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Johannes Dumbacher*

The Fight Against Money Laundering

During the past few years a new consciousness has emerged with regard to the question of money laundering, and new laws and mechanisms to combat it have been developed. The Financial Action Task Force on Money Laundering was established at the 15th World Economic Summit in Paris in July 1989. What activities have been developed so far by this and other international initiatives? What further steps must be taken?

Since the 1980s we have been hearing and reading about money laundering with increasing regularity. Initially it was (exclusively) to do with the profits made from the sale of addictive drugs. However, as times have changed the authorities are tending increasingly to tackle money laundering as such – whether profits originate from drug sales, from “other lucrative forms of serious crime”¹ or from organised crime² is irrelevant.³

Money laundering is understood to mean any procedures and techniques used to veil the illegal origin of assets or money such that the impression is made that they were acquired legally or are of legal origin.

The first phase of money laundering involves sums of cash (many low-denomination banknotes, often a variety of currencies) which are deposited in the financial system or exchanged for value items (luxury goods, securities assets etc.) This exchange is the most conspicuous and therefore the weakest link in a chain of complex money laundering transactions, whose end is marked by apparently legal assets.

The sums of money moved and the profits made in money laundering are considerable, although estimates can only ever be described as being very vague. In the following, a number of estimates are given as an indication of the sums involved. The United Nations puts worldwide narcotic drug sales alone at approximately US\$ 500 billion p.a.;⁴ according to US sources, between US\$ 100 and US\$ 200 billion of drug money⁵ is laundered in the USA. In Italy, almost US\$ 25 billion are made from

illegal sources every year⁶ according to estimates made by the Italian Central Institute for Statistics in 1990 (1991 and 1992 data confirm this magnitude). UN estimates have revealed that organised criminal groups worldwide make an annual profit of approximately US\$ 1,000 billion. It is furthermore assumed that US\$ 1 billion of criminal profits find their way into the world's financial markets every day.⁷

According to estimates made by US government experts at the end of 1993, non-drug proceeds may account for a third or even as much as one half of the total illegal money which is smuggled into or through the US financial system. In Europe and, it is assumed, in Asia, drug sale proceeds probably account for three

¹ Trafficking in human beings, blackmail, arms trade, etc.

² Organised crime is defined as follows: Planned criminal acts committed for the purpose of gaining profit or power which are, individually or collectively, of a significant size; where two or more people involved collaborate for a long or indefinite period using commercial structures or structures similar to those of commercial companies, using force or other appropriate means of intimidation, or by exerting influence on politics, the media, public administrations, the judiciary or the economy. Of interest in this context is the example “mafia” in M. Pieth and O. Freiburghaus: Die Bedeutung des organisierten Verbrechens in der Schweiz; Bericht im Auftrag des Bundesamtes für Justiz, October 1993. Classic operational areas for organised crime include: drug trafficking, money laundering, corruption, fraud, blackmail, arms trafficking, trafficking in human beings including human organs, vehicle theft, criminal waste disposal.

³ There is also a practical reason for this, since in cases of suspected money laundering and subsequent enquiries the “source of wealth” and/or the money's origins can often only be discovered, let alone proven, at a very late stage. Bank personnel should also be protected from any degree of liability if they report a suspicious transaction to the relevant authorities in good faith.

⁴ As early as 1987, the UN estimated worldwide drug sales to have reached more than US\$ 300 billion. According to US estimates global drug sales could amount to US\$ 800 billion. Cf. The Banker, London, April 1990, p. 8. Fundamentally sceptical towards these estimates i.a.: P. C. van Duyne: Geldwäscherei, Umfangschätzung in Nebelschwaden, Den Haag 1993.

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quarters of all money laundered. However, more detailed studies could reveal the non-drug share of laundered money to be larger than hitherto assumed. This would call into question the approach adopted by countries which have criminalised the laundering of drug money only.

US experts see three reasons for the expansion of non-drug money laundering:

- ☐ Increases in other forms of crime have led to corresponding increases in proceeds.
- ☐ All criminals make use of the same money laundering systems and/or the same (drug money laundering) experts.
- ☐ Professional money launderers mix funds from a wide range of criminal activities by means of frequent transactions (e.g. electronic funds transfer) and/or via shell companies or similar.⁸

The Target: Criminal Wealth

Since attempts to fight the narcotics problem by reducing supply,⁹ e.g. by destroying drug cultivation, have not yielded the desired success, the authorities – with the USA leading the way – have switched their attention to the financial side of the phenomenon. Motives include the following:

- ☐ By confiscating assets, activities of this kind lose their attraction for criminals; the risk or rather the cost factor is increased.
- ☐ By tracing criminal proceeds, it could also be possible to track down the powerful figures behind the crimes.

