Non-paper on Part III of the Plan of Action: Countering money-laundering and promoting judicial cooperation to enhance international cooperation*

A. Countering Money Laundering

Introduction

At the high-level segment of the fifty-second session of the Commission on Narcotic Drugs, held in March 2009, heads of States, ministers and government representatives from 132 States adopted the Political Declaration and Plan of Action on International Cooperation towards an integrated and Balanced Strategy to Counter the World Drug Problem.2 Part III of the Plan of Action focuses on countering money-laundering and promoting judicial cooperating to enhance international cooperation.

Member States committed themselves to implementing effectively the Plan of Action, and stressed the need to foster international cooperation by implementing the provisions against money-laundering contained in all relevant international and multilateral instruments, such as the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption, the Financial Action Task Force Recommendations on Money Laundering in accordance with national legislation, and also by:

- Establishing new or strengthening existing domestic legislative frameworks to criminalize the laundering of money derived from drug trafficking, precursor diversion and other serious crimes of a transnational nature in order to provide for the prevention, detection, investigation and prosecution of money laundering;

- Establishing new or strengthening existing financial and regulatory regimes for banks and non-bank financial institutions, including natural and legal persons providing formal or informal financial services, thus preserving the integrity, reliability and stability of financial and trade systems;

- Implementing effective detection, investigation, prosecution and conviction measures; and

- Promoting effective cooperation in strategies for countering money laundering and in money-laundering cases.

General information

Money laundering and related illicit financial activities have devastating economic and social consequences. They continue to pose serious challenges to economies and governments. In addition to funding corrupt individuals and their networks, the illicit proceeds of money laundering have also been used to finance organized crime, conflicts and terrorist activities.

* Prepared by the Secretariat as part of the preparations for the high-level review on the implementation by Member States of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.

1 See *Official Records of the Economic and Social Council, 2009, Supplement No. 8* (E/2009/28), chap. I, sect. C.

The process of money laundering is critical to the effective operation of virtually every form of transnational and organized crime, including the production and trafficking in illicit drugs, and should not be seen as an isolated financial crime

To successfully combat money laundering, it is imperative that comprehensive and globally harmonized regulations be adopted and enforced. It has been shown that legal and operational obstacles inherent in many national frameworks further stretch the ability of some Member States to effectively implement anti money laundering legislation. In many cases, the proceeds of crime are raised in, or routed through countries which have weak or non-implemented legislation. The law enforcement abilities of Member States must be enhanced, and they must be able to effectively share information, improve the coordination within their national systems, and expand their cooperation on the regional and international stage.

Specific information

I. Achievements

Information currently available to UNODC, including a preliminary analysis of the responses received to date to the 2013 Annual Reports Questionnaires, shows that the implementation of measures to combat money-laundering increased marginally since 2011. There remain regional disparities in terms of legal and operational measures undertaken.

A majority of Member States already have some form of legislation criminalizing money laundering, and a significant portion of this legislation is reported as taking into consideration international requirements and standards, such as those established by the Financial Action Task Force.

A significant portion of Members States has also carried out the following actions:

a. Established legislation allowing the freezing, seizure and confiscation of the proceeds of illicit drug trafficking and other serious crimes;

b. Incorporated measures into their financial systems to counter money-laundering;

c. Established Financial Intelligence Units (FIU).

II. Challenges

While reporting from Member States indicates that efforts to combat money laundering are recognized as important to undermining organized crime linked to the trafficking in narcotic drugs, further efforts need to be made.

Many Member States still need to implement practical measures to enhance their capacity to analyze financial information, to properly identify, trace and investigate illicit financial flows, and to confiscate the proceeds of crime. Member States must also continue to improve their ability to effectively coordinate at the national level and cooperate with their neighbours, as well as regional and international partners, to effectively share information, conduct joint operations, extradite money launderers, and provide mutual legal assistance on anti-money laundering matters.

Despite several recent high-profile anti-money laundering cases, the majority of laundered money goes undetected and those cases which are discovered often do not result in prosecutions. Along with the needed enhancements to legal frameworks and operational capacity, the political will of Member States to investigate and prosecute money laundering cases also requires reinforcing.

