



FINANCIAL INTELLIGENCE ANALYSIS UNIT

# ANNUAL REPORT 2010





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# FINANCIAL INTELLIGENCE ANALYSIS UNIT

## Composition of the Board of Governors

### Chairman

Silvio Camilleri M.O.M., LL.D.

### Deputy Chairman

Herbert Zammit LaFerla ACIB

*Mr. Herbert Zammit LaFerla held the position of Acting Chairman as from 8<sup>th</sup> September 2010 after the resignation of Dr. Silvio Camilleri who was appointed Chief Justice*

### Members

Anton Bartolo LL.D.

Pierre Calleja

### Secretary

Manfred Galdes B.A., LL.M. (Leicester), LL.D.

### Director

Manfred Galdes B.A., LL.M. (Leicester), LL.D.



*LEFT TO RIGHT: Dr. Manfred Galdes, Mr. Pierre Calleja, Dr. Silvio Camilleri, Dr. Anton Bartolo and Mr. Herbert Zammit LaFerla*



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

**Financial Intelligence Analysis Unit  
Valletta**

March 2011

Dear 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 2010.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Grech', is written over a light grey rectangular background.

**Dr. Peter Grech**  
Chairman



# TABLE OF CONTENTS

<b>CHARTS AND TABLES</b>	8
<b>ABBREVIATIONS</b>	9
<b>STATEMENT OF THE CHAIRMAN</b>	10
<b>1 THE FINANCIAL INTELLIGENCE ANALYSIS UNIT</b>	12
Establishment and Composition	12
Functions	12
Structure of the Organisation	13
<b>2 OPERATIONS</b>	14
Financial Analysis	14
Statistics	14
International Co-operation	22
Compliance Monitoring	26
Money Laundering Cases	27
<b>3 MANAGEMENT AND TRAINING</b>	29
The Board of Governors	29
The Director	29
Resources	29
Training	29
<b>4 OTHER DEVELOPMENTS AND INITIATIVES</b>	32
Legislative Developments	32
The Joint Committee on the Prevention of Money Laundering and Funding of Terrorism Regulation	32
Procedures and Guidance Implementing the Provisions of the Prevention of Money Laundering and Funding of Terrorism Regulation	33
FATF Statements	33
Freezing Orders	34
<b>5 PARTICIPATION IN INTERNATIONAL FORA</b>	35
EU Committee on the Prevention of Money Laundering and Terrorist Financing	35
EU FIU Platform	35
The Egmont Group	36
MONEYVAL	37



## CHARTS & TABLES

<b>TABLE 1</b>	STRs and cases (2002 – 2010)	14
<b>CHART 1</b>	STRs disclosures annually (1995 – 2010)	15
<b>TABLE 2</b>	STRs received by the FIAU by quarter (2003 – 2010)	15
<b>CHART 2</b>	STRs received by the FIAU monthly (2009 – 2010)	16
<b>TABLE 3A</b>	Outcome of STRs and cases (2003 – 2010)	17
<b>TABLE 3B</b>	Outcome of reports generated internally (2003 – 2010)	17
<b>TABLE 4</b>	STRs filed by subject persons for the period 2003 to 2010 in absolute numbers and as a percentage of the total number of STRs	18
<b>CHART 3</b>	STRs filed by credit institutions as compared to all other sectors for the years 2003 to 2010	19
<b>TABLE 5A</b>	Suspected predicate offences in cases referred to the Police on suspicion of money laundering (2003 – 2010)	21
<b>TABLE 5B</b>	Cases referred to the Police on suspicion of funding of terrorism (2003 – 2010)	21
<b>TABLE 6</b>	Requests for co-operation and assistance (2003 – 2010)	24
<b>CHART 4</b>	Comparative analysis of requests received and requests made by the FIAU	24
<b>TABLE 7</b>	Requests for co-operation and assistance (2010)	25
<b>TABLE 8</b>	On-site AML/CFT examinations conducted by different supervisory authorities (2010)	26

# ABBREVIATIONS

<b>AML/CFT</b>	Anti-Money Laundering and Combating the Financing 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>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 financing 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>PMLA</b>	Prevention of Money Laundering Act
<b>PMLFTR</b>	Prevention of Money Laundering and Funding of Terrorism Regulations
<b>STR</b>	Suspicious Transaction Report

## STATEMENT OF THE CHAIRMAN



It is my pleasure to introduce the FIAU's Annual Report for 2010.

The report aims at giving a detailed overview of the workings of the organisation and of its role and involvement in various aspects of the fight against money laundering and the funding of terrorism.

The organisation's role and the nature of its task make it imperative that it should be active in the domestic financial scene and on the Community and international levels.

As accounted for by this report, the organisation has used its limited resources effectively in order to fulfil its multifarious obligations.

The year under review saw an increase both in STR disclosures and in the number of cases analysed over the 2009 figures but fit within the annual average number of reports received over the last five years. It is encouraging from the point of view of the effectiveness of the organisation that during the period covered by the report a number of cases were also analysed on the basis of information obtained by the FIAU from its own sources without an STR having been filed.

Awareness of reporting obligations and appreciation of their serious nature is also gradually increasing even in sectors where these reporting obligations have come into force more recently.

In the field of compliance monitoring, where the MFSA and the LGA are also actively involved, the FIAU's compliance monitoring capacity has been strengthened through the increase of the number of staff in the Compliance section. The number of on-site visits carried out by the FIAU has increased.

The organisation is also an important point of reference in proposing legislative changes for the purpose of keeping Malta's legislation abreast with international obligations and developments in the field of money laundering and terrorist financing and this year also saw some important legislative amendments in this regard.

During the year under review the FIAU has also been active in the preparation of implementing procedures to assist the financial sector in complying with its legal obligations and to strengthen legal certainty in this area.

Given the global nature of the fight against money laundering and the financing of terrorism and given the futility of attempting to take on such a task only on the domestic level the FIAU's work, as a matter of necessity, also involves extensive and active participation in a number of Community and international bodies and real accountability to the same. In this field the organisation has, over the period covered by this report, managed to honour a large number of international commitments, including those within the European Union, the FATF, the Council of Europe MONEYVAL Committee and the Egmont Group.

