

Chapter VII

The Financial Intelligence Unit

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Those involved in the fight against money laundering and terrorist financing must have access to certain kinds of financially related information in order to conduct financial investigations. In this regard, the financial intelligence unit (FIU) plays an increasingly important role in this process.¹

Money launderers manipulate their illicit proceeds in an endeavor to conceal or disguise their true nature, source, location, disposition, and movement, with the ultimate objective of integrating these proceeds into, and through, the legitimate economy.² Those who finance terrorism seek to conceal the source of the funds and disguise the illicit use of funds in support of terrorism. Financial investigations are assisted greatly by a country's compre-

1. For a comprehensive discussion on FIUs, see *Financial Intelligence Units, An Overview 2004, (FIUs Overview)* by the International Monetary Fund and World Bank, available (read-only) at www.amlcft.org.
2. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention), art. 3(b)(i) & (ii). [http://www.incb.org/e/conv/1988/..](http://www.incb.org/e/conv/1988/)

hensive regime that requires the reporting of certain information and record keeping, and that facilitates information sharing among competent authorities, both domestically and internationally. The primary goals of financial investigations are to identify, trace, and document the movement of funds; to identify and locate assets that are subject to law enforcement measures; and to support the prosecution of criminal activity.

Financial investigations seek to discover the financial trail left by criminals. As part of this process, investigators analyze financial institution account records, real estate records, documents on liens and judgments, corporate registries, brokerage and mutual fund accounts, insurance contracts and a full spectrum of other financial and business relations records. Illicit financial operations have recently grown more sophisticated and complex, requiring traditional investigators to acquire new and specialized financial intelligence tools.

The Financial Action Task Force on Money Laundering (FATF), which is recognized as the international standard setter for anti-money laundering (AML) and combating the financing of terrorism (CFT), provides in *The Forty Recommendations on Money Laundering (The Forty Recommendations)*, that each country should establish an FIU.³ Further, FATF urges countries to impose measures on financial institutions and certain non-financial businesses and professions requiring them to maintain records on the identities of their clients and their transactions, and to report any suspicious transactions.⁴ Information generated by these reporting and record keeping requirements is to be reported to the country's FIU and is used to reconstruct transactions, to establish the link between individual clients and a particular business, to prove the "state of mind" of an individual, and finally, to identify the role of an individual in a criminal or terrorist financing activity.

Information reporting and record keeping requirements generate substantial financial data, much of which is not easily useable by competent authorities without further analysis. If a country's AML and CFT institutional frameworks are to be at all effective, the country must institute a reliable, efficient system for processing, analyzing, and disseminating this information. Without such a system in place, law enforcement has a much

3. *The Forty Recommendations*, Rec. 26., http://www.fatf-gafi.org/pdf/40Recs-2003_en.pdf.

4. *Id.*, Recs. 10-22.

more difficult time detecting criminal or terrorist financial dealings. The pressing need for effective data analysis of possible financial crime explains, in part, the proliferation of FIUs and the growing importance of their roles in the international effort to prevent, detect and prosecute money laundering and terrorist financing.⁵

A. Definition of a Financial Intelligence Unit

The Egmont Group of Financial Intelligence Units (Egmont Group), which is the international standard setter for FIUs, adopted the following definition of an FIU in November 1996:

A central, national agency responsible for receiving (and, as permitted, requesting), analyzing, and disseminating to the competent authorities, disclosures of financial information (i) concerning suspected proceeds of crime, or (ii) required by national legislation or regulation, in order to counter money laundering.⁶

The United Nations Convention against Transnational Organised Crime (2000) (Palermo Convention) adopted this definition, stating, “Each state Party...shall...consider the establishment of a financial intelligence unit to serve as a national center for the collection, analysis and dissemination of information regarding potential money laundering.”⁷

Expanding on this definition, FATF requires countries to establish an FIU, which has these three essential functions, i.e., the collector or “repository” of reported information, analysis and financial information sharing,⁸ for

