



FINANCIAL INTELLIGENCE ANALYSIS UNIT



# Annual Report 2011

FIAU

ANNUAL REPORT 2011

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# FINANCIAL INTELLIGENCE ANALYSIS UNIT

## COMPOSITION OF THE BOARD OF GOVERNORS

### CHAIRMAN

Dr. Peter Grech LL.D.

### DEPUTY CHAIRMAN

Dr. Anton Bartolo LL.D.

### MEMBERS

Mr. Pierre Calleja  
Dr. Bernadette Muscat LL.M. (Bruges), LL.D.

### SECRETARY

Dr. Manfred Galdes B.A., LL.M. (Leic.), LL.D.

### DIRECTOR

Dr. Manfred Galdes B.A., LL.M. (Leic.), LL.D.



LEFT TO RIGHT: Mr. Pierre Calleja, Dr. Bernadette Muscat, Dr. Peter Grech, Dr. Anton Bartolo, Dr. Manfred Galdes





# LETTER OF TRANSMITTAL TO THE MINISTER OF FINANCE, THE ECONOMY AND INVESTMENT

Financial Intelligence Analysis Unit  
Valletta

March 2012

Dear Hon. Minister,

In accordance with Article 42(1) of the Prevention of Money Laundering Act, Cap 373 of the Laws of Malta, I have the honour to transmit a copy of the Annual Report on the operations of the Unit and a copy of the annual accounts certified by the auditors for the Unit's financial year ended 31<sup>st</sup> December 2011.

Yours sincerely,



**Dr. Peter Grech**  
Chairman



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# ABBREVIATIONS

<b>AML/CFT</b>	Anti-Money Laundering and Combating the Funding of Terrorism
<b>CBM</b>	Central Bank of Malta
<b>CPMLFT</b>	Committee on the Prevention of Money Laundering and the Financing of Terrorism
<b>DNFBP</b>	Designated Non-Financial Business and Profession
<b>EC</b>	European Commission
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>FATF</b>	Financial Action Task Force
<b>FIAU</b>	Financial Intelligence Analysis Unit
<b>FIU</b>	Financial Intelligence Unit
<b>FSRB</b>	FATF Style Regional Body
<b>FT</b>	Funding of Terrorism
<b>JCPMLFT</b>	Joint Committee on the Prevention of Money Laundering and Funding of Terrorism
<b>LGA</b>	Lotteries and Gaming Authority
<b>MFSA</b>	Malta Financial Services Authority
<b>ML</b>	Money Laundering
<b>ML/FT</b>	Money Laundering and Funding of Terrorism
<b>MLRO</b>	Money Laundering Reporting Officer
<b>MONEYVAL</b>	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
<b>MoU</b>	Memorandum of Understanding
<b>PEP</b>	Politically Exposed Person
<b>PMLA</b>	Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta)
<b>PMLFTR</b>	Prevention of Money Laundering and Funding of Terrorism Regulations
<b>STR</b>	Suspicious Transaction Report
<b>UNODC</b>	United Nations Office on Drugs and Crime



## STATEMENT OF THE CHAIRMAN



It is my pleasure to present the Annual Report of the Financial Intelligence Analysis Unit which covers activity during the year 2011.

2011 was quite a demanding year for the organisation. The year recorded an increase in the FIAU's general activity in relation to areas such as compliance monitoring, reporting, analysis and the legislative field and it brought many encouraging results.

The developments of the year under review also highlighted the need for proper and continued vigilance for the prevention of money laundering and terrorism financing and for ensuring that appropriate reports are filed when suspicious situations are identified.

The year under review has seen the issuance by the FIAU on 20<sup>th</sup> May 2011 of Part I of the Implementing Procedures which followed a consultation process that took place during 2010. The Implementing Procedures repeal all previous guidance provided by the MFSA and other representative bodies. Part I of the Implementing Procedures is binding on all subject persons, whether carrying out relevant financial business or a relevant activity. Part II of the Implementing Procedures is currently being drafted by the associations and representative bodies representing subject persons on the Joint Committee on the Prevention of Money Laundering and Funding of Terrorism and will be submitted to the FIAU for consideration and approval.

As had been announced in last year's report, in 2011 Malta underwent the fourth round mutual evaluation by MONEYVAL. This evaluation included an on-site evaluation visit held between the 29<sup>th</sup> May and the 4<sup>th</sup> June 2011. The visit was co-ordinated by the FIAU and the report of the evaluation was subsequently adopted during the 38<sup>th</sup> MONEVAL plenary held in Strasbourg between the 5<sup>th</sup> and 9<sup>th</sup> March 2012.

The positive trend towards a general increase in the number of suspicious transaction reports across the various categories of reporting entities which was noted in 2010 was maintained in 2011 with more STRs being recorded across most (but not all) sectors. The year under review was, in fact, characterised by the highest number of STRs ever received by the FIAU since its establishment in 2002. During 2011, a total of 107 STRs were received. These gave rise to a total of 91 individual cases, a 65% increase over 2010. In addition to the 91 cases arising from the receipt of STRs, the FIAU also analysed a further 11 cases which were opened on the basis of information obtained by the FIAU from different sources such as international requests for information from other FIUs, spontaneous information disclosed to the FIAU by other FIUs and international media reports. As a result the total number of cases which were subjected to an analysis by the FIAU during 2011 amounted to 102.

Another point worth mentioning is that during 2011 the quality of reporting has improved with the incidence of so-called "defensive reporting" continuing to decline. The reports received are more focused and provide more detailed information. They also demonstrate a clearer link between the reported activity or transaction and the suspicion of the proceeds of crime. This is possibly a result of the emphasis being made by the FIAU on the importance of proper reporting in the feedback and guidance provided to subject persons but it is also indicative of an increasingly cautious approach to customer due diligence and of an increased awareness of the subject persons' responsibilities particularly with regard to the level of proof required to warrant the filing of an STR.

The average time taken by the FIAU for the conclusion of cases finalised during 2011 diminished by 20% compared to the average for 2010. This improvement is likely to have been at least in part brought about by the strengthening of administrative capacity through the recruitment of an additional financial analyst in the unit's Financial Analysis Section during the last quarter of 2010.



During 2011 where information was requested from the FIAU by a foreign FIU, in approximately 51% of the cases the information was given within one working day. Moreover, the average FIAU response time to international requests for information decreased from twelve and a half working days in 2010 to six working days in 2011.

In 2011 the FIAU made 142 requests for information to foreign counterparts in connection with 69 cases. This is the highest number of requests for information made in a calendar year since the FIAU became operational in 2002, and is almost double the number of requests made in the previous year.

The FIAU has also continued to exercise its off-site compliance monitoring functions through the collection of relevant information in connection with subject persons. In this regard the FIAU has introduced a comprehensive procedure for the reporting of specific information relating to compliance matters by the Money Laundering Reporting Officers of subject persons to the FIAU on an annual basis through the completion of an 'Annual Compliance Report'. This requirement came into force in May 2011 through the introduction of the Implementing Procedures, with the first submissions to the FIAU falling due in 2012 and relating to information on the preceding twelve-month period from January to December 2011. The receipt of such reports from subject persons will further assist the FIAU in the planning of its on-site compliance examinations on a risk-sensitive basis and in maintaining updated statistical data.

The FIAU was involved in 20 on-site examination visits during 2011. Two of these visits were carried out independently and were focused AML/CFT visits to a corporate services provider and to a trust and fiduciary company. The FIAU participated in 18 visits carried out jointly with the MFSA, while a further 13 visits were carried out by the MFSA on behalf of the FIAU. The increased involvement of the FIAU in on-site examinations is mainly due to the increase in staff complement in the compliance section to three officers. The envisaged further engagement of one additional officer in 2012 should serve to strengthen even more the capability of the FIAU in this area.

During the year under review, the FIAU issued two written warnings. A credit institution was reprimanded by the FIAU in view of the lack of consideration given by the institution to the risks of ML/FT in the establishment of a correspondent banking relationship with another credit institution situated in a non-reputable jurisdiction. The issue of another reprimand was considered necessary in a separate case where it was discovered that an investment services company was not complying with its own internal reporting procedures drawn up in accordance with the PMLFTR.

The FIAU also dedicated a significant part of its resources to the continuous training of its staff, without whom it cannot perform effectively, and has also organised training in the wider perspective of the financial services industry.

It is also pleasing to note that the case law of the courts of criminal jurisdiction has continued to develop in a manner which reveals an increased appreciation of the elements of the offence of money laundering and of the compatibility between those elements and the requirements of the right to a fair trial.

With the above in mind, the FIAU takes on its role as a leader in the fight against money laundering and the financing of terrorism with the objective of becoming more effective and focused and of enjoying the co-operation and the confidence of the stakeholders both in the law enforcement and in the business and financial services sectors.



**Dr. Peter Grech**

# 1. THE FINANCIAL INTELLIGENCE ANALYSIS UNIT

## Establishment and Composition

The FIAU is the national central agency in Malta responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating ML/FT. As a government agency set up by law, it is an operationally autonomous body within the Ministry of Finance, the Economy and Investment having separate juridical personality, its own offices and its own staff. The FIAU serves as Malta's FIU and is the entity designated to fulfil the responsibilities of an FIU set out in the 3<sup>rd</sup> AML Directive (Directive 2005/60/EC) and the FATF 40 Recommendations and 9 Special Recommendations.

The Unit has been operational since 1<sup>st</sup> October 2002 when it was established by virtue of Legal Notice 297 of 2002, which brought into force comprehensive amendments to the PMLA enacted by means of Act XXXI of 2001.

The responsibilities related to the governance of the Unit are divided among the Board of Governors and the Director with the Board establishing the policy of the Unit and the Director being tasked with the execution of that policy. Over the years, an Administration & IT Section, a Financial Analysis Section, a Compliance Section and a Legal & International Relations Section have been set up in order for the FIAU to be in a better position to discharge its functions.

More details on the composition of the Board of Governors and the duties and functions of the Director are contained in Section 3 of the report.

## Functions

The functions and responsibilities of the FIAU are listed in a detailed manner in the PMLA with the three core functions being the following:

### The receipt and analysis of STRs<sup>1</sup>

The FIAU receives information on transactions or activities suspected to involve ML/FT from institutions and persons that are subject to the obligations of the PMLFTR. Following the receipt of a report, a detailed analysis is carried out by the Financial Analysis Section after which an analytical report is presented to the Financial Analysis Committee for a determination as to whether the dissemination of information to the Police should be made on the basis of a reasonable suspicion of ML/FT. This function also requires the Unit to demand information from subject persons and any other person for the purpose of conducting its analysis.

### The exchange of information with other entities

The FIAU is also required to exchange information and to co-operate with local and foreign supervisory authorities and with other FIUs, either spontaneously or on the basis of a request for information. For this purpose the FIAU may enter into bilateral and multilateral Memoranda of Understanding with foreign FIUs, supervisory authorities and international organisations.

### Compliance monitoring

Oversight and monitoring of compliance by persons and institutions in terms of the PMLFTR also falls within the remit of the FIAU. In fulfilling this duty the Unit follows internal compliance procedures for on-site examinations and off-site monitoring. On-site examinations are carried out by the Unit's compliance officers and by supervisory authorities acting on the FIAU's behalf. Where on-site examinations are carried out by supervisory authorities acting as agents of the FIAU, the findings are reported to the Unit, after which a final report is drawn up by the FIAU's Compliance Section in which subject persons are informed of any remedial action deemed necessary.

<sup>1</sup> The term STR, which is used extensively in this report, should not be taken to be restricted to reports on the basis of suspicion or knowledge of ML/FT related specifically to transactions which are attempted or actually carried out. This term covers all disclosures of information made to the FIAU in terms of Regulation 15(6) of the PMLFTR whether or not they relate to a specific transaction.



Other areas of responsibility within the remit of the FIAU include the gathering of information on the financial and commercial activities in Malta, a task aimed at detecting areas of activity which may be vulnerable to ML/FT. Comprehensive statistics and records are indeed compiled and maintained on an ongoing basis which enable the FIAU to be in a position to detect threats and to assess risk on a national level. Officers of the Unit are also involved in the provision of training to subject persons, the monitoring of developments in ML/FT methods, typologies, and trends, the provision of guidance and feedback to subject

persons and the provision of assistance to subject persons in developing effective AML/CFT measures and programmes.

The FIAU is also tasked by law to provide advice to the Minister of Finance, the Economy and Investment on matters related to the prevention, detection, investigation, prosecution and punishment of ML/FT and to report any suspicion of ML/FT to the Police even where the knowledge of the suspicious activity does not arise from a report to the FIAU under the PMLFTR.



# STRUCTURE OF THE ORGANISATION

**The Board of Governors** is responsible for laying down the policies of the Unit.

Members are appointed by the Minister responsible for finance, with one person being selected from each of four panels nominated by the Attorney General, the Governor of the CBM, the Chairman of the MFSA and the Commissioner of Police. Both the Chairman and Deputy Chairman are appointed from among Board members by the Prime Minister after consultation with the Minister responsible for finance.

**The Director** is responsible for the execution of the established policies and reports to the Board accordingly. He also carries out all other functions of the Unit not attributed by the PMLA to the Board and is assisted by permanent staff.

The Director attends meetings of the Board where he can participate in discussions, though he has no right to vote.

Appointment is made by the Board upon a regular call for applications.