Newly emerging and more complex money laundering techniques, involving the use of the international trade system, cash couriers, alternative remittance systems, new payment methods, and complex corporate structures, are increasingly used by criminals to exploit vulnerabilities in national anti-money laundering capabilities.

Additionally, the use of the Internet for money laundering and the illicit transport of cash and value commodities across borders are growing practices. The relatively easy use of modern technology and the apparent lack of borders in criminal operations are often in direct contrast to the capabilities of Member States, many of which lack human and I.T. resources and continue to struggle with cross-border operations and information sharing.

Current statistics indicate that money laundering is worth trillions of dollars annually and less than one percent of global illicit financial flows are seized and frozen. As such, money laundering remains an incentive for criminal activities, as well as a global threat to the integrity, reliability and stability of financial and trade systems.

III. Priorities

In adopting the 2009 Political Declaration and Plan of Action, Member States committed themselves to implementing effectively the three international drug control conventions, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption through resolute international cooperation, in collaboration with relevant regional and international organizations, with the full assistance of the international financial institutions and other relevant agencies and in cooperation with civil society, including non-governmental organizations, and the private sector. This remains a priority for future work, and it is imperative that these comprehensive and globally-harmonized regulations for anti-money laundering be adopted and enforced.

The abilities of Member States must also be enhanced so they can effectively share information, improve the coordination within their national systems, and expand their cooperation on the regional and international stage.

States should make concerted effort to ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to:

(a) Effectively trace the proceeds of crime;

(b) Effectively freeze, seize, and confiscate the proceeds of crime;

(c) Extradite money launderers for prosecution;

(d) Exchange information at the national and international levels for the identification, tracing, and interdiction of laundered monies;

(e) Conduct joint investigations;

(f) Conduct cross-border operations;

(g) Engage in FIU to FIU cooperation and information sharing;

(h) Monitor the cross-border movement of cash and value commodities;

(i) Conclude, where necessary, bilateral or multilateral agreements or arrangements for using special investigative techniques such as electronic or other forms of surveillance and undercover operations in the context of cooperation at the international level;

(j) Submit action requests for mutual legal assistance and extradition in a timely manner.

The regulatory capacity of financial institutions should be further supported to ensure that:

(a) Customer identification and verification requirements (Know Your Customer/KYC) are implemented for all clients;

(b) Beneficial ownership is established for all accounts;

(c) Records are properly kept;

(d) Reporting of suspicious transactions is performed and penalties for non-reporting are known and levied.

IV. Further observations for consideration

Member States could consider:

Establishing and fully implementing comprehensive legal and regulatory frameworks in compliance with United Nations Conventions and internationally accepted standards to (a) criminalize the laundering of money derived from transnational organized crimes, (b) strengthen financial regimes, (c) enhance regulatory and reporting requirements, (d) support the effective freezing, confiscation and recovery of illicit assets;

Implementing effective detection, investigation, prosecution and conviction measures for money laundering and related illicit financial crimes;

Engaging in effective cooperation for countering money laundering and in prosecuting money laundering cases by strengthening mechanisms for domestic inter-agency coordination and information-sharing;

Strengthening existing regional and international networks for the exchange of operational information among competent authorities, particularly between Financial Intelligence Units;

Enhancing legislation and operational cooperation mechanisms to support joint operations and cross-border law enforcement activities to identify, trace, and interdict illicit financial flows;

Using the international cooperation tools developed by UNODC such as the MLA Request Writer Tool, model laws, the IMOLIN network, the online legal library and other reference materials and studies which are available on the UNODC website.

B. Judicial Cooperation

Introduction

While recognizing the existence of various legal and procedural impediments in connection to extradition and mutual legal assistance procedures, Member States committed to carrying out specific actions to overcome the difficulties in the Plan of Action, including by:

(a) Making full use of multilateral treaties, notably the 1988 Convention, the Organized Crime Convention and the Convention against Corruption, as legal basis for requesting and granting this type of judicial assistance;

(b) Adopting measures to expedite extradition procedures; and

(c) Adopting a more flexible approach to judicial cooperation, in order to facilitate the provision of the widest possible range of mutual legal assistance.