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5. As of June, 2004, 94 countries have established financial intelligence units that are members of the Egmont Group. The Egmont Group, Financial Intelligence Units of the World, available at <http://www.egmontgroup.org/>.
 6. The Egmont Group is an informal organization of financial intelligence units named after the location of the group’s first meeting at the Egmont-Arenberg Palace in Brussels. The goal of the group is to provide a forum for FIUs to improve support to their respective national anti-money laundering programs. See Egmont Group, “Information Paper on Financial Intelligence Units and the Egmont Group,” available at http://www.egmontgroup.org/info_paper_final_092003.pdf. See also Chapter III, the Egmont Group.
 7. The *Palermo Convention*, Article 7(1)(b).
 8. *The Forty Recommendations*, Recs. 36, 37 and 40.

detecting and countering money laundering and terrorist financing. The FATF also has a general requirement that all national authorities exchange information and co-operate with their domestic and international counterparts.⁹

In 2004, the Egmont Group revised its definition of an FIU to include specifically the combating of terrorist financing.¹⁰ The current definition of an FIU as follows:

A central, national agency responsible for receiving (and as permitted, requesting), analyzing and disseminating to competent authorities, disclosures of financial information:

- i. concerning suspected proceeds of crime and potential financing of terrorism, or
- ii. required by national legislation or regulation, in order to combat money laundering and terrorist financing.¹¹

As a result, the Egmont Group's definition of an FIU is entirely consistent with *The Forty Recommendations*.

B. Core Functions

FIUs vary from country to country, but all of them share three core functions; they receive, analyze and disseminate information to combat money laundering and terrorist financing. The dissemination of financial information should be done on both a domestic and international basis.

Because money laundering is often a cross-border activity, it is important for FIUs to join forces with other national intelligence units. Thus, even the best domestic laws and regulations against money laundering, including those for an FIU, need an effective international information sharing mechanism in order to combat effectively money laundering and terrorist financing.

9. *Id.*, Recs. 26 and 31.

10. The Egmont Group, Revised Statement of Purpose (June 23, 2004), www.egmontgroup.org.

11. *Id.*

1. Centralized Repository of Reported Information

Financial institutions must report all suspicious activity reports and other required disclosures (such as cash transaction reports) to their country's FIU.¹² The centralization of this “repository function”—designating the FIU as the recipient of financial disclosures—is a prerequisite for an effective preventive national and international framework against money laundering.¹³

The use of a centralized repository for the reporting of information and required disclosures ensures that all of the relevant information is in one place, facilitating the processing of information and analysis on a consistent basis. Centralization also ensures greater efficiency in information gathering.

2. Analytical Function

FIUs are more than mere databases for financial information required to be submitted by legislation or national regulatory authorities. FIUs must analyze the data they receive because so many suspicious transaction reports (STRs) and other financial disclosures often appear to be innocent transactions. Ordinary deposits, withdrawals, fund transfers, or the purchase of a security or an insurance policy may, however, be important pieces of information in detecting and prosecuting money laundering and terrorist financing.

Only through examination and analysis can FIUs detect criminal financial transactions. Distinguishing truly suspect transactions from those that are only benignly unusual requires informed analysis. Without it, the most sophisticated data gathering in the world will not be productive.

These analytical functions require countries to vest their FIUs with the necessary legal authority, proper human resources, and sufficient technical capacity. In particular, the FIU's analytical functions require extended powers to access information. These powers should include: access to certain commercial or government databases; the authority to request additional information from reporting entities and other sources as necessary; and access to

12. *The Forty Recommendations*, Recs. 13 and 19, paragraph 6.

13. See *FIUs Overview*, Chapter 3, Receiving Transaction Reports.

advanced intelligence techniques and apparatus, such as wire tapping and covert operations, subject to domestic legal principles.

Each country must balance very real privacy concerns against the FIU's need for an effective analytical function. While utilizing publicly available commercial databases does not raise privacy concerns, authorizing centralized intelligence units to request additional information does. The same caution applies to FIU surveillance and other intelligence techniques. Financial institution privacy laws should be drafted so as not to interfere with these functions of the FIU, yet protect the privacy of information.¹⁴

FIUs perform three specialized analytical functions: tactical, operational and strategic.¹⁵

a. Tactical Analysis

Tactical analysis is the process of collecting the data needed to build a case and to provide the accompanying facts behind the commission of a criminal offense. Although tactical analysis may be performed on all incoming reports, it is likely that STRs will provide the most directly useful information.

Tactical analysis includes the matching of data received from reporting institutions and others with data held by the FIU or accessible to it. Such data includes lists of names, addresses, phone numbers, and data in the other reports forwarded by reporting institutions. While some reporting institutions produce the simplest form of tactical information themselves, FIUs add to these reports related information on the reported client or transaction that they have in their databases.

