



FINANCIAL ACTION TASK FORCE
GROUPE D'ACTION FINANCIÈRE

The Revised FATF Standards

13. International Cooperation

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Overview

- International Instruments (R.36)
- Mutual Legal Assistance (MLA) and Extradition (R.37-39)
- Other Forms of International Cooperation (R.40)
- Other Areas of International Cooperation (R.8, R.24, R.25 & R.32)

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International Instruments

R.36: International Instruments

- The UNCAC is included as one of the conventions countries *should* ratify and implement
- The list of other international or regional conventions countries are *encouraged* to adopt (where applicable) is updated. Examples include:
 - Council of Europe Convention on Cybercrime, 2001
 - Inter-American Convention against Terrorism, 2002

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MLA and Extradition


MLA (R.37)

- New R.37 draws from the previous R.36, R. 37 and SR.V
- Covers ML, associated predicate offences and TF (implicit in the previous Standards)
- Introduction of a requirement for countries to have adequate legal basis for providing assistance and, whenever appropriate, enter into treaties, arrangements and other mechanisms to enhance cooperation

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MLA and Extradition

MLA: Processing

- Strengthened requirements in terms of the processing of requests for MLA namely by requiring:
 - 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
 - Maintenance of confidentiality of the requests for MLA as well as of the information contained therein

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MLA and Extradition


MLA: Dual criminality

- Strengthened requirements: countries should render MLA in the absence of dual criminality *when the assistance does not involves coercive measures*

MLA: Available powers

- The range of powers and investigative techniques that should be available for MLA has been broadened:
 - a) All those relating to the production, search and seizure of information and taking witness statements
 - b) A broad range of other powers and investigative techniques (powers of R.31)

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MLA and Extradition


MLA: Requesting countries

- Introduction of obligations for requesting countries:
 - Before making the requests, check on the requirements and formalities to obtain the required assistance
 - Provide complete factual and legal information necessary on the request (including any need for urgency)
 - Send requests through expeditious means

MLA: Resources

- Introduction of a direct requirement for countries to provide authorities responsible for the execution of MLA requests with:
 - Adequate financial human and technical resources
 - Staff with high professional standards and integrity and appropriately skilled

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MLA and Extradition

MLA: Freezing & confiscation (R.38)

- Covers ML, predicate offences and TF
- Strengthened requirements:
 - assist with requests based on foreign non conviction based confiscation (NCBC) orders (*unless inconsistent with fundamental principles of domestic law*).
 - 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

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MLA and extradition

Extradition (R.39)

- As before, covers ML and TF
- Strengthened requirements:
 - Constructively and effectively execute requests without undue delay
 - Have clear and efficient processes to facilitate the execution of extradition requests in a timely manner (including use of a case management system)
 - Not place unreasonable or unduly restrictive conditions
 - Ensure adequate legal framework

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MLA and extradition

Extradition (R.39)

- Introduction of a requirement for countries to have a 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
- Introduction of a direct requirement for countries to provide authorities responsible for the execution of extradition requests with:
 - Adequate financial human and technical resources
 - Staff with high professional standards and integrity and appropriately skilled

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Other Forms of International Cooperation

Structure of R.40

- A new structure
- 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 also covers 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)

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Other Forms of International Cooperation

Principles applicable to all competent authorities

- Strengthened & expanded scope - unduly restrictive measures include rejecting requests:
 - Involving *also* fiscal matters
 - When there is an ongoing inquiry, investigation or proceeding unless it would be impeded
 - As the nature or status of requesting authority is different
- Introduction of requirements on requesting authorities:
 - Provide adequate information to process request
 - Upon request, provide feedback on information received

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Other Forms of International Cooperation

Principles applicable to all competent authorities

- 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

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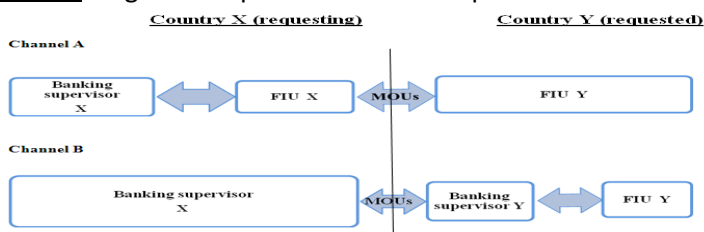
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Other Forms of International Cooperation

Principles applicable to all competent authorities

- Strengthened requirements relating to “diagonal cooperation” between non counterpart authorities
- Indirect diagonal cooperation should be permitted



- Direct diagonal cooperation is encouraged (FIU Y requesting information directly from Banking Supervisor X)

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Other Forms of International Cooperation

R.40: FIUs

- Clarification that cooperation should be possible regardless of status of FIU
- Introduction of a requirement for the requesting FIU to make best effort to provide complete factual and appropriate legal information, including potential link to requested country
 - Requesting FIU to provide feedback on information exchange when requested
- FIU should have powers to exchange all information accessible or obtainable under R.29, and subject to principle of reciprocity, other information.

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Other Forms of International Cooperation

R.40: Financial Supervisors

- Cooperation should be possible regardless of status or nature of financial supervisors
 - “Financial Supervisors” refer to designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance by financial institutions
- Cooperation to be consistent with international standards for supervision, *and* in manner proportionate to respective AML/CFT needs

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Other Forms of International Cooperation

R.40: Financial Supervisors

- When relevant for AML/CFT purposes, financial supervisors should be able to exchange:
 - *Regulatory information*
 - *Prudential information*
 - *AML/CFT information*
- Foreign counterparts may be permitted onsite to conduct inquiries for purpose of effective group supervision
- Further dissemination of information exchange subject to prior authorisation from requested financial supervisors
 - In case of legal obligations for compelled disclosure, requesting authority should, *at a minimum*, promptly inform the requested authority

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Other Forms of International Cooperation

R.40: Law Enforcement Authorities

- Cooperation for intelligence or investigative purpose for ML, associated predicate offences and TF, including identification and tracing proceeds and instrumentalities of crime
 - Consistent with agreements between Interpol, Europol, Eurojust and individual countries
- Ability to use powers, and investigative techniques in accordance with domestic law, to conduct inquiries for foreign counterparts
 - Ability to form joint investigative teams
- Encouraged to join and support existing AML/CFT law enforcement networks, and develop bilateral contacts

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Other Areas of International Cooperation

R.24&25: Legal Persons and Arrangements

- New requirement for countries on cooperation on basic and beneficial ownership information
- Referenced requirements in R.37 to R.40
 - Facilitate access to basic information in company registry (R. 24)/any information held by competent authority (R.25)
 - Exchange information on shareholders/legal arrangements
 - Obtain BO information for foreign counterparts in accordance with domestic law
- Additional requirement in relation to legal persons (R.24): monitor quality of assistance received

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Other Areas of International Cooperation

R.8: NPOs

- No change from old SR.VIII
- Countries to identify points of contact to respond to requests regarding NPOs suspected of TF or other forms of terrorist support

R.32: Cash couriers

- The declaration/disclosure system should allow for the greatest possible measure of international cooperation and assistance in accordance with R.36-40

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