The abuse of the financial institutions for the purpose of money laundering and terrorist financing erodes the very backbone of the financial sector and endangers our societies. The fight against such abuse is continuous and mammoth. Any feelings of optimism which we may have on this issue must therefore necessarily be moderated and cautious. That being said however, it is felt that in this general context the work of the FIAU has, throughout 2010, proceeded steadily in the proper fulfilment of its difficult function and in preparation for facing future challenges.

In introducing this report I feel that it would not be proper for the contribution of two persons who served as Chairman, Deputy Chairman and Acting Chairman of the organisation during 2010 and whose term on the FIAU has ended to go unmentioned. The FIAU Board is grateful for the long and valuable service to the organisation of the current Chief Justice Dr. Silvio Camilleri and of Mr. Herbert Zammit LaFerla, who has now retired from his management role at the Central Bank of Malta, whose contribution to the work covered in this report is considerable.



**Dr. Peter Grech**

# 1. THE FINANCIAL INTELLIGENCE ANALYSIS UNIT

## Establishment and Composition

The FIAU is the national central agency in Malta established under the PMLA (Chapter 373 of the Laws of Malta) responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating ML/FT.

The Unit was established and became operational on 1<sup>st</sup> October 2002, by virtue of Legal Notice 297 of 2002, which brought into force comprehensive amendments to the PMLA enacted by means of Act XXI of 2001. Structurally, the FIAU is set up as an agency within the Ministry responsible for finance, however the law provides for full autonomy for the Unit in its operational activities.

The PMLA provides that the FIAU is to be composed of a Board of Governors and a Director, with the Board being responsible for the establishment of the policy of the Unit and the Director being required to execute that policy. The FIAU has set up the following Sections in order to discharge its functions: an Administration & I.T. Section, a Financial Analysis Section, a Compliance Section and a Legal & International Relations Section.

## Functions

The functions and responsibilities of the FIAU are listed in Article 16 of the PMLA with three of these functions being considered to be its core functions:

**The receipt and analysis of information on transactions or activities suspected to involve ML/FT** from institutions and persons that are subject to the obligations of the PMLFTR. Where an analysis carried out by the Financial Analysis Section gives rise to a conclusion that a reasonable suspicion of ML or FT subsists, the Unit reports the suspicion to the Police. 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 and co-operation 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.

**Oversight and monitoring of compliance** by persons and institutions in terms of the PMLFTR. In doing so 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.

**In addition to the aforementioned functions, the FIAU is also entrusted with the following areas of responsibility:**

Gathering of information on the financial and commercial activities in Malta to detect areas of activity which may be vulnerable to ML/FT.

Advising the Minister responsible for finance on all matters and issues related to the prevention, detection, investigation, prosecution and punishment of ML/FT.

The monitoring of developments in methods, typologies, and trends in order to provide guidance and feedback by transmitting updated information to subject persons.

The compilation of statistics and records, the dissemination of information and the issuance of guidance and procedures for the implementation of the provisions of the PMLFTR.

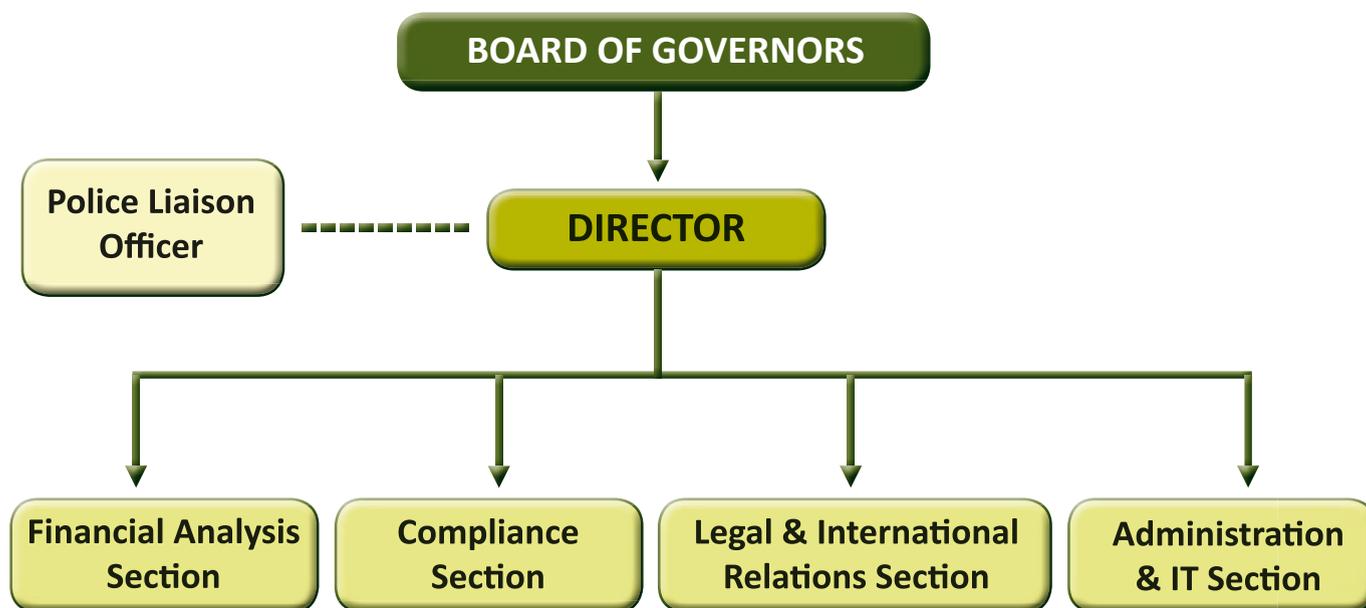
The promotion and provision of training on matters related to the prevention of ML/FT.

Advising and assisting natural and legal persons to develop effective measures and programmes for the prevention of ML/FT.

The reporting to the Police of any suspicion of ML/FT where the FIAU becomes aware of any suspicious activity during the course of the discharge of its functions, even where the knowledge of the suspicious activity does not arise from a report under the PMLFTR.

Participation in international fora, including the meetings, committees and working groups connected to the Egmont Group, the EU FIU Platform, the EU Committee on the Prevention of Money Laundering and Terrorist Financing and MONEYVAL.

