MECHANISM FOR COMBATING ILLICIT TRADE PROJECT (M-CIT)

STRATEGIC GUIDANCE PAPER ON ELABORATING A METHODOLOGY FOR ASSESSING COMPLIANCE WITH INTERNATIONAL BENCHMARKS

MARCH 2019
POSSIBLE PRIORITIES FOR DISCUSSION

The Siracusa International Institute for Criminal Justice and Human Rights (Siracusa International Institute) has prepared this Strategic Guidance Paper in order to invite input from relevant stakeholders and experts on the potential value and modalities of establishing a new review mechanism on illicit trade.

The paper sets out a wide range of questions across several topics of particular interest to the pilot phase of the Institute’s Mechanism for Combating Illicit Trade Project (M-CIT). However, views and input are sought more generally on the need for international benchmarks in the fight against illicit trade as a cross-sectoral phenomenon, and methods for assessing compliance with such benchmarks, including associated challenges and opportunities. Stakeholders and experts are also invited to share their experience of any relevant existing mechanisms (see, for example, those listed in table 2) and/or propose innovative models or suggestions that might prove effective in the context of combating illicit trade and related crimes.

Based on the analysis in this paper, some preliminary priorities for discussion are outlined below:

Is there value in developing a mechanism to assess performance in responding to illicit trade?

Would states be receptive to being reviewed or otherwise partnering with such a mechanism? Would a mechanism be complementary or duplicative of existing international and national efforts to address terrorism, money laundering, corruption and organised crime? Are there aspects of illicit trade that have not been addressed by existing efforts in those spheres? Is there value in seeking to identify the common features across the various sectors of illicit trade, or does such an approach risk being too broad to be useful? How are states and others currently assessing their responses to illicit trade, in the absence of cross-sectoral national, regional or international strategies and action plans to combat the phenomenon?

Should a review mechanism adopt a peer review or external evaluator (for example, an expert panel) approach?

To what extent does peer review promote legitimacy and accountability among states or companies under review? Is there a risk that peer review may result in relatively “light” findings due to the mutuality of the review? For states, what influences the decision to be part of a peer review process? Have experiences with peer review been positive or negative, and why? Does the quality of the experience depend on the nature of the subject matter? Would an expert panel be a more or less preferable approach to peer review? Would a panel of experts be seen as casting judgment on states or businesses subject to review? What mix of profiles should experts on such a panel have in order to ensure legitimacy of the mechanism?

Should the review mechanism be cross-sectoral or undertake sector-specific reviews?

That is, should the mechanism focus on issues that are common to all trade sectors or focus on specific sectors (for e.g. illicit trade in wildlife, firearms, pharmaceuticals, etc.)? What links can be drawn between illicit trade, organised crime and corruption for the purpose of review? Could cross-sectoral and sector-specific approaches be meaningfully combined in a review mechanism, depending on the specific sectors impacting a country or business?

Should the review mechanism assess technical compliance or functional compliance, or both?

That is, should the review mechanism limit itself to whether the necessary legal and institutional frameworks are in place, or should it also consider the quality and effectiveness of what those frameworks do with the powers with which they are vested? If both, should these lines of review occur in separate phases or simultaneously? What are the potential sensitivities regarding a review of functional compliance, and are states and businesses likely to be receptive to such review?
Should the review mechanism adopt a whole-of-Government approach or focus on specific agencies that are most relevant?

Is it preferable for a mechanism to examine how governments as a whole respond to the challenge of illicit trade including from a strategic perspective, or should it focus on assessing the adequacy of action taken by particularly relevant players such as Customs or Police agencies, or clusters of related agencies? Is there value in adopting both approaches? Would the additional cost and burden of adopting a whole-of-Government approach deliver sufficient additional value to the mechanism and countries under review?

Who or what should be the subject of review?

Should the review mechanism assess compliance of a specific country, or take a regional or sub-regional approach that might encompass several countries and other actors? Should it review countries grouped by supply chains for illicit trade (for e.g., illegal logging, in connection to which a commodity will move through various source, transit and destination countries that are not geographically proximate)? Should the mechanism review particular trade hubs? Should it review the performance of private companies in addition to countries?

How should the private sector and civil society be involved?

Should private sector and civil society actors be involved in reviewing countries or other private companies? Is it preferable that their involvement be limited to providing information relevant to conducting an assessment? What potential impact does private sector and civil society involvement have on the willingness of countries or businesses to be reviewed? Should industry associations be involved in the review process and if so, how? How can civil society be involved in a meaningful way? Could private companies financially support a review mechanism, and what other sources of funding might also be available? How might conflict of interest issues be addressed?

Views and perspectives would be most usefully received by the Siracusa International Institute by Friday 31 May 2019.

To engage in this consultation process, or in case you have questions or would like more information about M-CIT, please contact:

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EXECUTIVE SUMMARY

Several existing institutional mechanisms seek to monitor countries’ compliance with some standards that are commonly associated with efforts to counter illicit trade (especially in the areas of anti-corruption and anti-money laundering). However, no mechanism appears to be specifically devoted to the elaboration of benchmarks, and a corresponding methodology, to tackle illicit trade as a phenomenon in and of itself. The closest initiative is The Economist Intelligence Unit Global Illicit Trade Environment Index (Index). While the Index provides country scores and rankings against a range of indicators, it does not assess countries’ compliance against a set of policy recommendations. It appears, therefore, that the establishment of a new review mechanism would provide added value to current efforts aimed at monitoring countries’ performance in this field. At the same time, the existence of institutional review mechanisms in contiguous areas suggests that any new initiative should, as much as possible, avoid duplicative outcomes and seek to identify synergies with existing mechanisms.

The prerequisite for any discussion aimed at the creation of a new review mechanism is the determination of its approach. On a basic level, a mechanism can either aim at stimulating legal, policy, institutional or operational change by exploiting group dynamics, or be construed as a “service on request”. In this latter case, the mechanism will present features typical of a “consultant-to-client” relationship.

Analysis of nine ongoing initiatives has revealed that the mechanisms in place are based on two alternative concepts. The first concept, “peer review”, is centred around the basic notion that each entity plays the role of examiner and subjects itself to review. The second concept relies on the formation of external review panels composed of independent subject-matter experts. Both models present advantages and disadvantages that need balancing in light of the mechanism’s objectives.

A new review mechanism should be construed and built as a progressive, incremental endeavour. Its drafters may wish to lay its foundation keeping in mind the potential for further growth and expansion as the initiative acquires visibility and consolidates external political and financial support.

The development of substantive benchmarks and a methodology by the Siracusa International Institute are two separate but interdependent workstreams. Methodological changes occurring along the way will have an impact on how the benchmarks themselves are framed, and vice versa. The two streams will therefore be kept closely linked.

An important factor in making basic choices about the structure and objectives of a new mechanism is the amount of its expected initial funding. It might be suggested to start modestly and gradually expand the size and/or scope of the initiative as it gains traction, visibility and donor interest.

In determining the scope of a new mechanism, various options are on the table. The simplest and perhaps more traditional option is to review individual countries’ performance against a set of benchmarks. Alternatively, or perhaps additionally, individual reviews may consider countries’ performance as part of regional or sub-regional groupings. Other and possibly more innovative approaches could involve grouping countries linked by similar supply chains (for example, as origin, transit and destination countries for certain commercial flows, or countries along the same route). These approaches are not mutually exclusive, and the same mechanism may potentially envisage reviews of variable geometries.

Illicit trade manifests itself in several forms and supply chains affected by illicit trade have been detected in relation to virtually all commodities. This begs the question as to whether a new mechanism should take a cross-sectoral or sector-specific approach. The commonalities observed across sectors in terms of dynamics, routes, incentives and enablers suggest that a cross-sectoral focus could be of greater value than a sector-specific approach. That said, hybrid approaches could also be explored whereby a predominantly cross-sectoral review is accompanied by an examination of responses in selected sectors.
In view of the central role that the private sector plays or could play in curbing illicit trade, in-depth discussions are needed to define the nature and degree of its involvement in a new mechanism. Adequate communication and outreach strategies will also need to be designed to stimulate support from the private sector, including by forging partnerships with business associations. Private companies could be critical in providing information towards specific reviews and a new mechanism’s financial sustainability. Also, there appears to be space to explore the possibility that businesses themselves would be subject to examination. A much more difficult proposition would be to have businesses play the role of reviewers, particularly in cases where they are subject to the regulatory frameworks and law enforcement powers of countries under examination.

The breadth of civil society engagement on illicit trade issues, from a variety of angles and perspectives, suggests that a new mechanism could usefully draw from their extensive expertise, including in terms of accessing available data and information. At the same time, the experience of existing review mechanisms points to potential difficulties in effectively engaging non-governmental organisations (NGOs) in the assessment of governments’ performance, especially in corruption-related matters.

A methodology for a new mechanism will need to break down the evaluation procedure into a sequence of clearly defined steps and timelines. While existing mechanisms differ from each other in various respects, they are all articulated around the same broad phases, namely: the formation of review panels based on pre-determined criteria; the collection and analysis of information via desk reviews and onsite visits; the delivery of a report with recommendations; and follow-up action.

Existing initiatives also give rise to several issues that may be sensitive, that the drafters of the methodology for a new mechanism are encouraged to consider. These include, among others: how ‘deep’ evaluators should be expected to ‘dig’ into available information, taking into account objective time and resource availability; the types of sources of information from which evaluators should draw, and how the mechanism would handle information communicated confidentially; whether the evaluation should be guided by the development of indicators and the weight to be given to such indicators; how the mechanism should handle conflicting views between examiners and the examined entity, especially when review outcomes are to be made public; and the type and level of publicity to be given to such reviews. A particularly sensitive question to address is whether a new review mechanism will produce some form of ranking of examined entities.

