



Financial Intelligence Units Working With Law Enforcement Authorities and Prosecutors

Klaudijo Stroligo
Chin-Lung Hsu
Theodore Kouts



UNODC
United Nations Office on Drugs and Crime



© 2018 International Bank for Reconstruction and Development / The World Bank
1818 H Street NW, Washington, DC 20433
Telephone: 202-473-1000; Internet: www.worldbank.org
Some rights reserved.

StAR—the Stolen Asset Recovery Initiative—is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC) that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets.

This work is a product of the staff of The World Bank, the United Nations Office on Drugs and Crime, and the Egmont Group. The findings, interpretations, and conclusions expressed in this work do not necessarily reflect the views of The World Bank its Board of Executive Directors, or the governments they represent, the United Nations, or its Member States. The World Bank and the United Nations do not guarantee the accuracy of the data included in this work. The boundaries, colors, denominations, and other information shown on any map in this work do not imply any judgment on the part of The World Bank or the United Nations concerning the legal status of any territory or the endorsement or acceptance of such boundaries.

Nothing herein shall constitute or be considered to be a limitation upon or waiver of the privileges and immunities of The World Bank or the United Nations, all of which are specifically reserved.

Cover photos: © echoevg (top); baona (bottom). Further permission required for reuse.

Design by Sensical Design & Communication

Table of Contents

- Acknowledgments.....3**
- About the Authors.....4**
- Acronyms and Abbreviations.....5**
- Introduction.....7**
 - Background.....7
 - Objectives.....8
- International/Regional Standards.....9**
 - FATF Forty Recommendations.....10
- Recommendations.....13**
- Examples of Good Practices.....22**
 - FIUs’ Role in Financial Investigations.....22
 - Mechanisms for Cooperation between FIUs and LEAs/Prosecutors.....23
 - Legal and Operational Issues Related to the Use of Liaison Officers.....23
- Study with the Findings and Analysis.....25**
 - Methodology.....25

| | |
|---|-----------|
| Questionnaires and Workshops..... | 25 |
| Overview of Responses..... | 26 |
| Explanatory Note on Number of Responses..... | 28 |
| Description and Findings Based on FIUs' Responses | 29 |
| FIU Access to Domestic Law Enforcement Information..... | 29 |
| Spontaneous Dissemination..... | 38 |
| Dissemination upon Request..... | 43 |
| Feedback..... | 48 |
| General Comments and Observations..... | 51 |
| Description and Findings Based on LEAs' Responses..... | 55 |
| Spontaneous Dissemination | 55 |
| Dissemination upon Request..... | 62 |
| Feedback..... | 68 |
| General Comments and Observations..... | 70 |
| FIU Survey Participants..... | 78 |
| LEA Survey Participants..... | 80 |
| References..... | 82 |

Acknowledgments

This publication was written by a project team composed of Klaudijo Stroligo (Team Leader), Ching-Lung Hsu and Theo Kouts. It is based on the joint study by the World Bank, Egmont Group, and United Nations Office on Drugs and Crime—Global Programme against Money Laundering (UNODC GPML) on *Financial Intelligence Units (FIUs) Working with Law Enforcement Authorities and Prosecutors*.

The authors would like to express their gratitude to Nicola Muccioli from the FIU San Marino, Richard Walker and Chiara Harnden from the FIU Guernsey, and Christine Ernst Pohl from the FIU Switzerland, who helped analyze the results of the study. The team is also grateful to FIU Monaco for its financial contribution and to members of the Egmont Operational Working Group (now Egmont Information Exchange Working Group) for their constant support of the project.

Special thanks also to the Egmont Group Secretariat for the logistical support provided through all stages of the project, and to the Moneyval Secretariat for hosting one of the workshops. The team benefited significantly from the thoughtful comments received from participants of the two workshops held in Doha in January 2016 and in Strasbourg in May 2017, who helped shape the report and recommendations.

The authors would also like to thank Mr. Patrick John O’Sullivan (Senior Financial Sector Expert, IMF), Dr. Badr El Banna (AML/CFT Regional Advisor for the Middle East, North Africa, and Central Asia, IMF), Kevin M. Stephenson (Director, FATF TREIN, Financial Action Task Force Training and Research Institute), Stefan D. Cassella (Money Laundering and Forfeiture Expert at Asset Forfeiture Law, LLC), Jonathan Benton (Director, Anti-Bribery and Corruption Consultancy), and Tanjit Sandhu Kaur (Financial Sector Specialist, World Bank Group) for their thoughtful review and advice during the peer review process of this publication.

Finally, the team would also like to take this opportunity to acknowledge the important contributions made by the Financial Intelligence Units (FIUs), Law Enforcement Authorities (LEAs), and prosecutorial authorities that participated in the study by providing responses to the questionnaires.

Klaudijo Stroligo
Chin-Lung Hsu
Theodore Kouts

About the Authors

Klaudijo Stroligo is an anti-money laundering and countering financing of terrorism (AML/CFT) consultant working for the United Nations Office on Drugs and Crime - Global Programme against Money Laundering (UNODC GPML), Council of Europe and other international organizations. From 2007 to 2017 he was the Senior Financial Sector Specialist in the Financial and Private Sector Development Unit of the World Bank and for five years he was also the joint World Bank/UNODC GPML AML/CFT Mentor for Central Asia. In 2006–07 he was a consultant for the World Bank, Council of Europe, European Commission, International Monetary Fund (IMF), and UNODC GPML.

Previously he was the Director of the Slovenian Financial Intelligence Unit and served in this capacity for 12 years. Earlier in his career, Mr Stroligo was a Crime Inspector and Head of Foreign Crime Department in the Crime Police Unit in Ljubljana and in the Ministry of Interior of Slovenia.

For several years, he was the Chairman and Vice-Chairman of the Council of Europe Moneyval Committee and member of four other expert committees of Council of Europe responsible for drafting conventions and recommendations related to seizure and confiscation of proceeds of crime, economic and organized crime, money laundering and terrorist financing, and corruption. Mr. Stroligo was actively involved in the Egmont Group as one of the founding members and as a member of the Egmont Group Committee and Legal Working Group.

Chin-Lung Hsu has been a Special Agent with the Anti-Money Laundering Division (AML/D) since July 2014. Within the AML/D, Mr. Hsu is responsible for the Egmont Group issues and affairs. He has been an active member of the Egmont Group since 2014 and is currently a member of the Egmont Membership, Support and Compliance Working Group. In this capacity, he sponsored Nepal FIU's application for the Egmont Group membership in 2015 and is now co-sponsoring Vietnam FIU's application for the Egmont Group membership.

Before joining the AML/D, Mr. Hsu spent 14 years working within the Investigation Bureau to tackle economic and corruption crimes, and then he served as a liaison officer in Chicago, United States.

Theodore Kouts is a consultant with specialized expertise in anti-money laundering and countering the financing of terrorism (AML/CFT). He works with the World Bank in its Finance and Markets Global Practice as well as with the Egmont Group. He has a background in terrorism studies, forensic investigation, criminology and criminal justice, illicit financial flows, and sustainable development, as well as other issues.

Acronyms and Abbreviations

| | |
|------------------------------|---|
| AML/CFT | Anti-Money Laundering/Countering Financing of Terrorism |
| CTR | Currency Transaction Report |
| Egmont Group | The Egmont Group of Financial Intelligence Units |
| EU | European Union |
| Europol | European Union Agency for Law Enforcement Cooperation |
| FATF | Financial Action Task Force |
| FATF Methodology | FATF Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems |
| FIU | Financial Intelligence Unit |
| FT | financing of terrorism |
| Interpol | International Police Organization |
| LEAs | Law Enforcement Authorities and Prosecutors |
| ML | money laundering |
| ML/FT | money laundering/financing of terrorism |
| MONEYVAL | Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures |
| MOU | Memorandum of Understanding |
| SAR | Suspicious Activity Report |
| STR | Suspicious Transaction Report |
| Strasbourg Convention | Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime |
| UN | United Nations |
| UNCAC | United Nations Convention against Corruption |
| UNODC GPML | United Nations Office on Drugs and Crime, Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism |
| UNTOC | United Nations Convention against Transnational Organized Crime |
| Vienna Convention | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances |
| Warsaw Convention | Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism |

CHAPTER 1

Introduction

Background

Financial intelligence is collected by both public and private organizations and used by anti-money laundering/countering financing of terrorism (AML/CFT) and other competent authorities to investigate money laundering, associated predicate offences, and terrorist financing. It is a fundamental objective of international AML/CTF efforts for these authorities to be able to gather, assess, analyze, and deliver reliable, accurate, relevant, and up-to-date information. Authorities must also be able to carry out the effective assessment of information so that financial investigations can identify and trace illicit assets as well as the methods in which these assets are laundered.

Financial Intelligence Units (FIUs) are established based on criminal policy considerations specific to each country, and the basic features of FIUs are typically consistent with each country legal and administrative framework. Most countries establish FIUs in compliance with the Financial Action Task Force¹ (FATF) Recommendations² and other international AML/CFT standards as central national agencies responsible for receiving and analyzing suspicious transactions reports, and other information relevant to money laundering, associated predicate offences, and terrorist financing, and disseminating the results of their analysis to competent authorities. FIUs have been established in more than 160 jurisdictions and, as of July 2017, FIUs from 156 jurisdictions have been admitted to the Egmont Group.³

The FIUs usually serve as a filter between financial and other reporting entities on one side and Law Enforcement Authorities and prosecutors (LEAs) on the other. The presence of an FIU as an autonomous central, national agency allows for the impartial assessment and dissemination of financial information and protection of confidential information. FIUs are also responsible for the exchange of financial information internationally with counterpart FIUs and other foreign competent authorities.

In combating money laundering, associated predicate offenses, and terrorist financing, countries are expected to designate Law Enforcement Authorities to ensure these offences are properly investigated through the conduct of financial investigations or otherwise.⁴

Alongside intelligence and investigative divisions of LEAs and/or other competent authorities, FIUs are one of the competent authorities that can enhance a traditional criminal investigation which may include a financial

investigation. Financial information collected by LEAs, FIUs, and other competent authorities should be thoroughly examined and result in the initiation of proactive financial investigations. FIU's analytical capabilities help in developing different intelligence products that can be useful to LEAs. Routinely, FIUs spontaneously disseminate information to these authorities relating to suspected money laundering (ML), associated predicate offences, and terrorist financing (TF). Disseminated information could relate to an existing entity of interest, support an existing investigation, or prompt a proactive new investigation based on new information made available to LEAs.

However, for LEAs to effectively receive information/intelligence (collected and analyzed by the FIU) relevant to their investigation, FIUs and LEAs must be able to work together closely. The deliberate decision to create FIUs as a buffer between reporting entities and LEAs in many jurisdictions causes an institutional gap between those receiving and analyzing financial information and those mandated to conduct investigations.

In many jurisdictions, the level of cooperation between FIUs and LEAs could be drastically improved. This report casts light on how the FIUs and LEAs cooperate with one another and examines the impediments to their closer cooperation. In addition, this report presents a number of recommendations to help policy makers as well as FIUs and LEAs overcome these barriers, while considering international AML/CFT standards and best practices.

Objectives

The main objective of this publication is to support the implementation of international AML/CFT standards as established by the FATF and other international organizations and to provide possible solutions in the areas currently not regulated by international standards, by:

- Identifying the strengths of and impediments to effective cooperation between FIUs and LEAs/prosecutors
- Developing best practices and guidance/recommendations related to FIUs cooperation with LEAs/prosecutors to overcome the identified impediments
- Developing practical solutions to assist jurisdictions in better demonstrating how financial intelligence is effectively managed among the competent authorities responsible for combating money laundering, associated predicate offences, and terrorist financing.

Finally, the findings and recommendations presented in this publication may well serve also as the basis for the Egmont Group and other international bodies to improve their policies related to the cooperation between the FIUs and LEAs/prosecutors.

Endnotes

1. The FATF is an intergovernmental body established by the ministers of its member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. See <http://www.fatf-gafi.org/about/>.
2. See FATF Recommendation 29 and the related Interpretative Note.
3. The Egmont Group was established in 1995 as an informal international association of FIUs. Its goal is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in this field. Egmont Group members are FIUs that comply with the criteria of the Egmont Group. See <http://www.egmontgroup.org>.
4. A financial investigation is an inquiry into the financial affairs related to criminal activity. Countries are expected to direct their competent authorities to conduct "parallel investigations," which means a financial investigation is to be conducted alongside or in the context of, a criminal investigation, if need be.

CHAPTER 2

International/Regional Standards

Most international and regional treaties¹ that, among other things, cover the fight against money laundering and/or terrorist financing do not contain provisions related to the cooperation between the FIUs and LEAs/prosecutors on a national level. The only exceptions are the 2003 United Nations Convention Against Corruption (UNCAC) and the 2000 United Nations Convention against Transnational Organized Crime (UNTOC).

UNCAC (in point b, Paragraph 1 of Article 14), and UNTOC (in point b, Paragraph 1 of Article 7), both contain the same provision dealing with inter-agency cooperation related to anti-money laundering. According to this provision, countries should ensure that their administrative, regulatory, law enforcement, and other competent authorities have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by their domestic laws and, to that end, consider establishing the FIU to serve as a national centre for the collection, analysis and dissemination of information regarding potential money laundering. The text of these paragraphs is provided in boxes 2.1 and 2.2.

BOX 2.1

Paragraph 1, point b) of Article 14 of UNCAC

Measures to prevent money-laundering

Each State Party shall:

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

BOX 2.2

Paragraph 1, point b) of Article 7 of the UNTOC

Measures to Combat Money-Laundering

Each State Party shall:

(b) Without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

In Europe, the European Union Directive 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing (Fourth EU AML/CFT Directive) contains a provision dealing with the national cooperation between the competent authorities. Article 49 of the Directive requires member states to ensure that their policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT have effective mechanisms to enable them to cooperate and coordinate domestically their policies and activities to combat ML/TF. The Directive does not provide any further guidance regarding the type of above-mentioned mechanisms. The text of Article 49 is presented in box 2.3.

Not surprisingly, more relevant provisions related to the cooperation between the FIUs and LEAs/prosecutors have been developed by the Financial Action Task Force (FATF). The FATF is the most important international body in terms of the development and monitoring of the implementation of global AML/CFT standards and is known for its “Forty Recommendations on Combating Money Laundering and the Financing of Terrorism & Proliferation (FATF Forty Recommendations)” (Gilmore 2011, 91). These Recommendations were amended in 2012. In 2013 the FATF issued also the revised Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (FATF Methodology).

BOX 2.3

Article 49 of the Fourth EU AML/CFT Directive

Article 49—National Cooperation

Member States shall ensure that policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing, including with a view to fulfilling their obligation under Article 7.²

The following FATF standards are relevant for the topics presented in this publication:³

FATF Forty Recommendations

- Recommendation 2 (National Cooperation and Coordination)
- Recommendation 29 (Financial Intelligence Units) and related Interpretive Note
- Recommendation 30 (Responsibilities of Law Enforcement and Investigative Authorities) and related Interpretive Note
- Recommendation 31 (Powers of Law Enforcement and Investigative Authorities)
- Recommendation 40 (Other Forms of International Cooperation).

In its substance, Recommendation 2 is very similar to the above-mentioned Article 49 of the EU AML/CFT Directive. Paragraph 2 of this recommendation requires countries to ensure that policy-makers, the FIUs, LEAs,

supervisors, and other competent authorities, at the policy-making and operational levels, establish effective mechanisms for domestic cooperation and coordination to combat ML/TF and the financing of proliferation of weapons of mass destruction. The text of Recommendation 2 is provided in box 2.4.

BOX 2.4

FATF Recommendation 2, Paragraph 2

Recommendation 2-National Cooperation and Coordination

Countries should ensure that policy-makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities, at the policymaking and operational levels, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

Recommendations 29 and 31, however, provide clear guidance regarding, among other things, the FIUs' and competent LEAs' powers, including those related to obtaining information and data from one another. While, according to Recommendation 29, the FIUs should have timely access to law enforcement information that they require to undertake their functions, Recommendation 31 limits LEAs' power to request data from the FIUs only to cases when they are carrying out investigation of money laundering, associated predicate offences, and terrorist financing. The importance of the latter provision and the additional guidance provided in the Interpretative Note to Recommendation 29 should not be underestimated. First, they require establishing the necessary legal conditions that the FIU data and powers are only used to combat money laundering, associated predicate offences, and terrorist financing; and second, they emphasize the importance of ensuring the operational independence of the FIUs when carrying out their key functions.⁴

Recommendation 30 regulates the responsibilities of LEAs and, among other things, requires that LEAs develop a proactive parallel financial investigation when pursuing money laundering, associated predicate offences, and terrorist financing. Moreover, it also requires countries to establish permanent or temporary multidisciplinary groups specialized in financial and asset investigations. The Interpretative Note to Recommendation 30 mentions that in addition to LEAs, other competent authorities (such as authorities that have the responsibility for pursuing financial investigations of predicate offences) should be considered when such multidisciplinary groups are established. In this regard, it is important to note that besides the anti-corruption authorities, no other competent authority, including the FIU, has been explicitly mentioned among these competent authorities.

Recommendation 40 deals with other forms of international cooperation, including with the exchange of information between FIUs, LEAs and non-counterparts. Regarding the later, the Interpretative Note to Recommendation 40 requires countries to permit their competent authorities to exchange information indirectly with non-counterparts and incites countries also to permit a prompt and constructive exchange of information directly with non-counterparts. The text of Recommendations 29, 30 and 40 and paragraph 2 of Recommendation 31 is provided in box 2.5.

Endnotes

1. For example, the 1988 Vienna Convention, the 1999 UN International Convention for the Suppression of the Financing of Terrorism, the Strasbourg Convention, and the Warsaw Convention.
2. Article 7 of the Directive regulates member states' obligations related to the national ML/TF risk assessment.
3. In addition, the FATF Methodology in Immediate Outcomes 1, 2, 6, and 7 provides further guidance as to how to evaluate whether countries have effectively implemented Recommendations 2, 29, 30, 31, 40 and some other Recommendations. Furthermore, in June 2016 the FATF launched a project on Inter-Agency Information Sharing, with the purpose of identifying:
 - The relevant authorities that play key roles in the sharing of counter-terrorist (CT) and counterterrorist financing (CFT) information
 - The most relevant types of information collected and how this is done in practice
 - The uses of financial information to build financial (and other) profiles and map networks
 - The challenges and good practices associated with the sharing of CT/CFT information
 - Big data tools and analytics.While recognizing the importance of this FATF project and its potential relevance for this publication, at the time this publication was written, the results of this project were not yet publicly available and could therefore not be taken into account.
4. The FIUs were established to receive and analyze the Suspicious Transaction Reports (STRs) and other information related to money laundering, associated predicate offences, and terrorist financing, and disseminate the results of their analysis to the competent authorities. See Verhelst (1998).

Recommendation 29-Financial Intelligence Units

Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.

Recommendation 30-Responsibilities of Law Enforcement Authorities and Investigative Authorities

Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT policies. At least in all cases related to major proceeds-generating offences, these designated law enforcement authorities should develop a pro-active parallel financial investigation when pursuing money laundering, associated predicate offences and terrorist financing. This should include cases where the associated predicate offence occurs outside their jurisdictions. Countries should ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Countries should also make use, when necessary, of permanent or temporary multi-disciplinary groups specialized in financial or asset investigations. Countries should ensure that, when necessary, cooperative investigations with appropriate competent authorities in other countries take place.

Recommendation 31-Powers of Law Enforcement and Investigative Authorities

2. Countries should ensure that competent authorities conducting investigations are able to use a wide range of investigative techniques suitable for the investigation of money laundering, associated predicate offences and terrorist financing. These investigative techniques include: undercover operations, intercepting communications, accessing computer systems and controlled delivery. In addition, countries should have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts. They should also have mechanisms to ensure that competent authorities have a process to identify assets without prior notification to the owner. When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able to ask for all relevant information held by the FIU.

Recommendation 40-Other Forms of International Cooperation

1. Countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing. Countries should do so both spontaneously and upon request, and there should be a lawful basis for providing cooperation. Countries should authorise their competent authorities to use the most efficient means to cooperate. Should a competent authority need bilateral or multilateral agreements or arrangements, such as a Memorandum of Understanding (MOU), these should be negotiated and signed in a timely way with the widest range of foreign counterparts.

2. Competent authorities should use clear channels or mechanisms for the effective transmission and execution of requests for information or other types of assistance. Competent authorities should have clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information received.

CHAPTER 3

Recommendations

Through analysis of the responses received from FIUs and LEAs (as reported in chapter 5) and feedback provided during two workshops with FIU and LEA practitioners, this report identifies a number of issues that may affect the effective cooperation among the FIUs and LEAs, and practices that may strengthen such cooperation. This report contains 17 recommendations derived from international AML/CFT standards and best practices that are intended to provide guidance with respect to some key issues that arise from the study. These recommendations are available to FIUs and LEAs that want to improve their legal and operational arrangements as well as make their existing mechanisms for cooperation and coordination more effective. The recommendations are also intended for the Egmont Group and other international organizations involved in drafting of international AML/CFT standards, monitoring their effective implementation, or providing guidance for their members.

Recommendation 1

FIUs should be authorized to obtain (under receipt, obtainment, and/or access modes) information¹ held by all relevant national law enforcement authorities, including from the police, customs authorities, tax authorities, immigration, anti-drug agencies, anti-corruption agencies, and intelligence services.

The survey results presented in chapter 5 show that while in most jurisdictions the FIUs have access to or may obtain information from all relevant LEAs, there are a considerable number of FIUs that are not authorized to obtain relevant information from customs authorities (3 percent of FIUs), tax authorities (14 percent of FIUs), immigration authorities (19 percent of FIUs), intelligence services (25 percent of FIUs), anti-corruption agencies (33 percent of FIUs), and anti-drug agencies (36 percent of FIUs).

The Financial Action Task Force (FATF) Recommendation 29 and the related Interpretative Note do not list the authorities from which the FIUs should be able to collect the law enforcement information. Nevertheless, it seems logical that the criteria for including a particular LEA in such a list should depend on:

- Whether the LEA is responsible for investigating money laundering, related predicate offences, or terrorist financing, and/or
- Whether the LEA holds data relevant for the FIU work.

While it is understandable that not all existing LEAs should be included in this list, providing specific examples of LEAs could be useful for those jurisdictions that are facing problems in this regard. These examples take into account the fact that, in most countries, LEAs are responsible for dealing with criminal offences related to tax and other types of frauds, corruption, human trafficking, and terrorism (that is, offences that are also relevant from the perspective of FIU's portfolios).

Recommendation 2

FIU access to domestic LEA information should not be subject to a mandatory Memorandum of Understanding (MoU).

The survey shows that almost one-third (30 percent) of FIUs must sign a MoU with the competent LEAs to be able to obtain information. These FIUs perceive this mandatory provision as an unnecessary legal requirement that causes delays in obtaining the relevant law enforcement information.

In practice, most MoUs facilitate solutions regarding the technicalities of cooperation between the FIUs and LEAs and allow the FIUs to request information from LEAs without explaining a legal basis for each individual request. However, in most jurisdictions these MoUs are not mandatory but rather the statements of policy concerning access to information.

Recommendation 3

The FIUs should have direct access to all relevant information kept by LEAs. When this is not possible due to the technical reasons (such as non-compatibility of IT systems, lack of integrated data basis, or manual storage of LEA data), the FIUs should be authorized to receive relevant information within 14 days. In urgent cases, a deadline to receive LEA information should be within 3 days.

In a significant number of jurisdictions, the FIUs have either direct access to some information held by LEAs (8 percent of FIUs) or both direct and indirect access (57 percent of FIUs). The remaining 35 percent of FIUs have only indirect access to LEAs information. The average time needed for these FIUs to receive information from LEAs is:

- 3 to 7 days (21 percent of FIUs)
- 7 to 14 days (35 percent of FIUs)
- More than 14 days (33 percent of FIUs).

In this regard, 74 percent of FIUs stated that the preferred and realistic time for receiving LEA information is less than 14 days.

FIUs identified the following reasons for not having direct access to relevant LEA information:

- Technical issues (58 percent of FIUs)
- Legal restrictions and data protection issues (37 percent of FIUs)
- Data stored manually (6 percent of FIUs)
- Other (13 percent of FIUs).

The proposed recommendation takes into account the findings of the survey and some additional important arguments. FATF Recommendation 29 and the related Interpretative Note stipulate that the FIUs should have access on a timely basis to LEA information required to undertake their functions. The survey results clearly indicate that in several jurisdictions, the time needed to receive responses from LEAs is not compliant with this requirement. Furthermore, according to another World Bank–Egmont Group study (Stroligo, Intscher, and Davis-Crockwell 2013), around 70 percent of all FIUs have a power to suspend/postpone suspicious transactions for a certain—usually short—period of time.² It is difficult to imagine how, in such urgent cases, these FIUs can practically and effectively exercise their power to suspend transactions without having access to at least basic information about the suspect's criminal history. It is therefore crucial that the FIUs should be able to promptly obtain this and other relevant information kept by LEAs.

Recommendation 4

The FIUs should have access to all relevant types of information kept by LEAs, including information on investigations, prosecutions, and convictions and information on criminal records.

