



ANNUAL REPORT

OF THE

FINANCIAL INTELLIGENCE

ANALYSIS UNIT

MALTA

2007



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Financial Intelligence Analysis Unit

Board of Governors

Dr Silvio Camilleri	<i>Chairman</i>
Mr Herbert Zammit LaFerla	<i>Deputy Chairman</i>
Dr Anton Bartolo	<i>Member</i>
Mr Pierre Calleja	<i>Member</i>

Director

Mr Frank Caruana¹ *(also Secretary to the Board)*

Our Mission

At the Financial Intelligence Analysis Unit we strive to be a leader in the prevention of money laundering and terrorist financing, thus contributing towards a safe and stable financial and economic environment. We work towards this mission through information collection, analysis and co-operation in the dissemination of information of suspected money laundering or terrorist financing related activities, thus supporting the domestic and international law enforcement investigative efforts.

¹ The Director retired at pensionable age as from 15 March 2008.

Letter of Transmittal to the Minister of Finance, The Economy and Investment

07

Financial Intelligence Analysis Unit

Valletta

June 2008

Dear Minister

In accordance with Article 42(1) of the Prevention of Money Laundering Act, *Cap 373*, 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 31st December 2007.

Yours sincerely

Dr Silvio Camilleri

Chairman

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Statement Of The Chairman

The FIAU is growing – not just in size but more in its important role in safeguarding the integrity of the financial system. Over the years the role of the FIAU has been broadened considerably by law. Its responsibilities have been extended to cover the financing of terrorism whilst the spectrum of subject persons who fall within its remit has been widened. In order that the Unit may meet the increased demands placed upon it the Unit had to increase its force of highly qualified personnel working in this sensitive field of expertise. I would therefore like to warmly welcome to the Unit Dr. Coralie Buttigieg who is the new Legal and International Relations Officer of the Unit, and Ms. Clare Farrugia who is the additional financial analyst engaged to strengthen the analytical function of the Unit. My warm welcome goes also to Ms. Nathalie Agius Barbuto who is our new administrative/support officer. The recruitment process is not yet complete but there has been a good start. Next year the Unit will also have a new Director following the retirement of Mr. Frank Caruana, the Unit's first Director whilst continuing with the capacity building in the Unit's compliance function.

The past year has been a landmark. Precisely on 29th March 2007, the first definitive conviction for a money laundering offence was declared by the Criminal Courts in the case of *The Republic vs. Maria Abela*. A previous conviction had been reversed by the Court of Criminal Appeal and therefore the first money laundering conviction was still awaited. It is true that the conviction was obtained after the accused admitted the charges against her but this does not diminish at all the value of the judgment. The fact that the accused admitted the charges can only be attributed to the fact that the prosecution had done its job well and had managed to come up with sufficiently strong evidence which could not be rebutted. Money laundering investigations and prosecutions tend to be complex and difficult but success is not beyond reach. The Maria Abela case has proved this. I am sure that the law enforcement and prosecution authorities will as a result multiply their efforts now that what seemed to be beyond their reach has been shown to be achievable.

Another important milestone in the course of the year under review has been the third round mutual evaluation report on Malta adopted by the Council of Europe committee, generally known as MONEYVAL. The report, although concerning the third evaluation of Malta undertaken in November 2005, is the first drawn up on the basis of a new comprehensive methodology developed by the Financial Action Task Force which embraces not only anti-money laundering measures but also measures to combat the financing of terrorism. The new methodology involves a very systematic and detailed assessment based on the FATF 40+9 Recommendations with a long list of objective essential criteria against which a jurisdiction is meticulously scrutinised from all aspects. The final report followed a grueling long meeting which the Maltese delegation to MONEYVAL had with the evaluation team. Three FIAU Board members are part of the Maltese delegation to MONEYVAL. It can fairly be said that the results obtained by Malta in the third round evaluation report by MONEYVAL are among the best achieved by the jurisdictions members of MONEYVAL.

As can be seen, the past year has not been without its challenges. One other challenge confronted by the FIAU is the implementation of the EU Third Money Laundering Directive. A consultative document reproducing the FIAU's ideas on how to best implement through legislation the requirements of the directive was prepared by the FIAU. In this regard particular and special credit must be given to the unstinting and time consuming efforts of the Deputy Chairman, Mr. Herbert Zammit Laferla, who was mostly responsible for the development of this invaluable tool to foster dialogue between the Unit and subject persons. The consultative document was put on the FIAU's website to be consulted by the industry

which was requested to provide its feedback and to make its suggestions. I am happy to note that the feedback received was considerable and very constructive and is now in the process of being evaluated.

The so called risk based approach to money laundering preventive measures has become the core guiding principle of the Third Money Laundering Directive. The concept has become the mantra of the financial services industry, repeated with enthusiasm but not necessarily with equal understanding. Among the new features of this year's report, therefore, one can find a brief article which introduces the idea of a risk based approach with an explanation of its core elements. It is hoped that similar articles which address in some depth some particular issue of relevance to the fight against money laundering and the combating of financing of terrorism will become a regular feature of the Unit's annual report.

The spirit of co-operation and mutual understanding that has been developed over the years between the FIAU and subject persons has borne fruit in the results to date of the consultation process initiated by the Unit for the purpose of making its recommendations to Government on the implementation of the EU Third Directive. I am confident that the same spirit will continue to pervade the relationship between the FIAU and subject persons in the future. This augurs well for Malta's efforts to combat money laundering and the financing of terrorism.

1.0 The Financial Intelligence Analysis Unit

1.1 Establishment

The Financial Intelligence Analysis Unit (FIAU) is the national central agency in Malta responsible for the collection, collation, processing, analysis and dissemination of financial information with a view to combating money laundering and the financing of terrorism. It is an administrative type of financial intelligence unit.

The FIAU is a government agency within the Ministry of Finance, having distinct legal personality. It was established and became operational in 2002, following amendments to the Prevention of Money Laundering Act (PMLA) (Chapter 373 of the Laws of Malta). Following a formal procedure established by the Egmont Group for recognition in meeting the criteria of the Egmont definition of an FIU, in July 2003 the FIAU was accepted as a full member of the Egmont Group, the international gathering of financial intelligence units formed in 1995.

1.2 Structure

The FIAU consists of a Board of Governors and a Director. The Board currently comprises four members appointed by the Minister responsible for finance from each of four panels, each of at least three persons, nominated respectively by the Attorney General, the Governor of the Central Bank of Malta, the Chairman of the Malta Financial Services Authority and the Commissioner of Police. The PMLA provides for a full Board of six Governors. The Chairman and Deputy Chairman are appointed by the Prime Minister after consultation with the Minister responsible for finance from among the members of the Board. The Director of the FIAU, who is appointed by the Board of Governors, acts as Secretary to the Board.

The Board is responsible for establishing the policies of the Unit. The Director is responsible for executing the established policies, and reports to the Board accordingly. Responsibility for carrying out all the

other functions of the Unit not attributed by the PMLA to the Board of Governors lies with the Director, who is assisted by permanent staff recruited by the Board of Governors.

The PMLA requires the Commissioner of Police to detail a senior police officer to act as the Police Liaison Officer responsible for ensuring continuity between the work of the FIAU and that of the Police Force. The Police Liaison Officer assists the Unit in the analysis and processing of Suspicious Transaction Reports (STRs) by making available to the Unit any information at the disposal of the Police or that forms part of police records, to the extent that such information is relevant to the exercise of the functions of the Unit. Moreover, where necessary, the Police Liaison Officer advises the Unit on investigative techniques and on other enforcement issues that impact on the work of the FIAU.

1.3 Core Activities

The core activities of the FIAU as set by law are threefold. First, it receives and analyses information on transactions suspected to involve money laundering or to be related to the financing of terrorism, and to report thereon. The Unit receives this information from institutions and persons who are subject to the obligations of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2003 (PMLR). Second, the FIAU exchanges information and co-operates with local and foreign supervisory authorities and with other financial intelligence units, either spontaneously or through memoranda of understanding. Third, the Unit is responsible for overseeing compliance by persons and institutions in terms of the PMLR. In doing so the Unit cooperates and liaises with local supervisory authorities who can be appointed to act as agents for and on behalf of the FIAU in carrying out on-site sectoral compliance visits and examinations and to report thereon to the Unit.

1.4 Other Functions

The FIAU is responsible for carrying out other ancillary functions as provided for under the PMLA and as may be necessary for the Unit to carry out its core activities. Foremost amongst these supportive functions are: the gathering of information on financial and commercial activities in the country for analytical purposes and to identify trends and areas which may be or have become vulnerable to money laundering or the financing of terrorism; promoting and providing training on anti-money laundering and countering the financing of terrorism (AML/CFT) matters and advising and

assisting institutions and persons who are subject to the obligations of the PMLR, in order to develop and establish effective AML/CFT measures and programmes. The FIAU is also responsible to keep the Minister responsible for finance informed on AML/CFT developments and to advise the Minister on AML/CFT legislative and other procedures that need to be put in place to counter such developments and to harmonise the national AML/CFT framework with the continued developments in international standards.