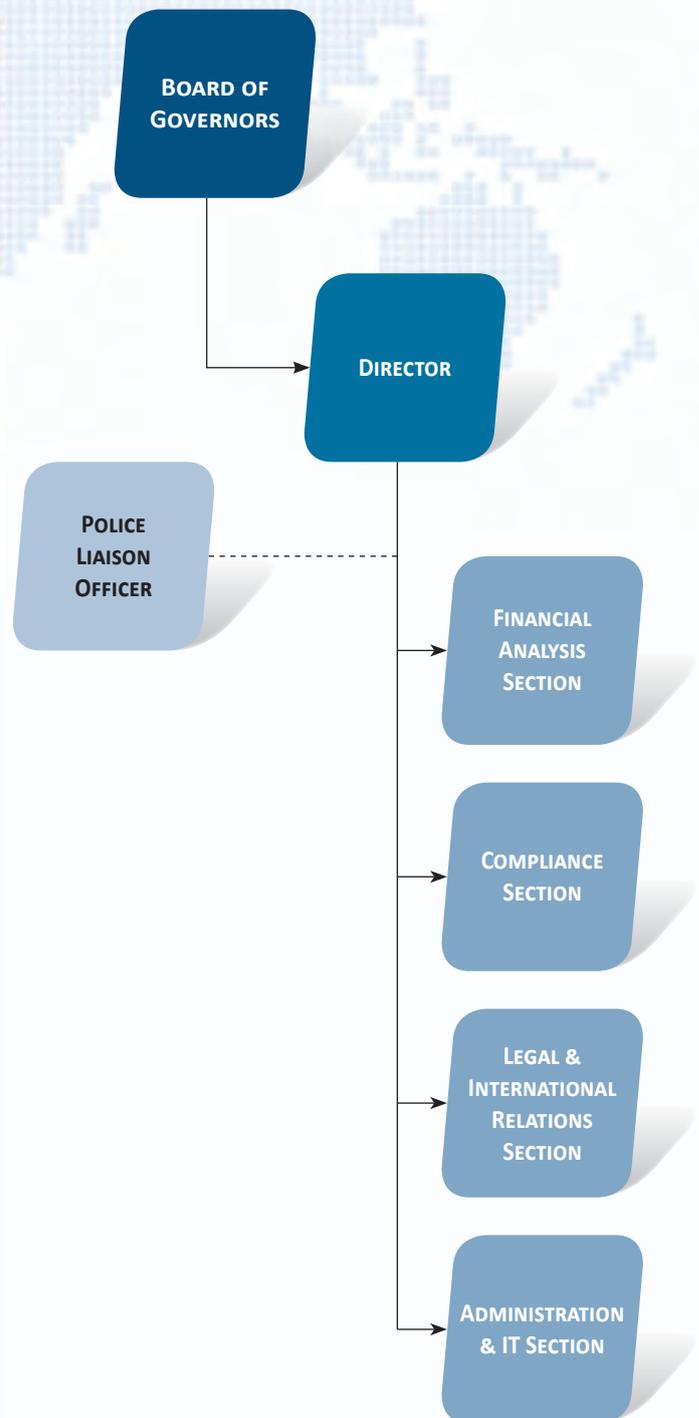
**Financial Analysts** are responsible for the analysis of STRs and preparation of analytical reports.

**Compliance Officers** ensure that subject persons are compliant with the PMLA and the PMLFTR.

**Legal staff** advise on legal matters and manage the international aspects of the Unit's functions.

**Administrative staff** members are responsible for the Unit's administrative, accounting and IT set-up.

**The Police Liaison Officer** is an officer detailed by the Commissioner of Police who is permitted by law to make available to the FIAU any information at the disposal of the Police or which is part of the police records if relevant to the exercise of the FIAU's functions and liaises between the two organisations. He also advises the FIAU on investigative techniques and on law enforcement issues.



## 2. OPERATIONS

### Financial Analysis

EU legislation, the FATF Recommendations and international conventions require every country to have a functioning FIU which is adequately resourced in order to carry out its functions, including the analysis of reports of suspicious activity and transactions. In order to be able to undertake these responsibilities in accordance with these international standards, FIUs should have access on a timely basis to financial, administrative and law enforcement information and should be in a position to exchange such information with foreign FIUs without unduly restrictive conditions when requested to do so.

FATF's Recommendation 26 and Article 21 of the 3<sup>rd</sup> AML Directive clearly require states to establish a FIU that serves as a national centre for the receiving and requesting, analysis and dissemination to Police or other law enforcement authorities of disclosures of information which concern potential ML/FT. The wording of the international standards and EU legislation leaves absolutely no doubts as to the reason for the setting up of a FIU within a jurisdiction and what should be considered to be the main task of a FIU.

STRs are processed by the Financial Analysis Section of the Unit through a systematic and structured analysis of the information contained in the STRs. This information is supplemented by other relevant information that the FIAU may already possess or that it obtains by requesting other persons who, in the opinion of the FIAU, could be in possession of further relevant information such as financial institutions, public authorities, law enforcement bodies and other FIUs.

Upon completion of the analysis by the Financial Analysis Section, a preliminary report is presented to the Financial Analysis Committee, an internal body chaired by the Director and composed of the FIAU's financial analysts and the Senior Legal and International Relations Officer. The Committee, after having reviewed the findings and conclusions of the preliminary report, determines whether the requirements at law for dissemination to the Police have been fulfilled. If the Committee determines that a reasonable suspicion of ML/FT does in fact subsist in the case, an analytical report together with all information considered to be relevant is submitted to the Police for investigation.<sup>2</sup> This same

procedure is also applied where the analysis is carried out on the basis of information in the possession of the FIAU which does not originate from a STR.

The FIAU carries out periodical overall analyses of the STRs it receives and the analytical reports drawn up by its officers on the basis of which it tries to identify patterns, trends and typologies of ML/FT. This information, when integrated with other data obtained by the Unit, is a key indicator of the threat of ML/FT in Malta and of the level of ML/FT risk to which the Maltese financial sector is exposed. General feedback is provided to subject persons and supervisory authorities especially when trends are identified and where international organisations such as the FATF release statements which would be of assistance to subject persons in the carrying out of their customer due diligence obligations.

The comprehensive statistics maintained by the FIAU in relation to the number and type of disclosures made by subject persons categorised also by the type of subject person, figures relating to the outcome of the analyses carried out, the type of predicate offence forming the basis of the STR and statistics relating to requests for information made by the FIAU are being reproduced in the paragraphs hereunder. Information is also provided on the typologies and trends identified during the course of the year under review.

### Statistics

The year under review was characterised by the highest number of STRs ever received by the FIAU since its establishment in 2002. During 2011, in fact, a total of 107 STRs were received, a figure which equates to a 47% increase in comparison to the previous year. In terms of cases,<sup>3</sup> the 107 STRs received by the FIAU during the year gave rise to a total of 91 unique cases, a 65% increase over 2010. In addition to the 91 cases opened further to the receipt of STRs, the FIAU carried out an analysis in a further 11 cases where the analysis was triggered by information obtained from other sources such as international requests for information from other FIUs, spontaneous information disclosed to the FIAU by other FIUs and media reports. Consequently, the total number of cases which were subject to an analysis by the FIAU during 2011 amounted to 102.

<sup>2</sup> The information disseminated to the Police never includes a copy of the STR received from the subject person since this is considered to be a confidential document intended only for the FIAU.

<sup>3</sup> Situations arise where the FIAU receives more than one STR from different subject persons in relation to the same circumstances, the same person, the same transactions or the same activity. When such circumstances arise, the STRs are dealt together as one case. It is also possible for the same subject person to report different transactions in relation to the same person or activity separately. In such cases it is often deemed to be more expedient to deal with the different transactions as one case.



A comparative table placing these figures alongside the corresponding numbers registered in previous years is marked as Table 1 below. At face value, such an increase in the receipt of STRs might seem to suggest a marked rise from the previously stable level of STRs filed during the preceding years which averaged 68 STRs per year during the period between 2003 and 2010. Nevertheless, it should be noted that the sharp rise in STRs received by the FIAU during 2011 is not cross-sectoral. Rather, the increase is mainly attributable to a sudden wave of disclosures made by remote gaming companies which, it should be noted, are not covered by the definition of “subject person” under the PMLFTR but are required to report ML/FT suspicions by the standard licence conditions issued by the LGA. Indeed, STRs filed by this category of persons during the year amounted to 37, which is a staggering rise in comparison to the figure of only four STRs filed by remote gaming companies during 2010.

in this sector is still not as developed as in other sectors and the incidence of premature reporting and cases where the suspicion of ML/FT does not have a clear basis was relatively high. Therefore any conclusion that the increase in the number of STRs from operators within this sector necessarily implies an increase in risk of ML/FT is clearly unfounded. Indeed, the only risk factor identified by the FIAU to have contributed to the rise in the number of STRs submitted by operators within this sector is the increase in the use of pre-paid cards as a method of payment for the deposit of funds to access remote gaming services. This interesting trend emerging from an appreciable number of STRs is explained further in the section dealing with typologies on page 23 of this report.

For comparative purposes, Chart 1 presents two data series to illustrate the effect the large number of disclosures made by remote gaming companies has had on the total figures

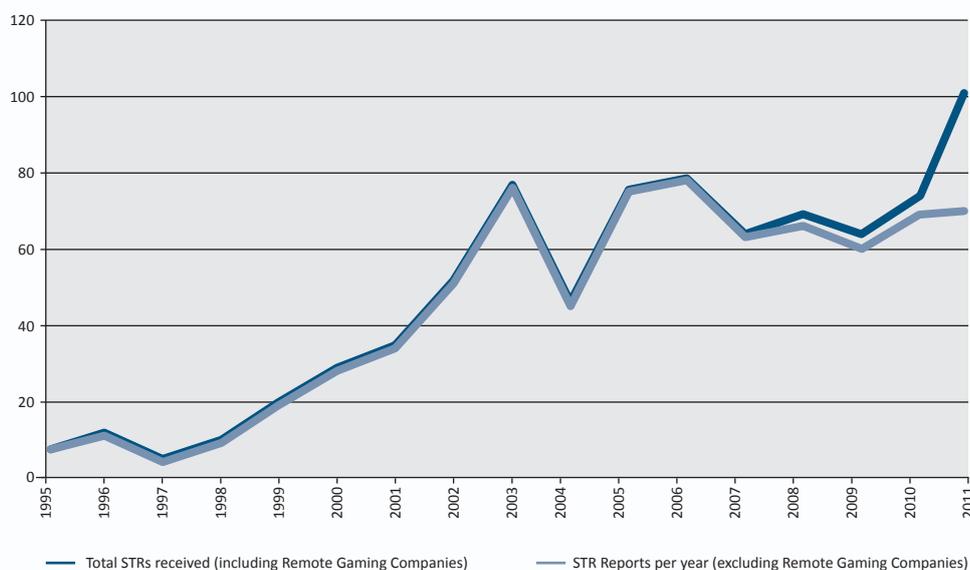
**Table 1: STRs and cases (2002 – 2011)**

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
STRs made by subject persons	11	76	46	75	78	63	69	63	73	107
Cases subject to analysis following STR submission	11	58	43	62	72	55	67	53	55	91
Cases subject to analysis on the basis of other information received by the FIAU	-	1	2	5	10	13	3	13	8	11
<b>Total number of cases subject to analysis</b>	<b>11</b>	<b>59</b>	<b>45</b>	<b>67</b>	<b>82</b>	<b>68</b>	<b>70</b>	<b>66</b>	<b>63</b>	<b>102</b>

The 37 disclosures by remote gaming companies were made by seven different companies operating within this sector. It is worth noting that one particular remote gaming company filed a total of 23 STRs which represents 62% of the STRs received from the remote gaming sector and 21% of the total STRs received by the FIAU in 2011. As explained in more detail later on in this report, the quality of reporting

for 2011. Interestingly, STRs filed by all persons and entities other than remote gaming companies during 2011 amounted to 70, which is just one STR more than the comparable figure for the previous year. The chart covers the period from 1995 to 2011, thus including the initial eight-year period during which subject persons were required to make disclosures directly to the Police.

**Chart 1: Annual STR disclosures (1995 – 2011)**



Following the receipt of the 107 disclosures made during 2011, the total number of STRs received by the FIAU since it became operational in 2002 increased from 554 to 661, while the total number of cases subject to analysis during the same period has increased from 476 to 567.

When looking exclusively at the STRs submitted to the FIAU by subject persons and supervisory authorities, thereby excluding disclosures of suspicious activity or transactions made by remote gaming companies, it can safely be affirmed that the quality of reporting has once again improved. The incidence of so-called “defensive reporting” has continued to decline, possibly as a result of the emphasis being made by the FIAU on this matter in the feedback and guidance provided to subject persons. On the other hand, the reports being received are undoubtedly more focused, they provide more detailed information, they demonstrate a clearer link between the reported activity or transaction and the suspicion of the proceeds of crime, they indicate an increasingly cautious approach to customer due diligence and an increased awareness of the subject persons’ responsibilities and the level of proof required to warrant the filing of a STR.

The progress observed in the quality of the STRs submitted by persons subject to the PMLFTR, however, was not mirrored in those made by remote gaming companies. A number of these disclosures lacked crucial information and the factors warranting the submission of the STR were at times speculative with the disclosure being made even where there was only minimal information to indicate that ML/FT had actually taken place or that there may have been an attempt of ML/FT. The experience with other categories of subject persons, nevertheless, should lead us to conclude that once the operators within this sector become more familiar with the duty to report suspicions of ML/FT and the situations in which the duty to report arises, the more there is a possibility that the STRs submitted will be focused, comprehensive and truly indicative of an actual suspicion of ML/FT. It is anticipated that the increasing interaction between remote gaming companies and the FIAU during 2012, especially in view of the consultation that will be taking place in order to determine the extent of the inclusion of this sector within the scope of the PLMFTR and the development of sector-specific guidance, should bring about an improvement in the quality of the STRs submitted by operators within this sector.

As can be seen in Table 2, contrary to what had happened in previous years, the receipt of STRs throughout 2011 was unevenly distributed with the largest number of STRs being filed during the third quarter. Of the 43 STRs received during the third quarter (40% of STRs received during the year), more than half, equating to 22 STRs, were filed by remote gaming companies, indicating that the unevenness in the distribution of STRs throughout the year is mainly attributable to the steep rise in disclosures made by remote gaming companies. Another factor contributing to the FIAU registering the highest number of STRs within a consecutive three-month period since its establishment was the fact that credit institutions filed 42% of all the STRs made during the year during that period. No particular reason could be attributed to this behaviour.

### STRs by categories of subject persons

The figures provided in Table 3 show the number of STRs submitted by each category of reporting entity during the period from 2003 to 2011.

As indicated earlier in the report, the largest number of STRs during 2011 was submitted by remote gaming companies. These entities are, strictly speaking, not subject persons in terms of the PMLFTR but should still be considered to be a reporting entity for the purposes of AML/CFT since an obligation to report suspicions of ML/FT is imposed upon them by the licence conditions issued by the LGA. Credit institutions, which filed a total of 26 STRs during the year, maintained their status as one of the most important originators of STRs. In fact, although there has been what may seem to be a significant reduction in the percentage of the STRs received by the FIAU from credit institutions, if one had not to take into account the STRs received from the remote gaming companies, credit institutions would still account for 37% of the STRs filed.