FIUs have access to different types of information kept by LEAs, but a significant number of FIUs do not have access to the following data:

- Operational information (52 percent of FIUs)
- Data on mutual legal assistance (37 percent of FIUs)
- Information on persons suspected and/or convicted of committing an administrative offence (36 percent of FIUs)
- Data maintained by Interpol (31 percent of FIUs)
- Information on documents and/or other evidence seized and analyzed (30 percent of FIUs)
- Data on modus operandi (27 percent of FIUs)
- Information on results of the financial investigation of predicate offences (25 percent of FIUs)
- Data on amounts of suspected proceeds generated by criminal offences (22 percent of FIUs)
- Tax information (19 percent of FIUs)
- Immigration information (12 percent of FIUs)
- Customs information (7 percent of FIUs).

When asked to which data they would need access, 42 percent of FIUs responded that they should have access to all data mentioned above. However, among the most common pieces of LEA information that the FIUs must have access to, the FIUs mentioned information on investigations, prosecutions, and convictions, and criminal records.

FATF Recommendation 29 and the related Interpretative Note do not specify the type of LEA information that the FIUs should be able to obtain. Instead, the wording “*information that they require to undertake their functions*” is used. Recommendation 4 in this publication is more specific and establishes a minimum threshold that is in line with the majority of FIU expectations and current practices.

Recommendation 5

When an FIU is requesting or accessing information from LEAs on behalf of a foreign FIU, no unduly restrictive conditions should apply, such as the need for a mutual legal assistance request or a Memorandum of Understanding (MoU).

The study indicates that some FIUs impose certain conditions when an FIU is requesting or accessing information from domestic LEAs on behalf of a foreign FIU. In this regard, most respondent FIUs mentioned the requirement to send a mutual legal assistance request, to sign a MoU, or to obtain a prior consent from LEAs.

FATF Recommendation 40 and the related Interpretative Note require FIUs to have the power to exchange:

- All information required to be accessible or obtainable directly or indirectly by the FIU under FATF Recommendations, in particular under Recommendation 29; and
- Any other information that they have the power to obtain or access, directly or indirectly, at the domestic level, subject to the principle of reciprocity.

Considering the international standards, some of the above-mentioned conditions are indeed unreasonable. While seeking consent from LEA that provides information seems to be logical, because the LEA is the owner of information, the other two conditions are unduly restrictive. Requiring a mutual legal assistance request or a previously signed MoU³ in such cases creates unnecessary barriers that could prevent timely exchange of information.

Recommendation 6

FIUs should be authorized to disseminate their information to competent domestic authorities when their analysis shows that there is no suspicion of money laundering, associated predicate offences, or terrorist financing, but they have grounds to suspect that:

- **Other (at least serious) criminal offences were committed; or**
- **Administrative offences related to noncompliance with the AML/CFT legislation were committed.**

The survey shows that 15 percent of FIUs are not authorized to disseminate information to competent domestic authorities when their analysis shows that there is no suspicion of money laundering or terrorist financing, but they have grounds to suspect that other criminal offences were committed. This was also confirmed by LEAs in their responses to the questionnaire, where more than half of LEAs (56 percent) indicated that they do not receive information/reports from FIUs related to other criminal offences not associated with ML/TF.

A much higher number of FIUs (70 percent) reported that they may disseminate information to competent state authorities when they suspect that an administrative offence or a misdemeanor was committed. Some respondent LEAs (15 percent) mentioned that they are also recipients of such information.⁴

Both mentioned issues are not directly addressed by international standards. However, their logical interpretation may help understand the rationale of the proposed recommendation. FATF Recommendation 20 requires the obliged entities to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of criminal activity, or are related to terrorist financing. This means that FIUs are receiving Suspicious Transaction Reports related to any criminal offence, including those where the perpetrators have only attempted to commit an offence and where no money laundering or terrorist financing suspicion exists.⁵ It is therefore logical that in such cases, where the FIU analysis shows that there is a suspicion that funds are the proceeds of crime, FIUs should be authorized to report their findings to the competent LEAs. The proposed solution is also in line with international personal data protection standards.⁶

On the other hand, it is less logical that FIUs are dealing with the administrative offences that go beyond the identified non-compliance with the AML/CFT obligations. As regards the latter, only the FIUs can sometimes identify breaches of the AML/CFT legislation such as Suspicious Transaction Reports (STRs)/Suspicious Activity Reports (SARs)/Currency Transaction Reports (CTRs) with incomplete data or reports received after the prescribed timeline. In such cases, the FIUs should be allowed to report their findings to competent supervisory authorities, so that actions can be taken against the obliged entities and the responsible persons involved in committing these administrative offences. However, also requiring the FIUs to report their suspicion to the competent bodies that other administrative offences (not related to breaches of AML/CFT legislation) were committed would clearly be contrary to the personal data protection standards and against the main objectives of establishing the FIUs with the unique powers to be used for combating money laundering, associated predicate offences, and terrorist financing.

Recommendation 7

The legislation should clearly determine the recipients of FIU information/reports that contain confidential data.

FIU information, and in particular analytical reports, almost always contain data that fall under the state, official, banking, and/or other types of professional secrecy. The FATF Interpretative Note to Recommendation 29 therefore requires that information received, processed, held, or disseminated by the FIU must be securely protected, exchanged, and used only in accordance with agreed procedures, policies, and applicable laws and regulations.

The survey shows that the legislation explicitly determines the recipient of FIU information in only about half the respondent jurisdictions (52 percent), while in other jurisdictions (48 percent) different mechanisms are in place that help determine the recipient authorities. The recommendation addresses this legal uncertainty and ensures that the recipients of FIU information and analytical reports are known in advance.

Recommendation 8

The legal status of FIU information disseminated to LEAs and/or other competent authorities should be regulated in legislation. When (re)designing their legal systems, countries should consider all the pros and cons of different regimes regarding the legal status of the FIU information.

In a slight majority of jurisdictions (58 percent), the FIU information/reports can only be used by the recipient as intelligence, thus following the minimal international standards. In 37 jurisdictions (41 percent), FIU information and documents can either be used as evidence in the criminal procedure or this depends on the content of information and/or the recipient. Similarly, 60 percent of LEAs reported that they can use the FIU information only as intelligence, while less than one-third of LEAs (29 percent) mentioned that they can use the FIU information/reports as both intelligence and evidence, depending on the content of the information (for example, whether the FIU information is related to ML/TF or only to other criminal offences).

One would logically expect that this highly important decision regarding the legal status of FIU information is regulated in legislation. However, the survey showed that this is not the case in more than one-third of respondent jurisdictions (36 percent). Furthermore, the survey identified several advantages and disadvantages of different existing regimes related to the legal status of FIU information. Countries are invited to take into account all the pros and cons in order to take a more informed decision in this regard, thus not necessarily being bound by *de minimis* international standards.

Recommendation 9

The legislation should specify conditions allowing for a withdrawal of confidentiality of FIU information, when appropriate.

The survey data collected in this study shows that in a vast majority of jurisdictions (91 percent), the legislation requires that FIU information disseminated to LEAs be treated as confidential. Interestingly, however, most FIUs failed to provide a response regarding the conditions allowing for a withdrawal of confidentiality. In addition, only 13 percent of LEAs reported that they have stipulated conditions to allow a withdrawal of confidentiality.

The recommendation above follows up on the FATF Interpretative Note to Recommendation 29 and invites countries to adopt the necessary rules and procedures allowing for a withdrawal of confidentiality of FIU information/reports.

Recommendation 10

Competent LEAs should be able to ask for all relevant information held by the FIU when conducting investigations of money laundering, associated predicate offences, and terrorist financing.

Both surveys, quite surprisingly, identified a small number of jurisdictions (less than 10 percent) where competent LEAs do not have the authority to request information from the FIU. This recommendation strictly follows FATF Recommendation 31, which regulates the right of competent LEAs to ask for relevant information held by the FIU when they are conducting investigations of money laundering, associated predicate offences, and terrorist financing.

Recommendation 11

The LEA's request for information held by the FIU should explain the background of request and, at minimum, the following information should be included in the request:

- **Legal basis**
- **Description of a case (including what triggered the LEA's interest in a particular case/person), and**
- **Reasons for suspicion of money laundering, associated predicate offences, or terrorist financing.**

The survey shows that while in most jurisdictions the LEAs must explain the background of their request to the FIU, in 10 percent of jurisdictions LEAs are not required to provide any explanations.

For the FIU to be able to assess whether the LEAs request for information meets the criteria contained in FATF Recommendation 31 (for example, that the case is related to money laundering, associated predicate offences or terrorist financing) it is crucial that background for the LEA request is provided, containing at least the legal basis, a description of a case, and reasons for suspicion of money laundering, associated predicate offences, or financing of terrorism. A similar requirement is already in place within the Egmont Group regarding foreign FIUs' requests for information.

Recommendation 12

The power of LEAs and other competent authorities to request information from the FIU should be provided in the legislation, which should clearly identify the competent authorities and specify the conditions that must be met before sending such requests.

According to the FIU survey, in around 10 percent of jurisdictions there is no explicit legal/statutory basis for LEA authority to request information from the FIU. Moreover, in almost half of jurisdictions (48 percent), the FIUs receive requests for information from the LEAs that are sent with respect to investigations on any criminal offence, even if there is no suspicion of money laundering, associated predicate offences, or terrorist financing. In 13 percent of jurisdictions, the FIU is receiving LEA requests that are not crime-related. Similar conclusions could also be drawn based on the LEA responses to the survey, where more than one-third of LEAs (36 percent) reported that they may send a request for information to the FIUs even if there is no suspicion of money laundering, associated predicate offences, or terrorist financing. In addition, 5 percent of LEAs may request information from the FIU even when there is no suspicion of crime at all.

Depending on the content of these LEA requests, and whether the FIUs are obliged to provide information based on such requests, this practice raises some concerns. This stems from the practice potentially being viewed as noncompliant with the international standards and may lead to improper use of the FIU powers.

As mentioned, FATF Recommendation 31 allows LEAs and other competent authorities to request all relevant information held by the FIU when conducting investigations of money laundering, associated predicate offences, and terrorist financing. It is therefore expected, at minimum, that if countries allow their LEAs to request data from FIUs based on other circumstances, this should be clearly regulated in the legislation, which should provide the conditions that must be met before sending such requests. In this regard, it is worth remembering that FIUs were initially created to fight money laundering, and later, terrorist financing. Thus, changing the focus of their work to other criminal offences or areas that are not related to the proceeds of crime may lead to their inability to effectively deal with their core functions.

Recommendation 13

The conditions under which the FIU may conduct the analysis and disseminate information to LEAs or other competent authorities based on their request should be regulated in the legislation.

The survey shows that based on LEA requests, the majority of FIUs (77 percent) usually start carrying out their analysis. However, the specific conditions under which they may or should conduct the analysis exist in less than half of these jurisdictions (30 percent). Furthermore, in more than one-third of jurisdictions (34 percent), the legislation does not provide any conditions for disseminating information to LEAs after receiving their request.

The FIUs have unique powers that are not given to LEAs and other competent authorities and they should be able to use these powers only under strictly regulated circumstances. In their responses, the FIUs provided the following examples of such circumstances and conditions, which are worth being considered by all countries:

- Suspicion of ML/TF.
- Suspicion of serious offence/predicate offence.
- Minimum requirements about the content of the request.
- The requesting authority should be one of the explicitly mentioned authorities.
- The request should be based on the international exchange of information.
- The request should not be related to a case that is already subject to prosecution under the criminal law.

The FIUs also mention the following conditions that they believe should be met to send their information to LEAs based on their requests:

- Suspicion of money laundering, associated predicate offences, or terrorist financing.
- Suspicion of any criminal offence or certain type of criminal offences.

- The use of FIU data should be limited to money laundering, associated predicate offences, terrorist financing or asset forfeiture.

Recommendation 14

The FIU should decide about the priority of incoming LEA information/requests based on objective and/or case-related circumstances.

The survey indicates that the majority of FIUs (72 percent) decide about the priority of incoming information/requests based on objective and/or case-related circumstances. However, 13 percent of FIUs also reported that they give priority to LEA requests, and 12 percent of FIUs to the STRs/SARs/CTRs.

According to FATF Recommendation 29 and the related Interpretative Note, the FIUs should serve as a national center for the receipt and analysis of information from the reporting entities and other information relevant to money laundering, associated predicate offences, and terrorist financing, and for dissemination of the results of their analysis to LEAs and/or other competent authorities. The same standard, and most country practices, also require FIUs to respond to information requests from competent authorities if certain conditions are met. Based on these and other inputs (such as requests received from the foreign FIUs), the FIUs should be able to independently decide about the priority of incoming information/requests by taking into account the objective and/or case-related circumstances.

Recommendation 15

When LEAs request information from FIUs on behalf of a foreign LEA, no unreasonable or unduly restrictive conditions should apply (such as mutual legal assistance requests or requests sent via a foreign FIU).

The analysis of LEA responses to the questionnaire shows that in some jurisdictions special conditions must be met when LEAs request information from FIUs on behalf of foreign LEAs. More than one-third of LEAs (37 percent) mentioned that their FIUs would not respond to such requests, instead instructing the requesting LEA to inform the foreign LEA to send its request via the local FIU (that is, using the FIU-to-FIU network).

While the suggested approach may work well in practice, it can be viewed as problematic vis-à-vis the implementation of FATF Recommendation 40 and the related Interpretative Note. These standards require countries to permit their competent authorities to exchange information indirectly with non-counterparts and even encourage them to permit prompt and constructive exchange of information directly with non-counterparts.

It is clear from the previous discussion that FIUs should be able to respond to requests received from domestic LEAs on behalf of foreign LEAs when certain conditions are met (for example, the request is related to money laundering, associated predicate offences or terrorist financing, and the requested assistance would not impede an ongoing inquiry, investigation, or proceeding). Advising the requesting foreign authority to use the mutual legal assistance or FIU channels in such cases would undoubtedly cause delays in providing assistance and can therefore be viewed as unreasonable or unduly restrictive. Therefore, requiring the foreign LEA to inform its local FIU before sending such request via LEA channels would certainly be advisable.

Recommendation 16

LEA direct access to FIU data/information, if allowed, should be regulated in legislation. When deciding about the type of data/information that LEA may have direct access to, countries should take into account the international requirements related to operational independence of FIUs, as well as the security and confidentiality of data/information.

The survey identified a potentially problematic practice related to LEAs' direct access to FIU data and information. A small number of LEAs (23 percent) reported that they have direct access to FIU data/information. Of these, only a slight majority of LEAs (57 percent) reported that they have an explicit legal basis for such access.

A more detailed analysis of LEAs responses to the survey shows that a significant number of LEAs have direct access to Currency Transaction Reports (61 percent), reports of cross-border transportation of cash or bearer instruments (43 percent), Wire Transfer Reports (21 percent), and Threshold Transaction Reports (18 percent).

Moreover, surprisingly, the highest level of response is related to LEAs' direct access to STRs/SARs, where 27 LEAs (96 percent) reported they have such access, and more than one-third of LEAs (36 percent) also reported they have direct access to FIU analytical reports.

The international standards regulate FIU mandate, functions, access to information, information security, and confidentiality, Egmont membership, and international cooperation.⁷ They also require countries to ensure that FIUs are operationally independent and autonomous, including when information shall be forwarded or disseminated to competent authorities. Moreover, FATF Recommendation 31 clearly determines when LEAs or other competent authorities may request information from FIU.

The recommendation acknowledges the fact that the above-mentioned FATF standards do not explicitly regulate LEAs' direct access to FIU information. However, it also invites countries to consider these standards when making arrangements that may negatively affect the operational independence of FIUs and their obligations to protect the confidentiality of data. While there are some arguments supporting LEA access to Currency Transaction Reports, reports on cross-border transportation of cash or bearer instruments, Wire Transfer Reports, and Threshold Transaction Reports,⁸ LEAs' direct access to STRs/SARs and FIU analytical reports is viewed as problematic in terms of the operational independence of FIUs and the security and confidentiality of data. In any case, it is unacceptable that LEA direct access to FIU data, if allowed, is not regulated in legislation.

Recommendation 17

LEAs and other recipients of FIU information should provide adequate, appropriate, and timely feedback to FIUs on the use of information. In this regard, an acknowledgement by LEAs of receipt of FIU information is not deemed to be sufficient. The obligation to provide feedback may be a legal requirement or may depend on other manners of cooperation between FIUs and recipients of their information (such as memoranda of understanding, MoUs).

The survey shows that most FIUs (87 percent) receive feedback from LEAs on the use of their information. In 30 jurisdictions (38 percent), providing feedback to the FIU is a legal obligation. In 43 jurisdictions (54 percent), providing feedback is not a legal requirement. In 11 jurisdictions (14 percent), different forms and ways of cooperation are in place.

Regarding the type of feedback, a large majority of FIUs (87 percent) indicated that "specific feedback" (that is, "case by case" information) was provided. Near half FIUs (44 percent) receive "general feedback", and a similar number of FIUs (42 percent) only receive an acknowledgement by LEAs of receipt of information.

The study also indicates that the quality of feedback is considered inadequate by 42 percent of respondent FIUs, and 35 percent of FIUs also reported they do not receive feedback in a timely manner.

The FATF regulates feedback in Recommendation 34, yet this recommendation only requires competent authorities and supervisors to provide feedback (and guidance) to financial institutions and other obliged entities. Nevertheless, the FATF indirectly deals with providing feedback to FIUs in its Methodology under Immediate Outcome 6. This standard requires a measurement of effectiveness of FIU work and how well the FIU analysis and dissemination is supporting the operational needs of competent authorities.⁹ Adequate, appropriate, and timely feedback to FIU is one of the key tools employed to satisfy the requirements of this standard. The acknowledgment by LEAs of receipt of FIU information, while useful, cannot serve the above-mentioned purpose. Therefore, it is recommended that providing other types of general and/or specific feedback be considered.

Endnotes

1. “Information” means any information that the FIUs require to properly undertake their functions.
2. This power is also regulated in the 2005 Warsaw Convention. See Articles 14 (domestic postponement) and 47 (international postponement).
3. In this regard, see Recommendation 2.
4. The smaller number of LEAs indicating that they receive such reports is logical because the LEAs are usually not authorized to deal with the administrative offences or misdemeanors, and these reports are usually sent to competent supervisory bodies.
5. The value of STRs cannot be understated. Reporting by, often regulated, institutions may in isolation mean any offence is not necessarily apparent, but when assessed alongside other information obtained from LEAs and other sources the STR may illustrate clear and defined crimes.
6. See Article 6, paragraph 1, item b) of the 1995 Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data, which determines that personal data may be collected for specified, explicit, and legitimate purposes and not further processed in a way incompatible with those purposes.
7. See FATF Recommendations 29 and 40 and the related Interpretative Notes.
8. In some countries, LEAs direct access to Currency Transaction Reports and Wire Transfer Reports is allowed because it can shorten the time needed to find out if and where a suspect has a bank account, so that a production order can be issued targeting only a specific bank instead of all banks in a particular country.
9. See Core Issues to Be Considered in Determining If the Outcome Is Being Achieved—6.1, 6.3, and 6.4 in the 2013 FAFT Methodology.

CHAPTER 4

Examples of Good Practices

The study presented in chapter 5 identifies three additional areas that are addressed in this chapter by providing examples of good practices developed in some jurisdictions. These good practices are related to:

- FIUs' role in financial investigations
- Mechanisms for cooperation between FIUs and LEAs/prosecutors, and
- Legal and operational issues related to the use of liaison officers.

FIUs' Role in Financial Investigations

Of 90 responding FIUs, 52 FIUs (58 percent) reported that they play an active role in financial investigations conducted by the competent LEAs. This was also confirmed by 55 LEAs (45 percent of respondents). FIUs participation in financial investigations is mandatory in only around 10 percent of jurisdictions, while in most jurisdictions this is either optional or depends whether certain criteria are met.

As regards the international standards related to financial investigations, FATF Recommendation 30 and the related Interpretative Note require that the range of LEAs and other competent authorities be considered when making use of multidisciplinary groups in financial investigations. However, among the competent authorities, the Interpretative Note only includes authorities that are not LEAs *per se* but that have responsibility for pursuing financial investigations of predicate offences, to the extent that these authorities are exercising functions covered under Recommendation 30.

According to the ECORYS2015 *Report on Needs Assessment on Tools and Methods of Financial Investigation in the European Union*,¹ financial investigations should be applied across all stages of the criminal investigations and judicial proceedings: from a proactive identification of crime or criminal networks, to case investigations and evidence building, up until prosecution and conviction of offenders (ECORYS 2015, 10). The report also identifies the FIU information as one of the most frequently occurring triggers for a financial investigation (ECORYS 2015, 10).

Based on the above considerations, the following criteria for the FIU's involvement in financial investigations could be considered as a matter of good practice:

- When the financial investigation is based on FIU information/report, it would make sense for the FIU to continue working with the competent LEA and actively participating in the financial investigation, if it can contribute to the success of the case.
- The FIUs' inclusion in financial investigations carried out by LEAs/prosecutors should not be mandatory. The final decision as to whether the FIU shall take part in such financial investigation should remain with the FIU.²

Mechanisms for Cooperation between FIUs and LEAs/Prosecutors

As mentioned, international and regional standards require countries to establish effective mechanisms for cooperation between the competent national authorities, yet they do not provide or refer to any particular mechanism. In this regard, the survey identified the following mechanisms that are used in several jurisdictions to strengthen the cooperation between the FIU and competent LEAs/prosecutors:

- LEAs and/or FIU's staff serving as a liaison officer.³
- Designating contact points in FIUs and competent LEAs to deal with operational and other bilateral issues of common interest.
- Periodic meetings, and daily and direct formal and informal contacts, to provide a forum for exchange of case-related information, obtain feedback, discuss practical problems and obstacles, and promote training activities.
- Signing of bilateral or multilateral Memoranda of Understanding (MOUs) between FIUs and competent LEAs. MOUs are mostly used in jurisdictions where the FIUs are not located at LEAs. They are usually intended to enhance the exchange of information. Often such MOUs also seek to establish specific "inter-agency mechanisms" to improve the cooperation and coordination of activities between the parties.
- Establishing joint working groups or task forces to deal with operational/case-based issues (such as joint analysis and/or investigation of complex money laundering and terrorist financing cases) or other, more strategic issues (such as assessing the risk of money laundering and financing of terrorism on a national level, developing IT solutions for sharing of information, and the like).
- Holding joint trainings, including exchange of staff for training purposes and promoting internship programs.
- Conducting internal surveys to understand the FIUs' needs and how to improve cooperation with the FIUs.

Legal and Operational Issues Related to the Use of Liaison Officers

The survey identified the use of liaison officers seconded in the FIU or in the LEA or in both as one of the most effective mechanisms of cooperation. Of 89 respondent FIUs, almost one-third (25, or 28 percent) indicated that they have the LEA's liaison officer seconded to their FIU.⁴ Not surprisingly, most of these FIUs are administrative-type FIUs. The following good practices are worth highlighting with regard to the role of the LEAs' liaison officers:

- They are used by FIUs to share intelligence information with LEAs, or to obtain information from the LEAs that is needed to perform the FIUs' tasks.
- Liaison officers act as analysts or are authorized to coordinate joint investigation teams when FIU reports are connected with an ongoing LEA investigation or when detailed and tailored intelligence reports from FIUs are needed.
- The liaison officers also coordinate meetings, organize workshops, and advise FIUs on investigative techniques and other law enforcement issues.

The survey also shows that the number of FIU's liaison officers seconded to LEAs is lower than the number of LEA's liaison officers seconded to FIUs, yet it is still significant. Of 126 respondent LEAs, 24 LEAs (19 percent)

mentioned that they host FIU staff in their agencies. The following tasks of FIU liaison officers were identified as best practices:

- Following up on cases reported by FIU to LEA
- Supporting LEAs through operational financial analysis of cases under investigation
- Coordinating actions during joint investigations
- Acting as facilitators during the exchange of information
- Facilitating cooperation related to strategic analyses
- Supporting LEAs in providing feedback to FIUs
- Training LEAs on financial intelligence tools.

In the majority of cases, the role and legal status of liaison officers is regulated in the MoU or similar written agreement signed by the FIU and competent LEA. Only few jurisdictions stipulate this in legislation.

Endnotes

1. ECORYS is a leading European research and consulting company. See more on <http://www.ecorys.com/>.
2. A mandatory inclusion of FIU(s) in financial investigations could be interpreted as being against the international standard related to the operational independence of FIUs (FATF Recommendation 29 and the related Interpretative Note) and could also negatively affect the FIU's ability to effectively carry out its core functions.
3. See more about the legal status and tasks of Liaison Officers in the next example of good practices.
4. Not all seconded staff play the role of a liaison officer.

CHAPTER 5

Study with the Findings and Analysis

Methodology

Questionnaires and Workshops

In February 2015, during the Egmont Group meeting in Berlin, Germany, the World Bank and the Egmont Group agreed to conduct a project on *FIUs Working with Law Enforcement and Prosecutors*. To this end, a joint project team was established, and a concept note was approved. In January 2017, during the Egmont Group meeting in Doha, Qatar, the United Nations Office on Drug and Crime, Global Programme against Money-Laundering (UNODC GPML) joined the project team.

During the first phase, in December 2015, a questionnaire covering various aspects of cooperation between the Financial Intelligence Units (FIUs) and law enforcement authorities and prosecutors (LEAs) was sent to 151 FIUs that were Egmont Group members. Responses were received from 91 FIUs (60 percent of Egmont members). Based on the result of the FIUs' survey, a report was drafted in June 2016 and presented to the Egmont Information Exchange Working Group (IEWG) during its meeting in Paris in October 2016. This report also served as a basis for identifying some potentially problematic issues and for drafting the first set of recommendations that were presented during the workshop in Doha on January 29, 2017. The workshop was held during Egmont Group meetings and was attended by around 70 representatives of FIUs from 37 jurisdictions and international organizations. The participants supported the proposed recommendations and expressed their views regarding all issues identified as potentially problematic.

