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Open-ended intergovernmental expert working group on countering money-laundering and promoting judicial cooperation

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Results attained by Member States in achieving the goals and targets set at the twentieth special session of the General Assembly, the limitations and problems encountered and the way forward: countering money-laundering and promoting judicial cooperation

Note by the Secretariat

Summary

The present note was prepared pursuant to Commission on Narcotic Drugs resolution 51/4, in which the Commission decided, inter alia, to establish open-ended intergovernmental expert working groups to work in a coordinated manner on the following topics, which correspond to the subjects of the action plans, declarations and measures adopted by the General Assembly at its twentieth special session: (a) drug demand reduction; (b) supply reduction (manufacture and trafficking); (c) countering money-laundering and promoting judicial cooperation; (d) international cooperation on the eradication of illicit drug crops and on alternative development; and (e) control of precursors and of amphetamine-type stimulants.

The open-ended intergovernmental expert working group on countering money-laundering and promoting judicial cooperation will discuss results attained by Member States in achieving the goals and targets set at the twentieth special session of the General Assembly, limitations and problems encountered and the way forward in the areas of countering money-laundering and promoting judicial cooperation. The conclusions and recommendations of the working group will be transmitted to intersessional meetings of the Commission to provide material on which to base the drafting of the outcome for the high-level segment of the fifty-second session of the Commission.



I. Introduction

1. At the twentieth special session of the General Assembly, Member States adopted a set of measures to enhance international cooperation to counter the world drug problem (Assembly resolutions S-20/4 A to E) in which four areas were identified that Member States should consider when addressing the countering of money-laundering and the promotion of judicial cooperation:

(a) Adoption by the year 2003 of national money-laundering legislation and programmes in accordance with the relevant provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;¹

(b) Broadening of the scope of predicate crimes to include not just drug offences but all serious crimes related to money-laundering;

(c) Promotion of multilateral, regional, subregional and bilateral cooperation among judicial and law enforcement authorities to deal with criminal organizations involved in drug offences and related criminal activities;

(d) Review and, where appropriate, strengthening by 2003 of the implementation of the measures to promote judicial cooperation adopted at the twentieth special session of the General Assembly, including extradition, mutual legal assistance, transfer of proceedings, controlled delivery, cooperation in law enforcement, targeting trafficking in drugs by sea, measures to support the judicial process and other forms of cooperation.

II. Significant and measurable results in the areas of countering money-laundering and promoting judicial cooperation

A. Countering money-laundering

2. The implementation of measures to counter money-laundering has increased significantly in all areas monitored as part of the follow-up to the twentieth special session of the General Assembly. That progress is corroborated by supplementary data from Financial Action Task Force on Money Laundering-style regional bodies and mutual evaluation reports from monitoring agencies.

3. Most Member States reporting on results in this area have:

(a) Criminalized the laundering of proceeds derived from drug trafficking and other serious crimes, although global trends indicate that States in some regions need to do more;

(b) Adopted legislation allowing the freezing, seizure and confiscation of the proceeds of drug trafficking and other serious crimes;

(c) Put measures in place in their financial systems to counter money-laundering and to allow for the reporting of suspicious and/or unusual

¹ United Nations, *Treaty Series*, vol. 1582, No. 27627.

transactions, adoption of “know-your-client” practices, identification of beneficial owners of accounts, removal of impediments related to banking secrecy in criminal investigations and establishment of financial intelligence units.

4. In addition, Member States have made significant efforts to adopt legal and institutional measures in the areas of prevention and detection (e.g. an increasing number of States are creating financial intelligence units to collect and analyse financial intelligence data). Even so, the laundering of proceeds derived from drug trafficking and other serious crimes remains a global threat to the integrity, reliability and stability of financial and trade systems.