Overall, it is critical that discussions on the above-mentioned issues take into consideration the overarching need to keep the examined entity fully engaged during all phases of the review. All the initiatives referenced in this preliminary study note that the overarching condition for any assessment to succeed is full and proactive collaboration by the examined entity.
1. PROJECT BACKGROUND AND OBJECTIVES

1.1 The Siracusa International Institute for Criminal Justice and Human Rights

The Siracusa International Institute is an independent non-governmental and non-profit law and policy organisation dedicated to the global protection of human rights through the rule of law. It is recognised by decree of the Italian President and the Italian Ministry of Foreign Affairs. It has consultative status with the United Nations, is a member of the OECD Task Force on Countering Illicit Trade, and actively contributes to a wide range of other expert fora on crime, human rights and security issues including the UN Crime Prevention and Criminal Justice Program Network. Over more than 45 years, the Institute has established itself as a centre of excellence in the Mediterranean region for technical assistance, training and research, having trained in excess of 53,000 judges, prosecutors, law enforcement officers and related practitioners from more than 170 countries.

1.2 M-CIT Project

M-CIT is a collaborative initiative of the Siracusa International Institute, set up in November 2018 to help shape international benchmarks and track global action in the fight against illicit trade. The start-up phase of this project is funded by Philip Morris International.

M-CIT aims to mitigate the harmful consequences of illicit trade by driving a systematic approach to it by all stakeholders. More specifically, M-CIT’s objectives are to:

- formulate international cross-sectoral recommendations for combating illicit trade that are specific, actionable and measurable
- propose an innovative methodology for assessing the compliance of national governments and businesses with the recommendations
- support governance bodies and policy-makers to drive a systematic approach to illicit trade across sectors and across borders

M-CIT will collaborate with governance bodies including the OECD and its Task Force on Countering Illicit Trade in an effort to build on their important work, especially on illicit trade in counterfeit and pirated goods, and the misuse of Free Trade Zones. M-CIT’s work will complement and build on ongoing efforts by contributing guidance in the many other priority areas where policy recommendations are still urgently needed.

The longer-term vision of M-CIT is the potential creation of an innovative review mechanism involving both states and businesses committed to implementing M-CIT’s recommendations, thereby driving forward a systematic approach to illicit trade worldwide.

M-CIT has established an advisory committee to provide strategic guidance and advice in relation to all aspects of M-CIT’s work, and it currently comprises:

- Mr. Walter Gehr, Chief of Cabinet, Austrian Ministry for Europe, Integration and Foreign Affairs.
- Mr. Jeffrey Hardy, Director General, Transnational Alliance to Combat Illicit Trade.
- Mr. Danil Kerimi, Head of Information Technology and Electronics Industries, World Economic Forum.
- Dr. Irene Mia, Global Editorial Director of Thought Leadership, The Economist Intelligence Unit and former Senior Economist, World Economic Forum.
- Mr. Huw Watkins, Head of Asia Policy, UK Intellectual Property Office.
- Mr. Leigh Winchell, former Deputy Director of Compliance and Enforcement, World Customs Organization.
- Ms. Stephanie Farr, Head of Global Tax Public Affairs, DIAGEO.
The first meeting of the Advisory Committee was held from 3-4 December 2018 at the Institute’s headquarters in Siracusa, Italy. This Strategic Guidance Paper has been adapted from the paper that was provided to Advisory Committee members and which formed the basis of discussions during the December meeting.

1.3 Objectives and structure

This paper has been elaborated in the framework of the Siracusa International Institute’s M-CIT project, which aims to support the development of an innovative methodology to assess compliance with international benchmarks in the field of illicit trade. While it does not lean towards any specific methodological model or approach, it provides some initial strategic thinking and policy options around which a methodology might take shape in parallel to the development of substantive policy recommendations.

In considering the main options on the table, this paper draws together the ideas, perspectives and lessons learned from comparable initiatives adopted at the international level in the broader “governance” sector. The main features of these initiatives, the diversity of their objectives, levels of sophistication, scope and approaches are considered in more detail in a separate study by the Siracusa International Institute.

1.4 Acknowledgments

The Siracusa International Institute thanks Mr. Stefano Betti, the Institute’s Senior Legal and Policy Advisor, for his extensive support in the preparation of this paper and dynamic analysis of the various methodological angles to be considered in assessing compliance with international benchmarks in the fight against illicit trade. Thanks also to members of the M-CIT Advisory Committee for their guidance, advice and input, and Mr. John M. Sellar, Senior Law Enforcement Advisor to the Institute.
2. DETERMINING THE BASIC APPROACH OF A NEW REVIEW MECHANISM

It is assumed that the overarching goal of a new review mechanism will be to stimulate change (whether on the legal, institutional, operational or policy fronts) to enable examined entities to address illicit trade more effectively based on a set of pre-determined benchmarks. To achieve this broad objective, a review mechanism may take a variety of forms. It can be more or less ambitious in its outreach depending on the extent of available political and financial support. There is not a fixed and compulsory model to be followed, but rather a number of real-life initiatives from which to draw elements, lessons learned and potential solutions. Crucially, there is nothing preventing a new mechanism from adopting some unique and unprecedented features.

First and foremost, it seems important to identify the mechanism’s basic approach. This is how the mechanism will present itself to the outside world, which naturally impacts on how it will be perceived. It will be about putting a face on it. It will enable its drafters and promoters to answer questions about its place and how such a mechanism would add value in a world already teeming with strong initiatives.

On a basic level, a new review mechanism in the field of illicit trade may seek to stimulate legal, institutional or policy change by either: i) exploiting the incentives created by group dynamics; or ii) providing a tailored service to specific entities upon request.

2.1 Exploiting the incentives created by group dynamics

This model assumes that a group of entities will have taken a commitment, more or less formally, to support the goals of the mechanism and thus “open up their doors” to be examined in accordance with an agreed procedure. This approach relies upon the group dynamics creating the incentives for individual entities to comply with a defined set of benchmarks, thereby driving a ‘race to the top’. That is, a situation in which more poorly performing entities are incentivised to improve their record in order to preserve their reputation, image or standing vis-à-vis other group members. This model presupposes that the outcome of individual examinations is made public.

In a complementary manner, this model may also envisage the provision of support to non-compliant entities through cooperation, technical assistance and training programs, etc. The prospects of receiving support may actually prompt some entities to “join the club” in the first place.

While the initial number of participating entities may be small, the mechanism’s governing body will probably seek to expand its number in order to amplify the positive effects of these group dynamics among other factors.

2.2 Providing a tailored service upon request

Under this model, examined entities show up spontaneously and seek an assessment of their preparedness to tackle illicit trade, either in general or in specific areas/sectors. This type of review bears all the hallmarks of a spontaneous request for auditing domestic legal systems, policies and structures. The interplay between the reviewing body and the examined country acquires the flavour of a consultant-to-client relationship. Some entities may decide to come forward and request an examination because they are genuinely interested in improving their performance and seek external reviewers to help them understand and overcome their weaknesses. Alternatively, they may request an examination when they are sure about their high levels of performance and wish to use the review outcome as ‘proof’ of their credentials (for purposes as diverse as attracting foreign investment, reinforcing their candidacy to international posts, etc.)

Under this model, the assessment methodology will be significantly different from the one likely to be adopted under the approach described in the previous section. The outcome of the review, with related findings and recommendations, will not necessarily be published and will be used, instead, as a document for internal/domestic reference.
The advantage of construing a mechanism as a service is that it is likely to be lighter from a procedural standpoint. Under the previous model, all participating countries need to undergo examination, the mechanism's governing body needs to manage a collective effort, which may become bureaucratically complex especially with a high number of countries. Also, there will not be a need for a group of entities to get together in advance and agree to the mechanism's goals as a condition for the mechanism to start carrying out its evaluations.

The “service upon request” approach could also inject a potentially interesting element of flexibility in the mechanism and open up review scenarios of “variable geometry”. For example, entities might be able to determine which specific benchmarks they want to be evaluated against, based on their specific needs, priority areas, etc. From this point of view, the benchmarks being developed by M-CIT could be seen as a menu of areas/sectors from which to pick and choose. After they have been evaluated against some of these benchmarks, examined entities may request the mechanism’s secretariat to carry out a new evaluation covering other sectors.

The main downside appears to be that several entities, whether countries, private sector actors or others, might simply receive their review outcome and not act upon it, especially if it does not reflect their hopes or expectations. The lack of transparency and ad hoc nature of the mechanism is unlikely to encourage ‘a race to the top’ and may instead result in hesitant and poorly performing countries failing to embark on the road to reform.
3. DETERMINING THE BASIC STRUCTURE OF A NEW REVIEW MECHANISM

When designing the backbone of a review mechanism, a basic choice that needs to be made from the outset is whether it will follow a “peer review” or a “external evaluator” approach. Both present advantages and disadvantages, which are briefly outlined below.

3.1 The “peer review” approach

Some of the mechanisms identified in Chapter 7, and several others in and beyond the governance sector, are based on the peer-to-peer concept. This has been effectively described as:

the assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles. The examination is conducted on a non-adversarial basis, and it relies heavily on mutual trust among the States involved in the review, as well as their shared confidence in the process. When peer review is undertaken in the framework of an international organization—as is usually the case—the Secretariat of the organization also plays an important role in supporting and stimulating the process. With these elements in place, peer review tends to create, through this reciprocal evaluation process, a system of mutual accountability.2

Under this model, all entities comprising the mechanism assume the roles of examiners and, in turn, are examined at different times. The mechanism defines the criteria for the pairings.

The peer review principle presents a notable advantage. The fact that the evaluations are not handed down by an “all knowing” judge sitting above reinforces perceptions of legitimacy and mutual accountability. However, a peer review mechanism could lead to ‘soft’ and somewhat watered-down outcomes. This is because the examiners might be tempted to be lenient in their judgment towards their peers in other countries, knowing that they will soon switch roles with them and hoping to receive a similarly gentle type of evaluation.

3.2 The “external evaluator” approach

The basic alternative to a peer review mechanism is centred around the “external evaluator” model. For example, in the context of its counter-terrorism assessments, the United Nations Counter-Terrorism Committee (CTC)/Counter-Terrorism Executive Directorate (CTED) relies on a team of assessors led by the UN Secretariat and comprised of different international organizations with technical expertise in specific fields (e.g. the UN Office on Drugs and Crime for the criminal justice response to illicit trade, World Customs Organization on the customs side). The possibility of drawing upon the experience of a range of international agencies, each bringing their specialised knowledge to the table, seems particularly important in view of the heterogenous character of the requirements set forth in resolution 1373, which relates to countries’ international counter-terrorism obligations and establishes a review mechanism to monitor state compliance with its provisions. A review mechanism that monitors compliance within broad anti-illicit trade policy recommendations would also probably need to draw from a wide range of technical expertise.

