

## FINANZ- UND WIRTSCHAFTSDIENST

s.C.41.129.1. - FUR/ZKA

Bern, 14. März 1990

INFORMATIONSNOTIZGeldwäscherei: Massnahmen der Schweiz,  
multilaterale Kooperation und Verhältnis zu den USA1. Massnahmen der Schweiz1.1. Entwurf einer Strafnorm

Nachdem der Nationalrat dem Entwurf einer neuen Strafnorm zugestimmt hat, hat sich jüngst auch die ständerätliche Kommission im Sinne einer möglichst raschen Behandlung und der Vermeidung von Differenzen für diese Fassung ausgesprochen. Es kann von einer baldigen Verabschiedung ohne Anfechtung mittels eines Referendums ausgegangen werden. Die Norm geht insofern weiter als die meisten existierenden ausländischen Geldwäscherei-Artikel, als sie Geldwäscherei generell (und nicht nur im Zusammenhang mit Drogengeschäften) sowie auch die mangelnde Sorgfalt bei der Identifikation des wirtschaftlich Berechtigten ("beneficial owner") unter Strafe stellt; damit wird nicht bloss die vorsätzliche Geldwäscherei erfasst.

am 19.3.90  
vom Ständerat  
verabschiedet

1.2. Ergänzende verwaltungsrechtliche Massnahmen

Im Auftrag des Bundesrates verabschiedete anfangs März 1990 eine interdepartementale Arbeitsgruppe einen Bericht, in dem sie dem Bundesrat die Einführung ergänzender Massnahmen zur Gesetzgebung über Geldwäscherei vorschlägt. Während mit dem Strafartikel die Geldwäscherei über das (private) Finanzsystem bekämpft werden soll, sind diese Massnahmen als komplementäre Instrumente anzusehen, mit denen auch die Verwaltung ihren Teil an deren Bekämpfung leisten will. Konkret werden folgende Massnahmen vorgeschlagen:

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- Deklarationspflicht für Bargeldeinfuhren von über sFr. 50'000.-- an der Grenze.
- Verschärfung der Visabestimmungen, v.a. in Bezug auf Präzisierung von Aufenthaltswitz und geschäftliche Beziehungen.
- Reglementierung des professionellen Notenhandels durch Richtlinien der 3 Grossbanken, die von der EBK wie Statuten zu genehmigen sind (z.B. regelmässige Ueberprüfung der Geschäftsbeziehungen, besondere Sorgfalt, Verantwortung der obersten Geschäftsleitung).
- Melderecht der Banken und weiteren in Finanzsektor tätigen Personen und Institutionen bei Verdacht auf strafbare Handlungen (d.h. Schutz vor dem Vorwurf eines Kunden, sie hätten durch Meldung Bankgeheimnis verletzt).

Diese Vorschläge an den Bundesrat sollen von diesem noch diesen Monat behandelt werden. Für dieselbe Sitzung wird ihm ausserdem der Schlussbericht der "Financial Action Task Force on Money Laundering" (FATF) der erweiterten G7 zur Zustimmung vorgelegt (s. Punkt 2).

## 2. Multilaterale Kooperation

Multilateral wird das Problem der Geldwäscherei in verschiedenen Organisationen angegangen, so z.B. im Europarat, in der EG oder von INTERPOL. Zwei internationale Instrumente verdienen besondere Erwähnung, nämlich die Wiener Konvention der UNO vom 20.12.1988, welche den Drogenhandel generell betrifft und u.a. eine Obligation dafür schafft, die damit in Verbindung stehende Geldwäscherei zu kriminalisieren, sowie die Basler Grundsatzklärung (der G10-Banküberwacher im Rahmen der BIZ) vom 12.12.1988, welche namentlich eine Kundenidentifikation verlangt.

Anlässlich des 15. Weltwirtschaftsgipfels im Juli 1989 in Paris beschlossen die Staatsoberhäupter der G7 die Einberufung der bereits erwähnten FATF unter Einladung weiterer interessierter Länder. Experten aus 15

- 3 -

Ländern, darunter der Schweiz, analysierten die bereits unternommenen internationalen und nationalen Arbeiten und einigten sich auf einen Katalog von 40 Empfehlungen zur Bekämpfung der Geldwäscherei (s. Anhang). Da auch Empfehlungen darunter sind, die nicht von allen Teilnehmern tel quel angenommen werden, handelt es sich dabei keineswegs um den kleinsten gemeinsamen Nenner, sondern um einen relativ ambitionierten Rahmen.