⁸ A tonne of cocaine is worth between US\$ 100 million and US\$ 200 million when sold on the streets. The amount seized in the USA in 1993 (almost 108 t) would have had a street value of between US\$ 10 billion and US\$ 20 billion. Problems for the transport of illegal money: US\$ 1 billion in US\$ 100 notes weighs approximately 10 t.

⁹ Around half of this total is accredited to organised crime; cf. E. U. Savona and M. A. Defeo: Money Trails: International Money Laundering, Trends and Prevention/Control Policies; Report Prepared for the International Conference on Preventing and Controlling Money Laundering and the Use of the Proceeds of Crime: a Global Approach, Courmayeur, Italy, 18-20 June 1994.

⁷ This was announced by the head of the Crime Prevention and Criminal Justice Branch, Eduardo Vetere, at the opening sitting of the European Regional Preparatory Meeting for the 9th UN Congress on Crime Prevention and the Treatment of Offenders (1995) on 28.2.1994 in Vienna. According to Vetere, an integrated approach to the control of organised crime is therefore his department's most pressing aim, and for this reason close cooperation is maintained with the UNDCP; money laundering is the "life blood of organised crime"; in: UNO-Woche, Vol. 10, No. 4, 23. February 1994, p. 5.

☐ The spread of drug addiction does not only have a tragic human side. The vast assets gained from drug sales and other illegal sources, as well as the negative publicity for a banking sector which is associated with criminal elements, can impair the stability of the financial sector.¹⁰

☐ One of the main dangers of international drug trafficking lies in the sheer unlimited opportunities for corrupting legitimate political institutions, since exceptional profit margins mean almost any sums of money are available. In this way, public confidence in the government's capability to maintain law and order can also be undermined.

Methods and Institutions Involved

It has to be assumed that money laundering takes place practically everywhere in the world – it is not just restricted to major financial or offshore centres. As a consequence of modern technologies, in particular electronic funds transfer, and the nature of the international financial system, every country which is integrated into this system is exposed to risk. When it comes to laundering the vast sums of money involved, criminals – whether they are drug dealers

⁸ *Shell companies*: General term for a variety of different legal entities; refers in some FATF countries to registered companies (institutions, limited companies, foundations, funds, etc.); although registered they do not carry out extensive business in the country of registration and often hold very few assets there. The term is also used for merely pro forma companies (also known as shelf companies). *Ghost companies*: These are completely fictitious and exist in name only, e.g. on consignment notes. *Front companies*: Are legally registered as companies and carry out, or at least purport to carry out, ordinary commercial business. The normal business activity, however, serves primarily as a pretext for money laundering. In some countries, professional secrecy regulations offer additional protection for beneficial owners (i.e. the actual company owners); trustees or similar often act as company owners.

⁹ In its 1993 annual report, the INCB (International Narcotics Control Board) emphasises the significance of the fight against money laundering. Reducing demand is described as the most important issue, whereby all socio-economic and cultural aspects are taken into consideration. For it would be highly equivocal to speak of successful demand reduction programmes if consumers merely switched from internationally controlled narcotic drugs to alcohol, organic solvents and other harmful but legal substances.

¹⁰ However, companies are also threatened and must be protected. The exceptional profit margins of illegal activities – in the case of narcotics it must be assumed that at least 50% to 80% of proceeds are pure profit – form a competitive advantage in the form of cheap illegal capital which enables criminals who operate (apparently) legal businesses (e.g. import/export companies, transport firms, etc.) to undercut legitimate traders' prices whose profit margins are assumed by US experts to be no more than 10%. Such competition, of course, cannot be withstood for very long; in many cases insolvent companies are then bought up inconspicuously by criminals who continue to do business under the company name, and not even the bank need necessarily notice anything. The "purchasers" have then not only acquired an additional source of income, but also another "laundry".

and/or groups involved in organised crime – increasingly contract the services of highly qualified experts; their methods are becoming ever more sophisticated, that is to say complex. The transactions take place in an ever growing chain of countries or territories.¹¹

In the banking sector, measures aimed at tackling money laundering have already been introduced in many countries. Money launderers now switch to countries where such regulations are less rigorous or non-existent, where supervisory authorities are weak and banking and professional secrecy laws are strict (e.g. countries in transition from a planned to a market economy, offshore centres) as well as to institutions such as NBFIs¹² or NFIs¹³ in general which are less stringently controlled; they also often use the “underground banking system”.¹⁴

Money laundering can be divided into three stages:

□ *Placement stage*: Cash from illegal activities is, for example, deposited in bank accounts or used to purchase securities, luxury goods, and real estate. Once this stage is completed proceeds no longer exist in the form of cash.¹⁵

□ *Layering stage*: The connection between illegal funds and their criminal origins is blurred, in many cases by means of a multitude of transactions, combined at will and applied repeatedly one after the other, e.g. electronic funds transfer,¹⁶ sale of assets and conversion into other securities.¹⁷