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1 Only within the OECD, there exist many peer-review mechanisms in addition to the Bribery Convention Monitoring process, for example the Environmental Performance Reviews (EPR) and Development Assistance Committee (DAC) Peer Reviews. While all such mechanisms are based on the same notion, they are regulated by different legal documents and distinct procedures.

Under this model, the review panel could also be comprised of recognised experts acting in their personal capacity as opposed to representatives of international agencies. Provided that an effective expert selection process is in place, the upside of this approach is the involvement of highly motivated experts with cutting-edge knowledge of specific subject matters, which would facilitate the elaboration of rigorous and high-quality assessments. In comparison with peer review models, the downside could be the perception by examined entities that they are being “judged” by a “morally superior” entity. This might mean that they are less prone to actively cooperate in the review.
4. DETERMINING THE SCOPE OF A NEW REVIEW MECHANISM

Illicit trade is a vast and complex subject. Policy discussions about illicit trade touch upon, for example, criminal, international, trade/customs and economic matters. Public authorities, private sector companies and consumers all have key roles to play and high stakes in how illicit trade is handled.

Defining the scope of a review mechanism in this field will partly depend on the nature of the policy recommendations that will emerge from M-CIT. An overarching consideration in determining the scope of a review mechanism is the amount of financial resources and the extent of political support that is estimated as being initially available. It might be wise to start with relatively modest objectives and, as the mechanism acquires more visibility and traction, expand its reach.

The next sections examine the potential scope of a new review mechanism in relation to its substantive, geographical and functional coverage.

4.1 Cross-sectoral or sector-specific reviews?

Should a review mechanism focus on illicit trade from a cross-sectoral perspective, i.e. limit examination to issues that are common to all or most types of illicit trade, or should it rather look into specific areas (such as illicit trade in wildlife, cultural property, pharmaceuticals, etc.)?

In addressing this question, one needs to consider the extensive literature and empirical evidence available showing commonalities and converging aspects among illicit trade manifestations. Importantly, a study carried out by the Transnational Alliance to Combat Illicit Trade (TRACIT) found that many of the recommendations adopted by Inter-Governmental Organisations (IGOs) across the board are similar in nature. In all or most illicit trade sectors under consideration, whether trafficking in cultural objects, pharmaceutical products or humans, IGOs come to virtually identical conclusions in terms of links between illicit trade, organised crime and corruption, the need for strengthened “know your customers” procedures, the establishment of national inter-ministerial task forces/ cross-cutting departments, and the use of intelligence-driven/ proactive investigations.

In view of the above, it seems that the most effective outcome in terms of coverage, use of time and resources would be achieved by a review mechanism that takes into account the cross-sectoral dimensions of anti-illicit trade efforts. This would not automatically exclude, in principle, an intermediate approach whereby a generally cross-sectoral review is accompanied by an examination of country responses in selected sectors. An examination of such sectors might come as an “optional feature” upon the request of specific countries, or based on a preliminary assessment that the country in question faces particularly acute challenges in one or two given areas.

4.2 Assessing formal or de facto compliance?

Compliance assessments are typically carried out on two levels. The first level involves evaluating whether the necessary legislative and institutional frameworks are in place, certain investigative powers can be exercised by the police, etc. This type of review concentrates on the formal availability of structures and agency prerogatives. Evaluations of this kind are generally straightforward and most of the information required by reviewers can normally be obtained through open sources. Although there may be points of contention concerning the scope of certain measures, uncertainties can usually be quickly overcome by engaging the entity under review in dialogue.

The second level looks at what the entity under examination actually does with the powers vested in it. This type of evaluation requires a deeper scrutiny of entities’ underlying dynamics, including how they work in practice based on existing structures and, sometimes, in spite of them.
Financial Action Task Force (FATF) Mutual Evaluations are based on a clear-cut distinction between these two assessment levels to the point that “technical” and “effectiveness” evaluations take place in two formally separate review phases.

Other mechanisms, such as reviews in connection to the UN Convention against Corruption (UNCAC), merge the two components, with reviewing teams expected to simultaneously scrutinise countries’ implementation from both perspectives.

While it seems intuitive that, in principle, formal and effectiveness assessments should be regarded as two fundamental and complimentary aspects of the review, various constraints might force compromise on the effectiveness dimension. For example, limited financial resources may reduce the scope and duration of country visits, thus narrowing the opportunities for the review team to carry out interviews with key country officials. When these constraints are known in advance, strategic use of limited time and resources becomes essential. Therefore, as much information as possible could be gathered in the initial phases of a review via open sources so that time spent on country visits is optimised and exclusively used to collect information that is not otherwise obtainable.

### 4.3 Whole-of-Government or agency-specific reviews?

Another question is whether a review mechanism should take into consideration how governments respond to the challenge as a whole or, rather, the adequacy of action taken by specific governmental services such as Customs authorities, criminal investigators, regulatory/inspection agencies, etc.

While potentially more costly and more burdensome than agency-specific approaches, whole-of-Government options seem preferable as they provide more comprehensive and informed understanding of countries’ weaknesses.

This makes particular sense in the area of illicit trade, which typically involves a multitude of agencies that are expected to coordinate their work. At the same time, whole-of-Government options could leverage assessments that specialised organisations (such as WCO, UNODC, etc.) might one day initiate in measuring the performance of specific stakeholders.

### 4.4 Single countries or regions?

Many review mechanisms are premised on the “one country, one review” principle. This is natural considering that states are still predominantly regarded as the basic sovereign entities in governance affairs. That said, nothing prevents a new mechanism from performing assessments on blocks of countries. One possibility would be to carry out regional or sub-regional reviews. Such reviews would probably provide less detailed insights into country-specific issues. However, they would highlight the bigger picture in geographical terms, show cross-border dynamics and shared challenges, as well as provide momentum for region-wide reforms.

The idea of comparing neighbouring countries for review purposes in order to extract regional/sub-regional trends and commonalities as well as regional/sub-regional recommendations is not new. On counter-terrorism, for example, the CTC regularly monitors how countries belonging to the same region have implemented UN Security Council Resolution 1373 (2001):

> as [...] those groups often include countries with very diverse legal systems, historical backgrounds and traditions, an attempt was made to isolate a number of informal subgroups based on criteria such as geographical proximity and language linkages, as well as legal systems and regional treaties, for the purpose of detecting areas of relative homogeneity.²

The findings of The Economist Intelligence Unit’s (EIU’s) Global Illicit Trade Environment Index have formed the basis of regional and sub-regional briefings. These reports have then been used by the Transnational Alliance to Combat Illicit Trade, the business-driven NGO that commissioned the Index, to issue corresponding regional and sub-regional policy recommendations.  

4.5 Countries along the same supply chain(s)?

A much less explored possibility would be to evaluate countries linked by one or more supply chains for specific goods that are impacted by illicit trade, through being infiltrated with illicit products or from which legitimate products are diverted.

This approach could be of particular interest given that global smuggling schemes in relation to particular goods impact countries on the basis of being origin, transit and destination countries, which may otherwise not necessarily be geographically proximate. For example, recent reports highlight that illegal logging supply chains often involve countries in South East Africa as origin countries, with wood being processed in Asia and sold to Europe-based destination companies.

One could also imagine grouping together the countries found along certain trade routes (for example, countries touched by the Belt and Road Initiative (also known as ‘One Belt One Road’ project or the ‘Silk Road Economic Belt and the 21st Century Maritime Silk Road’) a major trans-continental investment and infrastructure project financed by China.

Along these lines, the methodology for a new mechanism could envisage the identification of groups of countries involved in significant volumes of illicit trade among each other as origin, transit and destination countries, and take such groups as the target of individual reviews.

4.6 Private entities instead of (or in addition to) countries?

The possibility should be explored of having private-sector corporations examined as part of a new mechanism, and not exclusively countries. The potential role for private sector involvement in the initiative is addressed more broadly in Chapter 5, with Section 5.2.3 touching on the issue of private companies acting in their possible role as entities under review.

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4 The full list of downloadable briefings and policy papers can be found at: www.tracit.org/global-illicit-trade-index.html
5. ROLE OF THE PRIVATE SECTOR AND CIVIL SOCIETY

5.1 Role of non-governmental actors in existing review mechanisms

Existing mechanisms unequivocally recognise the contribution that the private sector and/or civil society can make in terms of providing information to review teams. However, the extent and degree of their involvement varies considerably.

In stressing the role of the examined country as a “facilitator”, the Africa Peer Review Mechanism considers that the review team should in principle have access to all sources of information and to the whole range of stakeholders.

In contrast to this approach, the UNCAC Review Mechanism limits the involvement of civil society in the various phases of the review to cases where the examined countries have expressly allowed this to happen. While in practice several countries have enabled civil society to provide input during onsite visits and/or allowed examiners to consider NGO assessments, the issue of civil society participation in meetings of the mechanism’s decision-making body remains contentious. The establishment of the review mechanism for the UN Convention against Transnational Organized Crime (UNTOC) along the lines of the UNCAC Review Mechanism, experienced similar difficulties. As has been pointed out:

the resistance comes from concerns that allowing space for non-state parties to voice themselves may lead to robustly critical appraisals of certain states’ records in fighting, or even being involved in, organized crime. It is the kind of criticism that many states are unwilling to be subjected to, especially if it is amplified through the mouthpiece of the UN. ⁵

However, compromise was ultimately reached when the UNTOC mechanism was established in 2018; states are encouraged to consult with civil society when preparing their self-assessments, and civil society has the opportunity to appear at ‘constructive dialogues’ that take place before UNTOC’s thematic working groups, and make oral statements before the Conference of the Parties as part of the ‘general review’ aspect of the mechanism.

