. Should this not be the case, the adoption of counter-measures<sup>14</sup> would need to be considered.

82. The ideal course would obviously be for non-co-operative jurisdictions to adopt laws and regulations to bring them into compliance with the Forty FATF Recommendations and to ensure they are effectively implemented.

## **II. IMPROVING MEMBERS' IMPLEMENTATION OF THE FORTY RECOMMENDATIONS**

83. FATF members are clearly committed to the discipline of multilateral monitoring and peer review. Therefore, a notable part of FATF's work has continued to focus on monitoring the implementation by its members of the Forty Recommendations on the basis of a self-assessment and mutual evaluation procedure. The self-assessment exercise consists of a detailed questionnaire and an in-depth discussion at the final Plenary meeting. The mutual evaluation procedure provides a comprehensive monitoring mechanism for the examination of the counter-measures in place in member countries and of their effectiveness. Together, they provide the necessary peer pressure for a thorough implementation of the Forty Recommendations in members.

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<sup>13</sup> The twenty-five criteria and the process for the FATF work on non-co-operative countries or territories can be found in a report which was published on 14 February 2000, available at the following website: <http://www.oecd.org/fatf>

<sup>14</sup> See Section II. C. of the February 2000 Report on Non-Cooperative Countries or Territories.

A. 1999-2000 SELF-ASSESSMENT EXERCISE

84. Given the fact that some of the FATF Forty Recommendations still have not been fully implemented by all FATF members and that the FATF observer members have been in the process of undergoing evaluations of the adequacy of their anti-money laundering systems, the need remains for an adequate, ongoing monitoring system. Mutual evaluations provide in-depth analysis of an individual member's anti-money laundering regime; however, such evaluations do not occur with such frequency to give an accurate view of progress made between evaluations. The annual self-assessment process was conceived for the purpose of ascertaining this progress.

85. The FATF therefore adopted a revised self-assessment process that will serve as a yearly summary of the state of implementation of the FATF Forty Recommendations, furnish information on potential problem areas in this regard, and play an integrated and complementary role in mutual evaluation procedures. Some of the specific changes to the self-assessment process include: a simplification of the self-assessment questionnaire (the previous questionnaires on legal and financial matters were combined into a single document and considerably reduced in size), and compliance analysis focused only on specific Recommendations (Recommendations which require mandatory action or which call for specific measures against which compliance can be assessed).

B. MUTUAL EVALUATIONS

86. The second and major element for monitoring the implementation of the FATF Recommendations is the mutual evaluation process. Each member is examined in turn by the FATF on the basis of a report drawn up by a team of three or four selected experts, drawn from the legal, financial and law enforcement fields of other FATF members. The purpose of this exercise is to provide a comprehensive and objective assessment of the extent to which the country in question has moved forward in implementing effective measures to counter money laundering and to highlight areas in which further progress may still be required.

87. As the final reports of the second round of evaluations of FATF members had been adopted at its Plenary meeting in June 1999, only the evaluation reports concerning new members were discussed during FATF-XI (see Section I. A. (i)). Given that there were no examinations of the current FATF members,<sup>15</sup> the period was used to remedy the most serious shortcomings, identified during the second round of evaluations, which, in several cases, had triggered the application of the FATF's policy for members who do not comply with the Forty Recommendations.

88. Furthermore, the period was used to start the assessment of the first two rounds of mutual evaluation. This general assessment will serve to prepare the third round of mutual evaluations, as well as to make new members aware of the importance of our work in this area.

C. POLICY FOR NON-COMPLYING MEMBERS AND FOLLOW-UP TO MUTUAL EVALUATIONS

*(i) Steps applied in 1999-2000*

**Austria**

89. During 1999-2000, the FATF continued its efforts to persuade Austria to eliminate its system of anonymous savings passbooks. These efforts were initially delayed and complicated by the difficulties in forming a government for a considerable period following the October 1999 elections.

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<sup>15</sup> FATF members are committed to undergoing a simplified third round of mutual evaluations, starting in 2001.

However, in January 2000, the FATF President wrote to the Austrian Minister of Finance of the -- at that time -- interim government setting out the serious concerns of the Plenary regarding the anonymous passbooks and asking Austria once again to take steps to abolish these accounts. In response, on 25 January 2000 the Austrian Council of Ministers issued a public statement acknowledging the need to take action with respect to the anonymous passbook savings accounts, and indicating that a consensus existed for the new Austrian government which was yet to be formed at that time to take steps to deal with the issue.

90. However, at its meeting in February 2000 the FATF Plenary agreed that more precise and immediate action was required from Austria, and accordingly it considered applying the final step of the FATF policy regarding members which do not comply with the Forty Recommendations. Given that there was only an interim government in Austria at that date, it was agreed that Austrian membership of the FATF would be suspended unless action was taken by the new Austrian Government. Accordingly, a public statement was issued on 3 February 2000 which stated that Austria would be suspended as a member of the FATF with effect from 15 June 2000 unless by 20 May 2000 the Austrian government:

- a) issued a clear political statement that it will take all necessary steps to eliminate the system of anonymous passbooks in accordance with the 40 FATF Recommendations by the end of June 2002; and
- b) introduced and supported a Bill into Parliament to prohibit the opening of new anonymous passbooks and to eliminate existing anonymous passbooks.

91. Following this statement on 22 February 2000, the Council of Ministers of the new Austrian government issued a public statement in which it confirmed its intention to remove the possibility of opening new anonymous savings passbooks during 2000, and to otherwise comply with the FATF decision. On 20 March 2000, the Austrian Government introduced amendments to the Banking Act into Parliament. These measures proposed to eliminate the passbooks as follows:

From 1 November 2000 until 30 June 2002	<p><u>New passbooks opened</u></p> <p>- the holder must be identified.</p> <p><u>Existing passbooks</u></p> <p>- Deposits: if a deposit is made, the passbook holder must be identified (except for deposit transfers from anonymous securities accounts opened prior to 1 August 1996). All savings deposit accounts must be held in the name of the identified customer.</p>
After 30 June 2002	<p>- Passbooks where identification has already taken place – deposits and withdrawals can be made in the normal way.</p> <p>- Passbooks where there has been no identification – shall become “special marked accounts”, and identification must take place before any deposit or withdrawal can be made.</p>

92. On 16 May 2000, the Austrian Government declared its intention to implement a further series of measures that are intended to facilitate the full elimination of the anonymous passbooks, and to prevent any subsequent misuse of passbooks where the holder has not been identified, after June 2002. These measures were subsequently adopted by the Financial Committee of the First

Chamber of the Austrian Parliament on 25 May 2000 and by the Plenary of the First Chamber on 7 June 2000.

The most important of these measures are:

- a) After 31 October 2000, any withdrawal from a passbook where the holder has previously been identified, and which has a balance of ATS 200,000 or more, can only be made by the identified holder. Withdrawals from passbooks with balances below ATS 200,000 can be made upon presentation of the code-word.
- b) For transactions over ATS 200,000 (whether in one amount or several connected amounts) on savings deposits the customer must be identified. This applies after 31 October 2000 for payments into a savings account, and after 30 June 2002 for withdrawals from a savings deposit.
- c) After 30 June 2002, any proposed withdrawal from an anonymous passbook whose holder has not previously been identified and which has a balance of ATS 200,000 or more must be reported to the Austrian financial intelligence unit (FIU). There will then be a seven day delay, and if the FIU does not object, the money can be paid.
- d) After 30 June 2002, the transfer or acquisition of a passbook for which identification procedures have not been effected, will be prohibited and a person transferring or acquiring a passbook could be subject to an administrative fine of up to ATS 300,000.
- e) The Financial Committee of the Lower Chamber of the Austrian Parliament asked the Minister of Finance to issue a banking circular stating that credit institutions should apply increased diligence to: (a) transactions that split a large deposit into smaller deposits; and (b) withdrawals from anonymous savings passbooks prior to 30 June 2002.

93. Following consideration of the full range of measures being implemented by the Austrian government, the FATF agreed that the conditions which it laid down on 3 February 2000 were met. Accordingly Austria's membership of the FATF was not suspended. The FATF welcomes the constructive action taken by Austria to remove the anonymous passbooks and to strengthen its anti-money laundering regime and will follow closely the implementation of these measures.

*(ii) Follow-up to mutual evaluation reports*

## **Canada**

94. Canada has provided several reports to the FATF since its mutual evaluation in 1997, updating the FATF Plenary in September 1999 and again in June 2000 on developments regarding the Proceeds of Crime (Money Laundering) Bill. It is anticipated that the Bill will be passed by the Canadian Parliament in June 2000. This Bill strengthens the existing legislative provisions on record keeping and introduces mandatory suspicious transaction reporting, as well as the mandatory reporting of "prescribed" transactions and the cross-border movement of large amounts of currency and monetary instruments. It also creates a financial intelligence unit: the Financial Transactions and Reports Analysis Centre of Canada. The establishment of the Centre is anticipated in July 2000. The Canadian Government is developing regulations to implement the new reporting requirements and other elements of the legislation that are subject to regulations. The FATF looks forward to the implementation of the legislation and regulations.

## **Japan**

95. Following the discussion of its second mutual evaluation report at the June 1998 Plenary meeting, which concluded that the Japanese money laundering system in place at that time, was not

effective in practice, the delegation of Japan reported back several times to the FATF on the measures it had taken to improve its regime since that date.

96. At the September 1999 Plenary meeting, the FATF was informed by Japan that its new money laundering legislation had been enacted by the Diet on 12 August 1999. The new Law extends the definition of money laundering to cover over 200 predicate offences and establishes a Japanese financial intelligence office (JAFIO). The Law came into force in February 2000. Following the creation of the JAFIO, Japan began to take part in the Egmont Group<sup>16</sup> and is now in a better position to participate in the international exchange of information.

### **Singapore**

97. Following the discussion of its second mutual evaluation report at the FATF Plenary meeting in February 1999, the Singaporean delegation reported back in June 1999 on the measures that it would be introducing. In September 1999, Singapore advised that its Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1999 was passed on 6 July 1999 and came into force on 13 September 1999. The amending legislation extended the money laundering offence to a wide range of serious crimes, increased the powers to confiscate criminal assets, clarified the requirement to report suspicious transactions, and introduced several other measures to enhance the anti-money laundering regime. On the provision of mutual legal assistance, Singapore has recently enacted the Mutual Assistance in Criminal Matters Act, which came into effect on 1 April 2000, to provide for a more comprehensive legal framework for mutual assistance in legal matters.

### **Turkey**

98. Turkey's second mutual evaluation report was discussed at the FATF Plenary meeting in June 1999, and its delegation reported back in February 2000. A number of steps to strengthen its anti-money laundering regime have been taken since June 1999: Article 4 of the Money Laundering Law was amended regarding the customer identification requirements and lifted the threshold for large cash transactions. A new Banking Law (N° 4389 of June 1999) had been enacted that prohibits banks from providing services to individuals who fail to provide identification. Further amendments require that banks identify third parties acting on behalf of legal persons. Banks are now required to have compliance officers and to implement anti-money laundering training programmes for employees; a Bill to ratify the 1990 Council of Europe Convention is to be introduced into Parliament during the year.

## **D. MONITORING ASPECTS FOR GCC MEMBER STATES**

99. The Gulf Co-operation Council (GCC) is in the unique position of being a member of FATF but with non-FATF member countries as its constituents.<sup>17</sup> Following a high-level FATF mission in January 1999 to the General Secretariat of the GCC in Riyadh, noticeable progress has been made to improve the implementation of effective anti-money laundering systems within the GCC States.

100. As a result, the GCC delegation to the September 1999 FATF Plenary meeting included representatives from all six GCC member States. Furthermore, on 17-18 January 2000 in Riyadh, the GCC held a technical seminar for its member States with the participation of the FATF Secretariat, on the subject of self-assessment and mutual evaluation procedures. In addition, five members of the GCC (Bahrain, Kuwait, Oman, Qatar and the United Arab Emirates) have agreed to undergo a mutual evaluation.

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<sup>16</sup> The Egmont Group is the informal international grouping, set up in 1995, which provides a forum for financial intelligence units (FIUs) to improve support to their respective national anti-money laundering programmes. Fifty-three FIUs are currently represented within the Egmont Group.

<sup>17</sup> Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

101. Taking into account the unique position of the GCC in FATF's membership, it was decided that mutual evaluations of its member States should be a joint FATF/GCC process. The first on-site visit of these evaluations took place in Bahrain on 5-7 June 2000, and will be followed by other examinations. The mutual evaluation reports of GCC member States will be discussed at FATF Plenary meetings in 2000-2001.

### **III. STRENGTHENING THE REVIEW OF MONEY LAUNDERING METHODS AND COUNTER-MEASURES**

102. The annual survey of money laundering methods and countermeasures provides a global overview of trends and techniques and focuses on selected major issues. Other areas of work included the preparation of a Reference Guide to procedures and contact points on information exchange to financial regulators and law enforcement agencies and work on estimating the magnitude of money laundering. Taking into account the work of the OECD's Committee on Fiscal Affairs, the FATF examined the question of the transmission of information by members' anti-money laundering authorities to their tax administrations. Finally, the FATF convened a third Forum with representatives of the world's financial institutions and accounting professions.

#### **A. 1999-2000 SURVEY OF MONEY LAUNDERING TRENDS AND TECHNIQUES**

103. The annual FATF typologies exercise brings together experts from the law enforcement and regulatory authorities of FATF member countries to exchange information on significant money laundering cases and operations. It also provides a vital opportunity for operational experts to identify and describe current money laundering trends and effective countermeasures. Building on the analysis and lessons learned from earlier typologies work, the yearly exercise also attempts to examine a series of particular concerns in the money laundering area from the operational perspective. The meeting of experts took place under the chairmanship of the United States and, for the first time, experts from member jurisdictions of FATF-style regional bodies were invited to participate in the FATF meeting.

104. With the increasing offering of financial services over the Internet, it is the potential for conducting financial transactions on-line that presents one of the most significant vulnerabilities to money laundering at present. A growing number of existing "mainstream" financial institutions, as well as a few pure Internet banks, already provide a range of transactional services. The potential money laundering risks arise from the extreme difficulty for banks offering such capabilities to positively establish the identity of a particular transactor or even determine the location from which the transaction is made. The capability of accessing an account from beyond national borders raises the question of how to determine regulatory or investigative jurisdiction when on-line activity might indicate money laundering. However, no money laundering cases have been detected yet which involve this mechanism. The FATF considered this issue important enough to require further attention, if only to examine the implications the technology might have on current customer identification practices.

105. Alternative remittance systems are often shown to be the backbone of some money laundering schemes throughout the world. The FATF considered three major systems – Black Market Peso Exchange, hawala/hundi, and the Chinese/East Asian systems – which, although different in regional, economic, or cultural origins, share a number of common characteristics. These systems give the money launderer the key ability to move funds rapidly over great distances leaving little or no audit trail. They represent a significant challenge to the investigator who must often surmount cultural, ethnic or linguistic barriers in order to detect and penetrate such systems. Remedies to the problem of alternate remittance systems could include expanding and more thoroughly implementing



regulatory controls or licensing requirements for financial activities. Current regional and national initiatives to study these systems and their use for money laundering are an encouraging sign.

106. The role played by company formation agents in money laundering is becoming increasingly clear. Taking advantage of the agent's expertise in varying company registration procedures, together with the banking or corporate secrecy of certain jurisdictions, the launderer may create a barrier of legitimate seeming corporate structures that further separates him from his illegal proceeds. For the most part, company formation agents are not specifically held to anti-money laundering rules, and extending such rules to cover this sector may represent a solution on a national level. This response to the problem does not address the issue of services provided from locations outside of the jurisdiction. One other possibility might be to promote a minimum standard in company formation procedures – perhaps limiting the number of directorships held by an individual, or striking companies off the register upon failure to comply with necessary procedures. Implementing such standards will only work, however, if they are adhered to by all jurisdictions.

107. The FATF has observed a growing trend for trade activity to be used both as a cover for money laundering and as an actual money laundering mechanism. Although frequently appearing in the context of alternative remittance systems, trade related money laundering is not exclusively associated with such systems. Several examples were cited this year in which laundering operations through import or export of merchandise were not tied to alternative remittance. Customs officials responsible for import/export controls have access to useful information on cross-border movement of goods; however, this information is not always exploited fully from the perspective of potential money laundering activity. The FATF will continue to examine this issue and attempt to further clarify the relationship between trade activity and alternative remittance systems in future typologies work.

108. As in past years, the FATF also examined other money laundering methods and trends presented in the framework of individual country contributions. From this material, it can be concluded that narcotics trafficking continues to represent the single largest source of criminal proceeds throughout the world. Nevertheless, the proceeds from various types of fraud activity make up an increasing portion of illegal funds originating from some jurisdictions. The increased presence of certain professions – especially solicitors, notaries, and accountants and often in connection with company formation agents – in money laundering operations was noted. In addition to some of the more complex money laundering techniques, a number of less sophisticated methods continue to be observed, including use of accounts with false names, structuring transactions and currency smuggling.

109. In inviting the participation in this year's typologies exercise of jurisdictions from outside the FATF membership, the FATF has attempted to reinforce the fact that the phenomenon of money laundering knows no borders. Until recent years, the FATF was virtually alone in attempting on an annual basis to develop an overview of money laundering trends and patterns. A certain number of non-FATF countries, as they implement anti-money laundering programmes, have started to examine laundering methods and trends within their borders. They have also begun to share this information both through experts meetings in the context of FATF-style regional bodies and now through FATF typologies exercise. It is hoped that this increased participation in the FATF typologies effort will continue and further enhance the annual survey of money laundering trends.

## B. OTHER AREAS OF WORK

### *(i) Strengthening international co-operation*

110. Following the issuance of a reference guide on procedures and points of contact for exchanging information by the G7 in May 1998, the FATF decided to develop a similar guide for FATF jurisdictions. The proposed guide would set out the key features of each country's privacy and

secrecy laws, its ability to share information and the conditions under which such information might be exchanged, and the position of each country on mutual legal assistance. The guide would also provide a list of contacts for financial regulators, law enforcement agencies, and relevant ministries, departments or administrative authorities. The work on the FATF Reference Guide has continued during FATF-XI. Information from jurisdictions proved to be more voluminous than anticipated, although material for the full FATF membership was not obtained. Therefore, a document containing the reference guide information gathered so far was distributed prior to the June 2000 FATF Plenary.

*(ii) Estimating the magnitude of money laundering*

111. In June 1999, the FATF Ad Hoc Group on Estimating the Magnitude of Money Laundering agreed to focus its efforts on gathering the available national and international data in relation to drug production and consumption, and providing an interim report on the state of information regarding drug trafficking proceeds for the June 2000 Plenary. This work was conducted in close co-operation with the organisations and agencies which work to combat the supply of, and demand for illicit drugs, in particular the UNODCCP, Europol, the Pompidou Group, the European Monitoring Centre for Drugs and Drug Addiction and the US Office of National Drug Control Policy.

112. During the year the Ad Hoc Group held several meetings, including a two day Technical Workshop on estimating drug trafficking proceeds. The data that were available at national and international levels was collected by the group of participating experts, and synthesised and analysed by an expert consultant, who prepared a report to the Ad Hoc Group.

113. The report examined a range of national and international efforts to quantify the value of illicit drug sales on either a global or national basis. The purpose of the study was to identify and assess alternative approaches for estimating total revenues generated annually by sales of cocaine, heroin and cannabis globally and in each of the 29 FATF members and observer members. The report firstly found that estimates based on global production provide a useful cross-check for consumption based estimates. However, production estimates do not provide a sufficiently reliable and accurate estimate on their own due to the considerable degree of uncertainty and variability inherent in many of the parameters that must be used. Data for these parameters are difficult to gather systematically and regularly and this affects its value.

114. The report considered methods for making a global estimate based on consumption data, and concludes that, because prices for each drug vary so much among countries, there is no alternative but to construct a global drug expenditure figure as a sum of national estimates. It also concluded that current data sets on prevalence of use, consumption per user, and purity only support very rough estimates of either national or global revenues. Even for the United States, which has highly developed data systems on illicit drug use and expenditure, estimates could range between US\$ 40 billion and US\$ 100 billion. Global estimates and those for other nations have an even broader range.

115. Though it is possible for estimates to be developed by using average values whenever there is variability in values such as price or purity, this causes significant difficulties due to a lack of sufficient data or the variability in these parameters. Moreover, the underlying statistical distributions of the observations that do exist, combined with the small and often weakly designed samples that are available, render the mean value a poor measure of actual price or purity.

116. The report concludes that before estimates which are defensible and useful can be developed, there is no alternative but to gather more drug-related data, both more regularly and more systematically, in the areas of Prevalence, Expenditure/Consumption, and Price/Purity. This might occur by: (a) supplementing general population surveys with studies that develop systematic listing of sites at which difficult-to-reach users might be interviewed and (b) including in surveys of all populations questions concerning expenditures. If an expenditure approach is used then neither price nor purity are needed for expenditure calculations. If seizure data are to be used to develop supply-side quantity estimates, then, price and purity data will have to be collected on a systematic basis and

at regular intervals. Such data and the market will have to be carefully analysed. Due to data and analytical constraints, the FATF decided to end this work at this stage, though several international organisations, including the UNODCCP, Europol, and the European Monitoring Centre for Drugs and Drug Addiction, are continuing to work to improve the available data, and interested FATF members will also continue to work address the problem.

*(iii) Transmission of information from anti-money laundering authorities to tax administrations*

117. The FATF continued to analyse the question of co-operation between anti-money laundering authorities and tax administrations. The objectives of this co-operation were to ensure that suspicious transaction reporting obligations were not undermined by the so-called “fiscal excuse” and to permit, to the fullest extent possible, the exchange of information between anti-money laundering and tax authorities without jeopardising the effectiveness of anti-money laundering systems. As for the first of these objectives and as indicated in last year’s annual report, the FATF took the step to address a potential weakness in money laundering reporting systems in adopting an interpretative note to FATF Recommendation 15. This note works toward closing the loophole whereby criminals could avoid suspicious transaction reporting requirements by stating that their affairs related only to tax matters.

118. With regard to the second objective, that is, permitting increased exchange of information between anti-money laundering and tax authorities, the FATF and OECD Committee on Fiscal Affairs (CFA) held a second informal contact meeting on 3 February 2000 to consider this issue. While it was agreed that tax and anti-money laundering authorities have differing priorities, there appears to be room for continuing work in this area. At the domestic level, it may be possible to reinforce the co-operation between the two authorities to benefit from the new dialogue taking place. Further work remains to be done on determining exactly what type of anti-money laundering information would be of most critical interest to tax authorities. The FATF has also raised the issue of exchanging information in the opposite direction, that is, from tax to anti-money laundering authorities. Similarly then, consideration must be given to what sort of tax information might be of use to anti-money laundering authorities, without undermining the efficiency of national fiscal systems.

### C. THIRD FORUM WITH THE FINANCIAL SERVICES INDUSTRY

119. One of the FATF's goals is to encourage co-operation with the private sector in the development of policies and programmes to combat money laundering. To further this aim, a third Forum was convened during FATF-XI with representatives from the financial services industry and accounting professions. The purpose of this event was to discuss with the private sector, areas of common interest and the best way to develop measures to prevent and detect money laundering through the financial community.

120. The Forum, organised by the FATF in Paris on 4 February 2000 was attended by representatives from FATF members, national banking, financial and accounting associations, companies such as SWIFT s.c. and Western Union, delegates from international financial services industry and accounting organisations (European Banking Federation, International Banking Security Association, European Insurance Committee, European Savings Banks Grouping, International Federation of Accountants, European Federation of Accountants and the Federation of European Stock Exchanges). Four general topics were addressed in the Forum: current money laundering trends, feedback to institutions reporting suspicious transactions; the role of the accounting profession in identifying and discouraging money laundering and the issues raised by the wire transfers of funds. The full record and conclusions of the third FATF Forum with representatives of the financial services industry are at Annex C.

## CONCLUSION

121. During the 1999-2000 round, the FATF focused its work on spreading the anti-money laundering message throughout the world. This task has become, and will continue to be, the priority of FATF's activities until 2004. FATF-XI was marked by the admission of three new members from Latin America Argentina, Brazil and Mexico, the continuing development of FATF-style regional bodies, the improvement of the anti-money laundering systems in FATF members, in particular Austria, and the completion of its first phase of the important work on the issue of non-cooperative countries or territories.

122. The issue of enlarging FATF membership, strengthening the work of FATF-style regional bodies, improving the effective implementation of the Forty Recommendations within the FATF membership and the ongoing work on non-cooperative countries or territories remain challenges which will be pursued in 2000-2001. These essential tasks will be carried out under the Presidency of Spain, which will commence on 1 July 2000.



**Financial Action Task Force  
on Money Laundering**

Groupe d'action financière  
sur le blanchiment de capitaux

**ANNUAL REPORT  
1999–2000**

**ANNEXES**

22 June 2000

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## ANNEX A

# FATF REVIEW TO IDENTIFY NON-COOPERATIVE COUNTRIES OR TERRITORIES: INCREASING THE WORLDWIDE EFFECTIVENESS OF ANTI-MONEY LAUNDERING MEASURES

### Introduction and background

1. The Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF) have been established as the international standard for effective anti-money laundering measures.
2. FATF regularly reviews its members to check their compliance with these Forty Recommendations and to suggest areas for improvement. It does this through annual self-assessment exercises and periodic mutual evaluations of its members. The FATF also identifies emerging trends in methods used to launder money and suggests measures to combat them.
3. Combating money laundering is a dynamic process because the criminals who launder money are continuously seeking new ways to achieve their illegal ends. Moreover, it has become evident to the FATF through its regular typologies exercises that as its members have strengthened their systems to combat money laundering the criminals have sought to exploit weaknesses in other jurisdictions to continue their laundering activities. And so to foster truly global implementation of international anti-money laundering standards, the FATF was charged in its current mandate to promote the establishment of regional anti-money laundering groups to complement the FATF's work and help spread the FATF philosophy throughout the world.
4. In order to reduce the vulnerability of the international financial system to money laundering, governments must intensify their efforts to remove any detrimental rules and practices which obstruct international co-operation against money laundering. Since the end of 1998, the FATF has been engaged in a significant initiative to identify key anti-money laundering weaknesses in jurisdictions inside and outside its membership.
5. In this context, on 14 February 2000, the FATF published an initial report on the issue of non-cooperative countries and territories in the international fight against money laundering<sup>1</sup>. The February 2000 report set out twenty-five criteria to identify detrimental rules and practices which impede international co-operation in the fight against money laundering (see Appendix). The criteria are consistent with the FATF Forty Recommendations. The report also described a process designed to identify jurisdictions which have rules and practices that can impede the fight against money laundering and to encourage these jurisdictions to implement international standards in this area. Finally, the report contained a set of possible counter-measures that FATF members could use to protect their economies against the proceeds of crime.

