
VISITING EXPERTS' PAPERS

COUNTERING MONEY LAUNDERING: THE FATF, THE EUROPEAN UNION AND THE PORTUGUESE EXPERIENCE, PAST AND CURRENT DEVELOPMENTS

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I. INTRODUCTION

A. What is Money Laundering?

Money laundering is the processing of the criminal proceeds to conceal their illegal origin¹. In popular terms, it consists in “making dirty money look clean”: The objective of the launderer is to disguise, definitely, the illicit origin of the substantial profits generated by the criminal activity, so that such profits can be used as if they were derived from a legitimate source. This is done by screening the sources, changing the form, or moving the funds to less controlled places.

Three stages have been identified in the traditional laundering procedure. The first is the placement: the launderer gets rid of the cash originated by the criminal activity and introduces it in the financial system². This is the choke point of the procedure, where the launderer is more vulnerable and the attempt to launder can more easily be identified. The second stage is the layering: the launderer executes, or orders the execution of, so many transactions, as needed, in particular of international

nature, so that, definitely, the tracing of the origin of the monies is lost. Finally, the third stage is the integration: the money, now apparently of legal origin, is used for investment or for the acquisition of goods and services.

Fighting money laundering is, thus, an attempt to depriving criminals from the possibility of profiting from their criminal acts. The concept underlying the fight against the laundering of the proceeds of a criminal activity is therefore the following: if you cannot prevent the criminal activity itself from existing, you should at least make all the efforts to deprive the criminals from the proceeds of their crimes! But this is also the reason why any action against money laundering can only be ancillary to any other action, preventive or repressive, taken against crime and criminal activity in general: it's always a remedy - it comes at all times after an offence has been committed!

B. Why Should We Act Against Money Laundering?

There are, of course, many good reasons - moral, social or political - to ground the well-founded principle that the criminal

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¹ According to Webster's, money laundering is defined as “transferring illegally obtained money or investments through an outside party to conceal the true source”.

² Usually it was only into the financial system that the cash was directly introduced. However, with the anti-money laundering measures taken with regard to this sector, experience shows that cash is now tentatively introduced also through other channels.

should not profit from its criminal activity. In fact, no decent, legitimate, democratic society can be built based on ill-gotten gains.

However, there have been identified some macro-economic reasons which also justify that action is taken against money laundering. According to a Statement by the Staff of the IMF, presented to the Washington Plenary of the Financial Action Task Force in June 1996³, "potential macroeconomic consequences of money laundering may be summarised as follows:

- (i) Changes in the demand for money that seem unrelated to measured changes in fundamentals;
- (ii) Volatility in exchange rates and interest rates due to unanticipated cross-border transfers of funds;
- (iii) Increased instability of liabilities and heightened risks for asset quality for financial institutions, creating systemic risks for the stability of the financial sector and for monetary developments generally;
- (iv) Adverse effects on tax collection and allocation of public expenditures due to misreporting of income and wealth;
- (v) Contamination effects on legal transactions as transactors become concerned about possible criminal involvement;
- (vi) Other country-specific distributional effects or asset price bubbles due to disposition of "black money."

Nevertheless, there are not only potential macroeconomic effects of money

laundering. Also at the microeconomic level most pernicious consequences can be found. A total distortion of competition, and the elimination of legitimate businesses by people linked to money launderers and other criminals, may derive from the money laundering process. In fact, with the huge margin of profit that the criminal activities generate, it is possible in a systematic way, to bring legitimate businesses to bankruptcy, through dumping and/or the monopoly of entire sectors of economic activity.

On the other hand, money laundering can corrupt parts of the financial system and undermine good governance of financial authorities. The integrity of financial markets, an essential element for the prosperity of the economies, depends heavily on the application of high legal, professional and ethical standards. Should proceeds of crime be laundered through a financial institution, the reputation of such an institution would be seriously damaged. This would affect the willingness of customers and other institutions to deal with that institution, and could affect the market as a whole.

Finally, money laundering can lead to the bribery of individuals, institutions and even of governments. In the beginning, good and bad monies coexist, but in the end, Gresham's law⁴ operates, and we run the risk of remaining only with the corrupt entities. This can seriously weaken the moral and ethical standards of society and even damage the principles underlying democracy. For all these reasons, action should be taken against money laundering.

³ "Macroeconomic implications of money laundering" - IMF Staff Statement - Meeting of the Financial Action Task Force, Washington, D.C., June 26-28, 1996.

C. Why Does Action Against Money Laundering Need To Be Universal?

In a time of globalisation of financial markets, it is nevertheless not sufficient to ensure domestic measures to prevent money laundering. On the contrary, it is paramount that action against money laundering and measures to prevent it are universally applied. It is widely acknowledged that the strength of the anti-money laundering system depends of the strength of its weakest link: if a country does not participate in this battle, the money being laundered will flow quickly through it and then return to the globalised financial system. In such a situation, experience shows that detecting the illegal origin of the amounts at stake becomes much more troublesome. This means that, although many efforts have been made to raise awareness of the problem and to develop international co-operation in this field, actions must be developed to ensure the co-operation in the fight against money laundering is widespread worldwide, and that every jurisdiction is engaged in the fight against this plague.

D. How to Fight Money Laundering?

Some arguments have been developed in the sense that the fight against money laundering determines the abandon of the liberalisation of the financial markets and the return to administrative controls of foreign exchange and of investment. It does not seem that there is a need to be so. In fact, the prevention of money laundering

depends of an adequate legislative framework, of the monitoring of information and of international co-operation. The same occurs with the needed supervision to ensure a smooth functioning of free and competitive financial markets - adequate legislation, timely and complete information and international co-operation.

This paper reports on three different but related experiences. Section I deals with the FATF experience, and the strategy to build a worldwide anti-money laundering network. Section II discusses the developments of the European Union fight against money laundering, in particular the Directive "on the prevention of the use of the financial system for the purpose of money laundering". Section III informs on the Portuguese experience to fight money laundering. A short Conclusion tries to bring together some thoughts on the future of the fight against money laundering.

II. THE FATF EXPERIENCE

A. Early Initiatives

The recent fight against money laundering had some precursors. In 1980, on June 27, the Council of Europe approved its Recommendation No R (80) 10 on Measures Against the Transfer and Safekeeping of Funds of Criminal Origin. This was the first call of attention on the possible abuse of banks for the purpose of concealing illegally acquired funds, and it included a general recommendation on the identification of clients.