2.0 Operations

2.1 Core Operations

The core operations of the FIAU remain unchanged. In terms of the provisions of the PMLA, apart from the compliance function, the primary function of the FIAU is the receipt, analysis and reporting of Suspicious Transaction Reports (STRs) – transactions suspected to be related to money laundering or the financing of terrorism – complemented and supported by the co-operation and exchange of information with the Unit's foreign counterparts or other supervisory authorities with the aim of fulfilling its core function both at a national and international level.

2.1.1 Reporting of Suspicious Transactions

The FIAU processes STRs through a systematic analysis of the information contained in the STRs, supplemented by other relevant information that the FIAU may already possess or that it obtains by requesting other persons who could be in possession of further relevant information. If the suspicion of money laundering or terrorist financing persists the FIAU is legally bound to forward its analytical report, together with all relevant information, to the Malta Police for further investigations. To this effect the FIAU carries out an overall analysis of the STRs to identify and draw patterns and typologies of money-laundering or the financing of terrorism that could serve to assist institutions and the authorities in the better monitoring and observance of their obligations.

By law, the subject person who files an STR, and whose confidentiality is protected by the FIAU, can request feedback from the FIAU on STRs filed by it². The FIAU is obliged to provide such feedback. However the law does allow some discretion to the FIAU in providing feedback in particular where, in the opinion of the FIAU, such feedback could be to the detriment of an ongoing investigation.

2.1.2 Co-operation with counterparts

An equally important and complementary function of the FIAU is the confidential mutual exchange of information and cooperation with foreign FIUs. The need to co-operate and exchange information on specific cases arises both internally and externally. The law provides for both spontaneous exchange of information or, where necessary, through the use of memoranda of understanding. Conscious of the fact that international cooperation is conducive to enhance the global fight against money laundering and the financing of terrorism, the FIAU attaches great importance to such co-operation and has established internal procedures to deal with such requests efficiently and timely on a reciprocity basis.

A request for assistance received from a foreign FIU calls for a thorough analysis of the information provided. This analysis will assist the FIAU to determine the type of information requested, whether the information is already available at the FIAU or whether it could be obtained through the means available to the FIAU according to law. Subject to confidentiality, the exchange of information is provided only in cases of money laundering and financing of terrorism investigations. The information is supplied for intelligence purposes only unless the FIAU specifically authorises otherwise, having taken into consideration a request to that effect by the foreign FIU.

Likewise if, in the course of the analysis of the information supplied on an STR or from other information available to it, the FIAU identifies that foreigners could be involved or there are indicative links to other countries, the FIAU seeks the assistance of its foreign counterparts for information that could be vital to expedite the analysis and conclusion of the reports.

² The STR itself is not forwarded to the Police.

The analysis of the requests for assistance received from foreign FIUs could lead the FIAU to treat such requests as STRs whereby the FIAU would open a case on its own initiative. Thus, should the collection and compilation of the information, together with the information disclosed by the requesting FIU lead the FIAU to sustain a money laundering or financing of terrorism suspicion, the FIAU compiles its own analytical report, in collaboration with the foreign FIU, to be forwarded to law enforcement for further investigation.

2.1.3 Co-operation with supervisory authorities

The PMLR defines supervisory authorities as those authorities that, by law, are responsible to supervise particular sectors that are subject to the PMLR obligations. The PMLR provides a list of supervisory authorities. The PMLA requires the FIAU and these authorities to co-operate in the fulfillment of the functions of the FIAU under the PMLR. To this

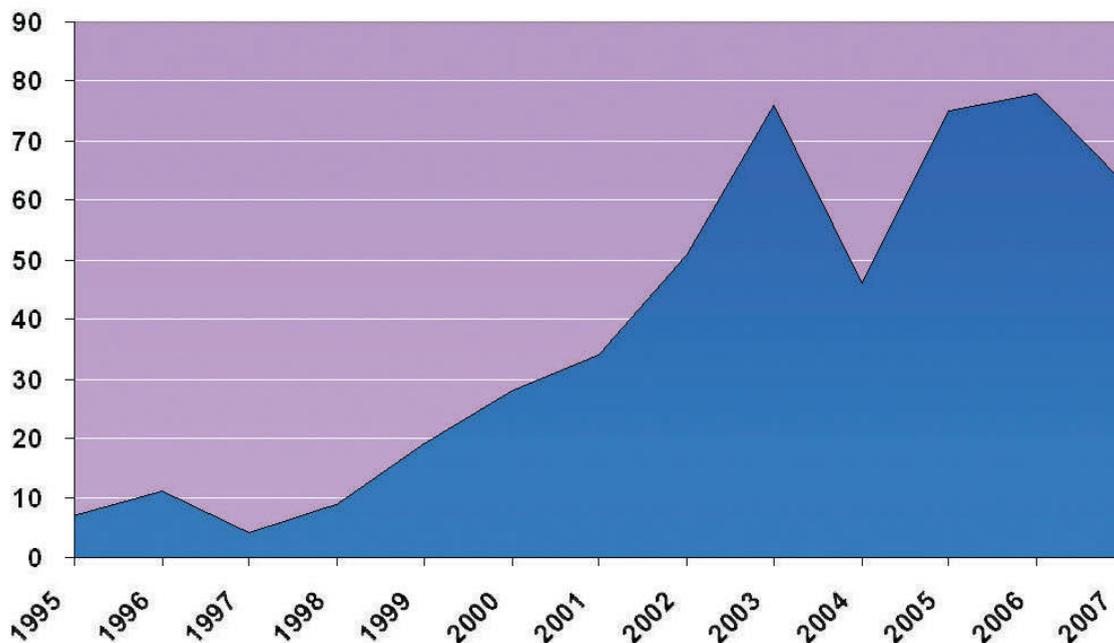
effect the FIAU seeks to maintain efficient ways of open communication with the relevant authorities for co-operation and exchange of relevant information. The PMLA authorises the FIAU to disclose information available to it both to a supervisory authority in Malta or to a supervisory authority outside Malta provided that, in the opinion of the FIAU, such foreign supervisory authority exercises similar duties to those of a domestic supervisory authority.

2.2 Statistics

2.2.1 Suspicious Transaction Reports

STRs filed with the FIAU during 2007 decreased by 15 reports (20%) over the previous year to 63 reports. The reduction in STRs seems to be a levelling process in the number of reports filed by subject persons, indicating a similar downward trend experienced in 2004 (Chart 1).

Chart 1 Suspicious Transactions Reports by year 1995 - 2007



The 63 STRs filed with the FIAU in 2007 translated into 55 cases. Although this is a smaller proportion of cases than that of the previous year, it remains a strong figure at 87% of total STRs. The difference in the number of STRs and the number of cases is the result of different subject persons reporting on transactions which, following analysis by the FIAU, are identified as being related to the same case and are hence analysed as one. To a certain extent, this is a positive factor that indicates the vigilance

of subject persons in their due diligence and transaction monitoring processes. Indeed, the FIAU has satisfactorily observed that the quality of the STRs filed with the Unit continues to improve. The FIAU has consequently noted that, whereas the improvement in the STRs assists the Unit in carrying out a better analysis, the analysis itself has become more complex through the intricacies of the reported structured transactions themselves. Table 1 shows the Case-to-STRs relationship.

Table 1 STRs and cases - 2003 to 2007

	2003	2004	2005	2006	2007
STRs	76	46	75	78	63
Cases	58	43	62	72	55
% of STRs	76%	93%	83%	92%	87%

Once an STR is received by the FIAU, the Unit uploads the information into its database and begins the process of assessing and analysing the report. In practice, this process involves a number of measures that are, at times, time-consuming. For instance, the Unit may require further information domestically and, in particular, internationally which very often takes longer than desired; searches in other financial intelligence data that may already be held by the Unit; searches in other databases and, last but not least, resources. On the other hand there are also cases where the FIAU's analytical report concerning an STR is sent to the Police for further investigation within a few days following

receipt of the STR itself. This is particularly the case where the FIAU, through the Police Liaison Officer, becomes aware of related ongoing Police investigations.

During 2007, the FIAU processed 52 STRs which amounted to 45 cases. The STRs processed during this year concerned one STR filed in 2005, 21 STRs (19 cases) filed in 2006, and 30 STRs (25 cases) filed in 2007. There were 34 STRs (31 cases) of which the analysis was still ongoing at the end of 2007. These STRS were filed in 2007, with the exception of one which was filed in 2006³.