The UNCAC Review Mechanism does not envisage the involvement of private sector actors. By way of contrast, the UNTOC Review Mechanism affords a role to such actors by permitting appearances at the constructive dialogues before working groups. However, as the constructive dialogues will take place only after the working group sessions have concluded and after their reports have been adopted, there are questions as to the purpose of this involvement.

Similarly, FATF Mutual Evaluations value the establishment of a close and constructive dialogue with the private sector, civil society and other interested parties, and sees them as key partners in ensuring the integrity of the financial system. Crucially, the involvement of the private sector is not only foreseen during the evaluation phase, but input from business has been solicited and extensively obtained during the revision of the recommendations forming the benchmark of the process itself.

A specific point is whether Governmental representatives should be present at meetings between the review team and the private sector/ civil society. The methodology for FATF Mutual Evaluations clarifies that:

Meetings with the private sector or other non-government representatives are an important part of the visit, and generally, the assessors should be given the opportunity to meet with such bodies or persons in private, and without a government official present, if there is concern that the presence of the officials may inhibit the openness of the discussion. The team may also request that meetings with certain government agencies are restricted to those agencies only.

The approach followed by the OECD Bribery Convention Monitoring is somewhat reversed. When the private sector or civil society is invited to join discussions during the onsite visit, the presence of Governmental officials as observers is generally justified by the need for such officials to prepare responses to the views expressed by private sector/civil society representatives. There is an exception to this rule in relation to panels that are devoted to collating private sector and civil society input. Accordingly, Governmental views on issues raised in these panels should be conveyed at a later time.

5.2 Potential role of the private sector in a new review mechanism

Illicit trade in its various manifestations has severe detrimental effects on legitimate private companies. One of the reasons is that illicit trade places legitimate business at a competitive disadvantage vis-à-vis illegal traders; such traders are often able to sell goods or services at significantly lower costs due to the fact that they do not transfer to consumers the price of complying with often financially burdensome regulatory frameworks (e.g., safety and security regulations). Also, illicit trade exposes companies to an increased risk of litigation and requests for compensation (if not outright criminal actions), particularly when substandard material makes its way into supply chains and causes damage to end users. Some corporations suffer from loss of image and reputation, and the consequences of the theft of their intellectual property rights.

The private sector therefore has an inherent interest in ensuring that illicit trade affecting their industries is thwarted. Additionally, it is common knowledge that the fight against illicit trade depends on the proactive and sustained involvement of the private sector. It seems of particular relevance, therefore, to explore the role that the private sector could play in a new illicit trade related mechanism.

When we refer to the private sector, we use a catch-all formula that includes a wide range of companies and businesses performing different roles in different industries, contexts and supply chain stages. This diversity inevitably entails that each type of entity is likely to have different expectations in relation to the value of an illicit trade-related mechanism. It is also likely that each of them will be ready and able to provide varying types and degrees of contributions/inputs to such a mechanism. It is thus important to avoid any over-simplification and refrain from regarding the private sector as a homogeneous bloc. As a starting point, it might be useful to consider private companies’ involvement on the basis of the nature and type of services that they provide. For example, private-sector actors may be divided into Business to Business companies (B2B), Business to Consumer companies (B2C), and companies trading services as opposed to goods.

Another potentially relevant distinction is between companies whose presence is limited to one country and those operating across multiple markets. Multinational corporations could provide their unique perspectives as to how the same types of mechanisms, procedures, supply chains, etc., function simultaneously in several markets. Those perspectives could be extremely valuable in reviews focusing on blocks of countries. They may also facilitate data cross-checking for comparative purposes.

Potentially, there are at least four roles that private companies might play in a new illicit trade mechanism:

- Private companies contributing information;
- Private companies as an integral part of review teams;
- Private companies being the object of examination; and
- Private companies providing financial or other support.

5.2.1 Private companies contributing information

In this role, private companies can theoretically intervene at different stages of the process. They could be involved during the desk review phase, for example by providing written input to the review team prior to an onsite visit. Together with information stemming from other sources, their input will contribute to shaping the knowledge base that the review team will then use to gauge compliance during the onsite visit, draft review reports, etc. The mechanism’s governing body could draw up a list of companies that have provided their availability in-principle. In drawing up that list, it may be appropriate to seek the inclusion of companies of different types and sizes in order to ensure the availability of the right profiles on the
occasion of specific assessments. There will be a need to regularly review and update the list. When a specific review is in the planning stage, pre-selected companies would be contacted and their contribution solicited by a set deadline.

It will be necessary to determine the format of private companies’ input. For example: will they be asked to answer a pre-defined set of questions? Will they be encouraged to provide whatever information they are able to convey to the review team in relation to a specific review? Perhaps a mixed approach?

Companies’ contribution could also be solicited during onsite visits. As mentioned in Section 5.1, existing mechanisms offer precedents in this regard, with private-sector entities being part of panel discussions with or without the presence of Governmental officials.

5.2.2 Private companies as integral part of review teams

One could theoretically conceive of private companies being an integral part of review teams, which would entail involving them directly in all phases of the assessment exercise. In practice, however, if companies are to assume the role of reviewers as such, and have a direct role in assessing country performances, a number of very difficult, if not even intractable, issues will arise. For example, it is highly uncertain that individual governments (provided that governments are the object of the review) would accept in principle to be “judged” by private companies. And even if they accepted, conflict of interest issues would inevitably kick in, particularly when the companies that are part of the review team are subject to the regulatory/enforcement authority of the examined country (for example, through the exercise of inspection powers, authorities to grant and withdraw licenses, etc.).

While these objections may not be insurmountable, any attribution of fully-fledged “assessor status” to private companies will have to be very carefully thought through to avoid, first and foremost, natural and justifiable perceptions of bias which would, in turn, severely undermine the credibility of the review mechanism itself.

5.2.3 Private companies being the object of examination

The traditional focus of review mechanisms in the governance sector is the assessment of compliance standards by governments. In other words, the focus is on the evaluation of public policies. However, there is nothing that would conceptually limit the analysis of governance issues to policies enacted and implemented by governmental agencies. If the notion of “governance” is considered in a holistic manner as the broad set of processes presiding over a social system, whether undertaken by a government, by a market or by a network, private companies can be regarded as fully-fledged actors. The proactive role that the private sector can play in governance matters appears in all its relevance in discussions about illicit trade, which is characterised by the presence of multiple public/private stakeholders with the ability to craft and implement measures which directly shape policy outcomes. For example, private businesses are (or should be) in a position to develop policies and processes to monitor the integrity of their supply chains. In practice, a number of companies do so by monitoring (or at least claiming to monitor) their manufacturing and distribution lines against risks such as corruption, money laundering, human trafficking and forced labour. Recently, some businesses have developed innovative schemes using blockchain technology to ensure commodity traceability.

Since the introduction and spread of global trading platforms over the Internet, online intermediaries have been pressured to work to support public authorities in identifying and removing infringing content from their web pages.

Transport operators are being encouraged to contribute to the detection of illicitly traded goods by air and sea through the application of more stringent due diligence measures vis-à-vis their customers, upgrading risk-management capabilities, etc.

Another type of private-sector entity, Free Trade Zone (FTZ) Operators, have come under closer scrutiny and pressure to adopt an array of measures to prevent FTZs from being exploited by organised crime and traffickers taking advantage of high degrees of opacity and lack of oversight.
It should be noted that while the private sector’s actions against illicit trade have to a large extent been driven by external/government regulation, several initiatives have been the outcome of self-imposed regulation and voluntary practices.

In view of the above, discussions about a new review mechanism on illicit trade may consider the possibility of addressing a number of substantive recommendations directly to private sector entities and monitoring the extent of private entities’ compliance with such recommendations.

It is worth noting that, while most of the initiatives that were examined for this paper envisage a role for private sector entities as providers of information, none of them conceive of businesses as the subject of reviews. Even the FATF, which places bank and non-bank financial institutions at the heart of the global anti-money laundering system, formally addresses the totality of its recommendations to national governments. In departing from this approach, a new review mechanism would break new ground. Crucially, for this approach to succeed, it will be critical for individual businesses to have sufficient incentives to accept having their policies and operations subjected to evaluation.

The methodology for a new review mechanism could perhaps develop a solid communication strategy highlighting the potential and actual benefits for companies that decide to open themselves up to external review. These may include: a desire to enhance their image and reputation, especially when the company knows that it is already implementing innovative approaches or solutions; or a desire to learn about weak points and how the company can improve its internal processes. Some companies may also be encouraged to participate if they see direct value in receiving detailed, pragmatic and candid recommendations on how their internal policies and operations can be streamlined and made more effective, especially when they are already under the obligation to comply with an existing regulatory framework (for e.g., the UK Bribery Act expects companies to adopt certain procedures to prevent corruption practices).

If this course of action is adopted, the drafters of a new methodology will be confronted with the very complex task of identifying which and how many private sector entities may or should be the object of examination in any given review. While in traditional reviews the challenge is often limited to identifying which governmental agencies are responsible for relevant implementation action, what will be the criteria to select the private companies that should undergo scrutiny in addition to government agencies? Even small countries may count hundreds if not thousands of small and medium enterprises with operations within their territory. Will there be thresholds in terms of minimum numbers of businesses (and perhaps sectors) in a given country to be subject to scrutiny in order for the review to deliver an acceptable outcome? It may be practically extremely difficult to have both public and private sector entities scrutinised as part of the same country-specific examination. An alternative, and perhaps more feasible option, would be to have reviews exclusively focused on compliance by businesses operating in certain sectors. For example, one type of review might concentrate on how a critical amount of FTZ Operators distributed across various continents comply with specific benchmarks dealing with transparency levels in FTZs. Another could examine the extent to which transport companies comply with other benchmarks regarding customer and due diligence practices, etc.

A new mechanism may thus consider creating two separate types of reviews, one following a traditional country/government-specific approach and one devoted to examining compliance by private companies transnationally against specific benchmarks.

5.2.4 Private companies providing financial or other support

The private sector is likely to be an important partner to ensure that a new mechanism is funded adequately in order to function effectively. Private funding may add to the funding already provided by individual governments and/or entities such as international organisations and foundations.

