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SELECT COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES
(PC-R-EV)

4TH PC-R-EV TYPOLOGIES MEETING

(Conclusions of Working Groups)

Vaduz, 9-11 April 2002

Directorate General I (Legal Affairs)

May 2002

WORKING GROUP 1 (FINANCIAL INTERMEDIARIES)
SUMMARY AND CONCLUSIONS

Moderator: Mr Giovanni ILACQUA (Italy, PC-R-EV Scientific Expert)
Secretary: Mr Peter CSONKA (Council of Europe, DG I)

The workshop was attended by roughly 25 participants. The workshop heard three presentations, made respectively by Mrs Claire SCOHIER (CTIF-CFI, Belgium), Mr Peter Neville (Guernsey Financial Services Commission, Guernsey) and Mr Daniel THELESKLAF (Due Diligence Unit, Liechtenstein); each presentation was followed by a discussion.

A number of important issues were raised by the three presenters and discussed by the participants, such as:

- In many countries intermediaries, such as tax advisors, lawyers, notaries, accountants are allowed to provide services related to asset management, investment, company formation, tax planning, etc.; while these professions provide services similar to those provided by traditional financial institutions on the market, in most countries they are unregulated as financial intermediaries and as such, do not fall under due diligence and anti-money laundering regulations.

- Recognising that these financial intermediaries and the services they provide are at risk of being misused for criminal purposes, for example by enabling, assisting or conducting operations, which may constitute or may be related to financing of terrorism, money laundering, tax fraud or bankruptcy violations, some countries, including member States of the PC-R-EV, have recently moved to regulate these professions.

- Similarly, initiatives were also taken at the international level (EU, FATF, Council of Europe) to bring these professions under the existing international anti-money laundering regulatory framework.

- Law enforcement experience shows that these professions may particularly be involved in the setting up of companies, the creation of trusts, the opening of bank accounts on behalf of clients, the management of their assets and the provision of other services which aim at protecting their identity and assets; these services may become their principal professional activity and dominate over traditional legal or accounting activities.

- The use and misuse of these professionals create particular challenges for law enforcement and judicial authorities engaged in investigating - domestically or internationally - money laundering or other crimes since their secrecy, confidentiality and similar privileges make it rather difficult, if not impossible, to know the identity of the ultimate physical beneficial owner of the assets kept or managed by them.

In the light of the above, the moderator drew the following conclusions:

- Given the similarity of financial and other services provided by intermediaries with those of the traditional financial institutions, it appears necessary and justified that they should be regulated and treated as other financial service providers irrespective of their professional status.

- These financial intermediaries need in particular to be covered by anti-money laundering regulations and subject to core obligations, such as "know your customer" rules, record-keeping and suspicious transaction reporting; in addition, they need to be properly supervised even if this does not seem to be required by the current international anti-money laundering standards.

- The "know your customer" rules should extend to the identification of the beneficial owner, the origin of the assets and creating prospective business profiles for each customer.

- National authorities in charge of coordinating anti-money laundering policy should provide assistance to the professional associations of these intermediaries in preparing a tailor-made list of money laundering indicators.

- Laws regulating these intermediaries should clearly provide that their secrecy and client confidentiality rules are not an obstacle to the disclosure of information to the FIU, law enforcement or regulatory bodies.

- Laws regulating these intermediaries should require their professional associations to periodically control that their members' activities are in line with the profession's legal status and code of conduct; furthermore, they should require that lawyers or accountants inform their association or register with a public authority that they also act as financial advisors or consultants; countries may wish to subject the conduct of financial activity by the legal professions to a specific authorisation by a public authority.

- Laws regulating these intermediaries should require that suspicious transaction reports (STRs) be sent directly to the FIU and not through professional associations, because the latter do not have the same requirements of confidentiality, are unfamiliar with STRs and thus make it difficult to centralise the processing of STRs.

- Laws regulating trusts should require that trustees identify the types of trusts which represent a particular risk, so as to enable the permanent monitoring of their activities.

- Charities should be regulated and required to disclose their assets.

- FIUs should be routinely consulted on new legislation extending anti-money laundering obligations to new categories of professions, because they have an overall view of the money laundering situation in the country and can reasonably assess whether certain professions represent a risk.

- Laws regulating these intermediaries should include, among the licensing requirement, knowledge of anti-money laundering legislation.

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CONCLUSIONS OF WORKING GROUP 2

DISCUSSION TO EXAMINE IN DETAILS THE METHODS OF FINANCIAL INVESTIGATIONS, I.E. INVESTIGATIONS RELATED TO SUSPECTED FUNDS AND LAUNDERING OPERATIONS

The discussions held within this working group are reflected in the conclusions prepared by Mr Igor BARAC, from the Croatian Anti Money-Laundering Department, who acted as facilitator.

Conclusions

Prior to the meeting, a questionnaire was sent to PC-R-EV members, and replies were received from 9 different countries (San Marino, Latvia, Czech Republic, Hungary, Slovakia, Malta, Estonia, Bulgaria and Andorra). During the session, three presentations were made, covering the various approaches concerning the initialisation of financial investigation. The first one was a presentation by Mr Dieter JANN (Investigation Magistrate from Switzerland), then by Mr Yury CHIKHANCHIN (First Deputy Chairman of Russian Financial Monitoring Committee), and by Mr Klaudijo STROLIGO (Director of the Office of Money Laundering Prevention from the Republic of Slovenia).

The composition of working group 2 was the following: 1 judge, 4 prosecutors, 7 policemen, 16 administrative officers and others.