□ *Integration stage*: The accumulated assets are given a legal “touch”, e.g. by false credit repayments, sale or purchase of real estate, fictional or forged import/export invoices and company acquisitions.¹⁸

Problems

Professional criminals operate on an international basis – not only because larger markets and economies of scale help to maximise profits, but also because the risks involved as far as their activities and wealth are concerned can be reduced by exploiting the problems of communication and cooperation which exist between authorities and between countries. In this respect, national borders prove to be an incentive rather than an obstacle as far as money launderers are concerned. This is why an increasing number of individual criminals and criminal groups carry out their trade in illegal goods and services in global markets as well as becoming involved in international money laundering. They can select the “weakest link in the chain”, i.e. the country or territory with the weakest regulations, where banking and professional secrecy is most stringent and where bank supervision is least effective or even non-existent, and where the jurisdiction shows no interest in (international) cooperation and allows criminal capital to enter its financial system, thus providing criminals access to global financial systems. This unfair competition created by countries which attract illegal funds through weak laws and/or their lax implementation – at the cost of countries with stringent regulations – underlines the necessity of a global approach to fighting money laundering.

¹¹ According to US estimates, Rodriguez Gacha of the Medellin cartel laundered around US\$ 130 million using 82 accounts in 16 countries.

¹² NBFIs = Non-bank financial institutions, e.g. bureaux de change which are largely unregulated as financial institutions in many countries and which are not subject to the same sort of supervision as banks; brokers; in the case of insurance companies life assurance, in particular single-premium policies, are considered susceptible to money laundering.

¹³ NFIs = Non-financial institutions: companies which do not belong to the financial sector, e.g. antique dealers, car, coin, gold, jewellery dealers, import/export companies, hotels and restaurants, construction firms, travel agents; these institutions provide above all the opportunity to mix illegal with legal income (commingling).

¹⁴ The term “underground banking system” refers to an unofficial (or parallel) banking system; it originally served to avoid foreign exchange controls and works on the basis of trust, relatively anonymously, without any particular business records. Money (also gold) is “transferred” to another country without any “paper trail” as follows: a claim acquired in one country using criminal proceeds (e.g. at an underground bank) is honoured in another country on presentation of a certain proof of claim (e.g. part of a playing card). In many cases, this system is said to function internationally better and cheaper than the services offered by the mainstream banking. As regulation of the financial services sector increases there is also a danger of growing use of informal banking systems (e.g. Hawala or Hundi system).

¹⁵ Nowadays, the main focus of measures aimed at tracking down illegal (drugs) funds is placed on attempts to channel funds into circulation or into the financial system – i.e. the first stage. Businesses or institutions, apart from banks, which run a particularly high risk of becoming involved in the first stage of money laundering include: bureaux de change, money transmitters, casinos, lotteries, other games of chance, dealers of precious metals and stones, auctioneers, real estate agents, car and boat dealers, tax consultants, lawyers and travel agents. Money laundering can be made more complicated by curbing cash payments (above a certain amount).

¹⁶ The trail is often lost if the sums of money are simply paid into several domestic bank accounts before being brought together again at a later stage; international transactions take place thereafter. It has been demonstrated that a bank can send a sum of money through 72 countries in just one working day using modern communications – this makes stringent rules for tracking down transactions in electronic payment systems absolutely essential.

¹⁷ Securities appeal to money launderers because they can transform any form of assets (not just cash) into a variety of other assets in any number of transactions – i.e. the funds are extremely liquid; there is of course great demand for bearer bonds in this context.

¹⁸ The increasing infiltration of legitimate businesses including the financial services sector by illegal wealth is currently regarded as a particularly serious threat to our economic and social system.

For this reason, international as well as national defence and control mechanisms have been developed in order to at least increase the risk and cost of criminal activities. There are, however, a number of problems when it comes to creating a global strategy to combat money laundering:

- ☐ tax havens which not only offer the same degree of confidentiality as found in normal business transactions, but also explicitly invite tax evasion and money laundering;
- ☐ the competition faced by strictly regulated institutions from those in areas with less stringent regulations, e.g. offshore centres;
- ☐ the transition from centrally planned economies to market economies with all its uncertainties (privatisation with weak controls as far as the origin of investment capital is concerned, uncontrolled business practices, and the lack of state authority in general).

Political initiatives based on the following key points would be necessary in order to at least prevent a further spread of money laundering and its related dangers:

- ☐ Crime's global dimension can only be – effectively – answered globally; since the mobility of payments and capital flows has increased considerably with the elimination of foreign exchange restrictions and the increasing integration of the world's financial markets, adequate countermeasures can only be successful if there is multilateral cooperation¹⁹ between the regulatory and the law enforcement authorities.
- ☐ As money launderers are becoming increasingly professional, only an international exchange of intelligence and know-how on the part of these authorities is likely to lead to success.
- ☐ If as many countries as possible are included in joint efforts to combat money laundering there will be fewer opportunities for money launderers to switch to areas with less stringent regulations.²⁰

Central and Eastern Europe: a Problem Area

The widespread legal uncertainties in Central and Eastern Europe are without doubt a breeding-ground for (organised) crime. Moreover, the ongoing privatisation process and the chance to start up a large number of small companies provide an opportunity to establish and exploit firms for illegal transactions. Finally, ideal conditions for money

laundering are being created as the financial sector is modernised, as barriers between states crumble, and intensive efforts are made to liberalise services and capital markets which in turn increases the number of opportunities for carrying out quick and frequent cross-border financial transactions.