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<sup>1</sup> The report is available at the following website address : <http://www.oecd.org/fatf>

6. The goal of the FATF's work in this area is to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering.

7. At its Plenary meeting on 20-22 June 2000, the FATF approved this report. Section one of this report summarises the review process. In section two, the report briefly describes the findings with respect to the jurisdictions studied. Section three highlights issues that were raised during the process that warrant further consideration by the FATF. Section four outlines future steps to be taken and identifies 15 countries or territories which are viewed by the FATF as non-cooperative in the fight against money laundering.

## **I. Review process**

8. At its February 2000 Plenary meeting, the FATF set up four regional review groups (Americas; Asia/Pacific; Europe; and Africa and the Middle East) to analyse the anti-money laundering regimes of a number of jurisdictions against the above-mentioned twenty-five criteria. Soon after this meeting, the jurisdictions to be reviewed were informed of the work to be carried out by the FATF.

9. The reviews involved the gathering of all the relevant information, including laws and regulations, as well as any mutual evaluation reports, related progress reports and self-assessment surveys, where available. This information was then analysed with respect to the twenty-five criteria and a draft report was prepared and sent to the jurisdictions concerned for comment. In some cases, the reviewed jurisdictions were asked to answer specific questions designed to seek additional information and clarification. Each reviewed jurisdiction sent their comments on their respective draft reports. These comments and the draft reports themselves were discussed between the FATF and the jurisdictions concerned during a series of face-to-face meetings which took place at the end of May and at the beginning of June 2000. Subsequently, the draft reports were discussed by the FATF Plenary. The findings are reflected below.

## **II. Summaries of the reviews of jurisdictions**

10. This section contains summaries of the reviews of a first set of jurisdictions carried out by the FATF. Jurisdictions marked with an asterisk are regarded as being non-cooperative by the FATF. (References to "meeting the criteria" means that the concerned jurisdictions were found to have detrimental rules and practices in place.)

### **Antigua and Barbuda**

11. The authorities of Antigua and Barbuda have achieved impressive results, especially since 1999, in revising the anti-money laundering framework, in accordance with the FATF 40 Recommendations. However, there are still some deficiencies in the identification of beneficial owners. Amended regulations on customer identification requirements and improved registration procedures would basically address those deficiencies.

## **Bahamas \***

12. The Commonwealth of the Bahamas meets criteria 12-16, 18, 21, 22, 23 and 25. It partially meets criteria 5, 10, 11 and 20. Although the Bahamas has comprehensive anti-money laundering legislation, there are serious deficiencies in its system. In particular, there is a lack of information about beneficial ownership as to trusts and International Business Companies (IBCs), which are allowed to issue bearer shares. There is also a serious breach in identification rules since certain intermediaries can invoke their professional code of conduct to avoid revealing the identity of their clients. International co-operation has been marked by long delays and restricted responses to requests for assistance and there is no room to co-operate outside of judicial channels.

13. This jurisdiction is a member of the Caribbean Financial Action Task Force (CFATF), and has indicated, during the process of this review, its commitment to follow the recommendations contained in the CFATF mutual evaluation of 1997. At present there are several Bills pending in the legislative process that would address the weak points identified.

## **Belize**

14. Since criminalising money laundering in 1996, Belize has generally pursued policies in law and regulation aimed at fostering a sound anti-money laundering regime. Belize has, nevertheless, certain deficiencies with regard to IBCs, particularly in the identification of beneficial owners and in ascertaining other information that could prove useful in protecting against criminal abuse of its offshore financial sector.

## **Bermuda**

15. Bermuda appears to have effective regulations and supervision for financial institutions operating in its territory as well as an efficient mandatory system for reporting, monitoring and sanctioning for the failure to comply with the obligation to report suspicious or unusual transactions. Financial institutions are not, however, required to identify the beneficial owners of all companies for which transactions are undertaken.

## **British Virgin Islands**

16. The British Virgin Islands (BVI) is committed to implementing solid legislation and regulatory measures against money laundering.

17. The BVI allows certain intermediaries, and individuals, which are subject to the same anti-money laundering standards and supervision as financial institutions, to introduce business to banks and financial institutions on the basis that the introducers themselves verify the identify of the customer. In addition, the BVI allows certain institutions based in certain overseas countries, subject to equivalent anti-money laundering systems, to introduce business, without separately verifying the identity of the client. The banks and the financial institutions are only required to know the name of the client but not to verify the identity separately. There is concern as to whether such a system is consistent with FATF Recommendations and provides sufficiently rigorous checks on the identity of clients of banks and financial institutions, especially in cases where the introducer is not a financial institution.



18. The BVI also has a large number of IBCs, the formation of which by intermediaries is subject to fewer identification requirements than applied to the company sector as a whole.

19. The FATF has decided to consider both issues and will need, following this exercise, to discuss them with the BVI authorities.

### **Cayman Islands \***

20. The Cayman Islands meets criteria 1, 5, 6, 8, 10, 11, 13, 14, 15, 16, 17, 18 and 23. It partially meets criteria 2, 3, 7 and 12. The Cayman Islands does not have any legal requirements for customer identification and record keeping. Even if in the absence of a mandatory requirement, financial institutions were to identify their customers, supervisory authorities cannot, as a matter of law, readily access information regarding the identity of customers. Moreover, the supervisory authority places too much reliance on home country supervisors' assessment of management of bank branches.

21. Although the Cayman Islands has criminalised the laundering of the proceeds of all serious crimes and its system *encourages* reporting of suspicious transactions (by providing a safe harbour from criminal liability for those who report), it lacks a *mandatory* regime for the reporting of suspicious transactions. Moreover, a large class of management companies – including those providing nominee shareholders for the purpose of formation of a company or holding the issued capital of a company -- is unregulated.

22. At the same time, the FATF notes that the Cayman Islands has been a leader in developing anti-money laundering programmes throughout the Caribbean region. It has served as president of the CFATF, and it has provided substantial assistance to neighbouring states in the region. It has demonstrated co-operation on criminal law enforcement matters, and uncovered several serious cases of fraud and money laundering otherwise unknown to authorities in FATF member states. In addition, it has closed several financial institutions on the basis of concerns about money laundering.

### **Cook Islands \***

23. The Cook Islands meets criteria 1, 4, 5, 6, 10, 11, 12, 14, 18, 19, 21, 22, 23 and 25. In particular, the Government has no relevant information on approximately 1,200 international companies that it has registered. The country has also licensed seven offshore banks that can take deposits from the public but are not required to identify customers and keep their records. Its excessive secrecy provisions guard against the disclosure of relevant information on those international companies as well as bank records.

24. During the FATF review process, the Government expressed its intention to propose to the Parliament, before October 2000, two Bills which would criminalise money laundering and establish a suspicious transaction reporting system with a Financial Intelligence Unit (FIU). However, the authorities indicated that those Bills would not likely introduce a customer identification requirement, nor would they relax the excessive secrecy provisions.

## **Cyprus**

25. Cyprus has a comprehensive anti-money laundering system. The review did, however, raise a specific issue of concern on customer identification in respect of trusts. The FATF welcomes Cyprus' intention to supervise lawyers and accountants when engaged in financial activities.

## **Dominica \***

26. Dominica meets criteria 4, 5, 7, 10-17, 19, 23 and 25. Dominica has outdated proceeds of crime legislation, which lacks many features now expected, and very mixed financial services legislation currently on the books. In addition, company law provisions create additional obstacles to identification of ownership. The offshore sector in Dominica appears to be largely unregulated although it is understood that responsibility for its regulation is to be transferred to the Eastern Caribbean Central Bank. Since Dominican authorities did not participate in the FATF review, the FATF looks forward to the discussion of the CFATF evaluation of Dominica, currently scheduled for October.

## **Gibraltar, Guernsey, the Isle of Man and Jersey**

27. These jurisdictions have comprehensive anti-money laundering systems. Gibraltar, Guernsey, the Isle of Man and Jersey have in place a system for reporting suspicious transactions. Where the underlying criminal conduct is drug trafficking or terrorism, the obligation to report is a direct one. Where the underlying criminal conduct is another predicate offence, the reporting is an "indirect obligation": failure to make a report potentially leaves one open to a charge of money laundering; making a report is a defence against such a charge. During the review process the issue was raised as to whether an "indirect reporting requirement" is adequate and consistent with FATF Recommendations or whether the obligation should be a direct one for all predicate offences. FATF has agreed to consider the issue and will need, following this exercise, to discuss further the adequacy of the suspicious transaction reporting system in the jurisdictions with the authorities.

28. Gibraltar, Guernsey, the Isle of Man and Jersey allow certain intermediaries, and individuals, which are subject to the same anti-money laundering standards and supervision as financial institutions, to introduce business to banks and financial institutions on the basis that the introducers themselves verify the identify of the customer. In addition, the jurisdictions allow certain institutions based in certain overseas countries, subject to equivalent anti-money laundering systems, to introduce business, without separately verifying the identity of the client. The banks and the financial institutions in Guernsey, Isle of Man and Jersey are only required to know the name of the client but not to verify the identity separately. There is concern as to whether such a system is consistent with FATF Recommendations and provides sufficiently rigorous checks on the identity of clients of banks and financial institutions, especially in cases where the introducer is not a financial institution. Guernsey, Gibraltar, Jersey have decided to restrict to those meeting FATF anti-money laundering standards, the list of countries permitted to introduce business to Guernsey, Gibraltar, Jersey banks without them having to verify separately the client's identity. The FATF has decided to consider the issue and will need, following this exercise, to discuss the adequacy of introducer system in the jurisdictions with the authorities.

29. The lack of a stringent scheme to apply the new rules of customer identification for accounts opened prior to their entry into force is also a source of concern. The new rules for customer identification verification were introduced in Gibraltar in 1995, Guernsey in 1999, Isle of Man in 1998 and Jersey in 1999.

#### **Israel \***

30. Israel meets criteria 10, 11, 19, 22 and 25. It also partially meets criterion 6. The absence of anti-money laundering legislation causes Israel to fall short of FATF standards in the areas of mandatory suspicious transaction reporting, criminalisation of money laundering arising from serious crimes and establishment of a financial intelligence unit. Israel is partially deficient in the area of record keeping, since this requirement does not apply to all transactions. However, Israel already meets FATF standards in the areas of regulation of financial institutions, licensing and screening procedures for banking corporations, and international co-operation in regulatory investigations. Israeli banking regulations address the issue of customer identification.

31. The Government of Israel has been considering the enactment of an anti-money laundering law for almost a decade. It is expected that a final draft will be submitted to a Knesset Committee for approval by the end of June 2000 and then sent to the full Knesset for its final two readings and a vote. Israeli officials expect enactment by the end of July 2000. This anti-money laundering legislation is intended to rectify most of Israel's shortcomings and to correct most of the deficiencies in the Israeli legal system that allow freedom of movement to money launderers. However, unless the legislation is amended to provide for exchanges with foreign administrative financial intelligence units, its enactment would cause Israel to partially meet criterion 15. The Israeli Ministry of Justice has already drafted a plan to set up an FIU so that the unit can become operational as soon as the law is passed.

#### **Lebanon \***

32. Lebanon meets criteria 1, 2, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 24 and 25. In particular, it maintains a strict banking secrecy regime which affects access to the relevant information both by administrative and investigative authorities. International co-operation is compromised as well.

33. Anomalies in the identification procedures for clients and doubts related to the actual identity of the clients can constitute grounds for the bank to terminate any existing relationship, without violating the terms of the contract. No specific reporting requirement exists in such cases.

34. Furthermore, there does not seem to be any well-structured unit tasked with FIU functions, even though during the process of the FATF review, the country has indicated that it has formed a joint committee, composed of members of the Central Bank, the Ministry of Finance and the Bankers Association.

#### **Liechtenstein \***

35. Although the situation has recently improved significantly, Liechtenstein currently meets criteria 1, 5 (partially), 10, 13 (partially), 15, 16, 17, 18, 20, 21 and 23. The system for reporting suspicious transactions is still inadequate, there are not proper laws in place for

exchanging information about money laundering investigations and co-operating with foreign authorities in prosecuting cases, and the resources devoted to tackling money laundering are inadequate.

36. During the FATF review, the Liechtenstein authorities advised of measures already adopted to improve the effectiveness of their anti-money laundering operations. They have introduced laws in Parliament governing due diligence and mutual assistance and to increase further the resources devoted to the fight against money laundering, including the establishment of a new FIU, separate from the Financial Services Authority. It is expected that this legislation will be adopted by September 2000. They also plan to have more judges to deal with money laundering cases.

37. FATF strongly supports these measures and urges their quick adoption. They are intended to rectify most of the shortcomings which have been identified. The FATF also advises the Liechtenstein authorities to consider whether any additional measures are needed to require banks to obtain more information on customers introduced by lawyers and fiduciaries and to encourage banks to report suspicious transactions.

### **Malta**

38. In an otherwise comprehensive anti-money laundering system, the review raised only one major source of concern. This relates to the Maltese system of nominee companies which is an obstacle for the identification of the beneficial owners in offshore and onshore companies although the nominee companies are licensed and regulated by the Malta Financial Services Centre. The FATF urges Malta to accelerate the phasing-out of the nominee company system.

### **Marshall Islands \***

39. Marshall Islands meets criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23 and 25. It also indirectly meets criteria 15, 16 and 17. It lacks a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. While the size of the financial sector in the Marshall Islands is limited with only three onshore banks and no offshore bank, the jurisdiction has registered about 3,000 IBCs. The relevant information on those international companies is guarded by the excessive secrecy provision and not accessible by financial institutions.

40. During the FATF review process, the Government has indicated that, by the end of October 2000, it would propose an anti-money laundering law which would introduce criminalisation of money laundering, customer identification, record keeping and suspicious transaction reporting system.

### **Mauritius**

41. Mauritius has a range of legislation governing the domestic and offshore financial services industries. Some concerns have been identified regarding the identity of directors and beneficial owners of offshore trusts but the Economic Crime and Anti-Money Laundering Act, passed on 13 June 2000, reinforces the existing legislation in the prevention of and fight against money laundering.

## **Monaco**

42. The anti-money laundering system in Monaco is comprehensive. However, difficulties have been encountered with Monaco by countries in international investigations on serious crimes that appear to be linked also with tax matters. In addition, the FIU of Monaco (SICCFIN) suffers a great lack of adequate resources. The authorities of Monaco have stated that they will provide additional resources to SICCFIN.

## **Nauru \***

43. Nauru meets criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23, 24 and 25. It lacks a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. It has licensed approximately 400 offshore “banks”, which are prohibited from taking deposits from the public but are poorly supervised. The excessive secrecy provisions guard against the disclosure of the relevant information on those offshore banks and international companies.

44. In response to the allegation that a significant number of “offshore banks” derives its funds from illicit sources in Russia, the government has been tightening its supervision over those “banks”. During the FATF review process, Nauru indicated its intention to consider reforms, which would introduce the obligation of customer identification and record-keeping.

## **Niue \***

45. Niue meets criteria 1, 2, 3, 4, 5, 10, 11, 12, 14, 15 and 25. Although Niue has introduced laws relating to money laundering and international co-operation, the legislation contains a number of deficiencies, in particular in relation to customer identification requirements. While it has licensed five offshore banks and registered approximately 5,500 IBCs, there are serious concerns about the structure and effectiveness of the regulatory regime for those institutions. In addition, Niue willingness to co-operate in money laundering investigations has not been tested in practice.

46. During the FATF review process, the authorities acknowledged some of the deficiencies, but they have not indicated any concrete initiatives to reform the system.

## **Panama \***

47. Panama meets criteria 7, 8, 13, 15, 16, 17, 18 and 19, and partially meets criterion 10. Panama has not yet criminalised money laundering for crimes other than drug trafficking. It has an unusual and arguably inefficient mechanism for transmitting suspicious transaction reports to competent authorities. Panama's FIU is not able to exchange information with other FIUs. In addition, certain outdated civil law provisions impede the identification of the true beneficial owners of trusts.

48. Panama is, however, an active member of the CFATF and through its work in that body has made a number of significant improvements to its regime over recent years. Significantly, in connection with its hosting this year of the plenary meeting of the Egmont Group of financial intelligence units, the President of Panama committed her administration to implement a series of improvements to her country's anti-money laundering regime.

## **Philippines \***

49. The Philippines meets criteria 1, 4, 5, 6, 8, 10, 11, 14, 19, 23 and 25. The country lacks a basic set of anti-money laundering regulations such as customer identification and record keeping. Bank records have been under excessive secrecy provisions. It does not have any specific legislation to criminalise money laundering per se. Furthermore, a suspicious transaction reporting system does not exist in the country.

50. During the past few years, the government has been seeking unsuccessfully for the Congress to pass several anti-money laundering Bills. The Government of the Philippines urgently needs to enact an anti-money laundering Bill during the current session of the Congress (June 2000 to May 2001), to criminalise money laundering, require customer identification as well as record keeping, introduce suspicious transaction reporting system and relax the bank secrecy provisions.

## **Russia \***

51. Russia meets criteria 1, 4, 5, 10, 11, 17, 21, 23, 24 and 25. It also partially meets criterion 6. While Russia faces many obstacles in meeting international standards for the prevention, detection and prosecution of money laundering, currently the most critical barrier to improving its money laundering regime is the lack of a comprehensive anti-money laundering law and implementing regulations that meet international standards. In particular, Russia lacks: comprehensive customer identification requirements; a suspicious transaction reporting system; a fully operational FIU with adequate resources; and effective and timely procedures for providing evidence to assist in foreign money laundering prosecutions.

52. Russia faces a unique challenge in combating money laundering as it continues its transition to a market economy. The existence of a continued large scale capital flight, underdeveloped market institutions and lack of fiscal resources all complicate the fight against money laundering.

53. Russian authorities state that they are committed to implementing the FATF Forty Recommendations and being "cooperative" within the context of the 25 criteria. In this regard, they are working with the Duma in a Trilateral Commission to try and reach agreement and passage of a comprehensive money laundering statute in July 2000. FATF has been advised that the new law will contain provisions for a mandatory suspicious transactions reporting regime, which will require that the reports be filed with the "Interagency Centre for Countering the Legalisation (Laundering) of Illegally Derived Proceeds" ("Centre").

54. The Interagency Centre, which was created in mid-1999, has the potential to become a fully functioning FIU, but cannot be truly effective until there is a suspicious transaction reporting system that produces reports for the Centre to work on. Russia must also enact the necessary implementing regulations to carry out the provisions of the new law.

55. The success of Russian efforts will depend on high-level support to combat money laundering, clearly defined authority for agencies charged with carrying out anti-money laundering responsibilities, and adequate resources to carry out agency duties.

## **Samoa**

56. Samoa passed a Money Laundering Prevention Bill on 5 June 2000. The enactment of this Law has criminalised money laundering, required financial institutions as well as trustee companies to identify customers and keep their records, and established suspicious transaction reporting system and an FIU. As a consequence, a number of Samoa's deficiencies have been addressed, while others will need further steps. The FATF urges the Government of Samoa to fully implement the enacted law and to strengthen the bank licensing procedure.

## **St. Kitts and Nevis \***

57. St. Kitts and Nevis meets criteria 1-13, 15-19, 23 and 25. Money laundering is a crime only as it relates to narcotics trafficking. There is no requirement to report suspicious transactions. Most of the other failings relate to Nevis, which constitutes the only significant financial centre of the federation. The Nevis offshore sector is effectively unsupervised, and there are no requirements in place to ensure financial institutions to follow procedures or practices to prevent or detect money laundering. Non-residents of Nevis are allowed under law to own and operate an offshore bank without any requirement of identification. Strong bank secrecy laws prevent access to information about offshore bank account holder, apparently even in some criminal proceedings. Company law provisions outline additional obstacles to customer identification and international co-operation: limited liability companies may be formed without registration of their owners and there can be no mutual legal assistance or international judicial co-operation (notwithstanding a treaty or convention) with respect to legal action against an international trust, or a settlor, trustee, protector, or beneficiary of such trust.

## **St. Lucia**

58. Although St. Lucia enacted relatively comprehensive new money laundering legislation early this year, it appears not to have structured its offshore financial services regulatory regime in such a way as to prevent conflicts of interest with the private sector in decision-making and operations. This conflict of interest has the potential of undermining the anti-money laundering system. It also appears as though the regulatory body may not be staffed sufficiently to oversee the rapidly developing offshore services sector. The FATF urges St. Lucia to remedy these deficiencies and will follow up progress in the matter.

## **St. Vincent and the Grenadines \***

59. St. Vincent and the Grenadines meets criteria 1-6, 10-13, 15, 16 (partially), 18, and 22-25. There are no anti-money laundering regulations or guidelines in place with respect to offshore financial institutions, and thus no customer identification or record-keeping requirements or procedures. Resources devoted to supervision are extremely limited. Licensing and registration requirements for financial institutions are rudimentary. There is no system to require reporting of suspicious transactions. IBC and trust law provisions create additional obstacles, and the Offshore Finance Authority is prohibited by law from providing international co-operation with respect to information related to an application for a license, the affairs of a licensee, or the identity or affairs of a customer of a licensee. International judicial assistance is unduly limited to situations where proceedings have been commenced against a named defendant in a foreign jurisdiction.

### **III. Issues of particular concern for anti-money laundering purposes**

60. During the review process, a number of issues arose in several jurisdictions (noted above), which raised questions of interpretation. These were:

- (i) The practice in some jurisdictions of an "indirect obligation" to report suspicious transactions related to some criminal offences, whereby making a report provides a defence against a charge of money laundering, rather than a direct obligation to make a report.
- (ii) The practice in some jurisdictions of allowing intermediaries to introduce businesses to banks and financial institutions where the obligation to verify customer identity was an obligation for the introducer instead of the bank.
- (iii) Difficulties in establishing the beneficial ownership of some legal entities, including companies issuing bearer shares and trusts.
- (iv) The existence and development of the IBCs which can be formed by intermediaries and be subject to fewer verification and disclosure requirements than applied to the company sector as a whole.
- (v) The lack of a stringent scheme to apply the new rules of customer identification for accounts open prior to their entry into force.

61. The FATF believes that these general issues require further clarification. In light of this, the FATF will initiate a dialogue with concerned jurisdictions to discuss the implications for them, including the possibility of changing their laws and practices.

### **IV. Conclusion and the way forward**

62. The FATF has considered the reports summarised above and confirmed that there is a wide variance in both the character of the money laundering threat posed by different jurisdictions and in the status of efforts to implement anti-money laundering controls.

63. This work of the FATF has been particularly encouraging. Most jurisdictions have participated actively and constructively in the reviews. The reviews of jurisdictions under the 25 criteria have revealed – and stimulated – many ongoing efforts by governments to improve their system. Many jurisdictions indicated that they would shortly submit anti-money laundering Bills to their legislative bodies and would conclude international arrangements to exchange information on money laundering cases among competent authorities. Some of them have already enacted anti-money laundering legislation.



64. Nevertheless, serious systemic problems have been identified in the following jurisdictions:

Bahamas  
Cayman Islands  
Cook Islands  
Dominica  
Israel  
Lebanon  
Liechtenstein  
Marshall Islands  
Nauru  
Niue  
Panama  
Philippines  
Russia  
St. Kitts and Nevis  
St. Vincent and the Grenadines

65. These jurisdictions are strongly urged to adopt measures to improve their rules and practices as expeditiously as possible in order to remedy the deficiencies identified in the reviews. Pending adoption and implementation of appropriate legislative and other measures, and in accordance with Recommendation 21, the FATF recommends that financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from the “non-cooperative countries and territories” mentioned in paragraph 64 and so doing take into account issues raised in the relevant summaries in Section II of this report.

66. The FATF and its members will continue a dialogue with these jurisdictions. The FATF members are also prepared to provide technical assistance, where appropriate, to help jurisdictions in the design and implementation of their anti-money laundering systems.

67. On the other hand, should those countries or territories identified as non-cooperative maintain their detrimental rules and practices despite having been encouraged to make certain reforms, FATF members would then need to consider the adoption of counter-measures.

68. All countries and territories which are part of the global financial system are urged to change any rules or practices which impede the fight against money laundering. To this end, the FATF will continue its work to improve its members’ and non-members’ implementation of the FATF 40 Recommendations. It will also encourage and support the regional anti-money laundering bodies in their ongoing efforts.

69. In such a broad context, the FATF also calls on all the jurisdictions mentioned in this report to adopt legislation and improve their rules or practices as expeditiously as possible, in order to remedy the deficiencies identified in the reviews.

70. The FATF intends to remain fully engaged with the jurisdictions identified in paragraph 64, as well as the other jurisdictions whose reviews are described above. The FATF intends to place on the agenda of each plenary meeting the issue of non-cooperative countries and territories, to monitor any progress which may materialise, and to revise its

findings, including removal of jurisdictions' names from the list contained in paragraph 64, as warranted.

71. The FATF will continue to monitor weaknesses in the global financial system that could be exploited for money laundering purposes. This will lead to further jurisdictions being examined. Future reports will update the FATF findings in relation to these matters.

72. The FATF expects that this exercise along with its other efforts, including the third round of FATF mutual evaluations of its members and the activities of regional anti-money laundering bodies, will provide an ongoing stimulus for all jurisdictions to bring their regimes into compliance with the FATF 40 Recommendations, in the global fight against money laundering.

22 June 2000

**LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE  
COUNTRIES OR TERRITORIES<sup>2</sup>**

**A. Loopholes in financial regulations**

*(i) No or inadequate regulations and supervision of financial institutions*

1. Absence or ineffective regulations and supervision for all financial institutions in a given country or territory, onshore or offshore, on an equivalent basis with respect to international standards applicable to money laundering.

*(ii) Inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of their managers and beneficial owners*

2. Possibility for individuals or legal entities to operate a financial institution without authorisation or registration or with very rudimentary requirements for authorisation or registration.

3. Absence of measures to guard against holding of management functions and control or acquisition of a significant investment in financial institutions by criminals or their confederates.

*(iii) Inadequate customer identification requirements for financial institutions*

4. Existence of anonymous accounts or accounts in obviously fictitious names.

5. Lack of effective laws, regulations, agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions on identification by the financial institution of the client and beneficial owner of an account:

- no obligation to verify the identity of the client;
- no requirement to identify the beneficial owners where there are doubts as to whether the client is acting on his own behalf;
- no obligation to renew identification of the client or the beneficial owner when doubts appear as to their identity in the course of business relationships;
- no requirement for financial institutions to develop ongoing anti-money laundering training programmes.

6. Lack of a legal or regulatory obligation for financial institutions or agreements between supervisory authorities and financial institutions or self-agreements among financial institutions to record and keep, for a reasonable and sufficient time (five years), documents connected with the identity of their clients, as well as records on national and international transactions.

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<sup>2</sup> This list should be read in conjunction with the attached comments and explanations.

7. Legal or practical obstacles to access by administrative and judicial authorities to information with respect to the identity of the holders or beneficial owners and information connected with the transactions recorded.

*(iv) Excessive secrecy provisions regarding financial institutions*

8. Secrecy provisions which can be invoked against, but not lifted by competent administrative authorities in the context of enquiries concerning money laundering.