The first presentation was made by Mr Dieter JANN on the Swiss approach and practice in conducting financial investigations, including an overview of the relevant legislation. In Switzerland, financial investigations may be launched on the basis of the STR system and/or through the investigation of the predicate offence. Mr JANN presented in detail the relations between prosecution authorities and Swiss banks, the level of proof required for starting investigations as well as triggers for launching financial investigations regarding terrorist financing in Switzerland. He further provided information on the application of special investigative techniques in money laundering cases.

Mr Yury CHIKHANCHIN presented the functioning of the Russian FIU and ways of receiving information from the reporting institutions. Through several levels of analytical filters in the Russian FIU, notifications are made to Russian law enforcement agencies and/or to the prosecutor. The Russian FIU is responsible for handling not only ML cases, but also all other profit generating offences. The Russian representative underlined the problem of capital flight from Russia.

The final presentation was made by Mr Klaudijo STROLIGO. The presentation included a case-study illustrating the co-operation between the FIU and the police regarding a money laundering case in which corruption was the predicate offence. The Slovenian representative described in details the stages of a financial investigation, its purpose, starting-points, aims, modes of conduct and other issues relevant to financial investigations.

During the discussions, the working group 2 tried to formulate answers to the following questions, hereafter presented as conclusions:

1. How should a financial investigation start?

Financial investigations may, obviously, start in different ways depending on the authorities or bodies intervening initially and the field of competence concerned: tax administration, Customs,

financial supervisory bodies, audit bodies etc. Within the anti money laundering prevention system that most PC-R-EV countries have now implemented, a financial investigation may start as a result of an STR, or jointly as part of the investigation of the predicate crime. All participants agreed that both ways are essential for conducting financial investigations relating to money laundering and that there is often a mixture of those two approaches. As regards investigations relating to the financing of terrorism, it was concluded that relying on the STR reporting system is often the only way and that such a system has shown its usefulness. Furthermore, in line with Convention N° 141, most countries have adopted the so-called "all crimes" approach for the purpose of seizing and confiscating proceeds from crime, so that these standards should be applied automatically to every investigation relating to profit-generating offences. In those cases when the countries have not yet adopted the all-crimes approach, the use of performance indicators or law enforcement guidelines is recommended, in order to ensure that the financial side of the investigations is adequately dealt with.

2. What are the common indicia on which financial investigation start in PC-R-EV countries?

It was concluded that it is impossible to enumerate all possible indicators or triggers for launching a financial investigation, simply because there is a wide range of them in addition to an STR: unexplained wealth or assets, suspicious behaviour, non-declaration of assets, activities connected with organised crime etc. It appears that within the field of police or other law enforcement bodies, a pro-active approach is essential.

3. How to establish a link with a crime?

In the majority of PC-R-EV countries, speaking in general, the link with a crime is rather difficult to establish. There are several reasons for this. Firstly, national legal systems only seldom apply the reversal of the burden of proof and it is the prosecution's responsibility to provide evidence for all the facts concerned. Secondly, it appears, from practice, that the potential of freezing and seizure orders is not fully used. Concrete cases were for instance mentioned where - although accounts were frozen and assets were seized by a given country's authorities following an international request - there was no follow-up information provided by the requesting country as to the continuation of the investigation (sometimes over a very long period of time). Finally, some countries solve the problem in the police investigation stage as well as in the prosecution / judicial stage, simply combining from the very beginning the investigation for the predicate offence with the financial investigation. In this regard, some participants concluded that, since it was not possible to investigate a variety of offences without performing a joint financial investigation, the predicate offence and the financial offence may therefore be linked from the very beginning.

4. What is the level of proof needed?

Whereas most countries need a conviction for the predicate offence, others require at least strong evidence of the existence of a profit-generating offence. It was also concluded that the level of proof required varies from national system to national system, and that it differs for the various investigation phases: the level of proof is somewhat lower for the police investigation and prosecution, than the one needed for conviction. It appeared that this is a question that needs to be addressed urgently, in order to avoid further misinterpretation of the current international standards.

5. The use of special investigative techniques

The range of applicable techniques varies from system to system and, in general, it is possible under every jurisdiction to use a narrower or broader range of these tools for financial investigations.

Although they have shown their usefulness in such cases, and even if a broad range of measures can be applied, some difficulties still need to be solved, as mentioned under item 3. above: for example, to use these techniques, courts need to be well aware of all circumstances, and as practice shows, they are still somewhat reluctant to authorise their application in financial and/or money laundering investigations.

6. Difficulties in international co-operation

The difficulties of international co-operation are visible at administrative and judicial level. In the administrative phase, although co-operation is more common, major problems remain, such as: overcoming bank secrecy in some jurisdictions, the level of information that some jurisdictions may exchange, and the time needed for the reply. As regards judicial co-operation, and notwithstanding the state of ratification of Convention N° 141, there are only few international requests for mutual legal assistance concerning financial investigations. Furthermore, the question of asset-sharing needs to be addressed by the PC-R-EV members through national legislation, though it would seem preferable for some to set standards internationally first in this area. All these issues need to be addressed in the future.

7. Resources for financial investigations

It was underlined that financial and economic newspapers and the Internet were valuable sources of information. In addition to operational analysis (needed for the reconstruction and understanding of the offences – including at court level), strategic analysis can be useful for the pro-active identification of sectors at risk and non-co-operative reporting institutions. Training activities involving staff of law enforcement agencies, FIUs and the financial private sector are a good way of enhancing co-operation and reporting.

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