



**Council of Europe Convention on Laundering, Search, Seizure and  
Confiscation of the Proceeds from Crime and on the  
Financing of Terrorism**

**Financial Intelligence Units**

**Training Seminar  
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## STRUCTURE OF PRESENTATION

- Treatment of FIUs under the Convention
- Definition of financial intelligence unit (Article 1)
- Measures at national level:
  - Establishment of a financial intelligence unit (Article 12)
  - Postponement of Transaction (Article 14)
- Measures at international level:
  - **Cooperation between FIUs (Article 46)**
  - **Postponement of suspicious transactions (Article 47)**
- Treatment of Measures to prevent money laundering (Article 13)

## ➤ **TREATMENT OF FINANCIAL INTELLIGENCE UNITS IN THE CONVENTION**

- Entirely new concept that adds value to the comprehensiveness of the Convention
- Does not distinguish between the types of FIUs
- Developed on the basis of existing standards
- Is not involved in the operations of the FIU except to the extent of its powers and duties
- Places obligations on FIUs at both the national and international level in line with the philosophy of the whole Convention

## ➤ **BACKGROUND TO FINANCIAL INTELLIGENCE UNITS**

- Main source is Recommendation 26 of the FATF\_40
- Consult assessment and evaluation of Recommendation 26 in the FATF or MONEYVAL latest Mutual Evaluation Reports and subsequent Progress Reports
- Use information as may be applicable under the Convention to support the review and assessment

## ➤ DEFINITION OF FINANCIAL INTELLIGENCE UNIT

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

- i. concerning suspected proceeds and potential financing of terrorism, or
- ii. required by national legislation or regulation,

in order to combat money laundering and financing of terrorism.

✚ Confirm definition against legislation

## ➤ MEASURES AT NATIONAL LEVEL

- Establishment of a financial intelligence unit (Article 12)
  - Each party shall adopt such legislative and other measures as may be necessary to establish an FIU as defined in this Convention
  - Each party shall adopt such legislative and other measures as may be necessary to ensure that its FIU has access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of suspicious transaction reports
- ± Confirm establishment and powers of FIU against legislation
- ± Consult MONEYVAL or FATF Third Round Mutual Evaluation Reports and Progress Reports regarding FATF Recommendation 26

## ➤ MEASURES AT NATIONAL LEVEL

### □ Postponement of Transaction (Article 14)

- each party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken:
- by the FIU or, as appropriate, by any other competent authorities or body,
- when there is a suspicion that a transaction is related to money laundering,
- to suspend or withhold consent to a transaction going ahead
- in order to analyse the transaction and confirm the suspicion.

✚ Confirm powers of FIU against legislation

✚ Evaluate effectiveness against statistics

## ➤ MEASURES AT NATIONAL LEVEL

- Postponement of Transaction (Article 14)
  - Each party may restrict such a measure to cases where a suspicious transaction report has been submitted
  - The maximum duration of any suspension or withholding of consent to a transaction shall be subject to any relevant provisions in national law
- ± Confirm powers of FIU to restrict such measures against legislation
- ± Establish legislative provisions for duration of suspension and evaluate its effectiveness against information provided in the Questionnaire – preferably statistics.



## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46)
  - Largely drawn from the Council Decision of 17 October 2000 concerning arrangements for co-operation between FIUs of the (EU) Member States in respect of exchanging information
  - Contains 13 main elements or criteria most of which are addressed through the Questionnaire with Parties having to demonstrate their practical implementation
  - Covers the obligations of FIUs to cooperate fully and establishes high principles on ways of cooperation covering the request and the response procedures

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.1)
  - Parties shall ensure that FIUs, as defined in this Convention, **shall cooperate** for the purpose of combating money laundering, **to assemble and analyse**, or, if appropriate, **investigate** within the FIU **relevant information** on any fact which might be an indication of money laundering in accordance with their national powers

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.2)
  - Each Party shall ensure that FIUs exchange, **spontaneously** or **on request** and either **in accordance with this Convention** or in accordance with **existing or future memoranda of understanding** compatible with this Convention, any **accessible information** that may be relevant to the **processing or analysis of information** or, if appropriate, to **investigation** by the FIU regarding **financial transactions** related to money laundering and the **natural or legal persons involved**

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.3 – Quest.)
  - Each party shall ensure that **the performance of the functions** of the FIUs under this article **shall not be affected** by their internal status, regardless of whether they are **administrative, law enforcement** or **judicial authorities**
  
- ✚ Assess and evaluate measures in place to confirm that FIU of country evaluated can cooperate as required by Article 46.3

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.4 – Quest.)
  - Each request made under this article shall be accompanied by **a brief statement of the relevant facts** known to the requesting FIU.
  - The FIU shall specify in the request **how the information sought will be used**
- ± Verify by obtaining details of contents of a sample request
- ± Confirm procedures in place to ensure that information received is used as specified in the request

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.5 – Quest.)
  - When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties
- ✚ Assess and evaluate the process/procedures applied in fulfilling these obligations in a timely and comprehensive manner and ensure the FIU can have access to requested information - confirm effectiveness