Nevertheless, the figures for 2011 mark a significant drop in STRs submitted by credit institutions when compared to 2010 when 38 reports were made. Even if a comparative analysis had to be conducted over a longer period, the number of STRs by operators in this sector in 2011 remains remarkably low. Considering the vast improvements made, especially the increased awareness of ML/FT risks, the introduction of more sophisticated alert systems and the attention being given to training of staff, one would have

**Table 2: STRs received by the FIAU per quarter (2003 – 2011)**

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Quarter 1	36%	28%	21%	22%	27%	23%	24%	26%	14%
Quarter 2	26%	17%	37%	29%	21%	36%	25%	23%	18%
Quarter 3	17%	26%	16%	26%	27%	28%	21%	27%	40%
Quarter 4	21%	28%	25%	22%	25%	13%	30%	23%	28%



**Table 3: STRs filed by type of reporting entity in absolute numbers and as a percentage of the total number of STRs (2003 – 2011)**

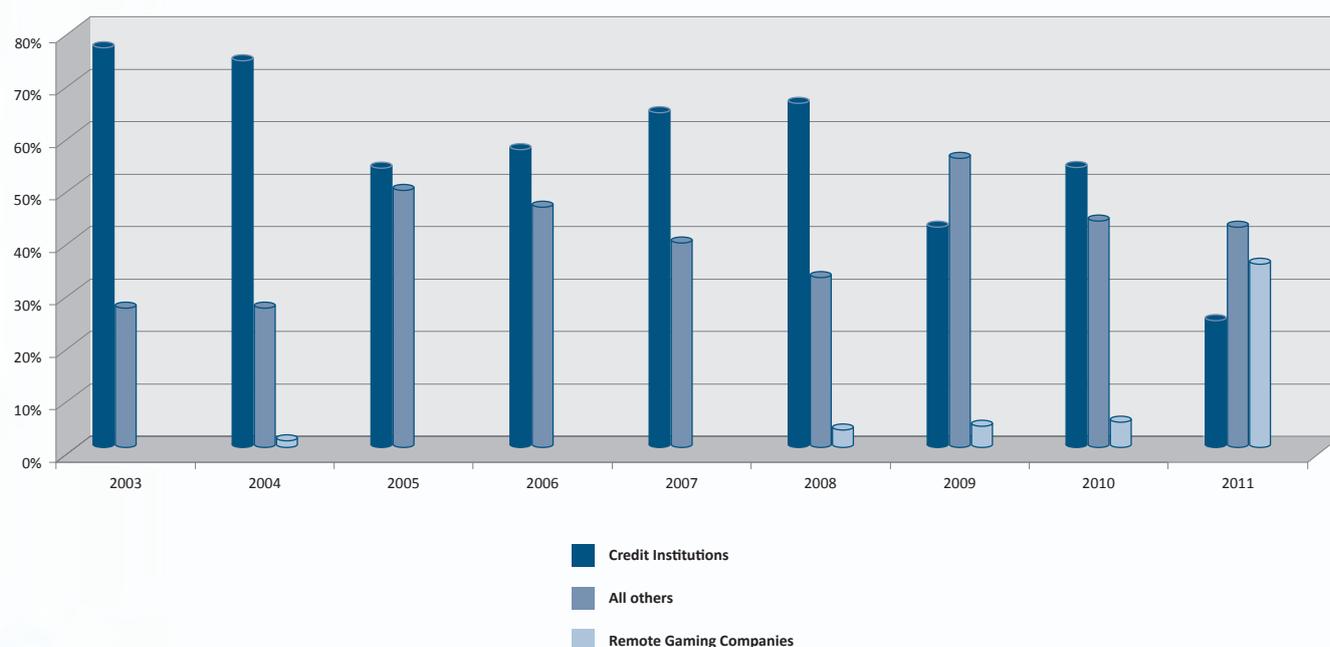
Type of reporting entity	2003		2004		2005		2006		2007		2008		2009		2010		2011		TOTAL	
	No	%	No	%	No	%														
Credit Institutions	56	74	33	72	39	52	42	54	39	62	44	64	26	41	38	52	26	24	343	53
Financial Institutions	4	5	8	17	18	24	13	17	11	17	13	19	6	10	4	5	6	6	83	13
Investment Services Licensees	5	7	2	4	1	1	-	-	2	3	-	-	3	5	2	3	8	7	23	4
Insurance Licensees	1	1	-	-	10	13	3	4	2	3	2	3	-	-	4	5	5	5	27	4
Supervisory Authorities	8	11	1	2	5	7	12	15	1	2	1	1	3	5	3	4	6	6	40	6
Independent Legal Professionals	1	1	-	-	-	-	-	-	1	2	1	1	3	5	3	4	1	1	10	2
Remote Gaming Companies	-	-	1	2	-	-	-	-	-	-	3	4	3	5	4	5	37	35	48	7
Casino Licensees	-	-	-	-	-	-	-	-	-	-	-	-	1	2	2	3	6	6	9	1
Trustees & Fiduciaries	-	-	-	-	1	1	5	6	2	3	3	4	2	3	4	5	6	6	23	4
Real Estate Agents	-	-	-	-	-	-	1	1	-	-	-	-	2	3	-	-	-	-	3	-
Accounting Professionals	1	1	1	2	1	1	2	3	4	6	-	-	4	6	3	4	1	1	17	3
Regulated Markets	-	-	-	-	-	-	-	-	1	2	-	-	3	5	-	-	-	-	4	1
Company Service Providers	-	-	-	-	-	-	-	-	-	-	2	3	3	5	5	7	5	5	15	2
Others	-	-	-	-	-	-	-	-	-	-	-	-	4	6	1	1	-	-	5	1
<b>TOTAL</b>	<b>76</b>	<b>100</b>	<b>46</b>	<b>100</b>	<b>75</b>	<b>100</b>	<b>78</b>	<b>100</b>	<b>63</b>	<b>100</b>	<b>69</b>	<b>100</b>	<b>63</b>	<b>100</b>	<b>73</b>	<b>100</b>	<b>107</b>	<b>100</b>	<b>650</b>	<b>100</b>

expected a steady increase of reports by banks rather than a decline. One of the reasons for this 32% decrease in STRs from credit institutions may be attributable to an improvement in the preventive measures and the due diligence procedures. The FIAU also noted that the quality of the STRs filed by the credit institutions improved substantially indicating that the banks are being more meticulous and are conducting better internal assessments prior to filing STRs. Nonetheless, when one considers the size of the Maltese financial services sector

and the fact that the number of deposit accounts maintained with credit institutions operating in and from Malta exceeds 1.3 million, there is no doubt that the figure of 26 reports in one calendar year is to be seen as objectively low.

The chart below provides a graphic illustration of the distribution of STRs filed by credit institutions and remote gaming companies as compared to all other categories of reporting entities.

**Chart 2: STRs filed by credit institutions and remote gaming companies as compared to all other sectors (2003 – 2011)**



A slight drop from the previous year was recorded in the number of disclosures made by independent legal professionals and accounting professionals with two STRs less in each category than in 2010 being filed. Meanwhile, no disclosures were made by the Malta Stock Exchange and by real estate agents.

On the other hand, the positive trend of a general increase across the various categories of reporting entities that had been noted in 2010 was maintained with more STRs being recorded across almost all the remaining sectors. To this effect, significant increases were registered in the categories of investment services licensees which filed eight STRs compared to only two in 2010, casinos which filed six STRs after having filed two STRs in 2010, and supervisory authorities which also filed six STRs in 2011 compared to three STRs in 2010.

### Persons in respect of whom disclosures were made

Most cases analysed by the FIAU, including those that originated from the submission of a STR, related to activity or transactions carried out by or in relation to more than one natural or legal person. It was also observed that 48% of the STRs received during the year were made in relation to foreign natural persons, while 18% were filed following the existence of a suspicion concerning a combination of local and foreign, legal and natural persons. On the other hand, only 16% of the STRs received concerned specifically Maltese natural persons.

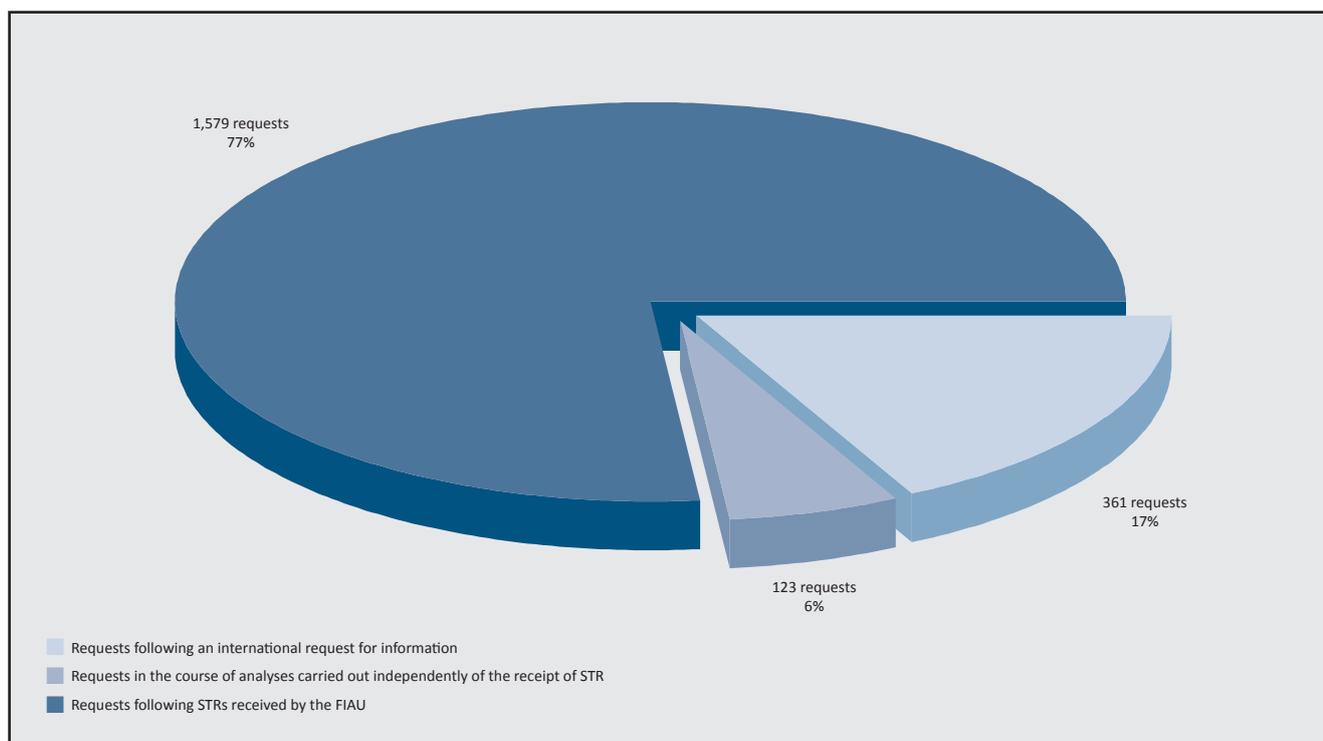
The foreign persons in respect of whom analyses were carried out were either nationals of or legal entities registered in 37 different jurisdictions, 76% of which were European jurisdictions.

### Requests for information

In carrying out its duty to analyse suspicious transactions or suspicious activity reported to it, the FIAU often makes requests for information to a variety of persons, including persons subject to the PMLFTR, the Police, Government Ministries, departments, authorities and agencies and supervisory authorities. Financial and law enforcement information is also obtained by the FIAU from other sources when a request for information is made by a foreign FIU carrying out a ML/FT analysis or investigation within its jurisdiction.

STRs submitted to the FIAU normally only contain the information in the possession of the subject person which gave rise to the suspicion of ML/FT. In order for that initial suspicion to be confirmed and for that information to be disseminated to the Police, the FIAU carries out a much more comprehensive analysis of that information and all other information that it has access to which would assist the Unit in its determination as to whether a reasonable suspicion of ML/FT actually subsists. Consequently, in most cases, the FIAU is necessarily required to exercise its powers to gather additional information to broaden its understanding of the circumstances under which the reported transaction or activity has taken place.

**CHART 3: Requests for information sent by the FIAU by type of initial disclosure (2011)**



During 2011, the FIAU made a total of 2,063 requests for information, a figure which represents an increase of 27% when compared to the 1,627 requests sent during 2010. This increase is consistent with the increase in both the number of cases analysed and the international requests for information received during 2011. Detailed information on the international requests for information is provided in the section on International Co-operation on page 24 of the report.

Chart 3, on the previous page, categorises the total number of requests for information made by the FIAU during 2011 according to whether they were made in furtherance of a STR, whether they were made to obtain additional information in relation to an analysis being carried out independently of the receipt of a STR and whether the requests for information were made in relation to the receipt of an international request for information from a foreign entity.

Chart 4 below illustrates the number of requests for additional information sent to subject persons, Government entities and other persons from whom information is normally sought. The chart also includes the number of cases

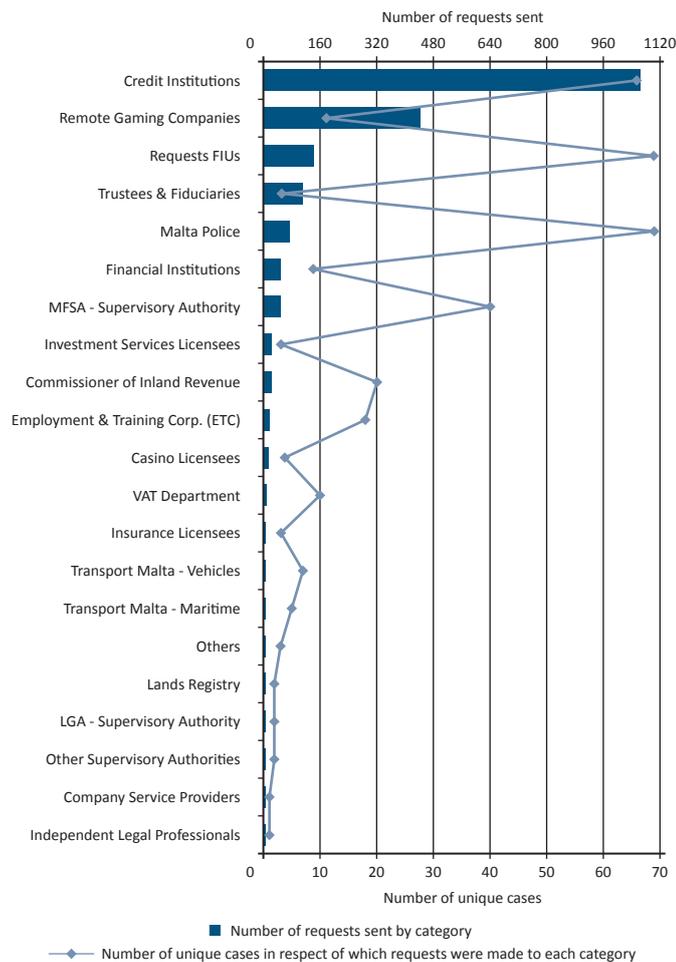
in respect of which requests were made to each category of persons. As in previous years, the largest number of requests for information made by the FIAU (1,066 requests) was made to credit institutions. This large number of requests for information was made in relation to 66 different cases. On the other hand, the 444 requests made to remote gaming companies were made in connection with the analyses of only 11 different cases. These statistics clearly show the depth of the analysis and the breadth of the information sought in the course of the analysis of a case.

