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ANALISIS OF FATF RECOMMENDATIONS REGARDING OPERATIONAL AND LAW ENFORCEMENT

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Nº	TÍTULO	RECOMMENDATIONS	INTERPRETIVE NOTES	METHODOLOGY	ELEMENTS TO ANALIZE
29	Financial intelligence units	<p>Countries should establish a financial intelligence unit (FIU) that serves as a national center 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 properly undertake its functions</p>	<p>A. GENERAL</p> <p>1. This note explains the core mandate and functions of a financial intelligence unit (FIU) and provides further clarification on the obligations contained in the standard. The FIU is part of, and plays a central role in, a country's AML/CTF operational network, and provides support to the work of other competent authorities. Considering that there are different FIU models, Recommendation 29 does not compromise a country's choice of a particular model, and applies equally to all of them.</p> <p>B. FUNCTIONS</p> <p>(a) Receipt</p> <p>2. The FIU serves as the central agency for the receipt of disclosures filed by reporting entities.</p> <p>At a minimum, this information should include suspicious transaction reports, as required by Recommendation 20 and 23, and it should include other information as required by national legislation (such as cash transaction reports, wire transfer reports and other threshold-based declarations/disclosures).</p> <p>(b) Analysis</p> <p>3. FIU analysis should add value to the information received and held by the FIU. While all the information should be considered, the analysis may focus either on each single received disclosure or on appropriate selected information, depending on the type and volume of the disclosures received, and on the expected use after dissemination. FIUs should be encouraged to use analytical software to process information more efficiently and assist in identifying relevant links. However, such tools cannot fully replace the human element of analysis. FIUs should conduct the following types of analysis:</p> <p>☐ Operational analysis uses available and obtainable information to identify specific targets (e.g. persons, assets, criminal networks and associations), to follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of crime, money laundering, predicate offences or terrorist financing.</p> <p>☐ Strategic analysis uses available and obtainable information, including data that may be provided by other competent authorities, to identify</p>	<p>29.1 Countries should establish a FIU with responsibility for acting as a national center for receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing; and for the dissemination of the results of that analysis.</p> <p>29.2 The FIU should serve as the central agency for the receipt of disclosures filed by reporting entities, including:</p> <p>(a) Suspicious transaction reports filed by reporting entities as required by Recommendation 20 and 23; and</p> <p>(b) any other information as required by national legislation (such as cash transaction reports, wire transfers reports and other threshold-based declarations/disclosures).</p> <p>29.3 The FIU should:</p> <p>(a) in addition to the information that entities report to the FIU, be able to obtain and use additional information from reporting entities, as needed to perform its analysis properly; and</p> <p>(b) have access to the widest possible range of financial, administrative and law enforcement information that it requires to properly undertake its functions.</p> <p>29.4 The FIU should conduct:</p> <p>(a) operational analysis, which uses available and obtainable information to identify specific targets, to follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of crime, money laundering, predicate offences and terrorist financing; and</p>	<p>1-. The concept of competent authorities. If the term is broadly interpreted can lead to complications in its application and interaction with the LEAs.</p> <p>In some criminal procedure systems there are specific receivers for the information generated by the FIU. Also, the information provided by these agencies can only be used for certain purposes.</p> <p>If the number of people and institutions who know and can use the FIU reports, the possibilities to affect confidentiality and information security increase.</p> <p>(According to the general glossary: <i>Competent Authorities refers to all public institutions with designated Responsibilities for combating money laundering and/or terrorist financing. In particular, this includes the FIU; the authorities that have the function of investigating and/or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on</i></p>