Upon receipt of an STR, staff of the FIU will look for additional information on the subject, the company, the transactions, or other elements involved in a particular case to provide the basis for further analysis. The main sources of such additional information are:

- The FIU's own data,
- Publicly available sources,

14. *The Forty Recommendations*, Rec. 4.

15. *Id.*, Chapter 3, Analyzing Reports.

- Governemnt-held databases,
- Additional information from reporting entities and other entities, and
- Other FIUs.¹⁶

b. Operational Analysis

Operational analysis uses tactical information to formulate different hypotheses on the possible activities of a suspected criminal. Operational analysis supports the investigative process. It uses all sources of information available to the FIU to produce activity patters, new targets, relationships among the subject and his or her accomplices, investigative leads, criminal profiles, and, where possible indications of possible future behavior.

One technique of operations analysis is financial profiling. This provides the analyst with methods for developing indicators of concealed income of an individual, a group of individuals, or an organization. It is an effective indirect method of gathering, organizing, and presenting evidence related to the financial status of subjects. The relevance of the profile is to show that the target cannot demonstrate a legitimate source for the difference between his or her outflow of cash versus the income. The tracing of a person's assets may also provide leads linking the subject with predicate offenses.

Through operational analysis, the information received by the FIU is developed into operational intelligence, which can be transmitted to law-enforcement agencies or prosecutors for further action.¹⁷

c. Strategic Analysis

Strategic analysis develops knowledge to be used for the future work of the FIU. The main characteristic of strategic intelligence is that it is not related to individual cases, but rather to new issues or trends. The scope of any strategic analysis varies greatly depending upon the FIU's mandate. It may consist of the identification of evolving criminal patterns in a particular group or

16. *Id.*

17. *Id.*

the provision of broad insights into emerging patterns of criminality at the national level.

Strategic analysis is developed after all available information has been collected and analyzed. It requires a wider range of data than operational analysis, as well as experienced analysts. The data comes from reports provided by the reporting entities, the FIU's own operational intelligence and tactical information, public sources, law enforcement and other governmental agencies. At a broader level, strategic analysis may suggest the need to impose reporting and other AML/CFT obligations on new entities or enhance existing reporting requirements.¹⁸

3. Domestic Information Sharing

If it suspects money laundering or the financing of terrorism, the FIU should have the authority to share, or route, financial information and intelligence to other domestic authorities for investigation or action. The FIU should also be authorized to cooperate and coordinate its actions with the other domestic authorities devoted to the detection, prevention and prosecution of money laundering and terrorist financing.

The importance of timely information sharing with the proper authorities cannot be overstated. Effective measures against money laundering rely on getting the available information to the appropriate authority. For most FIUs, the sharing of information usually follows some analysis of reported financial disclosures. For other FIUs, especially those that receive an enormous volume of financial disclosures, the financial disclosures are made available to law enforcement authorities immediately; these FIUs conduct analysis on financial disclosures and other financial information upon request of law enforcement as needed at a later time. In either case, the key is for the FIU to provide the competent authority with financial intelligence as quickly as possible so that the competent authority can pursue the leads provided by the FIU.¹⁹

Domestic coordination is vital. The FIU has to be an essential partner in domestic coordination and could even be empowered to assume the lead role

18. *Id.*

19. *Id.*, Chapter 3, Dissemination Reports.

in coordinating the relevant authorities that fight money laundering—which is to say, the FIU, regulators and supervisors of the financial sector, the police, the judicial authorities, and other relevant ministries or administrations.²⁰

4. International Information Sharing

Because so much of money laundering and terrorist financing are cross-border activities, FIUs must be able to share financial intelligence with other FIUs worldwide in order to be effective partners in the international fight against these crimes. A core feature of an FIU is its ability to cooperate in an efficient and rapid manner with all of its foreign counterparts. Information sharing at the international level should occur through direct and secure communication with the competent foreign authorities.²¹

C. Types or Models of FIUs

Countries generally choose one of four basic models in establishing or improving the operations of an FIU:

- a. The *administrative model*, which is either attached to a regulatory/supervisory authority, such as the central bank or the ministry of finance, or as an independent administrative authority;
- b. The *law enforcement model*, whereby the agency is attached to a police agency, whether general or specialized;
- c. The *judicial or prosecutorial model*, where the agency is affiliated with a judicial authority or the prosecutor's office; or
- d. The *hybrid model*, which is some combination of the above three.

