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**FIUs Working With Law
Enforcement/Prosecutors**

**RECOMMENDATIONS AND
BEST PRACTICES**

Table of Contents

I. Methodology

II. Description and Findings

- i. FIU Access to Domestic Law Enforcement Information
- ii. Spontaneous Dissemination of FIU Information
- iii. Dissemination of FIU Information upon Request
- iv. LEAs' Direct Access to FIU Information
- v. Feedback
- vi. General Comments and Observations

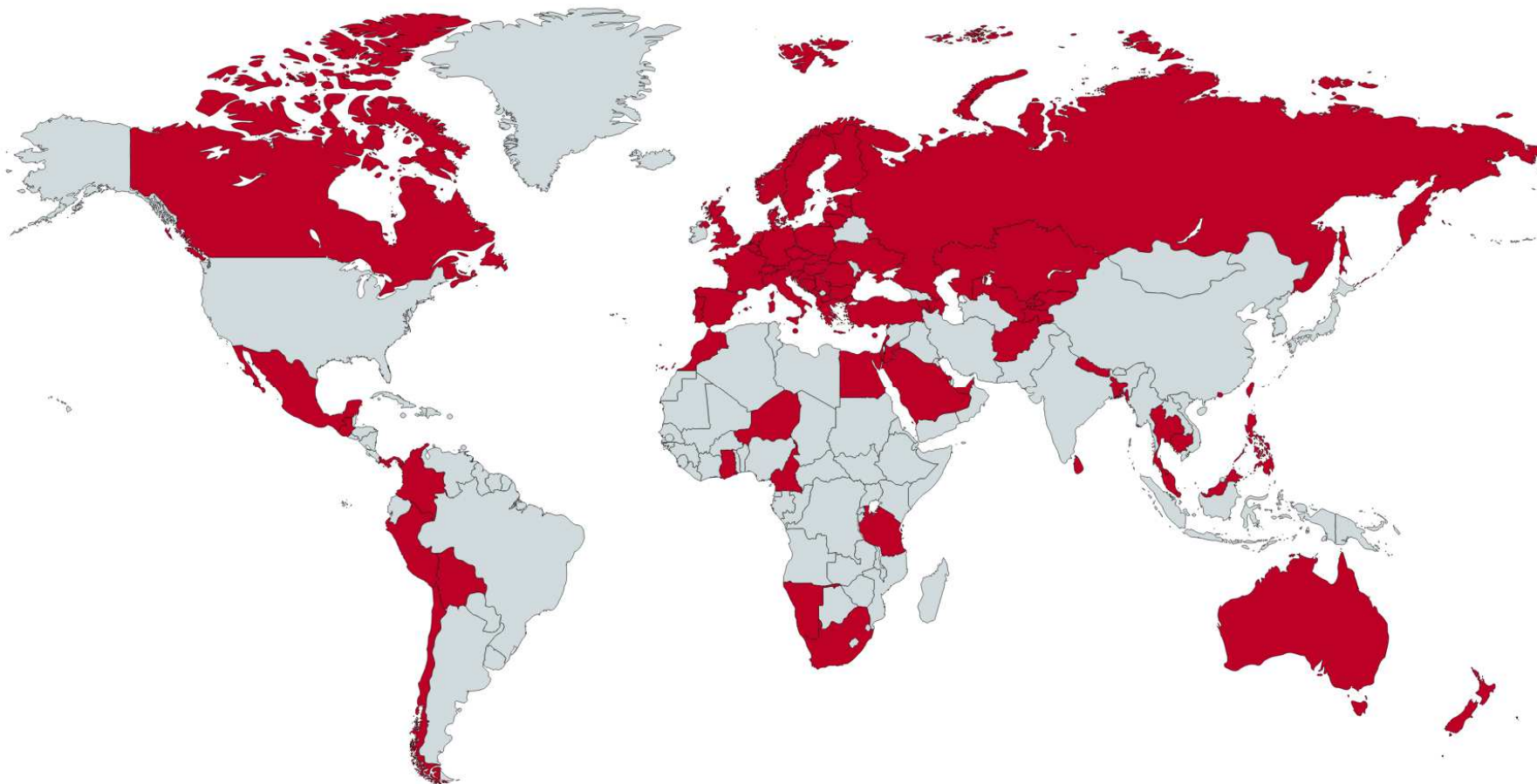
III. Issues Identified - Recommendations and Best Practices