During the second phase, in May 2016, the second questionnaire consisting of 39 questions related to the same aspects of cooperation between FIUs and LEAs was sent to 151 FIUs that were Egmont Group members. The FIUs were asked to forward the questionnaire to their domestic LEAs that are recipients of their information/reports or have access to their data. The questionnaire was sent also to Europol, which forwarded it to its members. Responses were received from 130 LEAs located in 58 jurisdictions (38 percent of Egmont members). Based on the findings, a report was prepared, and additional recommendations were added to the first set of recommendations. A second workshop was held on May 30, during the plenary meeting of the Council of Europe Select

Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) in Strasbourg. At the meeting, the project team presented all issues identified together with the newly added recommendations. The workshop was attended by around 51 representatives of FIUs, law enforcement authorities, and prosecutors from 30 jurisdictions and international organizations. Their comments were taken into account when preparing the final set of recommendations presented in this report.

Overview of Responses

FIUs' Responses

The questionnaire was sent to 151 Egmont Group members and responses were received from 91 FIUs. The response rate was 60 percent and within the minimum response rate agreed by the World Bank and the Egmont Group.

The respondent FIUs are representative of the overall population of FIUs on dimensions such as type and size of FIU, date of establishment, and geographic representation (tables 5.1–5.4).

| TABLE 5.1 | | Type of Respondent FIUs |
|--------------------|--------------------|-------------------------|
| Type of FIU | Number (%) of FIUs | |
| Police | 15 (16) | |
| Administrative | 59 (65) | |
| Prosecutorial | 1 (1) | |
| Hybrid | 11 (12) | |
| Other ^a | 5 (6) | |

a. Of five FIUs that responded "Other," four provided further information. Other types of FIU include those that are part of wider law enforcement community, not only the police (at least one of those categorized as a police FIU also fits in this category); one FIU that is part of the wider intelligence and counter-intelligence community; and one FIU that is a hybrid administrative/judicial FIU.

| TABLE 5.2 | | Size of Respondent FIUs |
|-----------------------|--------------------|-------------------------|
| Size of FIU | Number (%) of FIUs | |
| Small (<50 staff) | 63 (69) | |
| Medium (50–100 staff) | 15 (17) | |
| Large (>100 staff) | 13 (14) | |

| TABLE 5.3 | | Date of Establishment of Respondent FIUs |
|-----------------------|--------------------|--|
| Date of establishment | Number (%) of FIUs | |
| 1990s and earlier | 31 (37) | |
| 2000–14 | 29 (34) | |
| 2005–09 | 23 (27) | |
| 2010 to the present | 2 (2) | |

Note: Six FIUs did not respond to this question.

TABLE 5.4

Geographic Representation of Respondent FIUs

| Egmont Group geographic regions | Number (%) of FIUs |
|---------------------------------|--------------------|
| Europe I | 28 (31) |
| Europe II | 16 (18) |
| Asia & Pacific | 15 (17) |
| Americas | 12 (13) |
| Middle East & North Africa | 7 (8) |
| Eurasia | 5 (5) |
| East & South Africa | 5 (5) |
| West & Central Africa | 3 (3) |

LEAs' Responses

The responses were received from 130 LEAs located in 58 jurisdictions. The response rate was 38 percent and within the minimum response rate agreed by the World Bank, the Egmont Group, and the UNODC GPML.

The respondent LEAs are representative of the overall population of LEAs on dimensions, such as type and attribute of LEA, and the body to which the LEA is administratively subject (tables 5.5–5.7).

TABLE 5.5

Type of Respondent LEAs

| Type of LEA | Number (%) of LEAs |
|------------------------|--------------------|
| Prosecutor's Office | 20 (15) |
| Police | 59 (45) |
| Financial police | 14 (11) |
| Customs authorities | 16 (12) |
| Tax authorities | 12 (9) |
| Intelligence services | 16 (12) |
| Immigration | 2 (2) |
| Anti-corruption agency | 10 (8) |
| Anti-drug agency | 10 (8) |
| Other ^a | 12 (9) |

Note: Twenty of the LEAs that responded to the survey provided more than one answer to this question. For this reason, the numbers in this table do not correspond to the number of survey responses received. Thus, the percentages in this table relate to the number of answers that were provided to this question, which totals 172, rather the total number of survey responses.

a. Of the 12 LEAs that responded "other," a variety of different types of LEAs were listed. These included one hybrid (judicial/police) LEA, as well as LEAs concerned with anti-money laundering, anti-human trafficking, fraud and corruption investigation, security service, border security, and internal security.

| TABLE 5.6 Attributes of LEAs | |
|------------------------------|--------------------|
| Attribute of LEA | Number (%) of LEAs |
| National | 120 (92) |
| Local | 13 (10) |
| Other ^a | 5 (4) |

*Note: Seven LEAs provided more than one response to this question.
a. Of the five LEAs that responded "other," one did not provide any additional information. For the LEAs that did respond, one stated that it was a state LEA, one described itself as transnational, one related to courts taking cases, and another stated that due to the number of end-users it was not possible to provide a single answer to the question.*

| TABLE 5.7 Body to Which the LEAs Are Administratively Subject | |
|---|--------------------|
| LEA is housed in: | Number (%) of LEAs |
| President's Office | 12 (9) |
| Prime Minister's Office | 5 (4) |
| Ministry of Justice | 14 (11) |
| Ministry of Interior | 41 (32) |
| Ministry of Finance/Treasury | 19 (15) |
| Financial Supervisory Service | 1 (1) |
| Intelligence service | 8 (6) |
| General Prosecutor's Office | 15 (12) |
| Other ^a | 30 (23) |

*Note: Eight LEAs that responded to the survey provided more than one answer to this question.
Of the 30 LEAs that responded "other," 11 listed entities that were already categorized. Other bodies that LEAs are administratively subject to include governors, the Chief Executive of the Government, the Ministry of Defense, Security Services, Parliament, the judiciary, the Minister of Police or Police Commission, the Ministry of Business, and independent bodies.*

Explanatory Note on Number of Responses

Although 91 FIUs and 130 LEAs responded to this survey, in many instances the numbers reported on a particular issue or question do not necessarily add up to 91 and 130. This is due to the following reasons:

- Not all FIUs and LEAs responded to every survey question.
- Some questions permitted more than one answer to be chosen.
- Some respondents marked several choices where only one was expected.
- Sometimes respondents chose "Other" but failed to explain what that meant.
- On some open-ended questions, many different responses were received, but only some of them were used in the report.
- Four jurisdictions (Estonia, Kyrgyz Republic, Mali, and Serbia) included responses from multiple LEAs (in all, from 22 LEAs).
- Some responses were provided in languages other than the required English language and some were difficult to understand; therefore, not all written explanations were considered in the analysis.

- In some cases, the first part of a question was answered, but no responses were given to sub-questions, or vice versa.

Description and Findings Based on FIUs’ Responses

The responses to the questionnaire analyzed in this part of the report are focused on the following thematic headings:

- FIU Access to Domestic Law Enforcement Information
- Spontaneous Dissemination
- Dissemination upon Request
- Feedback
- General Comments and Observations

FIU Access to Domestic Law Enforcement Information

This section reports on whether and under which conditions the FIUs are authorized to collect, directly or indirectly, on a timely basis all relevant information kept by domestic law enforcement authorities/prosecutors (LEAs)

Authority to Collect Information from LEAs

FIUs were asked if they are authorized to collect information kept by the relevant national law enforcement authorities (under receipt, obtainment and/or access modes) and all 91 FIUs responded positively to this question. They also indicated from which LEAs they may collect information and their responses are presented in table 5.8.

| TABLE 5.8 LEAs from which the FIU May Collect Information | |
|--|--------------------|
| LEA is housed in: | Number (%) of LEAs |
| Police | 90 (99) |
| Customs authorities | 88 (97) |
| Tax authorities | 78 (86) |
| Immigration | 74 (81) |
| Intelligence services | 68 (75) |
| Anti-corruption agency | 61 (67) |
| Anti-drug agency | 58 (64) |
| Other | 52 (57) |

| Other LEAs specified^a | |
|---|----|
| Prosecutor’s Office ^b | 12 |
| Supervisory/regulatory bodies | 8 |
| Judiciary | 8 |
| All public and private entities | 4 |
| State register of real estate | 3 |
| All state entities | 3 |

| Other LEAs specified ^a | |
|--|---|
| Counter-terrorism agency | 2 |
| Coast guard | 2 |
| Military police | 2 |
| Interpol | 2 |
| Aircraft registry | 1 |
| All competent authorities | 1 |
| All specialized units such as organised crime units | 1 |
| Border guard | 1 |
| Charities commission | 1 |
| Company registry | 1 |
| Forestry department | 1 |
| Investigation committee | 1 |
| Ministry of Social Development | 1 |
| National anti-crime unit | 2 |
| National bank | 1 |
| Serious fraud office | 1 |
| State registry of legal persons | 1 |
| Vehicle registry (cars and boats) | 1 |
| Various (state general controllership, patrimonial records, administration department, mutual legal assistance database, judiciary and/or courts, Accident Compensation Corporation) | 5 |

a. Some FIUs listed more than one body under this heading and not all listed bodies appear to be LEAs. In addition, references under this heading, which repeat one or more bodies specified in the list provided in the questionnaire, have been discounted because they are included in the upper part of the table.

b. This also includes any instances where FIUs have specified the Attorney General's Office as a source of information.

Table 5.8 shows that only one FIU is not authorized to collect information from the police, while only three FIUs do not collect information from customs authorities. The number of responses related to the collection of information from anti-corruption and anti-drug agencies is relatively lower, but this might be explained by the fact that not all jurisdictions have established dedicated agencies with these specific responsibilities. Overall, it can be concluded that the majority of FIUs are authorized to obtain information from all relevant LEAs.¹

Table 5.9 presents a breakdown of FIU's responses according to the type of FIU.

| TABLE 5.9 | | List of LEAs from which the FIU May Collect Information (Responses by Type of FIU) | | | | | | |
|-------------------|--------|--|-----------------|-----------------------|-------------|------------------------|------------------|-------|
| Type of FIU | Police | Customs authorities | Tax authorities | Intelligence services | Immigration | Anti-Corruption Agency | Anti-Drug Agency | Other |
| Police (15) | 15 | 15 | 11 | 12 | 12 | 11 | 11 | 8 |
| Admin (59) | 58 | 56 | 54 | 41 | 47 | 39 | 36 | 34 |
| Prosecutorial (1) | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Hybrid (11) | 11 | 11 | 9 | 9 | 9 | 7 | 6 | 9 |
| Other (5) | 5 | 5 | 3 | 4 | 5 | 3 | 4 | 0 |

Table 5.9 shows that almost one-third (27 percent) of police-type FIUs are not authorized to collect information from tax authorities, and a similarly large proportion (31 percent) of administrative-type FIUs cannot collect information from the intelligence services. However, the overall trend suggests that the type of FIU does not dictate the types of LEAs from which data are collected. The information provided by FIUs has also been by size of FIU, and this analysis suggests that, in general, small and medium size FIUs collect information from fewer sources than large FIUs.

FIUs were also asked to specify what legal and other instrument(s) provide them with the authority to collect information from the LEAs. Their responses are shown in table 5.10.

| TABLE 5.10 | | Number (%) of FIUs |
|----------------------------------|--------------------|--------------------|
| Authority to collect information | Number (%) of LEAs | |
| The AML/CFT law | 81 (89) | |
| The police law | 16 (18) | |
| The law creating the FIU | 14 (15) | |
| The Code of Criminal Procedure | 14 (15) | |
| The law on customs/tax law | 10 (11) | |
| The anti-corruption law | 6 (7) | |
| The law on public prosecution | 5 (5) | |
| Regulation | 12 (13) | |
| Memorandum of Understanding | 20 (22) | |
| Other law/statute | 18 (20) | |

The vast majority of jurisdictions (81, or 89 percent) provide the FIU with authority to collect information through provisions in the AML/CFT Law and a large number of FIUs have authority to collect information by provisions in more than one piece of legislation. Even where FIUs have mentioned the “Other law/statute” category, their narrative responses show that this category mostly includes different forms of AML/CFT or financial crime legislation, which could have easily been included as one of the listed types of legislation.

Interestingly, in almost one-third of jurisdictions (20, or 22 percent) the FIUs also must sign a Memorandum of Understanding with the LEAs regulating the technicalities related to information exchange. Half of these FIUs are small, administrative-type of FIUs. While in practice this legal obligation may facilitate solutions regarding

the technicalities of cooperation between the FIUs and LEAs, it could be also seen as additional and unnecessary legal requirement.

When asked if explanations were required regarding the background of a request when requesting information from LEAs, the FIUs were split in almost two equal parts. Namely, 49 FIUs (54 percent) have to provide an explanation and the remaining 42 FIUs (46 percent) do not.² Table 5.11 shows what type of information the 49 FIUs that responded positively to this question have to include in their request.

| TABLE 5.11 Type of Background Information | |
|---|--------------------|
| Type of background information | Number (%) of LEAs |
| Legal basis of the request | 39 (80) |
| What triggered the FIU's interest in a particular case/person | 34 (70) |
| How the FIU will use the information | 22 (45) |
| Other | 4 (8) |

Six FIUs provided some additional commentary to this question either by way of additional material or by way of clarification of its answers. Of these six FIUs, two stated that the confidentiality of the information is mentioned in each request they make. Another FIU noted that the legal basis of the request and the trigger for its interest are incorporated into the MOUs and, consequently, it is not necessary to provide this information in each request.

A more detailed analysis of responses showed that the type of explanation provided tends to be the same regardless of the type of FIU. For all types of FIU, the legal basis of the request and the reason the FIU's interest was triggered in a particular person/case tend to be the type of information that is provided more frequently and by a large majority of FIUs. Nevertheless, how the information is to be used by the requesting FIU was also indicated as important by almost half of FIUs (22 FIUs, or 45 percent).

FIU Access to LEA Information

The survey examined whether the FIUs have direct or indirect access to LEA information, or both direct and indirect access. Eighty-nine FIUs responded to this question. The results are presented in table 5.12.

| TABLE 5.12 Access to LEA Information | |
|---|--------------------|
| Access to LEAs information | Number (%) of FIUs |
| Direct access | 7 (8) |
| Indirect access | 31 (35) |
| Both direct and indirect access | 51 (57) |
| <i>Note: Eighty-nine FIUs responded to this question.</i> | |

A small number of FIUs (7, or 8 percent) have a direct access to LEAs' information, while a slight majority of FIUs (57 percent) have both direct and indirect access to LEA information. In this regard, the questions arise whether the remaining 31 FIUs that only have indirect access to LEA information are compliant with the international standards³ and best practices and whether they can effectively perform their main task. The survey examined this issue by asking those 82 FIUs (31 and 51 FIUs) that have indirect access to LEA information about the average time needed to collect such information. Eighty-one FIUs responded to this question and provided a variety of time periods, as shown in table 5.13.

TABLE 5.13

Average Time Needed to Collect LEAs' Information

| Average time needed to collect LEAs' information | Number (%) of FIUs |
|--|--------------------|
| < 8 hours | 8 (10) |
| 8 hours–24 hours | 4 (5) |
| 24 hours–3 days | 12 (15) |
| 3 days–7 days | 17 (21) |
| 7 days–14 days | 28 (35) |
| >14 days | 9 (11) |
| Other | 18 (22) |

Note: Eighty-one FIUs of the 82 FIUs that reported that they have indirect access to LEA information (see table 5.12) responded to this question. Some FIUs selected multiple answers.

More than half of FIUs (45 FIUs, or 54 percent) indicated that they need between 3 to 7 days (17 FIUs, or 21 percent) or 7 to 14 days (28 FIUs, or 35 percent) to receive information from the LEAs. Around one-third of FIUs (24 FIUs, or 30 percent) need less than 3 days on average, which can easily be considered as meeting the FIU operational needs. In contrast, a similar number of FIUs (27 FIUs, or 33 percent) need an average of more than 14 days which, quite clearly, would be difficult to consider as meeting the relevant international standards and best practices.

Twenty-seven FIUs, including the 18 that answered “other,” provided additional information to clarify their answers to this question. Several themes emerged from these responses:

- Seventeen FIUs stated that the time needed to collect information depends on the urgency of the case, with seven explaining that very urgent requests can be dealt with on the same day.
- Five FIUs noted that the time needed to collect information was dependent on the LEA from which the information was being requested.
- Three FIUs stated that there is a maximum time set out in the law for LEAs to provide information. One FIU noted that there is an 8- to 30-day deadline; another stated that there is a 15-day deadline; and the third explained that a government resolution in the jurisdiction sets out a one-month deadline.
- Two FIUs obviously misunderstood the question because they stated that they have direct access to the relevant information.

A related question immediately arises when considering what should be the most appropriate and realistic timeline for collecting all relevant information from LEAs to allow for timely analysis. Eighty-six FIUs responded to this question and provided an explanation. The answers to this question have been grouped according to the maximum preferred/realistic time for information to be collected. Where FIUs have provided two separate answers for the preferred and realistic time required for information to be collected, it is the maximum realistic time which has been included in table 5.14.

| TABLE 5.14 Preferred and Realistic Time Needed to Collect LEA Information | |
|--|--------------------|
| Preferred/realistic time | Number (%) of FIUs |
| < 8 hours | 6 (7) |
| 8 hours–24 hours | 6 (7) |
| 24 hours–3 days | 13 (15) |
| 3 days–7 days | 21 (24) |
| 7 days–14 days | 18 (21) |
| >14 days | 11 (13) |
| Other | 11 (13) |

Note: Eighty-six FIUs responded to this question.

Among the eleven FIUs which did not specify a time, three themes emerge:

- Nine FIUs stated that the time frame is dependent on the individual case.
- Three FIUs noted that it is possible for time to be reduced in urgent cases.
- Two FIUs did not provide a specific time frame.

Of the 86 FIUs that responded to this question, 64 FIUs (74 percent) stated that the preferred and realistic time for receiving information was less than 14 days. Interestingly, of these 64 FIUs, fewer FIUs (25 FIUs) indicated a preference for a shorter time period (less than 3 days) than those FIUs (39 FIUs) that would prefer to have a longer time period (between 3 and 14 days).

The survey posed an additional question to FIUs with indirect access to LEA information to list the main reasons for not having direct access to this information. Seventy-seven FIUs responded to this question (table 5.15). Some respondents provided more than one reason for not having direct access to relevant information, leading to 88 answers to this question.

| TABLE 5.15 Reasons for Not Having Direct Access to LEA Information | |
|---|--------------------|
| Reason | Number (%) of FIUs |
| Technical issues | 45 (58) |
| Privacy/secretcy of information | 16 (21) |
| Legal restrictions | 12 (16) |
| Data stored manually | 5 (6) |
| Other | 10 (13) |

Note: Seventy-seven FIUs responded to this question, but some provided multiple answers, leading to 88 answers.

The data presented in these tables show that in most cases, the reasons FIUs do not have direct access to information kept by LEAs is not under the control of the FIU. The most common reason for FIUs not having direct access to relevant information from LEAs is due to technical reasons, such as limitations with information technology (IT) systems or a lack of integrated databases. Twenty-eight FIUs (37 percent) also stated that legal restrictions and data protection issues prevent FIUs from having direct access to relevant information. The reasons categorized

as “Other” by 10 FIUs (13 percent) include a lack of cooperation from LEAs, poor record keeping, and LEAs not permitting direct access to relevant information.

Type of LEAs Information that Can/Should Be Obtained by FIUs

The study examined the type of information that can be obtained by FIUs from LEAs, whether directly or indirectly. The FIU responses are presented in table 5.16.

| TABLE 5.16 Type of Information Obtained from LEAs | |
|---|--------------------|
| Type of information obtained from LEAs | Number (%) of FIUs |
| Information on criminal investigations, prosecutions, and convictions, including: | 89 (98) |
| • Modus operandi | 66 (73) |
| • Amounts of suspected proceeds generated by criminal offence | 71 (78) |
| • Persons who participate, aid, abet, facilitate, and counsel the commission of criminal offence, | 75 (82) |
| Operational information | 44 (48) |
| Information on documents and/or other evidences seized and analyzed | 64 (70) |
| Information on results of the financial investigation of predicate offences | 68 (75) |
| Information on persons suspected or/and convicted for committing administrative offence(s) | 58 (64) |
| Tax information | 74 (81) |
| Customs information | 85 (93) |
| Immigration information | 80 (88) |
| Data maintained by Interpol | 63 (69) |
| Data on mutual legal assistance | 57 (63) |

While nearly all FIUs (89, or 98 percent) report that they have the ability to collect information on criminal investigations, prosecutions, and convictions, it is still surprising that two FIUs cannot collect such information. Customs, immigration, and tax information also garnered a high positive response, with most FIUs being able to collect this information from LEAs. Only 57 FIUs (63 percent) are able to access data on mutual legal assistance. The worst result is in relation to operational information, with less than half (44 FIUs, or 48 percent) being able to access operational information. In this regard, the type of FIU does not make a significant difference to the type of information that can be collected.

To compare the existing situation regarding FIUs’ access to different types of information kept by LEAs with their preference, the survey asked FIUs to specify the type of LEA information they should be allowed to access in order to carry out sufficient analysis. Eighty-eight FIUs responded to the question and many gave multiple answers. The responses are set out in table 5.17.

TABLE 5.17

Type of Information that Should Be Obtained from LEAs

| Type of information obtained from LEAs | Number (%) of FIUs |
|--|--------------------|
| Information on criminal investigations, prosecutions, and convictions, including: | 28 |
| • Modus operandi | 3 |
| • Amounts of suspected proceeds generated by criminal offence | 3 |
| • Persons who participate, aid, abet, facilitate, and counsel the commission of criminal offence | 10 |
| Operational information | 1 |
| Information on documents and/or other evidences seized and analyzed | 2 |
| Information on results of the financial investigation of predicate offences | 6 |
| Information on persons suspected or/and convicted for committing administrative offence(s) | 1 |
| Tax information | 17 |
| Customs information | 16 |
| Immigration information | 18 |
| Data maintained by Interpol | 5 |
| Data on mutual legal assistance | 2 |
| All of the above | 37 |
| Other | 31 |
| • Criminal records | 15 |
| • Asset information | 5 |
| • Financial details of investigation | 1 |
| • Travel history | 2 |
| • Where intelligence on a person is held | 1 |
| • Close associates | 2 |
| • Cash declarations | 3 |
| • Jurisdictions where a person is active | 1 |
| • Land registration | 1 |
| • Employment history | 1 |
| • Sentences given to individuals | 1 |

Note: Eighty-eight FIUs responded to the question and many provided multiple answers. FIUs have taken different approaches to answering this question. The assumption is that, where FIUs have listed specific types of information to which they do not have access, rather than stating "all of the above" they have stated that they have access to other types of information listed in the table.

A wide range of answers were provided to this question. The most common response (37 FIUs, or 42 percent) was that FIUs should have access to all types of information listed in table 5.17. The responses also indicate that the most common piece of information that FIUs should be able to access is information on criminal investigations, prosecutions, and convictions. Linked with this, 15 FIUs also specifically stated that they should have access to information on criminal records.

FIU Access to LEAs’ Information on Behalf of a Foreign FIU/Other Foreign Competent Authority

This section examines whether there are any special/additional conditions in place when an FIU is requesting or accessing information from LEAs on behalf of a foreign FIU or other foreign competent authority. Of the 91 FIUs that responded to this question, 61 FIUs (67 percent) indicated that no special conditions are in place, and 29 FIUs (32 percent) mentioned that some additional conditions must be met. The conditions mentioned by these FIUs are presented in table 5.18.

| TABLE 5.18 Special/Additional Conditions for FIU Access to LEA Information on Behalf of a Foreign FIU/Other Foreign Competent Authority | |
|---|--------------------|
| Special/Additional condition | Number (%) of FIUs |
| Information to be used by foreign FIU for intelligence purposes only | 10 |
| Permission required for foreign FIU to disseminate information further | 8 |
| Consent needed from LEA for information to be shared with the foreign FIU/competent authority | 7 |
| Memorandum of Understanding required | 3 |
| Foreign FIU to reciprocate sharing of information | 2 |
| Mutual legal assistance request needed | 1 |
| Other | 10 |
| <ul style="list-style-type: none"> Information relating to ongoing criminal investigations cannot/might not be exchanged | 3 |
| <ul style="list-style-type: none"> Request should not violate national integrity of sovereignty of the jurisdiction that the information is requested from | 2 |
| <ul style="list-style-type: none"> Request should be substantiated | 2 |
| <ul style="list-style-type: none"> Foreign FIU must abide by Egmont charter and principles | 1 |
| <ul style="list-style-type: none"> Request for information must be related to ML/TF | 1 |
| <ul style="list-style-type: none"> Information to remain confidential | 1 |
| <ul style="list-style-type: none"> Information may not be shared in some circumstances due to legal restrictions | 1 |

Note: This table reports the responses of the 29 FIUs that indicated that special/additional conditions had to be met.

Table 5.18 highlights the two most common conditions:

- Information provided to foreign FIUs should be used for intelligence purposes only (10 FIUs, or 34 percent).
- A permission is required before a foreign FIU can further disseminate the information (8 FIUs, or 28 percent).

