



Strasbourg, 31 August 1998
CDPC\pc-r-ev\doc98\12erev.doc

PC-R-EV (98) 12 rev.

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

SELECT COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(PC-R-EV)

{PRIVATE}
STEPS OF THE COUNCIL OF EUROPE MUTUAL EVALUATION PROCESS

Document approved¹ by the PC-R-EV at the 2nd Meeting
(Strasbourg, 3-5 June 1998)

¹ The PC-R-EV examined this proposal submitted by the Secretariat and approved it with some amendments. It also requested the Secretariat to supplement this paper with some detailed comments which can be found in the Appendix to it. It is the understanding of the Secretariat that future evaluations should be carried out according to this description of the procedure.

- 1) Mutual evaluation questionnaire completed by the country and returned to the Secretariat.
- 2) Secretariat fixes the date of the evaluation visit with the authorities of the host country.
- 3) PC-R-EV Chairman through the Secretariat, selects evaluators and provides them with the completed questionnaire. Evaluators agree to the on-site visit programme.
- 4) A pre-meeting on-site with evaluators and Secretariat.
- 5) On-site evaluation conducted (3-4 days).
- 6) Final on-site meeting between evaluators and the host government (organisation) to clarify outstanding issues.
- 7) Evaluators and Secretariat summary evaluation meeting to be held on-site in order to develop general agreement on draft evaluation report.
- 8) PC-R-EV evaluators provide written comments within 14 days to the Secretariat who sends these comments to all evaluators.
- 9) Based on these comments, the Secretariat prepares the draft mutual evaluation report.
- 10) Mutual evaluation draft report and comments made thereon distributed to all evaluators for comment.
- 11) Secretariat revises draft.
- 12) Mutual evaluation draft forwarded to country for their written comments.
- 13) Country comments circulated to all evaluators and they provide reaction and guidance to Secretariat as to which changes to adopt or not.
- 14) Secretariat provides revised draft mutual evaluation to country and is circulated to PC-R-EV member States prior to plenary meeting.
- 15) If needed, evaluators and country representatives meet at the start of the plenary to negotiate / agree on any final changes. In case of any dispute, the views of the evaluators shall prevail.
- 16) Discussion of the mutual evaluation in the plenary with a presentation by evaluators, a response by the country and pre-selected intervenor countries posing additional questions.
- 17) Mutual evaluation report adopted; if any public statement or a summary of the report is to be issued regarding the evaluation, the language should be agreed on when the mutual evaluation is adopted.

ANNEX I

AMPLIFICATION OF THE EVALUATION PROCESS

1. The mutual evaluation questionnaire should be sent to the country undergoing an evaluation at least 3 months prior to the country-visit. It should be returned to the Secretariat as quickly as possible, but 1 month before the visit at the latest. It is important that replies to the mutual evaluation questionnaire are as complete as possible: they are detailed, provide answers to all questions and they contain all necessary appendices.
2. The dates of the visit have obviously to be determined in consultation with the host-country and fit within the programme of visits adopted by the PC-R-EV Plenary.
3. Though evaluators are selected by the Chairman through the Secretariat, the Secretariat will, where possible, seek the approval of the Bureau. In addition, the Secretariat will systematically submit the list of evaluators before the visit to the country undergoing the evaluation and obtain its agreement. In the case of disagreement, the Secretariat will submit alternative proposals to the country until it agrees to the list.

On the basis of a draft submitted by the country concerned to the Secretariat, the evaluators will agree the programme for the visit as soon as possible and no later than at the first meeting of the on-site visit.

Evaluators should always bear in mind that different countries may adopt different approaches in the various fields of the anti-laundering regime, so they should be open and flexible, seeking to avoid narrow comparisons with their own national solutions.

4. The pre-meeting is an integral part of the visit: it allows a preliminary exchange of views among evaluators and the Secretariat on the issues that are likely to be raised during the visit, the distribution of roles, etc.
5. The length of the on-site visit is usually four days which, so far, proved to be appropriate. Perhaps, during the second round of evaluations – where the evaluation will focus on the progress made by countries on matters identified in the first evaluation reports – 3 days will be sufficient. Whatever the length, on-site programmes should have a reasonable timetable, which allows breaks for lunch and time for transportation between the various institutions visited.
6. The final on-site meeting with the representatives of the host country offers a unique opportunity where all outstanding issues can be raised and answered.
7. A ‘wrap-up’ meeting between the Secretariat and the evaluators is essential in order to develop at least a common appreciation of the on-site visit and identify the main strengths and weaknesses of the host country’s anti-laundering system. It should allow each evaluator to express his/her main impressions on the particular field he/she is responsible for and on the whole anti-laundering system in general. PC-R-EV evaluators should express their opinion before that of their FATF-colleagues. The points made should be summarised by the Secretariat at the end.

