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Financial Action Task Force Mandate (2012-2020), 20th April 2012, OXIO 2

Financial Action Task Force on Money Laundering; Financial Stability Board
[FSB]

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Core Issues

1. Whether the structure and functions of the Financial Action Task Force (FATF) resemble that of an international organization
2. What the significance is of the non-binding nature of a mandate

This headnote pertains to: Financial Action Task Force Mandate (2012-2020), an act of an international organization. [Jump to full text](#)

Background

The **Financial Action Task Force (FATF)** is an independent international body established in July 1989 by the then G7 as a response to the phenomenon of money laundering. Since it was established as, and to date still is, a temporary body, its mandate has been renewed five times (1989–1994, 1994–1999, 1999–2004, 2004–2012, 2012–2020). The original act of foundation is included in a very short paragraph of the economic declaration of the Paris G7 Summit of 16 July 1989, according to which the mandate of the task force is ‘to assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering [...]’ (para. 53 on drug issues). The legal basis for the FATF cannot be found in an international treaty; hence it lacks the formal structure of the majority of international organizations. The body has its Secretariat at the headquarters of the Organization for Economic Co-operation and Development, in Paris. It adopts recommendations, which are non-binding legal instruments, and assesses States’ compliance with the recommendations through mutual evaluation reports.

The mandate of FATF was updated and clarified by the present document. The document is composed of two parts: the mandate adopted by the FATF, where the structure and the functions of the body are detailed, and the Declaration of the Ministers and Representatives of the FATF – 34 States, the European Union and the Gulf Cooperation Council - which endorses the mandate itself. Compared to the previous mandates, the one under analysis represents an evolution towards a formalization of the body, whose competence has steadily expanded to include, along with anti-money laundering, combatting terrorist financing and the financing of the proliferation of weapons of mass destruction. While the 2012 Mandate represents a significant step towards formalization, it remains, in a formal sense, non-binding.

The Act under review constitutes an act relevant to the law of international organizations; it challenges the notions of ‘international organization’ and ‘subjects of international law’

Summary

The mandate defines the scope, the structure and the functions of the body, and the commitments of the Members. The FATF is composed of the Plenary, the President, the Steering committee and the Secretariat, which clearly evoke the archetypal ‘tripartite’ structure of an international organization.[para 17] States, according to the mandate, commit to implement the recommendations adopted by the FATF, revised in 2012, and participate in the systematic mutual evaluation and follow-up processes which are aimed at assessing States’ compliance with the recommendations.[para 6]

The purpose of the task force is to address the vulnerabilities of the financial system to money laundering and terrorist financing, and to consider related threats to the integrity of the international financial markets, including corruption – as expressly encapsulated in the mandate – and more recently virtual currencies.[para 3f]

The mandate explicitly refers to the ‘soft’, non-binding nature of the body, and to the fact that the

FATF is accountable to the Ministers who represent the Member jurisdictions.[para 48]

Analysis

The FATF lacks a binding constituent instrument, has a flexible structure which may change according to the will of the Ministers and the representatives of the FATF, its mandate is clearly enshrined in a non-binding act endorsed by the Members (the word 'parties' is never used), and its acts are mere recommendations. However, these elements have not prevented the FATF from resembling an international organization and consolidating an effective compliance mechanism. Firstly, FATF acts and documents are acts attributable to the FATF. Secondly, although overtly temporary, the FATF works as a permanent body, organizing plenary meetings three times a year, intersessional meetings and meetings of various ad hoc groups. Thirdly, it has developed a system of compliance with the recommendations which concretely impact on the legislative evolution of the Member jurisdictions. Fourthly, it was the Ministers representing the Member States – and not the G20, or the G7 as it was in 1989 – who endorsed the mandate prepared by the FATF, which means that the body has the competence to adopt acts on its own, which then receive a 'political seal'. No document adopted by FATF has been rejected by the Ministers.

Informal bodies have been developed over the years in order to respond rapidly to crises or threats to the integrity of the markets, such as the Basel Committee on Banking Supervision (BCBS) or the Financial Stability Board. They have proven to be effective in pursuing their mandate, although lacking transparency and accountability. These bodies have been defined as informal networks, transnational regulatory networks, and standard-setting bodies. They can be considered as 'soft organizations'. The FATF maintains an intergovernmental character – being composed of the Ministers of the Member States; nonetheless it is included in the 'international financial architecture' as defined by Giovanoli, and among the international 'standard setters'.

