

## GENERAL OBSERVATIONS

1. The CDPC at its XXVIth Plenary Session in 1977 set up a Select Committee of Experts on Violence in Present-Day Society and gave it the task of studying, with a view to drafting recommendations, the general and specific problems raised by crimes of violence (eg hold-ups and kidnappings) in present-day European society. Politically motivated crime was excluded. However, in view of the scope and nature of the subject, the CDPC considered that it should be dealt with in stages each defined by ad hoc terms of reference. The first ad hoc terms of reference given to the Select Committee reads as follows: "To examine the serious problems raised in many countries by the illicit transfer of funds of criminal origin frequently used for the perpetration of further crime".

The Committee started its work in the first quarter of 1978 under the chairmanship of Mr G. Di Gennaro (Italy) who was later replaced by Mr V. Esposito (Italy).

The Committee drew up a questionnaire on banking questions which was distributed to member States. On the basis of the replies thereto a report was produced by Mr L. Veneziani and Mr P. Klauser, consultant experts. This report was adopted by the Committee.

2. The motivation of the CDPC initiative is based on the assumption that modern forms of criminality in the majority of the European countries show an impressive increase in organised violent criminality supported by large financial resources and aimed at raising more and more gain. It is a vicious circle in which money is at the same time the target and tool of criminal groups and organisations. This type of criminality is usually related to the national or international practice of money laundering, i.e. by way of normal banking operations. Prevention and control to combat this behaviour cannot succeed if confined in a single national context. Therefore international collaboration is needed. Up to now this problem has never been studied in the framework of the Council of Europe with a view to the elaboration of an international instrument.

3. It emerges from the information collected on banking questions that authors of acts of criminal violence usually use banks in order to launder the money so obtained, and in order to hide it away.

The first object can best be achieved by cash operations such as exchange of banknotes or the purchase of either banknotes in a different currency, gold bars, or bank drafts. These enable the criminal to put the banknotes he has acquired back into circulation and obtain in their place easily realisable assets without the need to have any lasting business dealings with the bank. His next step is to hide the money away, eg by renting a safe-deposit in which the now laundered assets can be placed.

These two objects can also be achieved by means of a single banking transaction which consists in handing the dirty money into the bank and asking for it to be paid into an account (current, savings or deposit account). The criminal thus exchanges his banknotes for a bank deposit which he can either retain or convert into clean banknotes as the need arises.

However, little use is apparently made of the second method. Laundering by a cash operation (purchase of bank drafts or securities) followed in some cases by use of a safe-deposit account for a larger proportion.

By carrying out several banking operations, usually to different banks, in order to separate the laundering process from the hiding-away process, the criminal can reduce the risk of discovery. In the first place, each individual bank sees only one part of the process and, in the second, banks pay less attention to cash transactions. That is the main reason why a cash operation is the preferred method of laundering the money.

4. Banking practices in Council of Europe member States are astonishingly uniform, particularly as regards the formalities required to open an account or a securities deposit and to rent a safe-deposit. The identity of the client is checked in almost every State. This should be considered to be an extremely positive factor, the careful checking of a client's identity being of the utmost value when it comes to adequate enforcement of the bank's obligation to produce information and give evidence in criminal proceedings. It has now become particularly difficult to deposit money in a bank anonymously. There nevertheless appears to be some slight differences in the degree of care taken by banks from one member State to another.

The practice in several countries of renting safe-deposits only to clients whose professional standing has been known to the bank for some time strikes as a most useful additional measure. In that case, the bank is in a position to determine the purpose or purposes for which the client is renting the safe-deposit (whether for keeping securities, jewellery, precious metals or works of art for instance).

The stricter regulations in some countries requiring banks to check not only the identity of any person opening an account but also that of the beneficial owner if the latter is a third party, is relatively widespread. It is however desirable that this practice extends to all

Council of Europe member States even if its application still meets with some difficulties due to professional secrecy.

Banking practice in the sectors in which banks do not check the identity of persons with whom they have dealings is also largely similar everywhere. The operations in question are mainly those which do not involve any lasting relationship between bank and client, mainly cash operations, but also inter-bank transactions, ie when a cash sum is handed to one bank to be credited to an account in another bank which itself will also omit to check the identity of the person ordering such transfer.

These banking practices thus represent a weak spot in the system and one of which criminals are able to take advantage in order to launder money acquired through acts of criminal violence. The stricter the requirements regarding identity checks, the greater the chances of discovering the money obtained through criminal activities because it is through the banking system that money is usually laundered and hidden away.

