For Official Use **DAFFE/IME/BR/WD(2000)4**

Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

OLIS : 16-Feb-2000
Dist. : 17-Feb-2000

Or. Eng.

DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES

DAFFE/IME/BR/WD(2000)4
For Official Use

Working Group on Bribery in International Business Transactions (CIME)

MEASURES TO PREVENT THE USE OF FINANCIAL CENTRES IN BRIBERY AND CORRUPT TRANSACTIONS

This note by the Chairman of the Working Group on Bribery in International Business Transactions has been prepared for the informal meeting on Off-Shore Financial Centres to be held on 29 February 2000.

87554

Or. Eng.

Prof. Dr. Mark Pieth

Juristische Fakultät
Universität Basel
Maiengasse 51, CH-4056 Basel

Basel, 16. February 2000 jk

Telefon +41 61 267 25 38
Telefax +41 61 267 25 49
e-Mail Mark.Pieth@unibas.ch

MEASURES TO PREVENT THE USE OF FINANCIAL CENTERS IN BRIBERY AND CORRUPT TRANSACTIONS

Note prepared for the meeting of the OECD Working Group on Bribery of the 29 February 2000[1]

I. Introduction

Over the last ten years the international community has made considerable progress in developing instruments to reduce corruption. The policy changes by the large multilateral money lenders[2], the new Recommendations, Resolutions and Conventions of International Organisations[3] as well as the codes of conduct of the private sector[4] and the work done by NGOs[5], the media and other representatives of the civil society have raised the issue of corruption to the top of the political agenda around the world.[6]

So far, the focus has been primarily on the actual acts of bribery, be it on the offering or the receiving end. Little attention has been given to date to the financial **flows-relating** to corruption. Of course, in „petty corruption", the most common form of bribery (and though its' endemic character in some regions of the world is particularly dangerous to the social fabric), the sums are typically paid in cash. However, „grand corruption"[7],

1 This note reflects the personal opinion of the author and merely intends to stimulate the discussion of the Working Group at the meeting of the 29 February 2000.

2 Cf. the new Anti-Corruption Policies of the World Bank and amongst the regional development banks especially the Asian Development Bank (ADB).

3 Inter-American Convention Against Corruption of March 29 1996 of the OAS; Protocol, adopted by the Council on 27 September 1996, to the Convention on the protection of the European Communities' financial interests; Second Protocol, adopted by the Council on 19 Juni 1997, to the Convention on the protection of the European Communities' financial interests; Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, adopted by the Council on 26 May 1997; Joint Action of 22 September 1998, on corruption in the private sector; Council of Europe Resolution (97) 24 on the 20 guiding principles for the fight against corruption (6 November 1997); Criminal Law Convention on corruption, 3-4 November 1998; Civil Law Convention on corruption, 9 September 1999; OECD-Revised Recommendation of the Council on combating bribery in international business transactions of 23 May 1997; OECD-Convention on combating bribery of foreign public officials in international business transactions of 21 November 1997; United Nations, General Assembly Resolutions 51/59 and 51/191.

4 International Chamber of Commerce (ICC), Extortion and bribery in international business transactions, 1996 revisions to the ICC rules of conduct.

5 In particular the specialised NGO Transparency International.

6 Cf. the G7 meeting on 22 January 2000, focusing as one of its topics on international financial reform. Under the heading of international efforts to fight financial crime the FATF's work to identify „non-cooperative jurisdictions" and the OECD initiatives on bribery have received special attention.

7 Moody-Steward, Grand corruption, Oxford 1997, p. 2.

the specific area of interest of the OECD instruments against transnational commercial bribery[8], frequently depends upon wire transfer and the use of **financial institutions** in general. In many instances, such institutions will not be based in the country of the recipient, nor even in the home country of the briber. Focusing on the money management in bribery shifts attention away from the „supply" and „demand" side of bribery to a third dimension, the intermediaries and financial centres, especially the so-called **Off-Shore Financial Centres (OFCs)** and the specific services they have to offer, i.e. the rapid and cheap incorporation of domiciliary companies („International Business Corporations" (IBCs)), a slim regulatory and supervisory structure in the financial sector, and a combination of strong confidentiality laws with inadequate mutual legal assistance (cf. II.).