# STRUCTURE OF THE ORGANISATION



## BOARD OF GOVERNORS

**Composition:** Chairman, Deputy Chairman and two other members.

**Appointment:** By the Minister responsible for finance - one person 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. The Chairman and the Deputy Chairman are appointed from among the Board members by the Prime Minister after consultation with the Minister responsible for finance.

**Functions:** Lays down the policies of the Unit.

## DIRECTOR

**Appointment:** By the Board upon a regular call for applications.

**Functions:** Responsible for the execution of the established policies and reports to the Board accordingly. Carries out all the 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 but has no right to vote.

## POLICE LIASION OFFICER

**Appointment:** A police officer not below the rank of inspector appointed by the Commissioner of Police.

**Functions:** Assists the Unit in the analysis and processing of STRs and of information and intelligence data collected by the FIAU. He may 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. He also advises the FIAU on investigative techniques and on law enforcement issues.

## FINANCIAL ANALYSIS SECTION

**Functions:** Responsible for the analysis of suspicious transaction reports and preparation of analytical reports.

## COMPLIANCE SECTION

**Functions:** Ensures compliance with the PMLA and the PMLFTR by subject persons.

## LEGAL & INTERNATIONAL RELATIONS SECTION

**Functions:** Advises on legal matters and manages the international aspects of the Unit's functions.

## ADMINISTRATION & IT SECTION

**Functions:** Responsible for the Unit's administrative, accounting and IT set-up.

## 2. OPERATIONS

### Financial Analysis

FATF's Recommendation 26 requires States to establish a FIU that serves as a national centre for the receiving and requesting, analysis and dissemination of STRs and other information regarding potential ML/FT. The wording of the Recommendation leaves absolutely no doubts as to the purpose of 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.

Once the analysis in relation to the report is completed by the Financial Analysis Section, a preliminary report is drawn up and presented to the Financial Analysis Committee, an internal body chaired by the Director, composed of the Unit's financial analysts and the Legal and International Relations Officer. The Committee is tasked with assessing the contents of the report and reaching a determination as to whether a reasonable suspicion of ML/FT subsists in terms of law. If the Committee determines that the requirements set out in the law have been satisfied, the analytical report, together with all relevant information, is submitted to the Police for further investigations. The STR received from subject persons, being a confidential document, is retained by the FIAU and is not submitted to the Police with the analytical report.

The same procedure as outlined above is adopted by the FIAU where the Unit draws up an analytical report on the basis of information in its possession which does not originate from a STR.

The Unit strives to provide general feedback to subject persons and supervisory authorities on the quality of STRs and to further assist them in the monitoring of activities and transactions. To this effect the FIAU carries out periodical overall analyses of the STRs where it tries to identify and draw patterns, trends and typologies of ML or FT. The Unit also maintains comprehensive statistical data which is updated on an ongoing basis.

A review of the statistical data relating to financial analysis carried out during 2010 is contained in the following paragraphs.

### Statistics

During the year under review 73 STR disclosures were made to the FIAU, an increase of 15.9% over 2009. This rise in disclosures is to be considered a significant increase in absolute terms but minor when seen in terms of cases.<sup>1</sup> The figure related to disclosures has, in fact, resulted in the analysis of 55 cases by the FIAU, a 3.7% increase over 2009. A further 8 cases were analysed by the FIAU which did not result from a STR but were generated internally on the basis of information obtained by the FIAU from different sources and other data obtained through the ongoing monitoring of the financial and non-financial sectors and the contents of local and international media reports.

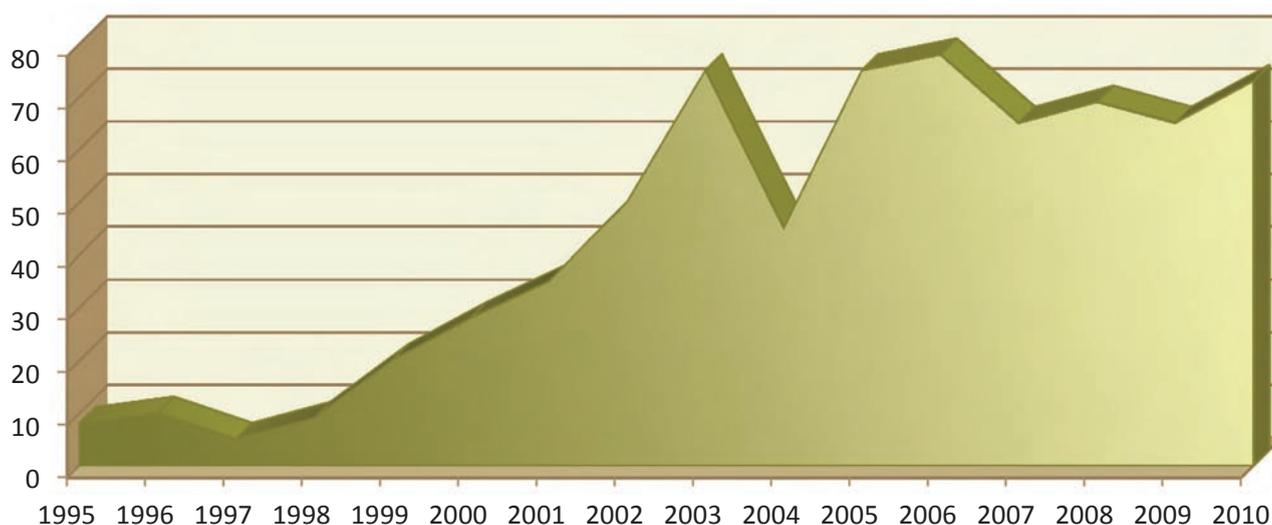
Table 1 below contains an overview of the number of STR submissions and cases opened by the FIAU since its first year of operation up to the end of 2010. The figures contained in this table confirm the level of stability attained over the years since the establishment of the FIAU which had already been commented upon in the 2009 Annual Report. Chart 1 then gives a graphic representation taking into consideration also the eight-year period prior to the establishment of the FIAU when reports were made by subject persons directly to the Police.

**Table 1: STRs and cases (2002 - 2010)**

	2002 <sup>2</sup>	2003	2004	2005	2006	2007	2008	2009	2010
STRs	11	76	46	75	78	63	69	63	73
Cases	11	58	43	62	72	55	67	53	55

<sup>1</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 with 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.