These variations arise primarily from different country circumstances and from the lack of an internationally accepted model, when the first such units were established in the early 1990s. For example, in some countries, the function of the FIU as an additional tool for law enforcement organizations in combating money laundering and associated crimes was emphasized, and this led to the establishment of the FIU in an investigative or prosecuto-

20. *The Forty Recommendations*, Rec. 31.

21. See Chapter VIII of this Reference Guide, International Cooperation.

rial agency. Other countries emphasized the need for a “buffer” between the financial institutions and the police and, consequently, their FIUs were established outside of these agencies.

It should be emphasized, however, that the four classifications are, to a certain degree, arbitrary and that there are other ways of classifying FIUs. Discussed below is a description of each model, advantages and disadvantages (although this listing is not exhaustive) and examples of countries that use the model.

1. Administrative

Administrative-type FIUs are usually part of the structure, or under the supervision of, an administration or an agency other than law-enforcement or judicial authorities.²² Sometimes, the administrative type constitutes a separate agency, placed under the supervision of a ministry or administration (autonomous) or not placed under such supervision (independent). The main rationale for such an arrangement is to establish an “buffer” between the financial sector (and, more generally, non-financial businesses and professionals subject to reporting obligations) and the law enforcement authorities in charge of financial crime investigations and prosecutions.

The advantages of an administrative-type FIU are:

- The FIU acts as an interface between the financial and other sectors subject to reporting obligations, on the one hand, and law-enforcement authorities, on the other hand; this avoids the creation of direct institutional links between reporting parties and law enforcement agencies, while bringing disclosures to the attention of law enforcement agencies.
- Financial institutions and others are more confident about disclosing information if they know that dissemination will be limited to cases of money laundering and terrorist financing and will be based on the FIU’s own analysis, rather than the reporting institution’s limited information.
- The FIU is a “neutral,” technical, and specialized interlocutor for the reporting parties.

²². *FIUs Overview*, Establishing an FIU.

- If the FIU is placed in a regulatory agency, it is the natural interlocutor of the financial institutions.
- Information can be easily exchanged with all types of FIUs.

The disadvantages are:

- Because the FIU is not part of the law enforcement administration, there may be a delay in applying law enforcement measures, such as freezing a suspicious transaction or arresting a suspect, on the basis of financial disclosures.
- The FIU usually does not have the range of legal powers that law enforcement agencies and judicial authorities have to obtain evidence.
- The administrative-type FIUs (unless that are truly independent) are more subject to the direct supervision of political authorities.²³

Examples of countries with administrative-type FIUs include Andorra, Aruba, Australia, Belgium, Bolivia, Bulgaria, Canada, Colombia, Croatia, the Czech Republic, France, Israel, the Republic of Korea, Liechtenstein, Malta, Monaco, the Netherlands, the Netherlands Antilles, Panama, Poland, Romania, Russia, Slovenia, Spain, Ukraine, the United States, and Venezuela.²⁴

By making an administrative authority a “buffer” between the financial institution and other reporting sectors and the law enforcement sectors, authorities can more easily enlist the cooperation of reporting institutions, which are often conscious of the drawbacks vis-à-vis their clients of having direct institutionalized links with law enforcement agencies. Administrative-type FIUs are often preferred by the banking sector. They may also appeal to other institutions and professionals that have been added to the list of reporting entities for the same reasons.

2. Law Enforcement

In some countries, the emphasis on the law-enforcement aspects of the FIU led to the creation of the FIU as part of a law enforcement agency, since this

^{23.} *Id.*

^{24.} *Id.*

was the easiest way to establish a body with appropriate law-enforcement powers without having to design a new entity and a new legal and administrative framework.²⁵

Operationally, under this arrangement, the FIU will be close to other law enforcement units, such as a financial crimes unit, and will benefit from their expertise and sources of information. In return, information received by the FIU can be accessed more easily by law enforcement agencies and can be used in any investigation, thus increasing its usefulness. Exchanges of information may also be expedited through the use of existing national and international criminal information exchange networks.