B. Promoting judicial cooperation

5. There has been moderate progress overall in implementing the measures to promote judicial cooperation adopted by the General Assembly at its twentieth special session (Assembly resolution S-20/4 C). The rate of implementation has increased significantly in two regions, namely in North Africa and the Middle East and in Oceania, but has remained at levels similar to the past in other regions, with some variations in different key areas of judicial cooperation.

6. Most reporting States have adopted legislation to allow for judicial cooperation. Most have adopted new legislation or revised existing legislation in the areas of extradition and mutual legal assistance and have entered into bilateral and/or multilateral treaties.

7. Law enforcement cooperation has increased in all regions.

8. The implementation rate of controlled deliveries has increased significantly and is widely used by States in all regions.

9. The offering of protection to judges, prosecutors, surveillance personnel, law enforcement officers and witnesses has also increased.

III. Limitations and problems

A. Countering money-laundering

10. Although 83 per cent of reporting Member States indicated that they had criminalized the laundering of the proceeds of drug trafficking and other serious crimes by the target date of 2003 set at the twentieth special session of the General Assembly, limitations and difficulties remained.

11. The phenomenon of money-laundering is not static. It is constantly evolving because criminals innovate, finding new ways to launder the proceeds of their crimes. For instance, the new issues that have emerged since 1998 and that have become an essential part of the comprehensive approach to countering money-laundering (such as asset forfeiture and recovery, comprehensive and efficient analysis frameworks for financial intelligence units, effective reporting systems and customer due diligence procedures for financial and non-financial entities and the financing of terrorism) are not reflected in the follow-up to the twentieth special session of the General Assembly.

B. Promoting judicial cooperation

12. According to the information provided by Member States, mechanisms for implementing judicial cooperation were not always in place. Training on effective means to request or grant cooperation was lacking. Also lacking were mechanisms to monitor the annual volume of judicial cooperation activities.

13. The following areas proved especially problematic for most States:

(a) The implementation rate for the transfer of proceedings was consistently low;

(b) Law enforcement cooperation at the interregional level was lacking;

(c) Implementation levels remained low for efforts to counter trafficking in drugs by sea;

(d) Protection of witnesses was, in the opinion of States and experts, a major issue of concern for law enforcement agencies;

(e) Legal impediments to extradition and practical difficulties remained, even though most States had laws in place and had entered into bilateral and multilateral treaties on the extradition of drug offenders and many States had revised their legislation since the twentieth special session of the General Assembly; with regard to the non-extradition of nationals, several States continued to refuse the extradition of their nationals;

(f) Most of the progress made in adopting bilateral and multilateral agreements took place within regional frameworks, rather than at the global level;

(g) While the low number of refusals of requests was encouraging, many difficulties remained with regard to differences between legal systems, delays and procedural and language problems.

IV. The way forward: countering money-laundering and promoting judicial cooperation

A. Countering money-laundering

14. In order to address effectively the aforementioned limitations and difficulties in the area of countering money-laundering, the open-ended intergovernmental expert working group on countering money-laundering and promoting judicial cooperation may wish to consider the following measures:

(a) Any future evaluation mechanism should include additional sources of supplementary information, such as the assessment systems established by the Financial Action Task Force (mutual evaluation reports) and by international financial institutions (e.g. the detailed assessment reports of the joint World Bank-International Monetary Fund financial sector assessment programme),² where applicable;

² See A/59/218 and Corr.1, para. 15.

(b) Member States should strengthen cooperation among competent domestic authorities;

(c) To address the difficulty of evaluating the impact of efforts to counter money-laundering, any future reporting instrument should incorporate the lessons learned from the monitoring of the implementation of the goals and targets set at the twentieth special session of the General Assembly;

(d) Member States should ratify and implement all relevant international standards in countering money-laundering, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against Transnational Organized Crime³ and the United Nations Convention against Corruption;⁴

(e) When implementing the above-mentioned conventions, States should be encouraged also to implement the Forty Recommendations on Money-Laundering and Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force, the interpretative notes to those recommendations and the best practices papers of the Financial Action Task Force (while not United Nations standards, those recommendations have gained wide international acceptance);