In December 1988, the Basle Committee on Banking Regulations and Supervisory Practices adopted a Statement of Principles on the prevention of criminal use of the banking system for the purpose of money laundering. The three main principles refer to customer identification - "know your customer", compliance with laws and

⁴ According to this principle, which seems to have been known since at least Aristophanes, but is usually attributed to Thomas Gresham, "bad money drives out good money". So, when we have two coins of equal legal value in circulation, but one is intrinsically lower value than the other, the worse coinage will drive the better out of circulation, since the better will be hoarded or melted down.

co-operation with law enforcement agencies. The Statement encouraged banks to put in practice measures to ensure that all customers are properly identified, that transactions that do not appear legitimate are discouraged and that co-operation with law enforcement agencies is achieved.

Still in 1988, on the 19th of December, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) was adopted, and the incrimination of money laundering was included in an international Treaty for the first time.

In 1989, in response to mounting concern over money laundering, namely over drug trafficking money laundering, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Arche Summit that was held in Paris. The Task Force included representatives from the G-7 members, the European Commission and eight other countries. In April 1990, the Task Force published a report containing forty Recommendations to fight money laundering, which were to become the standard by which anti-money laundering measures should be judged.

Almost one year later, on the 11th of November 1990, the Council of Europe opened for signature its Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. This Convention is open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration and for accession by other non-member States. It criminalizes money laundering the way the Vienna Convention had already done it.

Finally, to close this cycle of international instruments, the Council of

the European Economic Community approved, on the 10th June 1991, the Directive 91/308/EEC "on the prevention of the use of the financial system for the purpose of money laundering".

B. Initial Developments

The Financial Action Task Force on Money Laundering (FATF) was established as an inter-governmental body to develop and promote policies, both at national and international levels, to combat money laundering. The Task Force is thus a "policy-making body", aiming at improving measures to combat money laundering.

The FATF does not have a tightly defined constitution or an unlimited lifespan. For the time being, the Task Force has been reviewing its work and mission every five years, and it has been agreed to continue until 2004. Its future depends on the assessment made by the members' governments that the FATF is still needed and that its structure is the best and most efficient way to carry on the mission assigned to it. However, due to its own nature of a Task Force, there will be a point in time where the question will be renewed on whether to conclude its work or to change its nature.

The first five-year mandate of the FATF lasted from 1989 through 1994. During such period, the Task Force achieved considerable results. The report on the money laundering situation was drafted and the Forty Recommendations were established. The first substantial enlargement of the Group took place with all the at that time members of the OECD joining the Group, together with Hong-Kong and Singapore, as well as the Gulf Co-operation Council. The monitoring of members' progress in implementing anti-money laundering measures was launched. Self-assessments of the situation in each member were prepared. The first round of

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mutual evaluations of all Task Force members, an essential tool to exercise the “peer pressure” that contributes to the definition of the nature of the Group, was finalised. The typologies exercises were started in order to give us an update of money laundering trends and techniques, and possible countermeasures. Interpretative Notes on several Recommendations were drafted to clarify some issues and provide additional guidance. The Caribbean Financial Action Task Force was launched.

The most important achievement of the period was undoubtedly the issuance of the Forty Recommendations. They cover the role of the legal and financial systems in the fight against money laundering, as well as the area of international co-operation. They provide a complete set of measures to build a coherent anti-money laundering system, and are intended for universal application. Nevertheless, they provide sufficient flexibility to be followed and adopted by countries and jurisdictions with different legal systems, in different regions of the globe.

In April 1994, the London Plenary meeting of the FATF approved the document FATF-V/PLEN7/REV1 on the future of the FATF, prepared by the United Kingdom Presidency. The Ministers of the FATF members later endorsed this document, which set the FATF strategy for the period 1994 through 1999. It was then decided that the FATF should continue for five years more, to monitor members compliance with the Forty Recommendations, to revise and update such Recommendations and to increase the role of external relations work of the FATF.

C. Consolidation and Recognition

The second five-year mandate of the FATF (1994-1999⁵) was an important period of consolidation of the work of the

Task Force and of recognition of its work from the outside world. The FATF improved the level of its Forty Recommendations, monitored the implementation of the Recommendations in the member countries, continued to develop the typologies exercises, and contributed to the launching of the Asia Pacific Group on money laundering and of the Committee of the Council of Europe for countries that are not FATF members- the PC-R-EV Committee.

1. The Forty Recommendations

During this second period of existence, the FATF carried out the review of the Forty Recommendations to keep them fully up to date with existing trends and to anticipate future threats. This occurred under the Us Presidency of the FATF, in 1995/96. Additional consideration was given to nine particular matters. Some Recommendations were amended and new ones were introduced. The major changes were⁶:

- (i) The extension of the money laundering predicate offences beyond narcotics trafficking, to include all serious crimes;
- (ii) The mandatory reporting of suspicious transactions;
- (iii) The application of the financial Recommendations to the bureaux de change and all other non-bank financial institutions;
- (iv) The application of the financial Recommendations to the financial activities of non-financial businesses or professions;
- (v) The expansion of the Recommendation on customer

⁵ The FATF rounds (coinciding with each Presidency) run from July 1st through June 30th.

⁶ A full description of the stocktaking review of the Forty Recommendations can be found at the FATF VII Annual Report, available at the FATF Internet site: <http://www.oecd.org/fatf/>.

- identification, to take into account problems raised by the identification of legal entities;
- (vi) The particular attention required when dealing with shell corporations;
 - (vii) The need to pay special attention to and if necessary take measures to preclude the use of new or developing technologies for money laundering purposes;
 - (viii) The encouragement of the use of “controlled deliveries” techniques;
 - (ix) The monitoring of cross-border cash movements.

The FATF 40 Recommendations gained worldwide recognition as the international standards in this area during this period. They have been endorsed by the Caribbean Financial Action Task Force (CFATF), the Commonwealth Heads of Government and Finance Ministers, the Council of Europe, the Black Sea Economic Cooperation, the Three Baltic States (Riga Declaration) and the Offshore Group of Banking Supervisors (OGBS). The revised terms of reference for the Asia Pacific Group (APG), adopted in Tokyo in March 1998, also recognised that the Forty Recommendations are accepted international standards. Finally, on June 10th, 1998, the Special Session of the United Nations General Assembly recalled that “the Forty Recommendations of the Financial Action Task Force... remain the standard by which anti-money laundering measures adopted by concerned states should be judged”. It also approved a political declaration recommending the States that have not yet done so to adopt, by the year 2003, national anti-money laundering legislation and programmes in accordance with the action plan against money laundering.

The action plan, a document entitled “Countering Money Laundering” whose content derives directly from the Forty

Recommendations, offers an excellent panoply of principles to be applied and measures to be taken. Essentially, it refers to the three FATF main levels of intervention: the legislative, the financial and the law enforcement. At the legislative level States are urged to establish a legislative framework to criminalize money laundering from serious crimes and to permit prevention, investigation and prosecution of money laundering. Important tools: freezing, seizure and confiscation of the proceeds of crime, international co-operation and legal mutual assistance. At the financial level States are urged to establish a regulatory regime to deny criminals and their illicit funds access to national and international financial systems. Main tools: customer identification in accordance with the well grounded principle “know your customer”, record keeping, mandatory reporting of suspicious activity and removal of bank secrecy impediments. At the enforcement level, the main tools are: information-sharing mechanisms, extradition procedures and other measures to provide for effective detection, investigation, prosecution and conviction of criminals engaged in money laundering activities. It can be immediately recognised that the document incorporates the policies established in the Forty Recommendations, and has therefore added weight to the approach outlined therein.