Methodology

- A joint World Bank - Egmont Group - UNODC GPML project team was established to carry out this study.
- **Two questionnaires were sent to 151 Egmont Group members:**
 - *FIU Questionnaire in December 2015,*
 - *LEA Questionnaire in May 2016 (also sent out via Europol).*
- **Responses were received from:**
 - *91 FIUs (60 % response rate), and*
 - *130 LEAs from 58 Egmont jurisdictions (38 % response rate)*
- The respondent FIUs and LEAs are representative of the overall population of FIUs and LEAs on dimensions such as geographic representation, as well as type and size of FIUs and type of LEAs.

Respondent FIUs

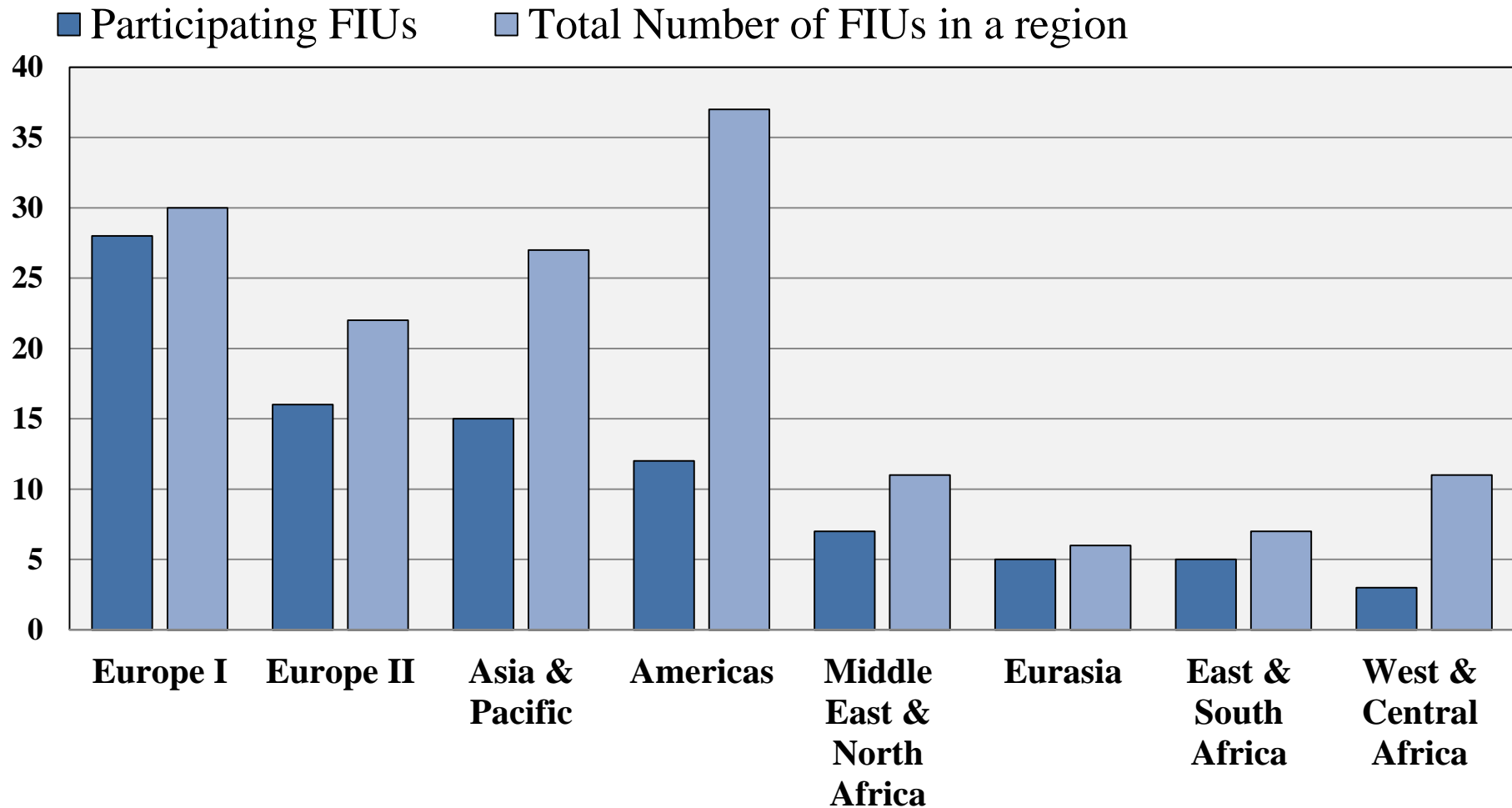
Map of FIUs Participation



Generated on <https://mapchart.net/world.html>

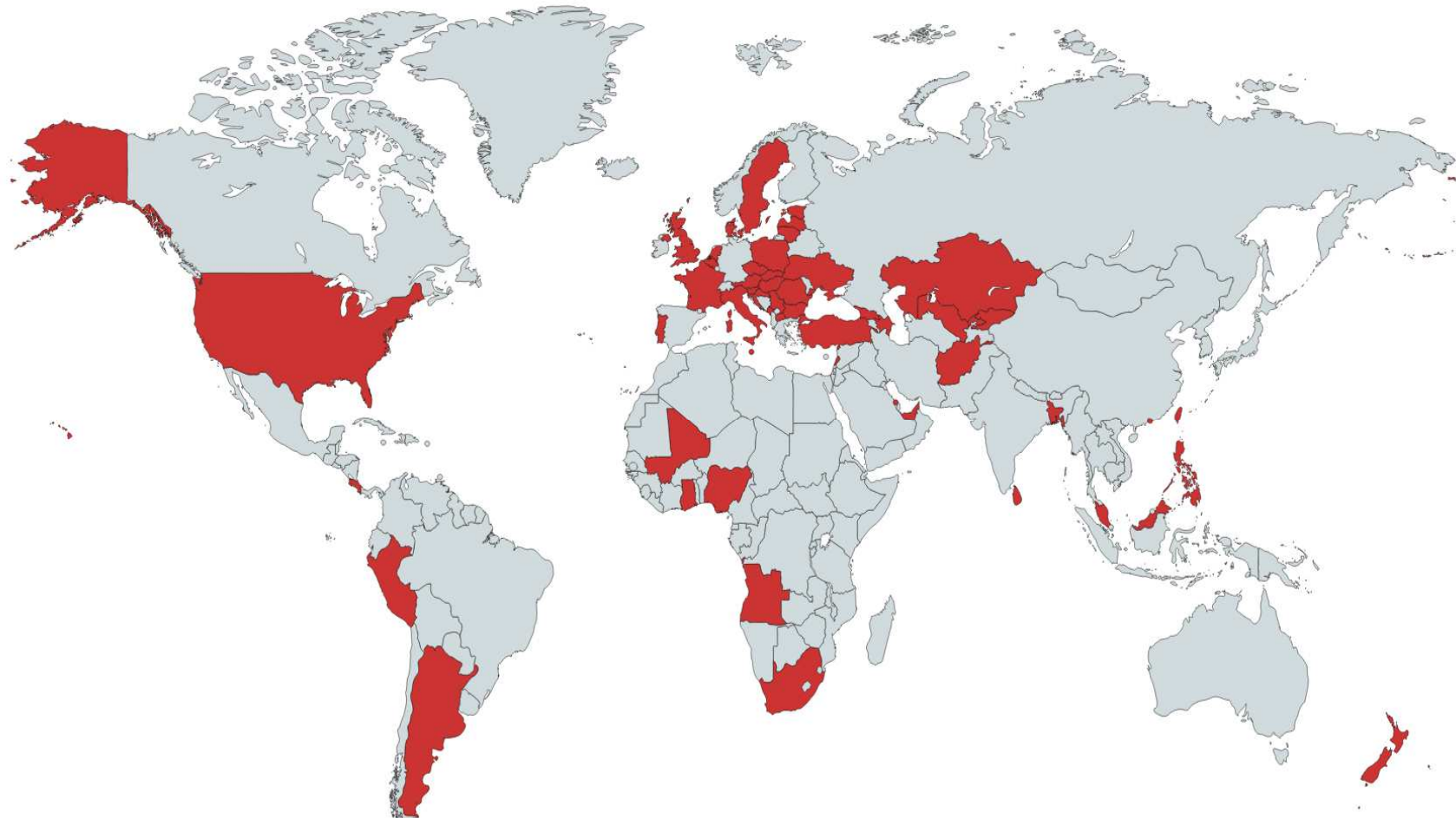
Respondent FIUs

Geographic Representation



Respondent LEAs

Map of LEA Participation by Country



Generated on <https://mapchart.net/world.html>

Description and Findings

The report is focused on the following thematic headings:

- 1. FIU Access to Domestic LEAs' Information**
- 2. Spontaneous Dissemination of FIU Information**
- 3. Dissemination of FIU Information upon Request**
- 4. LEAs' Direct Access to FIU Information**
- 5. Feedback**
- 6. General Comments and Observations**

FIU Access to Domestic LEAs' Information

1. Issue Identified:

- 3% of FIUs are not authorized to obtain information from customs authorities, 14% of FIUs from tax authorities, 19% of FIUs from immigration, 25% of FIUs from intelligence services, 33% of FIUs from anti-corruption agencies, and 36% of FIUs from anti-drug agencies.

Comments:

- *Examples of LEAs were added in the Recommendations and additional LEAs (e.g. Anti-Drug and/or Anti-Corruption agencies) were included in the list after Doha workshops. This make sense because drug offences and corruption offences are included in the mandatory list of predicate offences for ML.*
- *Prosecutor's office is not included in the list, because it's role is different in different jurisdictions.*

FIU Access to Domestic LEAs' Information

Recommendation 1

FIUs should be authorized to obtain (under receipt, obtainment and/or access modes) information 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.

FIU Access to Domestic LEAs' Information

2. Issue Identified:

- The survey shows that 30 % of FIUs must sign a Memorandum of Understanding (MoU) with the LEAs to obtain information from them.

Comments:

- *Signing MoUs may cause delays and is perceived to be irrelevant in jurisdictions that have established electronic database access arrangements.*
- *MoU should not be mandatory but rather a statement of access policy.*

Recommendation 2

FIU access to domestic LEAs' information should not be subject to a mandatory Memorandum of Understanding.

FIU Access to Domestic LEAs' Information

3. Issue Identified:

- 35 % of FIUs only have indirect access to LEAs information, while additional 57 % of FIUs have both direct and indirect access. The average time of these FIUs needed to receive information from LEAs is:
 - 21 % of FIUs need between 3 to 7 days,
 - 35 % of FIUs need between 7 to 14 days,
 - 33 % of FIUs need more than 14 days.
- 74 % of FIUs responded that the preferred and realistic time for receiving LEAs' information is less than 14 days.
- The following reasons were mentioned for not having direct access to relevant LEAs information:
 - Technical issues (58 % of FIUs)
 - Legal restrictions and data protection issues (37 % of FIUs)
 - Data stored manually (6 % of FIUs)
 - Other (13 % of FIUs).

FIU Access to Domestic LEAs' Information

Comments:

- *FATF Rec. 29 and related IN require that the FIUs should have access on a timely basis to LEAs' information that they require to undertake their functions.*
- *Only "technical" reasons should be considered when providing an exception.*
- *FIUs with a power to suspend/postpone suspicious transactions can only use this power properly, if they are able to receive LEAs' information promptly.*

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 LEA data are stored manually), the FIUs should be authorized to receive relevant information within 14 days. In urgent cases, a deadline to receive the LEAs information should be within 3 days.

