



AML/CFT 101

CFATF Secretariat Research Desk
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WHAT IS INTERNATIONAL CO-OPERATION?



What is International Co-operation?

THE UNDERLYING PRINCIPLE:

Countries should provide the widest possible range of mutual legal assistance (including in relation to confiscation requests in R. 38) in relation to Money Laundering (ML), associated predicate offences and Terrorist Financing (TF).



FATF's International Cooperation Requirement

THE FATF RECOMMENDATIONS:

- R. 36 International Instruments
- R. 37 Mutual Legal Assistance
- R. 38 Mutual Legal Assistance:
Freezing and confiscation
- R. 39 Extradition
- R. 40 Other Forms of
International Cooperation



International Instruments – R. 36

- Vienna Convention, 1988
- Palermo Convention, 2000
- United Nations Convention Against Corruption, 2003
- Terrorist Financing Convention, 1999

Countries are also encouraged to ratify:

- Council of Europe Convention on Cybercrime, 2001
- Inter-American Convention against Terrorism, 2002 and
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005

Mutual Legal Assistance (MLA): R. 37



MUTUAL LEGAL ASSISTANCE:

- Covers ML, associated predicate offences and TF.
- Requests countries to have adequate legal basis for providing assistance and, whenever appropriate, enter into treaties, arrangements and other mechanisms to enhance cooperation
- Should not prohibit or place unduly restrictive conditions on the provision of MLA.
- Timely prioritization and execution of requests. Use of a central authority or another official mechanism for the transmission and execution of requests. Creation of a case management system to allow monitoring of progress made in the execution of requests.
- Should not refuse to execute a request on the sole grounds that the offence involves fiscal matters; there is an ongoing inquiry, investigation or proceeding, unless it the provision of assistance would impede such inquiry, investigation or proceeding; or the requesting counterpart authority is of a different nature or status.



Mutual Legal Assistance: R. 37 (cont'd)

MUTUAL LEGAL ASSISTANCE:

- Should not refuse to execute a request for MLA on the grounds that laws require FIs and DNFBPs to maintain secrecy or confidentiality. (Unless legal professional privilege is applicable).
- Maintain the confidentiality of the MLA requests received and the information contained in them. Where the requested country cannot comply with this requirement it should immediately notify the requesting country.
- Countries should render MLA in the absence of dual criminality when the assistance does not involve coercive actions.



POWERS AND INVESTIGATIVE TECHNIQUES UNDER R.31 SHOULD BE AVAILABLE FOR MLA, INCLUDING:

Mutual Legal Assistance: R. 37 (cont'd)

A) Production, search and seizure of information and taking witness statements

B) a broad range of other powers and investigative techniques (powers of R.31) – Undercover operations, intercepting communications, accessing computer systems and controlled deliveries.

Best venue issues should be considered.

- Provide complete factual and legal information.
- Competent Authority dealing with MLA should have adequate financial, human and technical resources.
- Staff with high professional standards and integrity and appropriately skilled.

Mutual Legal Assistance: Freezing and Confiscation - R. 38



MUTUAL LEGAL ASSISTANCE: FREEZING & CONFISCATION

- Covers ML, predicate offences and TF. Also instrumentalities used in or intended for use in the commission of the offences or property of corresponding value.
- Assist with requests based on foreign Non-Conviction-Based Confiscation (NCBC) orders (unless inconsistent with fundamental principles of domestic law).
- NCBC means judicial procedures for confiscation in which a conviction is not required. In some countries, this could be in relation to civil forfeiture proceedings or *in rem** proceedings.
- At a minimum, NCBC should be available when perpetrator is unavailable by reason of death, flight, absence or is unknown.
- Countries should be able to share confiscated property.
- Effective mechanisms to manage frozen and confiscated property.

*refers to a lawsuit or other legal action directed toward property, rather than toward a particular person.

Extradition R.39



MUTUAL LEGAL ASSISTANCE: EXTRADITION

- Ensure that ML and TF are extraditable offences.
- Constructively and effectively execute requests without undue delay.
- Have clear and efficient processes to facilitate the execution of extradition requests in a timely manner (incl. case management system).
- Not place unreasonable or unduly restrictive conditions.
- Ensure adequate legal framework for extradition.

Extradition – R.39 (cont'd)



- Should have simplified extradition process which is consistent with fundamental principles of domestic law.
- Examples: direct transmission for provisional arrest, extradition based on warrants, simplified extradition based on waiver for formal extradition proceedings.
- Authorities responsible for the execution of MLA requests should be enabled with:
 - (a) Adequate financial human and technical resources
 - (b) Staff with high professional standards and integrity and appropriately skilled.
- Extradite its nationals or where that is not available submit the case without delay to its competent authorities for prosecution.

