Criticism of FATF’s assessment of the UK’s anti-money laundering systems

The much-anticipated Financial Action Task Force (FATF) mutual evaluation of the United Kingdom’s anti-money laundering and counter terror financing regime is out, and with it has come much praise from UK government officials, not least HM Treasury Minister John Glen, who said: “The report recognises that the UK's AML/CTF regime is the strongest of the over sixty countries assessed by FATF and its regional bodies.”[1]

Of the eleven areas under review, the UK received the highest possible rating in four areas, just as another four areas received a “substantial” rating.

Indeed the anti-money laundering global body did commend the UK. For example, it noted the role of its Joint Money Laundering Intelligence Taskforce which brings together law enforcement and industry in a partnership to share information and address financial crime issues.

FATF also praised the UK for its ‘robust’ understanding of ML/TF risks and mentioned its national coordination on AML/CFT, saying it has improved significantly since the last evaluation.

However, within a few days of the report’s publication, FATF's conclusions have attracted criticism and raised some important questions, rather than answered them. The Bond Anti-Corruption Group (the Bond Group) comprising three NGOs, Transparency International UK, Corruption Watch and Global Witness have been particularly strident[7] in their assessment of the FATF report, as reflected in the following points:

Financial Intelligence

FATF opines that the UK's law enforcement agencies have the “necessary resources” for financial investigation, with the UK Financial Intelligence Unit (FIU) having 80 full time staff, a drop of 17 from 2007, including nine staff providing tactical analysis, but without any forensic accountants.

FATF’s view may be seen as some as being complacent. A 2017 report[2] by the Royal United Services Institute opined that financial investigation within the police is “at best misunderstood and at worst marginalised”.

The staffing of the FIU should also be judged against a 30% real cut in central government funding of police in England and Wales since 2010. This reduction has meant an 18% in policing staff to 199,752 as at March 2018[3].
As a further indicator of the lack of importance relative in investigating economic crime may be derived from a recent joint report by the Police Foundation and Perpetuity Research which noted that just 3% of the 277,561 fraud reports in 2017-18 lead to criminal charges. By way of comparison, 13% of all reported crime in the same period lead to a charge, a summons or to community resolution.

FATF recognises the widespread criticism that the UK's Suspicious Activity Report (SAR) system cannot adequately cope with the over 600,000 SARs submitted annually and endorses calls for the system to be radically upgraded in order to assist the analysis efforts by the FIU.

**Companies House**

FATF recognises the UK as a global leader in corporate transparency, including free public access to the register of the ultimate beneficial owners of corporates and notes that criminal sanctions are available for cases of non-compliance.

It fails to advise readers that, so far, there has been just one prosecution for deliberately filing false information with Companies House.

This case involved an individual who wished to highlight the issue of false information at the Companies House register by reporting his own deliberate filing of incorrect data to Companies House itself! Subsequently, he was convicted of a criminal offence.

FATF acknowledges that the absence of verification of Companies House is a problem. It fails to mention that just 20 people at the corporate register are responsible for monitoring four million companies. Neither does FATF call for a comprehensive and effective system for verifying records at Companies House.

Another significant issue with Companies House is when individuals directly use Companies House to form a UK company, staff at the registry perform no verification checks on the directors, shareholders and beneficial owners. In contrast, trust and company service providers in the UK must perform such due diligence procedures when forming UK companies.

Those who wish to avoid such due diligence checks need only apply to Companies House directly when wishing to form a UK company. Perhaps the absence of these checks is a factor in Companies House securing 25% of the company formation market.

A further potential weakness in the formation of UK companies is that the authorities have no visibility of or control over trust and company service providers outside the UK. Consequently, Companies House are unable to ascertain to what extent such providers have conducted due diligence and kept appropriate records when UK companies are formed from overseas.

Anti-corruption campaigners Global Witness provided some clear examples of information at Companies House that may be suspect when they found some four thousand beneficial owners were aged less than two, including one who was yet to be born!

They also found that five separate individuals between them controlled over six thousand
companies thus indicating that the individuals may be acting as nominees and not as ultimate beneficial controllers.

Confiscation

While FATF notes that since 2014 the UK has restrained £1.3 billion and recovered £1 billion, it omits any reference to Law Commissioner David Ormerod's November 2018 statement that the UK’s “confiscation regime is failing both victims and the general public”.

Neither does FATF appear to acknowledge the UK National Audit Office's 2016 finding[6] that only 26 pence out of every £100 of criminal gains is currently being confiscated.

It was findings of this type when combined with the lack of investigative resources in the police that lead Tom Keatinge of the Royal United Service Institute to note recently “It appears easier for the government to take money off the police than to take it off criminals.”

Amount of Laundered Funds

The Bond Group were surprised, to say the least, at the FATF's opinions bearing in mind the recent statement by the National Criminal Agency's statement that the scale of the annual impact of money laundering in the UK could amount to “hundreds of billions of pounds” which itself exceeds previous estimates of £90 billion being laundered through the UK each year[8].

With a Gross Domestic Product (GDP) of approximately £2,000 billion, each hundred of billion pounds laundered through the UK economy represents 5% of its GDP. If, in reality, there are some £250 billion laundered through the UK economy, it would mean that some 12.5% of GDP represent criminal proceeds.

However, whilst countries measure the size of their economy in terms of GDP, due to the relatively large size of the UK international financial services industry, the flow of international funds flowing into or from the UK, via banks, insurers and other institutions operating in the UK, may make using GDP as a comparator misleading. For example, the $2 trillion flowing through London's foreign exchange markets each day are excluded from the GDP calculation.

Accordingly, whilst trillions flow through the various UK financial markets each day, the total percentage of criminal proceeds with some degree of a UK nexus may be very small. On the other hand, the sheer scale and liquidity of the UK markets may be attractive to foreign criminals wish to disguise their ill-gotten gains, an issue that FATF recognises.

In response to the criticism of the FATF report, a UK Treasury spokesman told KYC360 via email that: “As FATF’s report shows, we have built one of the toughest anti-money laundering regimes in the world. But there is always more we can do, which is why we will continue to improve our defences and work with our international partners to find and prosecute anyone dealing in dirty money.”

KYC360 also asked FATF to respond to the criticism about its work on the UK. It said via email that overall the UK’s AML/CFT regime is “very effective” in aspects such as
implementing targeted financial sanctions or setting out comprehensive AML/CFT obligations for all financial institutions. It added that: “However, the report also identifies some major weaknesses that the UK needs to address. The UK needs to strengthen supervision of the financial sector, increase the resources of their FIU and significantly overhaul their suspicious activity reporting (SAR) regime as a matter of priority.”

Conclusion

While the UK government must be congratulated on the result of the FATF evaluation report, it is important that complacency does not set in.

Equally, many working in both the public and private sectors are cognisant of the many apparent weaknesses in the current regime. Such weakness should be addressed immediately in order to permit the UK to effectively mitigate the financial crime that it faces.

About the article author: UK-based Denis O’Connor is both a Fellow of the Institute of Chartered Accountants in England & Wales and the Chartered Institute of Securities and Investment. He was a member of the British Bankers’ Association Money Laundering Committee from 2003 -10; and a member of the JMLSG’s Board and Editorial Panel between 2010 and 2016. He has been a frequent speaker at industry conferences on financial crime issues, both in the UK and abroad.

Notes:

[1] https://www.theyworkforyou.com/wms/?id=2018-12-10.HCWS1162.h