Table 2 Breakdown of STRs and cases - October 2002 to December 2007

STRs	Oct02-Dec03	2004	2005	2006	2007
Referred to Police	17	33 ^a	28 ^b	24 ^c	24 ^d
Inconclusive Information	30	33	41	48	24
Not related ML/FT	4	-	-	1	4
Ongoing Analysis	35	25	39	23	34
Refer to (a) 20 cases; (b) 22 cases; (c) 21 cases; (d) 22 cases					

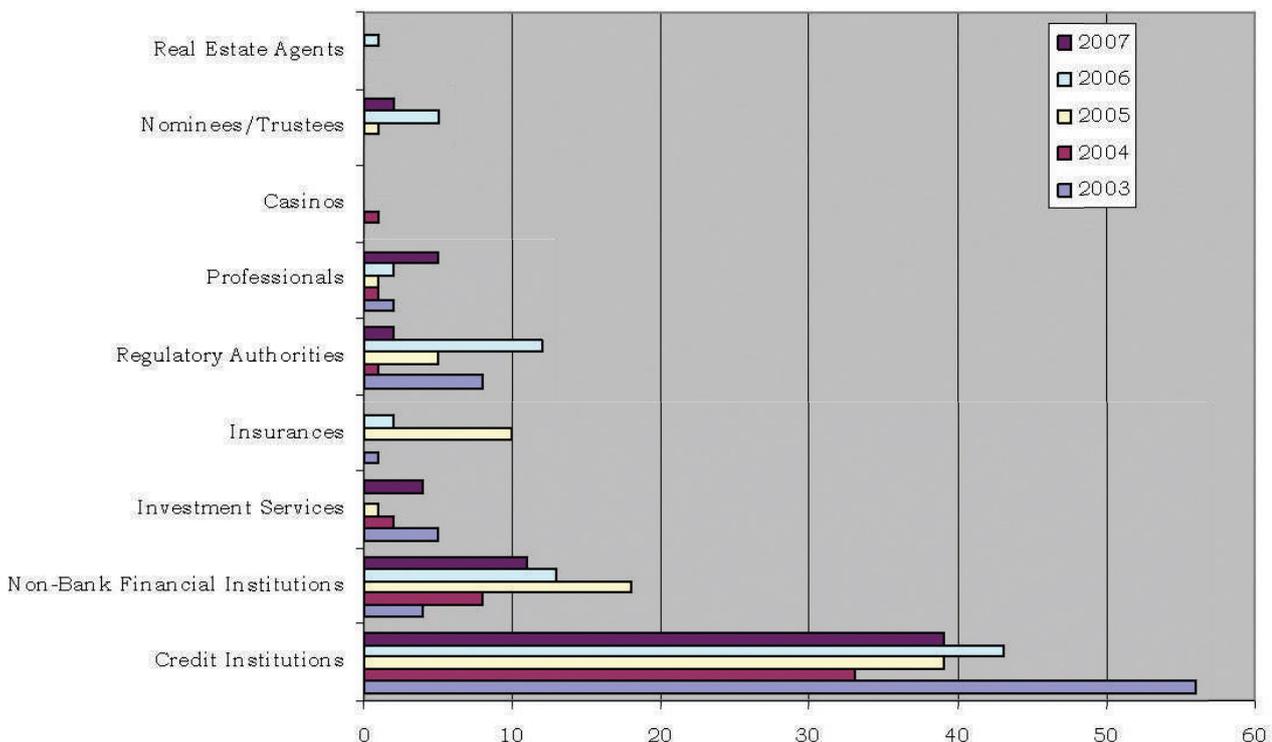
³ The 2005 STR was originally concluded and forwarded to the Law Enforcement in March 2006. Additional information was received by the FIAU during 2007 which was analysed. An additional report was forwarded to the Law Enforcement in 2007.

As a result of these analyses, during 2007 the FIAU referred 24 reports, relating to 22 cases, to the Malta Police for further investigations. Table 2 depicts the annual breakdown of the treatment of the STRs received as at the end of each year up to 2007. During 2007 another 24 STRs resulted in inconclusive evidence and therefore no further action was taken by the FIAU. In such circumstances, the FIAU does not close the file, but retains it in suspense pending any additional related intelligence that may eventually become available. During 2007, there were four reports relating to two cases that resulted not to be related to money laundering or to the funding of terrorism. In such circumstances, the file is closed.

The number of cases resulting from STRs from 2003 to 2007 amounts to 290, with the number of cases referred to the Malta Police increasing to 92; that is, 33% of all cases having been referred to the police authorities. Taking into account that the analysis on a number of STRs filed during 2007 was not concluded by the end of the year, this figure should not be interpreted as being conclusive.

The main source of the STRs filed with the FIAU during 2007 continued to be the credit institutions, having filed 39 STRs (62%) out of the 63 STRs filed with the FIAU during the year. This is understandable and compares with other jurisdictions in the light of the dominant role of the banking sector in the domestic financial system.

Chart 2 STRs filed by subject persons for the years 2003-2007

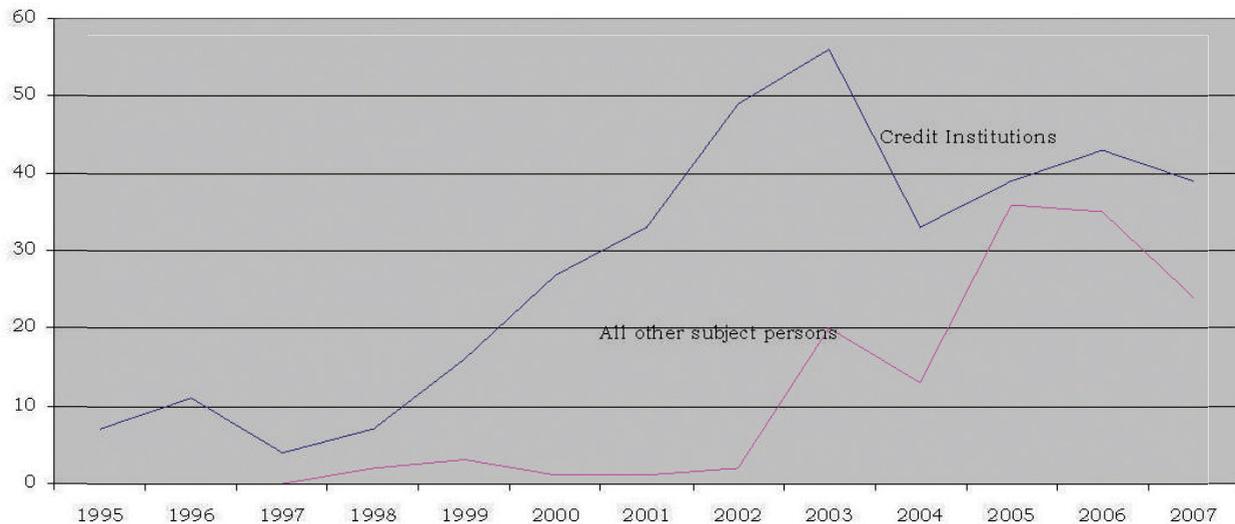


Except for the reports filed by professionals, which saw an increase to five reports during 2007, and by investment services licence holders, who filed four reports compared to none the previous year, there was an overall decrease in the reports filed by all the other subject persons. While the reports from credit institutions only decreased slightly, there were no reports filed by the insurance sector, continuing the downward trend noted by the FIAU during the last three years. Likewise, reports from supervisory authorities reduced to two reports

compared to 12 the previous year which had registered a marked increase. On the positive side, the latter could indicate more vigilance by the institutions themselves.

As shown in Chart 3, while there has been an overall decrease in the number of STRs filed with the FIAU in 2007, it is noticeable that the trend for credit institutions has remained sustainable. The variations in respect of other subject persons are however more pronounced.

Chart 3 STRs filed by credit institutions as compared to other sectors: 1995 - 2007



2.2.2 Typologies

The 22 cases referred to the Police during the year were analysed in order to determine the underlying criminal activity on the basis of the information contained in the STR, other information requested by the FIAU and the conclusions of the analysis of the information.

Table 3 Main Predicate Offences

Predicate Criminality	2003	2004	2005	2006	2007
Fraud/Forgery	2	5	4	5	1
Drug Trafficking	2	4		4	5
Organised Crime	5	2	1		2
Usury	1	2	2	5	1
Unlicensed Financial Services	4	2	1		3
Undeclared Income		2	4		
Funding of Terrorism	2		1		1
Human Trafficking			1		1
Theft			4		
Identity Theft				2	1
Illegal Gambling			1	2	
Prostitution				2	
Unauthorised Investment Service		2			
Compliance		1			
Phishing					1
Others	1	0	3	1	6
Total	17	20	22	21	22

During the year under review, the main identifiable predicate crimes suspected were Drug Trafficking, Unlicensed financial services and Organised Crime with 5, 3 and 2 cases respectively being forwarded to the Malta Police. Another 6 STRs with predicate crimes not in the above list were forwarded to the Police. Globally for the five years 2003-2007 the main suspected predicate criminality was Fraud/Forgery with 17% of the total cases forwarded to the Malta Police. Then the second and third most commonly suspected predicate crimes were Drug Trafficking with 15% and Usury with 11%.