9. Secrecy provisions which can be invoked against, but not lifted by judicial authorities in criminal investigations related to money laundering.

*(v) Lack of efficient suspicious transactions reporting system*

10. Absence of an efficient mandatory system for reporting suspicious or unusual transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering.

11. Lack of monitoring and criminal or administrative sanctions in respect to the obligation to report suspicious or unusual transactions.

**B. Obstacles raised by other regulatory requirements**

*(i) Inadequate commercial law requirements for registration of business and legal entities*

12. Inadequate means for identifying, recording and making available relevant information related to legal and business entities (name, legal form, address, identity of directors, provisions regulating the power to bind the entity).

*(ii) Lack of identification of the beneficial owner(s) of legal and business entities*

13. Obstacles to identification by financial institutions of the beneficial owner(s) and directors/officers of a company or beneficiaries of legal or business entities.

14. Regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transactions is unknown, or is represented by an intermediary who refuses to divulge that information, without informing the competent authorities.

**C. Obstacles to international co-operation**

*(i) Obstacles to international co-operation by administrative authorities*

15. Laws or regulations prohibiting international exchange of information between administrative anti-money laundering authorities or not granting clear gateways or subjecting exchange of information to unduly restrictive conditions.

16. Prohibiting relevant administrative authorities to conduct investigations or enquiries on behalf of, or for account of their foreign counterparts.

17. Obvious unwillingness to respond constructively to requests (e.g. failure to take the appropriate measures in due course, long delays in responding).

18. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters.

*(ii) Obstacles to international co-operation by judicial authorities*

19. Failure to criminalise laundering of the proceeds from serious crimes.

20. Laws or regulations prohibiting international exchange of information between judicial authorities (notably specific reservations to the anti-money laundering provisions of international agreements) or placing highly restrictive conditions on the exchange of information.

21. Obvious unwillingness to respond constructively to mutual legal assistance requests (e.g. failure to take the appropriate measures in due course, long delays in responding).

22. Refusal to provide judicial co-operation in cases involving offences recognised as such by the requested jurisdiction especially on the grounds that tax matters are involved.

**D. Inadequate resources for preventing and detecting money laundering activities**

**(i) Lack of resources in public and private sectors**

23. Failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to exercise their functions or to conduct their investigations.

24. Inadequate or corrupt professional staff in either governmental, judicial or supervisory authorities or among those responsible for anti-money laundering compliance in the financial services industry.

*(ii) Absence of a financial intelligence unit or of an equivalent mechanism*

25. Lack of a centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities.

## CRITERIA DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES

1. International co-operation in the fight against money laundering not only runs into direct legal or practical impediments to co-operation but also indirect ones. The latter, which are probably more numerous, include obstacles designed to restrict the supervisory and investigative powers of the relevant administrative<sup>3</sup> or judicial authorities<sup>4</sup> or the means to exercise these powers. They deprive the State of which legal assistance is requested of the relevant information and so prevent it from responding positively to international co-operation requests.

2. This document identifies the detrimental rules and practices which obstruct international co-operation against money laundering. These naturally affect domestic prevention or detection of money laundering, government supervision and the success of investigations into money laundering. Deficiencies in existing rules and practices identified herein have potentially negative consequences for the quality of the international co-operation which countries are able to provide.

3. The detrimental rules and practices which enable criminals and money launderers to escape the effect of anti-money laundering measures can be found in the following areas:

- the financial regulations, especially those related to identification;
- other regulatory requirements;
- the rules regarding international administrative and judicial co-operation; and
- the resources for preventing, detecting and repressing money laundering.

### A. Loopholes in financial regulations

*(i) No or inadequate regulations and supervision of financial institutions (Recommendation 26)*

4. All financial systems should be adequately regulated and supervised. Supervision of financial institutions is essential, not only with regard to purely prudential aspects of financial regulations, but also with regard to implementing anti-money laundering controls. Absence or ineffective regulations and supervision for all financial institutions in a given country or territory, offshore or onshore, on an equivalent basis with respect to international standards applicable to money laundering is a detrimental practice.<sup>5</sup>

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<sup>3</sup> The term "administrative authorities" is used in this document to cover both financial regulatory authorities and certain financial intelligence units (FIUs).

<sup>4</sup> The term "judicial authorities" is used in this document to cover law enforcement, judicial/prosecutorial authorities, authorities which deal with mutual legal assistance requests, as well as certain types of FIUs.

<sup>5</sup> For instance, those established by the Basle Committee on Banking Supervision, the International Organisation of Securities Commissions, the International Association of Insurance Supervisors, the International Accounting Standards Committee and the FATF.

*(ii) Inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of their managers and beneficial owners (Recommendation 29)*

5. The conditions surrounding the creation and licensing of financial institutions in general and banks in particular create a problem upstream from the central issue of financial secrecy. In addition to the rapid increase of insufficiently regulated jurisdictions and offshore financial centres, we are witnessing a proliferation in the number of financial institutions in such jurisdictions. They are easy to set up, and the identity and background of their founders, managers and beneficial owners are frequently not, or insufficiently, checked. This raises a potential danger of financial institutions (banks and non-bank financial institutions) being taken over by criminal organisations, whether at start-up or subsequently.

6. The following should therefore be considered as detrimental:

- possibility for individuals or legal entities to operate a financial institution<sup>6</sup> without authorisation or registration or with very rudimentary requirements for authorisation or registration; and,

- absence of measures to guard against the holding of management functions, the control or acquisition of a significant investment in financial institutions by criminals or their confederates (Recommendation 29).

*(iii) Inadequate customer identification requirements for financial institutions*

7. FATF Recommendations 10, 11 and 12 call upon financial institutions not to be satisfied with vague information about the identity of clients for whom they carry out transactions, but should attempt to determine the beneficial owner(s) of the accounts kept by them. This information should be immediately available for the administrative financial regulatory authorities and in any event for the judicial and law enforcement authorities. As with all due diligence requirements, the competent supervisory authority should be in a position to verify compliance with this essential obligation.

8. Accordingly, the following are detrimental practices:

- the existence of anonymous accounts or accounts in obviously fictitious names, i.e. accounts for which the customer and/or the beneficial owner have not been identified (Recommendation 10);

- lack of effective laws, regulations or agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions<sup>7</sup> on identification<sup>8</sup> by the financial institution of the client, either occasional or usual, and the beneficial owner of an account when a client does not seem to act in his own name

<sup>6</sup> The Interpretative Note to bureaux de change states that the minimum requirement is for there to be “an effective system whereby the bureaux de change are known or declared to the relevant authorities”.

<sup>7</sup> The agreements and self-regulatory agreements should be subject to strict control.

<sup>8</sup> No obligation to verify the identity of the account-holder; no requirement to identify the beneficial owners when the identification of the account-holder is not sufficiently established; no obligation to renew identification of the account-holder or the beneficial owner when doubts appear as to their identity in the course of business relationships; no requirement for financial institutions to develop ongoing anti-money laundering training programmes.

(Recommendations 10 and 11), whether an individual or a legal entity (name and address for individuals; type of structure, name of the managers and commitment rules for legal entities...);

- lack of a legal or regulatory obligation for financial institutions to record and keep, for a reasonable and sufficient time (at least five years), documents connected with the identity of their clients (Recommendation 12), e.g. documents certifying the identity and legal structure of the legal entity, the identity of its managers, the beneficial owner and any record of changes in or transfer of ownership as well as records on domestic and international transactions (amounts, type of currency);

- legal or practical obstacles to access by the administrative and judicial authorities to information with respect to the identity of the holders or beneficiaries of an account at a financial institution and to information connected with the transactions recorded (Recommendation 12).

*(iv) Excessive secrecy provisions regarding financial institutions*

9. Countries and territories offering broad banking secrecy have proliferated in recent years. The rules for professional secrecy, like banking secrecy, can be based on valid grounds, i.e., the need to protect privacy and business secrets from commercial rivals and other potentially interested economic players. However, as stated in Recommendations 2 and 37, these rules should nevertheless not be permitted to pre-empt the supervisory responsibilities and investigative powers of the administrative and judicial authorities in their fight against money laundering. Countries and jurisdictions with secrecy provisions must allow for them to be lifted in order to co-operate in efforts (foreign and domestic) to combat money laundering.

10. Accordingly, the following are detrimental:

- secrecy provisions related to financial activities and professions, notably banking secrecy, which can be invoked against, but not lifted by competent administrative authorities in the context of enquiries concerning money laundering;

- secrecy provisions related to financial activities and professions, specifically banking secrecy, which can be invoked against, but not lifted by judicial authorities in criminal investigations relating to money laundering.

*(v) Lack of efficient suspicious transaction reporting system*

11. A basic rule of any effective anti-money laundering system is that the financial sector must help to detect suspicious transactions. The forty Recommendations clearly state that financial institutions should report their “suspicions” to the competent authorities (Recommendation 15). In the course of the mutual evaluation procedure, systems for reporting unusual transactions have been assessed as being in conformity with the Recommendations. Therefore, for the purpose of the exercise on non-cooperative jurisdictions, in the event that a country or territory has established a system for reporting unusual transactions instead of suspicious transactions (as mentioned in the forty Recommendations), it should not be treated as non-cooperative on this basis, provided that such a system requires the reporting of all suspicious transactions.



12. The absence of an efficient mandatory system for reporting suspicious or unusual transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering, is a detrimental rule. The reports should not be drawn to the attention of the customers (Recommendation 17) and the reporting parties should be protected from civil or criminal liability (Recommendation 16).

13. It is also damaging if the competent authority does not monitor whether financial institutions comply with their reporting obligations, and if there is a lack of criminal or administrative sanctions for financial institutions in respect to the obligation to report suspicious or unusual transactions.

## **B. Impediments set by other regulatory requirements**

14. Commercial laws, notably company formation and trust law, are of vital importance in the fight against money laundering. Such rules can hinder the prevention, detection and punishment of criminal activities. Shell corporations and nominees are widely used mechanisms to launder the proceeds from crime, particularly bribery (for example, to build up slush funds). The ability for competent authorities to obtain and share information regarding the identification of companies and their beneficial owner(s) is therefore essential for all the relevant authorities responsible for preventing and punishing money laundering.

*(i) Inadequate commercial law requirements for registration of business and legal entities*

15. Inadequate means for identifying, recording and making available relevant information related to legal and business entities (identity of directors, provisions regulating the power to bind the entity, etc.), has detrimental consequences at several levels:

- it may significantly limit the scope of information immediately available for financial institutions to identify those of their clients who are legal structures and entities, and it also limits the information available to the administrative and judicial authorities to conduct their enquiries;

- as a result, it may significantly restrict the capacity of financial institutions to exercise their vigilance (especially relating to customer identification) and may limit the information that can be provided for international co-operation.

*(ii) Lack of identification of the beneficial owner(s) of legal and business entities (Recommendations 9 and 25)*

16. Obstacles to identification by financial institutions of the beneficial owner(s) and directors/officers of a company or beneficiaries of legal or business entities are particularly detrimental practices: this includes all types of legal entities whose beneficial owner(s), managers cannot be identified. The information regarding the beneficiaries should be recorded and updated by financial institutions and be available for the financial regulatory bodies and for the judicial authorities.

17. Regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transactions is unknown, or is represented by an

intermediary who refuses to divulge that information, without informing the competent authorities, should be considered as detrimental practices.

### **C. Obstacles to international co-operation**

#### *(i) At the administrative level*

18. Every country with a large and open financial centre should have established administrative authorities to oversee financial activities in each sector as well as an authority charged with receiving and analysing suspicious transaction reports. This is not only necessary for domestic anti-money laundering policy; it also provides the necessary foundations for adequate participation in international co-operation in the fight against money laundering.

19. When the aforementioned administrative authorities in a given jurisdiction have information that is officially requested by another jurisdiction, the former should be in a position to exchange such information promptly, without unduly restrictive conditions (Recommendation 32). Legitimate restrictions on transmission of information should be limited, for instance, to the following:

- the requesting authority should perform similar functions to the authority to which the request is addressed;
- the purpose and scope of information to be used should be expounded by the requesting authority, the information transmitted should be treated according to the scope of the request;
- the requesting authority should be subject to a similar obligation of professional or official secrecy as the authority to which the request is addressed;
- exchange of information should be reciprocal.

In all events, no restrictions should be applied in a bad faith manner.

20. In light of these principles, laws or regulations prohibiting international exchange of information between administrative authorities or not granting clear gateways or subjecting this exchange to highly restrictive conditions should be considered abusive. In addition, laws or regulations that prohibit the relevant administrative authorities from conducting investigations or enquiries on behalf of, or for account of their foreign counterparts when requested to do so can be a detrimental practice.

21. Obvious unwillingness to respond constructively to requests (e.g. failure to take the appropriate measures in due course, long delays in responding) is also a detrimental practice.

22. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters (fiscal

excuse<sup>9</sup>). Refusal only on this basis is a detrimental practice for international co-operation against money laundering.

*(ii) At the judicial level*

23. Criminalisation of money laundering is the cornerstone of anti-money laundering policy. It is also the indispensable basis for participation in international judicial co-operation in this area. Hence, failure to criminalise laundering of the proceeds from serious crimes (Recommendation 4) is a serious obstacle to international co-operation in the international fight against money laundering and therefore a very detrimental practice. As stated in Recommendation 4, each country would determine which serious crimes would be designated as money laundering predicate offences.

24. Mutual legal assistance (Recommendations 36 to 40) should be granted as promptly and completely as possible if formally requested. Laws or regulations prohibiting international exchange of information between judicial authorities (notably specific reservations formulated to the anti-money laundering provisions of mutual legal assistance treaties or provisions by countries that have signed a multilateral agreement) or placing highly restrictive conditions on the exchange of information are detrimental rules.

25. Obvious unwillingness to respond constructively to mutual legal assistance requests (e.g. failure to take the appropriate measures in due course, long delays in responding) is also a detrimental practice.

26. The presence of tax evasion data in a money laundering case under judicial investigation should not prompt a country from which information is requested to refuse to co-operate. Refusal to provide judicial co-operation in cases involving offences recognised as such by the requested jurisdiction, especially on the grounds that tax matters are involved is a detrimental practice for international co-operation against money laundering.

**D. Inadequate resources for preventing, detecting and repressing money laundering activities**

*(i) Lack of resources in public and private sectors*

27. Another detrimental practice is failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to ensure adequate oversight and to conduct investigations. This lack of resources will have direct and certainly damaging consequences for the ability of such authorities to provide assistance or take part in international co-operation effectively.

28. The detrimental practices related to resource constraints that result in inadequate or corrupt professional staff should not only concern governmental, judicial or supervisory authorities but also the staff responsible for anti-money laundering compliance in the financial services industry.

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<sup>9</sup> "Fiscal excuse" as referred to in the Interpretative Note to Recommendation 15.

*(ii) Absence of a financial intelligence unit or of an equivalent mechanism*

29. In addition to the existence of a system for reporting suspicious transactions, a centralised governmental authority specifically dealing with anti-money laundering controls and/or the enforcement of measures in place must exist. Therefore, lack of centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities is a detrimental rule.

## **ANNEX B**

### **SUMMARIES OF MUTUAL EVALUATIONS UNDERTAKEN BY THE SELECT COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES OF THE COUNCIL OF EUROPE (PC-R-EV)**

#### ***SLOVENIA***

1. The PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Slovenia between 7-10 April 1998.
2. Though crime rates in Slovenia are below the average European standard, its favourable geographic position, stable economy and developed financial system makes it vulnerable to money laundering operations. There are 28 banks operating in Slovenia, 4 of which are under full or major foreign ownership. Nevertheless, the Slovenian economy is still, to a very large extent, a cash-based economy. The major sources of significant illegal proceeds in the country are considered to be drug trafficking, organised car-theft, fraud, tax evasion, illicit immigration, smuggling and abuse of economic power. Slovenia, situated on one of the Balkan-routes, is considered to be a drug-transit country, though recent changes indicate that it is also becoming a drug-consuming country. Money laundering operations in Slovenia mainly occur at the placement and layering stage and involve the use of a wide range of techniques, mainly the misuse of non-residential accounts in Slovenian banks, the misuse of S.W.I.F.T., exchange of cash, exchange of cash into chips (in casinos), transport of money across the border, transactions with real estate property and back to back loans.
3. Slovenia is developing a strong anti-money-laundering regime based on international standards. It has ratified both the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The Law on the Ratification of the Council of Europe Convention was adopted by Parliament on 3 April 1998.
4. The Law on the Prevention of Money Laundering (LPML) was enacted in 1994 and amended in 1995. It contains a comprehensive set of measures for detecting and preventing money laundering activities and can be regarded as the centrepiece of the Slovenian anti-money-laundering regime. The money laundering offence is defined in Article 252 of the Penal Code, effective since 1<sup>st</sup> January 1995. It covers the intentional and negligent laundering of the proceeds of a "considerable value", generated by all predicate offences, even foreign-based, with the exception of "passive" tax evasion. It carries a maximum penalty of up to 5 years imprisonment if the perpetrator knew the illicit source of the proceeds and a maximum penalty of up to 2 years imprisonment in the case of "negligence" ("should have known" standard).
5. Taking into account internal and international practice, a draft law is currently pending in Parliament to substitute Article 252 of the Penal Code by another broader and more comprehensive money laundering offence. It will no longer be limited to acts that occur "in the performance of banking, financial or other economic operations", it will apply to all criminal offences from which proceeds may be generated, including "passive" tax evasion, "proceeds of a considerable value" will only be a qualifying element (with increased penalty) and it will explicitly apply to persons who committed the predicate offence.
6. Slovenia has established a system of confiscation "of objects used or intended for the use or gained through the commission of a criminal offence". This general provision applies to all criminal offences, including to money laundering. In the current confiscation-system, the prosecution has the burden to prove the illegal source of the property. In addition, conviction for a criminal (predicate)

offence is a prerequisite for confiscation. The performance of the system in terms of seizure and confiscation as well as the relevant legal provisions are currently not up to the desirable level. Parliamentary proceedings are pending to change these provisions relating to confiscation to fully comply with the provisions of the Council of Europe Convention No. 141. The proposed amendments will enable the seizure and confiscation of the property even in cases where the criminal procedure has been suspended or where the accused person died during the trial. These confiscation proceedings will be separate from the main criminal proceedings. The amendments will also make it possible for the police to obtain a freezing order (from the investigating magistrate) during pre-trial investigations. Another important amendment will be the possibility to secure property to the equivalent value of criminal proceeds already in the investigation stage.

7. Slovenia provides international co-operation on the basis of reciprocity with a number of foreign authorities in the field of information exchange related to money laundering cases. It has also entered into a number of bilateral agreements with other countries regarding police or legal assistance in criminal matters. Slovenia is also party to several Council of Europe Conventions in the field of criminal law, including the European Convention on Extradition. However, its capacity of providing assistance would be strengthened by ratification of the European Convention on Mutual Legal Assistance.

8. The 1994 LPML provides for the mandatory reporting by financial and non-financial businesses as well as supervisory authorities of suspicious transactions and all currency transactions above 3.600.000 SIT to the Office for Money Laundering Prevention (OMLP). The OMLP became operational in December 1994. Furthermore, the OMLP has significant powers of supervision and co-ordination in relation to money laundering cases. The reporting obligation is supplemented by a provision in the LPML making it an administrative offence for any entity or person covered by the LPML to fail to disclose data to the OMLP, e.g. on suspicions of money laundering. Over the period of 1995 – 1997 the OMLP processed 166 cases, 28 of which were passed on to the law enforcement authorities for investigation. Whereas the reporting system seems to function adequately, compliance is rather unbalanced. Most of the disclosures are made by the bank and credit institutions while the NBFIs and NFIs remains clearly deficient. For instance, only 1 disclosure is on record from the casinos, and the stock exchange is totally inactive in that respect.

9. Set up within the Ministry of Finance, the OMLP has wide-ranging powers and plays a central role in the anti money laundering strategy of Slovenia by evaluating and analysing suspicious transaction reports, initiating investigations, issuing directives and engaging in awareness raising and training initiatives. The OMLP is strongly committed to international co-operation and actively exchanges information with its foreign counterparts. However, it needs strengthening by an increase in its financial resources - as does the whole anti-laundering regime in general -, while its role of supervision, parallel to that of the Bank of Slovenia, needs clearer definition.

10. The anti-money laundering measures in the financial sector are based on the LPML and guidance by the OMLP. The LPML, in line with FATF recommendations, contains special provisions which require that all entities or persons engaged in financial and non-financial businesses listed by the Law to institute procedures on customer identification, record keeping, internal control and supervision, and staff training.

11. Overall Slovenia has established a sound legal and institutional structure, which seems to perform well. The operational achievements are promising, although no case has passed the final test of the courts yet, particularly on the issue of the proof of the predicate offence. The low compliance by NBFIs and NFIs should be met by enhanced and more effective supervision, where overreliance on the OMLP should be avoided. The Slovene authorities have already identified some problem areas in the current legislation and are taking appropriate action. The new, more self-contained, definition of money laundering and the revision of the confiscation and seizure provisions will further enhance its anti-money laundering regime that can adapt to changing circumstances, including the removal of foreign exchange controls in the near future. In addition, the Law on the liability of legal persons for

criminal offences will complete the legal arsenal of measures available against corporations engaged in illegal activities. Additionally, some other areas for improvement indicated in the Report, such as possible amendments of the LMPL on particular issues and others already mentioned, should be taken into consideration.

### CYPRUS

12. The PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) and an examiner from the Offshore Group of Banking Supervisors (OGBS) visited Cyprus between 27-30 April 1998. They were unable to visit the northern part of the island which, while under the sovereignty of the Cypriot authorities has not been under their effective control since 1974. The Cypriot authorities expressed grave concerns about the position in that part of the island.

13. Criminality in Cyprus is relatively low by international standards. There is no tradition of narcotics production and limited narcotics use. The vulnerability of Cyprus to money laundering activities of an international character flows in part from its geographical location adjacent to certain narcotics producing areas. Additionally Cyprus has an attractive onshore and offshore financial sector. In the offshore sector there are 37 banking units and more than 30,000 offshore companies have registered since 1975. The potential for abuse primarily arises at the layering stage. The attractiveness of Cyprus for laundering operations at the placement stage is diminished by virtue of the existence of foreign exchange regulations, the relatively limited role of cash operations in the Cyprus economy, and the absence of independent bureaux de change and casinos.

14. Cyprus has signed and ratified both the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime (the Council of Europe Convention). The Prevention and Suppression of Money Laundering Activities Law 1996 is the current legislative response, repealing and replacing the Confiscation of Proceeds of Trafficking of Narcotic Drugs and Psychotropic Substances Law of 1992. It provides a very comprehensive legal framework which compares favourably with others in place in larger countries which are members of the FATF. Its impressive legal structure, based on existing international anti-money laundering standards, is significantly in advance of any other country in its geographic sub-region. The definition of laundering draws heavily on Article 6 of the Council of Europe Convention and goes further than its requirements: It covers both instances where the accused knows as well as those where the accused was negligent and ought to have known that the property in question was proceeds. It encompasses the laundering of one's own proceeds. It does not matter whether or not the predicate offence was subject to the jurisdiction of the Cyprus courts. Cyprus has criminalised laundering of proceeds from a broad range of enumerated predicate offences (to which additional offences have been added by the Prevention and Suppression of Money Laundering Activities [Amendment] Law 1998). The law applies to both natural and legal persons. There is a system for the confiscation of proceeds which includes the reversal of the burden of proof when assessing the benefit. Though there is an impressive record of responding to international requests for restraint and other forms of assistance, there is a need for restraint and confiscation provisions to be used more in appropriate domestic cases.

15. There is a sound basis for international co-operation: Cyprus is party to the two leading multilateral Conventions and has concluded bilateral arrangements with other countries and is a party to several Council of Europe Conventions. This could be further strengthened by ratification of the European Convention on Mutual Legal Assistance. One consequence of the list approach to the issue of money laundering predicate offences is that Cyprus is precluded from offering the full range of assistance in respect of any offences, such as tax evasion, which are not so listed.

16. The 1996 Law provides for the reporting by financial businesses and supervisory authorities of suspicions of money laundering to the Unit for Combating Money Laundering (which became

operational in December 1996) or to the police. This is under-pinned by a provision in the law, making it an offence for a person to fail to disclose to the police or the Unit knowledge or suspicion acquired in a business or professional context that another is engaged in money laundering.

The Unit consists of 9 committed and effective individuals assigned from the Attorney General's office, the Police and Customs on detachment, though no one is dedicated to anti money laundering activities full time. Nonetheless they are able to give priority to their anti money laundering duties. The Unit plays a critical role in the anti money laundering strategy of Cyprus – evaluating and analysing suspicious transaction reports, conducting investigations, issuing directives and engaging in awareness raising and training initiatives. The Unit needs strengthening by an increase in its resources, so that at least some of its members (including its Head) are permitted to focus full time on their anti-money laundering functions, particularly prevention. It would also assist the Unit to have more statistical and analytical information available to them and appoint staff to perform strategic, operational and tactical analysis of data. The Unit needs ready access to the comprehensive statistical information on the level and spread of suspicious transaction reports in the banking sector which will become available to the Central Bank on a monthly basis. It is particularly important that the full extent of the money laundering threat within the offshore sector is subject to detailed analysis.

17. The anti-money laundering measures in the financial sector are based on careful guidance (the Central Bank has done much work in this field) and a broad ranging structure of supervision. The 1996 law, in line with FATF recommendations, contains special provisions, which require that all persons engaged in financial business institute procedures on customer identification, record keeping, internal control and supervision, and staff training.

18. Formal procedures appear now to be fully in place with respect to the banking sector, but there is an uneven spread of reporting by banks of suspicious transactions. The limited number of reports received from banks at the time of the visit were overwhelmingly from the onshore sector. No relevant financial institutions other than banks had reported suspicious transactions to the Unit. There is therefore considerable scope for the Unit, the Central Bank and other supervisory authorities to increase awareness of anti-money laundering legislation and monitor compliance by financial businesses. Further guidelines on what in the local context can amount to suspicious transactions issued as a result of consultation and co-ordination between the various actors in the anti money laundering regime (in particular the Unit and the Central Bank) would be beneficial.

19. There is great potential in the new and innovative Advisory Authority Against Money Laundering, which is intended regularly to draw together a broad range of actors from government and the private sector. It needs to co-ordinate the overall strategic response of Cyprus to the money laundering threat, and evaluate, on the basis of detailed analytical data, the success of its strategy.

20. Overall, Cyprus is to be congratulated on its excellent legal structure. It now has the opportunity to build on this and develop a fully effective operational anti-money laundering system that can adapt to changing circumstances, including the likely removal of foreign exchange controls in the near future.

### **CZECH REPUBLIC**

21. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited the Czech Republic between 18-21 May 1998.

