



Financial Action Task Force

President's Summary of Outcomes from the Experts' meeting on Corruption

Paris, 13 October 2012

1. The Financial Action Task Force (FATF) convened, in collaboration with the G20 Anti-Corruption Working Group, an Experts Meeting on Corruption on Saturday, 13 October 2012. In this meeting, 88 delegates from 28 jurisdictions and 14 organisations participated including: the FATF, G20 Anti-Corruption Working Group, Asia Pacific Group (APG), Intergovernmental Action Group against Money Laundering in Africa (GIABA), Middle East & North Africa Financial Action Task Force (MENAFATF), Commonwealth Secretariat, Group of States Against Corruption (GRECO), International Anti-Corruption Academy (IACA), International Association of Insurance Supervisors (IAIS), International Monetary Fund (IMF), Organisation for Economic Co-operation and Development (OECD), United Nations Office on Drugs and Crime (UNODC), World Customs Organisation, and World Bank¹. The meeting was chaired by the President of the FATF, Mr Bjørn S. Aamo (Norway), at facilities in Paris offered by the World Bank. The FATF continues to emphasise the anti-corruption agenda, while avoiding duplication of the role of mandated anti-corruption bodies. Part of that work is focused on bringing together anti-money laundering and counter-terrorist financing (AML/CFT) experts and anti-corruption (AC) experts for the purpose of discussing issues of mutual interest.
2. This is the second time that the FATF has held such an event. The first FATF Experts Meeting was held in February 2011 under the Mexican FATF Presidency, and was the first international platform for exchanging views between operational-level AML/CFT and anti-corruption experts, policy makers from both developing and developed countries, and international standard setters and assessment/monitoring bodies.
3. This meeting has been focused on the experience of countries, particularly in relation to asset recovery issues, and taking into account the domestic dimension. The timing of this meeting is significant, as it occurs at a critical stage during the FATF's work to develop a new assessment methodology, new mutual evaluation procedures, and new guidance which will assist countries in their implementation of the new FATF standards. It is particularly important for the FATF to have input from anti-corruption practitioners at this point in time when it is in the process of making the revised FATF Recommendations operational.
4. This meeting has also been an important opportunity for the experts who are present to provide input to the FATF's work. The information gathered during this meeting will be reported back to the FATF membership at the FATF Plenary which is being held in Paris

¹ See Annex 1 for the full list of jurisdictions and organisations represented.

next week, and will provide useful input into the development of the new assessment methodology and procedures, and guidance papers.

5. The key objectives for this meeting were:

- To identify key challenges and possible solutions for facilitating international co-operation by exploiting the synergies between AML/CFT measures and AC measures;
- To have an in-depth discussion of key issues concerning international co-operation in the context of investigating and prosecuting corruption, bribery and related money laundering offences;
- To identify and discuss key AML/CFT tools that asset recovery practitioners should be aware of and use;
- To use the results of the discussions as input into FATF's and anti-corruption standard setters' ongoing and future work on corruption, and
- To identify those *FATF Recommendations* that are particularly useful for AC experts and that should be included in FATF best practices on corruption.

6. Experts heard presentations on the following issues: i) asset tracing and financial investigations; ii) provisional measures (freezing and seizing); iii) confiscation; and iv) asset recovery and international cooperation. Participants discussed the issues outlined below. Additionally, there was a recognition of the important synergies between the work of the FATF and the work of the G20 Anti-Corruption Working Group.

Asset tracing and financial investigations

7. The *FATF Recommendations* require countries to implement domestic AML/CFT measures that provide valuable tools for tracing assets, conducting financial investigations, and facilitating the confiscation of the proceeds of corruption and bribery offences. These tools can add value to a corruption case, even where it may not be possible to pursue related money laundering charges. In practice, suspicious transaction reports (STR) have uncovered corruption activity, triggered corruption investigations, and been used to support ongoing financial investigations of corrupt activity. STRs can provide a valuable source of financial intelligence for investigators in both the identification and tracing of the proceeds of corruption. Unfortunately, adequate feedback on the value of STR reporting is not always transmitted back to reporting entities. The rigorous and effective prosecution of corruption and bribery cases also provides an important source of information for money laundering cases. It is useful to preserve the closed files of such cases, as these may be reopened and used as a source of information for future investigations.
8. Customer due diligence (CDD), enhanced CDD for politically exposed persons (PEPs), and record keeping measures are also important tools. Where financial institutions and designated non-financial businesses and professions (DNFBP) hold accurate information about the identity of their customers, including beneficial ownership information, the ability to trace assets is greatly enhanced. Administrative authorities, such as tax authorities, can hold useful information about the ownership and control of assets, and on declared income and assets. As well, FATF Recommendation 3 requires tax crimes to be predicate offences

for money laundering (see the definition of “designated categories of offences”, as that term is defined in the Glossary to the *FATF Recommendations*).