Most of the STRs filed during 2007 (51%) were related to foreign individuals or companies while 44% related to local activity with an additional 5% being related to both foreign and local activity. This analysis could be an indication that Malta may be used by criminals to launder money in the intermediary stage.

In addition to the 63 STRs filed with the Unit during 2007, the FIAU has generated another 13 reports (analyses processes). Five of these processes have been concluded and in two instances the analytical reports were transmitted to the Police for further investigations. The other eight processes were still ongoing as at the end of 2007.

2.2.3 Money Laundering Conviction

A first of such judgement was delivered by the Criminal Courts on 29 March 2007, in the case of *The Republic vs. Maria Abela*. This case concerns a Maltese national who was sentenced to six years imprisonment after having admitted involvement in money laundering. Abela was also found guilty of falsification of documents and transactions for the purposes of money laundering. Abela admitted to: receiving amounts of money in United States Dollars in the bank account of the company concerned; trading fraudulent merchandise; and falsifying documents for large amounts of money into other bank accounts. A number of other companies managed by foreign parties were also involved in

these illegalities. Together they had tried to launder money that had been fraudulently acquired from several other foreign companies.

It resulted that Abela received an amount of money through a local bank in May 2004. The money was transferred into an account in her name, on behalf of a foreign company, with which Abela was involved in the import and export of merchandise. The Malta Police had also traced other fraudulent transactions that had passed through the same bank account, as well as other accounts, dating back to at least January 2002. Local Police investigations confirmed that Abela, together with other foreigner parties, was involved in illegal money transactions, carried out by means of falsified documents, to the detriment of a number of foreign companies.

Abela was paid 10 per cent of the total amount of money that was transferred into her account over the years, which amounted to about Lm71,000 (€165,386).

In handing down judgement, the Judge acknowledged the fact that this was the first judgement in a case concerning money laundering delivered in the Criminal Court and it was therefore important to establish certain parameters regarding punishments in such cases, in view that this was a serious crime that was connected to international crime. The judgement states that Abela had registered a guilty plea back in November 2005, at a stage of compilation of evidence, and she had again pleaded guilty when she was due to stand trial. Among its considerations, the Court took note of the clean criminal record of the person concerned prior to the money laundering incidents.

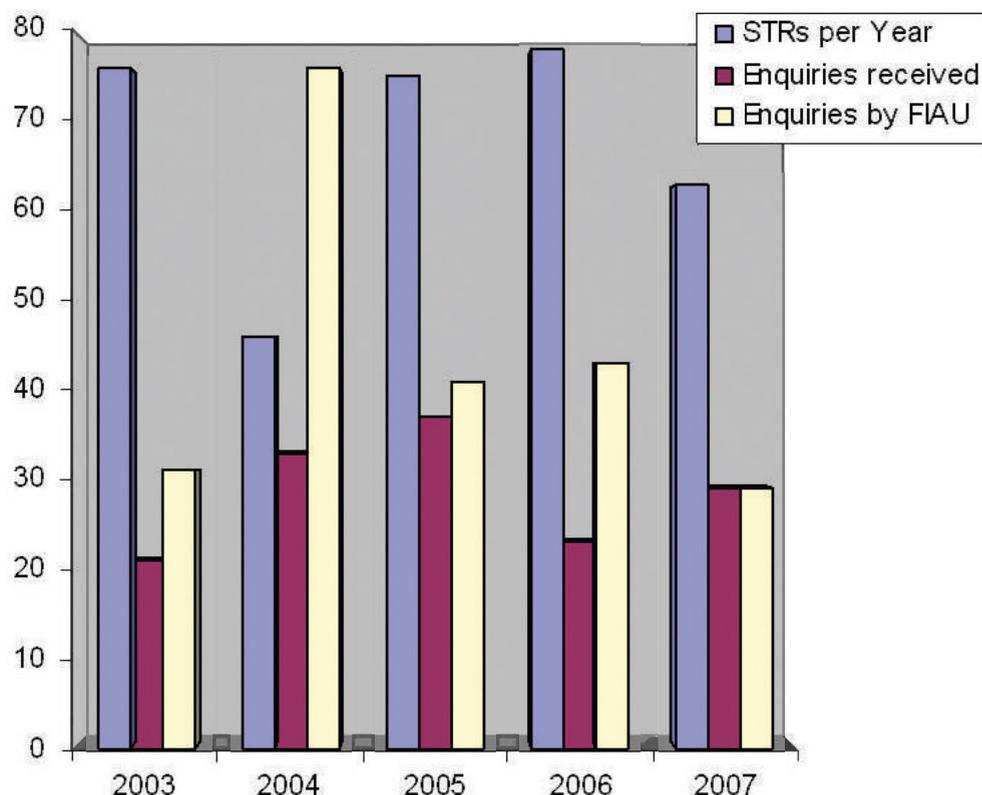
2.3 Requests for Co-operation and Assistance

A number of cases resulting from the STRs filed with the FIAU relate to internationally based criminal activity. This requires the FIAU to seek to cooperate and exchange information with its foreign

counterparts as part of its analysis process. Indeed, the FIAU cannot but reiterate the importance of efficient and effective co-operation between FIUs for their mutual benefit in the global fight against money laundering and the financing of terrorism.

Chart 4 provides a comparative indication of enquiries sought by the FIAU from foreign counterparts in relation to STRs received and enquiries sought from the FIAU by foreign counterparts.

Chart 4 STRs filed by credit institutions as compared to other sectors: 1995 - 2007



Indeed, in order to complete the analyses of a number of STRs during 2007 the FIAU has sought assistance from 24 foreign FIUs in respect of 29 STRs. By end 2007 the FIAU had received replies to 21 requests.

On the other hand during 2007 the FIAU received 29 requests for assistance from 15 different countries, up by 6 over 2006. The requests varied from requests for general information to those that required an elaborated analysis and compilation of

the information requested. During 2007, there were no enquiries to the FIAU that led the Unit to initiate its own investigation, compile its own analytical report and report to the Police. As at the end of the year, the FIAU had replied to all requests for assistance received.

Table 4 lists all the requests for assistance sought and received by the FIAU. It is worth noting that most of the enquiries were European counterparts. In five instances there were reciprocal enquiries.

Table 4 Requests for Co-operation and Assistance

Jurisdiction	Enquiries received		Requests to FIUs	
	Number	Replies	Number	Replies
Belgium	1	1	1	1
Bulgaria	4	4	1	-
British Virgin Islands	-	-	1	-
Croatia	3	3	-	-
Cyprus	1	1	1	1
Czech Republic	-	-	1	1
Estonia	-	-	1	1
Finland	2	2	-	-
France	-	-	1	-
Germany	-	-	1	1
Bailiwick of Guernsey	-	-	1	-
India	-	-	1	1
Isle of Man	1	1	-	-
Italy	2	2	-	-
Bailiwick of Jersey	3	3	-	-
South Korea	-	-	1	1
Latvia	2	2	1	1
Lithuania	-	-	1	1
FYR Macedonia	1	1	-	-
Netherlands Antilles	-	-	1	1
Poland	3	3	-	-
Portugal	1	1	-	-
Russia	-	-	3	2
San Marino	1	1	-	-
Serbia	-	-	1	1
Singapore	-	-	1	1
Spain	-	-	1	1
St Kitts & Nevis	-	-	1	1
Sweden	-	-	1	1
Switzerland	-	-	2	2
UAE	-	-	1	-
UK	3	3	3	1
USA	1	1	-	-
Venezuela	-	-	1	1
Total	29	29	29	21

2.4 Compliance Monitoring

In terms of the PMLA the FIAU is the authority that is responsible to ensure that institutions and persons that are subject to the obligations of the PMLR comply with their obligations and have in place effective AML/CFT procedures and programmes. In fulfilment of this task, the Act provides that, apart from carrying out its own compliance examinations, the FIAU may either request relevant supervisory authorities in Malta to undertake on-site examinations on its behalf or it may conduct on-site examinations in collaboration with these supervisory authorities. To this effect the FIAU had signed an agreement with the Malta Financial Service Authority (MFSA) for the on-site monitoring and examination of the financial sector.

Another agreement has been signed with the

Lotteries and Gaming Authority (LGA) for the gaming sector. The latter is still in the process of being put into operation.

On the financial sector side, compliance activities of the FIAU for the year continued to build on the signed agreement between the FIAU and the MFSA. A total of 39 on-site examinations, either focused or with an AML/CFT content, were conducted during the year. The examinations have identified certain shortcomings in some institutions none of which however has been of concern. In accordance with the FIAU/MFSA agreement, the FIAU, in collaboration with the MFSA, has ensured that corrective measures have been put in place to remove or mitigate risks. Table 5 shows a breakdown of the spread of these examinations by subject person.