22. As a crossroads for commerce, and the flow of people, the Czech Republic attracts organised crime groups from Eastern Europe, for the transit of prohibited goods, substances and criminally derived proceeds. Domestic organised crime groups are also developing. While measures to reduce cash payments are being continually adopted, the Czech economy is still heavily cash oriented. This, coupled with the country's numerous banking and non-banking financial institutions, make it vulnerable at the placement, layering and integration stages. Possibilities for laundering at these stages



also arise through the numerous bureaux de change and through insurance companies. Anonymous (bearer) passbooks may be held by residents and denominated in local currency only. Approximately 9 million have been issued by the Czech banks.

23. The anti-money laundering priorities of the Czech authorities are prevention; detection and prosecution of cases; and meeting obligations from international instruments. As a result Act N° 61/1996 (Measures against legalisation of proceeds from crime) came into force on 1 July 1996. This provides inter alia for disclosure reports by banks and other financial institutions of « unusual transactions » to the appropriate department in the Ministry of Finance, which was designated by decree as the FAU. It defines « legalisation of proceeds » in substantially similar terms to those used to define laundering offences in the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 1990 Council of Europe Convention on laundering search, seizure and confiscation of the proceeds of crime (the Strasbourg Convention) – although Law 61/1996 does not create money laundering offences. The Law inter alia imposes customer identification obligations on all financial institutions when entering into transactions exceeding CZK 500,000 (approximately \$ US 156 25), although the Banking Act has a stricter requirement of customer identification when conducting a transaction in excess of CZK 100,000 (approximately \$ US 3125). The law also provides for maintenance of customer identification data for a period of 10 years; a requirement to delay execution of a customer's payment for 24 hours from the receipt by the FAU of an unusual transaction report if there is a danger that such an action will impede the process of securing proceeds (which can be extended by a further 48 hours). The law, in line with international standards, also provides that any liability arising from possible claims for damages shall be borne by the state. The law also requires all financial institutions to draft and apply a system of internal rules, procedures and controls to prevent money laundering. A part of this system is the appointment of an individual for securing a regular contact with the Ministry of Finance, although this contact person does not have all the characteristics of a Money Laundering Compliance officer, as envisaged by the FATF recommendations.

24. The Czech Republic has shown its commitment to the anti-money laundering effort by signing and ratifying both the Vienna and Strasbourg conventions. Additionally it has also ratified the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters. Bilateral Mutual Legal Assistance Treaties are being negotiated with other countries.

25. The Czech authorities identified S. 251, 251a and 252 Penal Code as money-laundering offences. Their generic heading is « participation ». All these offences have a predicate simply based on criminal activity in wide terms. The first offence, which may be apt for the prosecution of some money laundering cases, none-the-less appeared to the examiners more like « handling and receiving » stolen goods. The examiners were advised that in 1997 1967 defendants were charged under Section 251 and 1129 were convicted, though how many cases involved money laundering is unclear. S. 251a was introduced in 1995 and appears money laundering specific though it is less clear in its language so far as money laundering is concerned than Act 61/1996. In 1995, 1996 and 1997 18,7 and 14 defendants were convicted under S. 251a. The criminal intent can be inferred from surrounding circumstances, and though the Czech authorities are satisfied that a person who is willfully blind to the origin of proceeds could be successfully prosecuted under both S. 251 or 251a the examiners remain uncertain. S. 252 was described as capable of punishing money laundering through negligence. 44 defendants were convicted under this provision in 1997. These three offences require close examination to establish how far they provide a complete prosecutorial regime. While much may depend on the interpretation put on them by the courts the examiners consider that their unease could be eliminated if the money laundering offence (or offences) was more closely based on the definition of « legalisation of proceeds » as used in Act 61/1996. One comprehensive piece of legislation, specifically tailored to deal with all aspects of the criminal offence of money laundering (including definition, punishment and intent and which puts beyond doubt that it does not matter where the predicate offence is committed and possibly capturing self laundering) would give greater consistency, certainty and cohesion to the criminal framework.

26. The legal provisions identified dealing with confiscation and provisional measures appear to have limitations. Their use is uncommon domestically. In particular, rather than forfeiture of property being viewed, as it appears to be, as an alternative form of punishment, it should be more specifically directed as a measure additional to punishment, aimed at confiscating the proceeds of crime. Clearer provision could also be made for value confiscation.

27. While there is much in Law 61/1996 to be commended it does not provide a completely comprehensive preventive regime against the use of the financial sector for money laundering. Further work supplementing existing provisions (such as dealing with money laundering contact persons) are necessary to bring practice fully into line with FATF recommendations. Further preventive legal measures are also required particularly covering: record keeping requirements; education and training; provision to establish the identity of the beneficial owner; provision to ensure that professional secrecy does not create obstacles in disclosing the beneficiary of an account or a transaction; and provision to enable reporting of rejected transactions. Inconsistencies in threshold limits for customer identification ought to be regularised. The Czech Republic should also stop issuing bearer passbooks and gradually convert existing ones into normal accounts, to bring it fully into line with relevant FATF recommendations and the EC Directive.

28. Additionally, a particular need, which the present law generally lacks, is provision for competent supervisory bodies explicitly to deal with money laundering. Competent Supervisory Authorities such as the Czech National Bank (CNB) or the Securities Commission should be assigned responsibility for checking and assessing the level of compliance with the provisions of Act 61/96 by persons falling under their responsibility. Where such authorisation is lacking provision should be made. Thereafter those Supervisory Authorities should introduce audit and inspection programmes of systems and procedures to combat money laundering. They should issue guidance notes, in consultation with the FAU, as to warning signs and indicators of unusual transactions. These will act as educational tools to assist early recognition and reporting of unusual transactions.

29. The number of international instruments signed and ratified within a short period of time is admirable, but the domestic legal provisions enabling the Czech Republic to implement its international commitments leave room for some uncertainty.

30. The examiners consider it would be helpful for the Czech authorities to take stock of the current legal framework in order to identify all the potential difficulties and consider making adjustments.

31. In the anti-money laundering effort the establishment of the FAU is a positive strength. It is part of the Egmont Group and has access to information on its secure web. Since the FAU's creation to the time of the completion of the mutual evaluation questionnaire it had received 1139 unusual transaction reports (1062 from banks, 33 from non-bank financial institutions and 44 from non-financial institutions). In the previous 1½ years, of the reports received, only 300 had been finalised, and, of these, only 15 had been sent to the police for investigation. At the time of the on-site visit the backlog was down to 350 cases. The FAU has a firm grasp on its problems but requires more resources, particularly as it needs also to engage in training, address the issue of feedback to the financial institutions, and address the low level of unusual transaction reports from financial institutions and the uneven spread of reporting from banks. Its difficulties in analysing unusual transaction reports are considered systemic. Its analysis is limited because some relevant information is presently unavailable. The FAU needs access to tax and customs information. Its effectiveness could be improved if it combined financial expertise with law enforcement expertise (to help manage intelligence information and prioritise cases).

32. The various bodies currently involved in the anti-money laundering effort are fragmented. Greater co-ordination and awareness raising of the shared money laundering threat across all sectors would improve the system—perhaps through the development of a meaningful anti-money laundering co-ordination body, with a strategic overview of anti-money laundering policy and issues.

33. By addressing these issues now the Czech Republic can further demonstrate its commitment to the fight against money laundering and the creation of an effective regime to combat it.

### SLOVAKIA

34. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited the Slovak Republic between 16-19 June 1998.

35. Criminality in the Slovak Republic is comparable with other countries. Their primary problem is economic crime. The most common predicate criminal offences arise out of the process of privatisation – e.g. offences of unlawful business, tax evasion, larceny, embezzlement and fraud. As Slovakia is a transit country drug trafficking is a continuing problem. The fact that the Slovak Republic is still to a large extent cash based and the existence of banking and non-banking financial institutions (and casinos and gambling houses) make the Slovak Republic vulnerable at the placement stage of money laundering. Possibilities also arise at the layering and integration stages through the purchase of real estate and through insurance companies. Anonymous (bearer) passbooks may be held by residents or non-residents in Slovak Crowns (SKK), though the volume of savings represented by them has reduced from 57% in August 1997 to 30% in August 1998.

36. The Slovak Republic was one of the first countries in Central and Eastern Europe to enact legislation, in 1994. The Slovak authorities, after four years of experience, are conscious that this Act needs amending and a committee, chaired by the Ministry of the Interior, is preparing amendments. Act 249/94 creates duties and obligations in the anti-money laundering field, which fall mainly on banks at present. There is a general duty under Article 5 establishing the responsibility of all natural and legal persons to prevent the laundering of the proceeds of crime by assisting law enforcement agencies, though banks have specific obligations to make, keep and update records of the existing forms and methods used in laundering proceeds of crimes and make, keep and update programmes designed to prevent laundering of proceeds of crimes, in particular of in service training. Thereafter there is a distinction in Act 249/94 between a general duty to inform under Article 6 and a duty to report. The Article 6 duty to inform imposes an obligation on a range of persons carrying on business to inform the prosecution or police authority whenever laundering of proceeds of crime is suspected, though in the absence of authoritative guidance on its meaning, most people interpret suspected to mean that evidence is required before the obligation arises. If reports are made under this article the statistics are not gathered for analysis. Article 7 places a duty on banks to report to the police authorities all suspicious banking transactions. Suspicious banking transactions are listed in a decree 181/97 (which came into force on 1/7/97). Most Slovak authorities consider the list indicative rather than exhaustive, but this should be put beyond doubt. The Slovak authorities are planning an extension of Article 7 to cover non-bank financial institutions and this initiative is welcomed. The non-bank sector needs obligations upon it to report their suspicions. In particular casinos, money transmitters, bureaux de change, the insurance and securities business, and real estate agency need urgent coverage. Consideration should be given to extending the Article 7 duty to embrace all non-bank financial institutions and other natural or legal persons carrying out quasi-financial activities. In the course of their review the Slovak authorities may wish to consider the continued utility of Article 6 and whether it could be subsumed into a wider obligation to report based on suspicion. If Article 6 is to remain then its wording should be clarified. Law 249/94 also creates duties without administrative sanctions (on banks which fail to report or other persons failing to perform their obligations). A system of administrative sanctions should be introduced to underpin legal obligations.

37. The Slovak Republic has signed and ratified the 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1993 (the Vienna Convention). It is also party to the European Convention on Mutual Legal Assistance. Slovakia has not yet acceded to the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime (the Strasbourg Convention), though it plans to do so shortly.

38. Act 249/94 does not create criminal offences. The Penal Code was however amended and a new S. 252 was introduced, clearly described as the offence of laundering proceeds of crime. There is no list approach to predicate offences. The offence has a predicate simply based on criminal activity in wide terms which can include tax evasion. The examiners were advised that courts in the Slovak Republic can prosecute the money laundering offence where the predicate offence has been committed abroad. It appears also that the offence can be committed by the author of the predicate offence. S. 252 also embraces those who conspire to commit the offence or those who are involved in inchoate acts. The examiners were advised that the offence created by S. 252 requires an intentional act and that criminal intent can be inferred from surrounding circumstances, though the mental element should be looked at so as to satisfy themselves that a prosecution could be brought where the defendant was wilfully blind to the origin of proceeds. The offence cannot be committed negligently and consideration should be given to legislating to catch negligent money laundering. The threshold limit of SKK 300,000 is limiting. It may not adequately catch smurfing and generally is an added obstacle to a prosecution. If it was removed reliance would not have to be placed on Article 251, which is nearer handling or receiving stolen goods, and in any event, may not be apt to deal with drug money laundering. It is understood that criminal proceedings were instituted under Article 252 in 1997 against 12 defendants and in 1998 against 10 defendants. 2 cases have resulted in conviction and sentence.

39. The legal provisions dealing with confiscation and provisional measures appear to have limitations. In particular, rather than forfeiture of property being viewed, as it appears to be, as an alternative form of punishment, it should be more specifically directed as a measure additional to punishment, aimed at confiscating the proceeds of crime. Clearer provision could also be made for value confiscation in the amendments being prepared.

40. Currently the Slovak Republic cannot give effect to decisions providing for confiscation on behalf of foreign states. Similarly it is understood international requests for provisional measures cannot, at present, be effected. Their legislation is to be amended to bring it in line with Articles 11-17 of the Strasbourg Convention. So far there have not been any international requests for legal assistance received or made.

41. Since banks have been obliged to report suspicious transactions (from 1/7/97) there have been 197 reports. For analysis of the reports the FIU has good access to police information and other registers and databases. The FIU have been proactive in approaching banks about their individual levels of compliance, viewing this as part of their training role. Generally the law enforcement side is working well within the confines of the existing law. The techniques are in place and investigation and detection appear to be on a firm footing. The challenge now for the Slovakian law enforcement authorities is to work effectively together with the financial sector to achieve long-term results. In this regard the provision of appropriate feedback is critical (both to commercial banks and to the National Bank).

42. There are no customer identification requirements for bank and non-bank financial institutions and, indeed, for the National Bank of Slovakia under Law 249/94. However banks are required by the Banking Act to observe identification procedures. The National Bank of Slovakia seeks voluntarily to comply with the legal duty of identification. Legislation is required to ensure bank and non-bank financial institutions (and the National Bank) are legally obliged to verify the identity of the person(s) on whose behalf an account is opened or a transaction is conducted, which in the case of legal entities should include the ascertainment of the identity of both the registered and beneficial owners of a corporate account. Guidance needs to be given on how customers should be identified. The Slovak Republic should stop issuing bearer passbooks and gradually convert existing ones into normal accounts to bring it fully into line with relevant FATF recommendations and the EC Directive. Full record keeping obligations (both of identification data and of transaction records) need to be introduced (and extended to all non-bank financial institutions). Though banks have appointed

reporting officers not all of them have the same responsibilities. Their role and responsibilities should be clarified in legislation or decree on the lines of the relevant FATF recommendation.

43. The National Bank of Slovakia practices a strong licensing and supervisory regime though it does not conduct specific ad hoc on-site visits to confirm compliance by banks with their obligations under Act 249/94 and Decree 181/97 regarding money laundering and it is recommended that it should do so. The National Bank of Slovakia seems generally accepted as responsible for bank supervision though the Ministry of Finance has a concurrent jurisdiction. The continued utility of this is questioned. The Ministry of Finance has responsibility for the supervision of insurance, capital markets, and other non-bank financial institutions including casinos. The examiners found that the Ministry adopts a very restrictive approach to the supervision of these undertakings and they should be empowered as necessary to check compliance with anti-money laundering obligations under the Law for those undertakings under their supervision.

44. Prior to their visit the examiners were concerned over comments in the media, alleging that Slovak Government Authorities had declared that investment in the issue of bearer Government bonds would be accepted without any questions being asked as to provenance of funds and identification. The examiners received, after the on-site visit, a clarification from the Slovak authorities that banks handling state bonds are identifying investors. While the examiners cannot confirm or deny whether such a statement was made, the press reports appear to contradict what the Evaluation Team believe Slovakia is trying to achieve in combating money laundering.

45. A broader perception of the money laundering threat among all the participants dealing with anti-money laundering issues is necessary. To avoid compartmentalisation of responsibilities the Slovakian authorities might wish to consider a meaningful co-ordination body where all the participants come together to share experience and raise awareness of the issues in all sectors. It may be that the Ministry of the Interior is best placed to spearhead this effort, supported by the solid groundwork put in by the FIU.

46. The Slovak Republic has made significant steps in developing its anti-money laundering regime. By extending the law beyond banks and remedying the legal shortcomings, of which it is well aware, it can develop its anti-money laundering regime to a position where it fully meets international standards.

### MALTA

47. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) and an examiner from the Offshore Group of Banking Supervisors (OGBS) visited Malta between 15-18 September 1998.

48. Criminality in Malta is low by international standards. The major source of illegal proceeds comes from drug dealing and fraud. The most common form of money laundering at present involves local drug traffickers using local banks to launder the proceeds of their criminal activity within Malta. A decision was taken in 1988 to establish an offshore sector, comprising both banks and companies. It was subsequently decided in 1994 to phase out all offshore operations by the end of 2004. However until that sector is phased out its potential vulnerability to money laundering activities remains unless there is in place ongoing and effective supervision which reduces this vulnerability.

49. The Maltese Government considers that only through co-operation and co-ordination, within an international strategy, can money laundering be effectively combated. These considerations inform their anti-money laundering policies. A high priority is thus given to ensuring that legislation meets current international standards and obligations. Malta has signed and ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). They have put in place a legal framework which more than adequately meets the

requirements of that convention to combat money laundering in what is seen as the primary domestic problem area of drug dealing. Drug money laundering is criminalised under amendments to the Dangerous Drugs Ordinance 1939 and the Medical and Kindred Professions Ordinance. These offences bear maximum penalties of life imprisonment, provide for any property of a convicted person to be deemed to be derived from money laundering and thus liable to confiscation in addition to a sentence of imprisonment. Malta had not signed and ratified the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime (the Strasbourg Convention) at the time of the on-site visit<sup>1</sup>. None-the-less Malta has moved beyond the drugs predicate for money laundering offences in what is now the principal Act – the Prevention of Money Laundering Act 1994. However the list of predicate offences in that Act is narrow and should be expanded – at the very least to include all relevant fraud offences. The 1994 Act defines money laundering on the lines of the Vienna Convention. It encompasses laundering of one’s own proceeds. It does not matter whether or not the predicate offence was subject to the jurisdiction of the Maltese courts. The law does not however apply directly to legal persons as corporate liability is not recognised in Maltese Law. The full introduction of corporate criminal liability would improve the system and extend the reach of the confiscatory regime. There are nonetheless robust provisions for freezing assets and property during the investigative stage, (which have been used by the Maltese authorities successfully) and for confiscation of assets and value confiscation upon conviction. Again, any property under the control of the convicted person is deemed to be proceeds. While the legal framework is well constructed it is difficult to judge its overall effectiveness as yet. 6 cases have been arraigned in court since 1996 and none of these prosecutions have been completed. The Maltese authorities indicated their willingness to make amendments in the light of the experience in decided cases.

50. Malta ratified in 1994 the European Convention on Mutual Assistance in Criminal Matters and in 1996 the European Convention on Extradition. Additionally they have negotiated or are negotiating a commendable number of bilateral agreements. That said the restricted list of predicate offences inhibits full international co-operation. It also restricts the range of provisional measures and enforcement of confiscation judgements that can be provided on request of other countries. Confiscation judgements in other countries can, however, be enforced if there is a corresponding offence in Malta.

51. The Prevention of Money Laundering Regulations 1994 address the financial system in clear terms and impose broad obligations of identification, record keeping, training and reporting of suspicious transactions in line with FATF recommendations. There is in place a sound structure of supervision, split between the Central Bank, the Malta Financial Services Centre (MFSC) and the Malta Stock Exchange and very recently the Gaming Board for casinos. The supervisory regime is backed up by thorough and comprehensive guidance notes, pioneered largely by the Central Bank. Recently valuable work has been put into harmonising all guidance notes by the Joint Steering Committee, an increasingly important body which comprises representatives of the Central Bank, financial regulators, the enforcement authorities and the Attorney General’s office.

52. The Central Bank’s on-site inspection regime is very proactive. Equal emphasis is now being put in place on on-site inspections of insurance and investment companies.

53. In the financial sector there is large compliance with FATF recommendations. However although new bearer accounts are no longer available, a small number of pre-1994 bearer accounts remain in existence. While credit balances in them are not great (and direct controls on identification are in place for new transactions) they should be phased out. Both the onshore and offshore sectors include nominee companies which can act on behalf of non-resident beneficiary owners. While Malta has taken serious steps to diminish the dangers this system does not comply fully with the FATF recommendations dealing with the identification of the ultimate owners of companies whose shares

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<sup>1</sup> On 5.11.98 (after the on-site visit) Malta signed the Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

are held by nominees. For full consistency of application of the recommendations, and for reasons of transparency a review of the position of nominee companies would assist their anti-money laundering effort.

54. The suspicious transaction reporting system is clearly functioning and copies of those reports helpfully go to the relevant supervisory authorities as well as to the Police. The number of reports however is low overall (28 since 1995, of which 21 are from onshore banks and only 1 from a non-bank financial institution). The continued monitoring of the number and spread of reports by the Joint Steering Committee is critical. Much can be won at a comparatively low cost by the establishment of an FIU, properly resourced to meet local needs, which can build further on the existing co-operation with the financial sector (especially by the provision of more training and feedback). A mandatory rather than voluntary system of declarations of incoming cash and other bearer negotiable instruments would assist overall law enforcement and involve the Customs more actively in this effort.

55. Overall there is in place a sound basis from which Malta can develop a fully operational anti-money laundering system. This process might be assisted by putting the Joint Steering Committee on a more permanent footing, tasking it formally with the strategic overview of the Maltese response to the money laundering threat.

### HUNGARY

56. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Hungary between 12-16 October 1998.

57. Hungary, at the centre of the European continent, is strategically linked between East and West. Its modern communications and transportation provide easy access to traditional smuggling networks, such as the "Balkan route". Its crime rate has increased significantly since the transition. Organised crime groups operate in Hungary and are becoming stronger and are believed to be involved in money laundering. The Hungarian economy is still heavily cash based, with luxury cars and real estate often being purchased in cash. Hungary is vulnerable to money laundering at the placement, layering and integration stages. At the placement stage Hungarian banks, and its 20<sup>2</sup> casinos and 2000 bureaux de change are potentially vulnerable to cash money laundering. In the non-financial sector only casinos are subject to money laundering supervision. Foreign sources of illegal proceeds are laundered in Hungary but the extent is not known. Anonymous bearer savings passbooks, which can only be used for cash deposits and withdrawals, can be held by Hungarian citizens and foreign nationals in Hungarian Forints (HUF). Although these passbooks are in bearer form in the case of cash transactions exceeding 2 million HUF<sup>3</sup> the customer needs to be identified under the anti-money laundering legislation.

58. Relevant policy objectives of the Hungarian government are: increased integration into the global financial and capital market to attract greater foreign investment; defending Hungary from money laundering and international fraud; encouraging techniques of modern money management and cashless transactions. Hungary, recognising the dangers it faces, has moved swiftly in the last five years to construct a new infrastructure designed to combat financial crime and money laundering. The anti-money laundering legislation, giving effect to a preventive strategy became effective on 8 May 1994 with the implementation of Act XXIV of 1994 on the Prevention and Impeding of Money Laundering and Government Decree N°74/1994. A Financial Intelligence Unit (FIU) was created (the AMLS), and a suspicious transaction reporting (STR) regime was introduced. Moreover, prior to the evaluation the Hungarian authorities had recognised that further concrete steps were needed on a number of fronts, including amendments to legislation.

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<sup>2</sup> The Hungarian authorities have advised that the number has reduced since the evaluation to 15.

<sup>3</sup> There are approximately 220 HUF to 1 US \$.

59. Hungary has not yet ratified the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime [the Strasbourg Convention] or the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances [the Vienna Convention<sup>4</sup>]. None-the-less Section 303 of the Criminal Code, introduced in 1994, in summary, penalises a person who conceals, uses or utilises pecuniary assets resulting from a range of serious offences in addition to drugs. Section 303 also penalises those who hide, handle, sell or perform financial and banking operations with those assets or their value knowing the origin of the assets. The predicate offences include any offences punishable with more than 5 years imprisonment. If money laundering is committed as part of a business or as part of a criminal organisation or by particular individuals in positions of trust there are more severe penalties. The list of predicate offences is the subject of proposed amendments which include adding bribery to the list of enumerated offences and lowering the general threshold to cover all offences of 5 years or more<sup>5</sup>. These are positive steps. The examiners believe, however, that attention needs also to be paid in this context to whether the list covers all offences which generate significant criminal proceeds in Hungary.

60. There have been no convictions under Section 303 obtained to date. There was a very widely held view that the offence was so tightly defined as to make it extremely difficult to secure a conviction. Urgent inter departmental consideration should be given to the requirements for proof of the offence of money laundering and to elaborating an alternative approach with less complexity, perhaps considering the “all crimes” approach of the Strasbourg Convention.

61. Consideration should also be given to the introduction of negligent money laundering and “own funds” laundering. The possibility of introducing corporate criminal liability deserves close consideration.

62. The existing regime concerning confiscation, which contains elements of both property and value based systems, is highly complex and is not mandatory in all circumstances and various exceptions are provided for. It appears that confiscation is only ordered in a small minority of profit generating cases. It is understood that legislative proposals are being prepared which are aimed at strengthening the mandatory element in the current system and ending the possibility of frustrating the process by transfer to third parties. The early enactment of these amendments is necessary<sup>6</sup>. Discussions also revealed that the range of provisional measures had in practice proved to be inadequate. A review should be undertaken urgently to ensure a comprehensive range of provisional measures, capable of being applied effectively in practice, is available<sup>7</sup>.

63. The legislative and administrative structure for international judicial co-operation appears, especially in the light of the 1996 Act on International Legal Assistance in Criminal Matters, to be generally sound. However the process of ratification of the Vienna Convention<sup>8</sup> and the Strasbourg Convention should be hastened. This should be undertaken in a manner which will permit Hungary to give effect to a confiscation order imposed by a court of another country<sup>9</sup>, and permit the granting and receiving of effective and timely co-operation in all areas.

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<sup>4</sup> The Hungarian authorities have indicated that legislation was enacted after the on-site visit on 6.11.98 and entered into force on 14.11.98 ratifying the UN Vienna Convention.

<sup>5</sup> The Hungarian authorities have indicated that legislation was enacted on 21.12.98 and came into force on 1.3.99, modifying Section 303 to include bribery both in its Hungarian and international forms to the list of crimes and lowered the general threshold so as to cover every criminal action punished by 5 years or more imprisonment.

<sup>6</sup> The Hungarian authorities have indicated that these amendments have been enacted in Act 87/98 on 21.12.98 and entered into force on 1.3.99.

<sup>7</sup> The Hungarian authorities have indicated that the Ordinance of Security, Article 107A of Act I of 1973 Criminal procedure was enacted on 1.3.99 and has now entered into force.

<sup>8</sup> See footnote 4.

<sup>9</sup> The Hungarian authorities have indicated that Act 87-98 was enacted on 21.12.98 and entered into force on 1.3.99 containing provision on the effect of foreign verdicts.



64. In order to ensure the preventive system becomes effective some improvements are required. In particular, the Customer identification requirements should be revisited. The evaluators strongly recommend that bearer savings deposits should be prohibited and that measures should be taken for the gradual conversion of the existing anonymous passbooks into normal passbooks which should be subject to the usual customer identification requirements at the time of account opening. Act XXIV of 1994 provides that financial institutions should identify their customers when conducting cash transactions in excess of 2 million HUF. The Hungarian authorities should consider strengthening this to ensure customer identification occurs when establishing an account or other business relationship as well as when conducting one off transactions of both a cash and non-cash nature above the threshold limit or series of linked transactions below the threshold limit in an attempt to escape customer identification. Records and details of all transactions should be kept for the same period prescribed in the law for cash transactions. Where there are doubts as to whether the customer is acting on his own behalf it is recommended that financial institutions be legally obliged to verify the identity of the person(s) on whose behalf an account is opened or a transaction is conducted, which in the case of legal entities, should include the verification of the identity of both the registered and beneficial owners of a corporate account as well as the identity of company directors. There should be a legal obligation to obtain and retain documents evidencing identity at the time of establishing an account or other business relationship.