Attracting private sector interest for funding purposes may require the mechanism’s governing body to design and implement a dedicated communication strategy highlighting, among other things, the benefits and levels of sponsorship. For example, to the extent that review outcomes are disseminated publicly, private companies may request that their logo appear on outcome documents and related events. Also, private companies could be given a range of options, for example whether to sponsor individual reviews or the mechanism’s general budget. They may also choose to limit their engagement to specific activities, such as follow-up events, training sessions for officials of examined countries/entities, etc.
5.3 Role of business-driven associations in the anti-illicit trade field

The connecting role of umbrella organisations representing business globally, regionally or nationally might be leveraged to streamline companies’ engagement in a new review mechanism. While some of these bodies are generalist and do not specialise in any particular field or sectors (such as the International Chamber of Commerce, Euro Cham, Am Cham, etc.), others gather members around specific objectives and areas of concern (typically, the protection of intellectual property rights). Currently, the Transnational Alliance to Combat Illicit Trade (TRACIT) is the only business-driven NGO working on illicit trade from a dedicated cross-sectoral angle.

These bodies could be seen as the “interface” between the review mechanism and individual companies. They could play an active role in promoting the mechanism among their members, or facilitating the identification of entities willing to provide input, or helping in fundraising efforts. Additionally, these bodies often develop cutting-edge country or subject-specific analytical studies that can be a precious source of information for a review team.

The methodology for a new review mechanism may wish to envisage the steps to be taken to approach such bodies with a view to exploring the development of collaborative schemes and partnerships.

5.4 Potential role of civil society in a new review mechanism

There are a myriad of civil society organisations/ NGOs that are often on the front-line of national, regional and global efforts to detect, monitor and raise awareness about illicit trade, whether in specific sectors or cross-sectorally. It is therefore legitimate to ask how these bodies of expertise and knowledge can be leveraged in support of a new illicit trade mechanism.

Overall, the experience of existing mechanisms shows the great value of involving civil society organisations in providing reviewers with critical information that public officials are either unable or unwilling to share. At the same time, as mentioned in Section 5.2, some governments adamantly oppose the involvement of civil society.

Some of the issues discussed in relation to how the private sector might provide input to a new review mechanism seem to apply to civil society organisations as well. However, one important point of difference may be the possibility for representatives of select NGOs to be an integral part of review teams. While in relation to corporations the point was made about the risk that their involvement in assessing countries’ performance would encounter conflict of interest issues, the same risk does not seem to be present, at least not in the same way, in relation to civil society involvement.
6. A REVIEW MECHANISM STEP-BY-STEP

Despite their differences, all nine existing review mechanisms examined in this paper follow the same broad evaluation procedure. This procedure revolves around five major blocks of activities: i) form the review panel; ii) collect the information; iii) analyse the information; iv) deliver the evaluation report; v) take follow-up action. This chapter aims to support the drafters of a new methodology by discussing key issues pertaining to each of these blocks.

6.1 Phases and cycles

Each phase or cycle may correspond to the examination of specific topics. This facilitates and streamlines the evaluation process, especially when the substantive benchmarks against which the review has to be carried out are numerous and require extensive examination. A case in point is the UNCAC Review Mechanism, which envisages two successive five-year cycles, each devoted to the analysis of different substantive chapters of the UNCAC. A new mechanism on illicit trade might determine, for example, that only a few of its benchmarks will be the object of the initial evaluation, and that the other benchmarks will be considered at a later stage.

Alternatively, individual phases or cycles may characterise different types of assessments. For example, the first phase of the OECD Bribery Convention Monitoring Process considers the adequacy of countries’ legislative framework while the second one focuses on the structures in place to give effect to existing laws. As it started to issue the first country reports, the Bribery Convention Working Group considered it necessary to add two additional phases to the process. These aimed to monitor progress made by countries in their implementation efforts and to keep track of changes in legislation or institutional frameworks, among other areas.

Any methodology underpinning a review mechanism needs to clearly divide the evaluation procedure into steps and provide accurate timelines for accomplishing all related tasks. A balance has to be found. On the one hand, time frames that are too short may not ensure the proper collection and analysis of information and result in superficial outcomes/ non-actionable recommendations. On the other hand, excessively long review cycles may lose momentum and generate fatigue on the part of involved stakeholders. Moreover, they risk producing findings/ recommendations that lose relevance soon after their adoption, due, for example, to legal and institutional changes that have occurred during a lengthy review cycle. Setting the right timing for the review cycle is fundamental as it provides involved stakeholders with advance understanding of the extent of their expected commitment (and time to prepare). It should not be forgotten that a quality review involves significant time and resource investments by the Governments of both examining and examined entities.

6.2 Forming the review panel

A review panel is the team that conducts the evaluation by gathering and assessing information and, typically, drafting a report with annexed recommendations. In many cases, the outcome of the review is then discussed and officially adopted by an entity with a broader composition, namely the body that represents all entities that adhered to the mechanism. In this way, the outcome of an individual review becomes the collective product of all the participants in the mechanism, thus providing the report with the necessary authoritativeness.

It is of paramount importance that a mechanism’s methodological document spells out clearly the procedure and criteria for the establishment of review panels. What needs to be avoided is the perception that panels are nominated in an arbitrary and opaque manner, which could jeopardize the entire endeavour (for example, by disincentivising the examined country and making them less prone to cooperate).

The steps involved in forming reviewing panels are likely to be very different depending on whether an “external evaluator” or “peer review” model has been chosen.
6.2.1 Panel selection under “external evaluator” approaches

Under this option, the mechanism’s governing body could be tasked with identifying a pool of experts that might subsequently be called upon to provide their services in the context of specific reviews. Depending on the breath and scope of the reviews to be carried out, the selection procedure could use criteria such as individual experts’ professional profiles, nationalities, language proficiency, etc. Some processes should be in place for conducting background checks about pre-selected experts both in general (for e.g., to ensure adequate levels of personal integrity) and in relation to specific reviews (for e.g., no conflicts of interest with the countries to be reviewed by them in particular). Clear rules of engagement should be in place for all experts, particularly those acting in their personal capacity (i.e., experts that do not provide their services as representatives of Governments or international organisations).

6.2.2 Panel selection under “peer-review” approaches

Peer review systems need to establish a procedure for matching reviewing and reviewed entities.

Under the UNCAC review mechanism, for each review cycle each State party is reviewed once and must act as reviewer between one and three times. The schedule of country reviews and the list of reviewing and reviewed countries for a given year are laid out in the country pairing tables for each review cycle and determined by drawing ballots. Each State party nominates in advance up to 15 governmental experts for the purpose of carrying out the reviews on behalf of their countries. The list of governmental experts is publicly available on UNODC’s website.

In the case of FATF Mutual Evaluations, countries are free to nominate individuals to be assessors as they wish. The Secretariat and President will then build a team of 5-6 individual experts (from different countries) with the necessary expertise for each evaluation. As each country is required to contribute at least five assessors throughout the evaluation process, when putting together the team the Secretariat and President will consider the country’s previous/required assessor contributions.

The procedure under the OECD Bribery Convention Monitoring Process is different in that the Working Group on Bribery selects country lead examiners, and then the country nominates the individual expert examiners.

6.2.3 Forming a competent and knowledgeable review panel

In general, any new mechanism should ensure that the composition and size of review panels reflect an adequate mix of knowledge and skills in order to match the specific needs of individual assessments. In this regard, the OECD Bribery Convention Monitoring Process requires that teams’ size vary depending on the complexity of the review and the available budget. While a larger team may be necessary to review a G-7 country, a smaller one may suffice for a smaller country. Evaluation teams are also formed in such a way as to ensure adequate expertise for the areas under evaluation. Additionally, experts shall be proficient in the language in which the evaluation is to be carried out. Another requirement is that, to the extent possible, one of the lead examiner countries should have a similar legal system as the evaluated country.

In a similar vein, the FATF outlines the following pre-defined criteria for the selection of its assessors: (i) relevant operational and assessment experience; (ii) language of the evaluation; (iii) nature of the legal system (civil law or common law) and institutional framework; and (iv) specific characteristics of the jurisdiction (e.g. size and composition of the economy and financial sector, geographical factors, and trading or cultural links).

Reviewing teams should be made up of well-trained and knowledgeable assessors as a pre-requisite for the conduct of sound reviews. This appears of particular relevance in peer review mechanisms where smaller or less-developed countries obliged to identify their own assessors often struggle to provide highly trained individuals. A key role of the Secretariat of the UNCAC Review Mechanism is the organisation of regular training sessions for government-appointed experts. This training aims to familiarise them both on the substantive requirements of UNCAC and the procedural aspects of the review process.
6.2.4 Role of examined countries in panel selection

Consideration should be given to enabling the entity under review to have a say over the composition of the review panel. While examined countries should obviously not be in a position to choose their own assessors, some corrective measures may be desirable. As the success of a review depends crucially on the voluntary cooperation and proactive role of examined countries (for e.g., in providing relevant information to evaluators, organising country visits, implementing the final recommendations, etc.), it is important to ensure that examined countries are “comfortable” with the panel's composition. For example, they may be given the possibility to object to one or more evaluators, whether individual experts or countries. A screening procedure might also be foreseen whereby, at the beginning of each review phase or cycle, the mechanism's governing body circulates a list of pre-selected experts and that countries have the chance to veto a limited number of candidates (with or without providing reasons).

6.3 Collecting the information

A central task of the review team is to collect all relevant information about the entity under examination. Some basic information may already be collected by a mechanism's governing body even before the formation of the review team. This preliminary work could save precious time as assessors would be able to already rely on a critical amount of substantive information as they become operational.

6.3.1 How deep to go?

A general question about collecting information is “how much” to gather. In other words, how detailed should scrutiny be of an examined entity's compliance? This question might be particularly relevant when the recommendations are drafted in very general terms. While reviews should ideally be as detailed and precise as possible, there may be significant obstacles in achieving this result. Intuitively, the deeper that evaluators are expected to dig into an entity's compliance record, the more time they would need to spend in dialogue with as wide a range of authorities as possible. This might require, in turn, significant financial resources. As a result, compromises may have to be found between conducting comprehensive, in-depth reviews and the need to adhere to often "modest" budget allocations.