Their nature should be assessed case by case. Soft organizations are legitimate under international law, since they trace their origin to the will of sovereign State. However, it remains unclear whether the intention of states or rules of international law govern subjectivity under international law. This question is of particular importance regarding responsibility at the international level for international wrongful acts. At present, this question has never been brought before an international court. There is, nonetheless, clear evidence of a formalization of some of these networks, including the FATF, which are becoming **de facto** organizations.

Impact

The FATF has been the model for many other bodies called FATF-style regional bodies (Moneyval within the Council of Europe for example), which operate in the field of anti-money laundering in different areas of the world.

Furthermore, the Financial Stability Board, which was created by the G20 in the aftermath of the outbreak of the global financial crisis, has learnt the lesson from the FATF and other standard-setting bodies (such as the International Organization of Securities Commissions, the BCBS and the International Association of Insurance Supervisors) and has built a similar compliance mechanism, which is detailed in the 2015 Handbook for the Financial Stability Board Peer Reviews.

Further Analysis and Relevant Materials

Leading Comments

M Giovanoli 'The Reform of the International Financial Architecture After the Global Crisis' (2009) 42 *International Law and Politics* 89

AM Slaughter *A New World Order* (Princeton, Princeton University Press, 2004)
PH Verdier 'Transnational Regulatory Networks and Their Limits' (2009) 34 *The Yale Journal of International Law* 113
C Brummer *Soft Law and the Global Financial System* (Cambridge, Cambridge University Press, 2012)
J Klabbbers 'Institutional Ambivalence by Design: Soft Organizations in International Law' (2001) 70 *Nordic Journal of International Law* 405
J Petman 'Deformalization of International Organizations Law' in Klabbbers and Wallendahl (eds) *Research Handbook on the Law of International Organizations* (Elgar, 2011)
A di Stasi, 'About Soft International Organizations', in Virjo and Ingravallo (eds) *Evolutions in the Law of International Organizations* (Leiden, Nijhoff, 2015)

Materials Cited

Financial Stability Board

Handbook for the Financial Stability Board Peer Reviews (12 March 2015)

G7/8

G7/8 summit, Economic Declaration (Paris, 16 July 1989)

Reporter(s): Sara De Vido

Source text

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I. Objectives, Functions and Tasks

Objectives of the Financial Action Task Force

1. The Financial Action Task Force (FATF) is an intergovernmental body established in 1989 by the Ministers of its Member jurisdictions.
2. The objectives of the FATF are to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

Functions and Tasks of the FATF

3. In order to fulfil its objectives, the FATF carries out the following tasks:
 - a) Identifying and analysing money laundering, terrorist financing and other threats to the integrity of the financial system, including the methods and trends involved; examining the impact of measures designed to combat misuse of the international financial system; supporting national, regional and global threat and risk assessments;
 - b) Developing and refining the international standards for combating money laundering and the financing of terrorism and proliferation (the FATF Recommendations);
 - c) Assessing and monitoring its Members, through 'peer reviews' ('mutual evaluations') and

follow-up processes, to determine the degree of technical compliance, implementation and effectiveness of systems to combat money laundering and the financing of terrorism and proliferation; refining the standard assessment methodology and common procedures for conducting mutual evaluations and evaluation follow-up;

d) Identifying and engaging with high-risk, non co-operative jurisdictions and those with strategic deficiencies in their national regimes, and co-ordinating action to protect the integrity of the financial system against the threat posed by them;

e) Promoting full and effective implementation of the FATF Recommendations by all countries through the global network of FATF-style regional bodies (FSRBs) and international organisations; ensuring a clear understanding of the FATF standards and consistent application of mutual evaluation and follow-up processes throughout the FATF global network and strengthening the capacity of the FSRBs to assess and monitor their member countries;

f) Responding as necessary to significant new threats to the integrity of the financial system consistent with the needs identified by the international community, including the United Nations Security Council, the G-20 and the FATF itself; preparing guidance as needed to facilitate implementation of relevant international obligations in a manner compatible with the FATF standards (e.g., continuing work on money laundering and other misuse of the financial system relating to corruption);