8. PC-R-EV evaluators should respect, as much as possible, the 14 days time limit: the quicker the individual reports are submitted to the Secretariat, the better in terms of quality and accuracy.
9. The Secretariat generally needs at least 14 days to produce the first draft mutual evaluation report on the basis of the submissions of the evaluators. Since the quality of the mutual evaluation reports is determined, to a large extent, by the evaluators' comments, it is essential that there is some co-ordination among the evaluators, in particular among the PC-R-EV and the FATF evaluators responsible for the same field, to avoid possible conflicting views.
10. Once the draft report is sent out to all evaluators for comments, these should be available to the Secretariat within 14 days. The Secretariat then provides the comments made by one of the evaluators to all others.
11. On the basis of the comments made on the draft, the Secretariat revises the original draft. This revised draft should be made available to the evaluators.
12. The revised draft is sent to the country for written comments. The country, whatever its size and government structure, should at least have 21 days for making its comments. Should the country be unable to provide comments within this time limit, it should raise the matter with the Secretariat. Upon receipt, the Secretariat makes sure that all the comments made by the country are clear; if not it seeks clarification and, if necessary, written explanation.
13. The comments provided by the country are circulated to evaluators with a view to determining which of them are acceptable. If the views of the evaluators differ on this question, the Secretariat has to negotiate a compromise solution.
14. The revised (2nd) version of the report should ideally be sent at least 1 month before the next Plenary meeting (where the report will be examined and adopted) to all PC-R-EV members to the evaluated country and to intervenor countries.
15. Practice shows that certain technical or drafting issues can and should be solved outside the plenary discussions, which should concentrate, as much as possible, on policy issues. Preferably, such a pre-plenary meeting should be held on the eve of the PC-R-EV Plenary, with the representatives of each country evaluated, together with the evaluators, to make final amendments. Substantive amendments (other than technical or drafting amendments) where possible, should be suggested at the stage when the evaluated country is first consulted on the draft report (item 11).
16. The Secretariat should select, in consultation with the Bureau, 2 intervenor States which will pose questions in writing during the discussion on the draft evaluation report. These 2 States should be identified at an early stage so that they have appropriate opportunity to prepare their questions and make them available to the Secretariat.

17. The adoption of the mutual evaluation report (and its summary) closes the evaluation exercise as such, but at the same time, it creates the basis for future follow-up activities. It is therefore crucial that the wording of the recommendations is carefully considered, particularly since, in cases of non-compliance, issues will be raised by the PC-R-EV in respect of a country against these recommendations. Any public statement will only be made if the PC-R-EV is dissatisfied with the compliance of evaluated countries with the recommendations laid down in the mutual evaluation report.

ANNEX II

POSSIBLE STEPS² **TO BE TAKEN IN RESPECT OF PC-R-EV MEMBERS NOT IN COMPLIANCE** **WITH THE REFERENCE DOCUMENTS³ OR THE RECOMMENDATIONS** **CONTAINED IN THE MUTUAL EVALUATION REPORTS**

Principles

1. On the basis of the FATF-policy, the PC-R-EV could decide that any of its action in respect of members failing to implement the reference documents or the recommendations in mutual evaluation reports should be guided by the following principles :
 - equality of treatment for PC-R-EV member States;
 - a graduated approach for dealing with non-complying members;
 - approval by the Plenary of the steps to be taken, whilst allowing for some flexibility regarding the application of the earlier stages of the process.

Steps in the process

2. The steps for dealing with non-complying members could be, in chronological order, the following:
 - (i) requiring the non-complying member to provide a report or regular reports on its progress in implementing the reference documents within a fixed timeframe;

² At its 2nd Plenary meeting on 3-5 June 1998, the PC-R-EV briefly discussed the question of how to deal with members which are not in compliance with the reference documents and requested the Secretariat to make proposals in this respect for the next Plenary meeting (7 - 11 December 1998). This note outlines the proposals of the Secretariat and was amended and agreed by the Bureau at its meeting on 7 September. It draws, to a large extent, on the FATF-policy paper on non-complying members.

³ These are, above all, the 40 recommendations of the Financial Action Task Force but, according to the terms of reference of Committee PC-R-EV (item C.), also the 1988 UN Convention on illicit traffic in narcotic drugs and psychotropic substances, EC Directive N° 308/91/EEC on the prevention of the use of the financial system for the purpose of money laundering and the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime.

- (ii) the Chairman of PC-R-EV sending a letter with copy to the PC-R-EV Plenary, to the Head of Delegation concerned, drawing his/her attention to non-compliance with the reference documents;
- (iii) the Chairman of PC-R-EV sending a letter with copy to the Head of Delegation concerned, to the Secretary General of the Council of Europe drawing his/her attention to non-compliance by a PC-R-EV participating State with the reference;
- (iv) the Secretary General (Director of Legal Affairs) of the Council of Europe sending a letter to the relevant minister(s) in the member State, drawing his/her/their attention to non-compliance with the reference documents;
- (v) arranging a high-level mission (including selected Heads of CDPC Delegation) to the participating State in question to reinforce this message;
- (vi) in the context of the application of Recommendation 21 of the FATF by PC-R-EV members, issuing a formal public statement to the effect that a member State insufficiently complied with the reference documents.

Practical Modalities for dealing with non-complying members

3. The steps proposed in paragraph 2 fall into two distinct categories. Steps (i) - (v) essentially involve enhanced peer pressure to assist non-complying members in expediting implementation of the reference documents. Step (vi) entails more serious action.
4. As regards the application of steps (i) - (v), the practical modalities are as follows: the Chairman would propose, after consultation with the Bureau, to the Plenary the steps which in his estimation should be taken in relation to the non-complying member. The Plenary would then decide the parameters for action, and the Chairman would be authorised to take action, where necessary through the Secretariat, within these limits. For example, if the Chairman were authorised to take any of steps (i) through (v), he or she would have the discretion to follow a high level mission (step (v)) with a letter to the authorities of the member concerned (step (iv)) -- without first seeking the Plenary's approval of such latter action.
5. If (after a reasonable time and following the application of steps (i) through (v) in the manner set forth in paragraph 4), the member in question persists in its failure to comply significantly with the reference documents and the recommendations, efforts would need to be intensified. The Chairman would be authorised at this juncture to propose to the Plenary that step (vi) be taken, and to pursue only that action, if any, which the Plenary approves. The Chairman would have no discretion to modify or deviate from the course of conduct approved by the Plenary.