At the same time, a “light review” is not necessarily a useless one as it may still help to identify key problems and areas for future work and examination. What matters is that a “light review” explicitly recognises its own limitations and only seeks to achieve objectives that are reasonable and commensurate to its actual capacity.

6.3.2 The sources of information

In dealing with the information collection phase of the review, any new methodology should critically determine from which sources the assessors will draw. Most, if not all, review mechanisms entrust assessors with the task of carrying out open-source research. Often in this preliminary research phase, assessors are assisted by the mechanism's staff. The initial open-source scoping is typically conducted over the Internet.

Ideally, there should not be restrictions on the type and nature of documents that assessors are allowed to access. Even if some information may appear dubious and/or may not come from officially approved sources and require corroboration, their collation remains useful. This information orients evaluators and provides leads for engaging the country in further dialogue.

The methodological documents for a new review mechanism might usefully compile a non-exhaustive list of sources from which the review teams are expected or advised to collect basic information.
6.3.3 Information-gathering channels: desk reviews and onsite visits

Information is collected through desk reviews and onsite visits. Before taking a closer look at these two channels, it should be noted that, in practice, information collection and evaluation go hand-in-hand. As information is being progressively gathered, the review team forms increasingly precise views about levels of compliance (and of course, stand ready to change its mind if necessary).

6.3.4 The desk review

A desk review broadly identifies the phase of a review where information-gathering activities take place before engaging the entity under examination in direct face-to-face dialogue. A solid desk review will crucially allow assessors to better focus their questions during onsite visits, avoid wasting time asking questions whose answers have already been provided through open sources, etc.

In an effort to prepare the best possible outcome to be used in the ensuing phases of the review, the guidelines for the UNCAC mechanism stress the need for the desk review to be concise, factual and based on solid reasoning. In carrying out the desk review, the assessors may address to the examined countries requests for clarification or additional information.

The UNCAC review mechanism also foresees an intermediate phase between the desk review and the on-site visit whereby:

*the secretariat […] organize[s] a telephone conference or videoconference bringing together the governmental experts of the reviewing States parties and the State party under review. During the conference call, governmental experts from the reviewing States parties shall introduce their parts of the desk review and explain the findings. The ensuing dialogue shall ideally last up to two months and consist of requests for additional information or specific questions from the governmental experts, to which the State party under review will respond, using various means of dialogue, including conference calls, videoconferences, e-mail exchanges or further means of direct dialogue […].*

6.3.5 Self-evaluations

The desk review phase is often triggered by the preparation of a document in which the entity under examination provides an estimate of its own levels of compliance. Such document may be the result of more or less detailed questionnaires prepared by the mechanism’s governing bodies.

Self-evaluations are useful in that they may provide the advance perspective of the entity under examination about the practical difficulties it is encountering and specific issues of national concern. This information might not be readily available through open source research. Also, self-evaluations may encourage a sense of “ownership” of the review by the examined country.

The main downside of self-evaluations is that there can be wide discrepancies in their quality. A very poorly written self-evaluation is of no value to the review team. For this reason, in the context of IMF Reports on the Observance of Standards and Codes (ROSCs), it is foreseen that IMF staff assist national authorities in discharging this task. The same possibility is envisaged by the UNCAC Review Mechanism. Another potential risk is that the mechanism’s governing bodies lose control over their timeframes when examined countries do not deliver their self-evaluations within the agreed deadlines.

The UNCAC Review Mechanism envisages examined countries completing “comprehensive self-assessment checklists” on the basis of a computer-based application known as the Omnibus Survey Software.
6.3.6 The onsite visit: general remarks

The objective of onsite visits is typically to gather information and a deeper understanding of dynamics which cannot be obtained via other means. Onsite visits generally offer the opportunity to rectify information gathered via open sources and overcome misunderstandings that may have arisen out of previous written exchanges between the evaluators and the examined entity.

Onsite visits must be carefully prepared to ensure reviewers can use this opportunity to extract the maximum amount of relevant information. Under FATF Mutual Evaluations, onsite visits are scheduled as early as possible, and not later than six months in advance. The country under review, via the designated focal point, is expected to prepare a draft program in coordination with the mechanism's secretariat and deal with the logistics.

Both the FATF and the OECD go to great lengths to provide details about expected durations of onsite visits (on average, one week) and their formats in the interest of an efficient use of time and resources. There are requirements, for example, that: panels be of a manageable size to permit productive discussions with the examiners; formal presentations be kept to a minimum; to the extent possible, and meetings be held in the premises of the agency under specific examination, to enable the assessors to meet the widest possible range of staff and to obtain information more easily.

Onsite visits should result in a document/ initial report where assessors share their preliminary findings and recommendations with the examined country. This step is important to avoid leaving the examined country “in the dark”, especially if the mechanism is premised on keeping the country fully cooperative and engaged throughout the process. The guidelines adopted in the context of CTC counter-terrorism evaluations stress that:

in particular in wrap-up session held at the conclusion of country visits, the visiting delegation should endeavor to discuss with the relevant authorities of the visited State its key factual findings and recommendations regarding technical assistance in priority areas and seek the visited State’s general consent to the initiation of early follow-up activities after the visit in that regard.

6.3.7 The onsite visit: access to information

A question of paramount importance relates to the type of documents/ sources that reviewers should be in a position to access. This may be a particularly tricky question in a mechanism dealing with illicit trade, where reviewers might seek to access sensitive trade-related information in the hands of private entities. The OECD Bribery Convention Process follows the general principle that a country is not required to disclose information that is otherwise protected by its laws and regulations.

Under FATF Mutual Evaluations, the opposite principle applies whereby assessors should be able to request or access documents, data, or other relevant information. This principle seems instrumental in upholding another principle entrenched in FATF Mutual Evaluations whereby it is the responsibility of the assessed country to demonstrate that its anti-money laundering (AML)/ counter-terrorist financing (CFT) system is effective. If the evidence is not made available, assessors can only conclude that the system is not effective. At the same time, in recognition of the reviewed country’s legitimate interest in protecting sensitive data or sources, it is envisaged that the documents in question can be redacted.

Guidelines of the Counter-Terrorism Committee for post-visit follow-up, 2012.
6.4 Assessing the information

Once the information relevant for the review has been collected, the review team needs to determine the extent to which the country under examination complies with the relevant benchmarks. That said, although the collection and assessment of the information may appear as two conceptually distinct activities, they are closely interrelated. Assessors will often start forming their own ideas on countries’ compliance levels as soon as they start collecting information and refine their judgment as additional elements become available.

Assessing available information is critical and perhaps the most sensitive part of the whole review process. Generally speaking, assessments focusing on technical compliance matters will be more straightforward than assessments looking at effectiveness. The latter tend to be based on much broader and, to some extent, nebulous criteria and entrust evaluators with a particularly delicate task. An overarching criterion, particularly when it comes to evaluating effectiveness levels, is that assessments should not be carried out in a mechanical manner. Instead, they should factor in the countries’ broader contexts, the sophistication of their institutions and regulatory frameworks, levels of development, etc. The point is well illustrated in the guidelines for FATF Mutual Evaluations, according to which

> assessment of effectiveness is not a statistical exercise. Assessors should use data and statistics, as well as other qualitative information, when reaching an informed judgement about how well the outcome is being achieved, but should interpret the available data critically, in the context of the country’s circumstances. The focus should not be on raw data (which can be interpreted in a wide variety of ways and even with contradictory conclusions), but on information and analysis which indicates, in the context of the country being assessed, whether the objective is achieved. Assessors should be particularly cautious about using data relating to other countries as a comparison point in judging effectiveness, given the significant differences in country circumstances, AML/CFT systems, and data collection practices.  

Similarly, under the heading “Flexibility of the analysis”, the guidelines for CTC-led counter-terrorism evaluations recommend that

> the visiting team should, to the extent possible, take into account the specific features of each country in order to provide the most accurate analysis of the highest priority issues for each State, the difficulties States are encountering and the relevance of the solutions introduced at the national level to address them. The following aspects of each State’s situation will be relevant to a thorough understanding of their situation and to setting priorities for national steps to tackle terrorism: 1) Geographical characteristics; 2) Specific historic and cultural features; 3) Level of development; 4) Political situation; 5) Administrative organization; 6) Institutional and legal system; 7) The specific threats of terrorism and other underlying criminal phenomena.

The complexity of the task is compounded by the fact that the review team will often be required to tread a fine line. While carrying out in-depth assessments, it will have to refrain from passing judgments on the country’s political systems or commenting on individual enforcement cases, especially ongoing ones. This is illustrated by the IMF Framework for Enhanced Engagement in Governance Issues, whose 1997 Governance Policy recognises the difficulty in separating economic aspects of governance from political aspects. Nevertheless, the Policy stressed that IMF’s conclusions should not be influenced by the nature of the political regime of a country, nor should the IMF interfere in domestic or foreign politics of any member, even though it would need “to take a view on whether the member is able to formulate and implement appropriate policies.”

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6.4.1 Developing indicators in support of the evaluation

Most mechanisms use some form of indicators to support the review team in their task of assessing compliance with relevant benchmarks. These indicators can be of a qualitative and/or quantitative nature. Since it is based on the elaboration of data sent by national statistical offices, the Global Indicator Framework for the Sustainable Development Goals (SDGs) rigorously relies on quantitative indicators. Instead, the EIU Global Illicit Trade Index uses a mix of qualitative (fourteen) and quantitative (six) indicators. In the Government Policy area (which is one of four areas targeted by the Index), quantitative indicators include, for example:

- Extent to which a jurisdiction engages in international judicial cooperation on money laundering and other criminal issues, based on FATF assessments and Basel Institute on Governance analysis;
- Extent to which a high standard of comprehensive IP laws is enforced;
- Extent of corruption among public officials.