### Outcome of analyses

Apart from the 102 cases in which an analysis was initiated by the FIAU in 2011 following the receipt of information during that year, a further 44 cases were brought forward from 2010 as their analysis was still ongoing as at 31<sup>st</sup> December 2010. Thus, the total number of STRs and cases dealt with by the FIAU during 2011 amounted to 170 and 146 respectively.

From the 146 cases analysed during the year, a total of 92 cases were finalised, meaning that a conclusion was reached

**CHART 4: Number of requests for information made and number of unique cases in respect of which the requests were made - per category (2011)**



by the FIAU as to whether the case should or should not be disseminated to the Police on the basis of a reasonable suspicion of ML/FT, while another 54 cases were still being analysed at the end of 2011. In comparison to 2010, although the number of cases dealt with rose by 29%, the percentage of cases concluded in a calendar year still increased slightly. Moreover, data also indicates that the

average time-period for the conclusion of cases finalised during 2011 diminished by 20% compared to the average for 2010.

As anticipated in the 2010 annual report, the improvements in efficiency noted above are likely to have been brought about by the recruitment of an additional financial analyst in

**TABLE 4: Outcome of STRs and cases (2003 – 2011)**

Outcome of STRs and cases where STR was received from subject persons: 2003 - 2011																		
	2003		2004		2005		2006		2007		2008		2009		2010		2011	
	STRs	Cases																
Referred to Police for investigation	17	17	23	20	28	22	24	21	24	22	41	39	20	16	34	19	24	17
No reasonable suspicion of ML/FT - no further action	31	26	27	25	42	34	36	34	26	25	30	29	21	20	40	37	70	62
Report unrelated to ML/FT - no analysis carried out	4	4	-	-	-	-	1	1	4	4	2	2	-	-	-	-	-	-
Ongoing analysis	34	30	25	24	24	21	23	21	30	27	27	25	48	41	47	39	60	51
Outcome of STRs and cases where analysis was based on other information received by FIAU: 2003 - 2011																		
	2003		2004		2005		2006		2007		2008		2009		2010		2011	
	STRs	Cases																
Referred to Police for investigation	-	-	-	-	-	-	4	4	2	2	2	2	2	2	4	4	1	1
No reasonable suspicion of ML/FT - no further action	-	-	1	1	5	5	7	7	5	5	6	6	3	3	8	8	11	11
Report unrelated to ML/FT - no analysis carried out	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1
Ongoing analysis	-	-	1	1	1	1	-	-	6	6	1	1	9	9	5	5	3	3
Outcome of all STRs and cases: 2003 - 2011																		
	2003		2004		2005		2006		2007		2008		2009		2010		2011	
	STRs	Cases																
Referred to Police for investigation	17	17	23	20	28	22	28	25	26	24	43	41	22	18	38	23	25	18
No reasonable suspicion of ML/FT - no further action	31	26	28	26	47	39	43	41	31	30	36	35	24	23	48	45	81	73
Report unrelated to ML/FT - no analysis carried out	5	5	-	-	-	-	1	1	4	4	2	2	-	-	-	-	1	1
Ongoing analysis	34	30	26	25	25	22	23	21	36	33	28	26	57	50	52	44	63	54

the Unit's Financial Analysis Section during the last quarter of 2010.

The figures indicating the outcome of the STRs and cases analysed during the period from 2003 to 2011 as well as the number of ongoing analyses as at the end of each year are outlined in Table 4 on the previous page, which is divided into three distinct sections. The first section provides data on STRs and cases where an STR was received by the FIAU, the second section provides figures of cases where an analysis was carried out based on information in possession of the FIAU that did not originate from a disclosure,<sup>4</sup> while the third section amalgamates all the data.

Table 4 reveals that a total of 24 STRs received by the FIAU resulted in the dissemination of information to the Police for further investigation during 2011. These STRs gave rise to 18 different cases, half of which originated from STRs filed by credit institutions, while the remaining nine cases originated from STRs filed by seven different categories of reporting entities. One other case was referred to the Police which did not originate from the submission of a STR. Further details on the cases forwarded to the Police are provided in the next section of the report dealing with suspected predicate offences.

The percentage of STRs which resulted in the dissemination of information to the Police during 2011 as a proportion of the STRs made experienced a significant drop in 2011 when compared to the previous years with the ratio falling from 44 percent in 2010 to 23 percent in 2011. The main factor contributing to this reduction was clearly a large proportion of STRs originating from remote gaming companies which did not have a strong basis of suspicion and which, upon further analysis, did not lead to a reasonable suspicion of ML/FT.

### Suspected predicate offence

Table 5 provides data on the suspected predicate offence from which the proceeds of crime was suspected to have derived in relation to those cases forwarded to the Police during the year under review on suspicions of ML/FT.

Similar patterns were observed to those noted in 2010 in that the suspected underlying criminal offence varied considerably and there was no single offence that stood out particularly. The foremost suspected underlying offence during 2011 was corruption taking place in countries outside Malta, with four cases being referred to the Police during the year where the suspicion was laundering of funds

**TABLE 5<sup>5</sup>: Suspected predicate offences in cases referred to Police on suspicion of ML/FT (2003 – 2011)**

Suspected Predicate Offence	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total	% of Total
Drug Trafficking	2	4	–	4	5	7	1	2	1	26	13%
Fraud	2	4	3	2	1	–	5	6	3	26	13%
Forgery	–	1	1	3	–	–	–	–	–	5	3%
Usury	1	2	2	5	1	4	–	–	1	16	8%
Undeclared Income	–	2	4	–	–	4	–	1	2	13	7%
Unlicensed Financial Services	4	4	1	–	3	3	–	3	–	18	9%
Organised Crime	5	2	1	–	2	2	1	1	1	15	8%
Human Trafficking	–	–	1	–	1	2	–	–	–	4	2%
Theft	–	–	4	–	–	–	–	–	2	6	3%
Illegal Gambling	–	–	1	2	–	1	–	–	–	4	2%
Identity Theft	–	–	–	2	1	–	–	–	–	3	2%
Living off the earnings of Prostitution	–	–	–	2	–	–	1	–	–	3	2%
Phising	–	–	–	–	1	–	–	–	–	1	1%
Corruption	–	–	–	–	–	–	–	1	4	5	3%
Unknown	2	1	3	1	6	16	7	4	4	44	23%
<b>Total</b>	<b>16</b>	<b>20</b>	<b>21</b>	<b>21</b>	<b>21</b>	<b>39</b>	<b>15</b>	<b>18</b>	<b>18</b>	<b>189</b>	<b>97%</b>
Funding of Terrorism	1	–	1	–	1	–	1	1	–	5	3%
<b>Grand Total</b>	<b>17</b>	<b>20</b>	<b>22</b>	<b>21</b>	<b>22</b>	<b>39</b>	<b>16</b>	<b>19</b>	<b>18</b>	<b>194</b>	<b>100%</b>

<sup>4</sup> It should be pointed out that in those cases where an analysis of a case is carried out on the basis of information in possession of the FIAU, although a STR is not actually received in these cases, for statistical and record-keeping purposes these cases are recoded as FIAU-generated STRs.

<sup>5</sup> The data for 2011 includes cases referred to the Police which did not result from STRs. The corresponding data for the period from 2003 to 2010 only includes cases disseminated to the Police further to a receipt of a STR.



generated from the commission or attempt of this offence. This was followed by three cases where the laundering of the proceeds of fraud was suspected and two cases where the proceeds-generating offence was suspected to be theft and the failure to declare income in breach of income tax legislation.

It is pertinent to note that the four cases forwarded to the Police on the basis of a suspicion of ML having corruption as the suspected predicate offence are all cases which involved foreign PEPs. The cases of suspected laundering of illicit funds originating from fraud vary in nature. One of the three cases referred to the Police for investigation concerned the suspected laundering of the proceeds of a potential credit card fraud scheme, another case related to the possible laundering of a large-scale international Ponzi scheme and in the third case the suspected predicate offence was believed to be a boiler-room scam carried out in another jurisdiction. Further details on the typologies identified in the cases forwarded to the Police for investigation are provided in the Typologies and Trends section hereunder.

In contrast with the situation in 2009 and 2010, in 2011 no cases were referred to the Police on the basis of a reasonable suspicion of the funding of terrorism.

## Typologies and trends

The 18 cases in which the analytical report drawn up by the FIAU was forwarded to the Police for further investigation on the basis of a reasonable suspicion of money laundering were critically analysed with a view to identifying any notable common money laundering methods and trends. Once again, the use of bank accounts held with credit institutions in the name of natural and legal persons and the use of wire transfers were prevalent in most of the cases analysed by the FIAU. Two of the cases where the potential perpetrators did not make use of any bank accounts involved the use of cash in land-based casino gambling while other cases involved the services of money-remittance companies and investment services licence holders.

A brief description of some of the cases which were subject to an analysis by the FIAU resulting in the dissemination of information to the Police is being included in the paragraphs hereunder highlighting the principal methods devised to launder the proceeds of crime identified in the course of the FIAU analyses. The information is being provided principally to assist subject persons in devising better preventive systems to avoid the use of their services by potential launderers. Notwithstanding the benefit to be gained from making more information public, certain detail could not be disclosed in view of the fact that Police investigations in a number of cases are still ongoing.

The use of correspondent banking relationships between banks in a foreign jurisdiction and credit institutions licensed under Maltese law by foreign PEPs featured in

three of the cases forwarded to the Police for investigation. In these cases the PEPs were suspected to have laundered funds which may have been obtained illicitly through abuse of their public position through the use of a correspondent banking relationship entered into by a bank in a foreign jurisdiction with a bank situated in Malta and licensed under Maltese law. The typology observed in these cases featured the use of international wire transfers, the use of invoices which could have been fictitious to justify the transfer of funds, the use of a correspondent bank and the use of shell companies. The suspicion that gave rise to disclosure in these cases was that there was an attempt by PEPs to launder misappropriated state funds.

Two reports concerned foreign individuals charged with serious crime outside Malta who deposited large amounts of cash in their personal bank accounts in Malta and also received considerable sums of money through money remittances from remitters in the country where the crime had been committed. In another case, a foreign national carried out a number of cash transfers from Malta in favour of individuals situated in five South American countries. From the resultant analysis it transpired that the subject carried out several transactions on more than one occasion in different branches of the same institution thus giving rise to the suspicion that smurfing of illicit funds had taken place.

One of the three reports where the predicate crime was suspected to be corruption involved the transfer of money from a foreign state-owned company into the bank account of a Maltese registered company whose beneficial owner was a PEP in his country of origin. The typology in this case involved the use of a complex corporate structure, bank accounts and wire transfers used to launder the proceeds of corruption for which a foreign PEP was being investigated in his country.

In another case the use of credit cards and a player's account with a remote gaming company prompted the analysis by the FIAU of the activity of an individual who deposited money in his wagering account through the use of credit card details which seemed to have been obtained illegally. After successfully transferring part of the money into his bank account, a second attempt to transfer more money was refused due to the large number of charge-backs received by the remote gaming company. These charge-backs, together with the failure to submit the requested due diligence documents, immediately raised the suspicion that the wagering account was being used to launder the funds gained through the misuse of third party credit card information.

## Trends observed

### Preparatory acts

In a number of cases companies were set up and bank accounts were opened by persons having a criminal record.



There were a number of indicators that these set-ups were being established as preparatory acts in the process of the laundering of illicitly-gained funds. In certain cases pseudonyms were used to try to hide the identity of the account holder and to ensure that his criminal record was not revealed to the subject person carrying out customer due diligence. As a preventive measure to ensure that the FIAU would be notified of any transactions carried out through the accounts, monitoring orders were issued by the FIAU requiring banks to notify the FIAU of any transactions taking place through the suspected accounts for a specified period of time which varied in length depending on the case in question.

### **Company structures**

Seven of the cases forwarded to the Police for investigation during the period under review involved the setting up and use of an elaborate corporate structure. Most of the structures analysed by the FIAU where there was a suspicion of ML/FT were group structures having both companies established in Malta and others registered overseas very often with common shareholders and funds being transferred between bank accounts held in different jurisdictions by different entities within the same group.

The number of cases analysed by the FIAU involving the setting up of corporate structures over the past three years has increased significantly. Indeed, the number of cases where companies established under Maltese law receiving fiduciary services, director services, company secretarial services or registered office services from Maltese professionals where suspicious activity has been identified has increased drastically. Consequently, the standard of customer due diligence being carried out by professionals providing company services, fiduciary services and trustee services is expected to be the highest and most rigorous possible since the risks involved in this area are undoubtedly on the increase.

### **Reports from remote gaming and casino licensees**

The main distinguishing feature of the extensive number of STRs received by the FIAU from remote gaming companies licensed by the Lotteries and Gaming Authority was that most of these reports were made due to very similar suspicious patterns in the players' behaviour. A growing tendency to utilise pre-paid cards as a method of depositing funds into an online gaming account was, in fact, identified. Most of the STRs made to the FIAU identified individuals who were making use of large numbers of pre-paid cards to deposit funds into their players' accounts. Such funds were then utilised to carry out a few safe and conservative bets and were withdrawn soon after from the players' gaming account into a bank account or an e-money/e-

wallet stored-value service. This trend should draw operators in this sector to consider limiting the amount of pre-paid cards that can be used by a single user and to introduce mandatory minimum betting levels that have to be attained before a withdrawal is allowed. Otherwise, the practice of converting cash into pre-paid cards and then channelling that cash from a players' account to a bank account or e-wallet with minimal betting can prove to be an undetected means of placing, layering and integrating illicit gains in the financial system. Once such transactions are detected, subject persons should refuse to carry out the transaction. Reporting these transactions to the FIAU after they have been carried out is a much less effective means of crime prevention than the actual refusal to carry out suspicious transactions.

## **International Co-operation**

The cross-border nature of the criminal offence of money laundering has increased with time, assisted by new technologies and the continuous developments in the financial sector. Today funds are transferred with ease and within extremely short periods of time from an institution in one jurisdiction to another institution in another jurisdiction. Moreover, professionals may be engaged in other countries to set up corporate structures or trusts while developing online technologies make it easier to carry out transactions with minimal human involvement and fewer face-to-face situations. The same phenomenon of internationalisation also applies to terrorism, which necessarily requires financing in order to achieve its aims. That financing, very often, is received from different parts of the world making it more difficult for law enforcement bodies to identify and intercept the flow of funds.

The international set-up which is very often prevalent in most ML/FT operations therefore requires international co-operation between FIUs which is facilitated by national legal frameworks conforming with the FATF Recommendations and networks of communication both at an EU and at an international level.