			<p>money laundering and terrorist financing related trends and patterns. This information is then also used by the FIU or other state entities in order to determine money laundering and terrorist financing related threats and vulnerabilities. Strategic analysis may also help establish policies and goals for the FIU, or more broadly for other entities within the AML/CTF regime.</p> <p>(c) Dissemination</p> <p>4. The FIU should be able to disseminate, spontaneously and upon request, information and the results of its analysis to relevant competent authorities. Dedicated, secure and protected channels should be used for the dissemination.</p> <p>☑ Spontaneous dissemination: The FIU should be able to disseminate information and the results of its analysis to competent authorities when there are grounds to suspect money laundering, predicate offences or terrorist financing. Based on the FIU's analysis, the dissemination of information should be selective and allow the recipient authorities to focus on relevant cases/information.</p> <p>☑ Dissemination upon request: The FIU should be able to respond to information requests from competent authorities pursuant to Recommendation 31. When the FIU receives such a request from a competent authority, the decision on conducting analysis and/or dissemination of information to the requesting authority should remain with the FIU.</p> <p>C. ACCESS TO INFORMATION</p> <p>(a) Obtaining Additional Information from Reporting Entities</p> <p>5. In addition to the information that entities report to the FIU (under the receipt function), the FIU should be able to obtain and use additional information from reporting entities as needed to perform its analysis properly. The information that the FIU should be permitted to obtain could include information that reporting entities are required to maintain pursuant to the relevant FATF Recommendations (Recommendations 10, 11 and 22).</p> <p>(b) Access to Information from other sources 6. In order to conduct proper analysis, the FIU should have access to the widest possible range of financial, administrative and law enforcement information. This should include information from open or public sources, as well as relevant information collected and/or maintained by, or on behalf of, other authorities and, where appropriate, commercially held data.</p> <p>D. INFORMATION SECURITY AND CONFIDENTIALITY</p> <p>7. Information received, processed, held or disseminated by the FIU must be securely protected, exchanged and used only in accordance with agreed</p>	<p>(b) strategic analysis, which uses available and obtainable information, including data that may be provided by other competent authorities, to identify money laundering and terrorist financing related trends and patterns.</p> <p>29.5 The FIU should be able to disseminate, spontaneously and upon request, information and the results of its analysis to relevant competent authorities, and should use dedicated, secure and protected channels for the dissemination.</p> <p>29.6 The FIU should protect information by:</p> <p>(a) having rules in place governing the security and confidentiality of information, including procedures for the handling, storage, dissemination, and protection of, and access to, information;</p> <p>(b) ensuring that FIU staff members have the necessary security clearance levels and understanding of their responsibilities in handling and disseminating sensitive and confidential information; and</p> <p>(c) ensuring that there is limited access to its facilities and information, including information technology systems.</p> <p>29.7 The FIU should be operationally independent and autonomous, by:</p> <p>(a) having the authority and capacity to carry out its functions freely, including the autonomous decision to analyze, request and/or forward or disseminate specific information;</p> <p>(b) being able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information;</p> <p>(c) when it is located within the existing structure of another authority, having distinct core functions from those of the other authority; and</p> <p>(d) being able to obtain and deploy the resources</p>	<p>cross-border transportation of currency & BNIs; and authorities that have AML/CTF supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and DNFbps with AML/CTF requirements. SRBs are not to be regarded as competent authorities).</p> <p>2-. Taking into account that the intention is to assess the effectiveness of the system, it seems must find ways to evaluate the FIU reports that incorporate its users or recipients, implying a workspace for FIU / LEA .</p> <p>3 -. The FIU analysis should have elements of human judgment, not only use systems. This leads to wonder if it pretends that people who have to perform the nalysis will also have to testify in court.</p> <p>4 -. Purposes of strategic analysis, possibility of its use to set goals for all members of the AML / CTF system.</p> <p>5-. Requests for information to the FIU by competent authorities.</p>
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procedures, policies and applicable laws and regulations. An FIU must, therefore, have rules in place governing the security and confidentiality of such information, including procedures for handling, storage, dissemination, and protection of, as well as access to such information. The FIU should ensure that its staff members have the necessary security clearance levels and understanding of their responsibilities in handling and disseminating sensitive and confidential information. The FIU should ensure that there is limited access to its facilities and information, including information technology systems.

E. OPERATIONAL INDEPENDENCE

8. The FIU should be operationally independent and autonomous, meaning that the FIU should have the authority and capacity to carry out its functions freely, including the autonomous decision to analyze, request and/or disseminate specific information. In all cases, this means that the FIU has the independent right to forward or disseminate information to competent authorities.

9. An FIU may be established as part of an existing authority. When a FIU is located within the existing structure of another authority, the FIU's core functions should be distinct from those of the other authority.

10. The FIU should be provided with adequate financial, human and technical resources, in a manner that secures its autonomy and independence and allows it to conduct its mandate effectively. Countries should have in place processes to ensure that the staff of the FIU maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.

11. The FIU should also be able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information.

F. UNDUE INFLUENCE OR INTERFERENCE

12. The FIU should be able to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence.

G. EGMONT GROUP

13. Countries should ensure that the FIU has regard to the Egmont Group Statement of Purpose and its Principles for Information Exchange Between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases (these documents set out important guidance concerning the role and functions of FIUs, and the mechanisms for exchanging information between FIUs). The FIU should apply for membership in the Egmont

needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence.

29.8 Where a country has created an FIU and is not an Egmont Group member, the FIU should apply for membership of the Egmont Group. The FIU should submit an unconditional application for membership to the Egmont Group and fully engage itself in the application process.

