Joint response to the Financial Action Task Force's Mutual Evaluation of the UK

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by Bond Anti-Corruption Group members: Corruption Watch, Global Witness and Transparency International UK

The Financial Action Task Force (FATF) aims to set standards and promote effective measures for combating financial crimes such as money laundering and terrorist financing. Despite giving the UK one of its highest ratings yet, this year's review highlights significant weaknesses in the UK's sanctions policy and anti-money laundering regime.

The review also paints an overwhelmingly positive picture of the UK's action on tackling financial crime, which stands in contrast to the National Crime Agency's recent statement that the scale of money laundering impacting the UK annually could be in the "*hundreds of billions of pound*s."

This briefing outlines four key themes which require more robust attention than FATF's review provides, and which require urgent government action.

For more detail and analysis on each theme, please get in touch with the contacts below:

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Quick look at UK's 2018 rating

The FATF review finds the UK substantially or highly effective in eight out of 11 key goals that an effective anti-money laundering and counter-terrorist financing framework should achieve. The UK received moderate ratings in only three: Prevention; Supervision; and Financial Intelligence. It finds the UK compliant or largely compliant with all but two of its 40 recommendations: Due Diligence on Correspondent Banking, and the Financial Intelligence Unit.

In relation to the 40 recommendations, the UK achieved 14 more full technical compliance ratings than the U.S., and 17 more than Switzerland.

Key findings of FATF's review

Issues highlighted by this year's FATF review include:

- Under-resourcing of the UK's Financial Intelligence Unit (FIU), with the UK failing to capture vital intelligence due to a "*deliberate policy decision to limit the role of the UKFIU*";

- Lack of evidence that level of prosecutions for high-end money laundering is consistent with UK's risk profile. Few prosecutions of companies due to "*difficulties of proving criminal intent*";

- Significant weaknesses among the UK's 25 anti-money laundering supervisory bodies. Inconsistent compliance across sectors, and a low level of reporting from many – including some which are identified as high risk;

- Lack of verification and screening of the People with Significant Control register at Companies House, leading to a concerning amount of inaccurate or false information, and undermining its full potential to combat money laundering.

Bond Anti-Corruption Group's recommendations

In light of the review, the Bond Anti-Corruption Group is calling on the UK Government to urgently:

- Devote long overdue resources to the Financial Intelligence Unit to improve the effectiveness of the Suspicious Activity Reports regime and the use of financial intelligence by law enforcement;

- Reform the UK's corporate liability laws to ensure that large companies can be held criminally liable for money laundering offences;

- Undertake a public review of the UK's anti-money laundering supervisory regime, including the consistency with which sanctions are applied by supervisors, whether sanctions imposed are sufficiently dissuasive, the potential for conflicts of interest, and how risk-assessment frameworks are being used;

- Ensure the confiscation regime is properly resourced and transparent, producing regular statistics on the use of Unexplained Wealth Orders, Account Freezing Orders, restraints and confiscations, and the amount of money repatriated;

- Empower Companies House to verify beneficial ownership information submitted to the UK's Persons of Significant Control Register to prevent false and misleading information from being used to conceal illicit activity.

1. Legal System and Operational Issues: Financial Intelligence; Prosecutions and Confiscation

a. Financial Intelligence

Key points in FATF review:

- The Financial Intelligence Unit (FIU) is under-resourced, with 80 full-time staff; 17 less than in 2007 when staff numbers were projected to increase to 200. There are only nine staff providing tactical analysis, and no forensic accountants;[1]
- The Suspicious Activity Report regime needs "significant overhaul": a decision to limit the role of the FIU in analysing results has led to vital financial intelligence being lost.

Review shortcomings:

FATF states that law enforcement has "*the necessary resources*" for financial investigation. However, until last year, National Crime Agency officers responsible for high-end money laundering were paid £5,000-£15,000 less per year than police counterparts. A 2016 Parliamentary Committee report found that financial investigators are often poached by the private sector, while a 2017 report describes financial investigation within the police as "*at best misunderstood and at worst marginalised.*"

Urgent recommendation:

The Government must devote long overdue resources to the FIU to improve the Suspicious Activity Reporting regime, and for financial intelligence across the board.