General information

According to data collected by UNODC through the Annual Reports Questionnaire during 2012, roughly 35% per cent of countries had concluded bilateral or multilateral agreements or memoranda of understanding on extradition with a number of countries ranging from one to 70. Eight Member States reported that they had entered into such agreements during the period under review. As regards action taken pursuant to those agreements, seven Member States reported that between one and 30 countries had been involved in such action during the reporting period. Thirty-nine per cent reported having bilateral or multilateral agreements or memoranda of understanding with other countries in relation to mutual legal assistance, with the number of countries ranging from one to 70. Six Member States reported that they had entered into such agreements during the period under review. As regards action taken pursuant to those agreements, eight Member States reported that between one and 44 countries had been involved in such action during the reporting period.

Approximately 28 per cent reported having bilateral or multilateral agreements or memoranda of understanding with other countries relating to illicit traffic by sea with the number of countries ranging from one to 21.

Between 2011 and 2012, there was an increase in the proportion of countries having bilateral or multilateral agreements or memoranda of understanding on extradition, mutual legal assistance and illicit traffic by sea, as well as new legislation, rules or procedure for the protection of victims and witnesses.

More than a third of reporting countries stated having new legislation, rules or procedures for the protection of victims and witnesses.

A key component for judicial cooperation is a country's ability to cooperate effectively with its neighbors, as well as with regional and international partners. Many Member States indicated that their legislation enabled them to conclude bilateral or multilateral agreements for extradition and mutual legal assistance and illicit traffic by sea of which some had adopted new legal instruments during the reporting period to permit the conclusion of such agreements.

Specific information

I. Achievements

During the past years, certain regions have witnessed the establishment and strengthening of regional and sub-regional networks aimed at fostering judicial cooperation in transnational organized crime-related cases.

In 2011-2012, two specialized networks were established: 1) The Network of Prosecutors against Organized Crime (REFCO) in Central America and Mexico was set up in March 2011 and 2) the West African Central Authorities and Prosecutors Network (WACAP) was established in November 2012. Both mechanisms have contributed to strengthening knowledge and to build capacity of national authorities to prosecute illicit drug trafficking and other transnational crimes. During the past years, REFCO organized regional workshops, involving more than 700 prosecutors. It also supported a closer cooperation between prosecutors and police officers responsible for the investigation of high profile cases, allowing them to exchange information and establish a common strategy to dismantle organized criminal groups. These two networks were established with the support of UNODC.

Another recent development of regional cooperation is the agreement between the Conference of Ministers of Justice of Ibero-American Countries (COMJIB) and the International Police Organization (INTERPOL) which was signed in October 2012 to promote judicial and police cooperation at the national, regional and international levels.[3]

Since 2008 the European Union's Judicial Cooperation Unit (EUROJUST) has enhanced its work in drug trafficking cases, including by implementing a strategic project aimed at identifying the main challenges and related solutions in EUROJUST coordination meetings involving drug trafficking. Similarly, in 2012, the EU commissioned the Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas (FIIAPP), to prepare a study on judicial cooperation, mutual legal assistance and extradition of drug traffickers between the EU and its members and Latin American and Caribbean countries. The draft study was presented in May 2013 during a workshop that gathered together representatives from different international organizations, including UNODC. Mutual legal assistance and extradition agreements have continued to be at the core of the judicial cooperation between the EU and third countries. The EU has recently entered into the first of such international agreement with the US (in 2010) and with Japan (in 2011).

During the past years, the use of UNODC tools has also led to increased judicial cooperation. The number of competent national authorities (CNA) designated by Member States has expanded. The "Directory of CNAs under the United Nations Convention against Transnational Organized Crime and the Protocols thereto and articles 6, 7 and 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988" now contains the contact information of 478 CNAs from 168 Member States and the Secretariat has recorded 445 registered users of the online directory.

In addition, the Mutual Legal Assistance Request Writer Tool was developed by UNODC to assist States in drafting mutual legal assistance requests to facilitate and strengthen international cooperation. This tool guides the casework practitioner through the request process, prompting the drafter if essential information has been omitted. The tool generates a complete request for final editing and signing. To date, 613 users have requested and received copies of the tool, up from 380 in 2010.[4]

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[3] http://www.interpol.int/en/Internet/News-and-media/News-media-releases/2012/PR079

[4] CTOC/COP/2012/9

In 2012, UNODC published three manuals, which will help spread knowledge and awareness of mechanisms for international cooperation in criminal matters: The Manual on Mutual Legal Assistance and Extradition, The Handbook on the International Transfer of Sentenced Persons and The Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime.