g) Assisting jurisdictions in implementing financial provisions of the United Nations Security Council resolutions on non-proliferation, assessing the degree of implementation and the effectiveness of these measures in accordance with the FATF mutual evaluation and follow-up process, and preparing guidance as needed to facilitate implementation of relevant international obligations in a manner compatible with the FATF standards;

h) Engaging and consulting with the private sector and civil society on matters related to the overall work of the FATF, including regular consultation with the private sector and through the consultative forum;

i) Undertaking any new tasks agreed by its Members in the course of its activities and within the framework of this Mandate; and taking on these new tasks only where it has a particular additional contribution to make while avoiding duplication of existing efforts elsewhere.

II. Composition and Participation

4. In the development of the FATF standards, guidance and other policy, the FATF consults widely amongst its Members, Associate Members, the International Monetary Fund (IMF), the World Bank and other observer organisations, as well as with other stakeholders including the private sector.

Members

5. FATF Members are the jurisdictions and organisations that have agreed to work together in the form of a task force toward the common objectives laid out in this mandate. The current Members of the FATF are listed in Annex A.

6. Member jurisdictions commit to:

a) Endorse and implement the FATF Recommendations for combating money laundering and the financing of terrorism and proliferation, using where appropriate guidance and other policy endorsed by the FATF; and

b) Undergo and actively participate in systematic 'peer reviews' ('mutual evaluations') and

follow-up processes using the agreed assessment methodology and procedures; evaluations will be published by the FATF.

7. Member organisations commit to:

- a) Endorse and promote the effective implementation of the FATF Recommendations among their member jurisdictions; and
- b) Support systematic 'peer reviews' ('mutual evaluations') and follow-up processes using the agreed assessment methodology and procedures.

8. Member jurisdictions and organisations commit to:

- a) Pursue the development of the FATF standards, guidance and other policy for combating money laundering and the financing of terrorism and proliferation and other threats to the integrity of the international financial system through active participation in the work of the FATF (chairing meetings, drafting reports, etc.); and
- b) Work together to meet the objectives and carry out the tasks of this Mandate.

Associate Members

9. Associate Members are FATF-style regional bodies (FSRBs), as designated by the FATF, that participate in the work of the FATF.

10. The relationship between the FATF and its Associate Members is governed by a set of high-level principles.

11. The decision as to whether a body qualifies as an FSRB and is thus eligible to participate in the FATF as an Associate Member is taken by the FATF Plenary. The current list of Associate Members is contained in Annex B.

12. Associate Members commit to:

- a) Endorse the FATF Recommendations, guidance and other policy as determined by the FATF for combating money laundering and financing of terrorism and proliferation;
- b) Promote effective implementation of the FATF standards in their member jurisdictions through the conduct of systematic 'peer reviews' ('mutual evaluations') and follow-up processes using the agreed assessment methodology and procedures, and publish completed evaluations; and
- c) Participate in the development of the FATF standards, guidance and other policy for combating money laundering and the financing of terrorism and proliferation and other threats to the integrity of the international financial system.

International Financial Institutions

13. Within and in furtherance of their respective mandates to promote financial and economic stability and development, the International Monetary Fund and the World Bank play a special role in the development, promotion and dissemination of measures for combating money laundering and the financing of terrorism and other related threats. In particular, the IMF and the World Bank:

- a) Contribute to the development of the FATF standards, guidance and other policy for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system;

b) Help to promote the effective implementation of the FATF Recommendations through country assessments conducted in the context of the Financial Sector Assessment Program using the agreed assessment methodology and promoting publication of detailed assessment reports; and;

c) Provide technical assistance and capacity building on combating money laundering, terrorist financing and other related threats.

Observers

14. The FATF works closely with other international organisations, such as the United Nations and the Egmont Group of Financial Intelligence Units, who participate as observers in the work of the FATF. Other bodies are eligible to participate in the work of the FATF as observers.

15. The decision as to whether a body may participate as an observer to the FATF is taken by the Plenary. The eligibility of observers is reviewed periodically by the Plenary in light of FATF objectives. The current list of Observers is contained in Annex C.