65. Under the Hungarian system money laundering supervision by the relevant supervisory bodies is a three stage process: the creation of confidential guidelines by the Police which are issued to the relevant supervisory authorities; the issuing of model Rules by supervisory authorities to those whom they supervise, based upon the guidelines issued to them by the Police; and the approval by the supervisory authority of internal rules drafted by the supervised bodies for preventing money laundering. It was not clear to what extent, if any, institutions had expanded on the model Rules themselves. There was concern expressed to the examiners about the lack of a level playing field so far as money laundering compliance is concerned. The examiners consider the model Rules and Guidance notes need revisiting. In the course of this the Hungarian authorities may wish to consider whether this three stage system is the most effective way of providing central guidance and address the concerns of the financial institutions regarding the lack of a level playing field on anti-money laundering compliance.

66. In any event the evaluators consider that the current supervisory system is extremely passive and needs to develop beyond its preoccupation with formal compliance issues. The role, responsibilities and powers given to supervisory authorities in the context of the anti-money laundering system needs to be reviewed: They need to develop an active role in monitoring actual compliance with anti-money laundering obligations by banks and financial institutions.

67. From 1994 to the time of the completion of the mutual evaluation questionnaire the AMLS had received 2200 suspicious transaction reports: 2146 from banks; 4 from bureaux de change; 37 from financial institutions; 5 from casinos; and 8 from insurance companies. While banks constitute about 95% of the reporting, 50% of those reports came from two commercial banks. Thus the formal system on STRs is in place but is not functioning effectively. The STR regime produced only 3 long-term investigations and no convictions. While the examiners were impressed by the professionalism of AMLS staff (which has very heavy demands on its small cadre) the examiners consider there may be an overreliance on STRs to generate money laundering investigations. The Hungarian authorities may wish to consider the merits of a more proactive law enforcement policy.

68. The examiners believe it is necessary for all the players in the anti-money laundering regime to identify collectively why the STR system is not working effectively. The private sector, in particular, appears to have some difficulties with the concept of suspicious transactions. In the examiners' view the supervised undertakings need: more practical guidance (based on actual Hungarian experience drawn up by the supervisory authorities in conjunction with the AMLS) on identifying suspicious transactions in each supervised sector; more training; and more feedback. Once more practical guidance notes are in place and issued by the supervisory authorities, they need

backing up with a structured outreach programme by the AMLS to the private sector to explain what is required and why. This should help to build up trust and understanding between law enforcement and the private sector.

69. The examiners had concerns that the system is fragmented and lacks a centralised point which can focus disparate efforts, inspire and provide accountability. If the AMLS is to fulfil a role which galvanises the system as a whole it will need to be considerably strengthened in human resources, adequately funded and equipped, and provided with greater analytical capability.

70. There is also an important need for co-ordination of thinking at a strategic level about the shared money laundering threat across all sectors. It is suggested that a permanent co-ordination body is set up, at a suitably senior level with the capacity and authority periodically to review how the system is operating and to ensure that necessary changes, where identified, take place.

71. In this way the examiners consider the Hungarian authorities need now to take stock of existing arrangements, machinery and legal provisions. While many of the building blocks of an effective anti-money laundering system are in place, there is a need for positive action in each sector to develop a system which works as a whole to meet the dangers Hungary faces.

### LITHUANIA

72. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Lithuania between 24-27 November 1998.

73. The transition to a market economy since 1990 has been accompanied by a rise in criminality. Drug trafficking, in particular, has virtually doubled since 1995. Lithuania has also seen the development of domestic organised crime groups, operating at the domestic and at the international level. Money laundering is frequently used by these groups. Similarly organised crime groups abroad are known to launder money in Lithuania. Thus money laundering is seen as a real threat to the developing Lithuanian financial system, which is vulnerable at the placement, layering and integration stages. The Lithuanian authorities perceive the pressure currently is on the banking sector, but they recognise that increasingly other non-bank financial institutions and real estate will become more vulnerable.

74. Three policy objectives were identified. The first is to encourage co-operation with corresponding institutions of other countries and international organisations. The second is to bring the legal system into line with European Union requirements and international standards. In this regard, Lithuania has shown its commitment by taking the first important steps to combat money laundering. Lithuania signed, and ratified in 1995, the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime N°141 (the Strasbourg Convention). It signed and ratified the 1988 United Nations Convention against Illicit Traffic In Narcotic Drugs And Psychotropic Substances (the Vienna Convention), which came into force in 1998. The Law on the Prevention of Money Laundering [Act VIII-275] came into force on 1.1.98. It was amended shortly before the on-site visit in the light of experience. Lithuania's third policy objective is to ensure co-ordination internally between the various institutions responsible for money laundering issues. In furtherance of this an FIU was created – the Money Laundering Prevention Division, which is an independent unit within the Tax Police Department. It has analytical, investigatory and regulatory roles.

75. A new provision of the Criminal Code, specifically directed to the criminalisation of money laundering (Article 326), came into operation in July 1997. Article 326 (which carries basic penalties of 3-7 years, and 5-8 years where there are aggravating features) has the merit of not being tied to any particular predicate offence. The Lithuanian authorities are satisfied that they can exercise jurisdiction

where the predicate offence is committed abroad, and that proceedings for a money laundering offence can be brought against the author of the predicate offence. Money laundering is defined for criminal purposes as “Transactions that are being carried out with the money acquired in criminal ways or the usage of money acquired in criminal ways in commercial or economic activities with the purpose of concealing or legalising such money...”. This wording is not as wide as that used in Act VIII-275. Article 326 appears tightly focused on activities directly associated with financial or commercial life. As well as potentially limiting domestic money laundering prosecutions, the definition could pose problems for Lithuania in dealing with extradition requests from countries where the money laundering offence is more widely drawn. An amendment, using the language of the existing international texts, is recommended.

76. Consideration should be given to the introduction of negligent money laundering, and criminalising failing to report a suspicious monetary operation or other reportable monetary operation. It was noted that consideration is being given to the concept of corporate criminal liability, and this is encouraged.

77. Confiscation of property (or monetary sums expressing its value) is provided for under Article 35 of the Criminal Code. Confiscation is an additional *penalty* mandatorily applied to property irrespective of the lawful origin of that property. It is applied to property post conviction in a wide range of serious crime. The examiners consider that this regime would benefit from revisiting in order to satisfy themselves that there is a clear legal framework of provisional measures and confiscation directed towards the *proceeds* of crime, as contemplated by the Strasbourg Convention.

78. Lithuania has taken several steps to ensure that it can co-operate internationally. As well as being party to the Strasbourg and Vienna Conventions, it is a party to a number of other important multilateral instruments including the 1959 European Convention on Mutual Legal Assistance and its first Protocol. A range of general mutual legal assistance agreements have been, or are about to be, brought into force. Though no requests for legal assistance in the field of money laundering have been received, the Lithuanian authorities consider that Articles 194 and 195 of the Criminal Procedure Code provide a range of provisional measures which can be used on behalf of foreign governments. Equally they consider that by using Article 35 they can enforce foreign criminal confiscation orders including value confiscation orders. These are untested. In any event, the Lithuanian authorities need to make legal provision for the enforcement of civil confiscation orders and consider taking measures to provide for the sharing with other countries of confiscated assets.

79. The preventive regime is underpinned by identification and reporting obligations. Basic customer identification and record keeping requirements are in place for credit and financial institutions when *monetary operations* are conducted above 50,000 Lit<sup>10</sup>. It is recommended that credit and financial institutions should be clearly obliged to verify the identity of both registered and beneficial owners of corporate accounts and identify company directors as envisaged by the FATF Recommendations, and the EC Directive. The Lithuanian authorities should satisfy themselves that all financial institutions are keeping all the transaction records required for evidential purposes in both cash and non-cash transactions for 5 years at least. Guidance should be given to credit and financial institutions on identification and record keeping requirements involving fund transfers by electronic payment systems. Clear guidance should also be given to all relevant bodies on the retention of copy documents on customer identification for at least 5 years after the account is closed.

80. Under Article 8 of Act VIII-275 credit and financial institutions, notaries, and persons authorised to perform notarial acts are obliged to identify the customer where they *suspect* that monetary operations may be related to money laundering (irrespective of the amount of money involved) and communicate such information to the Tax Police without delay. Under Article 12 of Act VIII-275 credit and financial institutions, notaries, or persons authorised to perform notarial acts, as well as being obliged to identify the customer if monetary operations involve a sum in excess of

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<sup>10</sup> This is equivalent to US \$ 12,500.

50,000 Litas, are obliged to report the identification data to the Tax Police. This threshold is lowered to 20,000 Litas (US \$ 5,000) where the monetary cash operation involves a single exchange of one currency into another or to 10,000 Litas (US \$ 2,500) where the monetary operation involves an insurance premium.

81. It is understood that the Article 8 reporting obligation covers all suspicious financial operations (and not just those where cash is involved). The examiners consider it is appropriate that the obligations under both Article 8 and Article 12 should embrace all relevant financial transactions.

82. Since its introduction in January 1998 there have been only 15 suspicious reports under Article 8. By contrast, there have been 50,000 reports to the Tax Police under Article 12, and this has placed huge administrative burdens on them. The examiners consider that more emphasis needs to be placed on the Article 8 suspicious reporting obligation. In this context, the Lithuanian authorities should consider extending the Article 8 obligation to other non-financial businesses which might be vulnerable to money laundering and consider whether the obligation should be further extended to professionals, including practising accountants and lawyers. The priority, however, on the law enforcement side must be to equip the FIU with the necessary resources (both of personnel and IT) for it to handle the reporting system effectively.

83. Despite the large volume of information the Tax Police has received only three cases have been investigated. These tax-based investigations have not emanated from the reporting system but are the result of other intelligence. The emphasis on the investigatory side needs urgently to move beyond tax offences to other important areas of criminality (such as drug trafficking) which the Lithuanian authorities know generate illicit proceeds. The Tax Police should also be legally empowered under Act VIII-275, in the light of prevailing circumstances, to order the suspension of a suspicious monetary operation. The FIU also needs to develop even closer relations with other FIUs (both criminal and administrative) and ensure that financial intelligence is routinely shared and received. The creation of Memoranda of Understanding would facilitate this process.

84. The examiners consider that, overall, too much reliance is placed on the Tax Police in the anti-money laundering regime. All other authorities believe the anti-money laundering regulatory role falls to the Tax Police. The Tax Police have not yet addressed their regulatory role because their resources are stretched on the analytical and investigative fronts. Little or no supervision of compliance is therefore taking place. There needs to be careful consideration given to the identification of other supervisory authorities to take on anti-money laundering regulatory responsibilities. As a matter of urgency programmes of on-site inspections of banks and other credit and financial institutions and relevant undertakings should then be put in place and regularly carried out.

85. In December 1997, the Bank of Lithuania issued a Resolution on the Methodical Recommendations on Prevention of Money Laundering to *credit* institutions supplementing Act VIII-275. It needs amplifying and promulgating to financial institutions and other relevant undertakings. In particular practical and detailed guidance needs drafting for discrete parts of the financial sector on identifying suspicious monetary operations and best practice in handling obligations under the anti-money laundering legislation, building on the basic but limited guidance already given. It is recommended that this is prepared by the Tax Police, in conjunction with the Supervisory authorities. Thereafter, training and awareness programmes in all parts of the financial sector, for staff at all levels, need to be implemented on a joint basis between the Tax Police and the Supervisory Authorities. Appropriate feedback systems need also to be put in place by the Tax Police to foster and develop co-operation of the private sector.

86. It is advised that a Working Group is set up, chaired at a suitably senior level, comprising representatives of all relevant actors in the anti-money laundering regime *inter alia* to ensure that the effectiveness of the anti-money laundering regime is regularly monitored and to ensure that necessary changes, once identified, are actioned.

87. Much has been done in a short time. By pausing now to review across the board all recent initiatives, and then by taking remedial action, the evaluators believe the Lithuanian authorities can build on what has already been achieved and develop an effective anti-money laundering system, which meets international standards.

### ANDORRA

88. The Principality of Andorra was the 8<sup>th</sup> country evaluated by the Committee. The PC-R-EV evaluation team, accompanied by two colleagues from the FATF, made a four-day visit to Andorra la Vella from 22 to 25 March 1999.

89. The Principality of Andorra is a small country (464 km<sup>2</sup>) situated in the heart of the Pyrenees, between France and Spain, with a total population of some 65,800 people. It achieved sovereignty only in 1993. Due to its protected geographical situation, the quasi-absence of any direct taxes, the free circulation of money across its frontiers and its relatively developed financial system, Andorra is likely to attract money laundering operations.

90. The examiners wish to express their very positive overall impression concerning Andorra's anti-money laundering regime. This regime rests on sound bases, from both the criminal law and regulatory standpoints, and the institutions responsible for its implementation are motivated, convinced of the need for a systematic effort to combat money laundering. Attention should also be drawn to the results already achieved by the Andorran anti-money laundering system and the determination of the Government of Andorra to make this system as effective as possible.

91. Crime in general remains at a lower level than the European average and the police crime statistics<sup>11</sup> show a slight fall between 1995 and 1997, the total number of criminal offences falling from 2,028 (1995) to 1,937 (1997), mainly due to the reduction in the number of drug-related offences. On the other hand, the number of cases of fraud (up from 88 to 173) and housebreaking (up from 376 to 518) increased significantly. Major sources of dirty money are essentially offences committed abroad, including drug trafficking. Smuggling, recently made a criminal offence and often involving organised crime, is likely to be a major source as well. Financial crimes such as forgery, corruption and fraud, in particular Community fraud, are also to be mentioned among the offences of economic nature detected that might generate substantial profits. The most common technique used by money launderers seems to be depositing cash in Andorran bank accounts. Even though money laundering cases seem not too significant, the Government of Andorra is aware of the fact that its financial system and non-financial intermediaries may be, and indeed are, used for laundering operations, above all by foreign drug traffickers and, in general, by organised crime groups.

92. The Andorran anti-laundering policy priorities are prevention, criminal legislation, co-ordination between all the actors concerned and the improvement of the legislative and regulatory framework. The diligence obligations are established by the law of 11 May 1995 on "the protection of banking secrecy and the prevention of the laundering of money and the proceeds of crime", the principles had been the subject of a Code of Conduct self-imposed by the Association of Andorran Banks in 1990. The offence of money laundering was introduced by the Criminal Code in July 1990 and partly modified by the law of May 1995. This law also imposes the obligation to identify clients, this obligation being limited to the banks alone, in the case opening a bank account, buying securities, making deposits, transferring funds, renting a safe or any other operation that can be assimilated to those listed. The obligation is not associated with a specific threshold. The banks are also obliged to keep a client identification register and to keep the documentation relating to the identity of their clients for at least the five years following the end of their commercial relations. The law of May 1995 also obliges any person or institution, banking or not, to declare any operation presenting reasonable

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<sup>11</sup> Source: International criminal statistics – Andorra (Secretariat General of Interpol), 1995-1997.

evidence of links with money laundering to the judge of first instance (“*Batlle*”). A copy of the declaration, accompanied by the relevant documents, must be sent to the Supreme Finance Committee (CSF), so that it can check compliance with the obligations of the bank. However, the law of May 1995 also imposes, specifically concerning the activity of banking, the obligation of secrecy. Article 6 of this law stipulates that these establishments may give information relating to their relations with their clients and the accounts or deposits of these latter only in the context of legal proceedings and on the written request of a judge. The scope of this Article 6 is the subject of controversy in civil proceedings. Strict restrictions also apply when a foreign authority requests information protected by banking secrecy in Andorra.

93. Money laundering offences appear in articles 145-146 (laundering and aggravate laundering) and 303 (laundering through negligence) of the Criminal Code. The only laundering offences are listed as those connected with drug trafficking, sequestration, illegal arms sales, prostitution and terrorism. Article 147 of the Criminal Code stipulates that the offence of laundering may be constituted even if the main offence was committed abroad, provided that this offence is punishable under Andorran criminal law. The intentional element appearing in Article 145 of the Criminal Code is very broad as it covers not only the case of he who has knowledge of the origin of the goods but also the case of he who “should” know this origin. In practice, over a period of 4 years (1995-1998) five cases were brought before the “*Tribunal de Corts*”, of which one was the subject of an order certifying the extinction of the criminal proceedings because of the death of the accused. In a second case the accused was found guilty but an appeal has been lodged. In a third case the accused were acquitted, while the fourth is about to be judged. The fifth case has not yet been dealt with. Ten other cases are currently being investigated and three others are about to be transmitted by the Police to the investigating magistrate.

94. The examiners noted that the limited number of offences listed as predicate offences might be an obstacle both to the effectiveness of the fight against laundering within the Principality and in international co-operation. A preliminary draft law is intended to extend the definition of the laundering by reference to the activity of criminal organisation which, according to the examiners may give rise to many additional difficulties, unless a precise definition is given to the concept of organised crime. It would therefore appear more judicious to use a more general formula, such as that in the Strasbourg Convention, making reference to any criminal offence as the predicate offence.

95. Article 37, paragraph 5 of the Criminal Code stipulates that “the confiscation of the things used to commit the offence” may be imposed – this is thus a possibility – as an additional punishment, and this applies to both individuals and legal entities. However, in the case of money laundering, confiscation is expressly provided for by Article 147 of the Criminal Code which makes it compulsory for all sums and property connected with laundering. The authorities of the Principality explain that the rudimentary nature of these provisions do not cause any difficulty in practice and point to several significant confiscations, one of which in the absence of the perpetrator of the offence, who had died. However, the Code of Criminal Procedure, as amended by the law of 10 December 1998, makes no provision for provisional measures (freezing, seizure) or for rules concerning confiscation.

96. The absence of any multilateral treaties or any legislation on international co-operation makes mutual assistance and other forms of co-operation with Andorra uneasy. Thus with the legislation now in force, the Andorran courts could not execute a confiscation pronounced by a foreign jurisdiction, as foreign judgements cannot be applied in the Principality. This is a particularly weak point in the system. Andorra should therefore rapidly introduce a legal instrument favouring this co-operation and ratify the existing international instruments. The examiners were in fact informed that the Principality was preparing to ratify the Vienna<sup>12</sup> and Strasbourg<sup>13</sup> conventions.

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<sup>12</sup> The Andorran Parliament approved the ratification law concerning this Convention on 22 April 1999.

<sup>13</sup> The Andorran Government signed this Convention on 7 May 1999.

97. Regarding the diligence obligations, the law of May 1995 is a good start, but in the matter of identifying the clients, keeping documents etc. it applies only to banks. Its coverage should therefore be extended to all institutions capable of facilitating laundering operations. Similarly, the law should be revised to give specific powers to the INAF (Andorran National Finance Institute) to improve the supervision of the institutions subject to diligence obligations, in particular regarding the prevention of money laundering.

98. The existence of numbered accounts worries the examiners. It would be desirable that Andorra, in conformity with the international standards, harmonises its legislation with these standards and eventually eliminates these numbered accounts. Similarly, the identification of the true beneficiary and the verification of the origin of funds should be made obligatory for persons acting as trustees, lawyers and other professionals who are authorised to directly perform certain financial operations, in particular deposit operations, on behalf of clients whose true identity is known only to them. In addition, they should be included within the field of application of a future criminal rule sanctioning the failure to report suspicious operations.

99. It is very positive that the banking institutions have well accepted their responsibilities concerning the declaration of suspicion, despite the difficulties that this entails (given the absence of a Financial Intelligence Unit in the system, declarations of suspect operations are sent directly to the judge). However, the examiners could not help wondering whether the small number of declarations of suspicions to the legal authorities is not due, in part, to the absence of any criminal provision directly sanctioning failure to declare suspicions, while on the other hand the non-respect of professional secrecy is subject to severe criminal sanction. It would therefore appear desirable to establish a balance by sanctioning under the criminal law at least the intentional failure to declare suspicion, in accordance with the practice of a number of member States. In fact the number of declarations to judges remains very limited (10 between 1995 and 1998) for various other reasons, in particular the virtual impossibility of proving that the funds come from the offences listing in Article 145 of the Criminal Code, the fact that the denunciation is made directly to the judge, the absence of a list of indicators of general application and the very restrictive interpretation of "suspicion".

100. The examiners were told that the Principality of Andorra intends to adopt a new law concerning in particular the creation of a Financial Intelligence Unit, the extension of the diligence obligations beyond the banking sector, creating the legal basis for international co-operation on criminal matters and reformulating the definition of money laundering. The rapid adoption and implementation of this new law seems to the examiners to be essential for developing an efficient anti-laundering system in Andorra. In addition, the planned ratification of the Vienna and Strasbourg Conventions should make it possible to significantly improve Andorra's capacity to assist foreign countries and, in particular, to execute freezing, seizure and confiscation decisions.

101. Through implementing these measures, Andorra will once more demonstrate its determination to fight effectively against money laundering and its will to honour its international obligations in this field.

### **ROMANIA**

102. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Romania between 26-29 April 1999.

103. Romania, as a state in South Eastern Europe which is bordered by the Black Sea, is strategically positioned between East and West. It is an important part of the "Balkan Route" particularly for the traffic of drugs from outside Europe and for arms trafficking. Since the political changes in 1989 and the transition to a market economy the crime rate has increased significantly. Organised Crime groups are believed to operate in Romania and are thought to launder proceeds in the country (primarily, though not exclusively, through the banking system). The main sources of

illicit proceeds are currently considered to be: trafficking in drugs, arms and radioactive substances; alien smuggling; smuggling of cigarettes, coffee and alcohol; trafficking in counterfeit bank notes and in vehicles stolen in the West.

104. There was no anti-money laundering law before 1999. Recognising its vulnerability internally and the need to fight money laundering on an international level, the central policy objective of the Romanian authorities has been to create a legal framework to fight money laundering. To this end Law 21/99, *Law on the prevention and punishment of laundering money*, was passed in January 1999 and came into effect on 22 April 1999. Thus, at the time of the on-site visit, the law had only just come into force. While there is much in Law 21/99 to be commended, the legal structure as a whole contains some potentially serious anomalies and ambiguities, which need addressing to ensure the anti-money laundering regime put in place can actually become operational.

105. The law creates the National Office for the Prevention and Control of Money Laundering (the office) as a multi disciplinary unit, to act as a filter between those with reporting obligations under the Act and the Public Prosecutor's office. It was unclear why the office had not commenced operations on the day the law came into effect. For the sake of its credibility the office needs to be up and running very quickly. It is intended that the office should receive, analyse, and process information about suspicions of money laundering, transactions in cash (Lei or foreign currency) above 10,000 Euro, and information about unusual transactions from a very comprehensive range of banking and financial institutions and persons (including lawyers, notaries and accountants). Those with reporting obligations are required to report suspicions of money laundering on the basis of "firm evidence". The examiners consider that the "firm evidence" requirement is too high and could discourage reporting. It should be replaced by a test based on suspicion. In the meantime, while the requirement remains, clear guidance should be given by the office as to what "firm evidence" means.

106. Once a report has been made the office will then transmit information to the Public Prosecutor where the office considers there is "solid data". The Romanian authorities need to ensure that the cumulative effect of the "firm evidence" and "solid data" requirements does not in practice lead to few reports being made to the office and even fewer reports being passed to the prosecutor<sup>14</sup>.

107. Romania ratified the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 30.12.92. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Council of Europe Convention) was signed in January 1999. Its speedy ratification is urged. Notwithstanding that the Council of Europe Convention has not yet been ratified, A.23 of Law N°21/99 (which came into force on 12.4.98) criminalises money laundering for a range of enumerated predicate offences in addition to drugs, as well as offences "committed by persons belonging to offender associations". Though the list of predicate offences appears wide the Romanian authorities should satisfy themselves that all offences that generate significant proceeds are covered. The level of proof required for the A. 23 offence may prove problematic. In proving the predicate offence, the list approach, in some cases, adds a layer of complexity which may prove to be an obstacle to successful money laundering prosecutions. It is recommended that this is reviewed and serious consideration should be given to the "all crimes" approach of the Council of Europe Convention. The mental element of the offence could also raise practical difficulties. It may be desirable to introduce a lower standard than knowledge or intent, such as reasonable suspicion. Consideration should be given to the introduction, as envisaged in the Council of Europe Convention, of the concept of negligent money laundering. This is important also in the context of the international assistance which Romania can provide. At present they cannot provide assistance on a "should have known" or negligence standard. Consideration should be given at the same time to making failure to report a suspicious operation a separate criminal offence with clearly dissuasive criminal penalties.

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<sup>14</sup> The examiners have been advised that since the on-site visit 138 STRs have been received by the office, 43 of which have been passed to the Public Prosecutor.



108. It was noted that consideration is being given to corporate criminal liability and this is encouraged.

109. Article 25 of Law N°21/99 appears to provide a mandatory confiscation regime which is both property and value based for laundered property. It has not, as yet, been tested. There were, however, concerns that the special confiscation regime under A. 118 of the Criminal Code, as it was explained, while covering instrumentalities and intended instrumentalities, failed to provide an effective regime for the confiscation of the proceeds of crime, with the wide meaning that is attached to proceeds under the Council of Europe Convention. There was also concern that the pre-existing regime for provisional measures under A. 163 of the Criminal Code, while apparently capable of securing compensation for victims' losses, may be less capable of securing actual proceeds from crime. This should be reviewed to ensure that the range of provisional measures available is comprehensive and cannot be frustrated by transfer of property to third parties. The level of proof required under the confiscation regime also needs reconsidering as, at present, the evidential burden which the prosecutor has to discharge is very high.

110. Strict banking secrecy has a long history in Romania. In summary the relevant parts of the *Banking Law* and the *Law on the Status of the National Bank of Romania* (which have not been amended since the passage of Law 21/99) oblige bankers to keep banking information secret until a comparatively late stage of the criminal process (an application to the court can be made at the request of the prosecutor when a criminal trial has been set in motion). The examiners were advised that Law 21/99 takes precedence, but this would appear to depend on goodwill rather than any legal foundation. This anomaly needs urgent rectification. There should be an explicit exemption in the Banking Law from banking secrecy in the case of reporting transactions under Law 21/99. It is also desirable to make it clear that the National Bank of Romania is caught by the reporting obligations under Law 21/99.