Exchange of AML/CFT information is permitted under the PMLA with any foreign body, authority or agency which the FIAU considers to have functions equivalent or analogous to those of the FIAU. Being a member of the Egmont Group,<sup>6</sup> the FIAU follows the Egmont Group Principles for Information Exchange and Best Practices for the Exchange of Information between FIUs when requesting or exchanging information. Moreover, the FIAU also carries out this duty in conformity with the provisions of EU Council Decision 2000/642/JHA.

From a practical point of view, the exchange of information with foreign counterparts is carried out through two secure

<sup>6</sup> For further information see section 'The Egmont Group' p.38 of this report.



online systems. The Egmont Secure Web is a system set up by the Egmont Group which allows for the secure exchange of information between Egmont Group members. In addition, being an FIU within an EU Member State, the FIAU avails itself of its membership of the FIU.Net to exchange information with the other EU FIUs which are members of this decentralised network.

In order to carry out its functions in accordance with the PMLA, the FIAU must invariably co-operate with foreign FIUs by providing information when a request is made. Requests for information are also made by the FIAU where this is necessitated by a foreign connection in a case being analysed.

### Requests for assistance and co-operation

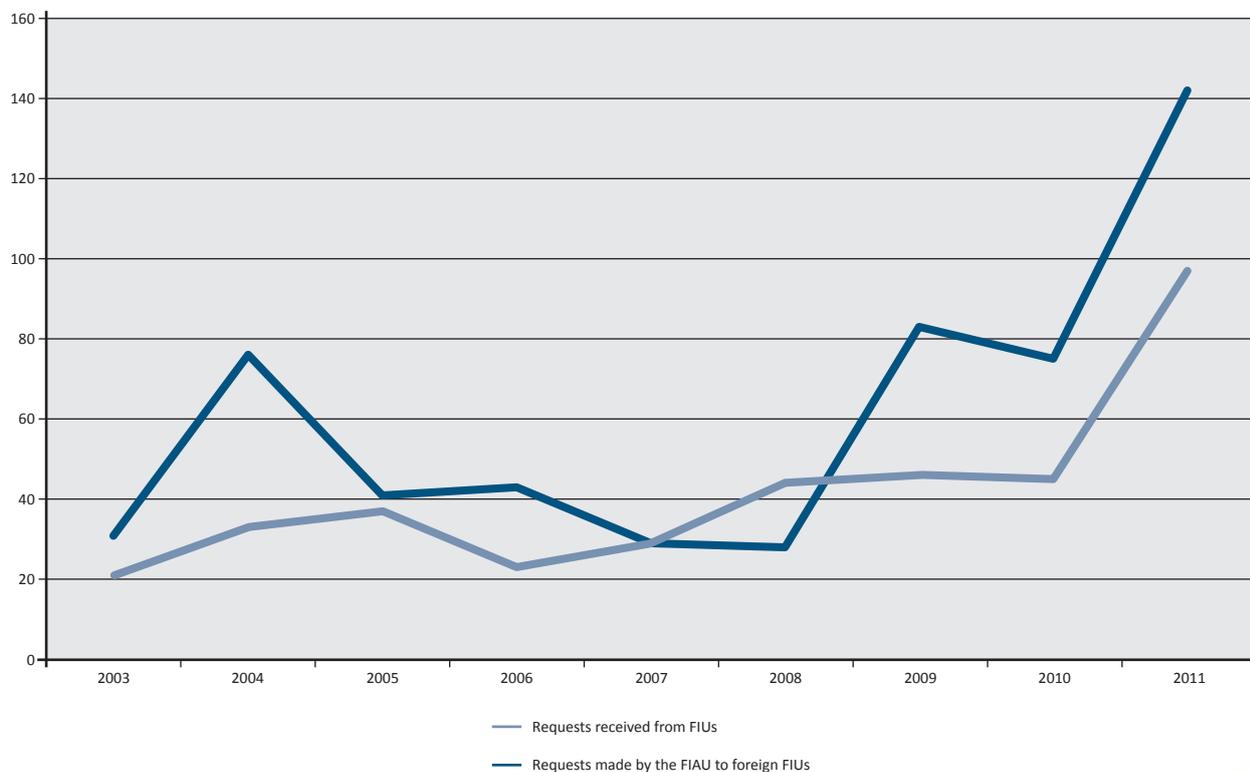
In 2011 the FIAU made 142 requests for information to foreign counterparts in connection with 69 cases. This is the highest number of requests for information made in a calendar year since the FIAU became operational in 2002, almost doubling the number of requests made in the previous year. Although a larger number of cases were analysed over the previous year, the rise in requests for information clearly highlights the broader international dimension of several cases dealt with by the FIAU during the year. This phenomenon was also confirmed by the figures representing requests for information received by the FIAU from foreign FIUs which also increased significantly from 45 in 2010 to 97 in 2011.

The comparative Table 6 overleaf lists the number of requests made and the number of requests received by the FIAU since 2003, showing also that in practically every year since 2003 the FIAU was more active in seeking information from its foreign counterparts rather than in providing information to assist investigations and analysis of suspicions being carried out overseas.

In an exercise that was carried out to determine the time taken by the FIAU to respond to requests for information made by foreign FIUs, it was established that during 2011 in approximately 51 percent of the cases where a request for information was made to the FIAU, information was provided to the foreign FIU within one working day. Moreover, the average FIAU response time to international requests for information decreased from twelve and a half working days in 2010 to six working days in 2011.

When compared to the timeframes of responses by foreign FIUs to the requests for information made by the FIAU as illustrated in Chart 6, it transpires that the FIAU is clearly more expeditious in providing responses. In fact, it was determined that during 2011, only ten percent of the international requests for information made by the FIAU during 2011 were answered within one working day and another ten percent were replied to after a period of 51 working days. The average response time of foreign FIUs in relation to requests for information made by the FIAU was of 17.8 days.

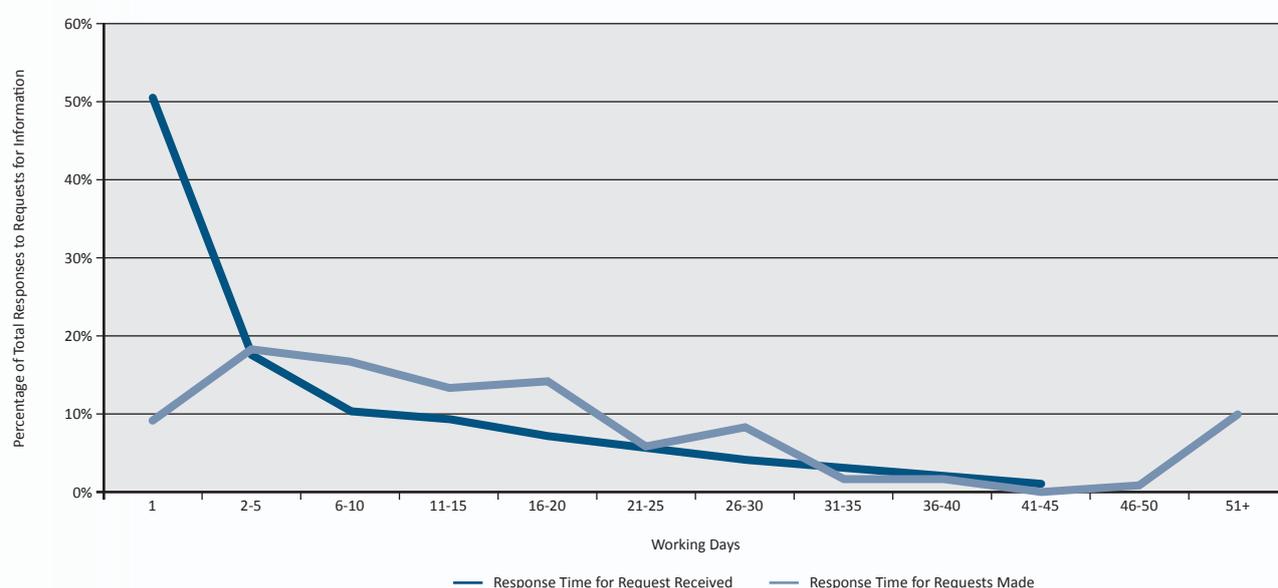
**CHART 5: Comparative analysis of requests received and requests made by the FIAU (2003 – 2011)**



**TABLE 6: Requests for co-operation and assistance (2003 – 2011)**

Year	Number of requests received by the FIAU	Number of requests made by the FIAU	Percentage difference between requests made by the FIAU and requests made to the FIAU
2003	21	31	48%
2004	33	76	130%
2005	37	41	11%
2006	23	43	87%
2007	29	29	0%
2008	44	28	-36%
2009	46	83	80%
2010	45	75	67%
2011	97	142	46%
<b>Total</b>	<b>375</b>	<b>548</b>	<b>46%</b>

**CHART 6: Response time for requests received and requests made by the FIAU (2011)**



### Requests for assistance made by the FIAU

As in previous years the majority of requests for co-operation made by the FIAU were directed to FIUs in European Union member states. Indeed, 64 percent of all requests made by the FIAU were made to FIUs in EU and EEA countries, together with another 17 percent being made to FIUs in European countries which are not members of the EU.

The FIU of the United Kingdom received the highest number of requests for assistance, followed by the German FIU and the FIUs of Austria, Italy, Poland, the Russian Federation and the United States of America. A review of the contents of Table 7 reveals that the FIU of Estonia was the only FIU within the EU with which the FIAU did not exchange information during 2011.

A breakdown of requests for information made by the FIAU to foreign FIUs is provided hereunder:

- Eighty-eight requests to the FIUs of twenty-two EU member states.
- Three requests to the FIUs of two EEA states.
- Twenty-four requests to the FIUs of twelve European countries not in the EU or EEA.
- Eighteen requests to 7 FIUs in the Americas.
- Eight requests to 5 Asian FIUs.
- One request to an African FIU.

### Requests for assistance made to the FIAU

A review of the requests for assistance made to the FIAU during 2011 reveals that even in the case of inward requests, a large percentage (64 percent) also originated from EU and EEA FIUs while sixteen percent of requests were received from FIUs in non-EU European countries. Ten percent of the requests received by the FIAU were made by FIUs in the Americas while about eight percent of the requests were made by FIUs from Asian countries.



Interestingly, the FIU from which most requests for co-operation were received was the Luxembourg FIU which requested information from the FIAU on 21 separate occasions, followed by the FIUs of the United Kingdom and that of Belgium.

In all cases where a request for assistance is made to the FIAU, a preliminary analysis is made in order to establish whether the information being made available to the FIAU and that collated by the FIAU in order to respond to the foreign enquiry contains evidence of a suspicion that ML/FT may have been committed in breach of Maltese legislation. During 2011 one such preliminary analysis gave rise to the opening of a case requiring a more detailed analysis by the FIAU.

The international requests for assistance made to the FIAU during 2011 have been split up by region in following paragraph:

- Sixty-one requests from the FIUs of seventeen EU member states.
- One request from the FIUs of EEA states.
- Sixteen requests from the FIUs of seven European countries not in the EU or EEA.
- Ten requests from five FIUs in the Americas.
- Eight requests from six Asian FIUs.
- One request from an African FIU.

Figures related to international requests for assistance made and received by the FIAU to foreign FIUs during 2011 are being provided in Table 7 below.

**TABLE 7: Request for co-operation and assistance (2011)**

Requests received by the FIAU		Jurisdiction	Requests made to other FIUs	
Number	Replies		Number	Replies
-	-	Albania	2	2
3	3	Argentina	-	-
-	-	Armenia	1	1
1	1	Austria	6	4
1	1	Bahrain	-	-
7	7	Belgium	2	2
-	-	Belize	2	2
1	1	Bosnia & Herzegovina	-	-
1	1	Brazil	1	1
-	-	British Virgin Islands	5	5
1	1	Bulgaria	2	2
2	2	Croatia	1	1
1	1	Curacao	-	-
-	-	Cyprus	3	3
-	-	Czech Republic	2	2
-	-	Denmark	3	3
-	-	Dominican Republic	1	-
1	1	Egypt	-	-
2	2	Finland	-	-
4	4	France	2	2
-	-	Georgia	1	1
1	1	Germany	9	8
-	-	Gibraltar	2	2
-	-	Greece	1	1
1	1	Guernsey	1	1



-	-	Hong Kong	3	3
-	-	Hungary	1	1
-	-	India	1	-
-	-	Indonesia	2	1
2	2	Ireland	1	1
-	-	Isle of Man	1	1
1	1	Italy	6	5
4	4	Jersey	-	-
1	1	Kazakhstan	-	-
2	2	Kyrgyzstan	-	-
-	-	Latvia	3	3
-	-	Liechtenstein	1	1
5	5	Lithuania	-	-
21	21	Luxembourg	2	2
-	-	Mauritius	1	1
2	2	Moldova	-	-
5	5	Montenegro	-	-
-	-	Netherlands	4	4
1	1	Norway	2	2
-	-	Panama	2	1
-	-	Peru	1	1
2	2	Poland	6	4
-	-	Portugal	5	5
1	1	Romania	3	3
-	-	Russia	6	3
1	1	Saudi Arabia	-	-
-	-	Serbia	2	2
1	1	Slovakia	2	1
1	1	Slovenia	-	-
2	2	Spain	5	3
1	1	Sweden	2	2
1	1	Switzerland	5	5
1	1	Syria	-	-
-	-	Thailand	1	1
-	-	Turkey	1	1
2	2	U.A.E	1	1
-	-	Ukraine	1	1
8	8	United Kingdom	18	17
3	3	USA	6	5
2	2	Venezuela	-	-
<b>97</b>	<b>97</b>	<b>TOTALS</b>	<b>142</b>	<b>124</b>



## Compliance Monitoring

One of the more important functions of the FIAU is that of monitoring compliance of subject persons falling within the definitions of 'relevant activity' and 'relevant financial business' under the PMLFTR. In carrying out this responsibility, the FIAU is empowered by the PMLA to carry out both on-site compliance examinations and off-site assessments on financial and non-financial subject persons in order to ensure that they are complying with their obligations under the PMLFTR and the Implementing Procedures.

Compliance monitoring by the FIAU is carried out on a risk-sensitive basis with the main tool for the measurement of risk being the information obtained by the FIAU in the course of its functions, information obtained from on-site examinations carried out by the FIAU itself or by supervisory authorities on its behalf, conclusions reached following the review of internal procedures and procedures manuals, information obtained from supervisory authorities and access to information which is publicly available.