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.6 – Quest.)
  - An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.
- ± Confirm powers of FIU against legislation
- ± Ensure FIU demonstrates procedures in place to apply refusal in the exceptional circumstances

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.7 – Quest.)
  - Information or documents obtained under this article **shall only be used** for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU **shall not be disseminated** to a third party, nor **be used by the receiving FIU for purposes other than analysis, without prior consent** of the supplying FIU
- ± Confirm whether law prohibits or limits the use of obtained information and documents
- ± Establish procedures in place by FIU to control use of information and documentation obtained
- ± Establish effectiveness of procedures through statistics, if available, on information received and requests for further use or dissemination



## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.8 – Quest.)
  - When transmitting information or documents pursuant to this article, the **transmitting FIU may impose restrictions and conditions** on the use of information for purposes other than those stipulated in paragraph 7. **The receiving FIU shall comply with any such restrictions and conditions**
- ✚ Establish whether FIU of Party under evaluation has ever imposed restrictions and conditions – what type?
- ✚ Establish whether the imposition of restrictions and conditions ever affected the objective of cooperation
- ✚ Establish whether there is feedback on the use of information by requesting FIU to requested FIU

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.9 – Quest.)
  - Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained
- ± Establish whether FIU has restrictions in giving its consent. What type of restrictions?
- ± Establish whether such circumstances ever occurred
- ± Establish, possible through sanitised replies, explanations for refusal

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.10 – Quest.)
  - FIUs shall undertake **all necessary measures**, including security measures, to ensure that information submitted under this article **is not accessible** by any other authorities, agencies or departments
- ± Assess and evaluate measures in place and procedural implementation
- ± Establish effectiveness of measures in place
- ± Confirm procedures in place for breaches of security or other measures

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.11 – Quest.)
  - **The information submitted shall be protected**, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU
- ✚ Confirm that the Party under evaluation has legislation in place protecting personal/individual data
- ✚ Establish level of confidentiality and protection of data applied by FIU - check what procedures are in place

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.12)
  - The **transmitting FIU may make reasonable enquiries** as to the use made of information provided and the **receiving FIU shall, whenever practicable,** provide such feedback
- ✚ Confirm that FIU of Party evaluated does not have any restrictions in providing feedback
- ✚ Establish whether as transmitting FIU, the FIU of the Party evaluated has in practice ever requested feedback and vice-versa – statistics would be helpful
- ✚ Establish level of effectiveness of responses (time and content)

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Cooperation between FIUs (Article 46.13)
  - Parties shall indicate the unit which is an FIU within the meaning of this article

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Postponement of Suspicious Transactions (Article 47.1)
  - Each Party shall adopt such **legislative or other measures** as may be necessary to permit **urgent action** to be initiated by a FIU, **at the request of a foreign FIU, to suspend or withhold consent to a transaction** going ahead for such periods and **depending on the same conditions as apply in its domestic law** in respect of the postponement of transactions
- ⊕ Ensure there are specific procedures through specific legislative or other measures
- ⊕ Establish how Article 14 supports Article 47.1
- ⊕ Confirm effectiveness

## ➤ MEASURES AT INTERNATIONAL LEVEL

- Postponement of Suspicious Transactions (Article 47.2)
  - The action referred to in paragraph 1 shall be taken where **the requested FIU is satisfied**, upon justification by the requesting FIU, that:
    - i. the transaction **is related to money laundering**; and
    - ii. the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, **if the transaction had been the subject of a domestic suspicious transaction report**
- ✚ Establish procedures in place for FIU to be satisfied on above criteria
- ✚ Establish how Article 14 is applied to Article 47.1
- ✚ Confirm effectiveness - statistics



## ➤ TREATMENT OF PREVENTIVE MEASURES

- Preventive measures are not addressed under the review of the Convention and are not to be specifically included in the Review Report
- It may be opportune however to consult the assessment and evaluation of preventive measures in the FATF or MONEYVAL latest Mutual Evaluation Reports and subsequent Progress Reports
- Use information as background material to understand better the environment within which the FIU fulfils its responsibilities and to establish its possible access to and availability of data and information
- The Convention provides only Article 13 which however comprehensively covers the necessary preventive measures

## ➤ TREATMENT OF PREVENTIVE MEASURES (Article 13)

- Establish a comprehensive domestic regulatory and supervisory or monitoring regime to prevent money laundering (Article 13.1)
- Subject identified persons and institutions to (Article 13.2):
  - Customer due diligence procedures, that include identification of beneficial owner, and that are applied on a risk based approach (FATF Rec 5)
  - Reporting of suspicions on money laundering subject to safeguard (FATF Rec 13 and Special Rec IV)
  - Record keeping on customer identification and transactions, training of personnel and the establishment of internal policies and procedures, and if appropriate, adapted to their size and nature of business (Rec 10 and Rec 15)
  - Tipping off (Rec 14)
  - Monitoring and supervision on compliance (Rec 23 and Rec 24)
- Establish measure to detect the significant physical cross border transportation of cash and appropriate bearer negotiable instruments (Special Rec IX) (Article 13.3)



**THANK YOU**  
***QUESTIONS?***

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