At the same time, however, financial sector reforms and restructuring provide the region's governments with an opportunity to implement protective measures against money laundering.

Nevertheless, when creating a set of rules and appropriate control mechanisms for the financial sector it is necessary to find the correct path between confidence-building measures aimed at protecting the private interests of citizens and customers on the one hand (such that they entrust their savings to the new financial institutions, for example), and an invitation to money laundering on the other.²¹

Confidence in a financial institution as well as in the ability of a financial market to function properly – and thus also the willingness of foreign investors and financial institutions to become involved – is crucially dependent on whether the impression is made that a country has high legal, professional and ethical standards. Such confidence is (no longer) given if it becomes known that criminals can easily direct dirty money into normal financial channels. This would doubtless have a negative effect on the development of a market-oriented financial system and on the national economy as a whole.

It is generally agreed that the Central and Eastern European countries do not currently play a major role in money laundering. However, as these countries' economies become increasingly integrated into the global financial system and their currencies become convertible in time, so will their appeal for money launderers increase. Money launderers, like any other investors, prefer politically and financially stable countries – when it comes to investments and transactions they too value security and professionalism.

¹⁹ Cooperation would need to be swift and unbureaucratic in order to be efficient. It should be possible to assume that there is smooth internal cooperation between the authorities involved.

²⁰ International pressure on these areas is increasing; besides, while criminal funds can be of short-term benefit to an institution or financial marketplace, they can endanger its long-term financial and political stability.

²¹ The conflict potential between measures designed to combat money laundering and those aimed at promoting the domestic financial services industry is not of course a problem which is limited to these countries.

The economic and political progress being made in the Central and Eastern European countries demands swift implementation of measures to combat money laundering so as to prevent the region becoming a hub of (organised) crime and money laundering. It is therefore not enough merely to offer international aid for the establishment of appropriate national regulations and mechanisms. Rather it is necessary to increase the pressure to participate in international cooperation and to establish international standards. For once criminal funds have entered the financial system it is extremely difficult – and in most cases impossible – to detect them and so to dissolve the accompanying criminal structures.

Tax Havens and Offshore Banking

Money laundering often takes place via tax havens,²² and criminals like to make use of the services offered by offshore financial institutions for this purpose. That is not to say, however, that every transaction made through these channels is illegal.

The motives for establishing offshore financial centres include:

- ☐ attracting foreign investments by granting tax incentives;
- ☐ generating additional sources of public income by selling authorizations for shell companies or banking licences, and creating additional jobs for the population by developing a financial services industry;
- ☐ utilising a lack of regulations to gain a competitive advantage; and
- ☐ the chance to save the costs normally required to combat money laundering.²³

The term “offshore banking”, originally used to mean the Caribbean banks “off the shores” of the USA, is now used as a general term to describe banks in tax haven jurisdictions where even the most renowned banks offer their financial services.

Many offshore centres offer other advantages besides tax benefits, e.g.:

- ☐ offshore banks are often subject to no reserve requirements as well as to lower or zero rates of taxation; nor are they subject to any foreign exchange or other restrictions;
- ☐ excellent communications facilities;
- ☐ political and economic stability;
- ☐ highly qualified financial experts.

²² A tax haven is a jurisdiction where taxation is negligible or where taxes are only levied on domestic transactions but not at all, or at low rates, on profits from foreign sources or where certain tax privileges are granted for certain groups of people or types of business; cf. Butterworth's Tax Havens Encyclopedia, where the most important tax havens named include: Aruba, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Costa Rica, Cyprus, Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, Liberia, Nauru, Netherlands Antilles, St. Kitts and Nevis, Panama, Turks and Caicos, Vanuatu.

²³ An example of the costs involved: In the USA approximately 10 million Currency Transaction Reports (for cash transactions of more than US\$ 10 000) were filled out in 1993; estimated costs for the financial institutions per report of between US\$ 15 and US\$ 17. Additional costs are incurred for training, recording and storing data, etc.

Hans-Joachim Chrste

Die USA und der EG-Binnenmarkt

Die amerikanische Außenwirtschaftspolitik gegenüber der EG 1985–1992:
Strukturen, Entwicklungen, Entscheidungsprozesse

The foreign trade decision-making process has been one of the more neglected fields of political science research. In this book, this decision making process, especially with regard to the European Community, is analyzed in light of the U.S.' reaction to the EC 1992 internal market project in the years 1985 to 1992. The book will focus on the question: Where and according to which rules is the American policy towards the European Community formulated?