<sup>2</sup> Figures for 2002 cover the period from 1<sup>st</sup> October 2002, when the FIAU became operational, to 31<sup>st</sup> December 2002. The annual figure of disclosures and cases for 2002, taken as an average for comparative purposes, has been taken to be 44.

**Chart 1: STR disclosures annually (1995 - 2010)**

The 73 STRs received by the Unit during 2010 bring the total number of disclosures to the FIAU since it became operational in 2002 up to 554, giving rise to the opening of 476 cases for analysis based on disclosures. The number of disclosures made during 2010 exceeds the average figure of 65.2 registered over the nine years of operation of the FIAU giving encouraging signs that the efforts being made to strengthen the levels of awareness among subject persons are bearing fruit. The increased quality of reporting evidenced throughout the year further confirms that the employees of subject persons are becoming more familiar with the obligations under the PMLFTR and are becoming more confident in determining what constitutes a suspicion of ML/FT and what transactions or activities warrant a disclosure. It has also been noted that the phenomenon of so-called “defensive reporting”, although still present, is diminishing with time.

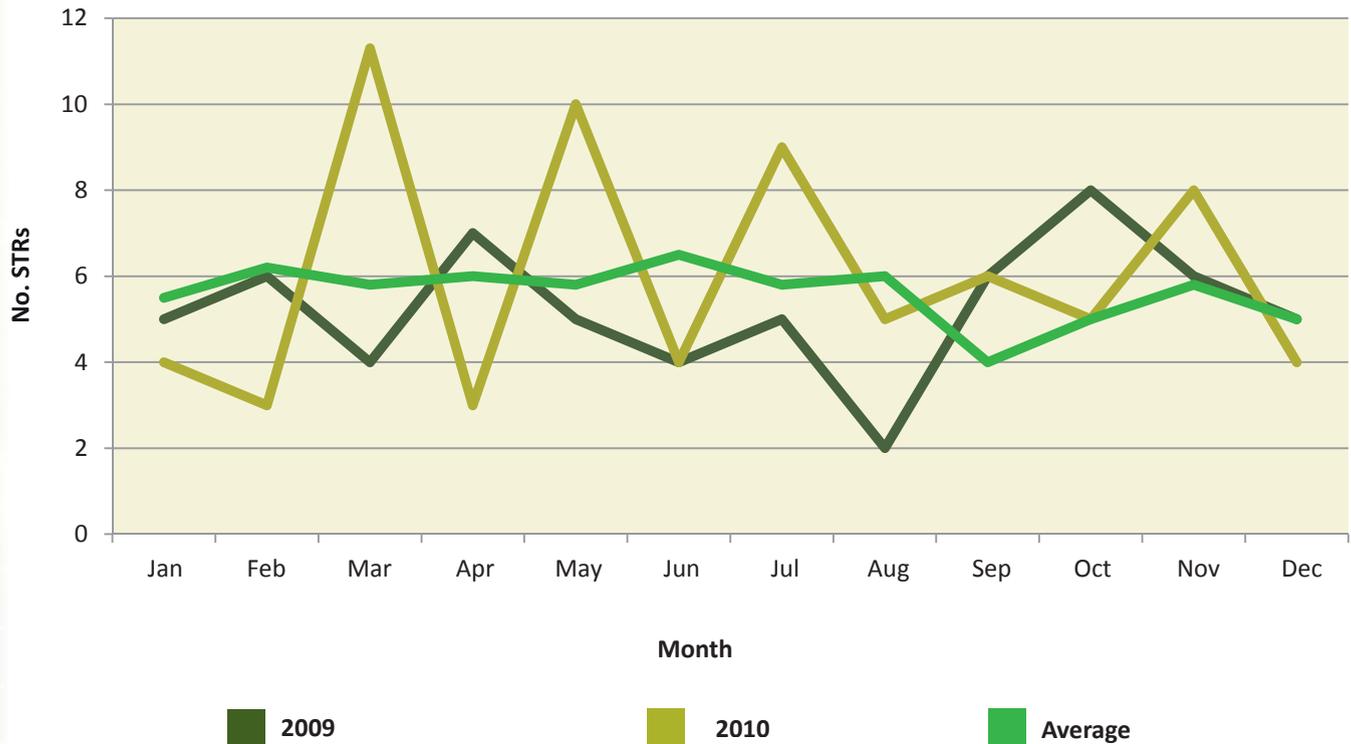
An improvement has also been identified in the quality of information provided in the reports, especially insofar as the description of the suspicion is concerned and accompanying data, even though this situation does not apply equally to all categories of subject persons. In relation to those categories of “relevant activity” that were included within the scope of the PMLFTR more recently, more efforts are expected to ensure that accurate and comprehensive information is made available to the FIAU when a disclosure is made.

The filing of STRs per quarter was evenly distributed during 2010, with the first and third quarter of the year being slightly busier as outlined in Table 2. The largest number of disclosures was registered in March whereas during February and April the FIAU received the fewest reports.

**Table 2: STRs received by the FIAU by quarter (2003 - 2010)**

	2003	2004	2005	2006	2007	2008	2009	2010
Quarter 1	35.53%	28.26%	21.33%	22.06%	26.98%	23.19%	23.81%	26.03%
Quarter 2	26.32%	17.39%	37.33%	29.41%	20.63%	36.23%	25.40%	23.29%
Quarter 3	17.11%	26.09%	16.00%	26.47%	26.98%	27.54%	20.63%	27.40%
Quarter 4	21.05%	28.26%	25.33%	22.06%	25.40%	13.04%	30.16%	23.29%

**Chart 2: STRs received by the FIAU monthly (2009 and 2010)**



In total, the Financial Analysis Section dealt with 138 reports during 2010, a large percentage of which originated from disclosures by subject persons and some of which were based on internal information available to the Unit. This global figure also includes the 48 disclosures and 9 other reports which were internally-generated that were still being analysed at the end of 2009.

The STRs in respect of which a conclusion was reached by the Financial Analysis Committee during 2010 as to whether a reasonable suspicion of ML or FT subsists amounted to 74, resulting in a total of 56 cases. In comparison to the figures for 2009 of 41 reports and 36 cases, a significant increase in the number of cases concluded has been registered. The addition of a financial analyst to the Financial Analysis Section during the last quarter of the year under review should ensure that during 2011 figures of concluded cases during one calendar year continue to increase and the time-period for the conclusion of the analysis of a case continues to diminish.