9. Financial institutions and DNFBP play a key role in this process. For example, it is important for financial institutions and DNFBP to implement robust programmes to combat money laundering. This includes policies and procedures for sharing information within financial groups for AML/CFT purposes, in line with FATF Recommendation 18. Financial institutions should also be required, at a minimum, to ensure that their foreign branches and majority owned subsidiaries apply AML/CFT measures consistent with the home country requirements. Supervisors and regulators also have an important role which includes ensuring that the financial sector meets the applicable AML requirements, and understands where the corruption and bribery risks are.
10. It is important for countries to have mechanisms in place to facilitate domestic co-ordination and co-operation among relevant law enforcement agencies, administrative authorities, and financial intelligence units (FIUs) in the investigation and prosecution of corruption offences and related money laundering, in line with FATF Recommendation 2. International co-operation is also needed to ensure that the authorities can successfully trace assets which have been moved abroad. Networks of practitioners can be a useful tool, enabling practitioners who are working on the same case in their respective countries to come together and better coordinate their efforts.

Provisional measures (freezing and seizing)

11. AML/CFT measures such as the *FATF Recommendations* provide for valuable tools that enable the freezing and seizing of assets related to corruption. There are also many useful tools available in international Conventions, including the *United Nations Convention against Corruption* (UNCAC). The participants recognised the need for strong domestic and international cooperation to ensure that the financial intelligence gathered through AML/CFT measures can be effectively used by the authorities in corruption and related money laundering cases, and to facilitate the enforcement of foreign freezing/seizing orders.
12. Transforming the information which is gathered by FIUs into evidence that can be used in court to support a freezing/seizing action is sometimes challenging. Where the enforcement of a domestic freezing/seizing order is being sought, further obstacles may arise if the processes and standard of proof required by the requested country are not well understood by the requesting country. The challenges associated with international corruption cases were also discussed including: the length, complexity and cost of investigations; the difficulties associated with obtaining evidence to the required standard; and the complexity of restraining assets internationally.
13. It is important to ensure that stolen assets do not remain frozen abroad indefinitely. Countries need to implement effective measures which facilitate international cooperation, and also respect the important principles of due process, rule of law and fundamental human rights. Experience in recent years has shown the difficulty of transforming a national freezing action into a successful confiscation and asset recovery action which results in the frozen assets being returned to the countries and people from whom they were stolen. The participants recognised that this is an area which would benefit from further capacity building and resources.

Confiscation

14. AML/CFT measures are useful in facilitating the confiscation of assets in corruption and related money laundering cases. The participants discussed a number of successful cases of international cooperation involving confiscation. Many countries already have in place sufficient legal frameworks to enable confiscation, including non-conviction based confiscation. However, in practice, action is sometimes not taken swiftly enough, and before the assets are hidden or moved abroad. The ease of moving money electronically or through the use of cash couriers or bulk cash smuggling, combined with the use of legal persons and arrangements (including shell companies and trusts), and the lack of accurate information on beneficial ownership create serious obstacles to confiscation. The effective implementation of AML/CFT measures as required by the *FATF Recommendations* and other international instruments, such as the *OECD Anti-Bribery Convention*, are valuable tools for addressing these issues.
15. Taking confiscation action in international corruption cases can be particularly challenging because much of the evidence in a foreign bribery cases is often not locally available. Political upheaval and social unrest can sometimes create practical impediments to secure Information exchange with foreign counterparts. It is also important to focus on both the demand side and the supply side of bribery transactions. It was also noted that multiple legal proceedings create complexity in confiscation cases. For example, assets might be dissipated in the course of a criminal case, leaving little for victims who are seeking compensation or restitution through a civil action. Overall, the participants recognised that there is a great need for further capacity building in this area.