Further to the review of the Recommendations, several other essential FATF documents were produced from 1994 through 1999, in particular on the policy for expansion of the membership; on the policy for dealing with members not in compliance with the Forty Recommendations; on the participation of international organisations in FATF meetings, and on the assessment of the performance of non-members.

2. The Mutual Evaluations

The Task Force continued to monitor the implementation by its members of the Forty Recommendations, namely through self-assessment exercises, cross-country reviews of measures referring to particular Recommendations and the conclusion of the second round of mutual evaluations of all its members.

The mutual evaluation process has been a central pillar of the work of the FATF, and has led to important improvements in the standard of anti-money laundering measures in all FATF members. This peer pressure system whereby countries open themselves to independent scrutiny, and are evaluated and subject to criticism by their own peers, has been very successful. This success stems not just from the process that is used to produce the country report (questionnaire, on-site visit, discussion in the Plenary), but also from the capacity of the Group to follow up the measures that are taken to rectify any deficiencies found.

All FATF-style regional groups have accepted the mutual evaluation concept and some groups have now completed a substantial number of reports. The advantages for the country evaluated are significant:

- (i) It receives an independent and objective analysis of its money laundering system;
- (ii) The review is a comprehensive one, which looks at all aspects of the system;
- (iii) The evaluated country obtains advice on best practice elsewhere and on how its own system could be improved; and
- (iv) The persons who participate as evaluators, and the countries they represent, benefit by evaluating the system in another country.

The mutual evaluation process is enhanced by the FATF's policy for dealing with members not in compliance with the Forty Recommendations. The measures contained in this policy represent a graduated approach. There are five steps in this policy. The first is a progress report at plenary meetings. A letter by the FATF President and/or a high-level mission to the non-complying country can follow it. Then comes the application of Recommendation 21, which requires financial institutions to pay special attention to transactions with persons, including companies and financial institutions in countries that do not or insufficiently apply the Forty Recommendations. As a final measure, the FATF membership of the country in question can be suspended. Steps taken in the year 2000 with regard to anonymous passbooks by a FATF member are an excellent example of how mutual evaluations can lead to a more effective international anti-money laundering system.

3. Preparing the Future

During FATF-IX, under the Belgian Presidency, the FATF conducted a review of its future. On April 28 1998, the Ministers of the FATF and the European Commissioner for Financial Services approved the FATF's strategy for the years 1999 through 2004. In substance, the need for continued action against money laundering was acknowledged, the membership strategy was defined and the future direction and objectives of the FATF were considered. It was recognized that, although standards have improved enormously in the past few years, particularly within the FATF membership, the challenge is to make those standards truly global. The FATF's strategy for the future therefore emphasises the importance of spreading the anti-money laundering message to all continents and regions of the globe. The other major tasks

of the FATF are the improvement of the implementation of the Forty Recommendations in FATF members and the strengthening of the review of money laundering trends and techniques.

This strategy intends to give a theoretical and practical answer to the present circumstances of the globalisation. In today's open and global financial world, characterized by the strong mobility of funds and the rapid development of new payment technologies, the need for international co-operation has increased substantially. This strategy is deemed the most cost-efficient way of countering money laundering.

D. Opening to the World

1. Spreading the Anti-Money Laundering Message

The main objective of the FATF for the period 1999/2004 is to create a worldwide anti-money laundering network. This is to be achieved by expanding the FATF to a limited number of strategically important countries; fostering the development of credible and effective FATF-style regional bodies; improving the co-operation with relevant international organisations, and securing the adoption of adequate anti-money laundering measures in non-member countries through the application of the FATF's policy for assessing non-members.

As it was already mentioned, in the present circumstances of the world economy, it is paramount that the fight against money laundering becomes truly global. The strength of the anti-money laundering system relying on the strength of its weakest link, we cannot afford to have "black holes" in the system whereby the efforts of all countries that are coherently fighting money laundering are jeopardized by those countries who do not wish to do anything or who are doing little against the

money laundering threat. The FATF has therefore, in 1999/2000, under the Portuguese Presidency, started this ambitious project of creating the worldwide anti-money laundering network.

- (i) *Expanding the FATF to a limited number of strategically important countries*

In June 2000, it materialized the second enlargement of the membership in the history of the FATF, by accepting Argentina, Brazil and Mexico as new full members⁷, after all three candidates having completed successfully a mutual evaluation exercise. The efforts are now geared to other regions of the globe where the Task Force is less represented, namely Africa, Asia and Eastern Europe.

- (ii) *Fostering the development of credible and effective FATF-style regional bodies*

The FATF external relations programme contributed to raise awareness of the money laundering problem throughout the world. Under the current strategy, the systematic development of existing FATF-style regional bodies, and the encouragement to establish new ones is vigorously pursued. A regional group, committed to the Forty Recommendations, exerting peer pressure among its members; conducting mutual evaluations based on a FATF-endorsed procedure; carrying out self-assessment surveys and regional typologies exercises; having one or several FATF members within their membership and a secretariat which would liaise regularly with FATF, is vital for the development of the strategy.

⁷ Argentina, Brazil and Mexico had joined the FATF as observer members, pending their mutual evaluation process, at the September 1999 Plenary meeting in Porto, Portugal.

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Therefore, the FATF continues to support the work of the already existing FATF-style regional bodies - the Asia/Pacific Group on Money Laundering (APG), the Caribbean Financial Action Task Force (CFATF), and the Council of Europe PC-R-EV Committee, as well as the anti-money laundering initiatives of the Offshore Group of Banking Supervisors (OGBS). The worldwide anti-money laundering network requires, nevertheless, an entire coverage of all regions. This is why the policy of the FATF is to strongly support the establishment of new FATF-style regional bodies. These are the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)⁸, the Intergovernmental Task Force against Money Laundering in Africa (ITFMLA)⁹, and the Financial Action Task Force in South America - GAFISUD¹⁰. Finally, it is envisaged to promote the development of further regional groups where none exists.

- (iii) *Improving the co-operation with relevant international organisations*

A third element indispensable for developing the worldwide network is the co-operation with relevant international organisations. Indeed, the FATF does not act in a vacuum, and a number of other international organisations or bodies (from the United Nations to the regional development Banks) play a significant role in the fight against money laundering. Being the world's leading authority for setting standards and monitoring compliance in the anti-money laundering area, the FATF's policy is to strengthen co-operative links with all relevant

international organisations, and in particular with the Multilateral Development Banks and the International Monetary Fund.