### 3. Verhältnis zu den USA

Einerseits betrachten die USA die Schweiz nach wie vor als eines der führenden Geldwäscherei-Zentren, wie z.B. aus einer Publikation des State Departments vom Januar 1990 hervorgeht. Andererseits enthält ein Bericht desselben State Departments vom März (Bureau for International Narcotics Matters: "International Narcotics Control Strategy Report") eine ziemlich positive Einschätzung unserer Anstrengungen zur Bekämpfung der Geldwäscherei (national und Mitarbeit in FATF).

Die direkte Konsequenz der Einführung eines Strafartikels besteht im Aussehenverhältnis darin, dass dank dem Vorliegen doppelter Strafbarkeit die **Rechtshilfe** grundsätzlich ermöglicht wird.

Im bilateralen Verhältnis beschäftigt uns speziell das sog. "**Kerry Amendment**" (November 1988), welches dem Treasury das Mandat gibt, in Verhandlungen mit Drittstaaten sicherzustellen, dass diese sämtliche Bargeldtransaktionen über US\$ 10'000.- als meldepflichtig erklären und registrieren und dass den US-Behörden nötigenfalls Einsicht in die Registereinträge gewährt wird. Wir haben uns stets gegen ein solches Vorgehen gewehrt und der Administration sowie der Botschaft in Bern unser Dispositiv erklärt. Nachdem das für den 16. März 1990 in Bern geplante Treffen mit Salvatore Martoche (M), Assistant Secretary im Treasury, wegen Versetzung von M abgesagt worden ist, verzichteten die Amerikaner auf eine sofortige Fortsetzung des Dialogs. Dies, wie auch die Tatsache, dass die Schweiz nicht auf der Liste der 18 Staaten figuriert, mit denen prioritär Verhandlungen gemäss Kerry-Amendment aufgenommen werden sollten, lässt klar darauf schliessen, dass unsere Anstrengungen im Kampf gegen die Geldwäscherei positiv eingeschätzt werden. **Unsererseits besteht deshalb kein Interesse an einer Beschleunigung der Konsultationen mit den USA.**



ANHANG

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

Paris, February 6th, 1990

SYNOPSIS OF  
THE FORTY RECOMMENDATIONS  
OF THE REPORT

A - GENERAL FRAMEWORK OF THE RECOMMENDATIONS

1 Each country should, without further delay, take steps to fully implement the Vienna Convention, and proceed to ratify it.

2 Financial institutions secrecy laws should be conceived so as not to inhibit implementation of the recommendations of this group.

3 An effective money laundering enforcement program should include increased multilateral cooperation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

B - IMPROVEMENT OF NATIONAL LEGAL SYSTEMS TO COMBAT MONEY LAUNDERING

Definition of the criminal offense of money laundering

4 Each country should take such measures, as may be necessary, including legislative ones, to enable it to criminalize drug money laundering as set forth in the Vienna Convention.

5 Each country should consider extending the offense of drug money laundering to any other crimes for which there is a link to narcotics ; an alternative approach is to criminalize money laundering based on all serious offenses, and/or on all offenses that generate a significant amount of proceeds, or on certain serious offenses.

6 As provided in the Vienna Convention, the offense of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.

7 Where possible, corporations themselves -not only their employees- should be subject to criminal liability.

Provisional measures and confiscation

8 Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offense, or property of corresponding value.

Such measures should include the authority to : 1) identify, trace, and evaluate property which is subject to confiscation ; 2) carry out provisional measures, such a freezing and seizing, to prevent any dealing, transfer, or disposal of such property and 3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered by parties, where parties knew or should have known that as a result of the contract, the state would be prejudiced in its ability to recover financial claims, e.g., through confiscation or collection of fines and penalties.

## C - ENHANCEMENT OF THE ROLE OF THE FINANCIAL SYSTEM

### Scope of the following recommendations

9           The recommendations 12 to 29 of this paper should apply not only to banks, but also to non-bank financial institutions.

10           The appropriate national authorities should take steps to ensure that these recommendations are implemented on as broad a front as is practically possible.

11           A working group should further examine the possibility of establishing a common minimal list of non bank financial institutions and other professions dealing with cash subject to these recommendations.

### Customer identification and record keeping rules

12           Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names : they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safedeposit boxes, performing large cash transactions).

13           Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction is conducted if there are any doubts as to whether these clients or customers are not acting on their own behalf, in particular, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc., that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

14           Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the account is closed.

These documents should be available to domestic competent authorities, in the context of relevant criminal prosecutions and investigations.



Increased diligence of financial institutions

15 Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

16 If financial institutions suspect that funds stem from a criminal activity, they should be permitted or required to report promptly their suspicions to the competent authorities. Accordingly, there should be legal provisions to protect financial institutions and their employees from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report in good faith, in disclosing suspected criminal activity to the competent authorities, even if they have not known precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

17 Financial institutions, their directors and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.

18 In the case of a mandatory reporting system, or in the case of a voluntary reporting system where appropriate, financial institutions reporting their suspicions should comply with instructions from the competent authorities.