Table 5 Compliance Visits 2007

Institution	Number of Visits
Credit Institutions	3
Financial Institutions	5
Insurance Brokers	4
Trustees	9
Investment Firms	18
Total	39

26 3.0 Management and Training

3.1 The Board of Governors

The PMLA requires that, as a minimum, the Board of Governors meets not less than ten times during a calendar year. Otherwise the Board sets its own procedures. During 2007 the Board of Governors met on 13 occasions to discuss and establish policies for the internal management of the FIAU and its international relations, including resources. During the year the Board also met on a number of other occasions to discuss matters that reflected on the FIAU as the national authority in AML/CFT issues. A number of such ad hoc meetings during 2007 mainly related to the transposition of Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purposes of Money Laundering and Terrorist Financing (the Third EU AML Directive)⁴ and to the finalisation of the Mutual Evaluation Report of the MONEYVAL Committee of the Council of Europe.

3.2 The Director

During the year the Director was involved in various meetings with the industry, supervisory authorities and other visiting organisations. Meetings with the industry and the supervisory authorities are often related either to findings from on-site examination reports or in relation to clarifications of policy issues. The FIAU seeks to make itself available for such discussions as the results often lead to further development in implementing the AML/CFT framework. On the other hand, meetings with external visiting organisations are often held at the request of the visiting organisation. During 2007 the Director held such meetings with law firms, real estate agents, license holders in the financial industry, and foreign delegations apart from the supervisory authorities. These meetings concerned the workings of the FIAU, the interpretation of the Act and Regulations, and implementation of the provisions of AML/CFT measures.

3.3 Resources

In the light of further developing the FIAU to be in a position to meet all demands placed on it by law and in fulfilling its responsibilities in its core activities, during 2007 the Board of Governors has taken measures to strengthen the Unit's resources. Having moved into its new premises which offer better office space in January 2007, the FIAU embarked on the implementation of its three-year plan to restructure the Unit. In order to strengthen its compliance and legal functions, the Unit engaged one legal officer who is also responsible for international relations, following a recruitment process which began in 2006. During 2007 the FIAU has increased its financial analysis resources by the recruitment of an additional financial analyst. An administrative/support officer was also engaged to replace the former officer who had resigned earlier in the year. Steps were also initiated to engage a compliance officer with the aim of enhancing the Unit's compliance capabilities. Since the Director is due to retire upon reaching pensionable age in the first quarter of 2008, the Board of Governors also initiated the process to recruit a designate Director. It is anticipated that this recruitment process will be completed by the first quarter of 2008. The FIAU looks forward to the further enhancement of its resources in 2008.

3.4 Training

The FIAU attaches great importance to training. Indeed in view of the increasing complexities of anti-money laundering and financing of terrorism issues, the FIAU further attaches great importance to the development and implementation of effective policies and procedures and the maintenance of an appropriate on-going training programme to combat this threat not only for subject persons but also for its own staff.

⁴ OJ L 214, 04.08.2006, p.29

In March 2007 the FIAU organised a half-day seminar on *The Role and Responsibilities of Real Estate Agents in Preventing Money Laundering and the Funding of Terrorism* held at the premises of the MFSA. The Seminar addressed three main topics, being:

- (i) An overview of money laundering and terrorist financing;
- (ii) The international and national legal framework for the prevention of money laundering and terrorist financing; and
- (iii) The role of FIUs and the FIAU.

In November 2007 the Legal and International Relations Officer participated in an extensive seminar organised by ACAMS in Amsterdam (Refer to Section 5.7).

Moreover the FIAU has assisted and participated in various training sessions organised by subject persons. The FIAU has also participated in providing training at the invitation of international bodies (Refer to Section 5).

4.0 Other Initiatives

4.1 The Prevention of Money Laundering Joint Committee

The Prevention of Money Laundering Joint Committee is an *ad hoc* representative committee whose objective is to create a dialogue between the industry and the authorities. The Committee brings together representatives from those agencies, authorities, and the industry that are subject to the PMLA and the PMLR, under the chairmanship of the Director of the FIAU. To meet its objective the Committee primarily provides a forum to discuss specific topics, exchange views and convey concerns and industry trends on developments in anti-money laundering and the financing of terrorism standards, regulations and obligations with a view of assessing their effectiveness and thus to make recommendations on best and effective implementing measures.

The Committee, which regulates its own procedures under its Terms of Reference, met four times during 2007. Anti-money laundering practical issues of mutual interest raised by the industry was an ongoing discussion during the meetings. The transposition of the Third Anti-Money Laundering Directive of the European Union continued to dominate most of the discussion. Other important items discussed during the meetings of 2007 were the activities of the EU Committee on the Prevention of Money Laundering and Terrorism Financing, the EU FIU Platform, and the MONEYVAL Third Round Mutual Evaluation Report (MER) on Malta.

4.2 Consultative Document

Following the discussions with the industry representatives, and relevant other interested parties at the Prevention of Money Laundering Joint Committee, the FIAU carried out an extensive exercise to further update the PMLR, 2003 to fully transpose the EU Directive (2005/60/EC) of 26 October 2005 on the prevention of the use of the

financial system for the purpose of money laundering and financing of terrorism (the Third Directive) and the Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures and technical criteria (the Implementation Directive).⁵

Having considered the provisions of the Third Directive and the Implementation Directive, the FIAU is of the opinion that both Directives should be transposed into a new set of prevention of money laundering and funding of terrorism regulations replacing the current Regulations of 2003 as amended in 2006. The 2006 amendments, harmonising the Regulations with the Forty Recommendations of the Financial Action Task Force, have already adopted, to a large degree, most of the provisions of the Third Directive. As a result, in November 2007 the FIAU launched a Consultative Document with its proposals for the transposition of the Third Directive and the Implementation Directive. In order to assist interested parties to comment on the Consultative Document, the FIAU included a brief description on the criteria it adopted in the transposition process whilst providing various correlation tables indicating the transposition of the various articles of the two EU Directives.

The Consultative Document has been circulated to all members of the Prevention of Money Laundering Joint Committee and other interested parties and posted on the website of the Unit.

Because of the implications of the new provisions and the obligations under the proposed regulations on business activities in enhancing measures to ensure effective continued prevention for institutions and activities from inadvertently being used for criminal activities, all stakeholders were asked to carefully consider the document and present any comments, views and opinions to the Unit by the end 2007. The FIAU has received a very encouraging response to the Consultative Document. The Unit will be evaluating all responses whilst continuing with its

⁵ OJ L 214, 04.08.2006, p 29

consultation and dialogue with all stakeholders to finalise the new regulations in early 2008.

4.3 MONEYVAL Third Round Mutual Evaluation Report on Malta

The Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL Committee) was established by the Council of Ministers of the Council of Europe. The Committee held its first meeting in December 1997. MONEYVAL is a select or sub-committee of the European Committee on Crime Problems (CDPC Committee) within the Directorate General of Legal Affairs and Human Rights of the Council of Europe. The Terms of Reference of the MONEYVAL Committee are to carry out self-assessments and mutual evaluations of anti-money laundering and financing of terrorism measures in the 27 Member States of the Council of Europe that are not also members of the Financial Action Task Force (FATF).

The third mutual evaluation of Malta by a MONEYVAL expert evaluation team took place from 13th -19th November 2005. The evaluation was based on the Forty Recommendations and the 9 Special Recommendations of the FATF, together with the Second AML Directive of the European Commission (91/308/EC as amended by 2001/97/EC). The report was discussed and adopted by the MONEYVAL Committee during its 24th Plenary meeting.⁶

The evaluation team consisted of experts from Liechtenstein (legal evaluator); Bulgaria (financial evaluator); Estonia (law enforcement evaluator); and an FATF representative from the United Kingdom (financial evaluator). The team was accompanied by a member of the Secretariat.

The examiners reviewed the institutional framework, the relevant AML/CFT laws, regulations and

guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBPs). The process also involved an examination of the capacity, the implementation and the effectiveness of all systems. The evaluation was based on the laws, regulations and other materials supplied by Malta during the on-site visit from 13 to 19 November 2005 and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant Maltese Government agencies and the private sector.

The Mutual Evaluation Report (MER) provides a summary of the AML/CFT measures in place in Malta as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how particular aspects of the systems could be strengthened. It also sets out Malta's level of compliance with the FATF 40 + 9 Recommendations.

According to the Methodology for the Third Round Mutual Evaluation process, a Recommendation is found to be *compliant* if all the essential criteria are fully observed; *largely compliant* if there are only minor shortcomings, with a large majority of the essential criteria being fully met; *partially compliant* if some substantive action has been taken and there is compliance with some of the essential criteria; and *non compliant* where there are major shortcomings, with a large majority of the essential criteria not being met.

The Report for Malta was discussed and adopted at the 24th Plenary Meeting held in Strasbourg from 10 – 14 September 2007. A three day pre-meeting between the Malta delegation and the evaluation team was held in late July and early August followed by another one day pre-meeting held on 22 September 2007 in Strasbourg.