The advantages of a law enforcement type of FIU are:

- It is built on an existing infrastructure, so there is no need to set up a new agency.
- Maximum law enforcement use can be made of financial disclosure information.
- There is quick law enforcement reaction to indicators of money laundering and other crimes.
- Information can be exchanged using the extensive network of international criminal information exchange networks (such as Interpol).
- There is relatively easy access to criminal intelligence and to the intelligence community at large.

The disadvantages are:

- This type of FIU tends to be more focused on investigations than on prevention measures.
- Law enforcement agencies are not a natural interlocutor for financial institutions; mutual trust must be established, which may take some time, and law enforcement agencies may lack the financial expertise required to carry out such a dialogue.
- Gaining access to a financial institutions' data (other than the reported transactions) usually requires the launching of a formal investigation.
- Reporting institutions may be reluctant to disclose information to law

²⁵. *Id.*

enforcement if they know the information could be used in the investigation of any crime (not just money laundering and the financing of terrorism).

- Reporting institutions may be reluctant to disclose information to law enforcement on transactions that are no more than “suspicions.”

Examples of law enforcement FIUs include Austria, Estonia, Germany, Hungary, Iceland, Ireland, Slovakia, Sweden, and the United Kingdom.

Also, a law enforcement-type of FIU will normally have all the powers of the law enforcement agency itself, without the need for separate, specific legislative authority. These powers include the power to freeze transactions and seize assets (with the same degree of judicial supervisions as applies to other law enforcement powers in the country).

3. Judicial or Prosecutorial

This type of FIU is generally established within the judicial branch of the country and most frequently under the prosecutor’s jurisdiction. Such an arrangement is typically found in countries with a continental law tradition, where the public prosecutors are part of the judicial system and have authority over the investigatory bodies.²⁶

Judicial or prosecutorial-type FIUs can work well in countries where banking secrecy laws are so strong that a direct link with the judicial or prosecutorial authorities is needed to ensure the cooperation of financial institutions.

The advantages of a judicial or prosecutorial-type FIU are:

- They usually possess a high degree of independence from political interference.
- The disclosure of information is provided directly to the agency authorized to investigate or prosecute the crime.
- The judiciary’s powers (e.g., seizing funds, freezing accounts, conducting interrogations, detaining people, conducting searches) are immediately brought into play.

26. *Id.*

The disadvantages are:

- Generally, the same disadvantages of law enforcement-type FIUs apply to judicial or prosecutorial-type FIUs except for the reluctance to disclose information upon “suspicion.”
- This type of FIU may have difficulty exchanging information with non-judicial or prosecutorial FIUs.²⁷

Examples of judicial or prosecutorial FIUs include Cyprus and Luxembourg.²⁸

4. Hybrid FIUs

This last category encompasses FIUs that contain different combinations of the arrangements described in the other three categories. This hybrid type of arrangement is an attempt to obtain the advantages of the different types of FIUs put together in one organization. Some FIUs combine the features of administrative-type and law enforcement-type of FIUs, while others combine the powers of the customs office with those of the police. It may be noted that in some FIUs, staff from various regulatory and law enforcement agencies work in the FIU, while continuing to exercise the powers of their agency of origin. Among the countries that have established “hybrid” FIUs are Denmark, Jersey, Guernsey, and Norway.²⁹

D. Possible Additional Functions

In addition to its core function responsibilities, an FIU could be given a number of other functions, regardless of which model is utilized.

27. *Id.*

28. *Id.*

29. *Id.*

1. Supervisory and Regulatory Responsibilities

The FIU could be granted the power to supervise financial institutions and non-financial businesses and professions with regard to their compliance with record keeping and reporting requirements.³⁰ In such cases, the FIU could also be authorized to impose sanctions or penalties against such entities and persons for failing to comply with their reporting or recordkeeping obligations—for example, meaningful fines and/or license suspensions. Furthermore, the FIU could be authorized to promulgate regulations necessary for the implementation of laws against money laundering and terrorist financing.

Some authority within the country needs to be responsible for these compliance matters. In most countries, this responsibility belongs to the supervisory authority of each financial sector, non-financial business or profession. But, because the FIU is the unique recipient of financial intelligence, in addition to which it analyzes financial intelligence, the FIU is well placed to monitor compliance with AML and CFT obligations. Some countries have opted to give the AML/CFT compliance responsibility to the FIU. In certain countries, some reporting entities and persons are not subject to any supervision other than that of the FIU, which makes it the most suitable body to address the compliance issues raised in this context.