FIU Access to Domestic LEAs' Information

4. Issue Identified:

- FIUs have access to different types of information kept by LEAs, but a lot of FIUs don't have access to the following data:
 - Operational information (e.g. on special investigative methods) (52 % of FIUs);
 - Data on mutual legal assistance (37 % of FIUs);
 - Information on persons suspected or/and convicted for committing an administrative offence (36 % of FIUs);
 - Data maintained by INTERPOL (31 % of FIUs);
 - Information on documents and other evidences seized/analysed (30 % of FIUs);
 - Data on modus operandi (27 % of FIUs);
 - Information on results of financial investigation of predicate off. (25 % of FIUs);
 - Data on amounts of proceeds generated by criminal offence (22 % of FIUs),
 - Tax information (19 % of FIUs);
 - Immigration information (12 % of FIUs); and
 - Customs information (7 % of FIUs).

FIU Access to Domestic LEAs' Information

4. Issue Identified:

- 42 % of FIUs responded that they should have access to all data mentioned above. Among the most common pieces of information that the FIUs should have access to, the information on investigations, prosecutions and convictions and criminal records were mentioned.

Comments:

- *FATF Rec. 29 and related IN do not specify the type of LEAs' information that FIUs should be able to obtain. Instead, the wording "information that they require to undertake their functions" is used.*
- *By being more specific at least a minimum threshold has been established that is in line with FIUs expectations.*

Recommendation 4

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

FIU Access to Domestic LEAs' Information

5. Issue Identified:

- The responses indicate that certain conditions imposed by some FIUs, when an FIU is requesting or accessing information from LEAs on behalf of a foreign FIU, are unduly restrictive (e.g. the need for a mutual legal assistance request or a MoU or a prior consent obtained from LEAs).

Comments:

- *FATF Rec. 40 and related Interpretative Note require FIUs to have a power to exchange: a) all information required to be accessible or obtainable directly or indirectly by the FIU under the FATF Recommendations, in particular under Rec.29; and b) any other information, which they have the power to obtain or access, directly or indirectly, at the domestic level, subject to the principle of reciprocity.*
- *While the time required to obtain a MLA request is perceived by FIUs as a barrier to timely action, seeking consent of the owner of information is not unduly restrictive.*

FIU Access to Domestic LEAs' Information

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 MoU.

Spontaneous Dissemination of FIU Info

6. Issue identified

- 15 % of FIUs are not authorized to disseminate their information to competent domestic authorities when their analysis shows that there is no suspicion of ML or TF, but they have grounds to suspect that other criminal offences were committed.
- *56 % of LEAs don't receive information from FIUs related to other criminal offences (not related to ML/TF).*
- 70 % of FIUs may disseminate information to different competent bodies, when they suspect that administrative offences or misdemeanours were committed.
- *15 % of LEAs receive information from FIUs related to administrative offences or misdemeanours.*

Comments:

- *These issues are not addressed by international standards.*
- *While it may seem logical that FIU information should be disseminated to competent authorities, when they have grounds to suspect that other criminal offences (at least serious offences) were committed, it is less logical that FIUs should be dealing with administrative offences that go beyond the compliance with the AML/CFT obligations.*
- *Standards related to personal data protection should be considered.*

Spontaneous Dissemination of FIU Info

Recommendation 6

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

- a) other (at least serious) criminal offences were committed; or**
- b) administrative offences related to non-compliance with the AML/CFT legislation were committed.**

Spontaneous Dissemination of FIU Info

7. Issue identified

- 47 FIUs (or 52 percent) responded that legislation explicitly determines the recipient authorities, whereas 43 FIUs (or 48 percent) responded that it does not. Those responding negatively provided several examples of how they determine the recipient authorities.