[1] The annual budget of the FIU is on average £3.5 million, compared with the US' Fincen budget of £92 million - although direct comparisons are hard to make *(comparison not included in report, but added by the Bond Anti-Corruption Group)*

b. Investigation and Prosecution of Money Laundering

Key points in FATF review:

- The UK achieves 1,400 convictions for standalone money laundering (ML) annually - the vast majority for low-end cash-based money laundering ML;
- There are now 180 investigations into high-end ML being conducted by UK Law Enforcement Authorities, but it's not clear that "*the level of prosecutions and convictions of high-end ML is fully consistent with the UK's threats*";
- The report notes companies are "*rarely convicted*" and that "*the UK's ability to prosecute large legal persons for criminal ML offences […] remains limited.*"

Review shortcomings:

- FATF's compliance rating is generous. The U.S.' average 1,200 convictions annually include "a significant number of very large and complex money laundering investigations" with the U.S. Department of Justice bringing in $4.3 billion in ML fines and forfeitures since 2014;
- Low numbers of convictions for 'failure to disclose' ML (just 13 prosecutions since 2013) weren't picked up by FATF, despite endemic under-reporting in legal and accountancy sectors;
- Despite the mention of large UK banks in many money laundering scandals, no bank has ever been prosecuted in the UK for its role in money laundering.

Urgent recommendations:

The Government must reform the UK's corporate liability laws to ensure that large companies can be held criminally liable for money laundering offences.

2. Confiscation

Key points in FATF review:

- Since 2014, the UK has restrained £1.3 billion and recovered £1 billion;
- As of December 2017, the Crown Prosecution Service has restrained £254 million on behalf of foreign states, and the Serious Fraud Office has £43 million restrained as a result of Mutual Legal Assistance requests.

Review shortcomings:

FATF's positive assessment seems to run counter to:

- Law Commissioner David Ormerod's November 2018 statement that the UK's "*confiscation regime is failing both victims and the general public*";
- The UK's National Audit Office finding that only 26p out of every £100 of criminal gains are being confiscated.

Nor does the review take into consideration:

- The UK's £1.9 billion of uncollected assets due from confiscation orders, as of March 2018;
- That, comparatively, the money restrained on behalf of foreign governments by the U.S. was $2.8 billion in 2016, with it recovering an average of $4.4 billion a year.

Urgent recommendations:

While the introduction of Unexplained Wealth Orders and other measures in the Criminal Finances Act have been welcome, the UK has a long way to go to prove its confiscation system is working effectively. The Government must ensure that the confiscation regime is properly resourced and transparent: producing regular statistics on the use of Unexplained Wealth Orders, Account Freezing Orders, restraints and confiscations, and the amount of money repatriated.

3. Supervisory Regime

Key points in FATF review:

- There are 25 different supervisors tasked with ensuring regulations are adhered to, resulting in a fragmented and inconsistent approach to supervision - particularly among the 22 legal and accountancy supervisors. This leaves the financial system vulnerable to money launderers seeking the weakest point to exploit;
- Supervisors and the sectors they oversee should take a risk based approach: understanding where there is a higher risk of money laundering, and investing resources there.

Review shortcomings:

FATF failed to highlight that a number of professional body supervisors in the accountancy and legal sectors act as both the trade body and regulator for firms registered with them, representing a significant conflict of interest.

Urgent recommendations:

The UK Government should ensure regulatory functions are separated from representative functions within self-regulatory bodies, and remove supervisory status from those who don’t take steps to address conflicts of interest. Government must also ensure transparent and proportionate sanctions, obligating self-regulating bodies to publish details of their enforcement plans and actions.

4. Companies House

Key points in FATF review:

- The UK is a global leader in promoting corporate transparency, with its public register of beneficial ownership for companies, Trust Register, and requirements that banks and other professionals obtain and hold beneficial ownership information;
- 25% of companies are incorporated directly via Companies House. In these cases, no identification, verification, or other due diligence checks are carried out. Individuals and entities are not screened against targeted financial sanctions lists when registering companies, and there is no obligation for professionals to report inaccuracies.

Review shortcomings:

- FATF mentions sanctions are used as a last resort for non-compliance, which grossly understates the poor track record of enforcement of the rules to date[2];
- While FATF acknowledges the problem posed by a lack of verification of data at Companies House, it fails to call for a comprehensive mechanism to verify data; ignoring the fact that many users will be dis-incentivised from using the information if they cannot trust its accuracy.

Urgent recommendations:

The UK Government should:

- Mandate and resource Companies House to verify beneficial ownership data submitted to the People with Significant Control register, and sanction non-compliance;
- Carry out basic verification such as proof of identity checks and international sanctions screenings to support investigations;
- Close loopholes which allow no beneficial owner to be declared, and introduce checks for companies that are listed as controlling entities.

About

The Bond Anti-Corruption Group is a coalition of British NGOs who, through their work, witness the devastating effects of corruption on society. This briefing is written by three of the Group's members: Corruption Watch, Global Witness and Transparency International UK.

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[2] The UK's first prosecution for a false company filing, which was celebrated via a government press release in March 2018, punished an individual who had set up companies with the express purpose of exposing the lack of checks and loopholes in the register.