111. The ratification of the Vienna Convention and other important international instruments (such as the European Convention on Extradition and its Protocols and the 1959 European Convention on Assistance in Criminal Matters and its first Protocol) is a very positive signal of Romania's commitment to international co-operation. However it is unclear whether there is a conflict between Romania's bank secrecy provisions and the implementation of A. 7(5) Vienna Convention. In the ratification process of the Council of Europe Convention, Romania should ensure that bank secrecy is not an obstacle to the provision of the widest possible measure of investigative assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. The Romanian authorities pointed to existing legislative provisions which they consider will enable them to act on behalf of foreign states in enforcing foreign confiscation orders and to take provisional measures on their behalf. A review of these provisions would assist to ensure that their use by Romania cannot be successfully challenged where the assistance requested relates to enforcing foreign confiscation orders based on an assessment of all the proceeds of crime or relates to taking provisional measures to secure proceeds of crime. It would also assist if the Romanian authorities satisfy themselves that there is adequate legal provision for the enforcement of civil confiscation orders made abroad.

112. Customer identification requirements are provided in Law 21/99 for any single cash or non-cash operation in Lei or foreign currency equivalent to 10,000 Euro or where there is information that the purpose of a transaction is the laundering of money. The threshold for the Customer identification requirement applies only to legal persons and the obligation should apply also to natural persons subject to Law 21/99. The threshold of 10,000 Euro appears rather high for the Romanian economy. It would be advisable if the figure was reconsidered generally, and for bureaux de change in particular, where most transactions presently undertaken would be likely to avoid the identification requirements entirely. When reviewing threshold requirements the Romanian authorities might also reconsider the current limits on cross border money movement (US \$ 10,000), which also appear high for the Romanian economy.

113. While Law 21/99 provides for some sanctions to be taken by the office for non-compliance, no authority or institution is tasked explicitly with checking compliance with Law 21/99. The office is not given that role so it was unclear how it might be in a position to issue sanctions. The examiners consider that the National Bank of Romania and the other relevant supervisory authorities need to become actively involved in the supervision of anti-money laundering measures and that a workable regime for sanctions for infringement of the law needs developing, with meaningful penalties that will have a real deterrent effect.

114. The success of the new office will be critical to the success (or otherwise) of Romania's whole anti-money laundering effort. The office appears to have a solid organisational basis and the potential for being effective in the future, assuming the uncertainties in the law are satisfactorily resolved. Three further examples of legal uncertainties and imprecisions are given. It was, firstly, unclear to the examiners whether it was intended that there should be two reporting obligations – one based upon suspicion under A.3 (which requires “firm evidence”) and one based upon “unusual” transactions under A.14 (which does not appear to require “firm evidence”). Without precise supplementary guidance on this issue (and, as has been indicated, on the meaning of “firm evidence”) there is a real danger that the office may actually receive very few reports in practice<sup>15</sup>. Secondly, the office has legal power to obtain further information from “any competent institution”. The office considered this provision entitles it to obtain information from all institutions – and not just those that make a suspicious or unusual report. A common interpretation between the banks and the office needs developing quickly on this and then could be put on a formal legal footing. Thirdly, the office has the formal power to suspend transactions but the examiners were concerned that the civil responsibility for any resulting financial loss, which according to the law is to be borne by the office, may inhibit the office's use of the power.

115. The office has a legal responsibility under Law 21/99 for organising, at its own cost, education and training programmes for the employees of institutions subject to Law 21/99. On the other hand, legal persons are also supposed to arrange their own training. This double obligation appeared to cause institutions to wait for the office to start its own training programmes before acquainting their staff with the new law. At the time of the on-site visit the office had not been allocated a budget, and so training had not commenced. It needs to do so urgently. Then, in due course, guidance notes on what might be suspicious and/or unusual transactions in the Romanian context need to be drawn up for all sectors by the supervisory authorities, co-ordinated as necessary by the office, building (so far as the banking sector is concerned) on the helpful work in this area begun by the Banking Association.

116. There needs to be a clear political commitment to the success of the office through proper resourcing of it. This is vital in order to ensure that all the office's many functions can be undertaken including, critically, the commencement of training, based on a common understanding of what the law means.

117. The passage of the formal law is an encouraging first step in Romania's fight against money laundering. However there is much to do. Romania needs to build on this and develop an operational system which will generate appropriate numbers of reports, and which are in turn transmitted to the prosecutor in sufficient numbers. Thereafter, at the penal stage, levels of proof should not be so high that they make the achievement of convictions and confiscation of proceeds very difficult in practice.

## **POLAND**

118. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task

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<sup>15</sup> The examiners have subsequently been advised that though two different words are used to describe the reporting obligation in the Romanian text of A. 3 and A.14 of Law 21/99 they mean the same and the office has now clarified this by issuing a standard report form based only on suspicious transaction reporting.

Force (FATF) visited Poland between 18-21 May 1999.

119. The Republic of Poland is one of the largest countries in Central Europe. Its northern frontier on the Baltic Sea gives it easy access to Scandinavian and North Sea ports.

120. Crime, and organised crime in particular, is considered to be a major problem. In recent years Poland is thought to have become a transit country for the smuggling of drugs to Western Europe. International organised crime groups are known to be active within its borders, some of which are believed to include foreign elements. Many of these criminal groups are thought to engage in money laundering in Poland, specifically of proceeds of crime committed outside Poland. The Polish authorities recognise that Poland is also vulnerable to the laundering of domestic proceeds. The banking sector is considered vulnerable at the placement stage, as are the 3,500 bureaux de change (“Kantors”) which currently operate in Poland, and the 34 casinos. Equally at the layering stage illicit proceeds are thought to be invested in property and/or on the capital market. Actual and potential sources of criminal proceeds include: the illicit production and trafficking of drugs; vehicle theft; extortion; smuggling of stolen cars, alcohol and cigarettes; and counterfeiting.

121. The Polish authorities recognised the money laundering threat at an early stage. They have engaged with the issue since 1992. Various Regulations and legislative instruments have been introduced at different times. A number of important steps have been taken towards building an anti-money laundering regime which meets international standards. None-the-less the examiners considered that overall the system had developed incoherently and slowly. At the time of the on-site visit only banks and brokerage houses had legal obligations on them to report suspicious transactions and supervisory regimes which involved some inspections of anti-money laundering issues. Other non-bank financial institutions are not only unsupervised but also beyond the scope of the anti-money laundering legislation. Reports of suspicious transactions for banks and brokers currently go to the Public Prosecutor.

122. Since 1996 there have been legislative proposals emanating from the Ministry of Finance to create a financial intelligence entity (FIE) in the structure of the Ministry of Finance. The first draft bill was withdrawn and the current draft bill (dated 1.3.99) was due to be presented to the Parliament in 1999. It significantly widens the scope of institutions subject to identity verification, record keeping and suspicious transaction reporting (STR) obligations – and includes casinos, insurance companies, bureaux de change and notaries. This is a positive step but the Polish authorities should consider further extending the coverage in the draft law to other relevant undertakings in both the financial and non-financial sectors, including appropriate professional persons such as lawyers involved in financial business and accountants. The range of coverage needs urgent attention and the speedy passage of the draft law is critical.

123. The National Criminal Information Centre (NCIC) had been established by a decree of the Minister of the Interior at the time of the on-site visit. NCIC’s mission is to co-ordinate the national fight against organised crime. Part of its objectives includes monitoring the usage of financial information referring to money laundering. It plans to become a formal counterpart of foreign institutions and agencies engaged in combating crime such as Europol, the FBI in the United States and NCIS in the United Kingdom. The establishment of an operational NCIC should provide Poland with an analytical and strategic capability, which it currently lacks. However the Polish authorities will want to guard against overlaps of responsibilities and ensure that the FIE and the NCIC work co-operatively with each other. In particular it should be resolved which single body will be responsible for international co-operation in anti-money laundering matters at the FIU/law enforcement level.

124. Poland signed and ratified the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 30.11.94 and signed the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Council of Europe Convention) on 10.11.98 but has not yet ratified it.

125. Article 5 of the Act on Protection of Economic Turnover (APET), dated 12.10.94, established money laundering as a separate crime. It contained a closed list of predicate offences based on organised crime activities. It covered “own proceeds” laundering. It has now been repealed. The current criminal provisions are found in A. 299 of the Criminal Code. The requirement that predicate offences should be related to organised crime has been removed. The range of predicate offences has been enlarged. It was not clear, however, whether Article 299 covers all the offences which currently generate criminal proceeds. The Polish authorities consider the new list in Article 299(1) is completely open-ended but the evaluators are not equally certain of this. In enumerating offences against property there is an additional reference to “other offences against property of considerable value”. This limitation may make it more difficult to extend the list of predicate offences beyond property offences. Though the list approach meets the basic requirements of the Vienna and Council of Europe Conventions, the Polish authorities should consider, when ratifying the Council of Europe Convention, the “all crimes” approach without any specification, which would provide clarity and certainty that all serious offences are covered. The law has not, as yet, been tested.

126. There have been no convictions for any money laundering offence in the 5 years since money laundering was criminalised. This may partly be explained by the lack of clarity there appears to be about the level of proof required for the predicate offence. Poland urgently needs some successful prosecutions (and deterrent sentences) to help break any developing mindset among law enforcement officers and prosecutors that they are powerless. Interdepartmental consideration needs therefore to be given to the level of proof that is required for the money laundering offence. Prosecutors should be clearly advised on the minimum evidential requirements thought to be necessary for launching criminal proceedings. In such a review the level of proof required for the mental element would also bear reconsideration. The evidential burden is high as the offence in A. 299(1) is based on an intent or guilty knowledge standard. A lower standard may be desirable for the Article 299(1) offence (such as justifiable suspicion). Equally consideration should be given to the concept of negligent money laundering, as envisaged by the Council of Europe Convention, for all the offences in A. 299.

127. The exclusion of “own proceeds” laundering in A. 299 is a retrograde step and should, in the examiners’ view, be reconsidered. They would also encourage the Polish authorities to consider carefully the possibility of introducing the concept of corporate criminal liability.

128. The Penal Code of 1997 uses the term “forfeiture” instead of confiscation. Forfeiture is provided for in general terms in Articles 44-45 of the Penal Code. There are also special measures on forfeiture contained in the Special Part of the Penal Code dealing with particular criminal offences. There is a special forfeiture provision under A. 299(7) in the case of money laundering offences under A. 299(1) and (2). This allows for the mandatory forfeiture of items derived directly or indirectly. This has not been tested in the courts as yet, but appears to provide for the removal from the perpetrator of the proceeds of crime. However it would assist this objective if “proceeds” were defined as in the Council of Europe Convention. It needs to be clarified that this provision covers value orders. By contrast, the general forfeiture regime under A. 44(1) of the Penal Code is mandatory only so far as it relates to items directly derived. In order to bring their law in line with the broad policy objective of the Council of Europe Convention the Polish authorities should introduce a general confiscatory power so far as proceeds or property the value of which corresponds to proceeds is concerned which is, at least, applicable to all serious criminality and offences which generate huge profits, and which strengthens the mandatory elements of the existing regime. It is suggested that such a power is based on the wide meaning of proceeds in the Council of Europe Convention. In the course of ratifying the Council of Europe Convention, the Polish authorities should review their provisional measures regime to ensure that a comprehensive range of effective provisional measures is available to support the wider confiscatory power.

129. Poland, as well as ratifying the Vienna Convention and signing the Council of Europe Convention, has also ratified the European Convention on Extradition and its Protocols and the 1959 European Convention on Mutual Legal Assistance in Criminal Matters. It is a positive sign that

Poland is able to provide legal assistance in this field, which in some aspects goes beyond their own domestic provisions. They can provide general legal assistance in cases in which the money laundering offence is based on a “should have known” or “negligence” standard or if the predicate offence is not a predicate offence in Poland. Legal assistance can also be provided in cases of “own proceeds” laundering where the individual is charged with money laundering, and where an individual is charged with the predicate offence and money laundering. The major weakness in international co-operation, however, is that parts of Polish legislation currently prevent any interference, on behalf of a foreign state, with the proceeds of a suspect in Poland (freezing, seizing, etc.) and the prohibition on the execution of judgements of a foreign court. It was unclear when the ratification process of the Council of Europe Convention will be completed. The Polish authorities are urged to give a high priority to the ratification process in a manner which will permit the granting and receiving of effective and timely co-operation in all areas, especially in relation to the tracing, seizure, freezing and confiscation of the proceeds of crime.

130. Perhaps as important as any of these issues for Poland’s international co-operation capability is the urgent need to establish an FIE which can begin to exchange financial information both spontaneously and on request with other FIUs and enter into Memoranda of Understanding with other FIUs.

131. On the financial side, basic identification and record keeping requirements are in place for banks. Identification requirements under the laws and regulations for banks relate to cash transactions and exchanges of currency above 10,000 Ecu and to all suspicious transactions (cash and non-cash). It would be prudent to clarify that these requirements apply also to the National Bank of Poland. A particular concern is the absence of any customer identification requirements for banks in the case of non-cash transactions of a size envisaged by the EC Directive. These should be covered. Brokerage houses must identify the owner of a securities account, and all securities transactions (cash and non-cash) with a value of 20,000 Zloty<sup>16</sup> or more must be the subject of identification procedures. Brokerage houses, however, may assume that the named owner of the account is also the beneficial owner. This is unsatisfactory. Moreover, it was not entirely clear how far beneficial owners were identified in the banking sector. It was indicated that further guidance on the “know your customer” issue is to be given in the new law. Clear guidance needs now to be given to all credit and financial institutions that they should be legally obliged, in the event of doubt as to whether customers are acting on their own behalf, to take reasonable measures to obtain information as to the real identity of the persons on whose behalf customers are acting, as envisaged in the FATF Recommendation 11 and the EC Directive.

132. The existing Polish supervisory authorities need to develop their own guidance material (on which training can be based) drawn from the local Polish experience on warning signs and indicators of money laundering in each of their sectors. Similar guidance needs to be developed for each relevant sector as anti-money laundering reporting obligations are extended regardless of whether a supervisory body is put in place. The FIU, when it is created, should take a leading role in ensuring the production of co-ordinated guidance.

133. The Commission for Banking Supervision, which has already begun work in anti-money laundering supervision, should now institute regular examinations which thoroughly monitor and assess the level of banks’ actual compliance with their anti-money laundering obligations. The Securities and Exchange Commission should also include in its programme regular inspections which go beyond the formal compliance issues presently covered and begin assessing the level of compliance of brokerage houses with their anti-money laundering obligations.

134. On the operational side reliable statistics on STRs were difficult to obtain. The Prosecutor’s office did not appear to have a real overview of this. It was indicated that STRs were not currently analysed operationally to determine, for example, which banks may be underreporting. It is critical that full analysis of STRs begins as soon as possible and this should not await the creation of the FIU.

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<sup>16</sup> 4,800 Euro.

Equally there was some uncertainty about the precise number of money laundering investigations. Concern was also expressed by law enforcement officers that databases are insufficiently shared. These concerns need examining and unnecessary obstacles should be removed. Concern was also expressed by the police that in police initiated enquiries they cannot follow the flows of potentially laundered money without access to banking information at an earlier stage than is possible at present. Again, this concern should be identified precisely, and unnecessary obstacles removed. The provision of meaningful feedback also needs addressing to help to build greater co-operation between law enforcement and the financial sector.

135. At present therefore all the indicators are that the system overall is currently both inadequate in its coverage and not performing well. Urgent action is required if Poland is to develop an effective operational anti-money laundering system that meets international standards. Much can be achieved by the early creation of an FIU, the passage of the draft law and the ratification of the Council of Europe Convention. The examiners would advise also that the Polish authorities need to nominate a lead department at a working level to be the moving force on the money laundering issue, which can focus and co-ordinate disparate activity. Beyond this, there is a real need for co-ordination of thinking at a strategic level about the shared money laundering threat across all the sectors. A discrete anti-money laundering co-ordination body drawn from actors in the anti-money laundering regime at suitably senior levels would assist. Such a body could draw up an inter agency action plan of what needs to be done in all sectors, drive through changes, and periodically review how the system as a whole is operating.

### LIECHTENSTEIN

136. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Liechtenstein between 6-9 September 1999.

137. Due to the small size of the country, Liechtenstein does not experience the common forms of domestic organised crime, such as drugs trafficking or alien smuggling. Crime rates are rather low compared to other European countries. Nevertheless, the geographical location of Liechtenstein, its highly developed financial services industry and “offshore” business sector, combined with strict professional secrecy rules, make Liechtenstein an attractive target for money laundering operations, e.g. by international organised crime.

138. The relevant policy objectives of the Liechtenstein Government in the area of money laundering control at present include the establishment of a special police unit for dealing with economic offences, including money laundering, the prevention of the abuse of the Liechtenstein banking sector and economic life for money laundering purposes as well as the education and training of government officials dealing with money laundering cases.

139. Liechtenstein has not yet ratified the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime [the Strasbourg Convention]<sup>17</sup> or the 1988 UN Convention against illicit traffic in narcotic drugs and psychotropic substances [the Vienna Convention]<sup>18</sup>. Nonetheless, Liechtenstein has taken steps to criminalise money laundering. Initially, this was done in respect of the laundering of the proceeds of drug offences (Article 20 a, paragraph 1 of the Law on Narcotic Drugs). Subsequently, the scope of the money laundering offence was broadened by the Law of 21 March 1996, which created a new money laundering offence (now Article 165 of the Criminal Code).

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<sup>17</sup> Liechtenstein signed the Strasbourg Convention on 29 June 1995.

<sup>18</sup> Given that Liechtenstein has had a customs union and an open border with Switzerland since 1923, it claims that its drugs-policy has to follow that of Switzerland. The ratification of the Vienna Convention is therefore conditioned upon Switzerland’s ratification of the Convention.

140. The scope of application of the money laundering offence under Article 165 of the Criminal Code is broader than under the Narcotics Act: it penalises any person who hides or conceals the origin of assets which stem from crime committed by another person. It also penalises those who knowingly take possession of such parts of the offender's assets or takes them into custody, converts, exploits or assigns such assets to a third party. The predicate offences under Article 165 include any crime, i.e. criminal offences punishable by imprisonment of up to not less than 3 years. Misdemeanours (such as fiscal offences, e.g. tax evasion) are therefore excluded from its scope. Likewise it excludes « own-funds » laundering. If the total value of laundered assets exceed CHF 150.000 or if the offence is committed by a member of a gang whose purpose is to commit money laundering, the penalties are more severe. Under the Narcotics Act, money laundering covers the proceeds of any drug-related offences, whether misdemeanours or crimes, as criminalised by Article 20 of the Narcotics Act. In addition, it covers the laundering of someone's « own-funds ». Both offences can only be committed intentionally. The examiners consider these legislative steps as positive ones. Nevertheless, the differences between the two money-laundering offences seem unnecessary and the examiners recommend that early consideration be given to bringing Article 165 of the Criminal Code fully in line with the approach taken under the Narcotics Act. They also draw attention to the fact that there have so far been no convictions obtained under either of the two legislative provisions criminalising money laundering. The examiners observe in this context that the « knowledge » standard applied by both money laundering offences is given a rather strict interpretation, as a result of which it is difficult to prove the criminal origin of proceeds derived from predicate offences typically committed overseas. The examiners believe that money laundering should therefore be made an autonomous offence by not requiring a formal proof of the specific predicate offence and consideration should also be given to the introduction of negligent money laundering. The possibility of introducing corporate criminal liability also deserves close consideration.

141. Liechtenstein law contains several provisions dealing with the confiscation of criminal proceeds and the application of provisional measures. The Law of 21 March 1996 brought about significant amendments to the Criminal Code in this respect. Article 20a of this Law (Absorption of illicit enrichment) provides that if an offender unlawfully enriched himself by committing one or more offences, he shall be condemned to pay an amount of money corresponding to the scope of the enrichment obtained, if this exceeds the amount of CHF 150.000. The examiners were informed that this provision could cover the proceeds of both crimes and misdemeanours. The absorption of illicit enrichment (hereafter confiscation) is conviction-based and Liechtenstein law does not allow civil forfeiture. The existing confiscation regime however can also be applied to corporations. There has so far been no confiscation ordered on the basis of Article 165 of the Criminal Code. Given the above-mentioned difficulty of proving the origin of the assets, which in most cases are thought to originate from extraterritorial predicate crimes, the examiners believe that the current confiscation regime needs to be revisited. The planned ratification of the Strasbourg Convention provides a unique opportunity to assess the adequacy of the existing confiscation regime and make the necessary adjustments. The examiners particularly recommend in this context that the CHF 150.000 threshold for confiscation (Article 20 a of the Criminal Code) be deleted, whereas the applicability of seizure and confiscation to all kinds of criminal proceeds, including property, instrumentalities, substitute assets and profits generated by proceeds, should be clearly provided for by law.

142. Provisional measures (freezing and seizure) related to assets subject to confiscation were allowed by judicial rulings on the basis of Article 253, paragraph 2 of the Code of Criminal Procedure, until a Supreme Court decision made this impossible. The Law of 22 October 1998, filled this gap by introducing Article 97a into the Code of Criminal Procedure. This new provision provides, in the event of suspected unjustified enrichment, for the possibility of seizure, safekeeping, administration, prohibition of alienation or other types of disposal, of assets considered to be subject to confiscation, under judicial control.

143. Liechtenstein, though it has not yet ratified either the Strasbourg or the Vienna Convention, is a party to other relevant bilateral and multilateral treaties on international judicial co-operation. It has in particular been a Party since 1970 to the European Convention on Mutual Legal Assistance in

Criminal Matters. This, in conjunction with the applicable domestic legislation (Law of 11 November 1992 on international legal assistance in criminal matters) provides the basis for collaboration with foreign states in the area of criminal justice. The Law, however, does not provide specifically for international assistance in the identification, tracing, freezing, seizure or the confiscation of the proceeds of crime and practice shows that Liechtenstein authorities are currently not in a position to give effect to a foreign request of confiscation. This problem should also be addressed in the context of the planned ratification of the Strasbourg Convention.

144. On the preventive side, the Due Diligence Act of 22 May 1996 and a related Executive Order of 18 February 1997 have established a suspicious transactions reporting mechanism and introduced a number of « due diligence » obligations. Thus, those subject to the Act (banks and other financial institutions, lawyers, trustees, investment undertakings, insurance companies, legal agents, branches in Liechtenstein of foreign investment firms and postal services) are under an obligation to identify the contracting party as well as the economically entitled persons when entering into business relations (e.g. accepting assets for transfer, safekeeping, management and investment). However, the Due Diligence Act does not apply to exchange offices<sup>19</sup> and the duty of identification applies to cash transactions only when they exceed CHF 25 000. Institutions or persons subject to the Act are also obliged to keep documents or references on customer relations, identification of contracting party and the establishment of the economically entitled person for a period of 10 years after the termination of the relationship or the execution of a transaction. The Act also requires internal controls to be carried out concerning compliance with its provisions, through independent auditing procedures.

145. If after clarifying the economic background, purpose of transaction and the origin of the assets, the institutions and persons subject to the Due Diligence Act have a "strong" suspicion that the transaction is related to money laundering, they have to report it to Financial Services Authority (FSA). They can also notify the prosecution service at the same time. The notion of « strong » suspicion is, however, not easy to define in concrete terms, even if guidelines of general application have been worked out under the auspices of the FSA by the relevant associations (accountants, trustees and lawyers). Yet, institutions or persons subject to the Due Diligence Act have to establish for themselves if a given suspicious transaction is "strong" enough to be reported. In so doing, they are actually required to carry out tasks that usually fall under the responsibility of law enforcement bodies. One frequently used method to substantiate or dissipate suspicion is to clarify the economic background etc. of transactions, which in Liechtenstein practice often involves consultations with the customer. The examiners fail to see how "tipping off" in such circumstances can be avoided. Institutions and persons subject to the Due Diligence Act are confronted here with an open conflict between loyalty towards their clients and the obligation to report and concern was expressed in this regard by the trustees that the obligation to disclose the identity of clients might easily lead to liability for breach of secrecy. The Due Diligence Act imposes penalties in case of wilful non-compliance with its provisions (e.g. non-reporting to the FSA), but the requirement of « wilfulness » might in many situations be very difficult to prove and may challenge the effectiveness of the above-mentioned Act. The examiners therefore believe that the current system may inhibit financial intermediaries from reporting rather than encourage them to do so and this situation urgently needs addressing. They recommend in particular that a specific and unequivocal provision be introduced in Liechtenstein law for exonerating persons who report suspicious transactions in good faith from the consequences of any breach of secrecy or disclosure rules.

146. As far as supervision is concerned, the FSA is the main supervisory authority responsible for the implementation of the Due Diligence Act. In this capacity, it is empowered to order inspections - through independent auditors - in the institutions under its supervision, order supplementary checks for customer identification, prohibit entering into business relations with customers, ask other supervisory authorities (e.g. Insurance supervision) to take disciplinary measures and request information necessary for its supervisory functions. The examiners noted with concern, that in

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<sup>19</sup> According to the Liechtenstein authorities, there are only two exchange offices operating outside the regulated banking sector.



practice the FSA - which has only 5 members of staff - is neither required, nor is in a position to carry out such control procedures and confines its task to supervising formal compliance with the Due Diligence Act. The controls are in the hands of private audit firms, contracted by the Government, but paid by the controlled entities, which are supposed to verify compliance with all obligations arising out of the Due Diligence Act, including the duty to report strong suspicions. Although financial institutions are audited every year, the 250 trustee companies and 40 individuals registered as trustees (managing all together approximately 78 000 entities) are audited at least every five years. These auditing procedures are rather formal. They do not extend to the checking of actual transactions. The examiners therefore recommend that audits be carried out more frequently and that they be extended to random checking of transactions carried out by supervised entities, in particular trustee companies; in this context the examiners consider that it would be necessary to include also auditors within the scope of the Due Diligence Act to oblige them to report suspicious transactions discovered during audits.

147. The FSA is also the disclosures receiving agency which verifies within 8 days, on the basis of the documents submitted to it and its own investigations, whether the "strongly" suspicious transaction declared is confirmed and has to be reported to the public prosecution services. The FSA has no backlog and systematically informs the reporting entities about the transmission of the case to the public prosecution services. The public prosecution can also receive the declaration of suspicion directly but in practice this is rather rare. Between 1 January 1997 and 31 December 1998 a total of 45 cases were reported (47 reports) and 33 proceedings have been instituted. However, among the 45 cases, only 3 cases were initiated on the basis of spontaneous suspicious transaction reports, while 22 cases resulted from requests for legal assistance, 11 from criminal proceedings pending abroad, 3 from press reports and 6 from criminal proceedings pending in Liechtenstein. Direct international co-operation between the FSA and foreign Financial Intelligence Units seems problematic. The examiners therefore recommend that the FSA be given a clear mandate to carry out analytical work on suspicious transactions, clear powers to access all information (intelligence) necessary for such work and be able to co-operate and exchange information with all relevant foreign counterparts.

148. On the law enforcement side, the police do not seem to be sufficiently involved in the fight against money laundering. This impression might well be due to the fact that the mission did not obtain as much specific information as it wished regarding, *inter alia*, the predicate offences from which proceeds are believed to be derived, the mechanisms used to launder money and the amounts estimated to be involved. During the discussions, mention was made of a new police co-operation treaty signed this summer with Switzerland and Austria, which will provide for reinforced co-operation once it is ratified.