⁶ OJL 166, 28.06.1999, p 77 and OJL 344, 28.12.2001, p 76 respectively.

Malta was evaluated on the PMLR as they were applicable at the time of the evaluation in 2005. Since the 2006 amendments⁷ to the Regulations were brought into force more than two months after the on-site visit, according to the Methodology these could not be taken into consideration. Had these amendments been brought into force before the on-site visit or within the time stipulated by the

Methodology, then Malta would have achieved better ratings all round.

Nonetheless, the ratings achieved by Malta compare exceptionally well even in relation to those countries that achieved high ratings. A general overview of the ratings achieved is provided in Table 6.⁸

Table 6 - Summary of ratings in MER

Standard	Compliant	Largely Compliant	Partially Compliant	Non Compliant
FATF40	18	13	7	2
FATF 9 SR	2	4	1	2

⁷ L.N. 42 of 2006

⁸ The full report is available on the FIAU website at www.fiumalta.org

4.4 Special Registration Scheme 2007

In anticipation of the adoption of the euro as the national currency as from 1st January 2008, the Ministry of Finance, in collaboration with the Central Bank of Malta, launched the Special Registration Scheme 2007 (the "Scheme"). The Scheme was designed to provide private individuals residing in Malta with a one-time opportunity to regularize their position in respect of their holdings of eligible assets as defined and that had not been declared for the purposes of the Income Tax Act. The Scheme was also designed to encourage a gradual and orderly surrender of undeclared hoarded cash and to facilitate its integration into the through the financial system. The Scheme was operative from 23 April 2007 until 31 July 2007. Registration of eligible assets under the Scheme was done through registration agents duly appointed by the Central Bank of Malta, and included:

- Maltese lira currency notes (minimum Lm1,000);
- Euro currency notes (minimum € 2,500);
- Deposits denominated in Maltese lira and/or euro held with local banks as at 16 April 2007 ;
- Securities denominated in Maltese lira and/or euro with a primary listing on the Malta Stock Exchange, held as at 16 April 2007.

Under the Scheme, applicants were required to sign a declaration stating that the registered eligible assets do not represent proceeds from any crime other than breaches of the Income Tax Act. According to the law the submission of false information would nullify the registration and render the applicant liable to prosecution. The Scheme does not exempt any person from complying with the requirements of the PMLA or the PMLR or from eventually being investigated for money laundering activities.

4.5 Cross Border Cash Movements

Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, which became applicable as from 15 June 2007 (the "Regulation"), provides for a Community-wide approach to control cash movements into or out of the Community.⁹ It obliges travellers entering or leaving the Community and carrying any sum equal to or exceeding €10,000 (or its equivalent in other currencies or easily convertible assets such as cheques drawn on a third party) to make a declaration to the customs authorities. Customs authorities are empowered under the Regulation to undertake controls on natural persons, their baggage and their means of transport and detain cash that has not been, or has been falsely, declared. Information obtained through declarations or through control procedures shall be recorded on a database and shared between the customs authorities within the Community.

Where there is evidence that cash is being carried cross border for the purposes of money laundering or terrorist financing, Member States may exchange information with each other. If it appears that the sum of cash involves fraud or other illegal activity affecting adversely the financial interests of the Community, Member States will also have to notify the Commission. Furthermore, the Regulation allows information to be supplied to the competent authorities of non-EU countries, within the framework of existing mutual assistance agreements and subject to Member States' internal provisions concerning the transfer of personal data to non-EU countries.

⁹ OJL 309, 25.11.2005, p 9

The Regulation takes account of a 2002 Commission report on cash movements into and outside of the EU. This report notes that from September 1999 to February 2000, EU customs authorities co-operated to examine cross-border cash movements for sums greater than €10,000. This exercise ("Operation Money Penny") revealed a considerable amount of cash and other assets moving in and out of the EU, amounting to €1.6 billion of which €1.35 billion was in the form of cash. Indeed, it is impossible to measure the exact scale of money laundering via cash movements; however, the volume of cash being transported does present a potential risk to both EU and national interests.

The Regulation also takes into account Special Recommendation IX adopted on 22 October 2004 by the Financial Action Task Force (FATF), which calls on governments to put measures into place to detect physical cross-border cash movements, including a declaration system or other disclosure obligation. Special Recommendation IX was developed with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through the physical cross-border transportation of currency and bearer negotiable instruments. Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation. Specifically, it aims to ensure that countries have measures in place:

- (a) to detect the physical cross-border transportation of currency and bearer negotiable instrument;
- (b) to stop or restrain currency and bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering;
- (c) to stop or restrain currency or bearer

negotiable instruments that are falsely declared or disclosed;

- (d) to apply appropriate sanctions for making a false declaration or disclosure, and
- (e) to enable confiscation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering.

Domestically, Legal Notice 463 of 2004 issued in terms of the External Transactions Act (Cap 233) provided for the declaration of cash or quasi cash exported from or imported into Malta. With the coming into force of the EU Regulation, the FIAU, in collaboration and consultation with the Customs Department and the Central Bank of Malta, drafted a new legal notice (Legal Notice 149 of 2007) replacing Legal Notice 463 of 2004. Legal Notice 149 of 2007 on cash controls, applies to persons entering, leaving or transiting through Malta. An appropriate declaration form must be filled in and forwarded to the officer on duty. False declarations or non declarations are subject to sanctions. The principle of obligatory declaration enables customs authorities to gather information on cash movements and, where appropriate, transmit that information to other authorities. The Customs Departments of all Member States maintain a database to report to the Commission about money declared. The database is made available to the FIAU on a regular basis.

5.0 Participation in International Fora

5.1 The EU Committee on the Prevention of Money Laundering and Terrorist Financing

The Committee on the Prevention of Money Laundering and Terrorist Financing (the Committee) was established in terms of the requirements of the EU Third Directive (2005/60/EC). During 2007, the FIAU continued to participate in the meetings of the Committee. The Committee continued its discussions on a common understanding on the criteria for recognition of third countries' equivalence. Initially the Committee is working on the basis of criteria through which a common European list of equivalent third countries for the purpose of simplified customer due diligence under Article 11(1) of the Directive could be compiled by Member States.

The Committee also provided a forum for a number of interesting and noteworthy presentations of researches. Prof. Birgit Unger, who has conducted extensive research on money laundering, presented the results of her studies to the Committee. The estimation of magnitude of money laundering is a central issue in her researches. She stressed that the risk based approach should be complemented with a general country risk assessment and measurement of money laundering. Countries' specific vulnerabilities have to be identified, so that the system can be shaped appropriately.

The Commission introduced a report prepared in relation to the application of the anti-money laundering rules to the legal profession. The Report was presented to the Committee together with the main conclusions of the seminar organised by the FATF in November 2006 in relation to the legal profession. The Commission stressed that both the conclusions of the survey it carried out and the FATF seminar identify two main areas where further work is needed: (a) the question of customer due diligence (CDD) performance in cross-border situations (in particular with regard to documentary

evidence and third party performance); and (b) the need for further outreach and awareness particularly as regards the separation of the reporting obligation from the professional secrecy/legal privilege. The International Bar Association (IBA) delivered a presentation in relation to the practical problems arising in relation to the performance of CDD measures in cross-border situations. The IBA in particular underlined the need to have a sufficiently harmonised regime in Europe. Additionally, the IBA stressed the need for increasing awareness among the legal professions and further guidance.

In the course of the Committee meetings the Commission gave a short presentation on the identification of clients in non-face-to-face activities under the Third Directive. It mentioned the different situations of non-face-to-face activities and the approaches taken by Member States. Amongst other the Commission recalled that, basically, there existed three main non-face-to-face situations: (i) the absent customer requesting to initiate a business relationship, (ii) the absent customer already identified in previous transactions and, finally, (iii) a person acting on behalf of a third party (legal or natural). One of the most common problems encountered appeared to be related to data protection, in the context of the collection and processing of identification information.

The Committee also dedicated enough discussion time in preparation for the FATF Plenary meetings as well as in briefing Member States on the FATF's activities. During 2007 the Chairman informed that the FATF had the intention to raise the issue of the treatment of the EU internal borders in relation to the implementation of SR VII and SR IX. He recalled that this issue was not new on the FATF agenda. Member States agreed on supporting and defending the EU implementation of SR VII (EU regulation 1781/2006 on wire transfers)¹⁰ and SR IX (EU Regulation 1889/2005 on cash controls) within the FATF framework. It was also agreed that the EU

¹⁰ OJ L 345, 08.12.2006, p 1

should require more information on the implementation of SRVII in non-EU FATF member countries, as a lax implementation of that standard by some major economic partners of the EU could result in significant administrative cost for the European banking industry.

The Committee also gave an opportunity for Member States to provide information in relation to the state of play in their implementation of the Third AML Directive, the deadline for which was 15 December 2007.