**Outcome of analyses**

Table 3A provides the figures related to the findings of the FIAU pursuant to the analysis of reports and cases year by year since 2003, specifying the number of cases that were referred

to the Police for investigation, those where it was held that no further action was required, those reports and cases that, when analysed initially showed that there was no *prima facie* evidence of ML/FT and those reports and cases that are still being analysed by the Financial Analysis Section. The statistics related to the outcome of cases which did not originate from disclosures by subject persons or supervisory authorities but on the basis of information available to the FIAU from other sources and through its ongoing monitoring of the financial and non-financial sector are contained in Table 3B.

After the review by the Financial Analysis Committee of the preliminary reports reviewed by it, 34 STRs out of 73 STRs filed by subject persons and supervisory authorities gave rise to 19 analytical reports being submitted by the FIAU to the Police for investigation. The statistics obtained from a recent research publication issued by the European Commission<sup>3</sup> show that Malta, with figures of 38 percent in 2007 and 59 percent in 2008, maintained a higher percentage of STRs referred to law enforcement bodies during a calendar year in proportion to STRs received during that same year when compared to the EU average where more than half of member states submit fewer than 25 percent of the reports filed by reporting entities. A relatively high proportion was also maintained in 2010 with an average of close to 47 percent.

<sup>3</sup> *Money Laundering in Europe – Measuring money laundering at continental level: The first steps towards a European ambition*, European Commission, DG Home Affairs, Fight Against Organised Crime Unit, January 2011, Mickael Roudaut and Athina Karvounaraki, p. 10.

Another four analytical reports were submitted to the Police during 2010 which did not result from a disclosure, bringing the total number of analytical reports submitted to the Police during the year to 23. The Financial Analysis Committee also established that 40 STRs were deemed not to substantiate the existence of a reasonable suspicion of ML/FT as required by the provisions of the PMLA. Eight further cases generated internally were not considered to satisfy the criteria required for a case to be referred to the Police.

The analysis in relation to 39 cases (47 STRs) was still being carried out at the end of the year. When added to the 5 cases generated internally, the total number of cases still subject to financial analysis at the end of 2010 stands at 44.

**Table 3A<sup>a</sup>: Outcome of STRs and cases (2003 - 2010)**

Outcome of STRs	2003		2004		2005		2006		2007		2008		2009		2010	
	STRs	Cases														
Referred to Police for investigation	17	17	23	20	28	22	24	21	24	22	41	39	20	16	34	19
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
STR 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

**Table 3B: Outcome of reports generated internally (2003 - 2010)**

	2003	2004	2005	2006	2007	2008	2009	2010
Referred to Police for investigation	-	-	-	4	2	2	2	4
No reasonable suspicion of ML/FT - no further action	-	1	5	7	5	6	3	8
Report unrelated to ML/FT - no analysis carried out	1	-	-	-	-	-	-	-
Ongoing analysis	-	1	1	-	6	1	9	5

<sup>a</sup> The figures for the years 2002-2009 contained in this table have been revised after a detailed review of categorization of statistics maintained by the FIAU was carried out. The discrepancies between statistics appearing in previous FIAU annual reports and revised statistics contained in this table have arisen as a result of corrections deemed necessary in relation to older data.

## STRs by categories of subject persons

As in the previous years, credit institutions remain the main source of STRs filed during 2010, with 58% of the total STRs during that period (refer to Table 4) originating from eight credit institutions. In absolute terms, credit institutions filed 12 more STRs than in the previous year while at the same time the STRs received from all the other subject persons decreased marginally from 37 to 35.

**Table 4: STRs filed by subject persons for the period 2003 to 2010 in absolute numbers and as a percentage of total number of STRs**

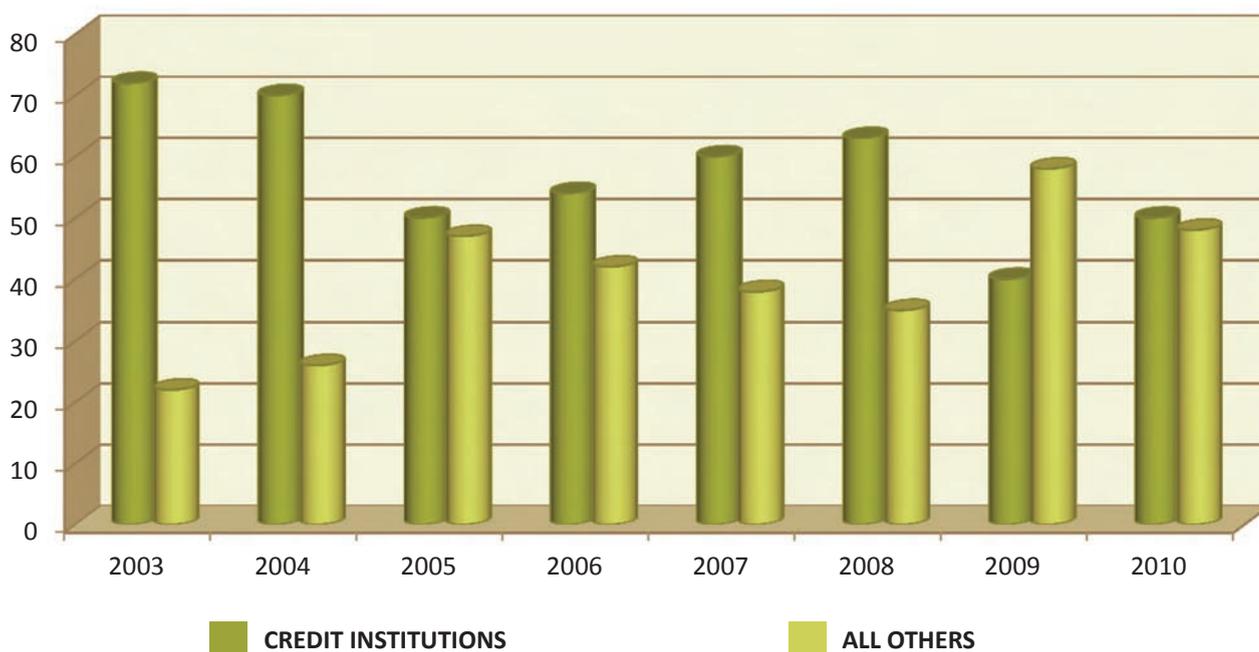
Category of subject persons	2003		2004		2005		2006		2007		2008		2009		2010		TOTAL	
	No	%	No	%														
Credit Institutions	56	74	33	72	39	52	42	54	39	62	44	64	26	41	38	52	317	58
Financial Institutions	4	5	8	17	18	24	13	17	11	17	13	19	6	10	4	5	77	14
Investment Services Licensees	5	7	2	4	1	1	-	-	2	3	-	-	3	5	2	3	15	3
Insurance Licensees	1	1	-	-	10	13	3	4	2	3	2	3	-	-	4	5	22	4
Supervisory Authorities	8	11	1	2	5	7	12	15	1	2	1	1	3	5	3	4	34	6
Independent Legal Professionals	1	1	-	-	-	-	-	-	1	2	1	1	3	5	3	4	9	2
Remote Gaming Companies	-	-	1	2	-	-	-	-	-	-	3	4	3	5	4	5	11	2
Casino Licensees	-	-	-	-	-	-	-	-	-	-	-	-	1	2	2	3	3	1
Trustees & Fiduciaries	-	-	-	-	1	1	5	6	2	3	3	4	2	3	4	5	17	3
Real Estate Agents	-	-	-	-	-	-	1	1	-	-	-	-	2	3	-	-	3	1
Accounting Professionals	1	1	1	2	1	1	2	3	4	6	-	-	4	6	3	4	16	3
Regulated Markets	-	-	-	-	-	-	-	-	1	2	-	-	3	5	-	-	4	1
Company Service Providers	-	-	-	-	-	-	-	-	-	-	2	3	3	5	5	7	10	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>543</b>	<b>100</b>