II. Challenges

The most frequent problem faced by judicial or law enforcement agencies in cooperating with counterparts in other countries is the slowness of formal procedures in the response time from the requested State. Reasons for this may include linguistic difficulties or differences in procedure, which complicate responding.

Additional challenges are linked to the absence of channels of communication between relevant national authorities for the exchange of basic information and criminal intelligence. In addition, lack of information and formal mechanisms of cooperation between law enforcement agencies and victim service providers prevent victims from being properly assisted and protected. This in turn, leads to less chances of the victim cooperating in the criminal proceedings. Processes move slowly in international judicial cooperation through mutual legal assistance, extradition or international cooperation for purposes of confiscation, which are also impeded by differences in national legislation of countries regarding procedures and protection measures.[5]

Other important problems include the absence of a common language for communication and the lack of cooperation from counterparts, as well as an insufficient exchange of information, compounded by the lack of agreements enabling operational cooperation or mutual legal assistance, and the inability of authorities to identify contact persons to expedite communication.

The issue of non-extradition of nationals continues to pose difficulties for a number of requesting and requested States. This is an issue requiring continuous dialogue and discussion among States parties, with the view to improving the understanding of the differences in legal systems and finding ways to mitigate the difficulties.

The duration of extradition proceedings has also continued to be a challenge for States, as extradition can be both time-consuming and expensive. The sheer size and scope of domestic variations in substantive and procedural extradition law present the most serious obstacles to just, quick and predictable extradition. Moreover, extradition remains a highly technical and specialized area of the law for which countries do not always have the required capacity.6 The use of videoconferencing to facilitate mutual legal assistance is also considered to overcome such technical obstacles.[7]

III. Priorities

Effective regional and international cooperation is required, and there is a need for increased bilateral and multilateral efforts in judicial cooperation, including through mutual legal assistance, extradition and controlled deliveries.

Furthermore, Member States which have not yet done so should seek to conclude, where applicable, bilateral or multilateral agreements or arrangements in relation to extradition,

[5] CTOC/COP/WG.4/2011/5
[6] CTOC/COP/WG.3/2012/2
[7] CTOC/COP/WG.3/2012/2

mutual legal assistance and illicit traffic by sea with more countries, in accordance with the relevant provisions of the 1988 Drug Convention, the Convention against Transnational Organized Crime and the Convention against Corruption, especially if they do not grant extradition and/or mutual legal assistance in the absence of a treaty or based on the principle of reciprocity.[8]

One of the most effective means of facilitating international cooperation is through regional and international coordination mechanisms and networks.[9] It should be noted that regional networks enhance personal contacts which build trust among officials and lead to a better understanding of their respective legal and procedural/operational requirements. These are crucial for law enforcement agencies in the context of sharing criminal intelligence, as well as for investigators, prosecutors and magistrates when they develop cases or request and respond to requests for mutual legal assistance and extradition, since timeliness and confidentiality are always a concern. For example, although mutual legal assistance and extradition processes can be lengthy, they can be expedited by such judicial platforms/networks, because knowing your counterpart can sometimes determine success or failure.[10]

The use of the United Nations Transnational Organized Crime Convention, as the legal basis for international judicial cooperation in drug-related cases, should be further promoted. Reference can be made to the fact that this Convention, unlike most of the existing bilateral treaties, includes a wide range of cooperation measures that are of particular relevance for these types of cases (i.e. international cooperation for the purposes of confiscation, disposal of confiscated proceeds of crime, joint investigations and special investigative techniques).

The world drug problem remains a common and shared responsibility which requires effective and increased international cooperation and necessitates an integrated, multidisciplinary, mutually reinforcing and balanced approach to supply and demand reduction strategies.

[8] E/CN.7/2012/14
[9] CTOC/COP/WG.3/2012/2
[10] CTOC/COP/WG.3/2012/2