- (iv) *Securing the Adoption of Adequate Anti-money Laundering Measures in Non-member Countries through the application of the FATF's policy for assessing non-members*

A last and essential component of the strategy to counter money laundering worldwide relates to the situation in non-member countries. Taking into account the interdependence and interrelation of anti-money laundering policies it is of paramount importance to secure the adoption of adequate anti-money laundering measures in non-member countries to prevent, detect and punish money laundering. In this context, the Non Co-operative Countries and Territories (NCCTs) exercise plays an irreplaceable role to reduce the vulnerability of the international financial system to money laundering.

The FATF has therefore engaged in a significant initiative to identify key anti-money laundering weaknesses in jurisdictions inside and outside its membership. It started by setting up twenty-five criteria, consistent with the Forty Recommendations, to identify detrimental rules and practices that obstruct international co-operation against money laundering. Main obstacles identified were loopholes in financial regulation, inadequate or no requirements for the registration of businesses and legal entities and the identification of their beneficial owners, lack of international administrative and judicial cooperation, and inadequate resources for preventing, detecting and repressing money laundering. Then, the FATF reviewed the anti-money laundering regimes of a

⁸ Launched in Arusha, Tanzania, in August 1999.

⁹ Its first meeting took place in Dakar, Senegal, in November 2000.

¹⁰ Launched on the 8th of December 2000, in Cartagena de Indias, Columbia.

number of jurisdictions against the above-mentioned twenty-five criteria. The reviews involved the gathering and analysis of all the relevant information. A draft report was prepared and 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. Subsequently, the FATF Plenary discussed and approved the reports.

On the 22nd June 2000, the last FATF Plenary under the Portuguese Presidency made public a “Report to identify Non-Co-operative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures”¹¹. Fifteen countries have been identified as Non-Co-operative in the fight against money laundering: 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. It is expected that this NCCTs exercise, along with the efforts of regional anti-money laundering bodies, will contribute for all jurisdictions to match international standards in the global fight against money laundering, and to join the worldwide anti-money laundering network.

The FATF is continuing to review the situation in the fifteen countries named as non co-operative, as well as in other countries that had not yet been subject to the NCCT survey. As the NCCT list is an open one, it is expected that some names will be deleted while some others could be added. A particularly important issue is to guarantee fairness and transparency throughout the whole process, the only way

to avoid undermining the credibility of the FATF, and to secure the possibility to deal constructively with the reviewed jurisdiction in a pro-active manner to ensure future co-operation. In fact, we cannot lose sight that the aim of the exercise is too bring all jurisdictions to apply the international standards in the fight against money laundering. The best result to be achieved by the NCCT exercise would be to arrive at the conclusion that there are no countries to be listed.

2. Strengthening the Review of Money Laundering Trends and Countermeasures

Further to the spreading of the anti-money laundering message, another major task to be accomplished by the FATF during the years 1999/2004 is to strengthen the review of money laundering trends and techniques (the third consisting in the improvement of the implementation of the Forty Recommendations in the member countries).

Deep knowledge of money laundering trends and techniques is essential to find the adequate countermeasures. The typologies meetings have generated the main source of expertise in this field, with law enforcement officials exchanging their experiences, annually. However, an effort to make discussions more interactive should be made. The increased contribution from FATF-style regional bodies and other relevant observer international organisations, as well as the participation of law enforcement and regulatory delegates from non FATF members is an experience that has started during FATF XI and I hope it will continue in the future permitting to increase the international knowledge of the money laundering phenomenon. An extension of the geographical scope of the future typologies exercises is also in the agenda for the next meetings.

¹¹ The full text of this report can be found at the FATF website: <http://www.oecd.org/fatf/>

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The next years will be of crucial importance for the fight against all forms of serious crime, in particular against organized crime, narcotics trafficking, corruption, terrorism, etc. The fight against money laundering can make an important contribution to that purpose, as it may deprive criminals from the use of the profits of their criminal activity. However, it should be taken into account that no action against the laundering of the proceeds of serious crimes will, by itself alone, achieve the goal of overcoming the problems raised by organized crime. A much more comprehensive action is needed, and any illusions on this point can only give rise to future delusion!

**III. THE EUROPEAN UNION
EXPERIENCE**

A. The 1991 Directive

The European Commission was a member of the Financial Action Task Force since 1989. However, the first legal text of the Economic Community (EEC) on money laundering was published only in June 1991. The legal instrument chosen to set the Community standards on the matter was the Directive 91/308/EEC "on the prevention of the use of the financial system for the purpose of money laundering"¹².

The Directive profited substantially from the work of the FATF, and most of the

solutions included in its text were already contemplated in the Forty Recommendations. Nevertheless, while the Forty Recommendations dealt with the legal and financial systems, as well as with the international co-operation, the Directive, in accordance with the Community rules then in force, had its scope limited to the financial system. As the title indicated, the objective of the Directive was much more limited than the Recommendations: it sets the rules to "prevent the use of the financial system for the purpose of money laundering". The reason for the introduction of the Directive was mainly the protection of the financial system of the Community. On one hand, protection against the advantages the launderers could try to take of the existing freedoms of capital movement and to supply financial services; on the other hand, protection of the single market, since the lack of Community action against money laundering could lead Member States, to adopt measures which could be inconsistent with completion of such market.

The Directive used a definition of money laundering taken from that adopted in the Vienna Convention¹³, but admitted the possibility for the Member States to extend the predicate offences beyond drug trafficking to any other criminal activity designated as such for the purposes of the Directive by each Member State.

¹² Under Community law, a directive sets the results that have to be obtained and imposes the obligation on the Member States to achieve such results. However, it gives the Member States the liberty and flexibility to find the most adequate ways to accomplish their task through the transposition of the directive into its internal law. The 1991 Directive sets only minimum standards, and for that reason, any Member State may adopt or retain in force stricter provisions in the field covered by the Directive to prevent money laundering.

1. Obligations Imposed to the Member States

The Directive imposes several obligations on the Member States. The first is the obligation to ensure that money laundering as defined in the Directive is prohibited. It is assumed that the prohibition will be made mainly by penal means, within the framework of the Vienna and Strasbourg Conventions. However, it is acknowledged that the penal approach

should not be the only way to counter money laundering and, therefore, several obligations with regard to the financial system¹⁴ are imposed on the Member States.

