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COMISIÓN INTERAMERICANA PARA EL
CONTROL DEL ABUSO DE DROGAS

CICAD

Secretaría de Seguridad Multidimensional

XXXIII MEETING EXPERT GROUP FOR THE CONTROL OF MONEY LAUNDERING
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COMMENTS BY FINCEN, UNITED STATES TO THE PROPOSAL OF THE REPUBLIC OF ARGENTINA
ON BEST PRACTICES IN THE EXCHANGE OF INFORMATION AMONGST FIUS
(CICAD/LAVEX/DOC.5)

FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN)

UNITED STATES OF AMERICA

September 2011

**COMMENTS AND OBSERVATIONS ON THE PROPOSAL BY ARGENTINA
REGARDING:**

**A MODEL REGULATION FOR THE EXCHANGE OF INFORMATION
BETWEEN FINANCIAL INTELLIGENCE UNITS OF MEMBER COUNTRIES
OF THE EXPERT GROUP ON MONEY LAUNDERING FOR THE INTER-
AMERICAN DRUG ABUSE CONTROL COMMISSION (CICAD)**

GENERAL COMMENTS OF FINCEN

The document should distinguish between what are Information Sharing Principles and Best Practices. The concept of the two files may be an example of Best Practice. Additionally, the document could be enriched, adding a section that defines the role of third parties to use information from financial intelligence units and third party liability to protect the information they receive from foreign units.

It should also be noted what might be the consequences of failing to protect information of foreign counterpart units, ranging from leaking information to the subjects in a suspicious activity report to the possible suspension of exchange of information by the unit with information that might have been released without proper authorization.

We must take into account that there are two ways in which financial information can be exchanged, one is through the FIU, and another is through mutual legal assistance treaties or rogatory letters. It is therefore important to keep both concepts separate and specify the unique role played by the FIU and how the information it handles is more sensitive than if it had been obtained by other means.

<u>1.- STATEMENT OF BASIC PRINCIPLES BY ARGENTINA</u>	FINCEN COMMENTS
1.7.- Countries pledge to promote in their respective jurisdictions the	1.7. - While fine in some cases where the exchange of information has been already suspended due to

<p>subscription of MOUs with foreign units in order to strengthen cooperation among the Financial Intelligence Units.</p>	<p>unauthorized dissemination of information by any of the parties of Memorandum of Understanding, this should be reserved for a best practices guide. The purpose of the Egmont Principles is to share information as widely as possible. Each intelligence unit should be free to negotiate with their counterparts in the instruments necessary to strengthen cooperation between the two units in order to respect the principles of Egmont.</p>
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<p><u>2. REQUIREMENTS AND TREATMENT OF REQUESTS FOR INFORMATION BY ARGENTINA</u></p>	<p>FINCEN COMMENTS</p>
<p>2.1.- Requests for information from other Financial Intelligence Units will be considered and must explain in detail the reasons supporting the request. Progress will be made only if the request is written and in connection with a suspicious activity report. The unit requested may reject <i>in-limine</i> applications that do not meet these requirements.</p>	<p>2.1. – This requirement could limit the possibility of cooperation between units of countries where the existence of a report is not a prerequisite for the investigation of money laundering and terrorist financing. Many financial crime investigations can be started without a suspicious activity report. In some cases law enforcement agencies requesting information from the financial intelligence unit of their country because of an ongoing criminal investigation, and in turn, an intelligence unit might require information from abroad. While there are many units that initiate an investigation in response to a report, there are many who start out as a result of other information obtained such as a wire transfer or due to the knowledge of other transactions.</p>

<p><u>3. – GUARANTEE OF SAFEGUARDS OF INFORMATION PROVIDED BY ARGENTINA</u></p>	<p>FINCEN COMMENTS</p>
<ul style="list-style-type: none"> • Financial Intelligence Units should note in the Principal file (the one which originates the request) the requirement made to another counterpart unit. • Information provided must run separate string forming an action, suggesting their identification as Docket of Information Exchange, and direct reference to the Principal Docket. The above exchange file will contain the information submitted by the foreign unit and local analysis unit. 	<p>3.2.- It seems interesting and viable as an example of "best practices" to maintain two bundles: the Principal Docket and the Docket of Information Exchange, and a back up of the latter in a lock box. This might be a good solution for those intelligence units which, by law, must make it available to the judiciary of the country.</p> <p>This is an issue that should be explored in more detail with the judicial authorities of each country in order to determine how the concept could be implemented in countries of both systems (Common Law and Civil Code).</p>

<p><u>4.- TREATMENT OF THE INFORMATION EXCHANGE FILE BY ARGENTINA</u></p>	<p>COMENTARIOS DE FINCEN</p>
<p>4.1.2. If any foreign counterpart unit authorized the use and transfer of information to be used as evidence in legal proceedings, the Principal Docket will be elevated in conjunction with the exchange of information. The administrative act to resolve the reference should accompany the</p>	<p>4.1.2.- It is dangerous and can be misleading to indicate that there is the possibility that "foreign counterpart unit can authorize the use and transfer of information to be used as evidence in judicial proceedings." It is better to omit that possibility given that the aim is to find ways to protect information and not to point out exceptions. At the same time there must exist a mechanism that allows the receiving unit, if necessary, to transfer the information in the Information Exchange Docket without having to</p>

<p>Information Exchange Docket and should explicitly mention that the foreign counterpart unit authorized the transmission to be used in legal proceedings</p>	<p>identify the source of the information and or provide original documents with logos of the foreign unit that could help identify it as the source.</p>
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