The study shows that in this case the political system did not act on behalf of the private sector, but mostly on its own, even having to alert the private sector to be more aware of the potential dangers the EC internal market could present to American economic interests. The relevance of the various actors in foreign economic policy issues is determined by the type of policy issue. The distinction of distributive, redistributive, and regulatory policy-issues was developed by the American scholar Theodore Lowi. In the book, this distinction is further developed to include structural, strategic, reactive and crisis issues. The second part looks at the role the private sector, the Administration, and the Congress play in this decision making process.

1995, 343 p., hardback, 98,- DM, 764,50 öS, 98,- sFr, ISBN 3-7890-3717-6
(Integration Europas und Ordnung der Weltwirtschaft, Vol. 5)



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However, it is often the additional advantages which, it is true, are not provided exclusively by tax havens – which pose problems when it comes to tackling money laundering; these include a well-developed tradition of banking and business secrecy, anonymity, regulations which veil the identity of the beneficial owner (bearer shares, trusteeships), loose regulations regarding customs duty and supervision, no information exchange with other countries concerning tax liabilities, as well as economical, informal and discrete opportunities for founding banks and businesses, frequently with a trustee being called in. Trails often go cold on the way through shell companies or fictitious firms.²⁴ What control mechanisms do exist, of course, are not necessarily designed to unearth illegal investors.²⁵

Since measures aimed at combating money laundering are often undermined by such loopholes, this problem was dealt with in detail some years ago within the framework of the FATF (Financial Action Task Force on Money Laundering) where, among others, the following countermeasures were considered:

☐ All payments and transactions involving these jurisdictions should be subject to special examination; the resulting costs would cancel out any competitive advantage.

☐ A systematic obligation to report any such transactions to the competent authorities should be introduced.

The effectiveness of such measures depends of course on the coordination of procedures between

the (FATF) countries. This is why the FATF invited the Offshore Group of Banking Supervisors²⁶ to collaborate.

International Agreements

From a point of view of criminal law, the Vienna Convention and the Council of Europe Convention are of significance as far as combating money laundering, drug trafficking, and other forms of serious crime are concerned.

The *Vienna Convention*²⁷ demands i.a. that drugs production and drug trafficking as well as drug money laundering be made a criminal offence; that international cooperation in the fight against crime be facilitated and simplified; that regulations governing the confiscation of criminal proceeds be introduced; and that banking secrecy be curbed if it should prove an obstacle to the effective pursuit of criminals.²⁸

The *Council of Europe Convention*²⁹ is based on the Vienna Convention and is largely identical in content. Of importance here – besides making money laundering a criminal offence, commitments to international cooperation, curbing banking secrecy rules, etc. – is above all the extension of the fight against money laundering to include proceeds from any form of criminal activity, thus also covering the arms trade, trafficking in human beings, terrorism, etc. This is without doubt a considerable step forward, since money laundering and organised crime often involve the same people and the same techniques.

The following international agreements aimed at combatting money laundering emphasise the financial aspects involved:

Basle Statement of Principles:³⁰ Key matters of concern with the aim of preventing money laundering are the identification of bank customers, compliance

²⁴ Admittedly – as mentioned earlier – money laundering can be carried out via fictitious business transactions with companies even if relatively strict company legislation exists.

²⁵ In these territories, cash deposits of money which has been physically taken out of the country are particularly frequent. Funds often return via "back to back" loans, i.e. credits arranged by a company or bank which is located in a tax haven; legal funds become available on "repayment" of the credit sum and interest – the money is laundered.

²⁶ Members: Aruba, Bahamas, Bahrain, Barbados, Bermuda, Cayman Islands, Cyprus, Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, Lebanon, Malta, Mauritius, Netherlands Antilles, Panama, Singapore and Vanuatu.

²⁷ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988; came into force in 1990); more than 100 ratification certificates deposited by the end of 1994; Austria has signed but not yet ratified the Convention.

²⁸ In no signatory country may banking secrecy laws be used to prevent courts and other competent authorities from acquiring bank, financial and business records in order to confiscate criminal assets, drugs, equipment etc. (Art. 5); neither, in principle, may international law enforcement assistance be refused in criminal cases on the grounds of banking secrecy laws (Art. 7).

²⁹ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990; came into force in 1993); ratified by 7 countries (Finland, Bulgaria, Great Britain, Norway, Switzerland, Netherlands, Italy) as of November 16, 1994 – Austria has signed but not yet ratified the Convention.