Co-ordination with the MFSA and the LGA at the beginning of the calendar year for the purpose of planning of on-site examinations is an essential step in determining which subject persons should be subjected to an on-site inspection during the year. Indeed, at the beginning of every year, the LGA and the different Units of the MFSA responsible for banking supervision, securities supervision, insurance supervision and the supervision of trustees submit a plan to the FIAU of on-site prudential inspections planned for the year for review and suggestions by the FIAU. The FIAU reviews these plans and provides feedback to the supervisory authorities, particularly for the purpose of prioritisation. The FIAU also states whether it believes that some other entities should be included in the list on the basis of information in its possession. The lists provided by the supervisory authorities are normally based on regulatory cycles, whereas the FIAU's approach is more risk-based.

At this stage, the FIAU also indicates preliminarily which on-site inspections it intends to participate in as a co-supervisor and where it will be carrying out a focused on-site examination based on the information in its possession.

Moreover various meetings were held during 2011 with the two supervisory authorities in order to discuss matters of mutual interest. In particular discussions were held with the MFSA on the application of certain aspects of the PMLFTR whilst the FIAU and the LGA continued discussions on issues related to legislative procedures to cover e-gaming under the PMLFTR.

### Off-site compliance assessments

The FIAU has continued to exercise its off-site functions

through the collection of relevant information in connection with subject persons. In this regard the FIAU has drawn up a comprehensive procedure for the reporting of specific information relating to compliance matters by the MLROs of subject persons to the FIAU on an annual basis through the completion of an 'Annual Compliance Report'. This requirement came into force in May 2011 through the introduction of the Implementing Procedures, with the first submissions to the FIAU being made in 2012 containing information related to the preceding twelve-month period from January to December 2011.

The receipt of such reports from subject persons will further assist the FIAU in the planning of its on-site compliance examinations on a risk-sensitive basis and in maintaining updated statistical data.

The FIAU also collects information from subject persons on an ongoing basis regarding the Money Laundering Reporting Officer of the subject person who is required to complete a 'MLRO Details Sheet'. This information enables the FIAU to determine whether subject persons have actually appointed a MLRO and a designated employee, whether the appointed MLRO occupies a position of sufficient seniority and command as required by law, as well as obtaining basic information regarding the subject persons. The maintenance of such information is also useful to ensure that information or guidance by the FIAU is disseminated directly to MLROs and for the purposes of informing MLROs of training programmes, seminars or workshops carried out by the FIAU. In fact, in 2011, following the data-collection exercise carried out for categories of DNFBPs, an AML/CFT awareness training programme was organised by the FIAU for MLROs of real estate agents.

### On-site compliance examinations

In accordance with the provisions of the PMLA, on-site AML/CFT examinations are either carried out directly by the FIAU, or else by the FIAU in collaboration with a supervisory authority or else by a supervisory authority on behalf of the FIAU. To this effect the FIAU has entered into co-operation agreements with both the MFSA and the LGA for the on-site monitoring and examination of the financial sector and the gaming sector respectively as empowered by the PMLA.

The aim of on-site compliance examinations is to assess whether subject persons are fulfilling their obligations under the PMLFTR in respect of *inter alia*:

- customer due diligence,
- record keeping,
- internal and external reporting,
- training, and
- procedures on internal control, risk assessment, risk management, compliance management and communications.



Generally, as explained earlier, the supervisory authority's regulatory cycle is followed and a decision is taken as early as practically possible as to whether an FIAU inspector will also be participating in the on-site examination. In the cases where the AML/CFT on-site examination is carried out by a supervisory authority as part of its broader prudential on-site inspection, the part of the inspection that relates to AML/CFT is carried out on behalf of the FIAU.

Procedurally, once the on-site compliance examinations are completed, a report is drawn up by the FIAU, irrespective of whether the compliance visit was undertaken by the FIAU itself, the MFSA, the LGA or by either supervisory authority jointly with the FIAU. In such report, the FIAU records the findings of such visits, identifies possible shortcomings and provides recommendations for subject persons to bring their procedures in line with the PMLFTR. The reports are then sent to the respective subject persons and a copy is also forwarded to the relevant supervisory authority. In case of joint inspections the report is signed by both authorities. The subject person is required to implement corrective measures within a time-period imposed by the FIAU and to inform the FIAU of the measures undertaken to rectify its position. Depending on the type of breaches identified, the FIAU will then consider the imposition of an appropriate sanction.

When a focused visit is carried out by the FIAU, the decision to carry out such visit is normally based on information in the possession of the FIAU which indicates some shortcomings in the systems of the subject person which may require closer examination by the FIAU.

In order to ensure that a consistent approach in compliance monitoring is adopted by the supervisory authorities and the FIAU following the introduction of the Implementing

Procedures, the FIAU conducted an exercise to update the compliance examination questionnaire utilised by the FIAU and the supervisory authorities during the course of on-site examinations.

### Statistics

Chart 7 below shows the steady increase of the FIAU's participation in on-site examinations over the last 3 years.

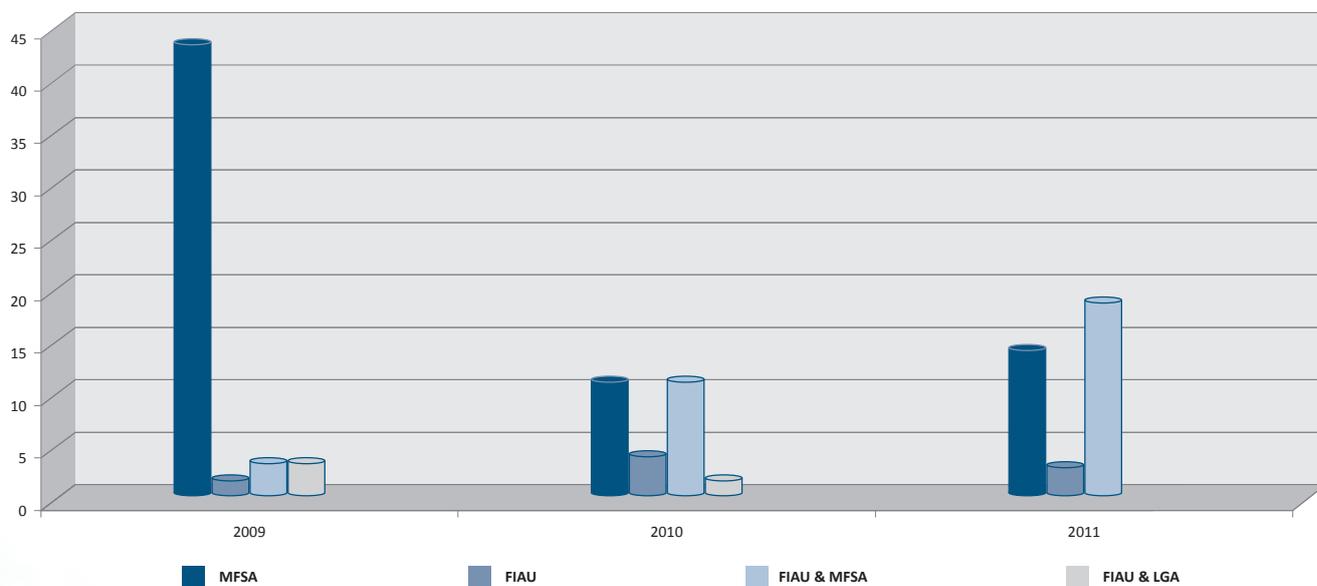
Table 8 (page 31) outlines the on-site compliance examinations carried out during the year under review and provides a breakdown by subject person and by authority carrying out the visits.

This table shows that a total of 33 on-site examinations were carried out during 2011. Not only have the on-site compliance examinations increased when compared to previous years, but the visits have also covered a broader segment of subject persons. The FIAU was involved in 20 visits during 2011, 2 of these visits being independent focused AML/CFT visits to a corporate services provider and to a trust and fiduciary company. The FIAU participated in 18 visits carried out jointly with the MFSA, while a further 13 visits were carried out by the MFSA on behalf of the FIAU. The increased involvement of the FIAU in on-site examinations is mainly attributable to the increase in staff complement in the Compliance Section to three officers. The envisaged further engagement of one additional officer in 2012 should serve to further strengthen the capability of the FIAU in this area.

### Sanctions

During the year under review, the FIAU issued two written warnings. A credit institution was reprimanded by the

**CHART 7: Number of on-site AML/CFT examinations (2009 – 2011)**



**TABLE 8: On-site AML/CFT examinations conducted by category of subject persons and by authority (2011)**

Sector	FIAU	MFSA	FIAU & MFSA	FIAU & LGA	TOTAL
Affiliated Insurance Companies	-	2	1	-	3
Collective Investment Schemes	-	-	2	-	2
Corporate Service Providers	1	-	-	-	1
Credit Institutions	-	-	2	-	2
Financial Institutions	-	-	3	-	3
Fund Administrators	-	-	1	-	1
Insurance Brokers	-	1	-	-	1
Insurance Principals	-	-	1	-	1
Investment Services	-	2	3	-	5
Protected Cell Companies	-	1	-	-	1
Tied Insurance Intermediaries	-	2	-	-	2
Trusts & Fiduciaries	1	5	4	-	10
Trust & Retirement Scheme Administrators	-	-	1	-	1
<b>TOTAL</b>	<b>2</b>	<b>13</b>	<b>18</b>	<b>-</b>	<b>33</b>

FIAU for the lack of consideration given by the institution to the risks of ML/FT regulations in the establishment of a correspondent banking relationship with another credit institution situated in a non-reputable jurisdiction. The issue of a second reprimand was considered to be necessary in a separate case where it was discovered that an investment services company was not complying with its own internal reporting procedures drawn up in accordance with the PMLFTR.

## Money Laundering Cases

### Judgements

As a result of the closer co-operation forged between the Attorney General's Office, the Police and the FIAU during 2011 and the growing awareness and expertise of all the parties involved, judicial activity in the ML sphere continued expanding. Six new charges of ML were brought before the Maltese courts, bringing the total number of arraignments since 2005 up to 36.

Although in 2011 only one ML judgement was handed down by the Maltese courts and despite the fact that the accused was acquitted of the ML charges brought against him, it is worth noting that the Court of Magistrates, in its deliberations, expounded upon two important principles which constitute the cornerstone of an effective ML legislative framework. These are the principles of the finding of guilt without the need for a conviction in relation to the predicate offence and the reversal of the burden of proof on the accused with respect to the origin of the proceeds involved.

Unfortunately, while correctly interpreting the manner in

which these provisions are to be applied, the conclusion reached by the Court was contrary to law. An appeal was instituted by the prosecution and the Court of Appeal, in a decision delivered on 19<sup>th</sup> January 2012, reversed the decision of the Court of Magistrates.

**The Police  
Vs  
Carlos Frias Mateo**

**Court of Magistrates (Malta)  
as a Court of Criminal Judicature  
5<sup>th</sup> August 2011**

The facts of the case were central to the proceedings since the prosecution had to establish the ML case on the basis of circumstantial evidence rather than on the basis of a conviction in relation to a predicate offence directly linked to the accused.

The accused, who was of Dominican nationality but resident in the Netherlands, travelled to Malta from Brussels, Belgium on 26<sup>th</sup> September 2009 after having purchased a one-way airline ticket. The following day, after he had purchased another ticket to return to Brussels, he was stopped by Customs Officers before boarding the aeroplane and was found to have been carrying a substantial amount of undeclared cash in breach of the Cash Control Regulations (Legal Notice 149 of 2008).

The Customs Officers reported Mr. Frias Mateo to the Police, who initiated an investigation on the basis of a suspicion of complicity to traffic drugs and money laundering. The suspicion was based on the fact that the day before the arrest of the accused, two persons of Dominican nationality



who had smuggled 400 grams of cocaine into Malta had been intercepted by the Police. One of the two persons was in fact subsequently accused of drug trafficking and he admitted to the charges. The Police claimed that there was a link between the accused and these two persons since they shared various telephone numbers on their mobile phones.

In the course of the proceedings, the Police alleged that a number of inconsistencies which emerged during the interrogation indicated that the explanations provided by the accused had been fabricated. This further convinced the Police that the accused might have been involved in criminal activities, especially attempting to launder funds which had been illicitly obtained by trafficking drugs, either himself or by a third party.

Indeed, for instance, the accused claimed that he had come to Malta to purchase gold. However, the Police determined that the accused knew very little about gold and had only visited one jewellery shop in Malta.

In order to shore up his assertion that he had come to Malta to purchase gold, the accused stated that he had purchased a one-way airline ticket from Brussels to stay in Malta for as long as necessary to conduct his business. However, it was established by the Police that as soon as he had checked in at the hotel in Malta he had confirmed that he would stay for one night only. Additionally, on the next day he bought an airline ticket to return to Brussels.

As to the provenance of the undeclared cash that he was found carrying, he alleged that such funds constituted the earnings from his employment as a taxi driver in Rotterdam. Nevertheless, the Police received information from the Dutch authorities that he had been unemployed for a number of years and that the registration number of the taxi he had provided to the Police did not exist.

Furthermore, after being questioned by the Police in relation to a previous conviction handed down by a court in Italy, the accused attempted to mislead the Police by stating that the conviction related to the possession of a false passport when in fact it related to a drug trafficking offence.

Notwithstanding the fact that no direct link had been established between the undeclared cash and the drug trafficking, the circumstances surrounding the case seemed to provide a strong indication that the accused had attempted to launder money by physically carrying illegally obtained cash from Malta to another country.

On the basis of the facts before it, the Court of Magistrates examined the provisions of Article 2(2)(a) of the PMLA which states that a person may be convicted of a money laundering offence even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the

existence of which may be established on the basis of circumstantial or other evidence, without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity. The court of first instance, in fact, did agree that insofar as the prosecution proves to the satisfaction of the Court that the funds derive from a criminal activity, it is not necessary to prove a conviction in relation to such criminal activity.

The Court then referred to the mental element of the offence of ML and to the specific reference in the law that knowledge or suspicion that the money derives from a criminal activity must be proven. Since the existence of the offence of ML is dependent on the proof of this specific mental element, the court was of the view that the onus to prove that the accused knew or suspected that the money derived from a criminal activity fell on the prosecution. The Court went on to quote Article 3(3) of the PMLA, which states that in proceedings for the offence of ML where the prosecution produces evidence that no reasonable explanation was given by the accused showing that the money was not money derived from a criminal offence, the burden of showing the lawful origin of such money would lie with the accused.

In relation to this article, the Court stated that although the burden of proof is shifted from the prosecution to the accused, ultimately it is the prosecution which will have to prove whether an offence was committed and that the accused was guilty of such offence. This does not amount to a derogation from the presumption of innocence. It was held that the prosecution has to prove to the satisfaction of the Court other facts which are related to the actual laundering of the funds involved and other links to the underlying criminal activity. Additionally, it would be up to the prosecution to prove that the financial position of the accused was not compatible with the amount of funds that the accused was in possession of. It is only after an examination by the judge or magistrate of the reasonable explanation on the provenance of the funds that the burden of proof can shift.