Comment:

- *The FIU reports almost always contain information that usually falls under official, banking and / or other types of professional secrecy. It would therefore seem logical that the recipients of FIUs' reports and / or mechanisms ensuring the appropriate use of FIU reports are known in advance and that the legislation provides for clear answers in this regard.*

Recommendation 7

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

Spontaneous Dissemination of FIU Info

8. Issue identified

- FIUs reported that in 58 % of jurisdictions the FIU information can only be used by the recipient as intelligence, thus following the minimal international standards in this regard. In 41 % of jurisdictions the FIU information and documents can whether be used as evidence in the criminal procedure or this depends on the content of information and / or the recipient.
- 60 % of LEAs can only use the FIU information as intelligence and 29 % LEAs reported the FIU information can be used by the recipient both as intelligence and as evidence, depending on the content of the information (e.g. whether the FIU information is related to ML/TF or only to other criminal offences).
- In 36 % of jurisdictions the legal status of FIU information is not explicitly regulated in the legislation.

Comment:

- *The study identified several advantages and disadvantages of different existing regimes related to the legal status of FIU information / report. Countries should carefully study those and take their decisions based on what works best for them, thus not necessary being bound by de minimis international standards.*

Spontaneous Dissemination of FIU Info

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 pros and cons of different regimes regarding the legal status of the FIU information.

Spontaneous Dissemination of FIU Info

9. Issue identified

- The clear majority of FIUs (83, or 91 %) indicated that according to their legislation the FIU information they disseminate to LEAs should be treated as confidential. However, most FIUs failed to provide a response regarding the conditions allowing a withdrawal of confidentiality.
- Only 13 % of LEAs have stipulated conditions to allow a withdrawal of confidentiality.
- 59 % of LEAs specified that FIU information is used only for the purpose for which the information was sought or provided and any re-dissemination beyond those originally approved is subject to prior authorization by FIU.

Comment:

- *The IN to FATF R 29 states that information received, processed, held or disseminated by FIU must be securely protected, exchanged and used only in accordance with agreed procedures, policies and applicable laws/regulations.*

Spontaneous Dissemination of FIU Info

Recommendation 9

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

Dissemination of FIU Info upon Request

10. Issue identified:

- 5 % of FIUs responded that LEAs and/or other competent bodies don't have the authority to request information from the FIU.
- 7 % of LEAs responded that they are not authorized to ask for relevant information held by the FIU.

Comment:

- *Competent LEA's right to request all relevant information held by the FIU is explicitly required by FATF R 31.*

Recommendation 10

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

Dissemination of FIU Info upon Request

11. Issue identified:

- *13 LEAs (10 %) responded that no explanation is required regarding the background of their request to the FIUs.*

Comment:

- *For the FIU to be able to assess if LEAs request for information is meeting the criteria contained in the FATF R 31 it is critical that a background of LEA request is provided containing at least the legal basis, description of a case (including what triggered the LEA interest in a particular case/person), and reasons for suspicion of ML, associated predicate offences or financing of terrorism.*

Dissemination of FIU Info upon Request

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 LEA interest in a particular case/person), and**
- reasons for suspicion of ML, associated predicate offences or TF.**

Dissemination of FIU Info upon Request

12. Issue identified:

- In 8 of 86 jurisdictions (9 %) there is no explicit legal/statutory basis for the LEA authority to request information from the FIU.
- *In 12 out of 58 jurisdictions (21 %) 13 LEAs of 130 LEAs (10 %) indicated that there is no specific legal basis for requesting information from the FIUs.*
- In 41 jurisdictions (48 %) FIUs receive requests for information from LEAs that are sent with respect of investigations on any criminal offence, even if there is no suspicion of ML, associated predicate offences, or TF, and in 11 jurisdictions (13 %) FIUs are receiving LEA requests that are not crime related.
- *More than one third of LEAs (47, or 36 %), coming from 28 jurisdictions (48 %), may send the request for information to FIUs even if there is no suspicion of ML, associated predicate offences, or TF. In addition, 7 LEAs (5 %) from 6 jurisdictions (10 %) may request information from FIUs even when there is no suspicion of crime at all.*

Dissemination of FIU Info upon Request

Comments:

- *FATF R 31 allows LEAs and other competent authorities to request all relevant information held by the FIU when conducting investigations of ML, associated predicate offences and TF. If countries allow LEAs to send to the FIU requests in other circumstances, this should be clearly regulated in the legislation.*
- *Depending on the content of these requests and whether the FIU is obliged to provide information based on such requests, this practice raises some concerns, because it is not compliant with the international standards (FATF R 31) and may potentially lead to improper use of FIU's powers.*

Recommendation 12

The LEAs' and other competent authorities' power 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 request.