Member States are required to ensure that credit and financial institutions identify their customers by means of supporting evidence when entering into business relations, particularly when opening an account or savings accounts, or when offering safe custody facilities” (article 3). The most important contribution the financial system can give to the fight against money laundering is

the help to detect and to trace illegal funds. Therefore, the Directive introduced several other important obligations. The obligation to keep a copy or the references of the evidence required for customer identification for a period of at least five years after the relationship with their customer has ended, or in the case of transactions, of the supporting evidence and records for a period of at least five years following execution of the transactions (Article 4). The obligation to examine with special attention any transaction which financial institutions regard as particularly likely, by its nature, to be related to money laundering (Article 5). The obligation of the financial institutions to cooperate fully with the authorities responsible for combating money laundering, by informing those authorities, on their own initiative, of any fact which might be an indication of money laundering, without alerting the customers concerned, and by furnishing those authorities, at their request, with all necessary information (Articles 6, 7 and 8). Lastly, the obligation for credit and financial institutions to establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering, and to take appropriate measures so that their employees are aware of the provisions contained in the Directive.

The most striking contrast between the obligations created by the Directive and the 1990 FATF Recommendations was the mandatory nature of the reporting of suspicious transactions. In fact, while the 1990 Recommendations admitted that the report could be made only on a voluntary basis, the Directive, from the very beginning, established a mandatory regime of suspicious transactions report. The remaining obligations created by the Directive were equivalent to the measures suggested in the FATF Recommendations.

¹³ “Money laundering means the following conduct when committed intentionally:

- the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action,
- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity,
- the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity,
- participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing paragraphs.

Knowledge, intent or purpose required as an element of the abovementioned activities may be inferred from objective factual circumstances”.

¹⁴ The Directive covers credit institutions and financial institutions, as well as insurance companies in so far as they carry out life insurance activities. It covers also branches located in the Community of all such institutions even if their head offices are situated outside the Community

They constitute the basis for the co-operation of financial institutions and their supervisory authorities with the authorities responsible for combating money laundering.

2. The Lifting of the Banking Secrecy

A major discussion took place in the late eighties/first half of the nineties around banking secrecy. Traditionally, the relations within the financial sector were based on the confidentiality of the relationship between the banker and his customer: the banker did not ask questions; the customer did not make disclosures. The fight against money laundering, namely against drug trafficking money laundering, introduced an entirely different approach. For the first time, it was said that the bankers should care about the origin of their customer's money, co-operate with law enforcement agencies, and denounce suspicious transactions of their customers, without alerting them to this fact. For the traditional banking system, this constituted a Copernican revolution.

To introduce this new concept in the financial sector was not an easy task. A complete change of mentalities both of the bank directors and employees, as well as of the supervisory authorities was needed. The idea met many resistances, and it was said that it could not succeed. Some saw banking secrecy as the essential basis of the financial business. Nevertheless, the Forty Recommendations clearly established that "secrecy laws should be conceived so as not to inhibit implementation of the Recommendations", and the Directive required Member States to lift the banking secrecy, either of financial institutions or of supervisory authorities, whenever necessary, namely when a suspicion arises. The mandatory reporting of suspicious transactions came into force for all EC Member States on the 1st January 1993.

Ten years later the discussion, as far as the financial system is concerned, seems entirely outdated¹⁵. In fact, in particular after the BCCI case, financial institutions understood that it was in their interest to avoid being tainted by money laundering. The image and good reputation of a financial institution depends heavily on the perception that high legal, professional and ethical standards apply. Any suggestion that an institution is deliberately or negligently involved in a money laundering case can only contribute to its discredit. No serious institution can afford to see its image and reputation shaken by these reasons.

B. The Amendment of the 1991 Directive

1. The Amendment Process

The application of the 1991 Directive in the Member States, accompanied by the work of a Contact Committee created to follow up the developments of the fight against money laundering in the Community, showed that some amendments to update the Directive, and to extend its scope were needed. The European Commission, came to the conclusion that the 1991 Directive, "*as one of the main international instruments in the fight against money laundering, should be updated in line with the conclusions of the Commission and the wishes expressed by the European Parliament and the Member States. In this way the Directive should not only reflect best international practice in this area but should also continue to set a high standard in protecting the financial sector and other vulnerable activities from the harmful effects of the proceeds of crime*". Having reached this conclusion, the European Commission, who has the right of initiative under

¹⁵ It restarted, however, with regard to the so-called gatekeepers: lawyers and accountants.

Community law, presented, in 1999, a Proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. The proposal was ambitious. According to the Explanatory Memorandum, “*as the 1991 Directive moved ahead of the original FATF 40 Recommendations in requiring obligatory suspicious transaction reporting, the European Union should continue to impose a high standard on its Member States, giving effect to or even going beyond the 1996 update of the FATF 40 Recommendations. In particular, the EU can show the way in seeking to involve certain professions more actively in the fight against money laundering alongside the financial sector*”. The main changes introduced by the Proposal with regard to the 1991 Directive were a widening of the prohibition of money laundering to embrace not only drugs trafficking but also all organized crime, and an extension of the obligations of the Directive to certain non-financial activities and professions.

According to the European Union legislative process, a Working Group of the Council¹⁶ was set to analyse the Commission’s Proposal and the European Parliament prepared its opinion. The Council Working Group started to consider the Proposal in late 1999, and concluded its work under the Portuguese Presidency of the European Union during the first semester of the year 2000. The European Parliament, after having considered the Proposal in several different Committees, formally approved its opinion on July 5, 2000. Taking into account the opinion of the European Parliament, as well as the opinion of the Economic and Social

Committee, a political agreement was unanimously reached at the Council level in September 2000 to adopt a Common position of the Council with a view to the adoption of the new Directive. The European Parliament has now to consider whether it fully accepts the views of the Council or still suggests amendments. If the Parliament accepts the Common Position of the Council, the Directive is immediately adopted; if the Parliament makes new suggestions, there will be a conciliation process between the Parliament and the Council.

2. The Contents of the Amendments

The Commission’s proposal had the intention to widen the predicate offences and to extend the scope of the 1991 Directive to several non-financial businesses and professions, since the whole financial sector (including non-bank financial institutions, such as bureaux de change, financial leasing, brokers, dealers, etc.), was already covered. The main changes to the 1991 Directive resulting from the Council’s Common position, and currently under consideration by the European Parliament, affect mainly those areas. However, there are also some other minor changes to clarify some points.

The first clarification affects the definition of “financial institution” to ensure that *bureaux de change* and money transmission/remittance offices, as well as branches located in the Community of financial institutions, whose head offices are inside or outside the Community come explicitly under the directive. It also included in the definition investment firms and collective investment undertakings marketing its units or shares, and thus made them subject to the obligations contained in Directive.

One of the two major changes to the 1991 Directive is the definition of criminal

¹⁶The Council integrates Ministers from each Member State.