The responses also indicate that certain conditions imposed by few FIUs are very restrictive, such as the need for a mutual legal assistance request or a MoU or existence of restrictive legal prohibitions on information exchange.

Spontaneous Dissemination

This section identifies legal conditions that permit the spontaneous dissemination of FIU information to domestic competent authorities, and that determine the recipient of FIU information and legal status of disseminated information.

Recipients of FIU Information/Case File/Report

The FIUs were asked to identify the recipients of their information and how, if at all, different outcomes of their analysis affect their decision concerning to whom to disseminate their information. The results of their responses are presented in tables 5.19–5. 22. Each table shows the recipients based on a different outcome of FIU analysis.

| TABLE 5.19 Recipients of FIU Information If There Are Grounds to Suspect Money Laundering, Associated Predicate Offences, or Terrorist Financing | |
|---|--------------------|
| Recipient | Number (%) of FIUs |
| Police | 67 (74) |
| Public prosecutor | 66 (73) |
| Other LEAs | 61 (67) |
| Other competent authority | 46 (51) |

Note: All 91 FIUs responded to this question and several provided multiple answers.

Table 5.19 shows that when identifying grounds to suspect money laundering, predicate offences, or terrorist financing, most FIUs send their information/file/report to the police (74 percent of FIUs), public prosecutor (73 percent of FIUs), and/or to other LEAs (67 percent of FIUs). Of the 61 FIUs that disseminate their information to other LEAs, 15 FIUs (25 percent) send their information to the intelligence services; 13 FIUs (21 percent) to the customs authorities; 10 FIUs (or 16 percent) to the tax authorities; and 10 FIUs (16 percent) to the specialized anti-corruption units. Forty-six FIUs (51 percent) of all FIU also disseminate their information to “other competent authorities,” such as the gaming authorities, illicit gains departments, central banks, and regulatory authorities.

| TABLE 5.20 Recipients of FIU Information If There is No Suspicion of ML/TF, but There Are Grounds to Suspect that Other Criminal Offences Were Committed | |
|---|--------------------|
| Recipient | Number (%) of FIUs |
| Police | 63 (82) |
| Public prosecutor | 48 (62) |
| Other LEAs | 50 (65) |
| Other competent authority | 37 (48) |

Note: Seventy-seven FIUs responded to this question and several provided multiple answers.

The FIUs responses presented in table 5.20 indicate that only 77 FIUs (85 percent) of 91 FIUs are authorized to disseminate their information to competent domestic authorities when their analysis shows that there is no suspicion of money laundering or terrorist financing, but they have grounds to suspect that other criminal offences were committed. Of the 77 FIUs, the vast majority of FIUs (63, or 82 percent) send their information to the police,

and more than half of FIUs also send their information to the public prosecutor (48, or 62 percent) and/or other LEAs (50, or 65 percent). Other recipients mentioned by a significant number of FIUs include anti-corruption bureaus or anti-corruption commissions (10 FIUs), tax authorities (8 FIUs), customs authorities (7 FIUs), and border agencies/coast guards/immigration offices (7 FIUs).

| TABLE 5.21 Recipients of FIU Information If There Is No Suspicion of ML/TF, but There Are Grounds to Suspect that Administrative Offences/Misdemeanors Were Committed | |
|--|--------------------|
| Recipient | Number (%) of FIUs |
| Police | 26 (41) |
| Public prosecutor | 14 (22) |
| Other LEAs | 25 (39) |
| Other competent authority | 46 (72) |

Note: Sixty-four FIUs responded to this question and several provided multiple answers.

Table 5.21 shows that only 64 FIUs (70 percent) of 91 FIUs may disseminate information to different competent bodies, when they suspect that administrative offences or misdemeanors were committed. Of these FIUs, 26 FIUs (41 percent) disseminate their information to the police and 14 FIUs (22 percent) to the public prosecutor. Among the recipients mentioned by a significant number of FIUs (25, or 39 percent) are other LEAs, such as anti-corruption agencies, customs authorities, state security departments, and authorities responsible for economic crime investigations. In addition, in such cases, 46 FIUs (72 percent) disseminate their information to other competent authorities, including the central banks and other supervisory/regulatory authorities.

| TABLE 5.22 Recipients of FIU Information in Other Cases | |
|--|--------------------|
| Recipient | Number (%) of FIUs |
| Police | 4 (36) |
| Public prosecutor | 4 (36) |
| Other LEAs | 5 (45) |
| Other competent authority | 8 (73) |

Note: Eleven FIUs responded to this question and several provided multiple answers.

Of the eleven FIUs that responded to this part of the questionnaire, only three FIUs identified some additional situations (not covered by their responses to other options mentioned above) that allow them to disseminate their information to different competent bodies. Two of these FIUs should also disseminate information when they identify funds of criminal origin that are subject to confiscation, and one FIU when there is any intelligence related to financial crimes. The recipients mentioned in these cases are other LEAs and the public prosecutor.

The survey posed a question whether jurisdictions have legislation in place that explicitly determines the recipients of FIU's information and results of analysis, and how the FIUs identifies the recipient(s) if no such provisions exist. All 91 FIUs responded to this question. Their responses were split almost in the middle:⁴47 FIUs (52 percent) responded that legislation explicitly determines the recipient authorities, whereas 43 FIUs (48 percent) responded that it does not. Of those responding positively, the majority of FIUs (32, or 68 percent) reported that their legislation covers all situations presented in tables 5.16–5.19. Although only 43 FIUs responded negatively to this question, 58 FIUs provided a detailed explanation as to how they determine the recipient authorities.⁵ The narrative responses could be summarized as follows:

- A majority of FIUs disseminate information to the authority in charge of investigating /prosecuting the suspected predicate offence and/or ML/TF, depending on the case.⁶
- Two FIUs indicated that an already pending procedure will influence their decision.
- Two FIUs mentioned that the FIU’s internal rules/practices play a part in their decision.
- Three FIUs stated that their decision depends on the legislation or the MoU in place with a particular authority.

On a related question, 65 FIUs (71 percent) responded that they may disseminate information and results of their analysis to multiple LEAs or to LEAs and the public prosecutor simultaneously. The respondent FIUs reported that the following mechanisms are in place to ensure that the recipients coordinate their activity and the FIU information is appropriately used the FIUs:

- The public prosecutor coordinates and has the lead in a criminal investigation and therefore coordinates the activities of all LEAs.
- A list of recipients is included in the FIU file and it is then up to the recipients to resolve any overlapping interests.
- An intra-governmental committee/body/working group/task force coordinates any overlapping issues.
- Contact/focal points are assigned by the FIU and LEAs to coordinate with one another.
- Solutions are provided in the Criminal Procedure Code, other legal acts, or in MOUs.
- In such cases, the FIU will act as coordinator and organize meetings with all relevant stakeholders, as necessary.
- Feedback mechanisms from the LEA(s) to the FIU(s) exist on how information is to be used.

Content of FIUs’ Reports Disseminated to LEAs and/or Other Competent Authority

This section examines the content of the report the FIUs are disseminating to the LEAs and/or other competent authorities. Table 5.23 presents the answers of the 90 FIUs that responded to this question.

| TABLE 5.23 Content of the FIU Report Disseminated to LEAs/Other Competent Authority | |
|---|--------------------|
| Content of the FIU report | Number (%) of FIUs |
| Only the results of analysis of the STRs/CTRs | 11 (12) |
| Only the results of analysis of the STRs/CTRs and information from open and public sources | 10 (11) |
| Only the results of analysis of the STRs/CTRs, information from open and public sources, and information obtained from international exchange of information | 16 (18) |
| Information and results of FIU analysis of all relevant data, including the STRs/CTRs and additional information collected from the reporting entities, administrative and LEA information, information from open and public sources, and information obtained from international exchange of information | 35 (39) |
| In addition to information and results of its analysis of all relevant data mentioned in the point above, the report also contains documents obtained from the reporting entities and other sources (such as from LEA and/or from registers) | 42 (47) |
| Other | (16) |

Note: Ninety FIUs responded to this question. The numbers do not add up because some FIUs selected multiple answers.

The vast majority of FIUs (77, or 86 percent) include in their report a comprehensive analysis of all information that they have on their disposal and/or can obtain from different private and public sources, including from the international cooperation. Forty-two FIUs (47 percent) in addition to providing comprehensive analysis also enclose documents obtained from different sources. While the relatively high number of FIUs (21, or 23 percent) responded that their report contains only the results of analysis of STRs/CTRs or, in addition to this, information from open and public sources, a detailed examination of their responses shows that most of them (19) provided multiple responses. This could be interpreted in different ways, but most likely the content of their reports depends on a case or on the recipient of the report. However, there are still two FIUs, one from Asia and one from Europe, that report only on results of their analysis of the STRs/CTRs.

Of 14 FIUs that responded “Other,” only 9 FIUs provided an additional explanation. In most cases, their response consisted of different combinations of options mentioned in table 5.23, with the exception of one FIU, which also may include in its report the network and strategic analysis.

Legal Status of FIU Information/Report Disseminated to LEA and/or Competent Authority

This segment of the survey looks at the formal legal status of the FIU information/report disseminated to the LEAs or/and other competent authorities. The results of FIUs’ responses are presented in table 5.24.

| TABLE 5.24 Legal Status of FIU Information/Report | |
|--|--------------------|
| Legal status of FIU information/report | Number (%) of FIUs |
| The FIU information/report can be used by the recipient only as intelligence. | 53 (58) |
| The FIU information/report can be used by the recipient as evidence in the criminal procedure. | 2 (2) |
| The FIU information/report and the attached documents obtained from the reporting entities and other sources can be used by the recipient as evidence in the criminal procedure. | 6 (7) |
| The FIU information/report and the attached documents obtained from the reporting entities can be used by the recipient both as intelligence and as evidence, depending on the content of information. | 22 (24) |
| Other | 13 (14) |

Note: Ninety-one FIUs responded to this question and five FIUs selected multiple answers.

The FIUs’ responses show that in the majority of jurisdictions (53, or 58 percent), the FIU information/report can be used by the recipient only as intelligence, thus following the minimal international standards in this regard. Of these FIUs, the vast majority (42, or 79 percent) are administrative-type FIUs, 8 (15 percent) are police-type FIUs, and 3 (6 percent) are hybrid-type FIUs.

A significant number of FIUs (30, or 33 percent) reported that information and documents can whether be used as evidence in the criminal procedure or this depends on the content of information. Not surprisingly, a large proportion of these FIUs (19, or 63 percent) are police-type FIUs (8), hybrid-type FIUs (9), or prosecutorial-type FIUs (2). The remaining 11 FIUs (37 percent) are administrative-type FIUs.

In addition, 7 FIUs (5 administrative-type and 3 police-type) of the 13 FIUs that responded “Other” also reported that their information/reports can be used as evidence depending on the type of information⁷ or the recipient. One of these 13 FIUs also reported that the FIU information can be used in court proceedings to help obtain warrants, production orders, or mutual assistance.

With regard to the legal status of FIU information disseminated to LEAs and/or other competent authorities, 49 FIUs (54 percent) of the 90 respondent FIUs reported that this is explicitly regulated in their legislation, while 32 FIUs (36 percent) reported that this is not. Of the remaining 9 FIUs (10 percent), 7 FIUs provided a detailed explanation, as follows:

- Three FIUs mentioned that the status of FIU information is addressed in the legislation indirectly by defining what can be treated as evidence in the Criminal Procedure Code.
- One FIU noted that the status of FIU information is partially regulated in the law and partially this is subject to interpretation.
- One FIU reported that the status of FIU information is regulated in the caveat agreement.
- One FIU reported that the status of FIU information is contained in a government dispatch submitted to the Parliament along with the Act.
- One FIU specified that it did not understand the question, but that dissemination was explicitly regulated.

A question that immediately arises when considering the status of the FIU information/report is what are, based on FIUs' experience, advantages of different approaches taken by their respective jurisdictions. Eighty-two FIUs (90 percent) responded to this question. A summary of their responses follows.

Advantages of using FIUs information as intelligence only⁸

- Promoting a respect of due process, human and privacy rights, and the evidence gathering procedures.
- Allowing for a clear separation of functions of different bodies participating in the criminal and pre-criminal procedure.
- Protecting the source of STR/other information and maintaining the confidentiality throughout the criminal procedure.⁹
- Promoting the filing of STRs by reporting entities.
- Ensuring better protection/security of the FIU and its staff, including by preventing the FIU staff from being invited/subpoenaed to give testimony in the court.
- Allowing a lower reporting threshold for the FIU to disseminate the information. The FIU only needs to be satisfied that the information is suspected to be relevant to ML/TF.
- Allowing a wider range of information to be used, including unconfirmed information.
- Enabling FIU information to be disseminated quickly because FIU is not required to present its information as evidence.
- The FIU intelligence provides a lead to LEAs/prosecutor for inquiry and facilitates their investigation by helping them focus on more important issues, thus improving effectiveness.
- FIU information is cross-examined, verified, and supplemented with other related information before it can be used as evidence. Therefore, proper checks and balances are protected.
- FIU information can also be used by competent LEAs to prevent ML/TF.
- The FIU can disseminate information to a wide range of LEAs.
- FIU information can be easily exchanged with all types of foreign FIUs.
- The arrangement prevents the circumvention of mutual legal assistance.

Advantages of using FIU information as evidence¹⁰

- This is a clear concept that prevents duplication of efforts and promotes more effective fighting of crime.
- It saves time and resources of reporting entities, LEAs, prosecutors, and courts.
- It reduces the administrative burden for those entities that have already provided the information to the state authorities, while effectively protecting their identity.

- It facilitates and expedites the investigation and prosecution.
- It allows the prosecutorial and judicial authorities to benefit from FIU expertise (for example, they can use the financial analysis and charts, hear FIU’s staff testimony, and so on).
- FIU information gathered from foreign FIUs not only reaches the judicial investigation faster when comparing with the mutual legal assistance channels, but taking into consideration the extensive network of FIUs operating globally, also allows information from foreign jurisdictions that otherwise would not be available to be obtained and used.

Confidentiality of FIU Information/Report

This segment of the survey looks at the confidentiality rules that apply to dissemination of FIU information/report to the LEAs and/or other competent authorities.

Of 91 respondent FIUs, the vast majority of FIUs (83, or 91 percent) indicated that according to their legislation the FIU information/reports they disseminate to the LEAs should be treated as confidential. The protection of FIU information is regulated by general security regulations, the AML/CFT legislation, the Criminal Procedures Code, and/or by the MoUs or interdepartmental agreements signed between the FIUs and LEAs. To ensure that secrecy rules are abided by, many FIUs reported that their documents are stamped/marked as classified, and that disclaimers/caveats are placed on their documents. To the same end, the FIUs mentioned that secure channels are used for dissemination, such as secure online systems (such as a GoAML Message Board), secure telephone/fax, or through a “secret department” registering all letters, including senders/recipients.¹¹ The legislation also stipulates sanctions for violation of the confidentiality rules.

While most FIUs failed to provide a response regarding the conditions allowing a withdrawal of confidentiality, some FIUs quoted the following rules in this regard:

- The recipient is empowered to decide whether it is appropriate to cancel or reclassify information, without specifying the conditions.
- The President has the authority to withdraw the confidential status in any particular case when this will not affect the safety of the sources, the republic, the people, or any of the officers involved in the case.
- Procedures for withdrawal of confidentiality are prescribed in the law for protection of confidential information.
- To lift the confidentiality of the FIU information/report, specific authorization/consent of the FIU is required based on a written and well-explained request provided by the recipient.

The remaining 8 FIUs (9 percent) that reported that their information/reports are not treated as confidential are all from Europe and they represent all four types of FIUs.¹²

Dissemination upon Request¹³

This section reports on the legal conditions for disseminating FIU information and results of the FIU’s analysis to domestic competent authorities based on their request, on the requesting authorities, and the legal status of disseminated FIU information.

Authority to Request Information from the FIU

The vast majority of FIUs (86, or 95 percent) responded that LEAs and/or other competent bodies have the authority to request information from the FIU. Three of the five jurisdictions where these bodies do not have such authority are from Europe and two are from Africa. Among these five, three are administrative-type FIUs, one is a police-type FIU, and one is a hybrid-type FIU.

In 78 of 86 jurisdictions (91 percent) there is an explicit legal/statutory basis for the authority to request information from the FIU, and in most instances (63 jurisdictions, or 73 percent) this authority is set out in the AML/CFT law, the Code of Criminal Procedure (18 jurisdictions, or 21 percent), or in the police law (13 jurisdictions, or 15 percent). Six of the eight jurisdictions without an explicit legal basis for the LEAs’ authority to request information from the FIUs are from Europe and two are from Asia/Pacific/Oceania. Three

of these FIUs are a police-type FIU, three are a hybrid-type FIU, and two are an administrative-type FIU.

Table 5.25 shows which LEAs or other authorities may request information from the FIU. In vast majority of jurisdictions, this authority is given to the police (90 percent), public prosecutors (80 percent), intelligence services (73 percent), and customs authorities (72 percent). Among “other competent authorities” vested with this authority, the FIUs mostly mentioned supervisory and regulatory authorities, other LEAs that were not mentioned in the questionnaire, and asset recovery units. In this context, only 5 FIUs (6 percent) mentioned political authorities such as Parliament, Special Parliamentary Commissions, government, and competent ministries.

| TABLE 5.25 Authorities with the Power to Request Information from the FIU | |
|--|------------------------------------|
| Authority | Number (%) of jurisdictions |
| Police | 77 (90) |
| Public prosecutor | 69 (80) |
| Intelligence services | 63 (73) |
| Customs authorities | 62 (72) |
| Tax authorities | 57 (66) |
| Anti-corruption agency | 52 (60) |
| Court | 52 (60) |
| Anti-drug agency | 45 (52) |
| Immigration | 41 (48) |
| Other competent authorities | 39 (45) |

Legal Conditions for Requesting Information from the FIU

FIUs were asked to provide information regarding the legal conditions authorizing LEAs and/or other competent authorities to request information from the FIU. Their responses are presented in table 5.26.

| TABLE 5.26 Legal Conditions for Requesting Information from the FIU | |
|--|------------------------------------|
| Legal conditions | Number (%) of jurisdictions |
| Only when conducting investigation on ML, associated predicate offences, and TF | 52 (60) |
| When carrying out a financial investigation and/or tracing assets subject to confiscation | 47 (55) |
| When conducting investigation on any criminal offence (with no suspicion of ML or TF) | 41 (48) |
| When the requesting authority is acting on behalf of a foreign LEA/other competent authority | 36 (42) |
| When there is no suspicion of crime and information is needed for other purposes | 11 (13) |
| Other | 10 (12) |

While in the majority of jurisdictions the requests for information are sent to the FIU in compliance with the requirements contained in FATF Recommendations 31 and 40, such a request may also be sent to 41 FIUs (48 percent) with respect to investigations on any criminal offence, even if there is no suspicion of money laundering or terrorist financing, and to 11 FIUs (13 percent) in cases that are not crime related. Depending on the content of these requests and whether the FIUs are obliged to provide information based on such requests, this practice raises some concerns because it may negatively affect the operational independence of FIUs and may potentially lead to improper use of the FIU powers.

FIU's Response to LEA's Request and Conditions to Conduct the Analysis and Disseminate Information

The survey examined in detail the FIUs' reactions after receiving a request from the LEAs or other competent bodies. In almost all FIUs (81, or 94 percent),¹⁴ a decision to conduct analysis or disseminate information based on such request rests with the FIU. An examination of the narrative responses of those five FIUs that responded differently revealed the following:

- Two FIUs made a mistake in their response. They are also among those FIUs that are operationally independent when deciding whether they shall conduct analysis and/or disseminate information to the LEAs and/or other competent authorities.
- One FIU takes such decision jointly with the requesting authority.
- One FIU is only obliged to disseminate information to the investigative judge and to the courts, while it has a full discretion when deciding whether to disseminate information to the LEAs.
- The response from one FIU is unclear.

One-third of the FIUs (29, or 34 percent) responded that they simply provide the STRs¹⁵ and other related data that is already in their possession to the requesting authority. Based on the LEAs' requests, the majority of FIUs (66, or 77 percent) usually start carrying out their analysis. However, conditions under which they may or should conduct the analysis are specified in less than half of these jurisdictions (26, or 30 percent). According to the FIUs responses, one or more of the following conditions should be met in order to satisfy the LEAs request:¹⁶

- There is suspicion of ML/TF.
- There is suspicion of serious offence/predicate offence.
- The minimum requirements about the content of the request have been met.
- The requesting authority should be one of the explicitly mentioned authorities.
- The request should be based on the international exchange of information.
- The request should not be related to a case that is already subject to prosecution under the criminal law.

Most of the remaining FIUs, whose legislation does not provide for any specific condition for carrying out the FIU analysis, responded that after receiving a request from LEAs they usually act in one of the following ways:

- Evaluate a request and decide which steps to take on case-by-case basis
- Treat the LEAs request in a same way as a STR/SAR and act accordingly
- Formally acknowledge the receipt of the request and provide an estimate of how long the FIU analysis will take
- Collect and provide data from their database
- Collect data from their database, send requests to the reporting entities and foreign FIUs, analyze all data and - depending on the results - decide whether to disseminate data to the requesting authority.¹⁷

A much higher number of FIUs (54, or 63 percent) reported that specific legal conditions exist under which the FIU may or should disseminate information to the LEAs based on their request. The conditions mentioned by most FIUs are the following:

- There is suspicion of money laundering, associated predicate offences or terrorist financing.
- There is suspicion of any criminal offence or certain type of criminal offences.
- The use of FIU data is limited to money laundering, associated predicate offence, terrorist financing, or asset forfeiture.
- Data can only be used as intelligence.

Individual FIUs also mention some additional criteria, such as:

- There is a threat to the national security.
- The financial transactions are linked to trading with sanctioned country.
- The identity of the person who made the STR should remain confidential.
- The LEAs’ request has been approved by a designated prosecutor.

After receiving a request from the LEAs, all other FIUs (29, or 34 percent), whose legislation does not provide for any specific condition for dissemination of information, act in the same way as previously described.

Legal Status of FIU Information/Report Disseminated to the Requesting Authority

When asked whether the legal status of FIU information/file/report disseminated to LEAs or other competent authority based on their request is the same as when the FIU information is disseminated to these bodies spontaneously, almost all FIUs (85, or 99 percent) responded positively.¹⁸ The legal status of disseminated information is different in only two jurisdictions:

- In one jurisdiction, the FIU information disseminated to LEAs can be used as evidence only if it is based on an STR.
- In another jurisdiction, the legal status depends on the recipient of FIU information; for example, it can be used as evidence only if the recipients are the prosecutor’s office and the court.

Priority of Incoming Information/Requests

The study also examined how the FIUs are prioritizing the LEAs’ requests, STRs, and other information that they receive in the course of their work. The responses of 86 FIUs that may receive requests for information from LEAs and/or other competent authorities are presented in table 5.27.

| TABLE 5.27 Priority of Incoming Information/Requests | |
|--|---------------------------|
| Priority | Number (%) of FIUs |
| FIU gives priority to requests received from LEAs and/or other competent authorities | 11 (13) |
| FIU gives priority to STRs/CTRs | 10 (12) |
| FIU decides about a priority based on objective and/or case related circumstances | 62 (72) |
| Other | 12 (14) |

Note: The numbers do not add up to 86 FIUs because 7 FIUs marked several choices, although only one was expected.

Table 5.27 shows that the vast majority of FIUs (62, or 72 percent) have the ability to act logically and take into account only case-related circumstances when deciding what priority shall be given to different incoming information (such as LEAs’ requests and/or STRs/CTRs). Interestingly, of the 12 FIUs that responded “other,” 4 FIUs indicated that they have different departments dealing with the LEAs requests and STRs/CTRs, and therefore do not have to give the priority to one or the other type of incoming information.

Strengths and Impediments to the Current State of Cooperation between FIUs and LEAs

This section examines the strengths and impediments to the current state of cooperation between the FIUs and LEAs as noted by 80 FIUs (93 percent) that provided descriptive responses to this part of the questionnaire. While the specifics of each country make it difficult to draw any general conclusions in this regard, a summary of responses that were mentioned as relevant by these FIUs follows.

Strengths

- Legal clarity regarding the rights and obligations of both parties
- Well-developed procedures for cooperation
- Understanding of each other's capabilities, priorities, and needs
- Well-developed and strong relationship (direct personal contacts)
- Regular meetings and coordination (contact points, and need for experienced staff for coordination on both sides)
- Clear mechanisms for communication
- Mutual trust and commitment
- Timely exchange of information, including direct access to data, when allowed
- Provision of detailed and useful information
- Unhindered exchange of information
- Sharing experience and knowledge on ML/TF typologies and trends
- Joint teams and/or joint investigations
- Timely and comprehensive feedback provided by both parties
- Setting up a Review Group to ensure the quality of information sharing
- Coordination with the Public Prosecutor.

Impediments

- Legal impediments exist. For example, legislation on information exchange is too restrictive; the FIU can only support LEAs' investigations on ML/TF.
- LEAs requests sent to FIUs are intended to bypass the procedures envisaged in the Criminal Procedural Code.
- There are misunderstandings regarding the role of the FIU.
- LEAs' knowledge about AML/CFT is insufficient.
- LEAs lack human and/or technical capacity to investigate financial crimes.
- Money laundering is not the LEAs' priority.
- LEAs submit incomplete requests.
- LEAs' responses are not timely.
- LEAs' databases are not centralized.
- The FIU lacks direct access to some or all of the LEAs' databases.
- The disseminated information is not comprehended as intended and is not registered in LEAs' database on time.