In addition, the FIU could be authorized to issue regulations for the financial and other reporting sectors with regard to the implementation of laws against money laundering. Giving such responsibilities to the FIU, however, should take into account issues of balancing AML/CFT needs with other supervisory concerns. To be effective, an FIU must receive adequate resources and appropriate government support for the FIU to accomplish its core functions and any additional responsibilities. If the FIU's staffing capacity is limited, additional supervisory or regulatory functions could undermine its core functions.

2. Investigations

Countries may grant their FIUs the function of providing investigative support to other law enforcement agencies in the course of ongoing investiga-

30. *Id.*, Other FIU Functions

tions on money laundering. In this case, the FIU would be expected to share information with investigative authorities upon request. These powers may entail the exercise of additional powers that would enable the FIU to request additional information from financial institutions or even to carry out investigations, including identifying potential assets, to be frozen, seized, or confiscated.

3. Enforcement and Blocking of Assets

Countries may also grant their FIU the power to take provisional measures to deal effectively with cases where urgent action is needed. Because the FIU is a crucial governmental point for identifying suspicious transactions, it is logical to grant the FIU provisional powers to preserve assets that might become subject to confiscation. Such measures could include the temporary freezing of assets as well as other measures that restrain any legal disposition of these assets.

Such provisional powers require, however, that the FIU be able to investigate and identify any assets vulnerable to confiscation under the laws against money laundering and terrorist financing. In doing so, however, particular care should be taken to assure that the FIU has sufficient resources to perform its core functions—that is, receiving and analyzing the suspicious-transaction reports, as well as sharing information with domestic and international counterparts.

Where provisional powers of blocking transactions and/or freezing assets are authorized, such powers are usually limited in terms of the duration of the blocking or freezing. Freezing or seizing assets usually requires judicial authorities or a government authority outside the FIU.³¹

31. *Id.*

4. Training

Because of focused and multidisciplinary expertise of an FIU, it could easily serve as the governmental unit to advise and train personnel from financial institutions in measures to fight money laundering and terrorist financing.

Again, countries must consider resource limitations in deciding whether to attach this function to the FIU. Capacity, funding and expertise are crucial concerns in this area, since demand for such services could become extensive.

5. Research

The FIU is in a unique position to provide research to its government based upon its experience of receiving, analyzing and disseminating financial information on money laundering and terrorist financing. This is especially true if the FIU is given a broad mandate with regard to strategic analysis, as discussed above in this chapter. Its strategic function could easily be expanded to authorize separate research and reports on its findings.

As with so many functions, the addition of research and the scope of that research depend upon funding, staffing and expertise. Without such resources, the core functions of the FIU could suffer.

E. Organizing the FIU

There are numerous decisions that have to be made in establishing the FIU or enhancing the operations of an existing FIU.

1. Choosing the Right Model

Good decisions about the proper model to adopt for an FIU proceed from equally sound knowledge about a country's cultural and economic characteristics and its legal and law enforcement traditions. Although no single model will work for all countries, some criteria are essential; the discussion below is given in the form of questions:

- Will or does the FIU possess relevant capacity and expertise in financial operations? If not, what is needed?
- What is the relationship between the proposed or existing FIU and the financial industry in the domestic context? What would enhance that relationship?
- Will or does the institution possess a culture conducive to protecting the confidentiality of financial information and to mitigating potential harm to individual privacy?
- Will or does the proposed FIU possess the actual legal authority, technical capacity, and experience to provide appropriate and timely international cooperation?
- Would the legal framework applicable to the proposed or existing FIU allow it to take part in the international administrative type of cooperation and would the legal framework allow for rapid, efficient, spontaneous and/or “upon request” international information exchanges relating to suspicious transactions?

2. Capacity Considerations

Financial investigations are only as good as the individual investigators and the technological infrastructure that supports the financial intelligence efforts. A country must make policy determinations on how the FIU can make the best use of the financial analytical skills of its staff members. In this regard, the country must also determine the best institutional setting for these skills—the central bank, ministry of finance, the police, the judiciary. Fashioning an FIU as a wholly separate agency from a country’s existing regulatory, administrative, or law enforcement agencies could also have serious resource implications.