³⁰ Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering adopted by the Basle Committee on Banking Regulations and Supervisory Practices (1988); the Basle Committee on Banking Regulations and Supervisory Practices consists of central bank and supervisory authority representatives from the G-10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, Great Britain, USA) and Luxembourg. "There should be agreement between the parties involved that the 'know your customer' principle of the 'Statement of Principles' forms a basic rule for sound banking business and is not merely a regulation for the purpose of combatting money laundering." Cf. E. U. Savona and M. A. Defeo, op. cit.

with laws and other regulations regarding financial business, the application of high ethical standards, cooperation with the authorities, appropriate staff training, and the creation of mechanisms to ensure that the principles contained in the Statement of Principles are carried out.

EU Directive on Money Laundering:³¹ The primary aim of this directive, like that of the Statement of Principles, is to prevent misuse of the financial system and to identify cases of money laundering rather than improving international cooperation as far as punishing the perpetrators and confiscating criminal assets are concerned; these aims are served above all by the UN and Council of Europe conventions.

On the one hand, the EU directive is designed to prevent money launderers and criminals from utilising the "Single Market" and so from undermining the stability and integrity of the EU's financial system; on the other hand, member states are restrained from introducing measures aimed at countering money laundering which differ from country to country and which are incompatible with the unity of the Single Market.

As in the Council of Europe Convention, a broad understanding of money laundering as a criminal offence is assumed (i.e. not just *drug* money laundering). All credit and financial institutions are subject to the regulations (i.e. also life assurance companies, for example). The EU directive's basic rules include the identification of customers, data recording and storage, an obligation to report suspicious transactions, internal control mechanisms and staff training.

Financial Action Task Force

The decision to establish the Financial Action Task Force on Money Laundering (FATF) was taken in July 1989 at the 15th World Economic Summit in Paris.³² An urgent need was recognised for decisive action on both a national and an international level in order to fight money laundering, particularly in the financial sector.

The FATF is not part of any international organisation, but an independent special group. It merely uses the infrastructure of the OECD in Paris

where its secretariat has been established.³³ It has become well-known, *inter alia*, for its pioneering 40 recommendations (1990).

The FATF has 28 members: Australia, Austria, Belgium, Canada, Denmark, EU Commission, Finland, France, Germany, Great Britain, Greece, Gulf Cooperation Council,³⁴ Hong Kong, Iceland, Ireland, Italy, Japan, Luxemburg, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey and the USA.

The effectiveness of the FATF lies in its composition; its membership represents practically all the major financial centres and has influence on non-members, e.g. in the case of the "dependent, associate or otherwise connected territories of FATF members". There are continuous efforts to spread the FATF message, e.g. in seminars and regional initiatives. Priority areas are the Caribbean, the Pacific region, and Central and Eastern European countries. The FATF also cooperates with relevant international organisations. Its multi-disciplinary structure ensures that all the key authorities (finance, justice and foreign ministries, central banks, supervisory authorities and law enforcement agencies) work together and that a wide range of knowledge is available, and so allows a balance to be found between potentially contrary approaches.

The FATF has the following functions:

- ☐ To observe developments in money laundering techniques and countermeasures and to review their implications for the 40 recommendations; international exchange of information and know-how.
- ☐ To monitor the implementation in the FATF member countries of measures aimed at combating money laundering.
- ☐ To promote the implementation of measures aimed at combating money laundering in third countries.

The group works on the principle of consensus. The FATF chair changes in the summer every year. Discussions usually take place in plenary sessions; ad hoc groups can be set up for special issues for a limited period of time. In addition there is the Steering Group.

³¹ EC Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering (1991).

³² Participants: G-7 heads of state and government (USA, Japan, Germany, France, Great Britain, Italy, Canada) and the President of the EU Commission.

³³ There has been an additional FATF Asia Secretariat in Sydney, Australia since November 1994.

³⁴ For the Gulf States, i.e.: Saudi Arabia, Bahrain, United Arab Emirates, Oman, Qatar, and Kuwait.

A major advantage of the FATF is the member countries' clear commitment to submit themselves to international monitoring. This takes place in two forms:

- ☐ Self-evaluation exercise. Every year, each country must answer a catalogue of questions and/or report on changes in national regulations which result from the implementation of FATF recommendations.
- ☐ Mutual evaluation procedure. Here, every country is examined by a team of experts from other FATF countries.³⁵ A report summary is published in the FATF annual report.

These practices establish an impression of how far the recommendations have been implemented by the member countries and where action is still required.

The 40 FATF Recommendations

When formulating these recommendations, the FATF endeavoured to take into consideration the considerable differences which exist between individual countries as far as their legal and financial systems as well as the various kinds of money laundering problems are concerned. An attempt was therefore made to establish only general principles for the fight against money laundering in order to leave sufficient scope for flexibility.

The first group of recommendations (1 to 3; General Framework of the Recommendations) is aimed at extending the potential for effective multilateral cooperation: just as the process of granting bilateral and multilateral assistance in law enforcement should be simplified, so any obstacles to the implementation of the recommendations presented by banking secrecy laws should be avoided. There is also an explicit demand for prompt ratification and implementation of the Vienna Convention.