Dissemination of FIU Info upon Request

13. Issue identified

- Based on LEAs requests the majority of FIUs (66, or 77 %) usually start carrying out their analysis, however the specific conditions under which they may or should conduct the analysis only exist in less than half of these jurisdictions (26, or 30 %).
- In 29 jurisdictions (or 34 %) the legislation doesn't provide for any specific condition for dissemination of information to LEAs after receiving their request.

Comments:

- *The FIUs have 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, FIUs provided several examples of such circumstances and conditions.*

Dissemination of FIU Info upon Request

Recommendation 13

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

Dissemination of FIU Info upon Request

14. Issue identified

- While most FIUs (72 %) decide about the priority of incoming information / request based on objective and / or case related circumstances, 13 % of FIUs give priority to LEA requests and 12 % of FIUs to STRs /CTRs.

Comment

- *The FIUs were established to receive, analyse and disseminate information from the reporting entities and not to serve as a “data basis” or a “long hand” for the LEAs. However, the international standards and most countries’ practices require FIUs also to respond to the information requests from competent authorities. Therefore, it only seems logical that FIUs should decide about the priority of incoming information / request based on objective and / or case related circumstances.*

Dissemination of FIU Info upon Request

Recommendation 14

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

Dissemination of FIU Info upon Request

15. Issue identified

- *Of 106 LEAs (82 %) that responded to this question, 39 LEAs (37 %) reported that special conditions need to be met when LEA request information from the FIU on behalf of a foreign LEA.*
- *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.*

Comment

- *While the suggested approach may work well in practice, it may be seen as problematic with regard to the implementation of FATF R 40 and the related Interpretative Note that require countries to permit their competent authorities to exchange information indirectly with non-counterparts.*

Dissemination of FIU Info upon Request

Recommendation 15

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

LEA's Direct Access to FIU Information

16. Issue identified

- *Of 124 respondent LEAs (95 %), 28 LEAs (23 %) reported that they have direct access to FIU information. Of these, only 16 LEAs (57 %) reported that they have an explicit legal basis for such access.*
- *The analysis of data show that a significant number of LEAs have direct access to cash transaction reports (61 %), cross-border transportation of cash or bearer instruments (43 %), wire transfer reports (21 %), and threshold transaction reports (18 %). However, the highest level of response is related to LEAs direct access to STRs/SARs, where 27 LEAs (96 %) reported that they have such access, and 10 LEAs (36 %) also reported they have direct access to FIU analytical reports.*

Comment

- *The international standards don't regulate LEAs' direct access to FIU information. While LEAs' access to cash transaction reports, cross-border transportation of cash or bearer instruments, wire transfer reports, and threshold transaction reports seem to be logical, their direct access to STRs/SARs and FIU analytical reports could be problematic from the point of operational independence of FIU and the security and confidentiality of data.*

LEA's Direct Access to FIU Information

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 security and confidentiality of data/information.

Feedback

17. Issue identified

- Of 91 responding FIUs, most of FIUs (79, or 87 %) indicated that LEAs and / or other competent bodies provide feedback on the use of FIU information, while 12 FIUs (or 13 %) do not receive any sort of feedback.
- In 30 jurisdictions (or 38 %) providing feedback to the FIU is a legal obligation, in 43 jurisdictions (or 54 %) this is not a legal requirement, while in 11 jurisdictions (or 14 %) different forms and ways of cooperation are in place.
- The majority of FIUs (69, or 87 %) are provided with “specific feedback” (i.e. “case by case” information), near half FIUs (35, or 44 %) receive “general feedback”, and 33 FIUs (or 42 %) indicated that they receive an acknowledgement by LEAs on receipts of their information.
- Of 79 FIUs that receive feedback from LEAs, the quality of feedback is considered inadequate by 33 FIUs (or 42 %).
- 25 FIUs (or 35 %) of the 72 responding FIUs indicated that they don't receive feedback in a timely manner.