			<p>Group.</p> <p>H. LARGE CASH TRANSACTION REPORTING</p> <p>14. Countries should consider the feasibility and utility of a system where financial institutions and DNFBPs would report all domestic and international currency transactions above a fixed amount.</p>		
30	Responsibilities of law enforcement and investigative authorities	<p>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 of 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.</p>	<p>1. There should be designated law enforcement authorities that have responsibility for ensuring that money laundering, predicate offences and terrorist financing are properly investigated through the conduct of a financial investigation. Countries should also designate one or more competent authorities to identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation.2. A 'financial investigation' means an enquiry into the financial affairs related to a criminal activity, with a view to:</p> <ul style="list-style-type: none"> ☐ identifying the extent of criminal networks and/or the scale of crime; ☐ identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and ☐ developing evidence which can be used in criminal proceedings. <p>3. A 'parallel financial investigation' refers to conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation into money laundering, terrorist financing and/or predicate offence(s). Law enforcement investigators of predicate offences should either be authorized to pursue the investigation of any related money laundering and terrorist financing offences during a parallel investigation, or be able to refer the case to another agency to follow up with such investigations.</p> <p>4. Countries should consider taking measures, including legislative ones, at the national level, to allow their competent authorities investigating money laundering and terrorist financing cases to postpone or waive the arrest of suspected persons and/or the seizure of the money, for the purpose of identifying persons involved in such activities or for evidence gathering.</p> <p>Without such measures the use of procedures such as controlled deliveries and undercover operations are precluded.</p> <p>5. Recommendation 30 also applies to those competent authorities, which are not law enforcement authorities, per se, but which have the responsibility of pursuing financial investigations of predicate offences, to the extent that these competent authorities are exercising functions covered under Recommendation 30.</p> <p>6. Anti-corruption enforcement authorities with enforcement powers may be designated to investigate money laundering and terrorist financing</p>	<p>30.1 There should be designated law enforcement authorities that have responsibility for ensuring that money laundering, associated predicate offences and terrorist financing offences are properly investigated, within the framework of national AML/CTF policies.</p> <p>30.2 Law enforcement investigators of predicate offences should either be authorized to pursue the investigation of any related ML/TF offences during a parallel financial investigation, or be able to refer the case to another agency to follow up with such investigations, regardless of where the predicate offence occurred.</p> <p>30.3 There should be one or more designated competent authorities to expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime.</p> <p>30.4 Countries should ensure that Recommendation 30 also apply to those competent authorities, which are not law enforcement authorities, per se, but which have the responsibility for pursuing financial investigations of predicate offences, to the extent that these competent authorities are exercising functions covered under Recommendation 30.</p> <p>30.5 If anti-corruption enforcement authorities are designated to investigate ML/TF offences arising from, or related to, corruption offences under Recommendation 30, they should also have sufficient powers to identify, trace, and initiate freezing and seizing of assets.</p>	<p>1 - . The use of a parallel financial investigation to research the predicate offense should be ensured. The objectives of this investigation are established, but there are no fixed or minimum standards on how to implement this (Possible use of the methodological guide). Obviously the date on which the financial investigation began should be noted, since the fact that it started at the same time as the investigation of the predicate offense will be evaluated.</p> <p>2.- One or more agencies responsible for identifying and securing assets should exist. (problems with the concept of assets in Chile)</p> <p>3-. Countries are requested to adopt special precautionary measures in the field (personal and real).</p> <p>4-. The concept of competent authorities is extended to institutions responsible for predicate offense financial investigations.</p> <p>5-. Use and creation of multidisciplinary teams.</p>

			<p>offences arising from, or related to, corruption offences under Recommendation 30, and these authorities should also have sufficient powers to identify, trace, and initiate freezing and seizing of assets.</p> <p>7. The range of law enforcement agencies and other competent authorities mentioned above should be taken into account when countries make use of multi-disciplinary groups in financial investigations.</p> <p>8. Law enforcement authorities and prosecutorial authorities should have adequate financial, human and technical resources. Countries should have processes in place to ensure that the staff of these authorities maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.</p>		<p>6 -. Cooperation with authorities in other countries. There is no information or warning on how it may develop and how its eventual compliance will be measured.</p>
31	Powers of law enforcement and investigative authorities	<p>When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able to obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions, DNFBPs and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence.</p> <p>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:</p> <p>Under-cover operations, intercepting communications, accessing computer systems and</p>		<p>31.1 Competent authorities conducting investigations of money laundering, associated predicate offences and terrorist financing should be able to obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for:</p> <p>(a) the production of records held by financial institutions, DNFBPs and other natural or legal persons;</p> <p>(b) the search of persons and premises;</p> <p>(c) taking witness statements; and</p> <p>(d) seizing and obtaining evidence.</p> <p>31.2 Competent authorities conducting investigations should be able to use a wide range of investigative techniques for the investigation of money laundering, associated predicate offences and terrorist financing, including:</p> <p>(a) undercover operations;</p> <p>(b) intercepting communications;</p> <p>(c) accessing computer systems; and</p> <p>(d) controlled delivery.</p> <p>31.3 Countries should have mechanisms in place:</p> <p>(a) to identify, in a timely manner, whether natural or legal persons hold or control accounts; and</p> <p>(b) to ensure that competent authorities have a process to identify assets without prior</p>	<p>1 -. Possibility of wide access to information. The question is what is necessary.</p> <p>2 -. Use of mandatory measures.</p> <p>3-. Use of special investigative techniques.</p> <p>4-.Requesting relevant information held by the FIU. What will be the relevant information. The STRs, other kind of reports? or it is enough with the report prepared by the Unit where they are analyzed.</p>

		<p>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.</p>		<p>notification to the owner. 31.4 Competent authorities conducting investigations of money laundering, associated predicate offences and terrorist financing should be able to ask for all relevant information held by the FIU.</p>	
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