- Feedback from the LEAs on the use of FIU information and/or the results of their investigation is inadequate.
- Follow-up by LEAs on information disseminated by FIU does not occur or is insufficient.
- There are difficulties in protecting the origin of information.
- Focal persons at the LEAs change frequently.
- LEAs' expectations regarding the quality of information that the FIU can obtain from foreign FIUs are too high.

Feedback

This section responds to the question as to whether the LEAs and/or other competent authorities provide feedback to the FIU, and if so, what type of feedback and whether the feedback is adequate and appropriate.

General information on feedback

Of 91 responding FIUs, the majority (79, or 87 percent) indicated that LEAs and/or other competent bodies provide feedback on the use of the information provided by the FIU, while 12 FIUs (13 percent) do not receive any sort of feedback. A detailed response of the 79 FIUs that responded positively is presented in table 5.28.

| TABLE 5.28 Legal Basis to Provide Feedback | |
|--|-----------------------------|
| Legal basis to provide feedback | Number (%) of jurisdictions |
| Legal obligations | 30 (38) |
| No legal requirements | 43 (54) |
| Other modalities | 11 (14) |

Note: The table reports the responses of the 79 FIUs that stated that LEAs and/or other competent bodies provide feedback on the use of the FIU information. The numbers do not add up because some FIUs provided multiple responses.

In 30 jurisdictions (38 percent), providing feedback to the FIU is a legal obligation; in 43 jurisdictions (54 percent) this is not a legal requirement; while in 11 jurisdictions (14 percent), different forms and ways of cooperation are in place. Of these eleven jurisdictions, in two jurisdictions the prosecutors shall inform the FIU about the decisions related to the FIUs' disseminations; in one jurisdiction the LEAs' feedback is mandatory when finish their work based on the FIUs' reports; and in one jurisdiction the LEA shall inform the FIU only when the pre-investigation case is finalized. The remaining FIUs have described other modalities of cooperation, such as the establishment of an *ad hoc* working group or similar mechanism between FIU and LEAs and/or the Public Prosecutors Office and/or relying on liaison officers to obtain this information.

Types of Feedback

Regarding the types of feedback provided by LEAs and/or other competent authorities, the majority of FIUs (69, or 87 percent) are provided with "specific feedback" (that is, "case by case" information); near half of FIUs (35, or 44 percent) receive "general feedback"; and 33 FIUs (42 percent) indicated that they receive an acknowledgement by LEAs on receipts of their information/report. These data are presented graphically in figure 5.1, while table 5.29 presents more detailed information regarding all different types of feedback reported by the 79 respondent FIUs.

FIGURE 5.1 Types of Feedback Provided to FIUs

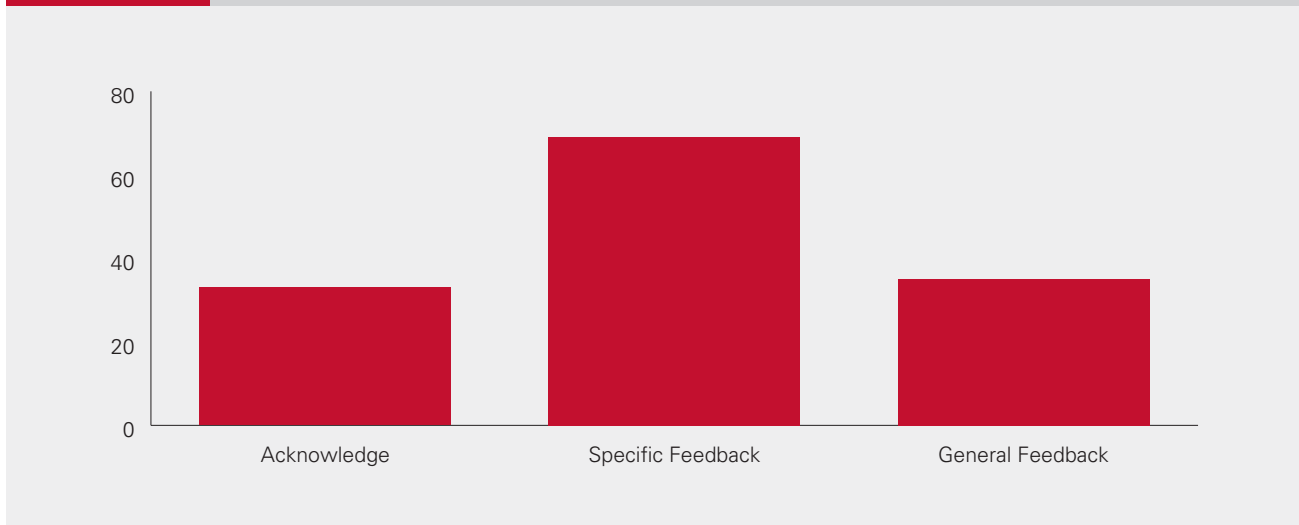


TABLE 5.29 Types of Feedback Provided to FIUs

| Type of feedback | Number (%) of FIUs |
|---|--------------------|
| Acknowledging receipt of FIU information | 33 (42) |
| Specific or “case-by-case” feedback, such as: | 69 (87) |
| • If a case is closed or completed | 54 |
| • If a case is transmitted to another competent authority | 48 |
| • If information is useful and will be used in future investigations | 41 |
| • Other | 5 |
| General feedback, such as: | 35 (44) |
| • Statistics on the number of FIU information/reports used in investigations/prosecutions/convictions | 29 |
| • Statistics on the number of cases closed | 23 |
| • Statistics on the number of cases transmitted to another competent authority | 10 |
| • Other | 9 |

Note: Seventy-nine FIUs responded to this question.

The analysis of responses shows that some FIUs receive different types of feedback at the same time. In particular, 15 FIUs receive all three types of feedback mentioned above; 29 of the 33 FIUs that receive “acknowledge” receipts also receive “specific feedback”; while 30 FIUs receive both “specific feedback” and “general feedback.” Of the 5 FIUs indicating they receive an “other type” of specific feedback, 2 FIUs specified that LEAs provide information on the level of contribution of FIU information to the investigations (such as new offences, new persons identified, asset involved). Of the 9 FIUs indicating they receive an “other type” of general feedback, 2 FIUs reported that LEAs provide information on their general level of satisfaction, while other FIUs mentioned information related to timeliness, the organization and formats of FIU reports, the quality of information, its usefulness, and the status of information delivered by the FIU.

Quality of Feedback

Seventy-two of the 79 FIUs that receive feedback from the LEAs responded about the quality of feedback. Quality is considered adequate and appropriate by 46 FIUs (58 percent). The remaining 33 FIUs (42 percent) highlighted the following reasons to support their views regarding the inadequacy of the feedback:

- Lack of a legal requirement that obligates LEAs to provide feedback to FIUs
- Limitations in LEA staff resources devoted to providing feedback to FIUs
- Lack of mechanisms to collect information or absence of IT systems used for this purpose
- Delays between the receipt of FIU information and completion of the case (need for “interim” feedback)
- LEAs’ lack of awareness of the importance of feedback.

In general, FIUs have stressed the importance of receiving feedback that would provide added value and should therefore contain high-quality and updated information (and not-as usually happens in practice-only information on the status of the investigation). To this end, some FIUs have signed MOUs and established other mechanisms of cooperation with the LEAs on individual cases, while others have implemented specific feedback models that LEAs use to incorporate all information the FIU needs. Moreover, some FIUs have introduced a more proactive approach by requesting feedback from LEAs on a case-by-case basis.

Timeliness of Feedback

Forty-seven of the 72 responding FIUs (65 percent) indicated that they receive feedback in a timely manner. More than one-third of FIUs (25, or 35 percent) responded negatively to this question and provided the same reasons why they consider the feedback is not timely as those mentioned above. To overcome this issue, some FIUs organize annual meetings with the LEAs, while other FIUs work with LEAs to collect relevant data on the FIU reports disseminated to LEAs and to track records of the cases.

Feedback by LEAs Regarding the FIU’s Work

The survey posed a question as to whether the FIUs receive any criticisms from the LEAs or other competent authorities regarding the quality of their work and timeliness of disseminated information. Of 82 FIUs that responded to this question, 58 FIUs (71 percent) indicated that they have not received any negative comments from these authorities. The remaining 24 FIUs (29 percent) reported that the main criticisms they receive from LEAs are related to the following:

- LEAs consider that the FIU collection of data from reporting entities and the financial analysis process takes too much time. Moreover, in a few jurisdictions, the prosecutors found the time needed by the FIU to respond to their request to be too long.
- LEAs consider the quality of FIU reports to be insufficient and/or not to be supported by all necessary elements. Some LEAs specifically mentioned the lack of information on predicate offences and the prohibition against using foreign FIUs’ responses as evidence.
- Information provided by FIU is not relevant or was already known by LEA or did not lead to further investigative actions.
- Too many FIU reports/files are disseminated to LEAs in some cities.
- Some FIUs also indicated that LEAs have, in general, unrealistic expectations as regards the FIUs’ work.

FIU’s Feedback Regarding the LEAs’ Understanding of Their Role

The survey also examined the FIUs’ opinion regarding the LEAs’ understanding of the role of FIUs in combating ML/TF. Thirty-six FIUs (40 percent) responded to this part of the questionnaire. The responses reveal the following:

- In several jurisdictions, the LEAs/prosecutors understand the role of the FIU but, at operational level, they do not take proper advantage of the FIUs’ capability to tackle ML/TF cases. Sometimes LEAs fail to approach the FIU at an early stage of investigation.
- A few FIUs reported that LEAs are not responding to their requests on time or the LEAs’ responses are very limited.
- One FIU mentioned that the LEAs tend to use the FIU’s powers to assist them in performing their own investigations (for example, by requesting the FIU to provide information/documents when they can obtain them by themselves). This implies that FIUs are expected to use their limited resources to assist the LEAs rather than carrying out their own core functions.
- One FIU reported that the LEAs tend to use information obtained from foreign FIUs as evidence in the investigative phase rather than using it as intelligence.
- Some FIUs have also indicated that LEAs’ feedback regarding the information/reports disseminated by the FIUs is very limited.
- In some jurisdictions, the LEAs expertise in handling money laundering cases and their capabilities/skills to investigate financial crimes is inadequate.

General Comments and Observations

This section presents the FIUs’ views regarding the level of LEAs’ and/or other competent authorities’ understanding of FIU capabilities, as well as the FIUs’ understanding of LEAs’ intelligence and/or evidentiary requirements.

Understanding of FIUs’ Capabilities by LEAs and/or Other Competent Authorities

All 91 FIUs responded to this question and provided their opinion on LEAs’ level of understanding of FIUs’ capabilities. The FIUs’ views are presented in table 5.30.

| TABLE 5.30 LEAs’ Understanding of FIU’s Capabilities | |
|---|-----------------------------|
| Level of LEAs’ understanding | Number (%) of jurisdictions |
| Excellent | 9 (10) |
| Very good | 52 (57) |
| Satisfactory | 29 (32) |
| Less than satisfactory | 2 (2) |
| Poor | 0 |

Note: All 91 FIUs responded to this question. One FIU provided two responses.

Almost all FIUs (89, or 98 percent) believe that the LEAs’ level of understanding of FIUs’ capabilities is at a “satisfactory” or a higher level. Of the remaining two FIUs that are not satisfied with the LEAs understanding of their capabilities, one is from Europe and one is from Africa and both are administrative-type FIUs.

The 91 FIUs were asked to explain their rating. Their responses are summarized as follows:

- Nine FIUs indicated that different LEAs have different understanding of FIU’s capabilities. In particular, the local police forces or those not directly involved in investigating financial crimes are usually not aware of the FIUs’ functions and powers.
- LEAs’ requests to FIUs are appropriate, timely, and focused on the most relevant issues reported in the dissemination file by the FIU. This means that dissemination files are followed up by LEAs in due course.

- LEAs often request the FIUs to postpone suspicious transactions. This means that they are well aware of the FIUs' powers.
- LEAs and FIUs are involved in a permanent and continuous process of sharing information, which ensures that the LEAs understand the FIUs' role well.
- Feedback the FIUs have received from LEAs indicates that FIU information is considered timely, adequate, and accurate.

The respondent FIUs also listed the following activities that helped them increase the LEAs' and/or other competent authorities' understanding of their capabilities:

- Fourteen FIUs organize or attend trainings for LEAs on FIUs' capabilities. These events are addressed in particular to new LEA staff.
- Seven FIUs indicated that joint investigations or cooperation in concrete cases are the most valuable activities that help increase LEAs' knowledge.
- Three FIUs have LEA liaison officers that facilitate their dialogue.
- In this regard, some FIUs also mentioned conferences, lectures, regular communications, joint courses, working groups, regular meetings, specialized training events, platforms, and so on.

Understanding of LEAs' Intelligence and/or Evidentiary Requirements by FIUs

Once again, all 91 FIUs responded to the question regarding the level of FIUs understanding of LEAs' intelligence/evidentiary requirements. Their responses are shown in table 5.31.

| TABLE 5.31 FIU's Understanding of LEAs' Intelligence/Evidentiary Requirements | |
|---|-----------------------------|
| Level of FIU's understanding | Number (%) of jurisdictions |
| Excellent | 30 (33) |
| Very good | 50 (55) |
| Satisfactory | 12 (13) |
| Less than satisfactory | 0 |
| Poor | 0 |

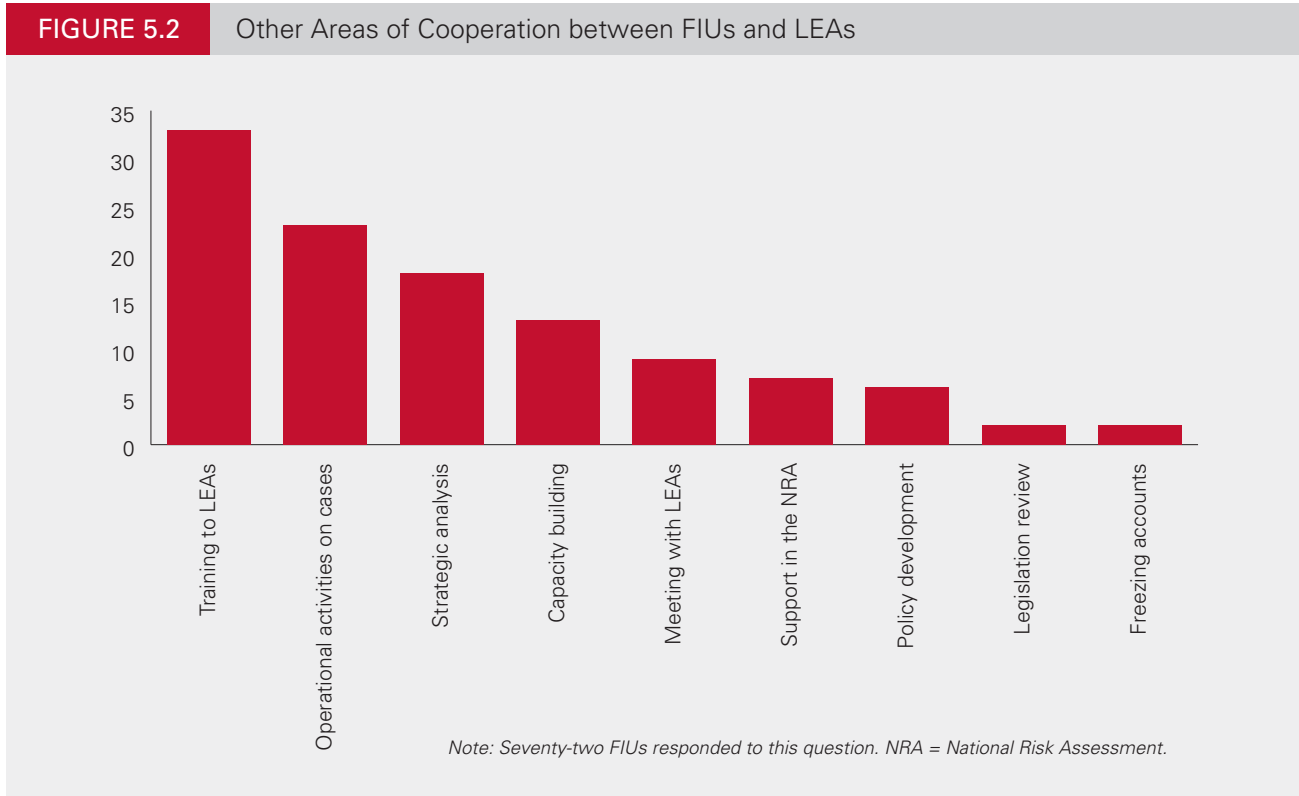
Note: All 91 FIUs responded to this question. One FIU provided two responses.

Almost all FIUs (80, or 88 percent) reported that they have a very good or even excellent level of understanding of LEAs' requirements. They provided the following arguments to back up this response:

- The FIU staff is composed of law enforcement officers or had experience at the LEAs or at the Prosecutor General Office.
- The FIU has a dedicated team that continuously reaches out to LEAs and/or prosecutors.
- The FIU staff is well trained in the legal framework, which is a basis of the intelligence and evidentiary requirements.
- Daily cooperation and information sharing with the LEAs increase the knowledge of the FIU staff. This happens through participation in working groups or joint task forces, regular coordination meetings, or via liaison officers staffed at the FIU.
- To increase the knowledge of FIU staff, some FIUs have adopted internal documents that illustrate the LEAs' and prosecutors' role and powers or have structured their files and reports in a way that reflect the requirements of the LEAs.

Areas of Cooperation between FIUs and LEAs Other than Analysis and Dissemination

The survey examined whether there are other areas of cooperation between the FIUs and LEAs that are not related to the analysis and dissemination of data. Seventy-two (85 percent) of FIUs responded. Their responses, presented graphically in the figure 5.2, show a variety of joint activities carried out by both partners.



The most respondent FIUs (33, or 43 percent) identified the training provided to LEAs as the most relevant joint activity carried out in their jurisdictions. Another 13 FIUs (17 percent) reported a closely related category of “capacity building.” They explained that this consists mainly of educating LEAs about FIU’s capacities (including on FIUs’ international sharing of information) and AML/CFT preventive requirements; sharing information on ML/TF typologies, trends, financial products, and patterns of illegal cross-border movements; and training on asset recovery.

Nine FIUs (12 percent) periodically hold meetings with LEAs mostly to share experience, analyze domestic and external ML/TF threats, and discuss indicators and criteria to identify suspicious transactions. Some FIUs mentioned that these meetings are organized in the framework of dedicated AML/CFT committees, commissions, or interdisciplinary/interagency working groups.

A significant number of FIUs (23 FIUs, or 30 percent) also reported the sharing of operational activities related to cases investigated by LEAs and the results of the FIU strategic analysis (18 FIUs, or 23 percent) provided to LEAs as important additional activities, although these two activities clearly fall into the FIUs’ core tasks that were already covered under the FIU’s analytical and dissemination functions. In a similar context, two FIUs indicated that they support LEAs’ investigations by freezing accounts or postponing transactions under investigation.

Less than 10 percent of the respondent FIUs are also involved in “policy development” and “legislation review,” which consist of proposing amendments to the AML/CFT legislation and advising policy makers on their regulative and administrative actions.

FIUs' Involvement in Financial Investigations Carried Out by LEAs

Ninety FIUs (99 percent) responded to a question related to their involvement in the financial investigations carried out by the LEAs. Of these FIUs, 52 FIUs (58 percent) indicated that they take an active part in financial investigations, and the remaining 48 FIUs reported that they do not. In this regard, 31 FIUs reported that their participation in financial investigations is optional, while for 6 FIUs it is mandatory,¹⁹ and for 15 FIUs it depends on whether they were involved in detection or initial analysis of the case.

Use of a Liaison Officer

The survey questionnaire asked whether the FIUs have a liaison officer representing the LEAs. Of 89 respondent FIUs, a significant number (25, or 28 percent) responded positively, indicating that the LEAs liaison officers are seconded to their FIUs. Not surprisingly, the vast majority of these 25 FIUs (20, or 80 percent) are administrative-type FIUs, while 3 are police-type FIUs, and 3 are hybrid-type FIUs. These 25 FIUs also provided an insight on different roles that the liaison officer are playing in their FIUs:

- Most frequently, FIUs use the liaison officers to share intelligence information with the LEAs, or to obtain LEA information that is needed to perform the FIU's tasks.
- Some FIUs use liaison officers as analysts who are in charge of carrying out financial analysis of STRs or other disclosures received.
- In other cases, liaison officers are also used to coordinate investigation teams when FIU reports are connected with an ongoing LEA investigation or when detailed and tailored intelligence reports from FIUs are needed.
- In few FIUs, the liaison officers are used to coordinate meetings, organize workshops, and advice FIUs on investigative techniques and other enforcement issues.

The respondent 25 FIUs also explained whether and how the role of the liaison officers is regulated in their jurisdictions. Their responses are presented in table 5.32.

| Legal basis | Number (%) of jurisdictions |
|-----------------------------------|-----------------------------|
| Law | 6 (24) |
| Regulation/Under-statutory Act | 2 (8) |
| Memorandum of Understanding (MoU) | 12 (48) |
| Other | 7 (28) |

Note: Twenty-five FIUs responded to this question. The numbers do not add up because 3 FIUs provided multiple responses.

In almost half of jurisdictions (12, or 48 percent), the role of the liaison officer is regulated by the MoU, while 8 jurisdictions (32 percent) stipulate the role in legislation. Of the 7 FIUs that responded "other," 2 FIUs referred to a written agreement signed between the FIU and LEAs, 2 FIUs mentioned that this is a matter of best practices, and 3 remaining FIUs referred to working procedures or FIU internal structuring.

Other Mechanisms to Strengthen FIU Cooperation with LEAs

The FIUs were asked to provide examples of any additional mechanisms or systems in place that are used to strengthen their cooperation with the LEAs. Seventy-five FIUs (82 percent) responded to this open-ended question and mostly referred to the previously mentioned mechanisms presented in this report, such as:

- Participation of FIU and LEA staff in different commissions, intergovernmental committees, and working groups

- Signing of multilateral or bilateral protocols/MoUs with LEAs
- Holding regular meetings
- Holding joint trainings
- Developing IT solutions, technical assistance, and reporting forms and other mechanisms aimed to facilitate connection with LEAs and sharing of information
- A few FIUs reported that representatives of the General Prosecutors’ Office and LEAs are members of the FIU board.

Description and Findings Based on LEAs’ Responses

The responses to the questionnaire analyzed in this part of the report are focused on the following thematic headings:

- Spontaneous Dissemination of FIUs’ Information to the Competent LEA
- Dissemination of FIU Information upon Request
- Feedback
- General Comments and Observations

Spontaneous Dissemination

This section provides information on the recipients of different types of FIU information and describes the legal status of disseminated FIU information, its quality, and whether it is sent to the LEAs in a timely manner.

Recipients of FIU Information/Case File/Report

The LEAs were asked whether their institutions were the recipients of the different types of FIU information and the end users of this information. The LEAs were also queried on whether there are other recipients of the FIU information in their jurisdictions and the topics for which they receive reports. The LEAs’ responses are presented in tables 5.33 and 5.34.

| TABLE 5.33 LEAs as Recipients of FIU Information/Case File/Report | |
|---|--------------------|
| LEAs receive FIU information | Number (%) of LEAs |
| Yes | 115 (88) |
| No | 15 (12) |

Note: 130 LEAs provided responses.

As table 5.33 shows, a vast majority of respondent LEAs (115, or 88 percent) receive the FIU’s spontaneously disseminated information, and 15 LEAs (12 percent) do not receive such information from FIUs.

| TABLE 5.34 LEAs as End Users of FIU Information/Case File/ | |
|--|--------------------|
| End user of FIU information | Number (%) of LEAs |
| Yes | 90 (76) |
| No | 26 (22) |

Note: 118 LEAs provided responses.

Whether an LEA is the end user of information disseminated by the FIU is based on several factors such as the LEA’s mandate, the nature of the information (for example, its relation to money laundering versus terrorist financing), and the structure of the country’s AML/CFT regime.

Of the LEAs that responded “Yes” to receiving spontaneous information from FIUs, 90 LEAs (76 percent) reported also being the end user of such information. In their narrative responses, the LEAs provided the following explanations in this regard:

- The LEA is a prosecutorial authority that can take the case to the court;
- The LEA is an independent entity that retains the information/analytic product for internal intelligence use only; or
- The FIU reports cannot be used as evidence and confidentiality clauses prevent dissemination of the information without approval.

The 26 LEAs (22 percent) that are not the end users of spontaneous FIU information identified the following instances in their responses:

- Information is referred by the respondent LEAs to other relevant investigatory or alternate LEAs depending on the risks identified (such as customs agencies, tax authorities, intelligence agencies, and/or specialized task forces/units).
- If the LEA is not prosecutorial in nature and elements of an offense are present, the case will be forwarded to prosecutorial or judicial authorities with or without further investigation (such as the Attorney General’s Office, State Attorney Office, Prosecutors Office, Special State Prosecutor’s Office, and/or competent criminal judges).
- FIU information is disseminated to international partners in accordance with the FIU’s restrictions.
- FIU data are made available directly to LEAs across the country to meet their own priorities (this data may be sanitized when appropriate).