The Court emphasised that the shifting of the burden of proof on the accused is the exception not the rule and is limited to those cases where it is reasonable to expect the accused to provide certain evidence which the prosecution would otherwise never be in a position to provide. The Court further stated that the duty of the accused to provide a reasonable explanation of the provenance of the funds is owed to the Court and not to the prosecution. Therefore, the Court concluded that the shifting of the burden of proof is legal and achieves a fair balance.

As to the evidence put forward by the prosecution, the defence argued that notwithstanding the fact that the prosecution had succeeded in proving that the accused did not have a clean police record and had been involved in drug



trafficking in the past, the prosecution had not established a link between the underlying criminal activity and the money laundering. The defence further held that the fact that two persons, who were arrested a day before the accused, were in possession of telephone numbers which were common with those of the accused was not enough to prove that the accused was guilty of ML. Even the fact that the accused was in possession of money that he failed to declare did not amount to a suspicion as to the provenance of the funds.

The Court, after examining the evidence, accepted the arguments put forward by the accused. It held that the prosecution did not provide sufficient evidence to prove that there was a real link between the drug trafficking offence and the undeclared cash. The scenario, the Court held, would have been different had the prosecution established that, for instance, the accused had contacted the person found guilty of the drug trafficking. However, no such fact had been established and the accused denied that he knew the persons accused of the drug trafficking offence.

The Court therefore stated that it could not conclude that the cash in the possession of the accused had derived from the drug trafficking since the circumstantial evidence was not sufficient to prove a link between the underlying criminal activity and the laundering. The Court further stated that although the accused had not provided a reasonable explanation on the provenance of the cash, such obligation would only have arisen once the prosecution had demonstrated a link between the underlying criminal activity and the accused. The accused was therefore not found guilty of the ML charges.

The judgement was appealed by the prosecution, who claimed that the Court of Magistrates had reached the wrong conclusion and applied the law incorrectly. On the 19<sup>th</sup> of January 2012, the Court of Appeal reversed the judgment of the Court of Magistrates. The judgment was reversed for the following reasons.

The Court of Appeal held that the Court of Magistrates had expected the prosecution to prove the link between the accused and the underlying criminal activity beyond any reasonable doubt. The Court of Appeal disagreed with this conclusion since if the prosecution had provided sufficient evidence to prove that a link between the accused and the underlying criminal activity existed beyond any reasonable doubt, the ML would have been automatically proven and the provision imposing an obligation on the accused to provide a reasonable explanation of the provenance of the cash would have been superfluous.

Additionally, the Court of Appeal held that, since Article 2(2) (a) of the PMLA did not require the prosecution to provide evidence of a conviction in relation to the underlying criminal activity, the prosecution merely had to prove that the cash found in the possession of the accused was not consistent

with his earnings. The prosecution was not required to provide evidence of the origin of the money, even if the money had been obtained illegally.

The Court further held that what the prosecution was required to provide was *prima facie* evidence that there was no logical and plausible explanation as to the provenance of the cash. Once this was proven, the burden of proof should have shifted onto the accused.

Upon an examination of the evidence provided by the accused, the Court of Appeal held that such evidence amounted to the *prima facie* evidence required to shift the burden of proof on to the accused. Since the accused had not provided a reasonable explanation as to the provenance of the money, he should have been found guilty of ML. The Court of Appeal therefore reversed the judgement of the Court of Magistrates and sentenced the accused to three years imprisonment and ordered him to pay a fine of €20,000. Additionally, the Court ordered the confiscation of the cash involved in the case and of all the other property of the accused in terms of Article 3(5) of the PMLA.



## 3. MANAGEMENT AND TRAINING

### The Board of Governors

A new Board of Governors was appointed for a three year period as from 21<sup>st</sup> February 2011. The new Chairman of the FIAU is Dr. Peter Grech while Dr. Anton Bartolo has been appointed Deputy Chairman. Assistant Commissioner of Police Mr. Pierre Calleja and Dr. Bernadette Muscat were appointed as members of the Board while Dr. Manfred Galdes, who is also the Director of the FIAU, is to act as secretary to the Board.

### The Director

The Director continued to implement the plans to strengthen the Unit agreed upon by the Board, particularly through the training of staff and the enhancing of tools utilised to carry out the functions of the Unit. In particular, efforts were made to strengthen the collaboration of the FIAU with its foreign counterparts and with supervisory authorities; to increase efficiency in responding to foreign requests for information; to improve the quality of the analysis of STRs; to raise awareness among subject persons, especially DNFBPs; to carry out more effective monitoring of compliance of subject persons; to contribute towards the work of MONEYVAL and the Egmont Group; and to contribute to the development of EU policy in the area of AML/CFT through the FIAU's participation at meetings of the CPMLFT and the FIU Platform.

### Training

#### Training received by the staff of the FIAU

The provision of adequate and relevant training to the staff of FIUs is crucial for the effectiveness of the national systems in place for the combating of ML/FT, so much so that it is specifically required by FATF Recommendation 30. Indeed, the FIAU places considerable emphasis on the provision of training to its staff and strongly believes that training is essential for the successful fulfilment of its functions and duties. In 2011 the officers of the FIAU once again participated in various training programmes both in Malta and overseas dealing with a broad spectrum of issues in the AML/CFT sphere.

In order to consolidate the expertise within the Financial Analysis Section, all financial analysts were asked to participate in a series of webinars. Two of the webinars were provided by the Intelligence Support Systems for Lawful Interception, Cybercrime Investigations and Intelligence Gathering and were entitled *Investigating Cyberspace Money*

*Laundering: Tools, Tricks and Techniques* and *Facebook Facts for Criminal Investigators and Analysts* respectively.

As the financing of terrorism continues to pose a serious threat to financial sectors across the world, the need was felt to continue strengthening the knowledge within the Financial Analysis Section on the specific methods necessary to detect FT. In pursuance of this goal, all financial analysts participated in a webinar offered by World-Check which was entitled *Countering Illicit Finance a Decade after 9/11: Emerging Trends*.

In addition, two financial analysts attended workshops organised by international organisations on this subject. The first workshop, the *EU-US Workshop on Terrorist Financing* was held in Budapest, Hungary between 11<sup>th</sup> and 12<sup>th</sup> May. The main topics discussed during the workshop were the compliance with UN Security Council resolutions on FT, the vulnerability of new payment methods to FT and the implementation of FATF Special Recommendation VII on wire transfers.

The second workshop, the *EU-GCC Workshop on Combating Terrorist Financing*, was held in Warsaw, Poland between 22<sup>nd</sup> and 23<sup>rd</sup> November. In the course of the workshop presentations were delivered on the implementation of FATF Special Recommendation VII on wire transfers Special Recommendation IX on cash couriers, and the UN sanctions regime on FT.

One of the analysts also attended a workshop held in Bran, Romania between 24<sup>th</sup> and 25<sup>th</sup> October entitled *The FIUs' Workshop: Defining End Users' Requirements on HEMOLIA in the EU Legal Framework*. The workshop was funded by the European Union within the Seventh Framework Programme in relation to the project entitled *Hybrid Enhanced Money Laundering Intelligence, Investigation, Incrimination and Alerts – HEMOLIA Project*.

A training workshop organised by the European Institute of Public Administration in Maastricht, the Netherlands, between 3<sup>rd</sup> and 4<sup>th</sup> November was attended by a compliance officer. The workshop related to recent developments on anti-money laundering and anti-terrorist financing efforts in the EU, including the risk management of PEPs, the practical implications of the risk-based approach to compliance and the role of Europol in combating ML/FT threats.

Officers within the Compliance and Legal and International Relations Sections also attended a number of training sessions organised by both Maltese and international



organisations, with a view to keeping abreast with the most recent developments within the financial and gaming sector.

As in previous years, the Board of Governors nominated an officer of the Unit within the Compliance Section to attend the annual evaluator training seminar organised by MONEYVAL. The seminar took place from the 25<sup>th</sup> to 29<sup>th</sup> July in Strasbourg and was attended by 32 experts from 21 countries. The purpose of the seminar was to train future evaluators who would be involved in the fourth round of mutual evaluations by MONEYVAL.

### Training provided by the FIAU

The FIAU was once again very proactive in providing training to increase awareness among subject persons and other stakeholders in the AML/CFT sphere.

Most notably, on 23<sup>rd</sup> September the FIAU held a highly successful training seminar on the newly-issued Implementing Procedures issued by the FIAU.<sup>7</sup> The seminar was very well attended by representatives from both the financial and non-financial sector. Presentations were delivered by FIAU officials as well as by a number of prominent speakers from the private sector. The seminar mainly focused on the contents of the Implementing Procedures, the interpretation given to the principal obligations under the PMLFTR and the practical implications of these obligations. The private sector representatives provided insights on the manner in which the Implementing Procedures are being applied in practice and the resulting challenges.

Other presentations on the Implementing Procedures of the FIAU were delivered by the Director and the Senior Legal & International Relations Officer as part of a course organised

by the Institute of Legal Studies on AML/CFT and during the course of the KPMG AML Roundtable VII.

The Director participated in the International Crime Forum organised by the International Chamber of Commerce, which was held in Malta between 11<sup>th</sup> and 12<sup>th</sup> May, where he delivered a presentation focussing on the preventive aspect of an AML/CFT regime. He was also involved in presenting to a number of representatives from the Central Bank of the Turkish Republic and Northern Cyprus visiting Malta the Maltese AML/CFT legal and regulatory framework.

During 2011, the FIAU also participated in the introductory course to the PMLFTR obligations and responsibilities once again organised by the Institute of Financial Services Practitioners.

The Compliance Section of the FIAU was also very active in providing training in the year under review. At the start of the year, the Compliance Section was invited to participate in a course organised by the Malta International Training Centre on insurance regulation and supervision. Two Compliance Officers provided training to a number of representatives from the financial services authorities of various Commonwealth countries on the manner in which the FIAU conducts on-site compliance monitoring.

Towards the end of the year the Compliance Section organised a training programme specifically tailored for the real estate sector aimed at increasing AML/CFT awareness within this sector. The programme consisted of three sessions which included topics such as the AML/CFT regime in Malta, the functions of the MLRO, the main obligations emanating from the PMLFTR and an overview of the compliance monitoring function of the FIAU.



*Training seminar on the FIAU Implementing Procedures (23<sup>rd</sup> September 2011)*

<sup>7</sup> For further information on the Implementing Procedures see section 'Implementing Procedures issued by the FIAU in terms of the provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations' p.36 of this report.

## 4. OTHER DEVELOPMENTS AND INITIATIVES

### Joint Committee on the Prevention of Money Laundering and Funding of Terrorism

The JCPMLFT is an *ad hoc* committee composed of representatives of the FIAU, supervisory authorities and other entities that have AML/CFT responsibilities and representatives of subject persons which committee was set up to provide a forum for discussion among the main players within the sphere of ML and FT prevention and to develop common AML/CFT standards and practices in compliance with the PMLFTR. The Committee is chaired by the Director of the FIAU, with the Senior Legal & International Relations Officer of the FIAU acting as secretary.

As in previous years, the JCPMLFT was instrumental in ensuring co-ordination between all stakeholders in the AML/CFT field. The meetings of the Committee provided an excellent forum for the presentation and discussion of the different views and experiences of the members with the aim of establishing comprehensive and all-inclusive measures in the prevention of ML/FT. It is to be noted that, following discussions between the members of the Committee, the Chairman invited the Comptroller of Customs to nominate a person to represent the Customs Department on the Committee, which invitation was duly accepted.

The first meeting of the JCPMLFT was dedicated entirely to the discussion of the draft Implementing Procedures proposed to be issued by the FIAU in terms of the provisions of the PMLFTR. The Implementing Procedures had previously been presented to the members of the Committee after having been revised by the FIAU on the basis of the comments made by all stakeholders during a period of consultation, which had taken place towards the end of 2010. The members were invited to highlight any areas of general concern to all subject persons which had not been addressed by the revised draft Implementing Procedures. The main issues which were brought up by the members related to the verification of identity of an applicant for business who is not present for verification purposes, the identification of politically exposed persons and the definition of beneficial owner. All issues were eventually addressed in the final version of the Implementing Procedures.

In view of its proximity to the on-site visit in Malta by the MONEYVAL evaluators as part of the fourth round MONEYVAL mutual evaluation, the second meeting of the Committee centred around the preparations necessary for such evaluation. The members were briefed on the manner

in which the evaluation was to be carried out and on the main areas which were to be assessed by the evaluators. Furthermore, the schedule of meetings to be held between the evaluators and some of the members of the Committee was planned.

In the other meetings of the Committee discussions were held on a variety of topics included in the agenda by the FIAU. The FIAU took the opportunity to keep the members of the Committee abreast with international developments in the AML/CFT sphere. In particular, discussions were held on the Common Understanding by the Member States of the European Union on the equivalence of third countries' AML/CFT regimes, the FATF Public Statements, the revision of the 3<sup>rd</sup> AML Directive (Directive 2005/60/EC) and the FATF 40 + 9 Recommendations.

Discussions also continued on the drawing up of sector-specific implementing procedures by representative bodies in consultation with the FIAU for eventual inclusion within Part II of the Implementing Procedures. The Malta Bankers' Association presented the Implementing Procedures for banking to the members during one of the meetings while the other members provided updates on the progress made in relation to their sector-specific implementing procedures.

### Implementing Procedures issued by the FIAU in terms of the provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations

Part I of the Implementing Procedures was issued by the FIAU on 20<sup>th</sup> May 2011. The issuance of Part I was the result of a long process which came to a head when a first draft was issued for consultation purposes on 17<sup>th</sup> August 2010. Following the consultation period, which ended on 29<sup>th</sup> October 2010, a process was initiated by the FIAU to review the comments received. This process resulted in a number of revisions being made to the consultation document. On 6<sup>th</sup> May 2011, the revised document was presented to the members of the JCPMLFT, who were invited to raise any issues of a general nature before the document was finalised. On the basis of such discussions the document was further amended by the FIAU and officially issued.

Part I of the Implementing Procedures was issued under Regulation 17 of the PMLFTR and is intended to assist subject persons in understanding and fulfilling their



obligations under the PMLFTR. Essentially the Implementing Procedures interpret the requirements set out under the PMLFTR and the PMLA and provide industry-specific good practice guidance and direction on AML/CFT procedures. The Implementing Procedures are binding and any failure by subject persons to comply with these procedures would constitute a breach of the PMLFTR which would render a subject person liable to the imposition of an administrative penalty.