19 When a financial institution develops suspicions about operations of a customer, and, when no obligation of reporting these suspicions exist, makes no report to the competent authorities, it should deny assistance to this customer, sever relations with him and close his accounts.

20 Financial institutions should develop programs against money laundering. These programs should include, as a minimum :

a) the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees ;

b) an ongoing employee training program ;

c) an audit function to test the system.

Measures to cope with the problem of countries with no or insufficient anti money laundering measures.

21 Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

22

Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply these recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulation prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these recommendations.

#### Other measures to avoid currency laundering

23

The feasibility of measures to detect or monitor cash at the border should be studied, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

24

Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerized data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.

25

Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.

#### Implementation, and role of regulatory and other administrative authorities

26

The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should cooperate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.

27

Competent authorities should be designated to ensure an effective implementation of all these recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.

28

The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.

29

The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control of, or acquisition of a significant participation in financial institutions by criminals or their confederates.



## D - STRENGTHENING OF INTERNATIONAL COOPERATION

Administrative cooperationa) Exchange of general information

30 National administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the IMF and BIS to facilitate international studies.

31 International competent authorities, perhaps Interpol and the Customs Cooperation Council, should be given responsibility for gathering and disseminating information to competent authorities about the latest development in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

b) Exchange of information relating to suspicious transactions

32 Each country should make efforts to improve a spontaneous or "upon request" international information exchange relating to suspicious transactions, persons and corporations involved in those transactions between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

Cooperation between legal authoritiesa) Basis and means for cooperation in confiscation, mutual assistance, and extradition

33 Countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions -i.e. different standards concerning the intentional element of the infraction- do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

34 International cooperation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.

35 Countries should encourage international conventions such as the draft convention of the Council of Europe on confiscation of the proceeds from offenses.

b) Focus of improved mutual assistance on money laundering issues

36 Cooperative investigations among appropriate competent authorities of countries, should be encouraged.

37 There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.

38

There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity. There should also be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

39

To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

40

Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offense or related offenses. With respect to its national legal system, each country should recognize money laundering as an extraditable offense. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgments, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

17E SESSION EXTRAORDINAIRE  
DE L'ASSEMBLÉE GÉNÉRALE DES  
NATIONS UNIES

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DECLARATION SUISSE PRONONCEE PAR

LE PROFESSEUR BEAT ROOS,

DIRECTEUR DE L'OFFICE FEDERAL DE LA SANTE PUBLIQUE

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NEW YORK, LE 22 FÉVRIER 1990



Déclaration suisse à la 17e Session extraordinaire  
de l'Assemblée générale des Nations Unies, New York,  
prononcée par le Professeur Beat Roos, Directeur de  
l'Office fédéral de la santé publique

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Monsieur le Président,

Au nom du Conseil fédéral suisse, je voudrais remercier l'Assemblée générale d'avoir accordé à mon pays le droit de parole lors de cette 17e Session extraordinaire. Je voudrais aussi vous féliciter, Monsieur le Président, de votre nomination en tant que Président de cette Session, vous qui avez déjà pu démontrer vos excellentes qualités personnelles en tant que Président de la 44e session de l'Assemblée générale.

L'initiative des Nations Unies de consacrer une session extraordinaire de son Assemblée générale au problème des drogues arrive à point nommé. Toujours plus d'Etats sont devenus conscients que nous nous trouvons actuellement devant l'un des défis de cette fin de siècle les plus marquants pour la société humaine, menacée par le développement inquiétant, dans de nombreuses régions du monde, de tout un réseau d'organisations criminelles. Ces organisations, non seulement obtiennent, grâce au trafic des drogues, des profits incalculables de façon tout à fait immorale, mais emploient en outre la violence et le terrorisme pour parvenir à leurs fins. Les Etats qui luttent en première ligne contre ces organisations doivent donc pouvoir compter non seulement sur notre entière solidarité mais également sur notre soutien.

Nous croyons fermement que le meilleur atout tant des pays producteurs que des pays consommateurs de drogues demeure l'action

concertée. Dans cette perspective, une coopération internationale nous paraît indispensable, qu'il s'agisse de lutter contre la production des drogues, d'essayer d'en éliminer la consommation abusive, de remédier aux méfaits de la toxicomanie par le traitement et la réadaptation de ses victimes, ou d'enrayer le trafic illicite des stupéfiants et des substances psychotropes. La présente Session extraordinaire de l'Assemblée générale constitue dès lors une impulsion déterminante au succès de cette action.