149. In the light of the above, the examiners consider that the overall Liechtenstein anti-laundering system is rather reactive and needs to improve, both on the preventive and repressive side. The Liechtenstein authorities need to take stock of the existing arrangements, machinery and legal provisions under the current anti-laundering regime. While many building blocks of a sound anti-laundering regime are in place, there is a need to take positive action in each sector to develop a system which works as a whole, both to meet the challenges Liechtenstein faces and to fully conform to the applicable international standards. In this regard, the forthcoming ratification by Liechtenstein of the Strasbourg Convention is welcomed by the examiners.

## CROATIA

150. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Croatia between 14-17 September 1999.

151. The transition to a market economy was accompanied by new types of criminal activity, notably organised and economic crime. Organised crime groups do operate in Croatia and are involved in extortion, racketeering, theft and smuggling of motor vehicles, prostitution, smuggling of

goods, human beings and weapons, counterfeiting as well as drug trafficking. Organised crime is thought to be involved in money laundering. Drug trafficking proceeds account for a considerable amount of illegal proceeds from foreign sources.

152. The Croatian economy is still heavily cash based. This, coupled with the existence of numerous banking and non-banking financial institutions, renders those institutions vulnerable at the placement stage of money laundering. In particular there is currently a lack of controls over bureaux de change, making them vulnerable to infiltration by organised crime. The real estate sector is vulnerable at the layering and integration stages.

153. Croatia has taken a number of important steps to combat money laundering. It ratified the UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) in 1990 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) in 1997. Since 01.01.98 money laundering has been criminalised as a separate offence in Article 279 of the Criminal Code (with more than adequate penalties). This offence is in addition to a concealing/receiving offence in Article 236 of the Penal Code – though prosecutors need guidance on the distinction between the two offences. On the preventive side the laws are basically well conceived and in some areas very comprehensive. The Prevention of Money Laundering Act came into force on 01.11.97. It applies to a wide range of credit and financial institutions including insurance companies, bureaux de change and casinos, and Article 2(2) extends obligations *inter alia* to lawyers and accountants, real estate agents and dealers in some high value goods. The list of undertakings subject to anti-money laundering obligations goes beyond existing international standards. The law imposes a range of obligations which include: identification procedures; record keeping procedures; designation of compliance officers (“the responsible party”); establishing lists of indicators of suspicious transactions; provision of up to date and regular staff training on money laundering issues; reporting of suspicious transactions and large transactions where identification requirements apply (generally transactions in cash, foreign currency, notes of value and precious metals and gems which amount to 105,000 Kuna or more<sup>20</sup>). The Preventive strategy also resulted in the creation on 04.12.97 of the office of the Prevention of Money Laundering (AMLDD), an administrative unit, responsible directly to the Minister of Finance. While laws are basically sound the area of most concern to the examiners is how the whole legal structure is being operationalised in practice.

154. While there have been 15 investigations for money laundering and 1 indictment preferred there have been no convictions yet under Article 279 of the Criminal Code. Croatia urgently needs some successful prosecutions and major confiscation orders.

155. Though Article 279 has considerable strengths (e.g. express provision for prosecutions where predicate offences are committed abroad and clear provision permitting prosecution of defendants for both the predicate offence and money laundering) the examiners none-the-less consider that the relevant Croatian authorities together should review carefully the effectiveness of the criminal provisions, and in particular the reasons for the lack of money laundering convictions. Prosecutors need clear and consistent guidance on the minimum level of proof thought to be needed currently for a prosecution for money laundering to be commenced. The Ministry of Justice could be more active in this area.

156. The *actus reus* of Article 279(1) appears to limit the money laundering offence to acts that occur in banking or other economic operations. While the examiners were advised that the term “other economic operations” would be widely interpreted, the examiners had reservations and consider it would be preferable to use the broad language of the Strasbourg Convention. Predicate crimes can be any offences for which imprisonment for 5 years or more can be imposed (which includes fraud, acceptance of bribes and tax evasion). However some offences which may be relevant in the Croatian context, e.g. offering a bribe, are not covered. When reviewing the list of predicate offences

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<sup>20</sup> Approx. 30,000 DM.

consideration could be given to the “all crimes” approach of the Strasbourg Convention which may also make proof of the predicate crime element of the money laundering offence easier. Apart from offences of imprisonment of 5 years or more any other offence is considered to be a predicate if it is committed by a member of a group or criminal organisation, though proving this element of the offence does add a layer of complexity to the criminal offence. The *mens rea*, firstly, contemplates an actual knowledge standard though, again, the minimum level of proof needs articulating for prosecutors. It is positive that the offence can also be committed negligently, though the Croatian authorities might wish to consider whether a further mental element such as reasonable suspicion could be helpful (with lower penalties for its commission).

157. Careful consideration should be given to the introduction of corporate criminal liability, and the Croatian authorities should ensure that conspiracy to commit money laundering is covered.

158. The Croatian authorities advised that if the Article 279 offence was not made out it would still be possible to impose an administrative penalty for breach of the definition of money laundering in Article 1(2) of the Prevention of Money Laundering Act. The relationship between this and Article 279 needs articulating, though the priority should be to ensure that Article 279 is capable of proof.

159. The Croatian confiscation system is conviction based and does not allow for civil forfeiture. The system has elements of both property and value based systems. A wide range of complex provisions in two different legal Codes were pointed to by the Croatian authorities as constituting their regime of confiscation and provisional measures. Moreover differences of opinion between the Prosecution Service and the Ministry of Justice on some parts of their interpretation, coupled with a lack of practical experience, make it difficult to form a judgement about their overall effectiveness. All these provisions need properly testing in practice, and prosecutors would benefit from guidance on their effect.

160. In Article 279(6) there is special provision for laundered money or property to be forfeited. If this is a confiscation measure it appears limited to money and direct proceeds, and does not appear to allow for value confiscation. Its meaning and extent need to be reviewed and its ambit also tested in practice. The general confiscation regime is found firstly in Article 82 of the Criminal Code (confiscation of pecuniary benefit) and Article 80 (provisional seizure of instrumentalities). These provisions are essentially discretionary and strengthening the mandatory element would undoubtedly increase their effectiveness. Whether indirect proceeds could be confiscated under Article 82 was subject to different opinions. These differences should be resolved as a matter of urgency in order to ensure that the confiscation of proceeds, as widely interpreted in the Strasbourg Convention, occurs in practice. Article 82 appears to allow for value confiscation, which is positive. In order that the regime is used more in practice some joint training of relevant prosecutors, investigating judges, and the Judiciary on the objectives and evidential requirements for an effective confiscation system fully in line with the Strasbourg convention would be of value. In particular consistent guidance is required as to the minimum level of proof that is thought to be necessary to pursue a confiscation order. The Ministry of Justice should also consider whether further modifications would assist the regime, including practices which have been of value in other jurisdictions, such as the reversal of the onus of proof, and/or application of the civil standard of proof. Prosecutors need to be more proactive in the use of the available provisional measures. While the examiners were assured that seizure of funds and the freezing of bank accounts were possible the examiners advise that consideration should be given to a legislative amendment which explicitly states what is capable of being the subject of provisional measures and when (particularly so far as provisional seizure/freezing by the Police at an early stage of enquiries is concerned). Additionally the Office’s power to postpone transactions should be reviewed and should be at least 24 hours.

161. Generally the Croatian rules on international co-operation, including mutual legal assistance, are soundly based though experience is limited. A positive feature is that legal assistance can be provided where the money laundering offence abroad would not be an offence in Croatia, and execution of foreign confiscation orders and execution of provisional measures on behalf of foreign

states are possible. The AMLD can exchange information with anti-money laundering authorities of foreign states regardless of whether they are judicial or police type units, which also is a positive feature.

162. On the financial side, the present customer identification requirements so far as transactions are concerned could be strengthened by extending the obligations in Articles 4(2) and 4(3) when conducting one-off transactions also to those of a non-cash nature at or above the prescribed threshold. It appears there is no legal obligation to identify the underlying beneficial owners of a company where an account is opened or transaction conducted. Beneficial owners of corporate accounts should be identified.

163. The Croatian National Bank, as bank supervisor, needs to develop special audit programmes for more thoroughly testing the anti-money laundering system put in place by banks. Beyond this, large areas of the non-banking financial sector are largely unsupervised for anti-money laundering purposes. This is a particular vulnerability for Croatia. A clearer structure needs to be developed in the non-banking financial sector for regular anti-money laundering supervision by clearly assigned supervisory authorities. Guidance notes need to be developed by those supervisory authorities in each sector which are specific to the operations which they supervise. Urgent attention needs to be given, in particular, to the bureaux de change: There is no regime of licensing, authorisation or registration. An effective system should be introduced whereby the existence of all persons performing exchange transactions is known and consideration should be given to a formal authorisation system and effective monitoring mechanisms should be established.

164. The issue of feedback needs addressing generally.

165. Since its inception AMLD has received 364 suspicious transaction reports, almost exclusively from the Agency for Financial Transactions and banks. 14 STRs have been passed to the prosecutor and the Police. Of the 110,000 cash transaction reports 27 have been examined by AMLD, but none have been sent to law enforcement. While the AMLD seems to be working well investigations and prosecutions seem to be taking a very long time. The Croatian authorities need to examine whether parts of the law enforcement procedure are slowing the whole process down unnecessarily. The Croatian authorities should also examine whether there is not too much reliance placed on the STR reporting regime: A more proactive money laundering investigatory approach is needed by the Criminal Police and greater involvement of the Customs Service should be considered.

166. Greater co-ordination is needed at the working level between institutions involved in anti-money laundering. Beyond this there is a need for co-ordination of thinking at the strategic level, and consideration should be given to a body, drawn from all the main players in the anti-money laundering regime chaired at a suitably senior level, to review periodically how the system as a whole is operating in practice.

167. By taking stock now the Croatian authorities can build on their basically sound legal structure and make their system a fully operational one.

#### **“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

168. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited "The Former Yugoslav Republic of Macedonia" between 26-29 October 1999.

169. The transition to a market economy and more recently, the events in Kosovo created an excellent opportunity for various types of criminals to operate in the country. Though reported crime appears steady, its structure is changing: narcotic related crimes, economic crimes and trafficking in weapons have sharply increased in recent years, generating significant amounts of illegal proceeds which need to be laundered.

170. "The Former Yugoslav Republic of Macedonia" is vulnerable to the placement, layering and integration phases of the money-laundering process. The economy of the country is heavily cash based due to a profound distrust within the population of the banking, financial and tax systems. As a consequence, financial institutions, exchange offices and the gambling industry appear not to be very concerned by the need to develop preventive measures with regard to money laundering. Moreover, the control over foreign money seems rather loose, notably regarding cross-border cash transactions but also in the framework of the privatisation process.

171. The Macedonian Government has already taken certain steps in the fight against money laundering. A specific offence of money laundering following an all-crime approach has been inserted in the Criminal Code enacted in July 1996 (Article 273) and several provisions regarding the seizure and confiscation procedures exist. It is also to be noted that the country acceded to the Vienna Convention and recently ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Convention (ETS N° 141)<sup>21</sup>. The Macedonian authorities intend to develop anti-money laundering measures in order to strengthen its capacities to fight criminal activities and to align its legislation and practice with European standards. It is in this context that a draft law on prevention of money laundering has been established.

172. Only one money laundering case was under investigation at the time of the evaluation visit and there had been no prosecutions and therefore no convictions in this field. It is not clear to the examiners whether certain investigations have specifically targeted money laundering aspects.

173. The money laundering offence established by Article 273 of the Criminal Code seems to cover a wide range of mechanisms or methods that can be used to launder crime proceeds and establishes stiff penalties. However, the examiners consider that the wording of the offence should be closer to the language of the Council of Europe Convention. They are concerned by the fact that the wording of the offence is very economics oriented and includes a number of concepts that do not appear to be precisely defined. This is particularly the case regarding the terms "economic operation" and "money". Moreover, the fact that the conversion of crime proceeds is only envisaged as the "release in trade and circulation" is another cause of concern for the examiners. Concerning predicate offences, the Macedonian authorities have decided to adopt an all crime approach, which is a good step. Even though the Macedonian authorities do not consider it to be a problem, they should nonetheless ensure that the two predicate offences specifically identified (drugs and arms trafficking) are only examples and can, under no circumstances, be construed as limiting the all crime approach.

174. In addition, though it is difficult at this stage to fully appreciate how the offence would operate in practice as it has not yet been tested in court, the examiners were of the opinion that the knowledge standard should be inferred from objective factual circumstances in order to ensure effective use of the offence.

175. According to the examiners, Article 273 of the Criminal Code should also clearly state that the perpetrator of the predicate offence can be convicted both for the predicate offence and for money laundering.

176. The Macedonian confiscation regime is conviction based and, in the context of the money laundering offence confiscation is compulsory. The Macedonian legal system comprises various provisions dealing with the confiscation and provisional measures contained in the Criminal Code, the Code of Criminal Procedure and the law on execution proceedings. The great number of provisions and their complexity did not allow the examiners to get a clear picture of the way these provisions function in practice and their interrelationship. It is therefore very difficult to appreciate their effectiveness, especially in the context of money laundering, as they have not yet been tested. Given the central place of the confiscation and provisional measures in the arsenal developed to fight money

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<sup>21</sup> The Macedonian authorities ratified Convention N° 141 on 19 May 2000 and it will enter into force on 1<sup>st</sup> September 2000.

laundering, the examiners recommend that the Macedonian authorities should review their confiscation and provisional measures regime with a view to simplifying it and ensure that it is fully operational and effective. This review should notably deal with the scope of application of the different provisions, the relevance of the distinction between "objects" and "property", the definition of unclear expressions such as "objects which according to the Criminal Code are to be confiscated" (Article 203 CCP) and the level of proof required to trigger confiscation or apply provisional measures. The examiners were of the opinion that several areas need to be clarified, notably the possibility of confiscating laundered proceeds in the hands of third parties and the possibility to apply provisional measures to legal persons. Finally, the possibility of introducing a civil action in rem against the assets suspected to be the proceeds of crime could be considered.

177. The inclusion of a specific offence of money laundering in the Criminal Code as well as confiscation measures is a positive start. However, the examiners are convinced that the lack of proper mechanisms to detect money laundering cases renders any conviction under this provision very difficult. The absence of a reporting mechanism of suspicious transactions as well as of a clear and compulsory system of client identification and record keeping requirements, do not allow criminal provisions to be applied in a proper way. The examiners recommend to the Macedonian authorities to consider taking appropriate measures to raise awareness among the private sector and the public at large of the necessity to counter money laundering. It is also central, especially concerning the banking sector, to apply efficiently the preventive measures such as identification of clients, the "know your customer" rule and reporting of suspicious transactions, to establish clear record keeping requirements and to prohibit the "tipping off" of those who could be suspected of money laundering. The monitoring of the due application of these measures is also essential, including through internal and external control more targeted at anti-money laundering measures as well as by appointing money laundering compliance officers. It is also recommended that adequate supervisory controls over the exchange offices, the casinos, ZPP (central payment house) and the privatisation process be established rapidly as well as proper control of the activities carried out by money remitters and company formation agents. It is further recommended that strict control mechanisms be put in place to ensure that "gift contracts" and "collateral contracts" with respect to trading in securities are not used to launder money. It is clear from the draft law on money laundering that the Macedonian Government is very aware of the necessity to adopt the preventive measures referred to above and to ensure their implementation. The examiners strongly encourage the Government to proceed rapidly in this direction.

178. The "Former Yugoslav Republic of Macedonia" is a party to a wide range of international and bilateral instruments. It is nonetheless unsure whether these instruments are effectively implemented notably as regards certain provisions of the Vienna Convention (Articles 3 to 9). Therefore the necessary steps, including legislative amendments if necessary, should be taken to ensure that the Vienna and Strasbourg Conventions are fully implemented. On the other hand, the Macedonian legal system comprises a number of useful provisions regarding legal assistance, enforcement of foreign criminal judgements and extradition as well as a possibility for direct police cooperation and exchange of information between the National Bank and its foreign counterparts. The effective implementation of such measures is difficult to assess, however, the examiners have identified several areas where clarification or improvement should be sought. For instance, the laundering on the national territory of the proceeds from a predicate offence committed abroad should clearly constitute a criminal offence in the country and appropriate rules governing the level of evidence should be established. It should also be clear that Macedonian nationals who have committed offences abroad, especially regarding money laundering, are investigated and considered for prosecution by national authorities as they cannot be extradited. The Macedonian authorities should also ensure that the widest range of confiscation measures (including value based and confiscation with respect to legal persons) can be used in mutual assistance requests. It would also be very useful to undertake a review of the conditions required to enforce foreign confiscation judgements with a view to assess if such conditions prevent in practice enforcement of such judgements and if this is the case, take the necessary steps to remedy such situations and ensure as well that foreign civil and value based confiscation judgements are enforceable. A review would also be necessary to determine whether

legal assistance requests where the requesting state is seeking the identification, freezing, seizure of the proceeds of money laundering or of the predicate offence or of the property or corresponding value can be given effect and, if needed, take the necessary steps to allow effective international cooperation in this field. The banking secrecy provisions seem to be quite rigid and a court order or, in some cases, a special authorisation from the Ministry of Finance is required for the communication of any information even to law enforcement authorities. Consequently, it appears necessary to review carefully the provisions concerning banking secrecy to ensure that bank secrecy is not an obstacle to the provision of the widest possible measure of investigative assistance. The examiners further suggest that necessary measures be considered to allow prosecutors and investigative judges to cooperate directly with their counterparts abroad and for asset sharing including when confiscated assets would have to be returned abroad.

179. On the operational front, the fact that a Financial Intelligence Unit has not yet been established and that none of the criminal police departments seem to have acquired a relevant level of specialisation as regards money laundering cases are also significant impediments to the effectiveness of the criminal offence of money laundering. Consequently, the examiners underline the need for an urgent establishment of a FIU with the necessary powers as far as national and international cooperation is concerned. Likewise, the Macedonian authorities should consider clarifying the repartition of powers between the judiciary, the prosecution services and the police forces and ensuring that those who have the task to investigate money laundering cases within these institutions have the necessary specialisation and that sufficient resources are provided for this purpose. Moreover, the examiners gained the impression that some obstacles in the sharing of information undermined real cooperation among different law enforcement bodies as well as between law enforcement bodies and other relevant institutions. The examiners therefore recommend that necessary mechanisms are put in place to allow an effective exchange of information among law enforcement bodies and between these bodies and other relevant institutions including the banking sector and that obstacles to interagency cooperation are removed. Certain special investigative means are now frequently used in a growing number of countries, however, some of these techniques cannot be used on the Macedonian territory due to constitutional obstacles. It is urgent that the Macedonian authorities consider carefully whether or not the constitution prevents the use of such special investigative means and, if necessary, carry out the requisite constitutional reform.

180. As mentioned above, a committee under the Ministry of Finance has prepared a bill on prevention of money laundering. The anti-money laundering act will present a solid legislative foundation for combating money laundering and several of the legal problems raised by the examiners on the current situation are addressed in this draft. The most important parts of the draft are the introduction of customer identification rules, rules on record keeping for at least 5 years, establishment of a FIU, the delimitation of legal and natural persons obliged to take measures for detection and prevention of money laundering, the prohibition of the "tipping off" and a clear obligation to report suspicious transactions. It should be noted however, that to ensure a firm basis to address the anti money laundering issue it is necessary to change and amend other legislation, e.g. the Constitution, the Criminal Procedure Code, The National Bank Act and the Banks and Savings Houses Act. After careful consideration of the examiners' suggestions, an effective and complete implementation of the proposed bill is crucial to properly develop the Macedonian approach to money laundering. Much remains to be done to ensure effective implementation of anti-money laundering measures. As yet there is a very long way to go before "the Former Yugoslav Republic of Macedonia" has an adequate legal structure in place to combat money laundering which meets the international standards, and even further to go before it can create an operational system.

## **BULGARIA**

181. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Bulgaria between 16-19 November 1999. At the time of the on-site visit the anti-money laundering regime in Bulgaria had effectively been in operation for one year.

182. Bulgaria, bordering the Black Sea, is strategically positioned between East and West. Its geographical position means that it is vulnerable to the traffic of drugs from outside Europe, and a convenient transit point for traffic in human beings. Crime, and organised crime in particular, is a growing problem. The fight against organised crime is a major national priority, as is combating corruption.

183. The Bulgarian authorities advised that the most serious money laundering problems currently involve the proceeds of drug trafficking and proceeds obtained from financial/economic crime. Bulgaria is vulnerable to money laundering at the placement, layering and integration stages. The banking sector is primarily considered to be vulnerable at the placement stage as are the exchange offices and casinos.

184. Recognising its vulnerability, Bulgaria began to engage with the money laundering issue in 1996, but the first law was never implemented. In 1997 a separate money laundering offence was established by the introduction of Article 253 of the Penal Code. In 1998 a new Law on Measures against Money Laundering (LMML) was adopted, providing a coherent framework for fighting money laundering. A specialised unit responsible for implementing the law was established, the Bureau of Financial Intelligence (BFI), which has the status of a General Directorate in the Ministry of Finance. It is an Administrative Unit responsible *inter alia* for collecting, processing, disclosing, keeping and analysing information on STRs from obligated entities. An extensive range of undertakings which are potentially vulnerable to money laundering are covered, including banks and non-banking financial institutions (bureaux de change fall within this category), insurers, investment companies and intermediaries, persons organising games of chance, notaries, stock exchanges and stockbrokers, auditors and chartered accountants. The BFI is working on a step-by-step basis (through training and the creation of discrete guidelines on suspicious transactions for those covered by the law) to ensure that those with obligations under the LMML understand their responsibilities. This process is encouraged. In due course the Bulgarian authorities may also wish to bring in other non-financial businesses not covered at present which are perceived as vulnerable to money laundering: car dealerships and others that trade in high value goods and possibly real estate agents.

185. From 01.11.98 until 01.09.99 the BFI received 132 STRs, 44% of them from banks. This had resulted, as of October 1999, in the arrest of 26 persons and the initiation of 4 trials. 613,000 US \$ and 279,000 DM and 37,000 Euro had been frozen and then seized or held and then seized.

186. On the legal side the UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) were ratified at early stages though work is still being done to incorporate all relevant provisions into Bulgarian Law. The money laundering offence in Article 253 of the Penal Code contemplates considerable terms of imprisonment and heavy fines. While the *actus reus* of the money laundering offence appears limited to financial or other transactions and would not cover all the physical elements of the offence as provided for in the Strasbourg Convention it is understood that the receiving offence provided for in Article 215(1) would be available to the prosecutor for, e.g. the simple acquisition of laundered proceeds knowing that the property was proceeds.

187. It is not a requirement that the predicate offence needs to be committed in Bulgaria (only that the offence constitutes a crime under Bulgarian Law). The Bulgarian authorities explained that, in their view, subject to judicial ruling, a person can be convicted for both the predicate offence and a money laundering offence, though amendments to clarify this point should be considered to ensure “own proceeds” laundering can be successfully prosecuted. It is also welcome that the Bulgarian authorities have adopted an “all crimes” approach to predicate offences. However the strict interpretation in some quarters of the need for a conviction for the predicate offence before proceeding for money laundering looks like a major potential obstacle to the overall effectiveness of the money laundering offences. In this regard the legal structure needs to be improved. It should be



possible to establish that a predicate offence has been committed in other ways through circumstantial or other evidence. It is helpful that the mental element of the offence of money laundering covers both knowledge and strong suspicion that proceeds have been acquired by crime, though money laundering by negligence is not covered. Serious consideration should be given to the introduction of negligent money laundering, as envisaged in the Strasbourg Convention.

188. Only physical persons are criminally liable under the Penal Code. Consideration should be given to the introduction of criminal liability of legal entities<sup>22</sup>. The Bulgarian authorities should consider the introduction of a provision for the criminalising of conspiracy to commit money laundering.

189. Turning to confiscation, the money laundering offence under Article 253 expressly provides in paragraph 4 for the confiscation of the object of the crime or its value if it no longer exists. Confiscation is ordered by the court and follows conviction. It is understood to be mandatory. With no completed money laundering conviction this provision has yet to be tested. Apart from this, there are other provisions in Articles 44, 45, 46 and 53 of the Penal Code that were pointed to. Once again these provisions require a conviction for the crime<sup>23</sup>. The Bulgarian authorities explained that in their system confiscation is a kind of punishment and that compensation is also an objective of the confiscation regime. They consider that they do not have confiscation in the sense it is provided for in the Strasbourg Convention and have decided to make separate legislative provision for this. In the absence of statistical information about the operation of the current system it was difficult to draw firm conclusions about it. While the present provisions, taken together, appear capable in theory of meeting some of the requirements of the Strasbourg Convention the examiners welcome the present review as a positive development that recognises the need for modern provisions which are geared to the confiscation of proceeds rather than confiscation being seen as an additional penalty. There are no provisions for the reversal of the burden of proof in establishing what are unlawful proceeds and subject to confiscation. The Bulgarian authorities should in their review seriously consider this issue. Equally consideration could also be given to invoking the civil standard of evidence when establishing the lawful origin of alleged proceeds. The only provisions allowing for seizure and freezing orders are the generic provisions (Articles 134, 135 and 138 of the Penal Procedure Code). Though they are said to have a wide interpretation (and have apparently been used in the ongoing money laundering cases) they appear on their face inadequate to satisfy the requirements of the Strasbourg Convention for provisional measures which would clearly preserve the position regarding proceeds which are potentially subject to confiscation orders. Consideration should be given in the planned new legislation to putting in place comprehensive provisions on provisional measures.

190. On international co-operation Bulgaria has not only ratified the most important conventions in this field and entered into bilateral agreements with some countries but is also able to assist on the basis of reciprocity without any treaties or more formal agreements. Furthermore, the BFI is legally allowed to exchange information with other countries' FIUs regardless of their nature<sup>24</sup>. However it is a serious deficiency that there is no direct possibility of enforcing foreign confiscation orders. This should be addressed urgently.

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<sup>22</sup> Since the evaluation visit it is understood that a new Chapter of the Violations and Punishments in the Administration Act has been presented to the National Assembly for adoption which provides for forfeiture, seizure and provisional measures of illegally acquired property and a special procedure for the indictment of legal persons.

<sup>23</sup> The Bulgarian authorities explained that in their opinion the confiscation provisions could be interpreted such that in cases where a person is prosecuted but a conviction cannot be obtained due to insanity, death or other circumstances confiscation of the object of the crime may still take place. This, however, is still subject to court interpretation.

<sup>24</sup> A proposed amendment to the LMML was drawn to the attention of the plenary meeting, which would hinder the BFI in obtaining information from those covered by the LMML on behalf of foreign countries in the same way as is permissible under the current legislation. Such a development, if enacted, would significantly inhibit the BFI's ability to afford international co-operation between FIUs and the plenary strongly urges that the BFI should continue to be able to assist foreign countries in this field.