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activity. Under the 1991 Directive, criminal activity means “a crime specified in Article 3 (1) (a) of the Vienna Convention and any other criminal activity designated as such for the purposes of this Directive by each Member State”. This was a narrow definition, which was already left behind by the revision of the FATF Forty Recommendations, namely Recommendation 4, which refers to serious crimes. The new EU definition identifies criminal activity with any kind of criminal involvement in the commission of a serious crime. It then defines serious crimes as being, at least, narcotics trafficking, the activities of criminal organisations, fraud against the European Communities’ financial interests; corruption and any offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law of the Member State. Moreover, Member States agree that, before three years from the entry into force of the new directive, they will revise the definition of predicate offences to money laundering, (essentially to include all crimes punishable with more than one year imprisonment)¹⁷. With the new wording, two major causes of concern come now explicitly under the definition of criminal activity: organized crime and corruption.

In addition to the widening of the list of predicate offences, the second major change the Common position introduces in relation to the 1991 Directive is the extension of the obligations imposed therein to several non-financial businesses and professions. According to the new Article 2a, Member States shall ensure that the obligations laid down in the Directive are imposed on auditors, external accountants and tax advisors; real estate agents; notaries and other independent legal professionals, dealers in high-value goods and casinos¹⁸. Thus, the European Union tries to give an

answer to the modern trends in money laundering. Actually, there is evidence that the tightening of controls in the financial sector has prompted money launderers to seek alternative methods for concealing the origin of the proceeds of crime, with an increased use of non-financial businesses. Further to accountants and lawyers, with whom we will deal in particular in the next section, real estate agents, dealers in high value goods, whenever payment is made in cash, and in an amount of 15000 Euro or more, and casinos will now be required to comply with the Directive’s obligations. They will have to respect the rules on customer identification, record-keeping, increased diligence, co-operation with law enforcement authorities and internal control and training.

The new directive will also improve the rules on customer identification, in

¹⁷ The full definition of serious crimes in the Common Position reads:

- “Serious crimes are, at least:
- any of the offences defined in Article 3(1)(a) of the Vienna Convention;
 - the activities of criminal organisations as defined in Article 1 of Joint Action 98/733/JHA;
 - fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the protection of the European Communities’ financial interests;
 - corruption;
 - an offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law of the Member State.”

Member States shall before [*three years from the entry into force of the Directive*] amend the definition provided for in this indent in order to bring this definition into line with the definition of serious Crime of Joint Action 98/699/JHA. The Council invites the Commission to present before [...] a proposal for a Directive amending in that respect this Directive.

Member States may designate any other offence as a criminal activity for the purposes of this Directive”

particular to deal with the increased risk created by new technologies, Internet banking, direct banking and other types of non-face to face financial transactions. A new Article 3 (10) has been agreed and requires Member States to ensure that specific measures are taken to deal with this problem¹⁹.

3. Lawyers and Accountants - the Gatekeepers

The question of the submission of lawyers and accountants to anti-money laundering obligations has raised controversy. During the last year or two, a new term has made its career in the anti-money laundering jargon: the gatekeeper. A gatekeeper can be defined as someone who is responsible for allowing someone else access to a field, although he/she does not necessarily own the gate or the field he/she allows you access to.

Gatekeepers are, according to the recent terminology, lawyers and accountants. They provide several services that may open “gates” to financial transactions. Such financial transactions may be used for laundering purposes. In fact, financial transactions made for money laundering purposes are no different in substance from legitimate financial transactions: the only difference being the origin of the funds involved. Moreover, lawyers and accountants have been found involved into money laundering schemes, and therefore

¹⁸ Article 2A of the Common position reads: “Member States shall ensure that the obligations laid down in this Directive are imposed on the following institutions:

1. credit institutions as defined in point A of Article 1;
2. financial institutions as defined in point B of Article 1;
and on the following legal or natural persons acting in the exercise of their professional activities:
3. auditors, external accountants and tax advisors;
4. real estate agents;
5. notaries and other independent legal professionals, when they participate, whether:
 - (a) by assisting in the planning or execution of transactions for their client concerning the
 - (i) buying and selling of real property or business entities;
 - (ii) managing of client money, securities or other assets;
 - (iii) opening or management of bank, savings or securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies;
 - (v) creation, operation or management of trusts, companies or similar structures;
 - (b) or by acting on behalf of and for their client in any financial or real estate transaction;
6. dealers in high-value goods, such as precious stones or metals, whenever payment is made in cash, and in an amount of EUR 15000 or more;
7. casinos.”

¹⁹ Article 3 (10): “Member States shall, in any case, ensure that the institutions and persons subject to this Directive take specific and adequate measures necessary to compensate for the greater risk of money laundering which arises when establishing business relations or entering into a transaction with a customer who has not been physically present for identification purposes (“non-face to face operations”). Such measures shall ensure that the customer’s identity is established, for example, by requiring additional documentary evidence, or supplementary measures to verify or certify the documents supplied, or confirmatory certification by an institution subject to this Directive, or by requiring that the first payment of the operations is carried out through an account opened in the customer’s name with a credit institution subject to this Directive. The internal control procedures laid down in Article 11 (1) shall take specific account of these measures.”

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attention has been brought to the role of “gatekeepers.

Gatekeepers may provide numerous services, which can be misused for money laundering purposes: introduction to banks and other financial institutions, management of deposit, savings or securities accounts, real estate transactions, investment services, company formation, creation of trusts and financial and tax advice. However, lawyers, and in some cases accountants, have a special privileged relation with their clients within the framework of the fundamental right of defence. Therefore, the imposition of the obligations laid down in the directive on lawyers and accountants raises some difficult issues, namely on how to harmonize the requirements of the professional secrecy and the needs to fight organized crime. A balanced solution requires a lot of good sense, and a particular ability to find the adequate answers to several questions, specifically when lawyers and accountants should be subject to anti-money laundering provisions and when their activities should be excluded from any such provisions.

After a deep debate, the Council decided that notaries and independent legal professionals, as defined by the Member States, should be made subject to the provisions of the Directive when participating in certain financial or corporate transactions, since in these transactions there is a greater risk of their services being misused for money laundering purposes. However, it is acknowledged that where independent legal professionals are ascertaining the legal position for a client or representing a client in legal proceedings, there should be an exemption from any obligation to report any information obtained in the course of ascertaining the legal position for a client or before, during or after judicial

proceedings. The same kind of reasoning applies to auditors, external accountants and tax advisors who, in some Member States, may defend or represent a client in the context of judicial proceedings or ascertain a client's legal position.

The new Article 2 A-5 (see footnote 18), subjects notaries and other independent legal professionals to the obligations laid down in the directive in two different situations: when they assist in the planning or execution of certain transactions for their clients or when they act on behalf of their clients in any financial or real estate transaction. The rationale for this solution is the idea that the privilege of professional secrecy was granted to the lawyer/customer relationship to safeguard the fundamental right of defence. The intervention in financial transactions, namely in the transactions referred to in the new directive, cannot be construed as a typical act of the lawyer's profession, and therefore does not deserve that kind of protection. On the other hand, from the axiological point of view, the value of the fight against serious criminality precedes, in these cases, other values.