(f) In some regions, States should significantly intensify their efforts to comply with the international standards in countering money-laundering referred to in subparagraph (d) above;

(g) Member States should:

(i) Establish new or strengthen existing legislative frameworks to criminalize the laundering of proceeds derived from drug trafficking and other serious crimes;

(ii) Adopt legislative measures to identify, freeze, seize and confiscate the proceeds of crime;

(iii) Introduce measures to keep centralized statistical data on legal action taken to counter money-laundering;

(iv) Consider measures to detect the cross-border transport of cash and negotiable bearer instruments;

(v) Remove all legal and other obstacles that unnecessarily impede the effectiveness of their anti-money-laundering systems.

B. Promoting judicial cooperation

15. In order to address effectively the aforementioned limitations and difficulties in the area of promoting judicial cooperation, the working group may wish to consider the following measures:

(a) Member States should make full use of United Nations multilateral treaties, notably the 1988 Convention and the Organized Crime Convention, as a legal basis for requesting and granting extradition and mutual legal assistance; this

³ United Nations, *Treaty Series*, vol. 2225, No. 39574.

⁴ *Ibid.*, vol. 2349, No. 42146.

is essential as a supplement to the network of bilateral and regional treaties on judicial cooperation whose coverage, by definition, cannot be universal;

(b) Member States should ensure the criminalization of those offences enumerated in the 1988 Convention and the Organized Crime Convention that are of relevance to drug offences, as that will provide the basis for the dual criminality requirement to be fulfilled;

(c) Member States should implement standardized universal mechanisms to facilitate extradition in line with United Nations conventions; specifically, extradition should be simplified in areas such as dual criminality, definition of political offences and consent surrender, and conditional surrender should be used more widely as a recourse;

(d) Member States should adopt a more flexible approach to judicial cooperation and should provide the widest possible range of mutual legal assistance, in particular in the area of non-coercive measures;

(e) Member States should adopt legislation or procedures to enable the transfer of proceedings, in particular where extradition is not possible;

(f) Member States should enhance inter-State cooperation in the areas of controlled delivery requirements and national capacities;

(g) Member States should devise common procedures and practices to enhance mutual legal assistance, extradition and controlled delivery capacity between States with different legal systems, including by the posting of criminal justice liaison personnel abroad;

(h) Member States should improve and institutionalize the exchange of information among source, transit and destination countries and among intergovernmental organizations in the area of law enforcement cooperation; States, in particular those situated along major drug trafficking routes, should consider establishing joint teams of law enforcement officers dealing with drug trafficking and organized crime;

(i) As the protection of witnesses is a core issue of concern for law enforcement agencies, Member States should adopt legislation and practical measures to provide for the protection of witnesses; the Organized Crime Convention should be used to that end to the fullest extent possible as it includes state-of-the-art measures in the area;

(j) Member States should fully exploit areas of synergy between the work of the United Nations Office on Drugs and Crime (UNODC) on judicial cooperation in the area of drug trafficking and the work carried out to implement the Organized Crime Convention; information-gathering should be complementary and mutually supportive;

(k) Member States should explore expanding online tools developed by UNODC; the online directory of designated authorities should be systematically expanded to enable the sharing of judicial cooperation tools, such as model forms, guidelines or manuals for extradition, mutual legal assistance, transfer of proceedings and other types of judicial cooperation, or to include links to websites containing such information;

(l) Member States should explore possibilities for UNODC to assist States in collecting data on requests for international cooperation and in establishing databases to maintain such information so that they may monitor the efficiency of their own national systems;

(m) Member States should further strengthen the role of UNODC in providing training and in facilitating problem-solving forums in recognition of the need for States to familiarize themselves with different legal systems and to establish new or strengthen existing working relationships with counterparts; doing so would also help to create and strengthen trust among competent national authorities, which is the cornerstone of international cooperation.