5.2 FIU.Net Task Force

At a meeting of the FIU Platform held in October 2007, the FIU.Net Bureau updated the participants on the status of FIU.Net, the proposal for which had been submitted to DG JLS on 28 September 2007. All EU Member States would be connected to FIU.Net. DG JLS confirmed that the project would be scrutinised very carefully by the Commission given its high importance for EU FIUs. The Ministry of Finance has agreed for the FIAU to join the FIU.Net. The FIAU is currently assessing the most cost efficient way of eventually joining the FIU.Net.

5.3 FIU Platform

The FIU Platform was set up by the EU Commission to enable EU FIUs exchange views and experiences on technical issues related to relevant provisions of the Third AML/CFT Directive. The Platform is therefore intended to serve as a forum for the discussion of issues related to differences in the operational structures of FIUs in order to explore possibilities of a harmonisation process, particularly in the field of gathering and interpretation of information for statistical purposes.

The FIAU continued to participate in the meetings of the FIU Platform. During 2006 Member States

had been grouped into eight teams with each team being assigned a project. During 2007 three projects were considered priority issues and were examined in the first place:

Data protection and confidentiality: The mandate covers the identification of critical areas where data protection measures may have an impact on AML/CFT activities, or vice versa, as well as the identification of problems and best practices in ensuring confidentiality on disclosures and other relevant information.

Feedback: The mandate of this sub-group covers the identification of different kinds of a whole range of feedback situations, (e.g. competent authorities to the FIU; the FIU to the reporting entities; FIU to FIU) in international cooperation; on specific cases; and on trends, typologies, and practices. Also the timing of the feedback and its content should be considered. The Commission reminded the FIUs of the FATF paper on best practices for feedback, issued in 1998, which still provides helpful background indications. Malta participated on the feedback project which was led by the UK. The UK FIU summarised the findings in a meeting in October 2007. The report gave a number of recommendations for best practices, ranging from the establishment of regular seminars to developing mechanisms for disseminating information and providing feedback.

Information available and cooperation with other FIUs: The sub-group will deal with the identification of information available to FIUs whilst examining existing obstacles to the effective exchange of information. Eleven issues have been highlighted in the report, ranging from the analysis of the nature, structure and content of STRs and FIUs' access to law enforcement data, to the constraints that affect the exchange of information. FIUs were then requested to select from this list the issues on which they believed further analysis could be made, and also make further comments if they wished.

A presentation of the BRITE¹¹ project was given at the Platform. The project, co-financed by DG Information Society, is scheduled to run until the end of February 2009. It is hoped that the BRITE platform creates a management instrument for business registers to interact across the EU. As regards FIUs, the aim would be for them to have access to the BRITE platform via domestic business registers or via the FIU.Net, thus ultimately allowing complete cross-border interoperability. Notification of data to FIUs would take two forms: a Single Event Notification Service (SENS), relating to modification of specified business register information, and a more generic Dynamic Event Notification Service (DENS), relating to flows of events.

5.4 The Council of Europe MONEYVAL Committee

During 2007 staff of the FIAU, together with members of the Board, formed part of the Malta Delegation to the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL). During the year the Committee held its 23rd, 24th and 25th Plenary Meetings in Strasbourg with the main items on the agenda being the discussions of the third round mutual evaluation reports.

The report for Malta was discussed and adopted at the 24th Plenary Meeting held in Strasbourg from 10 – 14 September 2007. A three day pre-meeting between the Malta delegation and the evaluation team was held in late July early August followed by another one day pre-meeting held on 22 September 2007.

The Experts' Review Group of MONEYVAL is responsible to review all mutual evaluation reports for the sake of consistency and quality, and to advise the Secretariat, Evaluation Team and the Plenary accordingly. During 2007 the Deputy Chairman of

the FIAU, as a member of the Review Group, reviewed the reports for Andorra, Czech Republic, Georgia, Liechtenstein and Monaco.

As a member of the MONEYVAL Bureau, the Deputy Chairman of the FIAU also attended the 15th Meeting of the Bureau held in Strasbourg between 3 - 4 May 2007 and three *ad hoc* Bureau meetings held in the margins of the 23rd, 24th and 25th MONEYVAL Plenary meetings in Strasbourg. At the 24th Plenary meeting of MONEYVAL held on 10 – 14 September 2007, the Mutual Evaluation Report of the Czech Republic was presented, which was preceded by a three-day pre-meeting held from 31st July to 2nd August 2007. One of the senior financial analysts of the FIAU formed part of the evaluation team.

The two senior financial analysts of the FIAU also formed part of the evaluation team in respect of the two (2) mutual evaluations of anti-money laundering and financing of terrorism measures of Council of Europe members, specifically San Marino and Bulgaria. The evaluation was based on the laws, regulations and other materials supplied by San Marino and Bulgaria during the on-site visits from 5th to 9th March 2007 and 22nd – 28th April 2007 respectively. The reports are expected to be presented to the MONEYVAL Plenary during 2008.

In 2007, the Deputy Chairman of the FIAU participated extensively in the work of MONEYVAL. One exercise in particular consisted in carrying out a detailed comparison of the EU Third AML Directive (2005/60/EC) and the EC Implementation Directive (2006/70/EC) against the FATF 40 Recommendations and the Interpretative Notes. The Third Directive has been adopted as a MONEYVAL reference document for the continuation of the Third Round of Mutual Evaluations as from January 2008. The exercise identified areas of divergences between the two standards and served as the document upon which

¹¹ Business Register Interoperability throughout Europe.

the Plenary amended the Mutual Evaluation Questionnaire for the 2008 MONEYVAL Evaluations. The findings of the exercise were presented to the MONEYVAL delegations at the 25th Plenary in December 2007.

The Deputy Chairman also took part as a lecturer in the MONEYVAL Training Seminar for evaluators for the Third Round Mutual Evaluations held in Strasbourg between 21st - 25th May 2007. His participation involved delivering lectures on six Modules, dealing with Customer Due Diligence Measures and Requirements; Wire Transfers; Internal Controls and the treatment of foreign branches and subsidiaries; Regulation, Supervision, Monitoring and Sanctions; Legal Persons and Legal Arrangements; and on EU AML Directives.

One of the Senior Financial Analysts of the FIAU participated actively as a member of the Working Group on Typologies. The FIAU further contributed to the work of the Council of Europe by making three (3) presentations at the meeting of the Working Group on Typologies, held in Montenegro from 20th to 31st October 2007. The meeting was attended by Dr Anton Bartolo, Board Member, and the Senior Financial Analyst. The topics covered dealt with organised crime and terrorist financing methods involving counterfeit products; money laundering techniques and counterfeiting; and investigative techniques involving counterfeiting products.

5.5 FATF Meetings

As an associate member of the FATF, the Council of Europe is represented by a MONEYVAL delegation composed of up to seven persons. The President and one official of the Secretariat together with five other delegates participate actively in the FATF Plenary meetings. The Deputy Chairman of the FIAU, as a member of the MONEYVAL Bureau, participated in the FATF XVIII 3rd Plenary held in Paris at the OECD Headquarters between 25th and 29th June 2007.

5.6 The Egmont Group

The Egmont Group of Financial Intelligence Units is an informal international gathering of financial intelligence analysis units. The Group was formed in 1995, and took its name from the palace in Brussels where the meeting took place. The FIAU has become a member of the Egmont Group since 2003. At the Egmont Plenary meeting held in Bermuda on 30th – 31st May 2007, six (6) FIUs were welcomed into the Egmont Group with the full rights and privileges of current members. The total number of members of the EGMONT group now stands at 106 national FIUs.¹²

5.7 The Association of Certified Anti-Money Laundering Specialists

The Association of Certified Anti-Money Laundering Specialists (ACAMS) is a membership based organization that provides resources for financial institutions and related businesses that help train, identify and locate practitioners who specialize in money laundering control policies, procedures & regulations. The association seeks to help compliance officers, anti-money laundering specialists, in-service and retired government regulators and enforcement agents perform their duties well by providing up-to-date information, education, career development and professional networking opportunities. As an international organisation, it provides a platform for career development and networking opportunities for professionals in the anti-money laundering field. ACAMS has its own educational programmes through which members can obtain the Certified Anti-Money Laundering Specialist (CAMS) certification.

The ACAMS Conference is based on four specific platforms. *General Sessions* with a panel of normally four experts who share their advice, experience and practices on particular timely themes with a question and answer session; *Seminars* which are sessions with fewer participants and speakers addressing specific AML issues; *Workshops* where participants work in groups to discuss and solve practical problematic issues; and finally

¹² Due to other commitments related to the MONEYVAL Mutual Evaluation Report on Malta, the FIAU could not participate in the Plenary.

Round Table sessions consisting of intimate discussions with no more than fifteen participants and a moderator on specific issues.

ACAMS held its European Money Laundering Conference and Exhibition in Amsterdam between the 7th and 9th November 2007. Earlier in the year, at the invitation of ACAMS for MONEYVAL to participate in this Conference, the MONEYVAL Secretariat had asked the Deputy Chairman, FIAU, to represent MONEYVAL as a speaker.