Another issue that had to be solved in the new directive was the question of the entity that should receive suspicious transactions reports from notaries and other independent legal professionals. The solution found was that Member States should be allowed, in order to take proper account of these professionals' duty of discretion owed to their clients, to nominate the bar association or other self-regulatory bodies for independent professionals as the body to which reports on possible money laundering cases may be addressed by these professionals. Thus, the new Article 6 (3) states that “*In the case of the notaries and independent legal professionals referred to in Article 2a(5), Member States may designate an appropriate self-*

regulatory body of the profession concerned as the authority to be informed of the facts referred to in paragraph 1(a) and in such case shall lay down the appropriate forms of cooperation between that body and the authorities responsible for combating money laundering.

Member States shall not be obliged to apply the obligations laid down in paragraph 1 [obligation to report suspicions and to provide the authorities with all necessary information] to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings”

This is the status of the discussions as far as the European Union directive is concerned. A final word, however, should be said on other developments at the EU level. A Political agreement has been reached on a framework decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, and also on the extension of Europol’s mandate to laundering transactions in general. A Decision has been approved facilitating cooperation and information exchange between the financial intelligence units of the Member States. All these measures try to make the fight against financial crime more effective.

IV. THE PORTUGUESE EXPERIENCE

Portugal being a member of the FATF and of the European Union, the Portuguese experience follows naturally the development of the fight against money laundering in these “fora”. From this point of view, more than repeating the contents of all legislation, which materializes, and in some cases anticipates, the solutions of the Forty Recommendations and of the EU Directive, it might be more interesting to draw the attention to one particular aspect of the implementation of an anti-money laundering system: the need for co-operation. Co-operation needed, first, between the legislators and the financial, judicial and law enforcement sectors, and, after the entry into force of the legislation, among these sectors.

A. The Development of the Portuguese Anti-Money Laundering Legislation

The development of the Portuguese legislation against money laundering started with the implementation of the rules of the 1988 United Nations Convention (the Vienna Convention).

In January 1993, a Decree-Law was issued (Decree-Law nr. 15/93, dated 22-01-93), which incriminated autonomously the money laundering conduct, i.e., created the offence of drug money laundering. This was a major change, since before the entry into force of such law, money laundering was punishable within the framework of the obstruction to justice offence, but there were no cases under this legislation.

The first sign of the need for co-operation in this field arose during the drafting of the Decree-Law (actually during the drafting of the Bill to be approved by the Parliament authorising the Government to legislate in this field, due to the exclusive

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competence of the Portuguese Parliament to legislate on criminal matters under Portuguese constitutional law). In fact, that legislation was prepared by a multidisciplinary group with representatives of the Ministry of Finance, Ministry of Justice, central Bank, Office of the Attorney-General, Criminal Investigation Police, Customs Authorities (as well as Health and Education Ministries, since we were dealing also with drug trafficking).

This proved to be very interesting because, since the beginning, all Ministries, Departments and Agencies to be involved in the fight against money laundering had an opportunity to give their opinions and consider each others' issues in the drafting of the legislation itself. This method was followed in the further developments of the Portuguese legislation, in particular in the implementation of the European Community Directive on money laundering, and in the development of new initiatives in the fight against money laundering.

The Directive was implemented through Decree-Law nr. 313/93 (dated September 15, 1993), which created a number of obligations for all financial institutions (either bank or non-bank financial institutions, including currency exchange businesses - "bureaux de change") and for offshore branches. The obligations created by the Decree-Law were our already known obligations imposed by the Directive: customer identification, record keeping, special diligence, report of suspicious transactions, and training and internal control. The Decree-Law was also drafted by a task force with representatives from all the already mentioned Ministries and Agencies, the only peculiarity being, in this case, the consultation made to the Portuguese Banking Association, which had almost all Portuguese Banks as

members.

Finally, this method of co-operation between legislators and ministries and agencies involved in the fight against money laundering was also followed in the last important development of the Portuguese legislation, which we may call stage III. With the co-operation of the Ministry of Commerce and of both the General Inspectorate of Gambling and the General Inspectorate of the Economic Activities, as well as of the other entities already mentioned, a new Decree-Law was drafted and published on December 2, 1995 (Decree-Law nr. 325/95).

This Decree-Law anticipates almost all the solutions that are now being discussed at the European Union level within the framework of the amendment of the 1991 Directive. In fact, save for the issues related to lawyers and accountants²⁰, all other matters are already covered. It extends the offence of money laundering beyond drug proceeds to those arising from all serious economic crimes and from other crimes which generate important proceeds (terrorism, arms trafficking, extortion, kidnapping, pandering, corruption, etc.). It extends some of the obligations imposed to the financial institutions (customer identification for cash transactions above a given threshold, record keeping and suspicious transaction reporting) to some non-financial businesses. The entities covered by this Decree-Law are casinos, real estate agents, bookmakers and lottery dealers and traders in goods of high individual value (precious stones and metals, antiques, objects of art, aircrafts, boats and automobiles).

²⁰ It should be said, however, that in the beginning of the nineties the intervention of Portuguese lawyers in financial transactions was much more reduced than some years later.

The first conclusion, that can be drawn from the fact that this legislation has been approved without opposition, is that the involvement in its drafting of the several Ministries and Agencies anyhow related with the fight against money laundering has created a “consensus” not only about its need, but also about its content. The point is particularly important since some of the solutions introduced by the legislation were not quite orthodox. This, if nothing else, would be an important reason to start the national co-operation against money laundering at the level of the drafting of the legislation.

B. The Legislative Solutions in Practice

Once entered into force, the legislation requires the co-operation of the entities which have to fulfil the obligations created by the law (financial or non-financial institutions either privately or publicly owned) and the different authorities with responsibilities in the fight against money laundering (either judicial or supervisory). The system that the Portuguese legislation has created is the following:

- (i) The institutions covered by law (all financial institutions, including all non-bank financial institutions, and some non-financial institutions) have to comply with the regulations and to fulfil a certain number of obligations, the most significant of which, by its external relevance, is the obligation to report suspicious transactions;
- (ii) The supervisory authorities (including those that control the activities of non-financial institutions) are required to control the compliance of the supervised or controlled entities and have the power to apply administrative sanctions in case of non-compliance. The administrative

sanctions are, in most cases, pecuniary, but, in the extreme cases, can be either the suspension or the revocation of any authorisation needed for the entity to carry on its business;

- (iii) The report of suspicious transactions is made directly to the Office of the Attorney-General, who commands both the competent Public Attorney to open an inquiry and to start a procedure, and the special unit of the Criminal Investigation Police, which centralises the reports (BIB-FIU), to carry on the investigations;
- (iv) Should the investigations be successful, the competent Public Attorney brings the case to court for judgement.

