



FINANCIAL ACTION TASK FORCE
GROUPE D'ACTION FINANCIÈRE

FATF Work on Investigating and Prosecuting Money-Laundering and the Confiscation of Criminal Proceeds

Séverine Baranger
Policy Analyst
FATF Secretariat

Agenda

1. Presentation of the FATF
2. Workshops/Report on
 - a) Investigations and prosecutions of ML (also on TF)
 - b) Confiscation of criminal proceeds

<http://www.fatf-gafi.org/publications/fatfgeneral/documents/ml-cft-judges-prosecutors.html>



1. Financial Action Task Force (FATF)

- Inter-governmental body (est. 1989)
- FATF + 9 regional bodies= more than 200 jurisdictions
- **Objectives:** Set international standards and promote effective implementation of legal, regulatory and operational AML/CFT measures
- FATF Recommendations
- FATF Mutual Evaluation Process

2. Scope and participation to the Initiative

Objectives

Outreach to the criminal justice sector

Identify challenges and best practices

Common work FATF and FSRBs

Participation

450 judges and prosecutors from more than 150 jurisdictions and observers

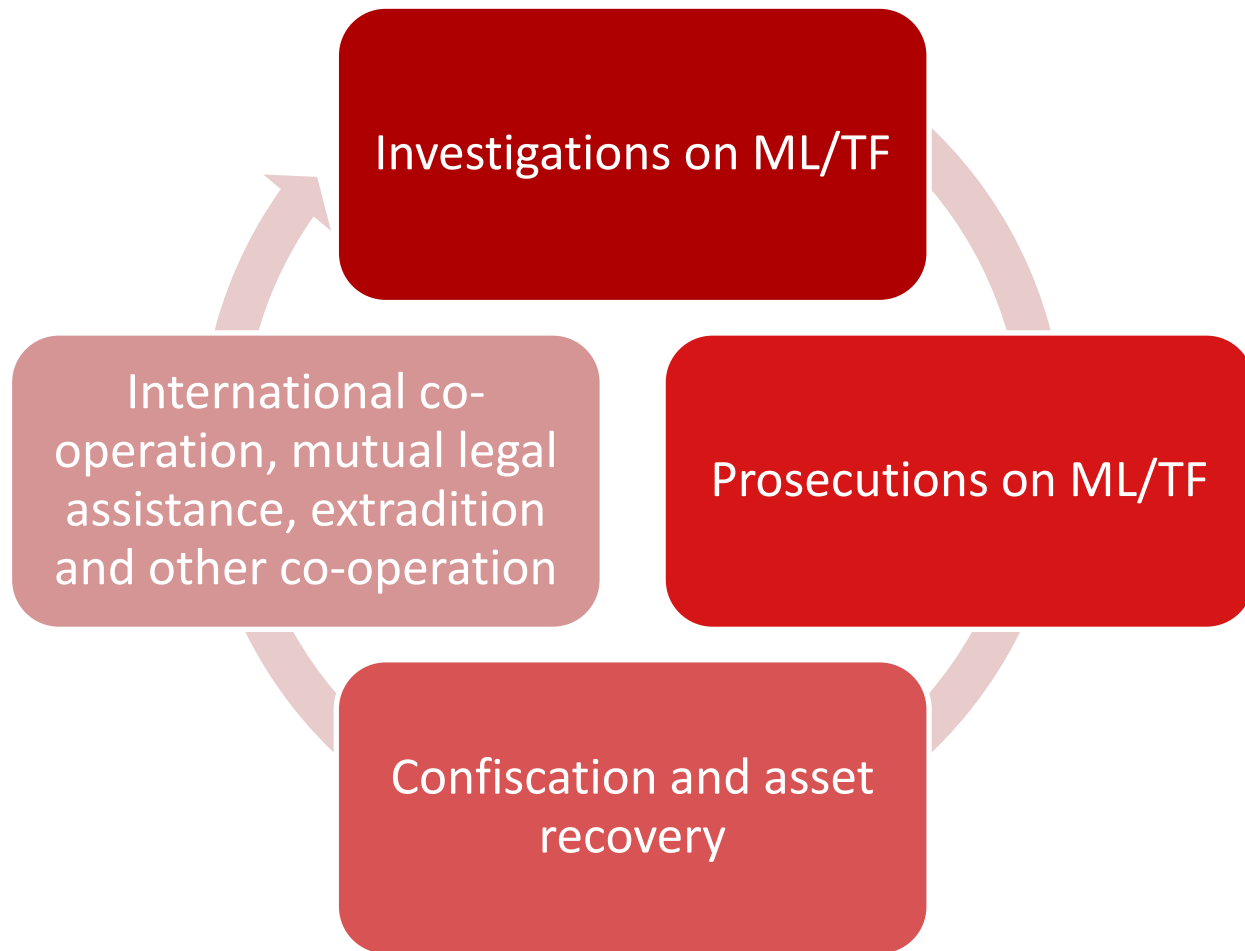
Regional bodies and other organisations, including the OSCE

Approach

6 regional workshops to share experience and best practices

Main findings in a report to be disseminated

Scope of the Initiative/report



General best practices (all)

Comprehensive understanding

- ML/FT risks,
- strategic policies and priorities

Institutional framework

- Creation of task force/ specialised ML/TF or confiscation units or at minimum experts