OTHER FORMS OF INTERNATIONAL COOPERATION – R.40



General principles apply to all competent authorities.

- Competent authorities are defined as “all public authorities with designated responsibilities for combating ML and/or TF” (this not only includes authorities such as the FIU, law enforcement and financial supervisors but can also cover other relevant authorities e.g. casino supervisors, customs).
- There are additional specific requirements for some categories of competent authorities (FIUs, financial supervisors and law enforcement authorities).

OTHER FORMS OF INTERNATIONAL COOPERATION – R.40 (CONT'D)



Requesting authorities should:

- Provide adequate information to process request
- Make clear purpose and on whose behalf the request was made
- Upon request, provide feedback on information received.

Additional safeguards:

- Aside from use for specific purposes, prior authorisation required for further dissemination
- Use of secure way, and through reliable channels or mechanisms for exchange.
- Option to reject request if requesting authority cannot protect confidentiality of information exchanged.

IMMEDIATE OUTCOME 2 CHARACTERISTICS OF EFFECTIVE SYSTEM



- Countries are required to provide constructive and timely information and assistance by other countries;
- To locate and extradite criminals; and
- Identify, freeze, seize, confiscate and share assets and provide information related to ML, TF or associated predicate offences.
- Competent authorities should seek international cooperation to pursue criminals and their assets. Over time, this makes country an unattractive location for criminals to operate and or a safe haven to maintain their illegal proceeds.

Immediate Outcome 2

Core Issues (cont'd)

❖ To what extent are constructive and timely MLAs and extraditions provided and the quality of such assistance?

To what extent has the country sought international co-operation in an appropriate and timely manner relative to domestic ML, associated predicate offences and TF which have transnational elements?

To what extent are the different competent authorities seek other forms of international co-operation to exchange financial intelligence and supervisory, law enforcement or other information in a timely manner with their foreign counterparts?

Immediate Outcome 2 Core Issues (cont'd)



- To what extent do the different competent authorities provide (including spontaneously) other forms of international co-operation to exchange financial intelligence and supervisory or other law enforcement or other information in a constructive and timely manner?
- How well are competent authorities providing and responding to foreign requests for cooperation in identifying and exchanging of basic and BO information of legal persons and arrangements?

Ratings- Recommendations 36-40 and Immediate Outcome 2



Countries	R.36	R.37	R.38	R.39	R.40	IO 2
Trinidad and Tobago	LC	C	PC	C	LC	ME
Jamaica	LC	C	LC	C	PC	ME
The Bahamas	LC	LC	LC	LC	LC	ME
Barbados	PC	LC	PC	LC	LC	ME
Antigua and Barbuda	LC	PC	LC	LC	PC	ME
Cayman Islands	LC	C	LC	C	LC	ME
Haiti	LC	PC	PC	PC	NC	LE
Bermuda	C	LC	LC	C	C	SE
Turks and Caicos Islands	PC	LC	LC	C	PC	ME

Current COVID-19 impact on AML/CFT regimes with respect to International Co-operation



- The FATF indicated in their paper, “COVID-19-related Money Laundering and Terrorist Financing, Risks and Policy Responses”, that there are mixed reports about the impact on operational cooperation due to the COVID-19 crisis. Some delegations expressed concern that delays in cooperation could be exacerbated over time due to remote working of FIU staff, and potential re-prioritisation efforts of law enforcement and supervisory authorities and within the private sector.
- Formal cooperation, such as mutual legal assistance and extradition are already impacted by the crisis due to the limitation or suspension of court operations, and the delayed execution of extradition orders caused by travel restrictions. Some delegations have reported that the provision of AML/CFT technical assistance has also been reduced or suspended.

Potential AML/CFT Response for consideration with respect to International Co-operation



The FATF highlighted in the paper, “COVID-19-related Money Laundering and Terrorist Financing, Risks and Policy Responses”, a range of actions that jurisdictions are taking or could consider taking in response to these challenges, from dealing with new risks and/or reduced operational capacity to facilitating charitable activity, economic and fiscal stimulus and financial relief packages.

A practical example of a response taken by authorities included the continuation of cooperating across borders. According to the FATF:

- FIUs should keep the Egmont Group Secretariat apprised of any developments, including any operational disruptions that could impact international cooperation responses and provide a key contact point.
- Increased communication may be required, particularly on group-wide supervision.