The two remaining LEAs (2 percent) provided written explanation, but did not directly respond to this question.

| TABLE 5.35 Other Recipients of FIU Information/Case File/Report | |
|---|--------------------|
| Other recipients of FIU information | Number (%) of LEAs |
| Yes | 111 (90) |
| No | 13 (10) |

Note: 124 LEAs provided responses.

Table 5.35 focuses on whether, from the perspective of the LEAs surveyed, there are other recipients of the FIU’s information in the same jurisdictions, including other LEAs. Of the 124 LEAs that responded, 111 (90 percent) recognized that other entities in the same jurisdiction are also receiving information from their FIU. This is consistent with the information found in tables 5. 19–5.21 in that, depending on the structure of the AML/CFT regime, information may be concomitantly distributed to different entities, resulting in each of these entities becoming concurrent end users of FIU information. On the other hand, 13 LEAs (10 percent) reported that there were no other recipients in their jurisdiction.

Content of FIU Information/Case File/Report Disseminated to LEAs

This section examines the content of the FIUs information disseminated to the competent LEAs. Table 5.36 shows the responses of 117 LEAs that responded to this part of the questionnaire.

| TABLE 5.36 Content of FIU's Information/Case File/Report | |
|--|--------------------|
| LEA receives FIU information related to: | Number (%) of LEAs |
| Suspicion of money laundering and associated predicate offences 83 (71) | 111 (90) |
| Suspicion of terrorist financing | 50 (43) |
| Suspicion of other criminal offences | 52 (44) |
| Suspicion of ML and associated predicate offences, TF, and other criminal offences | 61 (52) |
| Suspicion of administrative offences/misdemeanors | 17 (15) |
| FIU strategic analysis products | 29 (25) |
| Other | 10 (9) |

Note: 117 LEAs provided responses. The numbers do not add up because some LEAs selected multiple answers.

The most common type of information spontaneously disseminated by FIUs (reported by 83 LEAs, or 71 percent) is related to suspicion of money laundering and associated predicate offenses. The second most common category of FIU information, received by slightly more than half of respondent LEAs (61 entities, or 52 percent), is related to suspicion of money laundering and associated predicate offenses, terrorist financing, and other criminal offences. Fifty-two LEAs (44 percent) reported that they receive information from their FIUs that is related to suspicion of other criminal offences, and a similar number of LEAs (50, or 43 percent) receive information related to suspicion of terrorist financing. The two least common types of FIU's information received by LEAs were related to FIU strategic analysis products (29 LEAs, or 25 percent) and suspicion of administrative offences/ misdemeanors (17 LEAs, or 15 percent). Of the 117 LEAs, 10 (9 percent) listed "other," which includes topics related to: suspicion of money laundering and other related money transfers from and to certain risk-zones; suspicion of tax fraud, tax evasion, or criminal tax offences; corruption-related offenses; suspicion of benefit fraud; criminal investigations; and information on persons related to terrorist activity or persons to whom international sanctions were applied.

Legal Status of FIU Information/Case File/Report

This part of the survey looks at the legal status of the FIU's information disseminated to the competent LEAs. The results of LEAs responses are presented in table 5.37.

| TABLE 5.37 Legal Status of FIU's Information/Case File/Report | |
|---|--------------------|
| Legal status of FIU information received by LEAs | Number (%) of LEAs |
| Information can only be used by the recipient as intelligence | 75 (60) |
| Information can be used by the recipient as evidence in a criminal procedure | 8 (6) |
| Information and the attached documents obtained can be used by the recipient as evidence in a criminal procedure | 6 (5) |
| Information and the attached documents obtained can be used both as intelligence and as evidence, depending on the content of the information | 36 (29) |
| Other | 13 (10) |

Note: 126 LEAs provided responses.

The majority of LEAs (75, or 60 percent) can only use the FIU information/files/reports as intelligence. A considerable number of LEAs (36, or 29 percent) reported that the FIU information/file/report and the attached documents obtained by the reporting entities can be used by the recipient both as intelligence and as evidence, depending on the content of the information (for example, whether the FIU information is related to money laundering/terrorist financing or only to other criminal offences). A much smaller number of LEAs (8, or 6 percent) stated that they can use the FIU's information/file/report as evidence in a criminal procedure, while 6 LEAs (5 percent) indicated that they can use the attached documents, as well as the FIU information/file/report obtained from the reporting entities and other sources as evidence in a criminal procedure.

The remaining 13 LEAs (10 percent) chose "other." Their explanations are summarized below:

- There is an ongoing dialogue between the LEA and FIU to reach a consensus on the current regulations in relation to the legal status or nature of the FIU's information.
- FIU information can be used as evidence in administrative cases (for temporary payment orders only) where there is suspicion that delay can endanger tax collection.
- FIU information is taken as intelligence that can be integrated in criminal procedures.
- FIU information can be communicated to the judicial authority, but only with a justified decree.
- FIU information can be used as evidence upon prior written consent from the relevant foreign FIU.
- FIU information is examined to decide on the initiation of criminal proceedings.

When looking at the legal status of FIU information, the next logical step is to discuss experiences with the different classifications of obtained information. LEAs were asked to describe, based on their experience, the advantages and disadvantages of two approaches: first, if the FIU information/case file/report can only be used by the LEA *as intelligence* in their jurisdictions; and second, if the FIU information/case file/report can be used by the LEA *as evidence* in their jurisdictions. Of the 130 LEAs surveyed, 93 provided insight on the first approach and 50 offered insight into the second. Overall, only 23 LEAs did not provide responses to this section of the survey. A summary of the narratives follows:

Advantages of Using FIU's Information as Intelligence

- It adds a further layer of protection for reporting entities and staff, thus creating higher levels of reporting. Financial institutions and FIUs can more freely and quickly disclose information to LEAs, reducing undue delay and enabling LEAs to more promptly deploy necessary interdiction and investigative techniques.²⁰
- It contributes to the strategic and operational planning of the investigation, allowing for a more focused, efficient, and effective use of the existing resources while facilitating successful prosecutions.²¹
- It allows for more effective identification of criminal and terrorist resources as well as financial facilitators. It also helps to trace, freeze, and seize assets, leading to the recovery of the proceeds of crime without a formal investigation.
- Intelligence can be used as a guide to obtain court documents that would enable the institutions to release all relevant information in relation to the subject, not limited to administrative release to the FIU.
- It provides insight into foreign activities/assets largely unknown to local investigators.
- It provides new investigative leads or corroborates previously obtained information/intelligence in furtherance of criminal investigations/intelligence gathering efforts.
- It can be utilized in various aspects of law enforcement/counter-terrorism efforts, including national security.
- In some cases, FIU officials are not obligated to depose before the court since FIU information is considered a secondary source. Therefore, FIU staff can more efficiently allocate their time and resources.
- It leads to improvements in tax compliance for maximum revenue collection (for example, by providing the basis for identification and reauthorization of the taxable status of the entity).

- FIU intelligence not converted into evidence can contribute to future intelligence gathering, profiling, and the development of red flags.
- It promotes investigatory best practices.²²
- It avoids issues in court with STR information being deemed opinionated or biased.
- It promotes practices that help prevent future money laundering, related predicate offences, and terrorist financing.

Disadvantages of Using FIU's Information as Intelligence

- Often, some relevant intelligence²³ cannot be used to support investigation and subsequent charges.
- If they exist, legal treaties restrict LEAs from using intelligence in court. Approval must be granted, which is time consuming and inconvenient.²⁴
- If intelligence cannot be used as evidence in the court of law, the LEA must complete the same evidentiary measures already applied by the FIU, which causes “double work” and the misuse of public resources.²⁵ It is a labor-intensive and time-consuming process to convert FIU intelligence into admissible evidence, causing undue delays. Moreover, LEAs do not necessarily have access to same sources as the FIU.
- Issues may arise from banking secrecy considerations.
- Intelligence cannot be used as evidence in urgent court proceeding situations (such as applying for search warrants and/or surveillance warrants), which limits the ability to take the necessary actions toward the suspects.
- Intelligence must be handled separately from evidence in terms of storage.²⁶
- Intelligence has disclosure issues, which can create confusion regarding application and implementation.
- Information can get siloed.²⁷
- Intelligence obtained from foreign jurisdictions is difficult to verify.
- STRs may not include the necessary components to establish criminal linkages.
- Intelligence is not formatted for subsequent in-depth investigation.
- Transmission of intelligence may be intermittent or delayed, affecting the speed and consistency of investigation.

Advantages of Using FIU's Information as Evidence

- The FIU carries out some of the pre-trial criminal procedure, improving efficiency of the investigation phase of criminal prosecution.
- Evidence-gathering efforts are consolidated, and resources are allocated more efficiently. Repetitive/overlapping investigatory work by LEAs following FIU dissemination is eliminated.
- It helps ensure timely initiation of criminal proceedings for the adoption of appropriate procedural measures.
- It promotes more efficient FIU structure and practices.²⁸
- It allows LEAs to build more coherent and robust case files leading to more effective prosecutions.
- It contributes to court matters, such as securing confiscations.
- Information is current and can be gathered covertly before arrest.
- It contributes to more efficient collection of taxes.
- It streamlines procedures for public prosecutor notification and asset freezing.

- It allows for greater efficiency in mutual legal assistance requests.
- It grants access to raw data and sources of data that can aid in investigations.
- In some instances, the FIU can serve as the coordinator and liaison for investigations initiated based on its information.

Disadvantages of Using FIU’s Information as Evidence

- If the identity of a source or FIU analyst is revealed, the person/employee could be required to issue a deposition. This is a diversion from work for FIU staff and an inconvenience for sources/informants, who may be less willing to cooperate in the future.
- The information could be unreliable and, if used as evidence, would weaken the case.
- To avoid involving FIUs in court proceedings, prosecutors/investigators may be inclined to obtain the relevant evidence through independent sources and investigation rather than using the FIU data.
- There may be a lack of understanding of prosecutorial/investigative requirements in FIU information.
- An agency from a foreign jurisdiction may have limited availability to testify in court, if need be.
- FIUs may be reluctant to share certain information due to lack of confidentiality.

Quality of FIU Information/Case File /Report

The survey posed questions about the quality of the FIU information/case files/reports disseminated to the LEAs and requested suggestions for their improvement. Altogether, 123 LEAs responded to the first part of the question and 97 LEAs also provided explanations for their ratings. The LEAs’ responses are presented in table 5.38.

| TABLE 5.38 Quality of FIU’s Information/Case Files/Reports Disseminated to LEAs | |
|--|--------------------|
| Quality of FIU information | Number (%) of LEAs |
| Excellent (it fully meets the LEA’s operational, strategic and/or evidentiary needs) | 18 (15) |
| Very good (it meets the LEA’s operational, strategic and/or evidentiary needs to a high extent) | 56 (46) |
| Satisfactory (it meets the LEA’s operational, strategic and/or evidentiary needs to a certain level) | 46 (37) |
| Less than satisfactory (it meets the LEA’s operational, strategic and/or evidentiary needs only to a very low level) | 2 (2) |
| Poor (it does not meet the LEA’s operational, strategic and/or evidentiary needs) | 1 (1) |

In terms of the perceived quality of FIU information, a majority of LEAs (74, or 60 percent) ranked the information as “excellent” (18 LEAs, or 15 percent) or “very good” (56 LEAs, or 46 percent). While the reception and ranking of FIU material is unique to each jurisdiction and, even more so, unique to the needs of each recipient LEA and its relationship with the FIU, these LEAs described the following general elements that prompted such high ratings:

- Disseminated information was of exceptional analytic quality, and the frequency and timeliness of such strategic reports support efficient and effective investigative and law enforcement efforts.²⁹
- The information provided by the FIU was effective both in an intelligence and evidentiary capacity.
- There was a coordinated effort between the FIU and the respondent LEA. This collaboration helped the FIU understand the needs of the LEAs and the LEAs gain a clear understanding of their roles in preparing case strategies.³⁰

- The FIU released Financial Analysis Reports that help create new criminal investigations or add value to ongoing ones.
- Reports contained operational information and strategic analysis that helped generate new preventative guidelines and criminal investigation policies.
- STRs were comprehensive.
- There was effective network analysis.

More than one-third of LEAs (46, or 37 percent) ranked the quality of FIU’s information as “satisfactory” (that is, FIU information meets the operational, strategic and/or evidentiary needs of your LEA to a certain level), while the ratings of “less than satisfactory” and “poor” were selected only by 3 LEAs (3 percent). These LEAs also explained their ratings and the following thematic issues emerged from their responses:

- The FIU information could only be used as intelligence or evidence, not both simultaneously. This created issues with investigation, prosecution, measuring ML/TF cases, and so on.
- The FIU’s information needs to be distributed to LEAs as promptly as possible so criminal activity can be restricted, and perpetrators are not able to hide, disguise, or send illicit proceeds abroad (especially true in cases of money laundering and economic, fiscal, or financial predicate offences). Ideally, information should be received in real time (within 24 to 48 hours).
- FIU dissemination should be consistent and proactive (continuous, broad, spontaneous, and timely).
- Timely submission of information by reporting entities and foreign FIUs to the local FIU is needed.
- The FIUs and/or their reports require greater access to financial and other relevant information.³¹
- The quality and comprehensiveness of reporting fall short.³² Often, information provided was not detailed enough for in-depth investigation of money laundering, terrorist financing, and/or corruption.³³ Furthermore, the quality of FIU reports could be inconsistent.³⁴
- There is a need for greater FIU analysis (FIU’s actions must go beyond merely providing account statements, freezing orders, and description of cases).
- FIU reports need to be clear to LEAs.
- FIU information needs to be applicable and actionable in investigations.³⁵
- The structure/role of the FIU (administrative versus investigative) can affect the comprehensiveness of its products.
- FIU staff and resources need to be increased.³⁶
- FIUs and LEAs have different evidentiary requirements.³⁷
- Ongoing technical and procedural difficulties impede the exchange of information. Further triage and commentary are needed from the FIU to assess and prioritize the information provided. The breadth of information sharing is an issue (not all FIU reports are sent to all LEAs). There is a lack of reporting from specific industries or individual reporting entities.
- Feedback mechanisms to the FIU need to be improved to better focus the efforts of reporting entities (that is, so that more transactions hit LEA indicators).
- FIU could facilitate criminal proceedings by requesting the reporting entity to be ready to testify in court.
- FIUs, and their subsequent information, are limited by bank secrecy laws.
- FIU information needs to be shared with all relevant LEAs.

- Considering the liquidity of money, the importance of early reporting by reporting entities should be further stressed.
- Issues surround the protection and sharing of information in the intelligence community.
- Automated approaches need continued development to better leverage FIU information against growing national security requirements.

Reporting Timelines

Drawing a close to the topic of spontaneous dissemination, LEAs were asked whether FIU's information is communicated on time (for example, when the LEA can take prompt actions against the perpetrator and/or the proceeds of crime or prevent a terrorist attack) or too late (for example, when the perpetrator and/or the proceeds of crime are beyond the reach of the LEA). Of the 122 LEAs that responded to this question:

- 101 LEAs (83 percent) responded that the FIU's information is received on time.
- 21 LEAs (17 percent) responded that the FIU's information is received too late.
- Two of the 122 LEAs further commented that their experience was a mixture of the two choices, meaning that some information was received on time and some was too late.
- Eight LEAs did not respond because they felt the question was not applicable to their institutions.

Dissemination upon Request

This section reports on legal conditions and average timelines for dissemination of FIU information to LEAs upon their request, as well as on LEAs' direct access to information held by FIUs.

LEAs' Authority to Request Information from FIUs

LEAs were asked if they are authorized to ask for relevant information *held by the FIU* and the results were as follows:

- 118 LEAs (91 percent) responded that they are so authorized.
- 9 LEAs (7 percent) indicated that they are not so authorized.
- 3 LEAs (2 percent) did not respond to this question.

LEAs were also asked if they are authorized to request information that is *accessible by the FIU* and their responses are presented below:

- 99 LEAs (76 percent) responded that they are so authorized.
- 17 LEAs (13 percent) responded that are not so authorized.
- 14 LEAs (11 percent) did not respond to this question or their responses are unclear.

Table 5.39 reports on the legal basis for such requests. The clear majority of LEAs (104, or 79 percent) that responded positively to one or both previous questions reported that this is explicitly regulated in their legislation, while 13 LEAs (10 percent) responded that it is not.³⁸ Interestingly, a higher number of LEAs (117, or 90 percent) specified the legal conditions for such authority than those mentioning that their authority to request information from the FIU is regulated in legislation.³⁹

| TABLE 5.39 Legal Conditions for Requesting Information from the FIU | |
|---|---------------------------|
| Legal conditions for LEAs requests | Number (%) of LEAs |
| Only when conducting investigations on money laundering, associated predicate offences and/or terrorist financing | 72 (55) |
| When conducting investigation on any criminal offence, even if there is no suspicion of money laundering or terrorist financing | 47 (36) |
| When carrying out a financial investigation and/or tracing the assets subject to confiscation | 44 (34) |
| When there is no suspicion of crime and information is needed for purposes other than investigating crime | 7 (5) |
| When LEA is acting on behalf of a foreign LEA | 23 (18) |
| Other | 12 (9) |

Note: The numbers do not add up because some LEAs selected multiple answers.

The analysis of responses identified some potentially problematic legal and/or operational practices in general and in terms of compliance with the international AML/CFT standards. Namely, in 12 out of 58 jurisdictions (21 percent) a significant number of LEAs (13, or 10 percent) indicated that there is no specific legal basis for requesting information from the FIUs. Moreover, according to FATF Recommendation 31, LEAs and other competent authorities should be able to ask for all relevant information held by the FIUs when conducting investigations on money laundering, associated predicate offences, and terrorist financing. The reported results show that more than one-third of LEAs (47, or 36 percent), coming from 28 jurisdictions (48 percent), are formally non-compliant with this provision. In addition, 7 LEAs (5 percent) from 6 jurisdictions (10 percent) may request information from the FIU even when there is no suspicion of crime at all.⁴⁰ Of course, to confirm that in all these jurisdictions the FIUs powers are indeed being used improperly, information on whether the FIUs are actually obliged to respond to such LEAs' requests should also be examined.

Of 12 LEAs that responded “other,” the majority mentioned that they may ask the FIU for information when there is a suspicion of a certain types of crime (such as organized crime or money laundering), or a criminal investigation, or, in one case, when they need information on cross-border transportation of cash and bearer negotiable instruments, which is kept by the FIU.

When asked if explanation is required regarding the background of their request to the FIUs, most LEAs (112, or 86 percent) responded positively to this question and 13 LEAs (10 percent) stated that it is not.⁴¹ Table 5.40 focuses on those LEAs that responded positively to this question, and presents what type of information they must include in their requests to the FIUs.

| TABLE 5.40 Type of Background Information | |
|---|---------------------------|
| Type of background information | Number (%) of FIUs |
| Legal basis of the request | 78 (70) |
| What triggered the LEA's interest in a particular case/person | 71 (63) |
| How the LEA will use the information | 49 (44) |
| Other | 13 (12) |

Note: This table reports the responses of the 112 LEAs that responded that they are required to present background information for their requests to FIUs.

Thirteen LEAs provided some additional information to clarify their answers. Most of these LEAs stated that in their requests they usually present the basic facts of the case in which the information is sought and/or their basis for suspicion.

FIU Response to LEA's Request

The survey sought information on whether LEAs receive a response when they request information from FIUs and the average time needed to receive such response. In all, 124 LEAs (95 percent) from all 58 jurisdictions responded to these questions. Their responses are provided in tables 5.41 and 5.42.⁴²

| TABLE 5.41 FIU Response to LEAs' Requests | |
|--|--------------------|
| FIU response to LEA's request is provided | Number (%) of LEAs |
| Always | 78 (63) |
| Only when there is a suspicion of ML, associated predicate offences, or TF | 33 (27) |
| When there is a suspicion of other criminal offences | 11 (9) |
| Other | 15 (12) |

Note: 124 LEAs from all 58 jurisdictions responded to these questions. Thirteen LEAs provided multiple responses.

| TABLE 5.42 Average Time Needed to Receive FIU's Information | |
|--|--------------------|
| Average time needed to receive FIU's information | Number (%) of LEAs |
| < 8 hours | 6 (5) |
| 8 hours–24 hours | 15 (12) |
| 24 hours–3 days | 23 (19) |
| 3 days–7 days | 23 (19) |
| 7 days–14 days | 17 (14) |
| 14 days–30 days | 20 (16) |
| Other | 34 (27) |

Note: 124 LEAs from all 58 jurisdictions responded to these questions. Some FIUs selected multiple answers.

More than half the respondent LEAs (78, or 63 percent) always receive responses to their requests for information from FIUs, and fewer than one-third of LEAs (33, or 27 percent) only receive responses when there is a suspicion of money laundering, associated predicate offences, or terrorist financing. A much lower number of LEAs (11, or 9 percent) indicate that they also receive FIUs' responses when there is a suspicion of other criminal offences. A similar number of LEAs (15, or 12 percent) selected the "Other" category. These 15 LEAs and some other LEAs provided additional explanation to their responses, as follows:

- Four LEAs responded that they always receive a response from their FIUs; however, if the legal requirements are not met, the reply is just a formal refusal.
- Four LEAs reported that this is not applicable to them or that they have never sent a request to the FIU.
- Two LEAs mentioned that they only receive a response from their FIUs when the requested information is available in the FIU's database.

- The remaining five LEAs provided different responses, including some not related to this topic.

Regarding the average timeline for receiving a response from the FIUs, the highest number of LEAs (46, or 38 percent) reported that they usually receive a response between 24 hours and 3 days (23, or 19 percent) or between 3 and 7 days (also 23, or 19 percent). Thirty-seven LEAs (30 percent) indicated that the FIUs usually respond within the periods of 7 to 14 days (17, or 14 percent) or 14 to 30 days (20, or 16 percent). A smaller number of LEAs (21, or 17 percent) from 13 different jurisdictions (22 percent) noted that the FIUs in their countries usually respond within 24 hours after receiving a request. Fifty-three LEAs, including 34 LEAs that indicated the “other” category, offered some additional explanations to their responses, which can be summarized as follows:

- The large majority of respondent LEAs (37, or 70 percent) reported that the FIU response time depends on one or more of the following elements: the urgency of the case, the complexity of the case, the type of requested information, the number of suspects, whether the FIU has the requested information in its database, or whether it needs to obtain information from the obliged entities or from their foreign counterparts.
- The remaining LEAs (16, or 30 percent) provided some additional timelines (for example, more than 30 days, or “no term”) or noted that this question is not applicable to them because they are not the recipients of FIU responses.

When asked about the preferred and realistic timeline for receiving all relevant information from FIUs that would allow LEAs to carry out a timely investigation, 110 LEAs (85 percent) responded by providing different timelines, as presented in table 5.43.

| TABLE 5.43 Preferred and Realistic Timeline to Receive FIU’s Response | |
|---|--------------------|
| Preferred/realistic time | Number (%) of LEAs |
| < 8 hours | 2 (2) |
| < 24 hours | 10 (9) |
| < 48 hours | 4 (4) |
| < 3 days | 20 (18) |
| < 7 days | 25 (23) |
| 7 days–14 days | 13 (12) |
| < 30 days | 10 (9) |
| > 30 days | 1 (1) |
| Other | 24 (22) |

Note: 110 LEAs provided responses. In cases in which LEAs provided two separate answers for the preferred and realistic time to receive the FIU’s responses, the table includes both times.

More than half of the LEAs (58, or 53 percent) are grouped around the desired response periods of three, seven, and fourteen days, with seven days being the prevailing threshold for around one-quarter of the LEAs. A significant number of LEAs (24, or 22 percent) that responded “other” did not provide any concrete proposal (18, or 16 percent) or stated that the FIUs should respond “as soon as possible” (4, or 4 percent), or mentioned that this is not applicable to them (2, or 2 percent).

It is worth noting that most LEAs pointed out that the “desired” response period depends on the urgency of the case and other elements that were already mentioned.

Quality of FIU Information

The study also examined the LEAs' views regarding the quality of the FIU information received based on their requests and the limitations impairing the quality of FIU information that they may have observed in their daily practice. Altogether, 121 LEAs responded to this question. As can be seen from table 5.44, their responses were mostly on the positive side. The vast majority of LEAs (80, or 66 percent) from 42 jurisdictions (72 percent) assessed the quality of FIUs' responses as excellent or very good, while only 4 LEAs (3 percent) from 4 jurisdictions stated that they are less than satisfactory or poor. Nearly one-third of LEAs (37, or 31 percent) evaluated the FIUs' responses as satisfactory.

| TABLE 5.44 Quality of FIU Information | |
|--|--------------------|
| Quality of FIU information | Number (%) of LEAs |
| Excellent (it fully meets the LEA's operational, strategic, and evidentiary needs) | 19 (16) |
| Very good (it meets the LEA's operational, strategic, and evidentiary needs to a high extent) | 61 (50) |
| Satisfactory (it meets the LEA's operational, strategic, and evidentiary needs to a certain level) | 37 (31) |
| Less than satisfactory (it meets the LEA's operational, strategic, and evidentiary needs only to a very low level) | 1 (1) |
| Poor (it does not meet the LEA's operational, strategic, and evidentiary needs) | 3 (2) |

Note: 121 LEAs responded to this question.