One issue has to be solved before and during the course of the investigations: the problem of bank secrecy. As far as bank secrecy is concerned, it must be said that Portugal, due to historic reasons, which had their genesis in the years immediately after the 1974 Revolution, has a strong bank secrecy regime. Only in very few cases, namely in cases of judicial investigations of criminal activities, is bank secrecy overridden. However, in cases of money laundering, the Portuguese legislation made it clear that there is no room for bank secrecy. This is of vital importance for the development of the fight against money laundering. The existence, in some countries, of bank secrecy rules which prevail, even in cases of criminal activities such as money laundering, can be held responsible for some of the unsuccessful cases in the fight against money laundering at the international level, and was one of the reasons that lead the FATF to engage in the Non-cooperative Countries and Territories exercise.

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The Portuguese system overrides the bank secrecy in cases of money laundering and the abrogation of the bank secrecy rules has two important consequences. The first is that any institution subject to bank secrecy rules (or other rules of professional secrecy), which has to comply with the obligation to report suspicious transactions, is exempted from any liability whatsoever, provided that it has reported in good faith. The disclosure of information to the authorities, by its own initiative of the reporting entity, does not involve any breach of any duty of secrecy or any liability provided that, as mentioned, such disclosure is made in good faith (Article 13 of Decree-Law nr. 313/93, dated September 15, 1993, applicable to the non-financial sector by means of article 9 of Decree-Law nr. 325/95, dated December 2, 1995). The second consequence is that no entity can refuse the disclosure of any information requested by the competent judicial authority in cases of investigation of money laundering (article 60 of Decree-Law nr. 15/93, dated January 22, 1993). According to this rule the communication of any requested information, either manually stocked or in a computer data-base, or the surrender of requested documents may not be refused by any entity, either public or private, the only peculiarity being the fact that, in the case of financial institutions, the request is made through the central bank.

A system in action to fight money laundering requires a deep co-operation of many entities, institutions and authorities, but one clear conclusion that can be drawn from the Portuguese experience is that there cannot be any room for bank secrecy rules in the fight against the laundering of the proceeds of serious crimes.

Portugal has not created any special body to ensure co-operation between the domestic authorities concerned. However,

the Portuguese delegation to the FATF, which includes representatives from the Ministries of Finance and Justice, from the Supervisory Authorities (central Bank, Insurance Institute and Securities Commission), as well as from the Office of the Attorney General and the Criminal Investigation Police, has been the forum to share experiences, co-ordinate actions and suggest improvements either to the legislation or to the practice. On the other Portugal has, since 1991, a very comprehensive domestic legislation governing international judicial co-operation. It provides for full mutual co-operation with the authorities of other countries in the fields of extradition, transfer of criminal cases and execution of sentences, as well as the transfer of convicted persons and assistance in criminal matters, including the detection, seizure and confiscation of the proceeds of criminal activities. These provisions were contained in Decree-Law Nr. 43/91 of 22 January, which has been substituted and reinforced by Decree-Law Nr. 144/99 of 31 August, which entered into force on 1 October 1999. This text is applicable when there is no treaty or convention with a country, and is based on the principle of reciprocity with respect to coercive measures. When there is an existing treaty or convention laying down the framework and terms of co-operation, this legislation still applies, but it is limited to the subsidiary role of defining co-operation procedures and determining which entities implement these procedures.

C. Training

One final word should be written about training and the co-operation in this field. When fighting money laundering, it is necessary to ensure that financial institutions know what are the needs of law enforcement people and that law enforcement people know how financial transactions are carried on. It is also

further needed that all are aware of how money launderers work and that everybody is kept updated with the new technologies used for money laundering purposes. Training, together with some form of feedback to the reporting institutions, is thus of paramount importance.

Considering this, in Portugal, a training programme was prepared, based on a Protocol signed between the Criminal Investigation Police School of the Ministry of Justice and the Training Institute of the Portuguese Banking Association. According to this programme, seminars were held for the staff of financial institutions with the presence of speakers from the School of the Criminal Investigations Police and, on the other hand, senior staffs from financial institutions and from the supervisory authorities of financial institutions have participated in sessions for the students of the Criminal Investigation Police School.

This co-operation has also proved to be of great importance, not only because it permitted to share experiences between people with different backgrounds and not always used to work together (police people and financial people), but also because it helped to build the basis for an informal co-operation between the people involved. This informal co-operation has proved to be, in some cases, the main key for success in the fight against money laundering.

The Portuguese legislation has had during the last years some other minor amendments in order to improve its effectiveness. As it was acknowledged during FATF evaluations, the Portuguese authorities have worked very hard to establish a particularly comprehensive anti-money laundering system. All players, in both the public and the private sector, have mobilised their forces to implement wide-ranging prevention measures. The

main task is now to ensure the correct application of the existing legislation in order to improve the effectiveness of the anti-money laundering system. This will depend, however, not only of the domestic efforts, but also of the degree of international co-operation.

V. CONCLUSION

A huge effort is being made worldwide to counter the laundering of the proceeds from serious crimes. The FATF, The European Union, and many countries and jurisdictions, as well as many international Organisations are taking measures to eradicate this plague from the face of Earth. The FATF strategy to create a worldwide anti-money laundering network, with the co-operation of FATF-style regional bodies, the European Union improvement of the legislation of their Member States, and the efforts of many States to introduce more effective measures to fight financial crime are concurring to make this objective achievable. The most recent United Nations Convention Against Transnational Organized Crime (Palermo Convention), open for signature on the 12th of December 2000, will undoubtedly represent a huge step forward and will give a further impulse to the current fight.

However, it should be retained that the basis for success in this field is co-operation. Therefore, it is of paramount importance to ensure that all the pending efforts to improve the anti-money laundering systems keep or increase a high degree of co-operation. This applies to the FATF exercise on NCCT's, as well as to the review of the Forty Recommendations, where co-operation with FATF-style regional bodies has to be warranted. It applies to the European Union efforts, where co-operation among Member States should be increased. It applies at the domestic level, where co-operation between different

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agencies and different sectors is absolutely needed. Finally, it applies to the work of relevant international Organisations.

The fight against money laundering became somehow fashionable in the last years. Ten years ago, only a few pioneers were engaged, in very difficult conditions, it must be said, in the dissemination of the anti-money laundering idea. Today, many entities, bodies, organisations, even commercial companies, have initiatives on the fight against money laundering. All these entities have their own agendas and coordination is sometimes very difficult. However, further to the co-operation that is needed, an effort of coordination should be made to avoid duplication and other forms of wastefulness.