3. Staffing Considerations

Recruitment policies have implications for matters relating to resources, privacy, and institutional effectiveness. The relative rarity of investigatory financial expertise means that staffing considerations should be driven by the multidisciplinary nature of financial investigations in order to make recruit-

ment as diverse as possible.

Staff background and the terms of employment are both important. On the one hand, treasury or finance ministry officials, banking supervisors, and customs officers could bring their respective financial expertise and their understanding of transactions involving reporting entities. On the other hand, police or judicial officers bring useful law enforcement experience, particularly if the FIU has been granted law enforcement powers.

The terms of employment also impact the degree of independence, and the degree of confidentiality in the work of the FIU. The rarity of the high level skills/experience required of FIU analysts means that some countries might opt for staffing their units with experts seconded from other agencies. Although this is a less-costly staffing option—and probably one that is more conducive to effective information sharing—governments need to weigh the privacy and longer term implications of such decisions.

F. Privacy Safeguards

FIUs are repositories, as well as guardians, of highly sensitive information, a fact that calls for constant vigilance regarding legal and systemic safeguards.

1. The Main Policy Tension: Privacy Versus Efficiency

Certain policy tensions emerge as FIUs take shape; these stem mostly from the ambitious goals of AML and CFT laws and regulations, which compete with or erode rival privacy interests.³²

Laws against money laundering have emerged, in part, as a response to the obstacles that bank secrecy laws posed to supervisory and law enforcement efforts. In some jurisdictions, strong bank secrecy requirements have frequently defeated investigative efforts to obtain financial information required

32. The Egmont Group's statement of purpose, in the preamble, provides that it is "mindful of...the sensitive nature of disclosures of financial information." The Group also holds that "FIUs should work to encourage that national legal standards and privacy laws are not conceived so as to inhibit the exchange of information, in accordance with these principles, between or among FIUs; see The Egmont Group, Principles for Information Exchange between Financial Intelligence Units for Money Laundering Cases, (June 13, 2001), Principle 7. http://www.egmontgroup.org/princ_info_exchange.pdf.

to detect crimes and regulatory breaches, or for tracing or confiscating assets. Such a result is contrary to the FATF recommended structure, which provides that financial institution privacy laws should not inhibit any of the FATF recommendations.³³ Cumbersome procedures also hamper investigative efforts to gather information and/or evidence abroad. With financial globalization, such concerns have become even more acute. AML/CFT laws can be seen as an attempt to ensure efficient information exchange and evidence gathering, both domestically and internationally, as prerequisites for effective regulatory and criminal law enforcement in today's globalized economy.

The very sensitive and confidential nature of financial information means that FIUs need to institute stringent procedural safeguards for their important financial evidence gathering and information sharing functions. Effective law enforcement rests on efficient and speedy access to financial information. But this law enforcement need pushes against the boundaries of financial privacy concerns, raising legitimate concerns about the potential for abuse.

In its roles as repository, processor, and clearinghouse of financial information relating to the crime of money laundering and terrorist financing, FIUs are at the forefront of this debate about efficiency versus privacy. This tension is reflected in the choices countries make about the structure, functions, powers, and procedures of their financial intelligence units. Countries need to make realistic assessments of the costs to privacy inherent in each of the choices they make about the FIU's authorities and restrictions.

2. Confidentiality Principle

Imposing the confidentiality principle on FIUs is one of the most important protections against abuse of financial information privacy. This principle will also enable the FIU to exercise its functions as an intermediary between the reporting parties and the criminal justice system.

In cases where the FIU is part of another agency, such as the police or the office of the public prosecutor, the unit is usually governed by a general duty of confidentiality. In the absence of such a general duty, however, a specific duty of confidentiality should be expressed in the legal provisions governing

33. *The Forty Recommendations*, Rec. 4

and creating the FIU, and should be enforced by criminal and/or effective civil sanctions.³⁴ The duty of confidentiality may also be contained in domestic privacy laws of general application.