The LEAs were also asked to explain their rating and to specify the limitations that are negatively influencing the quality of the FIU responses. On the negative side, the LEAs reported the following:

- FIU's responses are not specific and detailed enough (for example, they lack explanations of suspicious facts related to reported transactions or they fail to provide data on a suspect's bank account) or they just copy what is mentioned in the STR without adding any valuable information.
- Delays in receiving responses from foreign FIUs, incomplete data from foreign FIUs, and incomplete data kept by the AML/CFT obliged entities (for example, on ultimate beneficial owners, on the source of wealth or origin of funds) impair the quality of FIU's responses to LEAs' requests.
- Information provided in the FIU's response can only be used as intelligence.
- FIUs' responses do not include supporting documents on transactions and opening of accounts or fail to provide a summary of financial transactions carried out on a suspect's account.
- FIUs cannot lift the banking and other types of secrecy, or due to other similar legislative restrictions their responses are incomplete.

As is clear from these responses—and as confirmed by several LEAs—LEAs expect their FIUs to provide prompt, broad, and detailed reports in response to their requests. It is equally important in this regard—and this was emphasized by only one LEA—that LEAs' requests should be clear, their questions should be well specified, and both the requests and the questions should be based on their good knowledge and understanding of what their FIUs can or cannot obtain and provide.

Requesting Information on Behalf of a Foreign LEA

The survey examined whether there are any special or additional conditions in place when the LEAs request information from the FIU on behalf of a foreign LEA. Of 106 LEAs (82 percent) that responded to this question, 67 LEAs (63 percent) stated that no such conditions apply.⁴³ The remaining 39 LEAs (37 percent) reported that the following special conditions need to be met:

- The foreign LEA's request must be related to money laundering, associated predicate offences, or terrorist financing.
- The domestic LEA should explain a relationship with the foreign country.
- The domestic LEA can only process such a request if it was received by its foreign counterpart.
- The LEA should ask for the FIU's consent for dissemination to a third party (foreign LEA).
- Such requests can only be processed based on relevant conventions and via the mutual legal assistance channels.
- Additional permission/approval is needed from the LEA's headquarters or the prosecution service.
- Based on a foreign LEA's request, the domestic LEA should first open a domestic criminal investigation.

In addition, several LEAs mentioned that their FIUs would not respond to such requests and therefore, they would instruct the requesting LEAs to send their requests via their local FIUs, thus using FIU-to-FIU networks. While the suggested approach may work well in practice, it may be seen as problematic with regard to the implementation of FATF Recommendation 40 and the related Interpretative Note, which require countries to permit their competent authorities to exchange information indirectly with non-counterparts.

LEA's Access to FIU Information

The last part of this section deals with LEAs' direct access to information kept by the FIUs. Of 124 respondent LEAs (95 percent), less than one-third of LEAs (28, or 23 percent) reported that they have direct access to FIU's information.⁴⁴ Of these, only a slim majority of LEAs (16, or 57 percent) reported that they have an explicit legal basis for such access, 10 LEAs (36 percent) stated that they have not, and 2 LEAs (7 percent) did not respond to this question about the legal basis. An examination of the narrative responses shows that 28 LEAs with direct access to FIU's information are based in 14 jurisdictions, while 10 LEAs whose access to FIU's data is not regulated in the legislation are all based in 3 jurisdictions.

Due to the potentially sensitive topic related to the FIU operational independence, its analytical functions, and LEAs' authority to ask for information held by the FIUs only when conducting investigations of money laundering, associated predicate offences, and terrorist financing, the survey also sought information regarding the type of FIU's information that the LEAs have direct access to. The results are presented in table 5.45.

| Type of FIU's information | Number (%) of responding LEAs |
|---|-------------------------------|
| Financial Analysis Report drafted by FIU | 10 (36) |
| Suspicious Transaction Report/Suspicious Activity Report | 27 (96) |
| Cash Transaction Report | 17 (61) |
| Threshold Transaction Report | 5 (18) |
| Wire Transfer Report | 6 (21) |
| Reports on cross-border transportation of currency or bearer negotiable instruments | 12 (43) |
| Other | 3 (11) |

A significant number of LEAs have direct access to Cash Transaction Reports (61 percent), reports on cross-border transportation of cash or bearer instruments (43 percent), Wire Transfer Reports (21 percent), and Threshold Transaction Reports (18 percent). However, quite surprisingly, the highest level of response is related to LEAs direct access to STRs/SARs, where 27 LEAs (96 percent) reported that they have such access. More than one-third of LEAs (10, or 36 percent) also reported they have direct access to FIU's analytical reports.

Feedback

This section presents the LEAs' responses as to whether they receive feedback from the FIUs on the use of their data. It further examines what type of feedback is provided and whether the feedback is timely, adequate, and appropriate.

General Information on Feedback

Of 130 responding LEAs, a slim majority of LEAs (74, or 57 percent) indicated that FIUs do not provide feedback on the use of LEAs' information, while 50 LEAs (38 percent) indicated that they do receive such information from the FIUs. Seven LEAs (5 percent) did not respond to this and the follow-up questions. A detailed response of 50 LEAs that responded positively is presented in the table 5.46.

| TABLE 5.46 Legal Basis to Provide Feedback to LEA | |
|---|-------------------------------|
| FIU's feedback is: | Number (%) of responding LEAs |
| Mandatory (regulated in legislation) | 11 (22) |
| Discretionary (not regulated, but a matter of best practices) | 38 (76) |
| Other | 5 (10) |

Note: The table presents the responses of the 50 LEAs that receive feedback from FIUs on FIU's use of LEA information. The numbers do not add up because some LEAs chose multiple options.

Eleven LEAs (22 percent) from 7 jurisdictions receive feedback from FIUs because this is a legal requirement. The majority of LEAs (38, or 76 percent) responded that they receive feedback from FIUs as a matter of best practices. Of the five LEAs that responded "other," four LEAs provided some additional explanations. In one jurisdiction, the FIU and LEA are housed under a common organization and as the FIU has direct access to LEAs' data, there is no need to give feedback. LEAs from two jurisdictions indicated that feedback from FIU is based on case-by-case basis and one LEA responded that FIU is providing feedback only if so requested by the LEA.

Types of Feedback

The 50 LEAs that receive feedback from the FIUs were asked to specify the type of feedback received. Their responses are presented in figure 5.3 and in table 5.47.

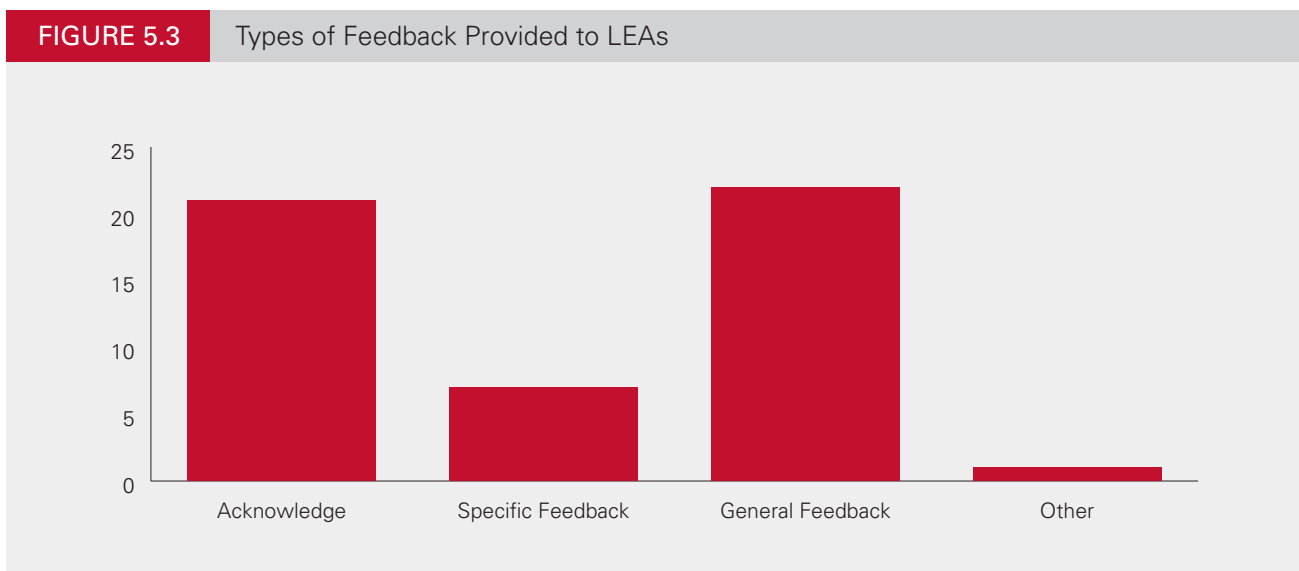


TABLE 5.47 Types of Feedback Provided to LEAs

| Type of feedback | Number (%) of LEAs |
|--|--------------------|
| Acknowledging receipt of LEA's data and/or confirming direct access to LEA's data | 21 (42) |
| General feedback, such as: | 22 (44) |
| <ul style="list-style-type: none"> Statistics on the number of cases where the FIU have obtained and used the LEA's data | 10 (20) |
| <ul style="list-style-type: none"> Statistics on the number of cases where the FIU transmitted LEA's data to another domestic competent authority | 2 (4) |
| <ul style="list-style-type: none"> Statistics on the number of cases where the FIU transmitted LEA's data to a foreign FIU or another foreign competent authority | 1 (2) |
| <ul style="list-style-type: none"> Other | 9 (18) |
| Specific or "case-by-case" feedback | 7 (14) |
| Other | 1 (2) |

Note: The table presents the responses of the 50 LEAs that receive feedback from FIUs on FIU's use of LEA information.

Table 5.47 shows that nearly half (21 LEAs, or 42 percent) only receive an acknowledgment by FIU on receipts of their data or a confirmation that they have accessed LEA's data directly. A similar number of LEAs (22, or 44 percent) indicated they receive different types of general feedback from the FIUs, such as statistics on the number of cases where the FIU have obtained and used the LEA's data (10 LEAs, or 20 percent); statistics on the number of cases where the FIU transmitted LEA's data to another domestic competent authority (2 LEAs, or 4 percent); statistics on the number of cases where the FIU transmitted LEA's data to a foreign FIU or another foreign competent authority (1 LEA, or 2 percent). In addition, 9 LEAs (18 percent) reported they receive "other type" of general feedback. They provided the following examples: statistics on the number of requests and responses; information as to how to improve the LEAs requests; a reconciliation of the state of submitted case referrals conducted twice a year by FIU and LEA.

Of the remaining LEAs, 7 LEAs (14 percent) reported that they receive a case-specific feedback. One LEA (2 percent) mentioned that its FIU seeks feedback from all users of STR/SAR every six months. Once the feedback is collated, it is then provided to all end users along with any additional information considered appropriate from the FIU.

The analysis of individual responses also shows that some LEAs receive several types of feedback simultaneously. For example, four LEAs receive all three types of feedback mentioned, while five LEAs that receive "acknowledge" receipts also receive case-specific feedback. Moreover, six LEAs receive both specific and general feedback.

Timeliness of Feedback

Of 50 LEAs that receive feedback from the FIUs, only 38 LEAs responded to additional question regarding the timelines of the feedback. Of these LEAs, the clear majority of LEAs (35, or 92 percent) reported that feedback is provided on a timely basis. Only 3 LEAs (8 percent) responded that they do not consider the feedback to be timely. To overcome this issue, they organize meetings with the FIUs to ensure that data are received on time.

Quality of Feedback

The survey asked all 50 LEAs that receive feedback from the FIUs about their opinion regarding the quality of feedback. Thirty-eight LEAs responded. They all mentioned that the FIU feedback is adequate and appropriate.

Strengths of the Current State of Cooperation between the LEAs and FIUs

The survey posed an open-ended question on the strengths of the current state of cooperation between LEAs and FIUs. In all, 105 LEAs (81 percent) responded to this question. Their responses are summarized as follows:

- Strategic and operational cooperation between LEAs and FIUs is critical during the process of crime investigation and verification of illegal proceeds.
- The existence of a cooperation agreement between FIUs and LEAs facilitates bilateral information exchange.
- Keeping both personal and official channels of communication between staff of FIUs and LEAs facilitates cooperation.
- Meetings held between LEAs and FIUs help resolve pending issues and increase mutual trust.
- The appointment of liaison officers and dedicated contact points within both the FIU and LEA helps raising the FIU's understanding of the LEA's urgency and the requirements of queries.
- Establishment of a joint task force between FIUs and LEAs has proven to be a valuable tool to combat crimes.
- Joint technical training and knowledge sharing enhance the capabilities of LEAs and FIUs.
- Direct access to or obtainable of FIU intelligence (STRs and CTRs) by LEAs facilitates early crime detection and ensures that timely measures are taken.
- Due to the FIU's assistance, the LEA can obtain foreign intelligence to combat transnational crimes.

Impediments to the Current State of Cooperation between the LEAs and FIUs

An additional open-ended question was asked regarding the impediments to the current state of cooperation between LEAs and FIUs. More than half of LEAs (73, or 56 percent) responded. The responses are summarized as follows:

- Delivery of disseminated or requested information from FIU is late and incomplete.
- Regulations and laws hinder LEAs from directly accessing to or obtaining FIUs' information.
- The low quality of FIUs' reports hampers the effective cooperation between LEAs and FIUs.
- LEAs lack awareness about the dissemination of the FIU's information upon request.
- FIUs' detection time related to new patterns of fraud (such as value added tax, bitcoin) could be improved.
- Classification of priorities, acknowledgement of urgent requests, and interpretation of legislation might vary between FIUs and LEAs.
- The FIU does not fully understand LEAs' needs in investigation and prosecution.
- The FIU is short of staff to appropriately deal with matters of interest to LEAs.
- The LEA is lacking technical skills to fully utilize the financial intelligence provided by the FIU.
- The system to exchange information between the FIU and LEAs is not secure.
- There is a lack of legal provisions to request and receive feedback from the FIU.
- Domestic LEAs have different objectives and require different levels of detailed information, confusing the FIU.

General Comments and Observations

This section presents LEAs' views regarding the level of FIUs' understanding of LEAs' capabilities as well as their understanding of LEAs' intelligence and/or evidentiary requirements.

Understanding of LEAs’ Capabilities by FIUs

Of 130 LEAs, the majority (122, or 94 percent) from 56 jurisdictions provided their views on FIUs’ understanding of their capabilities. Table A.48 presents this information.

| TABLE 5.48 FIUs’ Understanding of LEAs’ Capabilities | |
|--|--------------------|
| FIUs’ Understanding of LEAs’ Capabilities | Number (%) of LEAs |
| Excellent | 25 (20) |
| Very good | 64 (52) |
| Satisfactory | 27 (22) |
| Less than satisfactory | 5 (4) |
| Poor | 1 (1) |

Note: 122 LEAs provided responses.

A clear majority of LEAs (116, or 95 percent) indicated that FIUs’ understanding of their capabilities is considered “satisfactory” or higher. It is worth noting that 64 LEAs (52 percent) indicated that FIUs had a “very good” understanding of their capabilities, while 6 LEAs (5 percent) reported that the FIUs’ understanding is “less than satisfactory” or “poor.” Among the LEAs that were not satisfied with the FIUs’ understanding of their capabilities, there was one prosecutorial authority, as well as three police units, one Ministry of Justice, and one unspecified authority.⁴⁵

When asked to explain their ratings, some LEAs responded that high levels of understanding were due to the fact that some FIUs were located at the LEAs or that FIU staff were formerly LEA personnel. Where the level of FIUs’ understanding of LEAs’ capabilities was “satisfactory,” LEAs believed it was the result of close and long-standing cooperation between agencies on concrete cases investigated through joint activities. Generally, LEAs considered coordination mechanisms such as joint investigations, close working relationships, periodic meetings, and constant dialogues as specific mechanisms through which FIUs’ understanding was improved. Similarly, in some countries, FIU staff were required to attend financial investigation courses, thus learning how police forces function. Seminars were also considered effective instruments through which FIUs’ staff could learn about LEAs’ capabilities.

Circumstances where the rating was considered “poor” or “not satisfactory” were largely related to cases where LEAs indicated that FIUs overestimated their capabilities or failed to understand why some criminal cases were not opened or were closed⁴⁶ by LEAs. There were also situations where-although FIUs had a good understanding of LEAs’ capabilities-this information did not facilitate operational activities.

Further impediments for LEAs’ capabilities were related to limited human, budgetary, and/or technical resources. Several LEAs also mentioned that shortcomings in the legislation inhibited the ability to work closely with FIUs.

FIU Understanding of LEAs’ Strategic, Operational, and/or Evidentiary Requirements

Of 130 participating LEAs, 119 LEAs (92 percent) shared their views on FIUs’ understanding of LEAs’ strategic, operational and/or evidentiary requirements. Their responses are presented in table 5.49.

TABLE 5.49

FIU Understanding of LEAs' Strategic, Operational, and/or Evidentiary Requirements

| FIUs' understanding of LEAs requirements | Number (%) of LEAs |
|--|--------------------|
| Excellent | 23 (19) |
| Very good | 57 (48) |
| Satisfactory | 34 (29) |
| Less than satisfactory | 4 (3) |
| Poor | 1 (1) |

Note: 119 LEAs provided responses.

Nearly all (114 LEAs, or 96 percent) of the respondent LEAs reported that FIUs have a “satisfactory” or higher level of understanding of their strategic, operational, and/or evidentiary requirements. Nearly half (57 LEAs, or 48 percent) indicated a rating of “very good” and only 5 LEAs (4 percent) rated the FIUs’ understanding as “less than satisfactory” or “poor.” Not surprisingly, almost all LEAs that were satisfied with the FIUs’ understanding of LEAs’ capabilities also expressed their satisfaction with the FIUs’ understanding of their strategic, operational, and/or evidentiary requirements. Similarly, of 6 LEAs that criticized the FIUs’ understanding of LEAs capabilities, 5 LEAs also gave a negative rating of the FIUs’ understanding of their strategic, operational, and/or evidentiary requirements.

The LEAs narrative responses revealed certain objective elements that facilitated FIUs’ knowledge on LEAs’ strategic, operational, and/or evidentiary requirements, including the following:

- Presence of LEAs’ staff within the FIUs
- Location of the FIUs at the LEAs
- Attendance of investigative courses by FIU staff or the presence of former LEAs’ staff/ LEAs’ liaison officers at FIUs
- Cooperation mechanisms including joint workshops, daily cooperation, strategic meetings, and close working relationships.⁴⁷

Criticisms concerned instances in which FIUs omitted information necessary for LEA investigations, or when FIUs information could not be used as evidence. Some LEAs clearly indicated that the level of proof was known by FIUs and this affects the decision-making process when FIUs send cases to LEAs. LEAs also specified that there were circumstances when FIUs were not experienced in terms of evidentiary requirements, limiting the cooperation between LEAs and FIUs.

Overall, the results demonstrate that a proper understanding of LEAs’ strategic, operational, and/or evidentiary requirements permits FIUs to properly support LEAs in the course of their investigations.

Additional Inputs about LEAs and FIUs Working Together

The study also explored other ways in which LEAs work with FIUs. Ninety-nine LEAs (76 percent) provided examples of such activities, which included the following:

- Meetings between LEAs and FIUs.⁴⁸ Examples provided are mostly related to “operational issues” covering ongoing investigations or in-depth scrutiny of suspicious transactions, as well as information sharing on cross-border cash declarations. Strategic analysis and typologies exercises have been drafted together, and discussions have been held on emerging money laundering and terrorist financing risks. Regular feedback and statistics have been provided. Two LEAs indicated that they approached their respective FIUs to contact foreign FIUs in relation to ongoing investigations. One LEA specified that it works on “Egmont requests.”

- AML/CFT training events, seminars, courses, and workshops jointly organized by LEAs and FIUs for their staff. LEAs reported that these events take place very frequently and, at minimum, are organized on an annual basis. Some LEAs also responded that together with the FIUs they collect information for the development of best practices and raising awareness. Once elaborated, this information is provided to all competent authorities and the private sector.
- Attendance at multilateral meetings and involvement in domestic committees. AML/CFT issues and other related topics are usually discussed during these meetings.⁴⁹

LEAs Authority to Conduct Financial Investigation When Pursuing Money Laundering, Associated Predicate Offences, and Terrorist Financing

Ninety-seven LEAs (75 percent) responded that they have the authority to carry out such financial investigations, while less than one-third of LEAs (27, or 21 percent) indicated that they are lacking such authority. Six LEAs (4 percent) did not provide information on this topic.

Participation of FIUs in Financial Investigations Carried Out by LEAs

The survey posed a question whether FIUs take part in financial investigations led by LEAs and if yes, is FIUs’ participation required by legislation.

Less than half of respondent LEAs (55, or 42 percent) indicated that FIUs participate in financial investigations, while a slight majority of LEAs (67, or 52 percent) responded that they do not. Eight LEAs (6 percent) did not respond to this question.

Table 5.50 provides information on whether the active participation of FIUs in financial investigations is mandatory, optional, or “other.”

| TABLE 5.50 FIUs Participation in Financial Investigations | |
|--|----------------------|
| FIUs’ participation in financial investigations | Number (%) of LEAs |
| Mandatory | 5 (10) ^a |
| Optional | 25 (49) ^b |
| Other (depending on whether the FIU was involved in detection/initial case analysis) | 23 (45) |

Note: Of 51 LEAs that responded to this question, 3 LEAs selected multiple answers.
a. These LEAs are based in 5 jurisdictions.
b. These LEAs are based in 18 jurisdictions.

The FIU’s participation in financial investigations is mandatory in only a small number of jurisdictions (5, or 10 percent). Of the remaining LEAs, 25 LEAs (49 percent) stated that FIUs’ participation in financial investigations is optional. Twenty-three LEAs (43 percent) selected the option “other,” some of which specified that FIUs cooperate in financial investigations with LEAs when requested by prosecutors. LEAs also stated that such decisions were taken by prosecutors when FIUs were involved in the detection or initial analysis of the case or when FIUs’ participation could contribute to the success of cases.

LEA Staff Serving as a Contact Point⁵⁰ with FIU

In general, a dedicated LEA staff serving as a contact point for cooperation with the FIU may contribute to better coordination and collaboration among the authorities involved in detection, investigation, and prosecution of money laundering and terrorist financing. In this segment of the survey, the question posed was whether the LEAs appointed staff to serve as contact points with their FIUs.

Almost all participating LEAs (126, or 97 percent) responded to this question. A clear majority of LEAs (89, or 71 percent) indicated that they have dedicated staff serving as a contact point with the FIUs, while less than one-third of LEAs (37, or 29 percent) responded that they do not.

Those LEAs that responded positively to the previous question were also asked about the location of their contact points. Interestingly, 90 LEAs responded, as reported in table 5.51.

| TABLE 5.51 Location of LEAs' Contact Points | |
|---|--------------------|
| Location of LEAs contact points | Number (%) of LEAs |
| In the LEA | 74 (82) |
| In the FIU | 13 (14) |
| Other | 5 (6) |

Note: 90 LEAs provided responses. The numbers do not add up because some LEAs choose more than one option.

In most of the cases, contact persons are located at LEAs' offices (82 percent), while in 13 LEAs (14 percent) LEAs' staff is hosted in the FIUs. Those LEAs that selected "other" commonly referred to a situation where contact persons were located in both the LEA and the FIU offices.

Presence of FIUs' Liaison Officers at LEAs and their Legal Status and Tasks

The LEAs were asked if the FIUs have a liaison officer in their agencies. Almost all participating LEAs (126, or 97 percent) responded to this question. Of these, the majority of LEAs (102, or 81 percent) indicated that their FIUs do not have a liaison officer in their agency, and less than one-quarter of LEAs (24, or 19 percent) mentioned that they are indeed hosting the FIU staff in their agencies.

LEAs specified the following roles and tasks assigned to FIUs' liaison officers:

- To follow up on cases reported by FIU to LEA
- To support LEAs (prosecutors and police, in particular) through operational financial analysis of cases under investigation
- To act as facilitators in meetings with FIUs for exchange of information
- To cooperate on strategic analyses
- To support LEAs in providing feedback to FIUs
- To coordinate actions for joint investigations
- To develop and train LEAs on intelligence tools
- To make LEA information available to FIUs.

The respondent 26 LEAs also explained whether and how the role of the FIU's liaison officer is regulated in their jurisdictions. Their responses are presented in table 5.52.

| TABLE 5.52 Legal Basis Regulating the Role of a Liaison Officer | |
|---|--------------------|
| Legal basis | Number (%) of LEAs |
| Law | 7 (27) |
| Regulation/Under-statutory Act | 2 (8) |
| Memorandum of Understanding | 9 (35) |
| Other | 11 (42) |

Note: The table reports responses of 26 LEAs. The numbers do not add up because some LEAs selected more than one response.

More than one-quarter of LEAs (7, or 27 percent) indicated that the role of the FIU liaison officer is regulated by law, 2 LEAs (8 percent) specified that it was controlled by regulation or under-statutory acts, and slightly more than one-third of LEAs (9, or 35 percent) stated that its role was structured according to Memoranda of Understanding. Moreover, 11 LEAs (42 percent) referred to “other” mechanisms, among which they mentioned agreements, protocols, and resolutions by the Prosecutors Office. LEAs of one country indicated that although FIU officers are not permanently attached to LEAs, they are available on a consultancy basis (only as it pertains to FIU business).

Confidentiality of Information Received/Obtained from the FIU

Irrespective of the legal status of FIU’s information disseminated to the LEAs or accessed by them directly, the FIU’s information/reports almost always contain data that are protected by different types of confidentiality (for example, banking secrecy, tax, and other types of official secrecy). The LEAs were asked if they treat the information received/obtained from the FIUs as confidential and if so, what measures they take to ensure the confidentiality.