Domestic co-operation and information sharing

- Set up a permanent multi-agency coordinating committee on ML/TF

Others

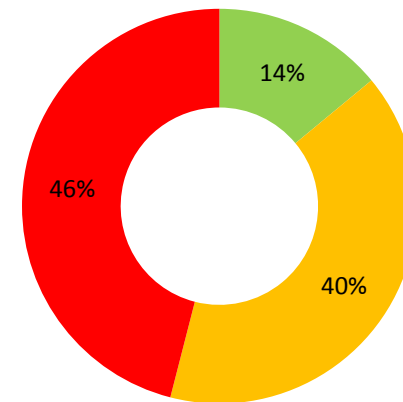
- Collaboration with the private sector
- Trainings for prosecutors and investigators

Investigation and prosecution of ML: Findings from the Mutual Evaluations (MEs)

- Technical compliance: R.3, R30 and R.31- positive
- **IO 7:** ML offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions
- Ratings of MEs on effectiveness (IO7):

| Reviews | IO7 |
|--------------|-----------|
| High | 0 |
| Substantial | 7 |
| Moderate | 20 |
| Low | 23 |
| Total | 50 |

IO7 Global



■ Low ■ Moderate ■ Substantial ■ High

Investigation and prosecution of ML: Main legislation challenges and best practices

Challenges around the ML offences

- Burden of proof too high / Complex legislation
- No criminalisation of self-laundering
- De-prioritisation of the ML prosecution.

Main good practices around criminalising ML offences

- Criminalising the offense adequately:
 - Expand the scope of predicate offences
 - Adopt an all-crimes approach to assist prosecution
- Ensure that the predicate offense need not be proven to convict for ML
- Fixing plea bargaining and deferral prosecution agreements

Investigation and prosecution of ML: Powers and techniques

Challenges with Investigative Techniques

- Lack of capacity to conduct forensic investigations
- Access to evidence held by foreign service providers
- Limited technical tools to intercept communications
- Encrypted communication channels

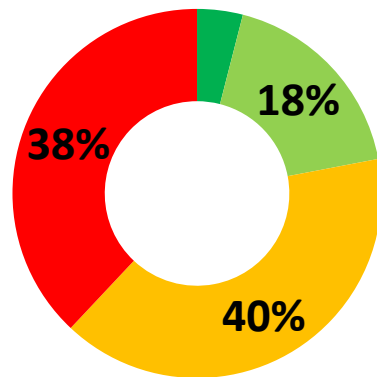
Effective tools and techniques

- Monitoring internet use and gathering forensic information from the dark web (e.g. block-chain analysis technologies)
- Access and intercept social media communications/ monitor web-based chats

Confiscation: findings from the Mutual Evaluations (IO8)

- IO8 – must be effective and achieve results – deprive criminals of their proceeds
- Ratings of MEs: implementation of effective confiscation regime is modest

IO8 Global



| Reviews | IO8 |
|--------------|-----------|
| High | 2 |
| Substantial | 9 |
| Moderate | 20 |
| Low | 19 |
| Total | 50 |

■ Low ■ Moderate ■ Substantial ■ High

Main deficiencies in MEs

Confiscation not a policy priority

Issues with low amounts

- Results on confiscation not in line with the risks faced (low amount confiscated)
- Misalignment between amounts subject to provisional measures (freezing , seizing) and amounts confiscated
- Amount ordered confiscated and that actually recovered

Inability to follow the money trail

- Use of complex structures (shell companies and trusts arrangements) and nominees
- Use of many (non-cooperative) jurisdictions

Lack of data and statistics

How much?

| Country | Annual avg no. cases | Annual avg confiscated (€M) |
|-------------|----------------------|-----------------------------|
| Austria | 500 | 14.4 |
| Belgium | 4000 | 62 |
| Denmark | 1100 | 17 |
| Ireland | 70 | 4 (3.5 tax recovery) |
| Italy | | 1.9 bn |
| Norway | 1250 | 19 |
| Spain | | 83 |
| Sweden | 1100 | 13.5 (220 tax) |
| Switzerland | 17 | 64 |

Best practices and recommendations (1)

Good practices

- Use of tax mechanisms against criminals
- Laws and powers that go beyond standard conviction based system – reduced or reverses onus of proof, easy to free/seize, sanctions for non-payments, etc.

Capacity building and resources

- **Capacity building** – Capacity building and training for investigators and prosecutors
- **Resources** - Allocating more human, material and IT resources to investigation and prosecution in terms of identification, tracing and confiscation of proceeds of crime

Coordination and cooperation

- **Information sharing** - Improving inter-agency information
- **International cooperation** - Improving international cooperation between law enforcement and prosecutorial agencies in relation to cross-border proceeds and instrumentalities of crime

Recommendations and best practices (2)

Operational issues

- **Availability of information** - Adequate powers to trace or monitor, adequate databases and information sources to get all necessary information quickly – BO, central bank registries, tax data, modern searchable asset databases
- **Asset management** - Establish a legal and institutional framework which ensures the effective and systematic management of confiscated assets.
- **Investigations** - Carry out financial investigations in parallel with the (criminal) investigations of all major proceeds-generating offences
- **Dissuasive Sanctions** - Ensure a more dissuasive system for seizing and confiscating falsely/not declared or disclosed cross-border movements of currency and/or BNI

Recommendations and best practices (3)

Legislation, policies and procedures

- **National Strategy** - Developing and implementing a national strategy on confiscation
- **Policy Guidance** - Generate policy guidelines both in LEA and prosecutorial services to focus efforts on confiscation
- **Raise Awareness** - Institutionalize clear operational responsibilities and enhance commitment of LEA and prosecutors to confiscate proceeds and instrumentalities of crime or assets of equivalent value
- **Statistics** - Improving the collection of statistics on conviction proceedings and cases as well as the value of criminal assets seized/frozen and the amount of proceeds of crime restituted to victims, shared or repatriated

Thank you
For more information:

FATF public website

www.fatf-gafi.org