The considerations above lead to the conclusion that co-ordination between the activities of banks and of the authorities competent in the prevention and control of criminal deeds is essential. To that effect it seems that particular obligations should be imposed on banks without however allowing them to replace the police or be assigned functions involving the exercise of a power of authority.

## Comments on the recommendations

a. This paragraph sets out a list of measures which, as a minimum, should be taken by all private and public banks or other agencies performing similar activities. The ways and means by which governments may arrange for these measures to be taken are not specified. They may include, inter alia, statutory means and recommendations to, or agreements with, bankers' associations.

The basic idea underlying sub-paragraph (i) is that the identity of a customer must be known to and thus checked by the bank, when he wishes to open a current or a deposit account or to rent a safe-deposit; also if he wishes to make a cash operation or an inter-bank transfer involving sums of a certain magnitude.

"Customer" here means both the owner of the funds and the person who represents him in his relations with the bank.

By "sums of a certain magnitude" the experts who drew up this text in 1980 had in mind indicatively any sum above 10,000 European units of account (ECU). However, the expression may be understood, according to conditions prevailing in each member State, as any sum which is above the average flows ordinarily dealt with under similar circumstances. Breaking down the sum in several parts should not be allowed as a way out available to customers.

Customers presenting themselves personally at the counter should be requested to establish their identity by exhibiting a document issued or approved by an official authority and preferably containing a photograph of the holder. In this respect the Resolution (77) 26 on the establishment and harmonisation of national identity cards adopted by the Committee of Ministers of the Council of Europe on 28 September 1977 is recalled.

Customers who do not present themselves personally at the counter should also be asked to establish their identity by exhibiting an official document or else by means of a document which could not have been produced prior to an identity check performed by an authority or other trustworthy agent on the basis of an official document.

The rental of safe-deposits is the easiest and most immediate means of safe-keeping almost any proceedings of crime. Therefore banks should not make them available to anyone regardless of personal considerations. Only customers well known to the bank and therefore regarded as trustworthy should be allowed to rent a safe. Two criteria are laid down in sub-paragraph (ii), namely the experience enjoyed by the bank in dealing with the customer over a certain period of time and references. The latter includes the personal acquaintance of the banker.

The Committee of Experts had also envisaged that banks should be bound to:

- a. draw up a list of customers to whom safe-deposits were rented and to forwarding the list to the appropriate authorities;
- b. forward this list to a judicial authority upon request
- c. keep an inventory of objects and funds placed in the safe.

This idea which would be given further examination did not, however, meet with the unanimous approval of the Committee.

Sub-paragraph (iii) provides for banks to hold stocks of banknotes whose serial numbers are recorded. These stocks should be easily available for use in cases of eg hold-ups and kidnappings, and when so used, banks should immediately make the serial numbers known to the authorities. In fact the only individual characteristic of any single banknote is its serial number. Hence the importance of recording the serial numbers of banknotes entered into circulation as the result of a criminal act (dirty money).

The effectiveness of most recommendations herein included depends on the accuracy with which bank employees who deal with customers judge the person and the situation they have to face. Therefore, it should be part of their professional training to be given adequate knowledge in checking identity papers and in detecting criminal behaviour.

b. This recommendation logically follows the recommendation contained in sub-paragraph (iii). Banknotes which entered into circulation as a result of a criminal act, and whose serial numbers are recorded must be traced in order to prevent them from being laundered. To that effect, close co-operation is endeavoured between on one side, the police and judicial or other appropriate authorities, and on the other side, banks. And this both at national and at international level, where the assistance of the ICPO-Interpol is of great importance notably because of the technical means which it has or may acquire. These means should in fact include access by Interpol to the SWIFT (Society for Worldwide Interbank Financial Telecommunications) telecommunications system which presently links the main banks in most European countries and should in the future be enlarged to every counter. The possibility of operating the European Conventions on Mutual Assistance in Criminal Matters and on the Transfer of Proceedings in Criminal Matters or others, or bilateral conventions where applicable, is also recalled.

c. When notes are paid in, banks should be able to compare their serial number with the numbers which figure on the list of dirty money. For practical as well as technical (absence of any widely used trans-national electronic system) reasons such comparison cannot be systematical at every single counter. Thus the recommendation provides for spot checks as an alternative solution. However, it is desirable that the use of such a system be enlarged to all Council of Europe member States.