Of 130 participating LEAs, 123 LEAs (95 percent) responded to this question. As expected, nearly all LEAs (118, or 96 percent) stated that they treat the FIU information as confidential. The remaining 5 LEAs responded that they do not.

Those responding positively were then asked to list the measures used to ensure confidentiality of FIU information. Table 5.53 presents their responses.

| TABLE 5.53 Measures Taken by LEAs to Ensure Confidentiality of FIU Information | |
|---|--------------------|
| Measures to ensure confidentiality of FIU’s information | Number (%) of LEAs |
| Classifying FIU’s information as confidential | 75 (64) |
| Limiting accessibility of FIU’s information by authorized personnel only | 81 (69) |
| Using FIU’s information only for the purpose for which the information was sought or provided | 70 (59) |
| Stipulating the conditions to allow a withdrawal of confidentiality | 15 (13) |
| Other | 6 (5) |

Note: 118 LEAs responded to this question, often selecting more than one measure.

The majority of LEAs (81, or 69 percent) limit the access to FIU’s information to “authorized personnel” only. The second most common measure, selected by 75 LEAs (64 percent), is to classify the FIU’s information as confidential, while 70 LEAs (59 percent) specified that FIU’s information is used only for the purpose for which the information was requested and any re-dissemination beyond those originally approved is subject to prior authorization by the FIU. Fifteen LEAs (13 percent) responded that they have stipulated conditions to allow a withdrawal of confidentiality.

The 6 LEAs (5 percent) that selected “other” provided the following additional explanations:

- One LEA chose all options.
- One LEA specified that FIU reports and information were used only to develop the cases.
- In another jurisdiction, FIU information was covered by “investigative secrecy” and could only be disclosed according to the Law on Criminal Procedures.
- Additionally, some LEAs specified that procedures and detailed instructions were provided to the users or recipients of FIUs’ information.
- One LEA indicated that special “gatekeepers” (such as “accredited officers”) control access to FIU information. These officers had received requisite training in handling and disseminating FIU information.

- One LEA also indicated that the FIU has a power to investigate breaches of confidentiality and could issue sanctions by withdrawing the LEAs' access if proper protocols are not met.

Additional Information on Strengthening Cooperation between LEAs and FIUs

This segment of the survey looked for additional mechanisms-beyond those already covered in the report-on how LEAs are strengthening cooperation with FIUs. In all, 105 LEAs (81 percent) responded to this part of the survey. Their responses are summarized below:

- Almost all responding LEAs consider periodic meetings, and daily and direct contacts, to be the most relevant means to strengthen cooperation with FIUs. Respondent LEAs indicated that these meetings provide, or at least should provide, information sharing on specific cases as well as feedback, discussions about obstacles and practical problems, and training activities.
- When FIUs are located at LEAs, regular and constant meetings are held. This helps facilitate daily cooperation.
- When FIUs are not located at LEAs, several initiatives have been undertaken to strengthen cooperation, mostly based on Memoranda of Understanding (MOU). In most cases, the MOU aims to enhance the exchange of information among parties. Frequently such MOU seek to establish "inter-Agency mechanisms" where LEAs and FIUs cooperate and coordinate their activities.⁵¹
- The most relevant issues discussed with FIUs are related to making information flows more agile and fluid, how to overcome possible barriers, and what information is relevant for cases under investigation.
- Maintaining informal direct contact is considered relevant for an effective level of cooperation and coordination between LEAs and FIUs.
- Joint working groups or joint task forces with FIUs have been established to tackle most relevant and complex money laundering and terrorist financing investigations. These working groups or task forces have carried out joint analysis of cases.
- Some LEAs have promoted internal surveys to understand the FIUs' needs and how to improve cooperation with the FIUs.
- One LEA has also promoted an internship program with its FIU.
- One LEA indicated that cooperation could be strengthened through FIU liaisons, contact points, and frequent discussions on strategic issues, and by prioritizing activities.

Endnotes

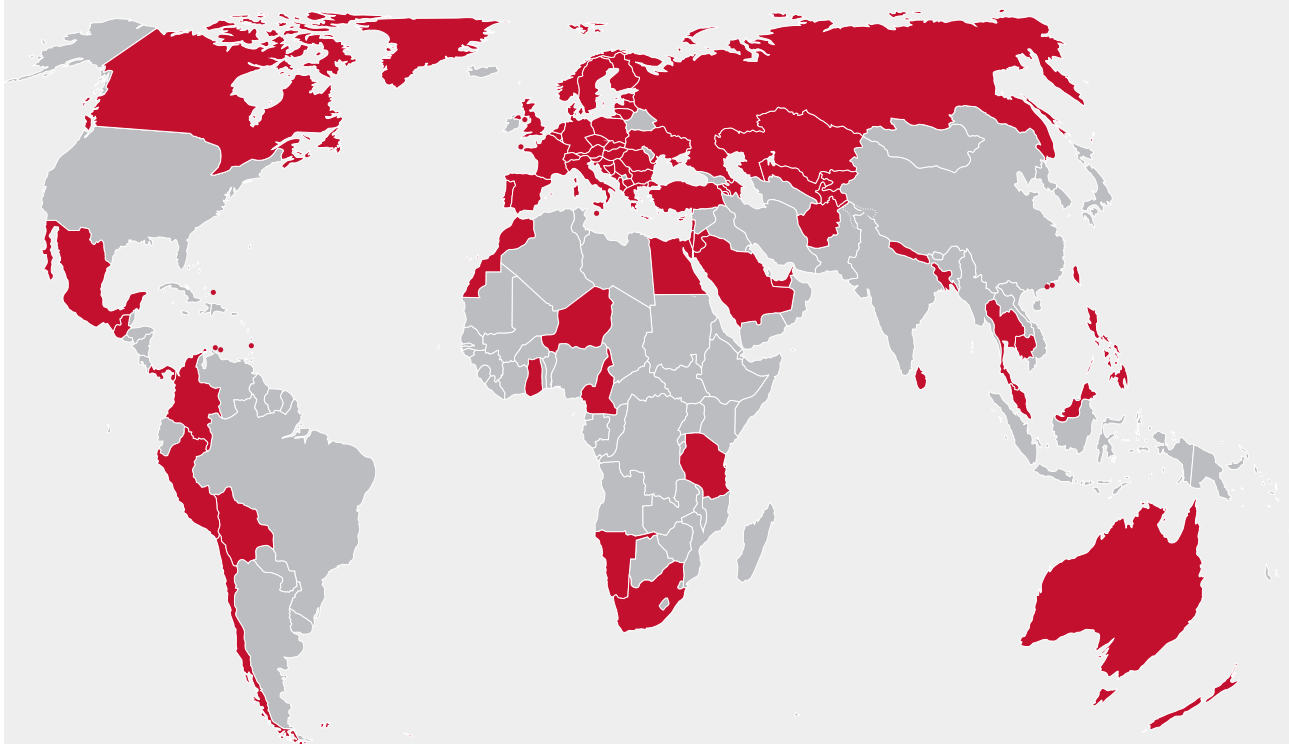
1. FIUs provided examples of many types of other LEAs from which they may obtain information. It seems clear that the reference to LEAs has been interpreted flexibly and, therefore, that the responses are not equivalent in their approach.
2. A more detailed examination of responses showed that type or size of FIU do not dictate whether background information for a request is required.
3. FATF Recommendation 29 and a related Interpretative Note require FIUs to have access on a timely basis to the LEAs' information.
4. The response of one FIU was unclear.
5. Even if this question was meant to be answered only by the 43 FIUs that answered NO—that is, that their legislation did not explicitly regulate recipients—58 FIUs responded and specified the arrangement of their system.
6. Responses include wording, such as “dissemination depends on the case,” and “depending on the working field of the LEA.”
7. For example, one FIU indicated that all information contained in the report can be used as evidence, with the exception of information received from its foreign counterparts, which may be used only as intelligence.
8. One FIU commented that there is no advantage in using the FIU information only for intelligence purposes, and that the term “intelligence” is confusing.
9. One FIU indicated that confidentiality is particularly important in small jurisdictions with extensive family connections.
10. One FIU mentioned that in civil law countries that have an “all proof” (“liberté de la preuve”) approach in criminal matters, the notion of “intelligence only” makes no sense.
11. One FIU stated that it personally hands over its report to the prosecutor.
12. Of the eight FIUs, four are administrative-type FIUs, two are police-type FIUs, one is a prosecutorial-type FIU, and one is a hybrid-type FIU.
13. In some jurisdictions, instead of using the word “request” the legislation is referring to an “initiative” from LEAs and/or other competent bodies sent to the FIU.
14. Because two FIUs made a mistake in their responses, the precise number is 83 FIUs, or 97 percent. See the first bullet point in the text.
15. Some FIUs are not allowed to disseminate the STRs to the LEA because they are obliged to protect the sender of the STR.
16. In their responses, some FIUs referred in general to provisions in their respective laws without providing the content of these provisions.
17. In addition, one FIU mentioned that LEAs have direct access to their STRs/CTRs database, and another FIU reported that they run a risk model to verify if there is relevant information to analyze.
18. A detailed examination of responses of two FIUs that responded negatively to this question showed that they made a mistake.
19. These six FIUs come from different continents. Three are administrative-type, two are hybrid-type, and one is police-type FIUs.
20. The lifespan of certain types of evidence is often very short and the opportunity for collecting certain evidence is fleeting.
21. The FIU information can be used as a lead to perform an investigation on predicate offence, thus speeding up the process of financial investigation.
22. Investigators are forced to cross-examine, verify, and supplement FIU information by using different resources.
23. Such as important records of the bank staff regarding the suspicion of their client.
24. Such as clearing or sanitizing military police intelligence to stand as a public document.
25. Especially when information is obtained from foreign jurisdictions, creating the need for mutual legal assistance requests.
26. In extreme cases, this may result in information/intelligence being overlooked, due to intricate storage procedures.
27. For example, financial intelligence is sent to and shared only with the Prosecutor's Office and not the national police.
28. If FIU information is used as evidence, its main advantage is that it can be included in the criminal procedures. Some FIUs have created a group of experts who attend court procedures to provide technical verification of the reports prepared by their staff and the reports prepared by a compliance officer, whose identities will not be disclosed.
29. Analytic products are comprised of threshold transaction reports, bank account statements, transaction records, a description of suspicion, and the like.
30. For instance, in what capacity LEAs should contribute to preparing strategies for cases that include STRs, presumed money laundering, links to source crimes, and other elements relevant to understanding FIU working documents.
31. Such as land and property ownership, cross-border currency movements, and company information.
32. Information needs to match the complexity of the jurisdiction. Suspicious Activity Reports (SARs) must cover as many sectors as possible and involve more than merely cash exchange transactions.
33. FIU information could be improved by the inclusion of additional elements, such as source of funds, purpose of funds, Wire Transfer Reports, fund linkages, and discrete information on counterparties, goods, and services that were subject to financial transactions.
34. In some jurisdictions, there is no minimum standard for FIU reports, which leads to some reports being more detailed than others.
35. FIU's information is not aligned and structured for investigations or for application of production orders and search warrants.
36. FIU analysts very often must decide between the fast dissemination and the quality of analysis.
37. FIUs issue reports based on “suspicion,” while the burden of proof for LEAs is “beyond a reasonable doubt.”
38. Of these 13 LEAs, 9 LEAs (69 percent) are of a police-type, and they come from 12 different jurisdictions.
39. This number includes 8 LEAs that have responded that their requests for information from FIUs is not regulated in the law.
40. These LEAs are of a different type: for example, representing the police, the Prosecutor's Office, intelligence service, and/or tax authorities.
41. These LEAs also come from a different spectrum of LEAs, such as the police, anti-drug agencies, anti-corruption agencies, the Prosecutor's Office, intelligence services, and tax authorities.
42. Surprisingly, the list of respondent LEAs also includes 13 LEAs from 12 jurisdictions that have previously responded that they are not authorized to ask FIU for relevant information.
43. Twenty-four LEAs did not respond to this question or replied that this is not applicable to them.
44. In the questionnaire, it was explained that “direct access” means the ability to query the FIU data online or via a contact point located in the FIU.
45. One of the four jurisdictions provided a response that included the views of several LEAs.
46. For example, when “some cases are not supported with relevant data to bring them further toward criminal investigation.”
47. All these factors helped clarify each party's powers, capabilities, and limitations.
48. These meetings are mostly “face to face meetings,” either formal or informal, based on the initiatives of LEAs'/FIUs' or governed by a MOU. They vary in frequency (daily, monthly, bi-monthly, quarterly, annually) or are organized when needed.
49. Topics include policy development, review of legislation and regulation, and cooperation in the national ML/TF risk assessments.
50. The report distinguishes between “Contact Points” and “Liaison Officers,” because in some jurisdictions they may play a different role.
51. Such mechanisms usually include “working groups,” “committees,” or “councils.” While some of these mechanisms are operational (that is, they work on concrete cases), others are attended by high-level senior representatives of competent authorities, and thus seem to be oriented to deal with policy issues rather than to increase coordination at an operational level.

APPENDIX A

FIU Survey Participants

The Financial Intelligence Units (FIUs) from the following countries, economies, and territories participated in the World Bank–Egmont Group–UNODC GPML survey.

- | | | |
|----------------------------|----------------------|--------------------------|
| 1. Afghanistan | 17. Chile | 33. Guernsey |
| 2. Albania | 18. Colombia | 34. Hong Kong SAR, China |
| 3. Armenia | 19. Croatia | 35. Hungary |
| 4. Aruba | 20. Curaçao | 36. Isle of Man |
| 5. Australia | 21. Cyprus | 37. Israel |
| 6. Austria | 22. Czech Republic | 38. Italy |
| 7. Azerbaijan | 23. Denmark | 39. Jordan |
| 8. Bahrain | 24. Egypt, Arab Rep. | 40. Kazakhstan |
| 9. Bangladesh | 25. Estonia | 41. Kyrgyz Republic |
| 10. Belgium | 26. Fiji | 42. Latvia |
| 11. Bolivia | 27. Finland | 43. Lebanon |
| 12. Bosnia and Herzegovina | 28. France | 44. Liechtenstein |
| 13. Bulgaria | 29. Germany | 45. Lithuania |
| 14. Cambodia | 30. Ghana | 46. Luxembourg |
| 15. Cameroon | 31. Greece | 47. Macao SAR, China |
| 16. Canada | 32. Guatemala | 48. Macedonia, FYR |



Source: Joint Study. Base map image ©d-maps.com. Note: Survey participants are in red.

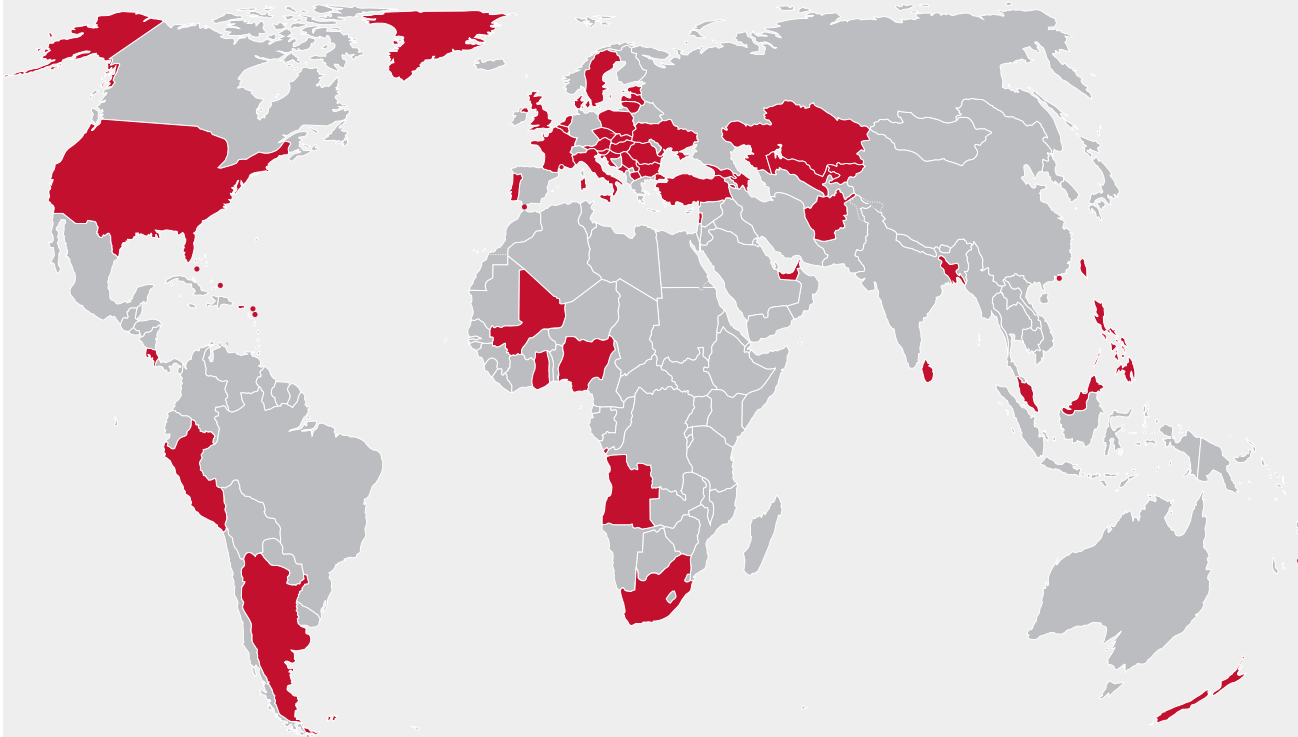
- | | | |
|-----------------|------------------------|------------------------------------|
| 49. Malaysia | 64. Philippines | 79. St. Vincent and the Grenadines |
| 50. Malta | 65. Poland | 80. Sweden |
| 51. Mauritius | 66. Portugal | 81. Switzerland |
| 52. Mexico | 67. Romania | 82. Taiwan, China |
| 53. Monaco | 68. Russian Federation | 83. Tajikistan |
| 54. Montenegro | 69. San Marino | 84. Tanzania |
| 55. Morocco | 70. Saudi Arabia | 85. Thailand |
| 56. Namibia | 71. Serbia | 86. Turkey |
| 57. Nepal | 72. Seychelles | 87. Turks and Caicos Islands |
| 58. Netherlands | 73. Singapore | 88. Ukraine |
| 59. New Zealand | 74. Slovak Republic | 89. United Arab Emirates |
| 60. Niger | 75. Slovenia | 90. United Kingdom |
| 61. Norway | 76. South Africa | 91. Uzbekistan |
| 62. Panama | 77. Spain | |
| 63. Peru | 78. Sri Lanka | |

APPENDIX B

LEA Survey Participants

The Law Enforcement Authorities (LEAs) from the following countries, economies, and territories participated in the World Bank–Egmont Group–UNODC GPML survey.

- | | | |
|--------------------|--------------------------|---------------------|
| 1. Afghanistan | 17. France | 33. Monaco |
| 2. Angola | 18. Georgia | 34. Montenegro |
| 3. Argentina | 19. Ghana | 35. Netherlands |
| 4. Austria | 20. Gibraltar | 36. New Zealand |
| 5. Azerbaijan | 21. Hong Kong SAR, China | 37. Nigeria |
| 6. Bahrain | 22. Hungary | 38. Peru |
| 7. Bangladesh | 23. Italy | 39. Philippines |
| 8. Belgium | 24. Kazakhstan | 40. Poland |
| 9. Bermuda | 25. Kyrgyz Republic | 41. Portugal |
| 10. Bulgaria | 26. Latvia | 42. Romania |
| 11. Costa Rica | 27. Lebanon | 43. Saint Maarten |
| 12. Croatia | 28. Lithuania | 44. Serbia |
| 13. Czech Republic | 29. Macedonia, FYR | 45. Slovak Republic |
| 14. Denmark | 30. Malaysia | 46. Slovenia |
| 15. Estonia | 31. Mali | 47. South Africa |
| 16. Fiji | 32. Malta | 48. Sri Lanka |



Source: Joint Study. Base map image ©d-maps.com. Note: Survey participants are in red.

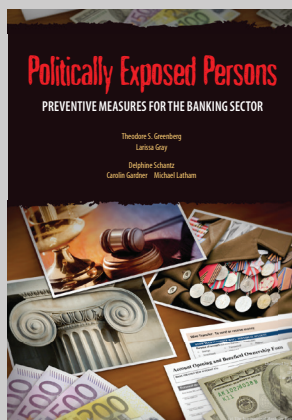
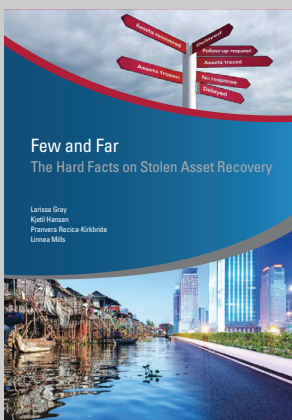
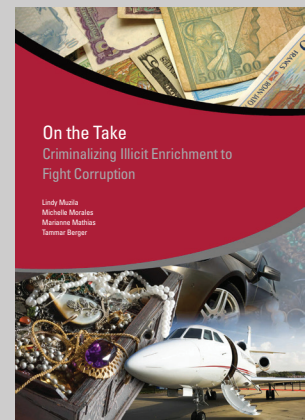
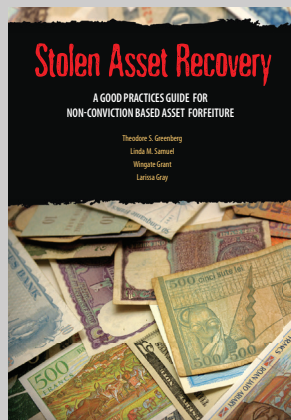
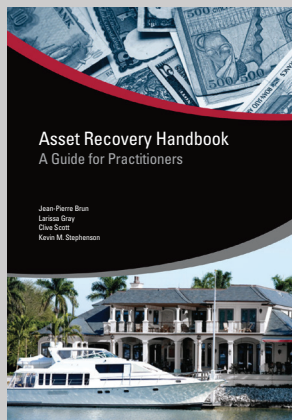
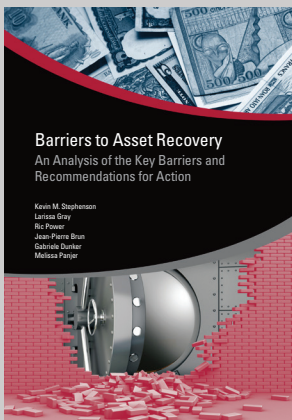
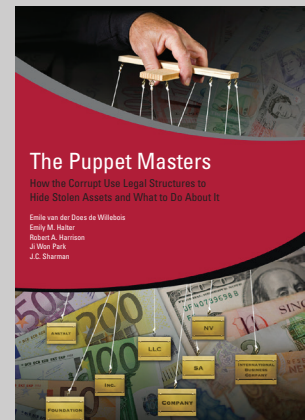
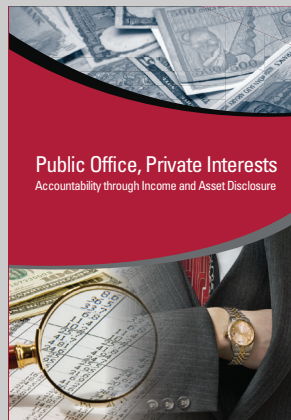
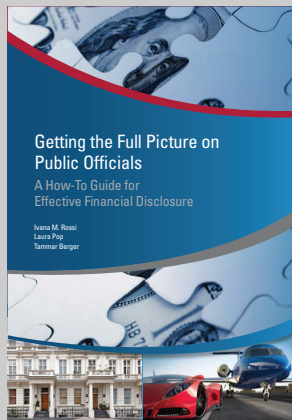
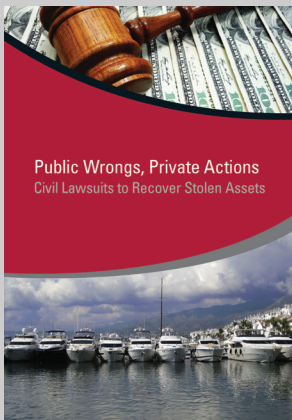
49. St. Kitts and Nevis
50. Sweden
51. Taiwan, China
52. Turkey
53. Turks and Caicos Islands
54. Ukraine
55. United Arab Emirates
56. United Kingdom
57. United States
58. Uzbekistan

References

- ECORYS. 2015. *Final Report on Needs Assessment on Tools and Methods of Financial Investigation in the European Union*. Report prepared for Wetenschappelijk Onderzoek-en Documentatiecentrum and Ministry of Justice in the Netherlands, December 22. Rotterdam. https://www.wodc.nl/binaries/2612-volledige-tekst-en_tcm28-74131.pdf.
- FATF (Financial Action Task Force). 2013. *Methodology for Assessing Technical Compliance with the FAFT Recommendations and the Effectiveness of ALL/CFT Systems*. <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>.
- Gilmore, William C. 2011. *Dirty Money. The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*. Council of Europe Publishing.
- Stroligo, Klaudijo, Horst Intscher, and Susan Davis-Crockwell. 2013. *Suspending Suspicious Transactions*. Washington, DC: World Bank.
- Verhelst, Boudewyn. 1998. "The Organization of a Financial Intelligence Unit." Paper presented to a training seminar for Council of Europe evaluators, Brussels, March 25 (typescript).



StAR publications have been the knowledge products geared toward providing tools and good practices to practitioners and are the backbone of country engagement and capacity-building.



All publications are available for free download and in different languages: star.worldbank.org