The issues of money-laundering, OFCs, IBCs and the implications of bank secrecy and related matters have been addressed in a multitude of **international fora** in a variety of contexts. This paper will give a brief overview of the most recent initiatives (of the UN, the BIS, IOSCO, FATF, OECD, COE, EU; cf. III.). And it will raise the question whether the OECD Working Group on Bribery needs to add its voice to this international chorus (cf. IV). It should be stressed, however, that the purpose is not to duplicate efforts. Rather, the OECD Working Group, as the repository of one of the most forceful initiatives against transnational bribery, needs to determine whether the relevant issues relating to the money management of corruption are **adequately addressed** in other fora. The issue could become crucial for success or failure of the OECD initiative: Members of the private sector have repeatedly warned that rogue market participants would be induced by the tougher standards in countries parties to the OECD instruments to go off-shore and **bribe from financial centres outside the reach of the OECD instruments**.

This has been the reason why the Working Group had initiated work in the area of money laundering and off-shore centres as early as February 1996[9]. It returned to the issue again in 1999 when it asked an ad hoc Group under the Chairmanship of M. *Thierry Francq* of the French Ministry of Finance, to examine the risks posed by off-shore centres[10]. The Working Group identified the main areas of concern the **lack of adequate regulation** of financial centres, **inadequate company law requirements**, and de jure or de facto **obstacles to administrative or judicial co-operation**. It concluded that the OECD should continue its efforts on these issues taking into account work done in other fora. The current paper will present a suggestion for the next steps to be taken (IV.).

II. Money flows related to corruption

1. Broadening the issue

Up to now, the OECD has addressed the money management related to corruption under the headings of **money laundering, bookkeeping offences**, or the **misuse of OFCs**. The point made by the prosecutors of Milan and Geneva is well-taken, that „grand corruption" should be analysed in its typical chronological stages: Frequently -- the creation of „**slush funds**" (most always held outside the country of domicile of the briber and the bribee) -- the actual **bribe payment** and -- the **laundering** of the **bribe** and the **profits** of bribery. If this is merely a model, it is based on experience[11].

It has been recognised, that Off-Shore Financial Centres play a key role when seeking to obscure transactions, however, it should be noted that many of the techniques applied are **also available in** the large financial centres

8 Cf. note 3.

9 Hearing of the OECD Working Group on Bribery in February 1996 in Paris, cf. the statements by prosecutors and judges: notably Mr. *Marin* of France, Mr. *Colombo* and Mr. *Greco* of Italy, Mrs *del Ponte* of Switzerland and Mr. *Clark* of the USA.

10 Special meeting with prosecutors of 11 February 1999.

11 Mr. Colombo and Mr. Greco at the OECD hearing in February 1996; Bernasconi, New criminal law provisions against the corruption of public officials, GMC, COE, 30 January 1995.

of **the OECD area**. In order to prevent the use of financial institutions preparing and executing corrupt payments, it might therefore be more efficient to concentrate on the specific measures to prevent the abuse of financial centres rather than limit oneself to the issue of OFCs.

2. The creation of „slush funds"

The term „slush fund" (fondi neri, caisses noires, schwarze Kassen) is used in different contexts, in taxation law for undeclared funds, in bookkeeping law for „off the books"-assets, or at least for funds eluding consolidated bookkeeping. Therefore the word „slush fund" does not automatically imply illegal activities even if, in many cases, criminal techniques will be applied to obscure these „informal reserves" (false bookkeeping, forged documentation or even fraud and embezzlement).

In practice, the **size** and the **structure** of such funds will diverge substantially. In an Italian case, courts heard evidence of an actual „caisse de guerre" of several hundreds of billions of Lire[12]. And this is not the only known case of such dimensions. These funds usually serve multiple purposes. They allow the management to act outside the company controls since it can effectively disguise the financial performance of a company. They could also be used to exert illegal political influence or to bribe for the purpose of obtaining business deals.

Some methods for creating slush funds have been described by Jermyn Brooks in his expert opinion to the OECD Working Group in 1996[13].

„Members of the senior management team of a company establish a bank account, usually outside the jurisdiction in which the company operates. The bank account is maintained in the name of an off-shore company which is beneficially owned by the members of the management team in question [...]. Arrangements are made for the company to make payments to the bank account of the off-shore company and documentation is prepared to „support" the payments made, usually in the form of invoices for consultancy or similar services, the purported nature of which usually enables the amounts involved to be deducted for tax purposes [...]".

„Arrangements are made by the senior management of a company for one of its customers to remit moneys to an off-shore bank account which is controlled by senior management and from which corrupt payments are made [...]".