The trend of a large proportion of disclosures being made by credit institutions is relatively common in most EU countries at varying levels. According to the aforementioned European Commission publication,<sup>4</sup> the main source of disclosures to FIUs across the EU member states during 2007 and 2008 were credit institutions. During the two years covered by the research conducted for the purposes of the report, fifteen EU member states received a greater proportion of disclosures than the FIAU from credit institutions, with the highest figures reported reaching 98 percent. In 2007, in 55 percent of member states more than three-quarters of STRs received originated from credit institutions, with the figure going down to 52 percent the year after that.

<sup>4</sup> *Ibid* p. 7.

With figures ranging between 64 percent and 41 percent of STRs received during the past four years, Malta has placed well below the EU average, clearly confirming the trends reported upon in the 2009 Annual Report that there has been a stark increase over time in the diversity of categories of reporting entities from where reports are being received. This comparative analysis with EU averages further confirms the remarks made in previous annual reports that the awareness of the obligations of subject persons to report suspicious transactions in the non-banking sectors is on the increase.

**Chart 3: STRs filed by credit institutions as compared to all other sectors for the years 2003 to 2010**



More specifically, in the other sectors of reporting entities there was an increase in the reports filed in five sectors being persons providing the business of life insurance, remote gaming companies, casino licensees, trusts and fiduciaries, and company service providers. A marked increase in reporting was registered in the area of insurance, with four reports being filed by licensees in the insurance sector, a sector where no disclosures were made during the previous year. Another sector worth mentioning is that of company service providers where there has been yet another increase over the reports submitted during the previous year, thus bringing the total number of STRs filed by this category of subject persons up to ten. Despite the contribution of the rapid growth in this industry to the increasing trend in reporting, the figures registered over the past three years show that operators in this area are becoming more aware and responsive to their legal obligations.

Another increase in the number of STRs filed with the FIAU was reported in the remote gaming sector. These reports, while being indicative of the operators' awareness to the risks involved in their industry are also a reflection of the effort undertaken by the FIAU in conjunction with the Lotteries and

Gaming Authority to regulate and protect the industry from being used to launder illegal funds.

A reduction in the number of STRs was registered in the other sectors, with no disclosures being made by operators in the real estate sector and by the only licensed recognised investment exchange. The global economic slowdown may have contributed towards this reduction in reporting, particularly in the real estate industry, where a reduction in the economic activity was registered during the year. With reference to the supervisory authorities and independent legal professionals, the number of reports remained stable for 2010 as in 2009 but constituted a lower percentage due to the larger total number of STRs received. Financial institutions licensed under the Financial Institutions Act filed two STRs less than in 2009 which resulted in a decrease from 9.5% to 5.5%. It should be noted that, after credit institutions, financial institutions generated the second largest number of STRs since the FIAU was established and now stand at 14.2% of total STRs. In this regard, it may be concluded that when excluding credit institutions and financial institutions the total number of reports filed by all other sectors together during 2010 has remained the same as that reported in 2009.

When considering the current international and local economic conditions and the trends in past years, the total number of STRs received may be considered to be in line with what was anticipated at the beginning of the calendar year. Moreover, the figures reported in this and other sections of the report may be indicative of the operators' generally high level of vigilance within their respective industry and a certain margin of success in the FIAU's commitment to ensure that the financial and non-financial sectors are not abused of by money launderers and terrorist financiers.

### Requests for information to subject persons

By virtue of Article 30(1) and Article 30A of the PMLA, the FIAU may demand any information which it deems to be useful in the fulfilment of any of its functions from any person subject to the PMLFTR, the Police, any Government Ministry, department, agency or other public authority, any supervisory authority and any other person, whether physical or legal. This power is very often exercised when the FIAU is carrying out an analysis of an STR, however, information from third parties may also be demanded by the FIAU when information is being collated pursuant to a request for information received from a foreign FIU or a supervisory authority and in fulfilling its compliance-monitoring functions under the PMLFTR. Naturally, this power is exercised with caution in view of the sensitive nature of the information sought.

The analysis of STRs necessarily involves a number of steps, one of which is the collecting and compiling of information from subject persons and public authorities with the aim of obtaining a clearer picture of the reported transaction or activity. The information obtained from the reporting subject person and other subject persons is, in fact, invariably crucial in the conclusion of a case and very often constitutes the most significant indicator as to whether suspicious activity exists. The figures being provided in the paragraph below clearly show the importance of the power to obtain information exercised by the FIAU, particularly in the course of an analysis being carried out in connection with a suspicion of ML/FT.