Among the quantitative criteria:

- Extent to which a jurisdiction has entered into 14 different international conventions related to illicit trade;
- Presence of specific legislation empowering authorities to use special investigative techniques under UNTOC and UNCAC guidelines: controlled deliveries, intercepting communications and undercover operations.

Moreover, indicators can be placed in a closed list (potentially with assessors’ judgments being strictly and exclusively bound by them) or they can be construed as simple examples/suggestions of the types of things assessors might consider. This latter solution seems to be the preferred approach of the African Peer Review Mechanism (APRM).

6.4.2 Indicators’ weight

Sometimes the review team is guided not only by indicators but also by instructions as to the weight that each indicator should bear in the context of the overall assessment exercise. The EIU Index methodology assigns a weight to each indicator as a percentage of the total.

In other cases, the weight to assign to certain indicators/criteria is not pre-determined in the methodology, but left to the review team. Under the FATF Mutual Evaluations, for example, the criteria used to assess compliance with the relevant benchmarks do not all have equal importance and assessors are expected to consider how significant any gaps are in relation to the country's risk profile and other structural and contextual matters. While in some cases a single gap may be sufficiently important to support a conclusion of non-compliance, in other cases a gap relating to a low risk or little used type of financial activity would only have a minor impact on the overall assessment.

6.5 Ensuring coordination with other review mechanism

In a new mechanism focusing on illicit trade, a significant amount of information is likely to originate from reports issued in the context of reviews undertaken in contiguous policy areas. The reports of those reviews can be very useful in providing background facts, data, information on legislation in force, institutions, etc. They will offer assessors a source of key information that has already been authoritatively collected and analysed elsewhere.
The guidelines for the UNCAC Review Mechanism, for example, states that,

*if the State party under review is a member of a competent international organization whose mandate covers anti-corruption issues or a regional or international mechanism for combating and preventing corruption, the reviewing States parties may consider information relevant to the implementation of the Convention produced by that organization or mechanism.*

Similarly, the IMF Framework for Enhanced Engagement in Governance Issues points to work carried out by the World Bank as being a relevant source of information in areas not covered by the IMF, such as in the fiscal and rule-of-law domains.

More delicate issues are raised by the degree of coordination that a new review mechanism could/should establish with other relevant ones. The need for achieving coordination seems important for two main reasons: 1) to avoid over-burdening the same entity (in particular, small and under-resourced countries) with multiple overlapping reviews within a short period of time; ii) to reduce the chances of different or even contradictory messages/recommendations stemming from multiple reviews.

The more the benchmarks adopted under a new mechanism on illicit trade overlap with those adopted under other mechanism, the more there will be a need for coordination.

There does not seem to be a single best way to achieve coordination. Depending on the circumstances, it might be expedient to explore the signing of Memoranda of Understanding (MoUs), which will define the overall relationship between two or more review mechanisms around questions such as: to what extent representatives from both mechanisms will contribute to each other’s evaluation processes? Will the timing of the different reviews be coordinated?

FATF Mutual Evaluations offer one of the best examples of a high degree of coordination reached with IMF-based processes. Accordingly,

*the FATF Standards are recognised by the International Financial Institutions as one of 12 key standards and codes, for which Reports on the Observance of Standards and Codes (ROSCs) are prepared, often in the context of a Financial Sector Assessment Programme (FSAP). Under current FSAP policy, every FSAP and FSAP update should incorporate timely and accurate input on AML/CFT. Where possible, this input should be based on a comprehensive quality AML/CFT assessment, and in due course, on a follow-up assessment conducted against the prevailing standard. The FATF and the IFIs should therefore co-ordinate with a view to ensuring a reasonable proximity between the date of the FSAP mission and that of a mutual evaluation or follow-up assessment conducted under the prevailing methodology, to allow for the key findings of that evaluation or follow-up assessment to be reflected in the FSAP; and members are encouraged to co-ordinate the timing for both processes internally, and with the FATF Secretariat and IFI staff.*

6.6 After the onsite visit: delivering the outcome of the review

Following the onsite visit, the review team is expected to possess a sufficient amount of verified information enabling it to draw its conclusion. In most cases, the outcome of the review consists of a detailed report inclusive of an executive summary and recommendations.

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6.6.1 The recommendations

The recommendations appear to be of particular importance as they will often form the basis of entities’ action plans. In order to facilitate the development of such plans, the methodology for FATF Mutual Evaluations emphasize the need for assessors to

*clearly indicate in their recommendations where a specific action is required, and where there may be some flexibility about how a given priority objective is to be achieved. Assessors should avoid making unnecessarily rigid recommendations (e.g., on the scheduling of certain measures), so as not to hinder countries efforts to fully adapt the recommendations to fit local circumstances.*

Interestingly, the same methodology also does not exclude the possibility of addressing country-specific recommendations in areas where high levels of effectiveness have been found, as there may be a need for action in order to sustain high degrees of performance.

6.6.2 Handling disagreements with the examined entity

Following the onsite visit, a draft report is usually prepared by the review team supported by the mechanism’s staff. While timelines and procedures vary significantly, all mechanisms under scrutiny envisage a phase after the onsite visit during which draft reports go through a series of readings aimed as much as possible at reconciling any remaining differences of opinion with the examined country. Under the APRM, for example, the country under review has an opportunity to react to the assessors’ findings and to formulate its own views on the identified weaknesses. In FATF Mutual Evaluations, this phase (which can also envisage face-to-face meetings between the assessors and representatives of the examined country) also serves the purpose of narrowing the list of key issues that will be the focus of the final discussion by the mechanism’s decision-making body.

An issue that needs to be addressed is how to handle persistent disagreements between the assessors and the examined country. One possible solution is to accept that the outcome of the review explicitly mentions such disagreements. Under the OECD Bribery Convention mechanism, for example, the examined country cannot block decisions taken by the mechanism’s collegial body. However, it is entitled to have its views and opinions fully reflected in the applicable documentation, including the final report. Crucially the report can also reflect differences in opinion among participants in the Working Group.

A different approach is followed by the UNCAC Review Mechanism, which, in line with its marked preference for consensus-building, leaves no other option than for the reviewing team and the examined country to reach an agreement through continued negotiation.

6.6.3 Report approval and adoption

Following a variable number of successive readings aimed to refine the draft report with the input of the examined country, the documentation is normally discussed by members of the mechanism’s governing body with a view to its adoption. In some cases, the role of these collegial bodies is merely formal. In the context of the UNCAC Review Mechanism, for example, while the Inter-Governmental Review Group (IGR) has a general mandate to overview the process, it does not consider substantive matters or adopt individual reports. The mechanism’s guidelines note that, once finalised, reports’ executive summaries shall be made available in the six official languages of the UN as documents of the IRG for information purposes only.

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Other mechanisms attribute a more substantive role to their governing bodies in shaping reports’ content and in adopting them officially. For example, under the OECD Bribery Convention Monitoring Process, the Secretariat circulates the draft report to all delegations comprising the Working Group at least three weeks in advance of its plenary meeting. This ensures that all countries have an adequate opportunity to review the draft report. Delegates are thus encouraged to submit written questions to the Secretariat and the lead examiners in preparation for the ensuing discussion in the plenary meeting.

6.6.4 Ratings

While a number of mechanisms aim to produce compliance ratings, this does not seem to be an indispensable feature of a review mechanism. Indeed, it is perfectly possible for a mechanism to address detailed recommendations to a country without producing an explicit “verdict” in terms of compliance rates (in most cases, though, these rates will be implicitly guessed by the language used in the recommendations). In discussing the potential reform to the Standards and Codes Initiative, for example, “most [IMF] Directors agreed to maintain the current system on the use of compliance ratings, in which some ROSCs assign ratings while others do not, reflecting the tension between public disclosure and a focus on reform efforts and country ownership”. 12

With this in mind, many mechanisms find it convenient to translate compliance levels into numbers. FATF Mutual Evaluations, for example, categorise compliance rates differently depending on whether the assessment revolves around technical or effectiveness compliance. For technical compliance, four levels are used, notably: compliant, largely compliant, partially compliant, and non-compliant. For effectiveness compliance, the categories are: high level of effectiveness, substantial level of effectiveness, moderate level of effectiveness, low level of effectiveness.

Rating-based approaches have the advantage of providing quick snapshots of areas where the examined entity needs to focus its attention. They may be powerful communication tools for internal purposes too. For example, following a low country score, one ministry in the examined country might find it easier to persuade other parts of governments to side with it in initiating a domestic reform agenda.

Arguably, also, “greater use of compliance ratings would enhance clarity, transparency, and comparability of assessments across countries, as well as provide stronger incentives to push ahead with reforms”. 13

6.6.5 Rankings

By placing examined entities in some form of hierarchical order, rankings typically aim to encourage compliance by leveraging fear of loss of image/reputation/ investment opportunities.

However, the integration of a publicly available ranking system into a review mechanism can turn out to be a double-edged sword. Upsides and downsides must be carefully balanced. A clear advantage of publishing rankings is that it is more likely to catch the attention of large audiences and the media, which might in turn result in a review mechanism with more visibility and clout. The main disadvantage seems to be that low scores may be regarded by affected entities as a sort of undeserved punishment and, paradoxically, inhibit action rather than stimulate it.

The production of publicly available country rankings is a central feature of the EIU Index. Although the EIU repeatedly stresses that this system does not pursue “name and shame” purposes, but rather seeks to drive countries into improving their performance, on at least one occasion the ranking has generated resentment among neighbouring countries, which has resulted in the cancellation of a planned sub-regional event.

At the other end of the spectrum, the guidelines for the UNCAC Review Mechanism stress that “the mechanism shall be non-adversarial and non-punitive and shall promote universal adherence to the Convention; it will not produce any form of ranking”.

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13 Ibidem.
6.7 Communicating review outcomes

Once the report from a review mechanism has been officially adopted, it has to be brought to the attention of relevant stakeholders. To whom exactly it will be circulated will very much depend on the objectives of the mechanism itself.