191. The financial structure and the preventive system appear basically sound on paper and there is a large measure of formal compliance with FATF Recommendations. An interesting and helpful feature of the Bulgarian system is the declaration of the origin of proceeds for transactions above 30,000 Levs<sup>25</sup>, and the examiners felt this could be extended to those opening accounts and commencing business relationships. Customer identification for transactions above 30,000 Levs (including linked transactions) apply to both cash and non-cash transactions. However the Bulgarian authorities might consider whether or not 30,000 Levs is not rather high for the Bulgarian economy – particularly for the exchange offices where most day-to-day operations are likely to fall below the threshold and escape identification requirements (unless there is a suspicion of money laundering). Article 6(3) of the LMML provides for a structure of specialised units to be in place within obligated entities for the collection of information, enforcing the other preventive measures, and liaising with the BFI, and generally involving shared responsibility for internal systems. While it is positive that the BFI are developing working relationships with these units, it would assist the preventive regime if there are clearly designated compliance officers at management level, in line with FATF Recommendation 19, with ultimate responsibility for the system.

192. The BFI appears to have been the driving force in anti-money laundering supervision by virtue of the Ministry of Finance's role in the control of implementation of the law though work has also begun in this area by the BNB and the Insurance Surveillance Directorate without formal legal requirements to do so. The Bulgarian authorities should not lose sight of the need for the prudential supervisors to become, where they are not already, fully involved in anti-money laundering supervision and they should be formally tasked with that role, which could for the time being, be undertaken in co-ordination with the BFI. The work of the Insurance Surveillance Directorate in this area may provide a model for other regulators. The Bulgarian authorities should satisfy themselves that financial sanctions are strong enough to prevent breaches of the LMML and can be applied by all supervisory authorities. The BFI needs to analyse more closely, with the supervisory authorities, the reasons for non-reporting in some sectors and build closer relations with those sectors which are underreporting. The BFI needs more resources. A signal of the national commitment to fight money laundering will be the improved resourcing of the BFI to enable it to fulfil its potential. The BNB and the BFI are not in agreement as to whether the BFI's powers to require further information extend beyond the obligated entity that made the suspicious transaction report. Legal provision should be made to allow the BFI to require further information from all covered by the LMML.

193. The examiners consider that all law enforcement bodies are committed to fighting money laundering. Co-operation between the BFI and the National Service for Combating Organised Crime (NSCOC) seemed to be well developed so that the NSCOC are informed of relevant future cases at an early stage. A system is being developed, which should be built upon, of creating discrete working groups with experts from the BFI, the Ministry of the Interior, investigation and prosecution for significant money laundering cases. The NSCOC also ensure that it is a routine part of all their investigations to follow up the money laundering aspects. The extent of the use of available special investigative techniques in money laundering investigations was, however, unclear and the Bulgarian authorities should examine whether full benefit is being made of them in relevant cases or whether a more proactive approach to their use would benefit the anti-money laundering effort. The examiners also consider that an increased level of interaction between the BFI and the Customs Authorities would benefit the system.

194. While co-ordination at the working level appears to be in place a high level co-ordination group, chaired at a suitably senior level and drawn from the relevant parts of the anti-money laundering system, with the capacity and authority periodically to review objectively how the system as a whole is working would benefit the system.

195. In this way the Bulgarian authorities should take stock of existing arrangements in order to

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<sup>25</sup> The Lev is pegged to the DM.

develop the practical operation of the basically sound anti-money laundering system which has been formally put in place.

### ESTONIA

196. A PC-R-EV team of evaluators, accompanied by colleagues from the Financial Action Task Force (FATF), visited Tallinn between 18-21 January 2000.

197. The Republic of Estonia is bordered to the east by the Russian Federation and to the south by Latvia. Its extensive Russian border and regular import of Russian currency makes it vulnerable to cash smuggling and money laundering. Its proximity to Russia and Scandinavia also makes it a transit country and vulnerable to trafficking of drugs.

198. Crime is increasing in Estonia: In 1999 there was an 11% rise, mostly in crimes against property and drugs offences. Organised crime groups are known to operate in Estonia and include persons of various national origins, including Russians, Chechens and Azerbaijanians. These groups are thought to be involved in drug trafficking, theft, robbery, prostitution and traffic in contraband. Organised crime groups are also thought to be involved in money laundering – which is considered principally to be an external threat. The banking sector is currently thought to be the most frequent money laundering target at the placement stage. However the Estonian authorities recognise the real vulnerability to cash money laundering of the 160 bureaux de change (all of which are unsupervised) and of the 130 casinos.

199. The main focus of Estonian anti-money laundering policy is currently one based on prevention. To this end the Money Laundering Prevention Act (MLPA) and necessary amendments to the Criminal Code and Administrative Offences Act entered into force on 01.07.99. Therefore the MLPA had only been in force for six months at the time of the on-site visit. Developments in the six months before the visit included: the creation of a small FIU, the introduction of reporting obligations to the FIU and the creation of specific offences relating to money laundering. At the time of the on-site visit the Estonian authorities were conscious of many of the deficiencies of the existing law and plans were in place to remedy several of them.

200. Estonia signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) on 25.06.99, and the draft law to ratify the Strasbourg Convention was being debated in the Parliament during the on-site visit<sup>26</sup>. Similarly amendments were being made to the Criminal Code and Code of Criminal Procedure at the time of the on-site visit<sup>27</sup>. Estonia has not ratified the 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention)<sup>28</sup>.

201. The definition of money laundering is provided in Section 2 of the MLPA as “the conversion or transfer of, or the performance of legal acts with property acquired as a direct result of an act punishable pursuant to the criminal procedure, the purpose or consequence of which is the concealment of the actual owner or the illicit origin of the property”. Money laundering is penalised by virtue of Article 148<sup>15</sup> with basic penalties of up to 4 years imprisonment and up to either 7 or 10 years, where there are aggravating features. The offence has the merit of not being tied to any particular predicate crime, and it is helpful that convictions for the predicate offence do not appear to be required. However it is necessary for the Estonian authorities to agree a common approach to the level of proof required for the underlying criminality. Though it is not expressly stated in the law, the

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<sup>26</sup> The evaluators have since been advised that this was adopted on 08.03.2000 and will enter into force on 01.09.2000.

<sup>27</sup> A number of these were brought into force on 17.04.2000.

<sup>28</sup> The evaluators have been advised that since the on-site visit an act on the accession to the Vienna Convention was adopted by the Estonian Parliament on 31.05.2000.

Estonian authorities thought that they could exercise jurisdiction for money laundering where the predicate offence is committed abroad (and that it could also be proved by circumstantial evidence). That said, the examiners consider that the present definition of money laundering is too restrictive and needs widening both for the pursuit of domestic prosecutions and for international co-operation purposes. An amendment which clearly encompasses all the language of the existing international conventions on the physical aspects of the offence would be highly beneficial. "Own proceeds" laundering is not covered and it is recommended that provision is made for this. Consideration should also be given to Article 18 of the Criminal Code to ensure it is not an obstacle to money laundering prosecutions. The mental element of the offence needs revisiting – particularly consideration should be given to the introduction of the concept of negligent money laundering, as envisaged by the Strasbourg Convention.

202. The active consideration of corporate criminal liability in the money laundering context (and generally) is encouraged.

203. The Estonian authorities pointed to Article 33 of the Criminal Code as the relevant general provision currently dealing with confiscation. The confiscation system is based on a criminal conviction and does not allow for civil forfeiture. The current regime is too restrictive. It is property based and no parts of it, at the time of the on-site visit, were value based. It is, and is planned to remain, basically a discretionary system. The list of offences for which confiscation is possible is, at present, very limited. A domestic confiscation regime which, unlike the present position, ensures that both direct and indirect proceeds (as widely defined in the Strasbourg Convention) are potentially confiscatable should be put in place. The regime should increase the mandatory element and be available in a wider range of offences and be incapable of frustration by transfer to third parties including family members. Provision should be made for value confiscation<sup>29</sup>. The Estonian authorities should also seriously consider introducing appropriate provisions reversing the onus of proof so the prosecution would not have the burden of proving which property is the proceeds of the offence. Consideration could be given also to invoking the civil standard of evidence when establishing the lawful origin of alleged proceeds. The current provisional measures regime is not really geared towards preserving assets likely to be confiscated as proceeds of crime. An ability to take such provisional measures domestically and on behalf of foreign states, and to be able to provide a wide range of investigative assistance, is necessary.

204. On international co-operation, the Estonian inability to provide judicial legal assistance to enforce foreign confiscation judgements of any type<sup>30</sup> and the inability to take provisional measures including the freezing of accounts are serious deficiencies which need urgent attention. It is vital that Estonia proceeds swiftly with the ratification of the Strasbourg<sup>31</sup> and Vienna Conventions. It is however very positive that the FIU can exchange intelligence information with all other types of FIU and their application to join the Egmont Group is encouraged<sup>32</sup>.

205. On the financial side formal laws and Regulations are generally in place.

206. According to Article 15 of the MLPA it is compulsory for credit and financial institutions and all non-financial entities subject to the MLPA where they identify a situation which might indicate money laundering to notify the FIU promptly and inform them of all suspicious and unusual transactions.

207. It is positive that a large number of institutions have been considered for the purposes of

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<sup>29</sup> In the amendments referred to at footnote 2 the evaluators have been advised that provision has been made for value confiscation.

<sup>30</sup> The examiners have been advised that the Criminal Code and Code of Criminal Procedure Amendment Act which entered into force on 17.4.2000 now makes enforcement of foreign judgements possible.

<sup>31</sup> See Footnote 26.

<sup>32</sup> The Estonian FIU has been admitted to the Egmont Group.

anti-money laundering obligations. That said, the legal formula for deciding whether an undertaking has obligations under the Act is complex and gives rise to considerable ambiguity. It would assist the anti-money laundering regime and aid clarity if the formula for deciding which financial institutions, and particularly non-financial undertakings, are caught by the act is reconsidered. Casinos should have clear anti-money laundering obligations on them and a clear supervisory body with responsibility for anti-money laundering compliance inspection.

208. The bureaux de change and the credit unions also need an active supervisory authority. Both these areas are dangerously unprotected at present. The Central Bank should start thorough anti-money laundering compliance inspection quickly. All the supervisory authorities need to be familiar with the level of STR reporting in their sectors and ensure that internal anti-money laundering procedures are in place including compliance officers as envisaged by FATF Recommendation 19, and that anti-money laundering training is taking place in the supervised undertakings. Central guidance notes need drawing up for all relevant sectors by the supervisory authorities, co-ordinated as necessary by the FIU, which include warning signs and indicators of money laundering in the different sectors (based on local experience).

209. The obligation to determine the identity of parties on the basis of reliable documents when establishing business relations and performing large transactions, in accordance with FATF Recommendation 10, appears largely to be met so far as credit institutions are concerned. Customer identification when establishing business relations needs addressing, however, where financial institutions are not covered by the Central Bank's Decree N°20. The MLPA places clear obligations on credit and financial institutions, where they suspect a person is acting on behalf of third parties, to obtain information as to the real identity of the person involved, but more guidance is required on how this can be achieved in practice.

210. The number of STR disclosures was modest at the time of the on-site visit (22 and only from banks – and mostly from one bank). The FIU, together with the supervisory authorities, need to monitor the spread of reporting and make contact where there is apparent underreporting. The FIU's step-by-step outreach strategy is welcomed by the evaluators. They need adequately resourcing for this work. Arrangements should be also made for appropriate feedback on a regular basis to the financial sector.

211. At the time of the on-site visit 3 cases had been passed to the police by the FIU and investigation work was ongoing. No one had been charged with money laundering. The law enforcement authorities should also consider the merits of a more proactive law enforcement policy which looks for a money laundering nexus as a natural progression of any serious crime to ensure that money laundering investigations do not depend on the STR system alone.

212. The Customs authorities should become more actively engaged with anti-money laundering issues.

213. The Ministry of Internal Affairs has the major co-ordinating role. The examiners consider there is merit in developing a permanent co-ordination body, chaired at a suitably senior level, with the capacity and authority to ensure that necessary changes, where identified, take place and which periodically can review objectively how the system as a whole is operating in practice.

214. By addressing the issues highlighted by the examiners, Estonia should be able to move from the present position, where formal measures are in place in some areas, to a position where it can develop a fully operational system which better meets all the relevant international standards in all areas.

# ANNEX C

## Record and Conclusions of the Third FATF Forum with Representatives of the Financial Services Industry

4 February 2000

### Introduction

1. The FATF and its members have always recognised the importance of maintaining regular and close contacts with the financial services industry. The private sector has a vital role to play in effectively implementing the anti-money laundering laws and regulations which are in place in different countries. Therefore, the FATF has previously organised fora with the industry in 1996 and 1998. Discussions took place on areas of common interest, such as the issue of feedback, the nature of the money laundering threat and the implications of new technologies, so as to seek ways to better develop measures to detect and prevent money laundering.

2. On 4 February 2000, the third FATF Forum with the financial services industry was attended by more than 120 representatives from FATF member governments, observer international organisations, national banking, financial and accounting associations as well as individual banks or accounting firms from FATF countries. In addition, there was attendance by delegates from organisations which represent the international financial services industry - European Banking Federation, European Insurance Committee, European Savings Banks Group, European Federation of Accountants, Federation of European Stock Exchanges, International Banking Security Association and the International Federation of Accountants. Companies dealing with wire transfers of funds, such as the Society for Worldwide Interbank Financial Telecommunication (SWIFT) and Western Union also attended.

3. Four topics were selected for detailed presentations and discussion at the Forum: current money laundering trends, feedback to reporting institutions, the role of the accounting profession in identifying and discouraging money laundering, and the issues raised by the wire transfers of funds. Some of these topics had not been previously discussed in FATF fora, while others sought to follow up on developments that had occurred since the previous meetings.

4. The meeting was opened and chaired by Mr. Gil Galvão, President of the FATF, who described the current priorities of the FATF, namely:

- to spread of the anti-money laundering message to all parts of the globe and the creation of a world-wide anti-money laundering network based on an adequate enlargement of the FATF, the fostering of FATF-style regional groups, and close co-operation with international organisations and bodies.
- seeking to further improve the efficiency and effectiveness of the measures in place in member jurisdictions.
- continuing to study the changes in money laundering techniques and trends.
- working to reinforce co-operation with the private sector; and
- moving forward the FATF work on non-cooperative countries and territories.

### **I. Money laundering trends**

5. The session began with a presentation by FinCEN (Financial Crimes Enforcement Network), United States, on behalf of the Chairman of the FATF-XI Experts Group on Typologies. The FinCEN representative highlighted the most important aspects of the FATF Typologies Report for

1999-2000, as well as the purpose of the FATF typologies work. The main issues covered during this year's exercise included:

- the vulnerabilities of Internet banking;
- the increasing reach of alternative remittance systems;
- the role of company formation agents and their services;
- international trade-related activities as a cover for money laundering; and
- specific money laundering trends in various regions of the world.

6. The Federation of European Stock Exchanges suggested that it would be very helpful for the private sector if the FATF Typologies Report were distributed in advance of the Forum, and it was agreed that, despite the timing difficulties, consideration would be given as to how the relevant associations and institutions could receive adequate time to consider the report.

7. This was followed by an address from a representative of the European Insurance Committee, who has held a position as a member of a working group on money laundering indicators in the Netherlands. It was noted that there had been very few reports of suspicious transactions from the insurance sector in the Netherlands, and that the industry needed the assistance and co-operation of government agencies in order to develop a more comprehensive typology on how the insurance industry could be misused by money launderers. He observed that countries need a vehicle through which this co-operation can take place. In order to further this work, the European Insurance Committee Secretariat will be sending a questionnaire to its members during the coming year to try to obtain a better understanding of the problem. The Netherlands, the United Kingdom and the Secretariat were able to provide some examples of money laundering in the insurance industry, both in the life and non-life sectors.

8. The Forum considered the paper from the Australian Banking Association (ABA), dealing with the approach taken in Australia to customer identification, (the AUSTRAC 100 point system of identification checks), the technologies that are being used and developed to try to prevent counterfeiting of identity documents, and the need for a global approach to the issue. The Netherlands described the "VIS" system, which is used in their country -- a national database of forged and missing identification documents which is the result of co-operation between the police and the private sector. The Chairman noted the benefits obtained from this system. Other delegations pointed out that usually when accounts are opened, but identification checks are not made immediately, the operation of the account is suspended until identification is confirmed.

9. The Secretary-General of the Federation of European Stock Exchanges (FESE), invited for the first time to an FATF Forum, explained that their membership covered 21 recognised stock exchanges not only in the European Union but also in Switzerland and Eastern Europe. The FESE exchanges have already concluded a Memorandum of Understanding which specifically applies for the cross-border exchange of information. The FESCO (Forum of European Securities Commissions) has also set up similar exchange of information mechanisms. Reacting to the section of the typologies report on on-line banking, the FESE representative stressed the fact that all the European markets are fully electronic and the impact of this on the audit trail. He also said that very few cases of money laundering have been discovered in the securities sector.

10. The Chairman noted that customer identification is the responsibility of the financial intermediaries, not of the stock exchanges, and that it was necessary to ensure customer identification in on-line transactions with regard to typologies in this sector. He also mentioned the possibility of money laundering operations through the derivative markets.

11. Finally, the issue of new payment technologies was also raised by the Belgian Banking Association which insists on the security provided by those systems (e.g. electronic signature), and

expressed concerns about the need for face-to-face contact when identity checks required in other countries are reliable.

## **II. Feedback to Reporting Institutions**

12. The session dealing with feedback commenced with presentations by four FATF countries: Australia, Belgium, the Netherlands and Norway. The speakers each described the reporting systems that exist in their countries and the principal methods by which they provide feedback to reporting institutions.

13. In Australia, the reporting system extends beyond suspicious transactions reports (STRs) to also cover large cash transactions and all international wire transfers. Approximately 6500 STRs are received each year and these are stored on a database, with more than 26 government agencies being authorised to access that database. The difficulty for the Australian FIU (Financial Intelligence Unit) is therefore to obtain feedback from those agencies as to what they do with the reports and, though this occurs on a regular basis, both formally and informally, feedback is not necessarily available on every report. Information is passed on to reporting institutions through an annual report and quarterly newsletters, as well as case specific feedback.

14. Belgium receives more than 8000 STRs each year, and the Belgian FIU has a comprehensive system set up for receiving feedback from the judicial bodies which investigate and prosecute cases based on the STR. The main method of feedback is through a detailed annual report, which contains a breakdown of data on, for example, the number of STRs, reports by sector or institution, the types of transactions involved, the monetary value of such reports and files, and the geographic areas from which cases have been referred. Every three months, information is also available on cases which are filed. Recently, more judicial information was made available, including verdicts of not guilty.

15. The Netherlands has a system of reporting unusual transactions, based on a list of objective and subjective indicators (of unusual activity). The reports are sent to the FIU, which further analyses them before sending on to law enforcement those reports that are not just unusual but also suspicious. The FIU publishes an annual report on the unusual transactions reports and the suspicious transactions, which shows figures of the different types of transactions that have been reported and describes trends, and a quarterly newsletter is also published with examples of sanitised cases. The FIU also produces different booklets for each of the sector of financial institutions (banks, bureaux de change, etc.). Feedback is also provided by means of visits from the FIU to the private sector.

16. Norway also described its suspicious transaction reporting system, and the feedback it provided. General feedback is mainly provided through an annual report, which contains statistical information about the number of disclosures received, together with appropriate breakdowns. Specific feedback is provided by an acknowledgement of receipt; then every six months a report is sent to each reporting institution regarding the current status of all cases which the institution has reported, and finally transcripts of legal decisions are provided.

17. The European Savings Bank Group (ESBG) informed the Forum that they had produced a study on money laundering of which a significant part deals with the issue of feedback. The ESBG requested regular and mandatory feedback. The same request was made at the European Union level. Furthermore, feedback should be provided to all professions and competent persons. The ESBG representative expressed her satisfaction with the Forum, which provides a platform for further dialogue.

18. The European Banking Federation (EBF) indicated its satisfaction with the 1998 FATF Best Practices Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons. However, the EBF advocated adequate procedures of feedback which could improve the quality of suspicious transactions reports and therefore lead to better results in the fight against money laundering. The minimum requirements in terms of feedback should be: the production of an annual



report containing relevant statistics on STRs (number, breakdown by sector, etc.), making available copies of judgements, the publication of leaflets and the organisation of seminars and national FATF-style fora. However, the requirements should also include the provision of specific information on specific cases, i.e., the current status of the reported case. The EBF representative assessed the presentations made by FATF members as encouraging, but said that the situation was not as good everywhere and there was some room for improvement.

19. The Chairman indicated that FATF will endeavour to spread its 1998 Best Practices Guidelines. Subsequently, a debate was launched by the Federation of European Stock Exchanges on the experience of FATF members when the money laundering cases get into the Courts, which was concluded by the need for improving the training of magistrates and investigative authorities in the area of financial crimes.

### **III. How the accounting profession can assist in identifying and discouraging money laundering**

20. The International Federation of Accountants (IFAC) emphasised the importance for financial institutions of an internal control framework. Businesses have three control objectives - financial reporting, operations, and compliance. When determining if these objectives are met one must examine five money laundering control elements:

- the control environment – this reflects the tone of the institution in combating money laundering.
- risk assessment – assessing money laundering risk is based on four main categories of risk: compliance, operational, reputational and strategic.
- control activities – describe the policies, procedures and mechanisms in place to prevent money laundering.
- information and communication – timely, accurate, and meaningful information requires clear, open channels of communication.
- monitoring – this can be either continuous monitoring of normal operations or separate evaluations by management (compliance monitoring, internal or external audit) to test the effectiveness of controls.

21. The European Federation of Accountants (EFA) stressed the importance of combating financial crimes for the accounting profession, and noted how auditors had had some reporting obligations since 1995. In its 1995 publication on the role, position and the liability of the statutory auditor in the European Union, the FEE has already set out the professions' position regarding reporting on illegal acts. However these mostly related to fraud, and required the auditor to report suspected illegality to the management of the company concerned. The Federation had already committed itself in 1999, along with other European professional organisations, to a Charter which required members to adopt Codes of Conduct which would help prevent professionals being involved in organised crime. Intrinsic to the Charter is the recognition of the need to improve mechanisms that will properly monitor compliance.

22. The Federation lastly raised the issue of the proposed amendments to the EC Money Laundering Directive and the proposal to include external accountants and auditors within the scope of the Directive. Concern was expressed by some accounting representatives that, as a profession, accountants should not report in the same way as financial institutions, but should be in the same position as lawyers and notaries since those professions are in direct competition for a large area of their services. This resulted in a useful discussion of the proposed contents of the amendments to the Directive, and a debate on the different concerns that are held by accountants regarding an obligation to report suspicious transactions to the FIU.

23. The German Association of Statutory Auditors stressed the difficulties for auditors of discovering money laundering when conducting their normal statutory audits. The auditor in Germany is obliged by law to observe secrecy regarding information received from the client and in relation to the client's files, and he can only seek to persuade the client not to engage in the type of activity proposed. An auditor is not permitted to report to the authorities. Thus the German auditing profession would support the proposal of the Federation to treat accountants in the same way as lawyers and other legal professionals.

24. The three interventions generated a discussion of various issues, such as to whom the accounting professions should report, the scope of the reporting obligations (the nature of the underlying criminal activity), the scope of the proposals concerning accountants in the EC Directive, and the need to make the profession aware of its duties.

25. The Chairman concluded that the issue of how the accounting profession can assist in identifying and discouraging money laundering should be revisited in the future, probably at the next FATF Forum with the financial services industry.

#### **IV. Issues raised by wire transfers of funds**

26. The FATF has for a long time worked with the Society for Worldwide Interbank Financial Telecommunication (SWIFT) on measures which would help to prevent wire transfers being misused by money launderers. SWIFT has 7,000 member institutions, which process five million messages totalling US\$ 5-6 trillion each day. SWIFT described the steps taken to improve the customer identification fields for the MT 100 form, which is still currently used for customer credit transfers. SWIFT advised that as from November 2000, the MT 100 form will be deleted and replaced by the MT 103, and that this form has an optional field for details of the account number, name and address of both the ordering and beneficiary customers. These identification details should normally be provided through some form of official documentation. The Forum then discussed the possibilities for encouraging financial institutions, particularly banks, to ensure that the optional identification field was filled out by customers (e.g. issuing another advisory on the importance of the information which could be included).

27. Western Union, participating for the first time in an FATF Forum, described their anti-money laundering and suspicious activity report systems (SARs). Western Union has developed compliance programmes -- which include interviews with customers requesting large value transactions -- and voluntary co-operation with law enforcement agencies which are aimed at preventing and detecting money laundering operations. Western Union works with the United States Treasury Department to develop regulations concerning SARs. The issues of significant interest to Western Union were typologies and feedback.

28. The United States delegation provided participants with a summary of the results of a recent survey carried out within the G-10 of the obligations in national legislation to identify the originator of a funds transfer, the information sought the institutions to which the obligation applied, etc. The survey showed a significant disparity between countries, with approximately 50% having some form of obligation to identify the originator of the transfer, while the remainder did not. Several countries which did not have such a system perceived legal and operational difficulties with imposing that obligation.

29. A presentation was given by the Italian Banking Association on the current initiatives to make cross border transfer and payment system more efficient and effective. These initiatives have the objective of reducing manual intervention in transfers. One proposal is the introduction of an International Bank Account Number (IBAN), which will provide identification of individual bank accounts at an international level. In addition, the use of the Business Entity Identifier (BEI) will allow identification of non-bank financial institutions in the same way that banks are currently identified. The important issue for authorities is the ability to identify the ordering customers, and

also the ordering institutions. For these reasons, full completion of Fields 52 and 59 of the SWIFT form is desirable.

### **Conclusions**

30. The FATF President reiterated the importance of co-operation and the exchange of views between FATF members and the financial services industry. In fact, all of FATF's work is based on co-operation (among governments, law enforcement authorities and financial institutions). Co-operation in the combat of money laundering should be global, not only geographically but also professionally.

31. The typologies exercise should continue to be a means for training and educating bank employees. It was therefore important to ensure regular dissemination of the FATF's reports on typologies to the financial services industry.

32. It was clear that the provision of feedback to reporting institutions has improved since the last Forum. However, FATF members should increase their efforts to implement the 1998 Best Practices Guidelines.

33. The first encounter between FATF and the accounting professions led to a stimulating dialogue which allowed for better understanding of how the accountants can assist in identifying and discouraging money laundering.

34. The discussion on the issues raised by wire transfers of funds also showed the sense of co-operation of the industry and how it reacts to the money laundering threats.

35. In general, this kind of event with the financial services industry should be pursued and take place more often than every two years. Future fora could also involve institutions from other parts of the world. This continuing dialogue could focus on customer identification in the case of no face-to-face contact, feedback -- which is a permanent item -- and a further discussion of the accounting issues.