„Company moneys are deposited overtly in an off-shore bank account maintained in the company's name supposedly for reasons of tax efficiency. The amount of the deposit is included among the company's assets as reported on its balance sheet which makes this method attractive to managements seeking artificially to maintain earnings and net assets. Covertly, the deposit is used to secure borrowings, usually from another bank, the proceeds of which are used to make corrupt payments [...]".

These **methods** to **create such slush funds** are quite well known[14]. One classical approach would involve transfer-pricing: A company belonging to the slush fund-structure overcharges its „mother" or a „legitimate sister" for goods or services delivered. This could even be done for raw materials of a product sold with the help of bribes[15]. Current practice is also to bill the legitimate company for fictitious services like advertising campaigns, market studies, expert opinions, consulting[16] or the notorious commissions to fictitious intermediaries. A more „elegant" method would involve imagined or prearranged financial operations without

---

12 Trepp, Swiss Connection, Zurich 1996, p. 201; SEC v. M. S.p.A., US District Court for the District of Columbia, 21 November 1996.

13 Cf. Pieth/Eigen, Korruption im internationalen Geschäftsverkehr, Bestandsaufnahme, Bekämpfung, Prävention, Frankfurt, Basel 1999, p. 393 et seq.

14 Service Central de Prévention de la Corruption, Rapport Annuel 1995, p. 44 et seq.; 1996, p. 99 et seq.

15 On the case „Cronassial" cf. Trepp 1996, p. 53 et seq.

16 USA vs. G.Y.I. Corp., USA District Court for the District of Columbia, Plea Agreement, 11.5.1989.

ulterior economic reason between captive corporations leading to a loss for the legitimate company and a gain for the underground partner[17]. Yet, a further variation observed has been to request payments for goods and services to an off-shore account and to book a loss or a fictitious rebate on the official books of the parent company[18].

3. Laundering-structures

Whereas in the creation of „slush funds" usually legally obtained funds are diverted from the regular books, the laundering of bribes and proceeds pursues a dual goal: interrupting the link to the illegal origin of the funds and, in the case of an official interrupting the link to the beneficial owner. This part of the operation implies the creation of a **smokescreen** with means of financial services (in the classical terminology of law enforcement authorities dealing with drug-money laundering, the so-called „placement" and „layering stage"[19]). In a second phase, the funds receive a credible „**legend**" as seemingly legally obtained in order to allow them to surface into the visible economy. Careful money launderers would of course declare these funds to tax authorities when „integrated" into the legal economy. They might alternatively be recycled into hidden structures , to be used for further bribery, or in the case of the bribee to pay off accomplices or other officials, party members etc.

Little is known to date about the micro-mechanisms of corruption-money laundering[20]. However, on the basis of some cases investigated it may be assumed that large-scale corruption follows the established methods of „structuring" of financial operations applied to tax fraud or drug-money laundering.

a. A classical structure requires a professional „**organiser**". Frequently he will be fiduciary, a banker[21], or at best an **attorney**[22] operating from a large financial centre or an OFC. Although the client-attorney privilege in most countries does not withstand criminal investigation where the attorney acts as mere financial intermediary, the legal difficulties created in clarifying the situation would suffice to impede law enforcement substantially. Organisers would regularly use IBC's and open bank accounts for them preferably in underregulated banking centres with little inclination to accord mutual legal assistance. Sometimes launderers also resort to the use of „stuges" or even non-existent „ghost companies", even though this method might add to the risks of detection.

b. IBCs belong to the typical services offered by an OFC: Non-residents are allowed to incorporate companies not conducting business where they are registered rapidly and cheaply. Registration requirements are light, registers rarely - if at all[23] - indicate the genuine beneficial owner of the company. Under the internationally agreed standards to prevent money laundering the beneficial owners of funds, including IBCs, have to be identified (KYC-policy) when entering into a business relation with financial institutions.

c. However, to date not all financial centres follow the rules of the Financial Action Task Force (FATF) of 1990, as amended in 1996, strictly enough. Therefore opening an **account for an IBC** or a sequence of IBCs with a banking institute **in an underregulated OFC** offers additional discretion[24]. **Bank secrecy** as such is not an impediment to law enforcement[25]. However, where it does not go along with strict identification and due

17 Cf. note 12.

18 Cf. USA vs. G. V. M., USA Court for the Northern District of Texas.

19 This terminology originally developed by US-customs was adopted by the FATF sub-group on statistics and methods in 1990; cf. also Pieth, Bekämpfung der Geldwäscherei - Modellfall Schweiz?, Basel/ Frankfurt 1992, p. 13.