A total of 1,627 requests for information were made by the FIAU to subject persons and governmental and supervisory authorities in 2010. Two hundred eighty-two of these requests were made in furtherance of the FIAU's commitment to assist foreign FIUs through exchange of information, while 1,135 requests for information were made in the course of an analysis resulting from a disclosure by a subject person. The remaining two hundred and ten requests for information were made by the FIAU in the course of analyses initiated

by the Unit itself on the basis of information available to it internally. A large proportion of the requests made by the FIAU (78.2 percent) were addressed to credit institutions while 11.6 percent of the requests were made to government and supervisory authorities. The remaining 10.2 percent of requests were made to different categories of subject persons.

The response time and the quality of information provided were generally satisfactory. Indeed, in the vast majority of cases the information was provided within the five working days established by law. In a few cases, when the volume of information to be provided was considerable, the FIAU acceded to a request by subject persons to extend the time limit by a few days in order for the subject person to be in a better position to collate the information requested.

### Persons subject to disclosures

Most of the STRs received by the FIAU during the year under review reported a suspicion in relation to more than one person, whether legal or natural. The 73 disclosures made in 2010, in fact, referred to suspicions involving a total of 85 persons who were either individuals of Maltese nationality or companies established in Malta and a further 87 foreign legal and natural persons. The foreign nationals were resident in 30 different jurisdictions whereas the legal persons subject to STRs were registered in 11 overseas countries. It was noted that no particular jurisdiction stood out as featuring more prominently in the STRs.

### Suspected predicate criminality

The suspected underlying offences in respect of which reports were submitted by the FIAU to the Police on the basis of a reasonable suspicion of ML once again varied considerably (refer to Table 5). However, it is worth highlighting the fact that in six of the 19 cases in which a report was transmitted to the Police in terms of Article 31 of the PMLA, this was done on the basis of a reasonable suspicion that the proceeds of crime leading to the suspicion of ML originated from the commission of fraud. The suspicions of fraud varied in nature and for the first time included a suspected boiler-room scam and a case involving false disclosures in relation to instruments listed on a financial market. The first case of suspected ML arising from the proceeds of corruption was also registered during 2010, while there were four cases in which the suspicion of ML was confirmed even though the FIAU could not determine the specific predicate criminal offence from which the proceeds derived. One case was referred to the Police on the basis of a suspicion of both ML and FT.

**Table 5A: Suspected predicate offences in cases referred to the Police on suspicion of money laundering (2003 - 2010)**

Suspected Predicate Criminality	2003	2004	2005	2006	2007	2008	2009	2010	Total	% of Total
Drug Trafficking	2	4	-	4	5	7	1	2	25	14.20%
Fraud	2	4	3	2	1	-	5	6	23	13.07%
Forgery	-	1	1	3	-	-	-	-	5	2.84%
Usury	1	2	2	5	1	4	-	-	15	8.52%
Undeclared Income	-	2	4	-	-	4	-	1	11	6.25%
Unlicensed Financial Services	4	4	1	-	3	3	-	3	18	10.23%
Organised Crime	5	2	1	-	2	2	1	1	14	7.95%
Human Trafficking	-	-	1	-	1	2	-	-	4	2.27%
Theft	-	-	4	-	-	-	-	-	4	2.27%
Illegal Gambling	-	-	1	2	-	1	-	-	4	2.27%
Identity Theft	-	-	-	2	1	-	-	-	3	1.70%
Living off the earnings of Prostitution	-	-	-	2	-	-	1	-	3	1.70%
Phising	-	-	-	-	1	-	-	-	1	0.57%
Corruption	-	-	-	-	-	-	-	1	1	0.57%
Unknown	2	1	3	1	6	16	7	4	40	22.73%
<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>171</b>	<b>97.16</b>

**Table 5B: Cases referred to the Police on suspicion of funding of terrorism (2003 - 2010)**

Funding of Terrorism	1	-	1	-	1	-	1	1 <sup>5</sup>	5	2.84%
<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>176</b>	<b>100</b>

### Typologies

A review of the 19 reports transmitted to the Police for further investigation under Article 31 of the PMLA reveals that in more than half the cases where the suspicion of ML was confirmed by the FIAU the use of cash, cheques or money orders was identified. In the other cases referred to the Police a variety of other common trends and techniques of ML were viewed and a brief overview is provided in the following paragraphs.

Specifically with regards to the use of cash, the following trends were identified:

- The deposit of amounts of cash which exceeded the known income of the individual in a bank account which were withdrawn in cash at a later date or used to purchase investment products.
- Combining of proceeds of crime with legitimate business and the deposit of such co-mingled funds into a bank account.

- Large amounts of cash being deposited into different bank accounts and the subsequent withdrawal in cash from ATMs situated in foreign countries using debit cards.
- The deposits of cash and cheques seemingly originating from international scams into bank accounts followed by the transfer in favour of third parties situated overseas.
- The transfer in favour of third parties situated in other countries of cash possibly originating from drug trafficking through money remittance service providers.

In one case, cheques which were drawn by a person who appeared to be acting as an intermediary on behalf of an organised criminal organisation were deposited in a bank account used for business purposes held in a foreign jurisdiction in the name of a company registered under Maltese law whose shares were settled on bare trust. Part of the money was then transferred to another bank account held by the same company with a Maltese credit institution and co-mingled with what appeared to be legitimate funds.

<sup>5</sup> The case being referred to was submitted to the Police on the basis of a reasonable suspicion of both ML and FT. For statistical purposes, the case is being listed under suspicions of FT since the principal suspicion was deemed to be FT.

In a case of self-laundering where the perpetrator had control over a number of bank accounts held in the name of a non-profit organisation, a large number of money orders were issued upon the presentation of cheques which were drawn on the bank accounts of the organisation. The manner in which these accounts were operated gave the false impression to the issuer of the money orders that sufficient funds were maintained for the cheques to be honoured thus resulting in fraud. The fraudulent gains were then laundered through the personal use of the funds.

In another case a considerable amount of money was transferred to a bank account held in Malta in the name of a company registered in a foreign jurisdiction. The beneficial owner of this company was also the controller of a number of companies registered in another country where he and these companies were being sued for securities law violations, including market misrepresentation and non-competitive share trading. The money which was channelled to the bank account in Malta was partly transferred to his personal accounts and used to purchase property overseas.