Apart from the initial chapters, which contain issues of a general nature, the Implementing Procedures comprise five main chapters which correspond to the main obligations under the PMLFTR, these being customer due diligence, the mandatory risk procedures and the risk-based approach, record-keeping, reporting and training. A number of matters which are ancillary to the main obligations, such as the notion of reputable jurisdiction and internal controls, are presented in the final chapter.

The Implementing Procedures repeal all previous guidance provided by the MFSA and other representative bodies. Part I of the Implementing Procedures is binding on all subject persons, whether carrying out relevant financial business or relevant activity.<sup>8</sup> However, it is complemented by Part II which applies specifically to each sector subject to the obligations under the PMLFTR. Part II is incomplete on its own and must be read in conjunction with Part I.

The Implementing Procedures under Part II are currently being drafted by the associations and representative bodies representing subject persons on the JCPMLFT. By the end of 2011, the only sector-specific implementing procedures which were approved by the FIAU were those intended for the banking sector. Work on the implementing procedures for the other sectors is still ongoing.

## FATF Statements

The International Co-operation Review Group of the Financial Action Task Force monitors jurisdictions which have strategic deficiencies in their AML/CFT regime on an ongoing basis. In order to protect the international financial system from ML/FT risks and to encourage greater compliance with the AML/CFT standards, the FATF issues notices to inform its members and other jurisdictions of the deficiencies identified, to make recommendations to the jurisdictions concerned to address such deficiencies and to advise its members and other jurisdictions on the measures to be adopted to protect against the high-risk posed by such jurisdictions.

The FATF notices take the form of public statements issued three times a year and a document entitled 'Improving

Global AML/CFT Compliance: update on-going process' which is also updated three times a year. The risk posed by the jurisdictions which feature on these documents varies in accordance with the deficiencies and the level of commitment and progress made in addressing such deficiencies. In practice, such jurisdictions may be roughly classified into three categories.

The first category includes jurisdictions that have consistently failed to meaningfully address their AML/CFT deficiencies and in relation to which the FATF has called on its members and other jurisdictions to apply counter-measures. These jurisdictions are listed in the public statement and are considered to pose the highest risk of ML/FT. The jurisdictions that featured under this category in 2011 were Iran and the Democratic Peoples' Republic of Korea.

The second category comprises those jurisdictions that have not made sufficient progress in addressing their AML/CFT deficiencies or have not committed to an action plan developed with the FATF. The jurisdictions that were listed in this category in 2011 were Bolivia, Cuba, Ethiopia, Kenya, Myanmar, Nigeria, São Tomé and Príncipe, Sri Lanka, Syria and Turkey. These jurisdictions were also included in the public statement.

The third category consists of those jurisdictions that have a number of AML/CFT deficiencies but have developed an action plan with the FATF and made a high-level political commitment to address such deficiencies. The last update in 2011 under the on-going process included the following countries within the list: Algeria, Angola, Antigua and Barbuda, Argentina, Bangladesh, Brunei Darussalam, Cambodia, Honduras, Kyrgyzstan, Mongolia, Morocco, Namibia, Nepal, Nicaragua, Paraguay, Philippines, Sudan, Tajikistan, Trinidad & Tobago, Turkmenistan, Venezuela, Vietnam, Yemen and Zimbabwe. The same document also singled out Ghana, Indonesia, Pakistan, Tanzania and Thailand as jurisdictions which, although having made a high-level political commitment to address their deficiencies, were not making sufficient progress.

<sup>8</sup> As defined in Regulation 2 of the PMLFTR.



## 5. PARTICIPATION IN INTERNATIONAL FORA

### The European Union Committee for the Prevention of Money Laundering and Terrorist Financing

The CPMLTF is a committee set up under Article 41 of the 3<sup>rd</sup> AML Directive to assist the EU Commission in the implementation of the 3<sup>rd</sup> AML Directive. Despite the fact that the committee is not a policy-making body, it serves as a platform for the discussion of policy issues related to AML/CFT. Officials of the FIAU represent the Government of Malta on the CPMLTF.

In 2011, discussions continued on the revision of the Common Understanding between Member States on third country equivalence. A task-force had been set up in the previous year to revise both the Common Understanding itself, as well as the criteria for the recognition of third country equivalence. During 2011, a number of countries were removed from the equivalence list while new ones were added.<sup>9</sup>

Discussions were also held on the AML/CFT implications of the UN and EU sanctions imposed on a number of citizens from North African countries, in view of the political upheaval which swept such countries at the end of 2010 and continued well into 2011. Discussions revolved mainly around the need for co-operation between FIUs in such instances and the possible revision of Council Decision 2000/642/JHA to facilitate the exchange of information when such circumstances arise. These issues may possibly be tackled in the revision of Directive 2005/60/EC.

In the course of one of the meetings of the CPMLTF a presentation was delivered to the members on the EU Emissions Trading Scheme. The presentation was delivered in the light of new EU regulations aimed at strengthening the security of emissions trading registries following the exposure to VAT carousel fraud that had been detected in the system. It was explained that the new regulations set out a number of provisions of an AML/CFT nature which render registries subject to certain obligations emanating from Directive 2005/60/EC. However, it was still not clear how the system would work in practice. It was therefore agreed to discuss the topic in further detail at future meetings of the CPMLTF once further concrete developments took place in this area.

### EU FIU Platform

The FIU Platform is an informal group set up by the European

Commission in 2006 which brings together Financial Intelligence Units from all the Member States of the EU and whose main purpose is to facilitate co-operation among FIUs. The FIAU was represented at both meetings of the FIU Platform held in 2011.

The topic which dominated the agenda of the FIU Platform meetings was the role of FIUs within the context of the UN and EU sanctions imposed on a number of North African citizens during 2011. In the light of such events, a need was identified to review Council Decision 2000/642/JHA which regulated information sharing between FIUs. A paper had been prepared by the FIUs of France and Belgium to initiate discussions on the involvement of the different FIUs in the process of identifying the amount of assets of (former) PEPs in EU countries and assessing the present framework of exchange of information. The issue which had been identified by France and Belgium was that in certain jurisdictions, the receipt of a suspicious transaction report was a prerequisite for the exchange of information with another FIU. However, as recent events had shown, France and Belgium argued that exchange of information might be necessary notwithstanding the fact that no STR had been filed. The FIU Platform agreed to create a subgroup (internal task force) to look at these issues in more detail and prepare a paper with concrete proposals.

A policy paper was presented in the second meeting of the FIU Platform. The paper contained eight specific policy proposals to enhance co-operation between FIUs. Among the policies proposed were the possibility for all FIUs to have the power to request additional information from any reporting entity, the ability of the FIU to postpone financial transactions upon a request from a foreign FIU and the establishment of a central database for bank accounts. Seven of these proposals were supported by the representative FIUs present at the meeting, including the FIAU. Following lengthy discussions on the matter it was determined that the proposals would be further fine-tuned by the subgroup and presented to the members for endorsement at the first meeting of 2012.

### The Egmont Group

The Director participated in 19<sup>th</sup> Plenary of the Egmont Group held in Yerevan (Armenia) and the meeting of the Legal Working Group of the Egmont Group held in 2011 in Oranjestad (Aruba). The FIAU, which has been a member of the Egmont Group since 2003, has in recent years been

<sup>9</sup> The complete list is contained in Appendix III to the FIAU Implementing Procedures.



participating actively in the workings of the Legal Working Group which is tasked with the review of the candidacy of potential members and the handling of all legal aspects and matters of principle within Egmont, including co-operation between FIUs.

The Egmont Group, which was first set up in 1995 in Belgium as a small group of 24 FIUs seeking to explore ways of co-operation among themselves, has today grown to incorporate within it 127 FIUs. This entity is evolving towards a structure of independent units working closely together to strengthen not only their own countries' AML/CFT regime, but to strengthen the international set-up of resistance to money launderers and terrorist financiers. Representatives of member FIUs meet periodically to find ways to co-operate, especially in the areas of information exchange, training and the sharing of expertise.

The strength of this grouping lies in the fact that it facilitates the interaction among FIUs. Indeed, systems have been created to facilitate the exchange of information and projects have been undertaken aimed at strengthening the expertise and capabilities of personnel employed by FIUs and the fostering of better and more secure communication among FIUs through the application of technology.

During the 19<sup>th</sup> Egmont Group Plenary held at the Hayastan Conference Centre in Yerevan in July, the FIAU was represented at the Heads of FIUs meetings, the meetings of the Legal Working Group, the Regional meeting for European FIUs and the plenary sessions. The Plenary was attended by over 290 participants representing FIUs from 99 jurisdictions and 10 international organisations.

During the Heads of FIUs meetings held during the week-long plenary, the FIUs of Azerbaijan, Kazakhstan, Mali, Morocco, Samoa Islands, Solomon Islands and Uzbekistan were endorsed as new members of the Egmont Group. This was the largest group of new members that had been admitted for some years, thereby strengthening the global network of information sharing in areas of particular strategic and regional significance.



*The participants at the 19<sup>th</sup> Egmont Group Plenary held in Yerevan (Armenia)*

Several of the sessions during the week focused on some of the legal, policy and operational challenges faced by FIUs, as well as the partnerships that the Egmont Group has with other international organisations, such as the UNODC, the World Bank, the International Monetary Fund, the Basel Institute on Governance and FSRBs, to assist in FIU development and capacity building.

In recent years the Egmont Group has also placed increased emphasis on the fight against corruption. The 19<sup>th</sup> plenary included further sessions devoted to combating corruption and asset recovery, as well as discussions on the impacts that corruption can have on efforts to establish new FIUs and to effectively carry out the FIU mission.

Training sessions held throughout the plenary week focused on topics of operational concern to FIUs. A joint operational training session looked at the Egmont information exchange standards and highlighted good practices and the possible challenges these standards present. Other sessions focused on new payment technologies and money laundering; the use of cross border wire and data transfer; new technology trends that may be of importance to FIUs; and AML/CFT regulation of money remitters.

The discussions on FIU co-operation with law enforcement agencies initiated during the 2010 plenary were continued, with the aim of enhancing the operational effectiveness of Egmont member FIUs. Given the recently reviewed FATF Recommendations 26, 27 and 28, this session also provided a platform for discussing the potential implications of the revised recommendations for the FIU relationship with law enforcement agencies in Egmont Group member jurisdictions.

Earlier during the year, the Egmont Group had also held its Working Group and Committee Meetings in Oranjestad, which were attended by 160 delegates from 61 Egmont Group FIUs, four observer FIUs and six International organisations.

During these meetings, among other things, the Legal Working Group continued to discuss information exchange practices in the light of the Egmont Principles of Information Exchange and Best Practices. It was agreed that where a FIU requires a MoU in order to engage in information exchange, it should not refuse to sign MoUs or place undue delay on the signing. It was determined that such practice effectively impedes or prevents information exchange. The Legal Working Group also agreed that where a FIU receives a request for information, it should not second guess the grounds for suspicion used by the requesting FIU to request information. Rather, the requested FIU should allow the widest scope and extent possible in extending information sharing co-operation.

## MONEYVAL

MONEYVAL held three plenary meetings in 2011, which were attended by the Maltese delegation consisting of Dr. Anton Bartolo (Head of Delegation – Malta Financial Services Authority, Legal/Financial Expert), Mr. Michael Cassar (Malta Police, Law Enforcement Expert), Mr. Anthony P. Cortis (Central Bank of Malta, Financial Expert), Dr. Jason Grima (Attorney General's Office, Legal Expert). The Director of the FIAU was also included in the delegation as from the December plenary.

In the course of the 2011 plenary meetings, progress reports and fourth round mutual evaluation reports were presented and adopted. Discussions were also held at the plenary on the revision of the FATF Recommendations. Contributions on this matter were solicited from all the member states to ensure that a unitary front would be presented by the Executive Secretary of MONEYVAL at FATF plenary meetings when discussions were held on such topic.

### Fourth round evaluation

As had been announced in last year's report, Malta was subjected to the fourth round mutual evaluation by MONEYVAL in 2011. The fourth round was different from the previous one, as it did not consist of an assessment of all the FATF Recommendations, but focused on the implementation of all key, core and other important FATF Recommendations and those other FATF Recommendations which had been rated non-compliant or partially compliant in the third round. Additionally, since most countries had largely brought their laws and regulations in line with the FATF Recommendations following the third round, it was determined that although formal compliance issues would continue to be assessed, an increased emphasis would be placed on the effectiveness of the procedures and practices of the country under review.

The first step of the evaluation was the submission of a mutual evaluation questionnaire, detailing all the AML/CFT legislative provisions in place in Malta and the operations and activities of the judiciary, the prosecution, the Police, the FIAU, supervisory authorities and other competent authorities involved in the fight against ML/FT in Malta.

Following the submission of the questionnaire, a team of evaluators accompanied by the Executive Secretary of MONEYVAL conducted an on-site evaluation visit in Malta from 29<sup>th</sup> May to 4<sup>th</sup> June. The visit was co-ordinated by the FIAU.

The team met with the Chief Justice and other senior members of the judiciary, the Attorney General, the Chairman of MFSA, the Deputy Governor of the Central Bank of Malta and the Registrar of Companies. Meetings were also held with representatives from 24 organisations and

agencies including law enforcement bodies, government departments and public entities, supervisory authorities, professional bodies and bodies representing operators within the private sector. The meetings were held at the premises of the MFSA.

At the end of the evaluation visit, the team presented their preliminary findings to the Maltese authorities. The first draft of the mutual evaluation report was then presented to the Maltese authorities at the end of the year. The report is expected to be adopted at the first MONEYVAL plenary of 2012 following a pre-meeting between the Maltese authorities and the evaluation team to discuss the findings of the evaluators.

### Evaluations

Between 21<sup>st</sup> and 26<sup>th</sup> November the Senior Legal & International Relations Officer of the FIAU participated in the fourth round evaluation of Moldova as a law enforcement expert. The visit was co-ordinated by the Moldavian FIU and the meetings were held in Chisinau. The team also met with representatives from the National Bank of Moldova and the National Commission on Financial Markets, as well as with representatives from 35 different organisations and agencies including law enforcement agencies, government departments, financial services supervisors, associations and the private sector. The draft report will now be prepared for review and adoption by MONEYVAL at its 40<sup>th</sup> Plenary meeting in December 2012.

### MONEYVAL experts' meeting on typologies

The Director and one of the financial analysts of the FIAU participated in the 10<sup>th</sup> MONEYVAL meeting of experts on typologies. The meeting was held between 31<sup>st</sup> October and 2<sup>nd</sup> November in Tel Aviv, Israel and was attended by 75 experts from 31 different countries including experts both from the public and the private sectors. The Director participated in the meetings on the postponement of financial transactions and the monitoring of bank accounts, whereas the financial analyst was involved in the meetings dealing with trade-based money laundering in cash-intensive economies. A report on each topic is expected to be issued at the end of 2012.