20 Mr. Stanley Morris at the Limassol Conference of the Council of Europe, October 1999.

21 Cf. the case S. Holding in : Trepp, 1996, p. 142 et seq.

22 Cf. the case S./D./K., US District Court for the Southern District of Ohio, Western Division, Indictment of 17 March 1994.

23 It may be noted that e.g. a Liechtenstein Stiftung without commercial activity would not have to be registered at all.

24 Cf. The case mentioned in note 13.

25 Cf. the case Pemex, Swiss Federal Court (BGE 110 Ib 173ff., 115 Ib 517ff.).

diligence and where it used to oppose a mutual legal assistance request, it contributes considerably to fending off access to information and assets.

These observations bring us back to the conclusions of the OECD Working Group's Ad-Hoc Meeting of February 1999 that three areas need to be further examined, both in law and in practice:

- the level of regulation of financial centres,
- the adequacy of company law requirements and
- the efficiency of administrative and judicial international co-operation.

III. International efforts to reduce the risks posed by OFCs

Several international organisations have recently focused on the issue of OFCs. The perspectives vary according to the mandate of the organisation:

The *Financial Stability Forum* established an Ad-hoc Working Group on OFCs on 14 April 1999 in which several European, American and Asian states as well as the *Basel Committee on Banking Supervision*, the *International Association of Insurance Supervisors*, the *International Organisation of Securities Commissions* and the OECD are participating. Its primary interest is to evaluate the risks OFCs pose for the stability of the world's financial system (addressing prudential and market integrity concerns). It does, however, endeavour to develop a methodology to asses compliance with international standards[26].

The *United Nations* have commissioned a report on financial centres, bank secrecy and money laundering[27], an Expert Group of the *UN-Commission on Crime Prevention and Criminal Justice* has met in Paris at the end of March 1999 and has drawn its conclusions[28]. They, in turn, have influenced the ongoing work on a Convention against transnational economic crime.

The *Financial Action Task Force (FATF)* with its forty Recommendations, updated in 1996 covers a central part of the concerns in regulating the financial sector. Apart from this regular work it has established an *ad-hoc group on „non-cooperative jurisdictions"*.

The *Council of Europe* Convention on Money-Laundering, Search, Seizure and Confiscation of Proceeds from Crime, its Convention on Mutual Legal Assistance in Criminal Matters and its Criminal and Civil Law Conventions on corruption[29] together with the Group of States against Corruption (GRECO)[30] contribute considerably to a legal framework of co-operation. Its specific corruption and OFCs has been promoted by the Limassol Conference of 20-22 October 1998[31].

The *European Union* is primarily approaching the issue of corruption from the angle of the protection of its financial interests. Therefore its work on OFCs is set in the context of preventing tax fraud[32]. Further input may

---

26 Its final report is to be published by April 2000.

27 UN, ODCCP, Paradis financiers, secret bancaire et blanchiment d'argent, Vienne, le 29 mai 1998.

28 Réunion du groupe d'experts de la commission des Nations-Unies pour la prévention du crime et la justice pénale, Paris, les 30, 31 mars et 1er avril 1999: „La corruption et ses circuits financiers internationaux: elements d'une strategie globale de lutte contre la corruption.".

29 Cf. note 3.

30 Agreement Establishing the Group of States Against Corruption - Greco, Strasbourg, 12 May 1999.

31 IV th European Conference of specialised services in the fight against corruption, „ International co-operation in the fight against corruption and off-shore financial centres: obstacles and solutions." Limassol, 20-22 October 1998.

32 Cf. note 3, the „euroshore"-programme and the projects for a „corpus iuris", a core criminal code on EU-fraud.

be expected from the EU initiatives to combat serious organised crime especially in the area of international co-operation.[33]

IV. Measures to Prevent the use of Financial Centres in Corrupt Transactions: Developing Common Standards

So far it has not been seriously disputed that there might be legitimate uses for OFCs and for IBCs[34]. However, it has become clear that in the current stage of liberalisation of financial markets serious underregulation of certain jurisdictions and their unwillingness or inability to cooperate increasingly endangers the stability of the international financial system and hampers law enforcement activities. The primary goal of measures should therefore be directed at securing a homogenous approach against legal or factual arrangements allowing the anonymous use of financial instruments. The following section discusses the issue of international standards[35] (1.) and their implementation (2.) separately:

1. Substantive standards

International organisations have rightly distinguished between a regulatory (preventive) and a sanction-oriented approach. This second approach will heavily rely on criminal law.

a. Regulatory approach

The following rules have been developed in the context of preventing money laundering[36]. They, however, follow a much broader agenda: Their primary goal is to establish a paper trial for all (especially all legitimate) business and thereby create „structures of global control" in the financial sector[37].