Feedback

Comments:

- *International standards are silent in this regard and the FATF R 34 only requires providing feedback to obliged entities.*
- *FATF Methodology under Immediate Outcome 6 requires measuring the effectiveness of FIU work and how well is the FIU analysis and dissemination supporting the operational needs of competent authorities.*

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, the 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 (e.g., MoUs).

General Comments and Observations

18. Issue identified

- Of 90 responding FIUs, 52 FIUs (or 58 percent) indicated they take an active part in financial investigations, and the remaining 48 FIUs don't.
- *Of 130 LEAs, 55 LEAs (42 %) indicated that FIUs participate in financial investigations, while a slim majority of LEAs (67, or 52 %) responded that they do not. Eight LEAs (6 %) did not respond to this question.*
- *Of the 51 respondent LEAs, 10 % stated that FIU participation in financial investigations is mandatory, 49 % indicated that it is optional, and 45 % described other circumstances in which FIUs cooperate in financial investigations with LEAs when requested by prosecutors (e.g., when FIUs were involved in the detection or initial analysis of the case or when FIU participation could contribute to the success of cases).*

General Comments and Observations

Comments:

- FATF R 30 and the related IN mention that the range of LEAs and other competent authorities should be taken into account when making use of multi-disciplinary groups in financial investigations.
- If the financial investigations carried out by LEAs are based on the FIU information, it could make sense that they would continue working on such case jointly with LEAs. However, any mandatory inclusion of FIUs in the LEAs' financial investigations may be contra productive and may be destructing the FIUs from conducting their core functions.

To be included as best practices.

General Comments and Observations

19. Issue identified

- Both surveys identified the use of the liaison officers, contact points and other mechanisms that can strengthen the cooperation between FIUs and LEAs. The following mechanisms were mentioned by 75 FIUs and 108 LEAs in this regard:
 - Participation of FIU and LEA staff in different commissions, inter-governmental committees, working groups and joint task forces.
 - Signing of multilateral or bilateral protocols / MoUs.
 - Holding regular/periodic meetings and daily and direct contacts.
 - Holding joint trainings and promoting internship programs.
 - Developing IT solutions, technical assistance and reporting forms and other mechanisms aimed to facilitate connection with LEAs and sharing of information.

Comment:

- FATF R 2 requires countries to ensure that competent authorities, including FIUs and LEAs, at the policy making and operational levels have effective mechanisms in place which enable them to cooperate & coordinate with each other concerning the development and implementation of policies and activities to combat ML/TF.

To be included as best practices.

General Comments and Observations

20. Issue identified

- Of 90 respondent LEAs, 82 % of LEAs have dedicated LEA staff serving as an FIU contact point in the LEA, 14 % have a contact point in the FIU and 6 % reported that there was a contact point in both the LEA and FIU.
- Of 126 respondent LEAs, 24 LEAs (19 %) mentioned that they are hosting FIU staff in their agencies. When asked about the roles and tasks assigned to FIU liaison officers, LEAs reported the following:
 - ✓ 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; and
 - ✓ To make LEAs' information available to FIUs.

General Comments and Observations

21. Issue identified

- The LEAs were asked how the role of the FIU liaison officer is regulated in their jurisdictions. Their responses are as follows:
 - ✓ 27 % - Law
 - ✓ 8 % - Regulation/Under-statutory act
 - ✓ 35 % - Memorandum of Understanding
 - ✓ 42% - Other (agreements, protocols and resolutions by the Prosecutors Office).

Comment:

- *FATF R 2 requires countries to ensure that competent authorities, including FIUs and LEAs, at the policy making and operational levels have effective mechanisms in place which enable them to cooperate & coordinate with each other concerning the development and implementation of policies and activities to combat ML/TF.*
- *Appointing the liaison officers and/or contact points in the FIU/LEA can undoubtedly facilitate and strengthen the FIU cooperation with the LEAs.*

To be included as best practices.



THANK YOU !

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