The FIU's duty of confidentiality, however, should be drafted so as not to restrict unduly the possibility of providing feedback to the reporting entities, as feedback is important both for the relationship between the FIU and the financial intermediaries and for enabling the reporting institutions to develop efficient reporting mechanisms.³⁵ Confidentiality requirements should be drafted in a way that does not inhibit international cooperation among FIUs.³⁶

3. Specialty Principle

To complement the duty of confidentiality, FIUs can adopt a “specialty principle,” which serves to limit the use of information reported to it by financial institutions and others, or as requested by the FIU from reporting parties. If an FIU is prohibited from using information provided to it for any purpose other than fighting money laundering and terrorist financing (and related crimes), countries can develop a sense of trust between reporting institutions and other parties and the FIU.

The specialty limitation necessarily depends on what it means to “fight money laundering and terrorist financing.” The restriction could be drafted to mean the financial information managed by the FIU could be used only for the performance of the agency's duties, as described in the law that established the FIU. It could also be expressed in a specific statutory or regulatory stipulation regarding the conditions for the dissemination of information by the FIU.

The specialty principle should be drafted in sufficiently broad language so that the FIU is not prevented from enforcing the laws and regulations against money laundering and terrorist financing. This should also allow for

34. Guy Stessens, *Money Laundering: A New International Law Enforcement Model* (Cambridge, England, and New York, New York, United States: Cambridge University Press, 2000), 191.

35. See section G, Information and Feedback, of this Chapter. See also FATF, Providing Feedback to reporting Financial Institutions and Other Persons: Best Practice Guidelines, ¶ 6, available at http://www.fatf-gafi.org/pdf/FEEDB_en.pdf.

36. The Egmont Group, Principles of Information Exchange between Financial Intelligence Units for Money Laundering Cases (June 13, 2001), Principle 7.

information supplied to the FIU to be used to enforce laws and regulations relating to the underlying predicate offense or offenses. In addition, if the specialty principle applies to international information exchanges among FIUs, it should be drafted so as not to inhibit or damage the efficiency of international cooperation among FIUs.³⁷

Breaches of the specialty limitation should be sanctioned by procedural laws about inadmissibility of the evidence before the courts, and/or by some form of civil or statutory liability for breach of confidentiality.

4. Independence and Accountability

Countries must assure the independence of the FIU from political influence, as well as independence from the competent or other supervisory authority in deciding which transactions to analyze or what information to disseminate. Independence provides another measure of protection against the abuse or misuse of financial disclosures. Independence is not an absolute concept, there will always be some measure of accountability, but the FIU should not be subject to abuse or undue influence from other government authorities. This sense of independence further supports a sense of trust between the FIU and reporting financial entities, which, in turn, promotes the prevention and detection of money laundering and terrorist financing.

This independence could be guaranteed in several ways. In certain instances it could be accomplished by creating the FIU as a separate agency with an autonomous budget and staff without accountability to any agencies that might be inclined to use the system beyond its proper limits. This independence should, however, be accompanied by proper accountability mechanisms, such as parliamentary reporting, audits, and/or judicial oversight.

G. Information and Feedback

It is important that the FIU work closely with reporting entities and persons, as well as a country's competent authorities, to fight money laundering and

³⁷*Id.*, at Principles of Information Exchange between Financial Intelligence Units for Money Laundering Cases (June 13, 2001), Principles 11 and 12.

terrorist financing. Consistent with its privacy obligations, the FIU should provide feedback about money laundering and terrorist financing trends and typologies that will assist financial institutions and non-financial businesses and persons to improve their AML/CFT practices and controls and, in particular, their reporting of suspicious transactions. It is a frequent criticism by reporting institutions that they receive little or no feedback from their FIUs about the usefulness of their reports. Thus, reporting entities have no guidance about whether their approach to reporting is helpful in the fight against money laundering and terrorist financing.

While there are obviously constraints on what an FIU can tell a reporting institution about a particular report (especially if that report involves an ongoing enquiry), it should be possible for the FIU to give general feedback to institutions about the quality and usefulness of their reports. FIUs will also have collected data, which once analyzed, should produce useful information about developments and trends in money laundering. This should be shared with reporting entities and persons so that they know what to look out for in designing their AML/CFT systems. Feedback about particular case histories, once any investigation and legal proceedings are over, should also prove useful.

The FATF now provides that all competent authorities, including FIUs, should establish guidance and provide feedback.³⁸ Authorities can expect this issue to feature prominently in AML/CFT assessments. FIUs will also need to maintain comprehensive statistics on STRs received and disseminated.³⁹

38. *The Forty Recommendations*, Rec. 25.

39. *Id.*, Rec. 32.