Recommendations 4 to 8 (Improvement of National Legal Systems to Combat Money Laundering) deal with strengthening national legal systems. They recommend the implementation and extension of money laundering's criminal status as contained in the Vienna Convention;³⁶ furthermore, it should be made possible to take interim measures and to confiscate assets.

³⁵ Practical experience has demonstrated the great importance of pressure exerted on countries by examination deadlines. Members are encouraged to implement measures which would be unthinkable without this procedure: since most countries presented new, highly efficient sounding regulations, the actual effects of the measures should be evaluated in a second round of examinations (after approximately 4 years; the first round of examinations is almost complete).

The recommendations for the financial system (9 to 29; Enhancement of the Role of the Financial System) are of central importance since it is generally agreed that the financial institutions have a key role to play in the fight against money laundering. The main thrust is therefore placed upon identifying customers and beneficial owners, efficient data storage, appropriate vigilance where unusual transactions are concerned, a right or an obligation to report suspicious transactions to the relevant authorities, staff training and internal controls.

It is recommended that not only banks but also other financial institutions and NFIs observe the recommendations. Attention is drawn to countries with insufficient regulations and measures for tackling money laundering; financial institutions should ensure that high standards of diligence are also applied to their overseas branches and subsidiaries. It is also considered important to examine any measures designed to record and to reduce cash transactions as well as for supervisory authorities to carry out their monitoring role efficiently.

Recommendations 30 to 40 (Strengthening of International Cooperation) deal with international cooperation between the authorities and other relevant offices.

The recommendations are complemented by a set of "interpretative notes" which serve to elucidate and update the recommendations as well as bridging the gap until such time as the recommendations are revised. After taking stock of progress in the working year 1994/95 (FATF VI), this process will need to be continued in the following working year.

As can be seen from the above discussion, the FATF with its 40 recommendations is of central importance in the fight against money laundering, particularly as far as the financial aspects of illegal business activities are concerned. This is wholly recognised by the other institutions involved in combating money laundering. The group's strategic approaches are held up as a general goal, a general standard; they are integrated into the work carried out by other groups (e.g. EU Directive on Money Laundering, within the context of the UN, etc.) Therefore, the developments so far can rightly be called a "success story", both within the group and as far as the spreading of its message is concerned.

³⁶ Not just *drug* money laundering.

However, money laundering has not been defeated by any means.

Global Bodies

The following institutions are also concerned with money laundering on a global basis:

The UNDCP (United Nations Drug Control Programme) is concerned with the fight against illegal production, trafficking and abuse of narcotics as well as combating money laundering. Efforts aimed at combating money laundering have been intensified since 1992, and a new strategy is currently being drawn up. Reorganisation of anti-drugs activities within the UN in 1993 improved cooperation with the INCB (International Narcotics Control Board) and the CND (Commission on Narcotic Drugs). Within the UN context, the UNDCP has a coordinating function in the named field and provides technical assistance and training.

CPCJB/UNOV (Crime Prevention and Criminal Justice Branch, United Nations Office at Vienna): This UN unit deals with all forms of crime, particularly organised and white-collar crime where attention is being increasingly devoted to the issue of money laundering. In June 1994, an international conference took place in Italy under the auspices of the CPCJB/UNOV on the subject of "Preventing and Controlling Money Laundering and the Use of the Proceeds of Crime: a Global Approach".³⁷

Interpol (International Police Organisation): One Interpol department, the FOPAC (Fonds Provenant d'Activités Criminelles) serves as a financial clearing house with the aim of facilitating the exchange of information on international financial flows (from drugs trafficking and other illegal sources). Particular attention is paid to the problems in the Central and Eastern European countries.

CCC (Customs Co-operation Council; now the WCO – World Customs Organisation): In 1993, a "Working Group on Money Laundering and Financial Assets" was created; regional liaison offices are currently being established; efforts aimed at combating money laundering are being intensified.

Commonwealth: Attention is being increasingly paid to the problem of money laundering; members

have been called upon to follow the FATF recommendations.

IOSCO (International Organisation of Securities Commissions): Although the legal status of the "Resolution of the Presidents Committee on Money Laundering" drawn up in 1992 by Working Party No. 4³⁸ is still unclear, it is nonetheless of significance since it is also aimed at more than 30 countries which are not FATF members; in seven recommendations they are urged, essentially, to observe the FATF recommendations as far as trading in securities is concerned.

Regional Bodies

The following bodies are concerned with the fight against money laundering on a regional basis:

Council of Europe: Besides the 1990 Convention, both the "Demosthenes" programme and a variety of seminars for Central and Eastern European countries on the fight against money laundering are Council of Europe activities worthy of mention. The Pompidou Group, a multi-disciplinary, interministerial cooperation group within the Council of Europe, deals with the fight against illegal drug trafficking and drug abuse.