- The „**Know your customer**"-rule (KYC) develops an entirely new dimension when extended to the **beneficial owner**[38]: Where IBCs, trusts, Anstalten, Stiftungen and joint accounts make it difficult or impossible to establish the true beneficial owner it would be unsafe to enter into a business relation. This requirement - taken very seriously - is demanding, but it could provide a relatively manageable answer to the treatment of companies incorporated in unreliable OFCs. It would allow isolating such IBCs without having to blacklist the OFC (cf. below).

- The code word „due diligence" relates to three additional provisions relevant in our context:
  - The obligation to apply **increased diligence** in unusual circumstances[39],
  - to keep the identification files and **records** on the economic background of unusual transactions[40],
  - the **obligation to notify** suspicious transactions to the competent authorities[41].

---

33 Cf. the Action Plan on Combating Organised Crime of 28 april 1997 and the recent decisions of the European Council at ist Tampere Meeting.

34 Financial Stability Forum, Draft Report 7 September 1999, p. 1; UN ODCCP 1998, p. 24 et sep.

35 Cf. especially the Conclusions of the Limassol Conference of the Council of Europe, following a proposal by Prof. *Ernesto Savona*, Rapporteur General and the Report of the meeting of the Expert Group on corruption and its financial channels in Paris of 30 and 31 March and 1 April 1999 (Limassol Conclusions).

36 Cf. the Basel Statement of Principles of 1998.

37 Pieth, The harmonisation of law against economic crime, European Journal of Law Reform, 1999, p. 530 et seq.; idem, in: European Journal of Crime, Criminal Law and Criminal Justice, 1998, p. 159 et seq.

38 FATF 1996 R. 11 and the related Interpretative Notes.

39 FATF 1996 R. 14.

40 FATF 1996 R. 12 and 14.

The obligation to „pay special attention to all complex, unusual large transactions, and all unusual **patterns** of transactions, which have no apparent economic or visible lawful purpose“ (FATF R.14) is especially relevant to our topic: A series of criteria may reveal that a transaction or a business pattern seem unusual - and it is almost certain that the criteria relating to corruption-money-laundering will be different from those „red flags“ pointing towards drug-money laundering. One might distinguish **high risk areas, industries** and **persons** as well as **transactions** risky by their nature.

The financial operator will have to apply special caution when dealing with large sums originating from **areas with endemic corruption**. Increased awareness will also be needed where the client or beneficiary is performing an important public function, be it as head of state, minister, party leader, in short: a person close to power and likely to be approached by potential bribers. Furthermore, it will be understood that clients involved in specific business sectors, like the **arms trade** will have to answer additional questions as to the **background** of the transactions, the **origin** of the funds and their **destination**. The traditional use of „red flags“ identifying risky transactions will have to be examined and probably modified to include the new risk patterns relating to corruption. The question, how to deal with cash-transactions, is a sub-item to this topic.

Already now it becomes clear, that the due diligence system developed over the ten years for money-laundering needs to be re-examined in the light of the prevention of „grand corruption“.

The rules sketched above apply to all **FATF Member Countries** and - with minor modifications - to the **Caribbean Financial Action Task Force (CFATF).** Indirectly, through model codes by the United Nations and the OAS they have been exported to other areas of the world. In some regions they have been picked up and embedded in binding international[42] or national law. To some extent the details may have been delegated to the self-regulatory audits of the financial industries. The world-wide coverage, however, goes way beyond the banking sector and includes all kinds of financial intermediaries.

Focusing on corruption-money-laundering it will, however, be noted, that the national awareness concepts may still be directed towards **specific predicate offences**: If the FATF has extended the scope of its criminal offence of money-laundering to cover all serious offences, it still leaves it to each country to determine which offences it regards as serious enough[43]. This decision will undoubtedly influence the nationally applicable awareness rules. The OECD Anti-Corruption Convention does touch upon the issue in its article 7 and the corresponding Commentaries (C 28), however, a certain measure of ambiguity remains because it refers to the domestic treatment of corruption-money-laundering. Therefore, the Council has asked the OECD Working Group to further examine this issue together with four other items.

b. Criminal law

Here the creation of slush funds and money-laundering would have to be discussed separately.