16. Observers have a stated role related to combating money laundering and the financing of terrorism and proliferation and commit to:

a) Endorse the FATF Recommendations, guidance and other policy for combating money laundering and the financing of terrorism and proliferation; and

b) Contribute to the work of the FATF in accordance with their respective legal frameworks and policies.

III. Organisation

Structure of the FATF

17. The FATF comprises the following internal structures:

a) the Plenary;

b) the President, assisted by a Vice-President;

c) the Steering Group; and

d) the Secretariat.

The Plenary

Composition and Responsibilities

18. The FATF Plenary consists of Member jurisdictions and organisations.

19. The Plenary is the decision-making body of the FATF. Its decisions are taken by consensus.

20. The Plenary:

a) Determines the manner in which it conducts its affairs;

b) Appoints the President, the Vice-President and the Steering Group;

c) Approves the work programme and budget for the FATF;

- d) Adopts standards, guidance and reports developed by the FATF;
- e) Decides on membership, FSRB status and observer status for the FATF; and
- f) Decides on any other matter governing the business and affairs of the FATF.

Attendance at Plenary Meetings

21. All Members may attend any Plenary Meeting or any meetings of subgroups created by the Plenary. The President presides over Plenary Meetings.

22. All Members, Associate Members and observers are entitled to attend the open sessions of Plenary Meetings. All Members and Associate Members are entitled to attend closed Plenary sessions.

23. The President may extend ad hoc invitations to representatives of non-Members to attend the whole or part of Plenary Meetings. In the context of specific (closed) sessions of the Plenary and after consultation with Members, the President may also invite representatives from the IMF, World Bank or observer bodies.

Meetings

24. The President convenes at least three Plenary Meetings every calendar year, normally in February, June and October.

25. Additional extraordinary meetings may be held as circumstances arise, at such time and place as the President may designate, following consultation with Members.

Working Groups and Other Subgroups

26. To support the work of the FATF, the Plenary may establish and mandate working groups and other subgroups as necessary.

27. The chairs of the working groups and subgroups are selected from and appointed by the Plenary at the President's recommendation. They report to the Plenary on their work programmes.

28. Participation in working groups and other subgroups is open to all Members, Associate Members, the IMF, the World Bank and observers.

29. The Secretariat supports the work of the working groups and other subgroups.

30. The current working groups of the FATF are listed in Annex D of this Mandate.

President

Appointment and Responsibilities

31. The FATF President is appointed by the Plenary from among its Members for a term of one year. The term of the President begins on 1 July and ends on 30 June of the following year.

32. The President convenes and chairs the meetings of the Plenary and of the Steering Group. The President oversees the FATF Secretariat.

33. The President is the principal spokesperson for the FATF and represents the FATF externally. The President will be informed of all significant matters that concern the FATF. More generally, the President takes all decisions and actions as necessary to achieve the objectives of the FATF in accordance with this mandate and the directions given by the Plenary. The President reports

regularly on behalf of the FATF Plenary to the Ministers on key aspects of FATF work and more generally to the public through the FATF annual report.

34. The President, in the discharge of the functions as the President, owes his/her duty entirely to the FATF and to no other authorities or institutions.

Vice-President

Appointment and Responsibilities

35. The FATF Vice-President, who is also the FATF President-designate, is appointed by the Plenary from among its Members for a term of one year preceding the start of his/her Presidential term.

36. The Vice-President assists the President in carrying out his/her responsibilities and stands in for the President when necessary.

Steering Group

Composition and Appointment

37. The FATF Steering Group is an advisory body and is chaired by the President.

38. The composition of the Steering Group is decided by the Plenary at the proposal of the President in a manner that ensures maximum effectiveness in taking forward the FATF's work while having regard to balanced representation in terms of geographic regions.

39. The composition of the Steering Group is reviewed on an annual basis.

Responsibilities

40. The Steering Group provides advice between Plenary Meetings to assist the President in carrying forward the directions of the FATF.

41. The President convenes at least three Steering Group meetings every calendar year at such time and place as the President may designate.

42. The duties of the Steering Group include the following:

- a) Monitoring and guiding the progress of the FATF's ongoing work;
- b) Promoting co-ordination across the working groups;
- c) Ensuring effective information flow to all Members; and
- d) Taking forward, in consultation with the Plenary, any other work necessary for the FATF to fulfil its mandate.