Asset recovery and international cooperation

16. Effective and timely international cooperation is essential for the recovery of assets related to corruption. The necessary legal frameworks for international cooperation should be in place, based on international instruments such as the UNCAC, and the *FATF Recommendations*. The *FATF Recommendations* require countries to implement a strong framework for information sharing. Under FATF Recommendation 37, countries should provide the widest possible range of mutual legal assistance (MLA) in relation to money laundering and associated predicate offences such as corruption and bribery. Under FATF Recommendation 38, countries should have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate the proceeds of crime. Where dual criminality is required for MLA, it is important for countries to have criminalised an adequate range of corruption and bribery offences, and related money laundering, in line with FATF Recommendation 3. Participants agreed that these requirements are particularly important in asset recovery cases, given their international dimension.
17. There are many potential obstacles to effective mutual legal assistance which can seriously delay and thwart the investigation and prosecution of corruption, bribery and related money laundering. For example, not all countries have established an FIU with sufficient capacity to trace assets and cooperate with foreign counterparts. The cross-jurisdictional aspect of cases involving stolen assets creates legal and practical complexities, including those of language. Corruption can negatively impact how the rule of law is applied in some countries, which can impede their ability to provide international cooperation effectively.

Conflicts can arise where mirror proceedings are not underway in the country where the predicate offence was committed as well as in the country where the assets are held, and the UNCAC provides for mechanisms to help address this issue, such as spontaneous information exchange.

18. Proactive approaches are particularly useful including: spontaneous information exchanges among competent authorities and making effective use of FIU information transmission channels and exchange mechanisms, in line with FATF Recommendation 40; utilising open source information; taking a multi-agency approach and strategic planning, in line with FATF Recommendation 2; and developing a case management strategy with the country from where the assets were stolen and other countries which may be holding stolen assets (*e.g.*, to consider issues such as which country should start the criminal, civil or administrative proceedings). The participants also noted that a number of supporting initiatives are available to help countries manage these issues, including the Stolen Asset Recovery Initiative (StAR) which is a partnership between the World Bank and the UN Office on Drugs and Crime (UNODC).

Conclusions

19. Both anti-corruption and AML experts confirmed that there is a growing recognition that, even though anti-corruption and AML efforts are mutually reinforcing, they have not always been brought together effectively. It would be extremely useful to have a greater understanding, at the policy, legislative, operational and enforcement levels of how AML/CFT measures may be effectively leveraged in the fight against corruption. Developing tools which take into account the needs of anti-corruption experts, such as best practices, to further this understanding could usefully advance cooperation and the effectiveness of both anti-corruption and AML/CFT efforts. The participants noted that anti-corruption and AML/CFT experts should continue working together on these important issues.

FATF Experts Meeting on Corruption
13 October 2012

ANNEX 1

List of jurisdictions represented:

Argentina
 Australia
 Bangladesh
 Brazil
 Canada
 China
 France
 Germany
 Hong Kong, China
 Italy
 Japan
 Kingdom of the Netherlands
 Liechtenstein
 Luxembourg
 Mexico
 Nigeria
 Norway
 Republic of Korea
 Russian Federation
 Singapore
 South Africa
 Spain
 Sweden
 Switzerland
 United Kingdom
 United States
 Vatican City State
 Zambia

List of international bodies represented:

Financial Action Task Force (FATF)
 Asia Pacific Group (APG)
 Commonwealth Secretariat
 Group of States Against Corruption (GRECO)
 G20 Anti-Corruption Working Group
 Intergovernmental Action Group against Money Laundering in Africa (GIABA)
 International Anti-Corruption Academy (IACA)
 International Association of Insurance Supervisors (IAIS)
 International Monetary Fund (IMF)
 Middle East and North Africa Financial Action Task Force (MENAFATF)
 Organisation for Economic Co-operation and Development (OECD)
 United Nations Office on Drugs and Crime (UNODC)
 World Bank
 World Customs Organization (WCO)

List of presenters and moderators:

Introductions:	FATF President; FATF Secretariat; G20 Anti-Corruption Working Group Co-Chairs (Mexico and the United Kingdom)
Asset tracing & financial investigations	Italy, Norway, World Bank (moderator)
Provisional measures (freezing and seizing):	Bangladesh, Canada, Luxembourg (moderator), United States
Confiscation:	APG Secretariat (moderator), Germany; Nigeria, United Kingdom
Asset recovery and international cooperation:	Australia (moderator), Liechtenstein / Egmont Group, Switzerland; Zambia