Mon pays soutient fermement les efforts entrepris dans toutes les enceintes internationales qui s'emploient à combattre les méfaits de l'usage abusif et du trafic illicite des drogues. La Suisse participe d'ailleurs activement aux travaux de la Commission des stupéfiants du Conseil économique et social, dont elle est membre. Elle a, en outre, augmenté considérablement ses contributions au Fonds des Nations Unies pour la lutte contre l'abus des drogues, tenant ainsi compte de son importance.

Les instruments internationaux jouent un rôle important pour la lutte contre les drogues au niveau mondial. C'est pourquoi la Suisse est partie à la Convention unique sur les stupéfiants de 1961 et a signé la Convention contre le trafic illicite de stupéfiants et de substances psychotropes de 1988. La ratification de cette Convention, de même que l'adhésion à la Convention sur les substances psychotropes de 1971 nécessitent l'adaptation de notre droit interne et nous étudions actuellement le moyen de devenir aussi rapidement que possible partie à tous les instruments internationaux pertinents. Nous mettrons tout en oeuvre pour que, jusqu'à l'adhésion de notre pays à ces accords, le contrôle des matières précurseurs et des substances psychotropes soit opéré de façon très stricte, dans le cadre des possibilités légales actuelles, de sorte que la Suisse ne puisse être utilisée pour contourner les dispositions prises dans d'autres pays.

L'action coordonnée au plan international doit être complétée, pour être efficace, de mesures prises au niveau national. Il



s'agit, avant tout, de s'attaquer aux causes du mal que sont, notamment, l'isolement social, la perplexité de nos jeunes face à l'existence et un certain malaise lié à notre civilisation. Dans ce contexte, la problématique de la lutte contre l'abus des drogues doit être envisagée dans le cadre de la santé publique ainsi que de la politique sociale et familiale. C'est pourquoi la Suisse estime que, pour réduire la demande, des activités préventives et thérapeutiques sont essentielles. Nous soutenons donc toute initiative dans ce contexte.

Nous estimons qu'il est primordial de mettre sur pied les instruments juridiques et institutionnels qui nous permettront de coopérer rapidement et efficacement avec les Etats qui nous le demanderont. Notre parlement est ainsi sur le point d'adopter une nouvelle disposition de droit pénal pour empêcher ce que l'on appelle le "blanchiment" de l'argent et nous espérons qu'elle pourra entrer en vigueur dans les mois à venir.

Je souligne à ce propos que, dans toutes les enquêtes portant sur des délits liés au trafic de la drogue, les autorités chargées de l'enquête ont le pouvoir de faire bloquer les comptes et lever le secret bancaire. Les banques sont alors tenues de livrer les informations requises. De plus, les nouvelles dispositions du Code pénal suisse contiendront le principe selon lequel toute personne dissimulant la relation, même indirecte, existant entre de l'argent et un crime ou un délit est punissable. Enfin, des normes légales plus strictes sur la confiscation des revenus illégaux et la possibilité de condamner les organisations criminelles ou les entreprises impliquées font actuellement l'objet d'une procédure d'examen accélérée qui devrait permettre rapidement leur adoption.

La Suisse attache un très grand prix à ce que cette Session extraordinaire soit couronnée de succès, par l'adoption notamment du programme mondial d'action pour les activités futures de lutte contre l'abus des drogues. Nos autorités se félicitent de la qualité du projet de ce plan et endossent l'approche multi-



disciplinaire équilibrée que caractérise ce document. Elles souhaitent qu'il connaisse tout l'impact voulu dans la lutte contre l'abus des drogues et qu'il s'impose comme un instrument utile aux pouvoirs publics, aux associations professionnelles, aux institutions universitaires, aux organisations non gouvernementales et aux divers organismes engagés dans la lutte contre l'abus des stupéfiants.

En outre, notre pays attend des travaux de cette session spéciale de l'Assemblée générale un renforcement et une amélioration du rôle des Nations Unies sur le plan mondial, dans la lutte contre le trafic des drogues. A cet effet, nous sommes prêts à offrir notre collaboration.

Monsieur le Président,

Mes autorités forment le voeu que nos travaux contribuent efficacement à apporter une réponse aux préoccupations croissantes que suscitent, en Suisse et dans de nombreux autres pays, l'abus et le trafic illicite des stupéfiants et des substances psychotropes.

Ma délégation, quant à elle, mettra tout en oeuvre pour que les espoirs placés ces jours dans la réunion de New York ne soient pas déçus, mais se trouvent au contraire renforcés à l'issue de la Session.

Je vous remercie de votre attention.