Secretariat

Composition and Appointment

43. The FATF Secretariat is composed of an Executive Secretary, who is appointed by the Plenary at the proposal of the President, and the Secretariat staff.

Responsibilities

44. In supporting the functions of the FATF, the Executive Secretary and Secretariat staff are

responsible to and act in accordance with the instructions of the President. The President is responsible for providing general direction to the Executive Secretary, in accordance with any directions given by the Plenary.

45. The main responsibilities of the Secretariat include the following:

- a) Supporting the activities of the FATF, including its working groups;
- b) Facilitating co-operation between Members, Associate Members and observers;
- c) Ensuring efficient communication to Members and others;
- d) Managing the financial, material and human resources allocated to the FATF;
- e) Maintaining the records, administering internal and external websites and dealing with correspondence of the FATF; and
- f) Carrying out all other functions that are assigned to it by the President or the Plenary.

46. The Secretariat service is provided by the OECD, and the Secretariat is located at the OECD Headquarters in Paris.

47. The cost of the Secretariat and other services are met by the FATF budget to which Members contribute. The OECD is used as the channel for these services. Individual Member contributions to the FATF budget are in line with OECD scales.

IV. Legal Effect and Duration of the Mandate; Accountability

48. This Mandate is not intended to create any legal rights or obligations.

49. This Mandate will commence on 20 April 2012 and will be valid until 31 December 2020. There should be a mid-term review of the work carried out under this mandate to ensure that it remains consistent with the aims and objectives of the FATF.

50. The implementation of this mandate will be carried out by the officials and technical experts of FATF Members and the FATF Secretariat. The FATF is accountable to its Ministers and reports to them on key aspects of its work through the annual reporting of the FATF President. The mid-term review and occasional ministerial meetings, as necessary, provide other mechanisms whereby Ministers may shape the strategic direction of FATF policy-making.

Annex A: FATF Member Jurisdictions and Organisations

Argentina

Australia

Austria

Belgium

Brazil

Canada

China

Denmark

European Commission

Finland
France
Germany
Greece
Gulf Co-operation Council
Hong Kong, China
Iceland
India
Ireland
Italy
Japan
Kingdom of the Netherlands
Luxembourg
Mexico
New Zealand
Norway
Portugal
Republic of Korea
Russian Federation
Singapore
South Africa
Spain
Sweden
Switzerland
Turkey
United Kingdom
United States

Annex B: FATF Associate Members

Asia/Pacific Group on Money Laundering (APG)

Caribbean Financial Action Task Force (CFATF)

Eurasian Group on combating money laundering and financing of terrorism (EAG)

Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)

Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

Financial Action Task Force on Money Laundering in South America (GAFISUD)

Inter Governmental Action Group against Money Laundering in West Africa (GIABA)

Middle East and North Africa Financial Action Task Force (MENAFATF)

Annex C: Current List of Observers

African Development Bank

Asian Development Bank

Basel Committee on Banking Supervision (BCBS)

Commonwealth Secretariat

Egmont Group of Financial Intelligence Units

European Bank for Reconstruction and Development (EBRD)

European Central Bank (ECB)

Eurojust

Europol

Group of International Finance Centre Supervisors (GIFCS) [formerly the Offshore Group of Banking Supervisors - OGBS]

Inter-American Development Bank (IDB)

International Association of Insurance Supervisors (IAIS)

International Monetary Fund (IMF)

International Organisation of Securities Commissions (IOSCO)

Interpol

Organization of American States / Inter-American Committee Against Terrorism (OAS/CICTE)

Organization of American States / Inter-American Drug Abuse Control Commission (OAS/CICAD)

Organisation for Economic Co-operation and Development (OECD)

Task Force on Money Laundering in Central Africa (GABAC)

United Nations –

- Office on Drugs and Crime (UNODC)
- Counter-Terrorism Committee Executive Directorate
- The Al-Qaida Sanctions Committee (1267/1989 Committee)

The World Bank

World Customs Organization (WCO)

Annex D: Current List of FATF Working Groups

Working Group on Evaluations and Implementation (WGEI)

Working Group on Money Laundering and Terrorist Financing (WGTM)

Working Group on Typologies (WGTYP)

International Co-operation Review Group (ICRG)