EU: Apart from the money laundering directive already mentioned, the fight against money laundering is included as part of the PHARE assistance programme for the Central and Eastern European countries with the aim of implementing the money laundering directive as well as the European Treaties in which the countries concerned commit themselves, *inter alia*, to applying the FATF recommendations.

OAS (Organisation of American States): In 1992, model regulations on drugs money laundering³⁹ were adopted by the Inter-American Drug Abuse Control Commission (CICAD) of the OAS. The organisation then recommended its 34 members to enact corresponding regulations. Aims include improving national criminal law and international cooperation as well as strengthening the role played by the financial system in efforts to combat money laundering.⁴⁰

³⁷ The conference final communiqué was also put forward for discussion at the World Minister Conference on organised transnational crime which took place in Naples, Italy, from 21-23.11.1994. The recommendations were aired in a resolution entitled "Naples Political Declaration and Global Action Plan Against Organized Transnational Crime".

³⁸ Working Party No. 4 on Enforcement and the Exchange of Information.

³⁹ "Model Regulations Concerning Laundering Offences Connected to Illicit Drug Trafficking and Related Offences"; the FATF also supports the efforts of the OAS as far as the acceptance and implementation of these regulations are concerned. These regulations are based on the UN Convention and also include the FATF recommendations.

CFATF (Caribbean Financial Action Task Force): At a conference of CFATF country ministers in Jamaica in November 1992, the "Kingston Declaration on Money Laundering" was passed. The declaration explicitly approves the 40 FATF recommendations as well as 19 recommendations specific to the region which were formulated at the Aruba conference (1990), and commits the CFATF member states to implement these recommendations. The CFATF currently has 26 members,⁴¹ and the secretariat has been situated in Port-of-Spain (Trinidad) since 1993. Activities are financed by five sponsor countries – the USA, Canada, the Netherlands, France and Great Britain.

EUROPOL (European Police Authority): The task of this authority is to gather and analyse intelligence and to improve cooperation between member states on the issues of combating cross-border organised crime, drug trafficking and related money laundering within the EU framework. The decision to establish EUROPOL was taken in 1991 and it has already begun provisional operations; the EU member states were still unable to agree on the EUROPOL Convention in 1994.

Final Remarks

Money laundering is possible anywhere – in any country, in any sector of the economy, in any company. Money laundering and organised crime are global problems which require global solutions. This can only occur if there is a clear political determination to introduce effective countermeasures. Of central importance is the "know your customer" rule, for which there is no alternative in an interconnected global banking system.

In order to fight money laundering successfully, strong legislative regulations, efficient national and international cooperation between institutions and authorities, and adequate strategies are required. These must be adjusted not only to changes and progress both in the financial field and in criminal techniques, but also to the weak links in the chain of countries, territories, financial systems and institutions.

The following measures are necessary in order to keep pace with the dynamic developments in money laundering in today's world of high technology:

☐ Analysis of:

- Patterns and trends in money laundering
- institutions and sectors of the economy infiltrated by criminals

- money launderers' asset administration practices
- the effects of money laundering on the national economy.

☐ Pursuit of a flexible, constantly developing strategy by all organisations and countries:

- with regard to a systematic approach to fighting drug cartels
- with the aim of preventing money launderers' gaining political influence
- in order to eliminate weak links in the financial system caused by unreliable institutions.

During the past few years a new consciousness, new laws and new mechanisms have emerged as far as the fight against money laundering is concerned. The coming years should serve their implementation.

The fight against money laundering is a necessary complimentary addition to the process of liberalisation and not a contradiction. It has nothing to do with raising barriers against the free movement of capital nor with hampering the financial system. Individuals should by no means be restricted in their freedom to carry out legal transactions.

Action taken against money laundering is to be regarded not only as a measure aimed at stemming or preventing crime, but also as a means of maintaining the integrity and thus the prosperity of financial institutions and of the financial system as a whole.

The fight against crime, whether it is money laundering or organised crime, involves considerable cost. In comparison, however, the costs of inaction – which result from the corruption of financial institutions, the spread of organised crime, the undermining of society and of political institutions – are disproportionately higher. After all, the functioning of our society is at stake.

However, since money laundering is an international phenomenon, only international cooperation can be successful in fighting it.

⁴⁰ At their summit meeting in Miami, USA, in December 1994, the heads of state and government from 34 countries on the American continent not only agreed to establish the world's largest free trade zone; they also agreed to take resolute joint action against corruption, organised crime, drug trafficking, money laundering etc., in which the OAS and the IADB (Inter-American Development Bank) should play the leading role.

⁴¹ Anguilla, Antigua & Barbuda, Aruba, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Colombia, Costa Rica, Dominica, Dominican Republic, Grenada, Guyana, Jamaica, Mexico, Montserrat, Netherlands Antilles, Panama, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Surinam, Trinidad & Tobago, Turks & Caicos Islands, Venezuela.