The Deputy Chairman formed part of a panel of four speakers in the General Session on *The Implementation Countdown: How to successfully comply with the European Union Third Money Laundering Directive*. His role in this general session was to speak on the requirements expected of the industry to implement a risk based

approach. In the process the Deputy Chairman also referred to some of the work of MONEYVAL in adopting the Third Directive as a reference document for its mutual evaluations and the identified divergences between the Third AML Directive and the FATF40.

The Deputy Chairman further participated in a Round Table session on *Complying with the New Payments Services Directive: What's the bottom line?*, for which he presented a detailed paper on the Payments Services Directive identifying areas that could be vulnerable for money laundering or the financing of terrorism.¹³ Through a set of a number of open-ended questions on this issue the participants got involved in a focussed and detailed discussion trying to identify how to apply the requirements under the Payment Services Directive to certain requirements under the Third Services Directive.

¹³ OJ L 319, 05.12.2007, p 1

38 The Risk-Based Approach - An analysis

The threat of money laundering and the financing of terrorism through financial institutions can be effectively managed not only by understanding the potential money laundering and terrorist financing risks associated with customers and transactions, but by addressing and accounting for these risks. The core principle of a risk-based approach is that the risk drives the relevant processes via differentiation in the risk indicator. The higher the risk, the more sophisticated the identification and monitoring process should be.

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Preamble 22) provides: *It should be recognized that the risk of money laundering and terrorist financing is not the same in every case. In line with a risk-based approach, the principle should be introduced into Community legislation that simplified customer due diligence is allowed in appropriate cases.*

There is no universally agreed and accepted methodology by either governments or institutions, which prescribes the nature and extent of a risk-based approach. The specifics of an institution's particular risk-based process should be determined by each institution based on the operations of that institution. Some degree of judgement is involved in determining the level of risk a particular client or product, for instance, represents. These are not static assessments. They will change over time, depending on how circumstances develop, and how threats evolve.

The Wolfsberg Group¹⁴ first highlighted the need for a risk-based distinction in its recommendations for heightened scrutiny on particularly sensitive clients in 2000. Since then, both the Basel Committee, in its consecutive due diligence papers, and the Financial Action task Force (FATF) in its revised 40 recommendations, have strongly emphasized such an approach.

A risk-based approach may take into account additional risk variables, specific to the industry or client or transactions or products. These variables may increase or decrease the perceived risk posed by the client or transaction. Some relevant risk indicators would include:

- **Geographic factors:** At the top of all lists of risk indicators, one usually finds reference to the country of origin of the client or the transactions. The quality of the regulatory environment and the enforcement of anti-money laundering standards are further important indicators. The reputation and regulatory risk for a bank is much higher with a client from a sensitive country than with client from a country with a reputation for high AML/CFT standards.
- **Industry/profession:** Some industries and professions are more sensitive to money laundering than others. Where an institution falls into such a category, or where a private client has a substantive connection with such an institution, higher standards of due diligence should be applied. There is no generally accepted list of industries or professions that are particularly prone to money laundering, so it will fall on individual subject persons to decide.

¹⁴ The Wolfsberg Group is an association of 12 global banks, which aims to develop financial services industry standards, and related products, for Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies.

- *The level of regulation or other oversight or governance regime to which a customer is subject:* A customer that is a financial institution, for instance, and is regulated in a jurisdiction recognized as having adequate anti-money laundering and financing of terrorism standards poses less risk than a customer that is unregulated or subject only to minimal AML/CFT regulation. Additionally, institutions and their majority owned subsidiaries that are publicly owned and traded on a recognized exchange pose minimal money laundering risks.
- *Politically exposed persons (PEPs):* A politically exposed person, or PEP, is the term used for individuals who are or have been entrusted with prominent public functions in a particular country. This category includes, for example, heads of States or government; senior politicians and government, judicial or military officials; senior executives of State owned corporations and important political party officials.
- *Volume:* A risk-based approach should divide clients according to the size of their assets and transaction volumes. Unusually high levels of assets or unusually large transactions compared to what might reasonable be expected of customers with a similar profile may mean that clients not otherwise seen as a higher risk should be treated as such.
- *Products/Services:* i.e. where a client uses a bank to take out, for example, a mortgage loan versus a client who is involved in a number of trusts and domiciliary companies, makes extensive use of the bank's payment and letter of credit services and operates through multiple account relationships in various locations where the bank is active. The two examples create a completely different risk exposures for the bank. A risk-based approach must take this into account when assessing a client's risk and ensure that the due diligence is structured in a way that addresses the risk accordingly.
- *Contact/relationship:* The public perception is that one cannot know one's client properly without having met him personally. Therefore, where the subject person has not met the client personally, this poses a higher risk. Long standing relationships involving frequent client contact throughout the relationship may present less risk from a money laundering perspective. However, the use by clients of intermediate corporate vehicles or other structures that have no clear commercial or other rationale or that unnecessarily increase the complexity or otherwise result in a lack of transparency will increase the risk unless the rationale is understood and the structure is sufficiently transparent to the institution.

An assessment of the various risks will result in the application of appropriate due diligence when entering into a relationship, and ongoing due diligence and monitoring of transactions throughout the course of the relationship. A reasonably designed risk-based approach will provide a framework for identifying the degree of potential risks associated with clients and transactions and allow for a subject person to focus on those customers and transactions that potentially pose the greatest risk of money laundering.

Such measures and controls may require investment both in terms of resources and time in order to identify and capture appropriate customer risk data. The strategies to manage and mitigate the identified money laundering and terrorist financing risks in financial institutions are typically aimed at preventing the activity from occurring through a mixture of deterrence (e.g. appropriate CDD measures), detection (e.g. monitoring and suspicious transaction reporting), and record-keeping so as to facilitate investigations.

These measures and controls may include the following:

- increased awareness by the subject person of higher risk situations;
- increased levels of know-your-customer or enhanced due diligence;
- escalation for approval of the establishment of an account or relationship;
- increased monitoring of transactions;
- increased levels of ongoing controls and reviews of relationships.

In line with the FATF recommendations, the Third Directive requires enhanced due diligence for customers or situations that are, by their nature, of a higher risk. By adopting a risk-based approach, competent authorities and financial institutions are able to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. Subject persons can therefore focus their attention and resources on those clients/customers, products and transactions that are most vulnerable to money laundering and terrorist financing, allowing resources to be allocated in the most efficient ways. The principle is that resources should be directed in accordance with priorities so that the greatest risks receive the highest attention.

The risk-based approach is arguably preferable to a more prescriptive approach in the area of anti-money laundering and terrorist financing because:

- (i) It is more flexible. The risk of money laundering and terrorist financing varies across customers, jurisdictions, products and delivery channels, and over time.
- (ii) It is more effective. Subject persons are better placed than legislators to effectively assess and mitigate the particular money laundering and terrorist financing risks they face.
- (iii) It is more proportionate. A risk-based approach promotes a common sense and intelligent approach to fighting money laundering and terrorist financing rather than a tick box approach. It also allows subject persons to minimise the adverse impact of anti-money laundering procedures on their legitimate customers, for example at the point of establishing a business relationship.
- (iv) It is more cost-effective. The risk-based approach focuses anti-money laundering and counter-terrorist financing resources and efforts on those areas where they will have most impact.

For the implementation of an effective risk-based approach, three aspects are key:

- (i) Support for the approach by supervisors. Supervisors need to exercise their powers in a way that promotes the risk-based approach. With any anti-money laundering regime it is inevitable that some money laundering and terrorist finance activity will 'slip through the net'. Supervisors need to recognise this and act accordingly. If a subject person demonstrates that money laundering or terrorist financing occurred despite the existence and operation of robust systems and controls, then this should not be a trigger for enforcement action.

(ii) Information from government and law enforcement on the risks and vulnerabilities. While subject persons will have the best knowledge of their products and customers, they need to be supported in their decision on the risk of these by information from Government, international bodies like the FATF and law enforcement on money laundering and terrorist financing risks and vulnerabilities.

(iii) Development of appropriate policies and procedures to identify and assess money laundering and terrorist financing risk, using intelligence and judgement rather than a tick box approach to effectively mitigate risks. Subject persons will have to demonstrate to their supervisors the appropriateness and effectiveness of their policies and procedures in the light of their money laundering and terrorist financing risks.

Regardless of the strength and effectiveness of AML/CFT controls established by financial institutions, criminals will continue to attempt to move illicit funds through the financial sector undetected and will, from time to time, succeed. It must be recognized that any reasonably applied controls, including controls implemented as a result of a reasonably implemented risk-based approach, will not identify and detect all instances of money laundering or terrorist financing. A well designed and effectively implemented risk-based approach will provide an appropriate and effective control structure to manage identifiable money laundering and terrorist financing risks.

42 References

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