As pointed out, the creation of a **slush fund** is not necessarily illegal, and where funds are diverted „off the books“ there might be a breach of the accounting rules of one country and maybe even its criminal law[44], but there is no guarantee that a non-member of the OECD instruments against bribery, especially an OFC, would be ready to act upon such a manipulation, be it domestically or in a mutual legal assistance context.

As concerns corruption-money-laundering three provisions are relevant:

---

41 FATF 1996 R. 15.

42 Cf. the Council of Europe Convention 141 (see above note 3.) and the EC Directive of 1991.

43 FATF 1996 R. 4.

44 Art. 8 of the OECD Convention and V. of the OECD Recommendation (cf. note 3).

- First, the **seizure and confiscation** of the bribe and the profits of bribery according to article 3 para. 3 OECD Convention: here, one might want to examine if the requirements are stringent enough. The Council of Europe Convention 141 might serve to provide additional ideas[45].

- Second, the difficulties in making corruption, as defined in the OECD Convention, a **predicate offence to money-laundering** have already been mentioned. This issue merits another examination from a technical rather than a political perspective. It might turn out to be a crucial instrument to make large-scale transnational bribery more risky and costly.[46]

c. Judicial co-operation

The obstacles and deficiencies in providing mutual legal assistance are considered to be the most important impediments to law enforcement and the area where very substantial problems exist. Here, the role of the OECD needs to be defined. The OECD Bribery Convention already addresses some mutual legal assistance issues but this has been a cautious approach, not going beyond accepted standards. However, as has been pointed out on numerous occasions, major problems in mutual legal assistance persist, not only as concerns unnecessary delays, including multiple appeals, but also the actual state of development of the laws governing mutual legal assistance.

At present, most requests for information are made under bilateral mutual legal assistance agreements (MLAA). However, given that most cases of international money laundering involve several countries as well as different bank accounts and different entities, the MLAA system is still very time consuming, cumbersome and often doesn't allow for successful investigation and prosecution.

The minimum standards on **international co-operation** in criminal matters are just as essential to combating corruption-money-laundering as corruption itself[47]. Article 9, in particular para. 3, of the OECD Convention should be part of the world-wide standard: „A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of *bank secrecy*." The most difficult topic in international co-operation remains, however, how to secure prompt and effective assistance without forcing Member States to depart from their fundamental legal principles and the safeguarding of human rights[48]. Again, the instruments developed in the context of the Council of Europe could give valuable guidance.

d. Company law

Inadequate company laws which prevent obtaining information about the true identity of beneficiaries have also been identified as a source of concern. This is an area in need of a more extensive study[49]. It is proposed that the OECD Working Group on Bribery examine to what extent new laws about meaningful registers could be made unnecessary by insisting on thorough identification of clients in the financial sector.

2. Implementing Standards

There are at least four different ways to promote harmonised substantive standards in financial centres:

---

45 Cf. IV.4 of the Limassol Conclusions.

46 Cf. p.4 of the Paris Conclusions.

47 Cf. FATF 1996 R. 30 et seq.

48 Cf. p.4 of the Paris Conclusions.

49 Cf.III.5. of the Limassol Conclusions.

- The financial centres could be **included as members** in the OECD Working Group on Bribery. In the case of small OFCs this approach, however, be in conflict with criteria for access developed by the Working Group.

- OFCs would be **convinced** of the need to introduce the agreed standards independently from joining the OECD instruments e.g. in the context of regional participant groups or the „Declaration" suggested for Non-Members[50].

- Non-cooperative OFCs could be encouraged to make an effort and eventually blacklisted if they remain unwilling. This (or a similar approach of „white-listing" the co-operative OFCs) is being pursued by some of the international bodies mentioned above, in Sub III.

- As an alternative to coercion, the **insistence on strict customer identification** for all financial operations by institutions in the OECD and the FATF areas, including the identification of beneficial owners, could indirectly isolate such unwilling OFCs: However, the rules on identification established would need some clarification. No financial institution could simply rely on the identification by another financial institution domiciled in an underregulated OFC. The identification would have to be repeated even in business relations with correspondent banks domiciled at such locations (maybe except one's own subsidiary, if it is submitted to the same standards as the mother)[51].

Delegates may wish to discuss the above proposals; they may also suggest additional options.

Prof. Dr. Mark Pieth

[50] Cf. p.4 of the Paris Conclusions.

[51] Cf.III.5 of the Limassol Conclusions.