If the mechanism is narrowly construed as a service to a specific country, group of countries or other entities, the outcome of the review will not necessarily have to be shared in public as it will be used for internal purposes only. In other cases, a decision to keep reports out of the public domain may stem from the perceived sensitive nature of the review itself. For example, following onsite visits on counter-terrorism, the CTC shares with the public a document referring to the visit in general terms. However, the visit report remains confidential. This should be without prejudice, however, for the ability of the examined country to publish the review report if it so wishes. In this regard, and in view of the confidential nature of its ROSCs, the IMF considers their publication to be “voluntary but presumed” while publication of the underlying detailed assessment reports is at the discretion of the examined country with the consent of Fund management.

In other cases, report publication may be the very objective of the mechanism, particularly when the goal is to expose examined entities to outside scrutiny as a major push for encouraging compliance. In the context of the OECD Bribery Convention Process, reports are published on the OECD website and announced through a news release. The Secretariat coordinates the release with the examined country, which is also encouraged to disseminate the report, for example by translating it into the local language and publishing it on the government’s website.

6.7.1 Balancing the need for publicity versus confidentiality

When review outcomes are public, potential clashes may arise with the dissemination of specific information that the examined entity provided on a confidential basis. The OECD Bribery Convention Monitoring Process addresses the issue by stating that,

> if the country being evaluated makes available to the evaluation team information it considers confidential, confidentiality of this information will be respected. Information contained in reports on country performance would remain confidential until it has been declassified. A country concerned could, however, take whatever steps it felt appropriate to release information concerning its report, or to make it publicly available.  

One option to balance the need for publicity versus confidentiality may be to provide for the compulsory circulation of executive summaries while the underlying full report remains confidential unless the examined country decides to make it public. This solution is adopted by the UNCAC Review Mechanism.

6.8 Ensuring follow-up action

Once the review report and related recommendations have been adopted and delivered to the examined entity, there will be an expectation that the examined entity will comply with the outcome of the review. However, this expectation will take different forms depending on the overall objectives of the review mechanism. If the mechanism is construed purely as a service to a client, to a good extent it will be regarded as having accomplished its mission. It will be up to the beneficiary entity to freely request additional services, more in-depth evaluations, or evaluations touching on different sectors and areas.

In contrast, if the mechanism’s overarching purpose is to accompany entities in gradual reform of systems and capacity in order to comply with given benchmarks, it might be important to embed a follow-up mechanism to ensure that the report and associated recommendations are actively implemented.

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Timelines can be set for the entities under review to submit follow-up reports on progress made to comply with relevant recommendations, or to come up with detailed action plans. Following such reports, new assessment phases or cycles may be envisaged focusing on specific areas or sectors. When an appropriate time is lapsed from the initial report, additional phases or cycles (which may include onsite visits) may aim at collecting and analysing up-to-date information, take stock of new initiatives, dynamics, practices and contexts.

### 6.8.1 Supporting the compliance effort through training and technical assistance

A methodology for a new review mechanism may consider ways to tie any follow-up action with measures, initiatives or programs designed to assist/s support examined entities in their compliance efforts. The APRM, for example, commits participating governments to extend their assistance as well as mobilize the donor community and relevant international agencies to support the examined country.

The UNCAC Review Mechanism expects countries to outline their specific technical assistance needs during the evaluation phase and to provide follow-up information on whether such assistance has actually been provided.

Linking country reviews and technical assistance is also a central concern of the IMF Codes and Standards Initiative, particularly in developing countries.

### 6.8.2 Consequences for failing to comply

A thorny question is what follow-up action to envisage vis-à-vis countries that fail to comply with the recommendations addressed to them. Existing review mechanisms offer different approaches depending on subject-matter and institutional contexts. For example, compliance with counter terrorism related evaluations in the context of Security Council resolution 1373(2001) rely on diplomatic pressure exercised by the Counter Terrorism Committee and, at least theoretically, on the imposition of sanctions under Chapter VII of the UN Charter.

The APRM considers progress reports submitted to it annually by reviewed countries. As it is based on the principle of continued dialogue and sharing of best practices, it does not foreshadow any “negative” consequence for persistently non-compliant countries.

One of the most articulated examples of peer-review pressure is offered by the FATF Mutual Evaluations as well as its “High risk and other monitored jurisdictions”, as illustrated below in Table 1.

#### Table 1

<table>
<thead>
<tr>
<th>FATF Mutual Evaluations follow-up and “High risk and other monitored jurisdictions” program.</th>
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<tbody>
<tr>
<td>Once their review is terminated, countries are placed under “regular” or “enhanced” follow up.</td>
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<tr>
<td>Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the FATF’s policy that deals with members with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems, and involves a more intensive process.</td>
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<tr>
<td>In addition to requesting more frequent reporting, the Plenary may apply other enhanced measures to countries placed in enhanced follow-up, including:</td>
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<tr>
<td>- A letter from the FATF President to the relevant minister(s) in the member country drawing attention to the lack of compliance with the FATF Standards;</td>
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<td>- A high-level mission to the member country to reinforce the message;</td>
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<td>- A formal statement to the effect that the member country is insufficiently in compliance with the FATF Standards,</td>
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</table>
and recommending appropriate action;

- The suspension of the country's FATF membership until the priority actions have been implemented. Suspended countries are not able to attend FATF meetings or provide input into FATF processes except for the process to determine whether deficiencies have been adequately addressed;

- The termination of the country's FATF membership.

The follow-up process is a dynamic one and countries may be moved from enhanced to regular follow up when they no longer meet the criteria of the former or when the Plenary is satisfied that countries have made significant progress to address the identified deficiencies.

The follow-up process succinctly described above is closely connected with a program that runs in parallel known as “High risk and other monitored jurisdictions” (or “ICRG review process” since it is overseen by the International Cooperation Review Group (ICRG)). Under this program, the FATF continually identifies and reviews jurisdictions with strategic AML/CFT deficiencies that present a risk to the international financial system and closely monitors their progress. Specifically, a country will be reviewed under the ICRG review process when:

- It does not participate in a FATF-style regional body (FSRB) or does not allow mutual evaluation results to be published in a timely manner; or

- It is nominated by a FATF member or an FSRB based on specific money laundering, terrorist financing, or proliferation financing risks or threats coming to the attention of delegations;

- It has achieved poor results on its mutual evaluation

A country that enters the ICRG review process as a result of its mutual evaluation results has a one-year Observation Period to work with the FATF or its FATF-style regional body (FSRB) to address deficiencies before possible public identification and formal review by the FATF.
7. OVERVIEW OF SELECTED REVIEW MECHANISMS

In the governance domain, a variety of review mechanism exist focusing on countries’ compliance with policies adopted in the education, health, environment, energy sectors, etc. As it did not appear either feasible or desirable to provide a comprehensive overview of all such mechanisms, the Institute chose to concentrate on a narrower category of international initiatives that:

- Monitor countries’ responses to key enablers of illicit trade (such as corruption and money laundering); or
- Address factors broadly underpinning illicit trade (such as deficits in socio-economic development); or
- Deal with connected criminal phenomena (terrorism).

Compared across their objectives, scope and approaches, the review mechanisms succinctly presented at Table 2 below offer potential guidance for the elaboration of a new assessment methodology in the illicit trade field.

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<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Area of focus</th>
<th>Measured against</th>
<th>Review conducted by</th>
<th>Format of review</th>
<th>Presentation of findings</th>
</tr>
</thead>
</table>
| IMF Framework for Enhanced Engagement in Governance Issues | Governance vulnerabilities, including corruption | Performance in public functions most relevant to economic performance | Review team | • Assessment of country functions most relevant to economic performance  
• Assessment of macroeconomic vulnerabilities  
• Policy advice and capacity development  
• Measures to prevent bribery and corruption | Determination of whether identified governance vulnerabilities are 'severe' |
| IMF/World Bank Standard and Codes Initiative | Economic and financial resilience | Standards and codes in 12 policy areas across three themes. | IMF / World Bank | • Country assessment condensed into report which may be published. | Qualitative and quantitative assessment of performance against standards as relevant. |
| FATF Mutual Evaluations | Money laundering and terrorism financing | 49 policy recommendations | Peer review | • Report prepared containing detailed country recommendations. | Compliance ratings with standards. |
| Intergovernmental Review Mechanism for the UN Convention against Corruption | Corruption | First cycle: chapters III and IV  
Second cycle: chapters II and V | Peer review (each state party reviewed by two peers) | • Self-assessment  
• Onsite visit  
• Country report with recommendations | Identification of successes, good practices, challenges and recommendations. |
• Country visits | No longer published online, but country reports identify measures taken and are compiled into global survey. |
| Global Indicator Framework for the Sustainable Development Goals (SDGs) | Sustainable Development Goals (SDGs) | Targets associated with the 17 SDGs | Secretariat | • Secretariat consults with national offices for statistical data  
• Expected to develop methodology and create estimates via transparent mechanisms | Comparison of country level data against quantitative indicators. |
<table>
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<tr>
<th>Mechanism</th>
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</table>
| African Peer Review Mechanism                 | Governance                                 | Objectives in four policy areas relevant to governance    | APRM Panel performs oversight and APRM Secretariat provides support                  | • Preparation of self-assessment report and national plan of action   
• Country review mission   
• Draft report   
• Peer review   
• Final report tabled at regional and sub-regional institutions                                                | Qualitative assessment focused on sharing experiences, identifying best practices and deficiencies, capacity building, and fostering standards, policies and practices that lead to good governance. |
| Economist Intelligence Unit (EIU) Global Illicit Trade Environment Index | The enabling environment for illicit trade | 14 qualitative indicators and six qualitative indicators in four policy areas | The Economist Intelligence Unit and external experts                                 | • Information regularly collected by analysts, benchmarking exercises by international institutions, desk research and expert interviews. | Scores out of 100 across four categories and a ranking of countries' performance based on those scores. |
| Mechanism for the review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto | Transnational organised crime               | First cycle: criminalisation, law enforcement and international cooperation   
Second cycle: preventative measures and international cooperation                      | Peer review                                                                                     | • Self-assessment   
• Desk-based peer review   
• Report submitted to thematic working groups   
• Constructive dialogue before Conference of the Parties                                         | Identification of successes, good practices, challenges and recommendations.                        |
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