The use of large complex corporate structures for the purposes of ML was also identified during the year under review. In one case the Maltese companies within the corporate structure were set up with the intention of concealing the identity of prominent foreigners involved in a highly suspicious management buyout plan subject to a large-scale investigation in a foreign jurisdiction. Another case related to the use of an insurance company licensed under the laws of Malta and authorised to carry on the business of insurance in another EU member state. The activities and records of this company were subjected to the review by the FIAU following a suspicion that the company was receiving the proceeds of an illegal activity carried out by a front company in another jurisdiction.

An interesting trend was identified and brought to the attention of the Police following the analysis carried out by FIAU analysts in two separate cases relating to the misuse of bank accounts by account holders. In these cases the account holders were likely to have been providing banking services on a very large scale without having been licensed to do so in accordance with the pertinent legislation. A large number of cheques were being negotiated at retail outlets owned by the account holders with the total sums being deposited exceeding the turnover of the business disproportionately. The high value of the account transactions was considered sufficient enough to warrant a report to the Police, particularly in view of the fact that such platforms are likely to be used by persons intending to launder cash originating from crime through the exchange of that cash for negotiated cheques.

A potential case of funding of terrorism was also brought to the attention of the FIAU which however, following investigations by the Police, proved to be a case of mistaken identity. The transfer of a considerable sum of money in favour of an inactive bank account held in the name of a foreign

national was deemed to be suspicious. This existence of a suspicion was strengthened when the money was claimed back by the remitting bank following due diligence enquiries and when independent due diligence checks confirmed a close similarity between the surnames of the beneficiary and the remitter of the funds and the surnames of two suspected terrorists. An attachment order was issued by the Criminal Court on the basis of this suspicion. The account was subsequently blocked until the police investigation revealed that there was sufficient documentary evidence to substantiate the transaction and that this was a case of mistaken identity arising from the existence of similar names to those on published lists.

## International Co-operation

In view of the cross-border nature of ML/FT, international co-operation is increasingly becoming crucial in the fight against ML/FT. It is often the case that the analysis of a STR by the FIAU necessitates the assistance of its foreign counterparts to provide essential information on natural or legal foreign persons involved in a particular case. Such a need also arises in relation to the analysis of those cases involving natural or legal Maltese persons having financial or other interests outside Malta.

As evidenced in this section and other parts of the report, international co-operation, in particular the exchange of information between FIUs, is indeed one of the core functions of the FIAU. Such function is set out in Article 16(1)(k) of the PMLA which states that the FIAU shall, upon request or on its own motion, exchange information with any foreign body, authority or agency which it considers to have functions equivalent or analogous to those of the FIAU. Being a member of the Egmont Group<sup>6</sup> and a FIU within the EU, the FIAU is required to comply with the Egmont Group Principles and the provisions of Council Decision 2000/642/JHA<sup>7</sup> in fulfilling its function of exchange of information.

The Egmont Principles for Information Exchange between FIUs for Money Laundering and Terrorism Financing Cases and Best Practices for the Exchange of Information between FIUs were issued by the Egmont Group with the aim of strengthening the exchange of information between FIUs. On a European Union level, Member States must also comply with the provisions of Council Decision 2000/642/JHA concerning arrangements for co-operation between financial intelligence units of the Member States in respect of exchanging information, which to a large extent mirrors the Egmont Group Principles.

The principles set out by the Egmont Group provide the established framework for the efficient and effective exchange of information between FIUs. Essentially, such principles seek to ensure that the exchange of information between FIUs takes place as informally and as rapidly as possible with no excessive pre-requisites within the parameters allowed by national law, while guaranteeing protection and confidentiality of the information exchanged.

<sup>6</sup> For further information see section 'Participation in International Fora – The Egmont Group' p.36 of this report.

<sup>7</sup> For further information see section 'Participation in International Fora – The EU FIU Platform' p.35 of this report.

In practice, the exchange of information between FIUs is generally carried out through the Egmont Secure Web, which is a web-based system set up by the Egmont Group specifically for the rapid and secure exchange of information. Member States of the EU may exchange information through the FIU.NET which is another secure platform set up by the FIU.NET Bureau, a unit within the Directorate-General for the Administration of Justice and Law Enforcement of the Commission of the European Union.

FIUs may also desire to enter into MoUs based on the Egmont Group Principles to regulate and further facilitate the exchange of information between them. It is to be noted that even though under our AML/CFT regime the existence of a MoU

is not a pre-requisite for the FIAU to exchange information with its foreign counterparts, in a number of jurisdictions the law specifically requires the existence of such a MoU for the exchange of information to take place.

The legal basis for the entering into MoUs is established under Article 16(1)(k) of the PMLA. Apart from the number of MoUs already in place, in 2010 the FIAU successfully negotiated and concluded three MoUs with the FIUs of San Marino, Canada and South Africa. Negotiations in relation to a number of other MoUs with the FIUs of Georgia, India, Japan, Saudi Arabia, Turkey and the United Arab Emirates also took place during the year under review and are expected to be completed in the coming months.



*The signing of MoU between the Chairman of the FIAU and the Deputy Director of AIF, San Marino (Strasbourg, 16<sup>th</sup> March 2010)*



*A MoU being signed by the Director on behalf of the Board of Governors of the FIAU and the Director of FIC, South Africa (Chisinau, 12<sup>th</sup> October 2010)*

### Requests for assistance and co-operation

During 2010 the FIAU made 75 requests for assistance to 38 different foreign FIUs. Generally, the replies to such requests were received within a reasonable period of time. However, in a number of cases delays were registered which went beyond the time periods set out in the Egmont Group's Best Practices for the Exchange of Information between FIUs, thereby delaying the analysis being carried out. As at 31<sup>st</sup> December, 18 replies to FIAU requests were still pending, however in most of these cases the requests had been made shortly before the end of December.

It is to be noted that in relation to requests made by foreign FIUs to the FIAU, a comparative analysis with the 2009 figures reveals similar patterns in 2010 with very minor variances being identified. Indeed, although the number of requests made by the FIAU decreased by eight from the previous year, approximately the same number of FIUs as in the previous two years were asked to provide assistance.

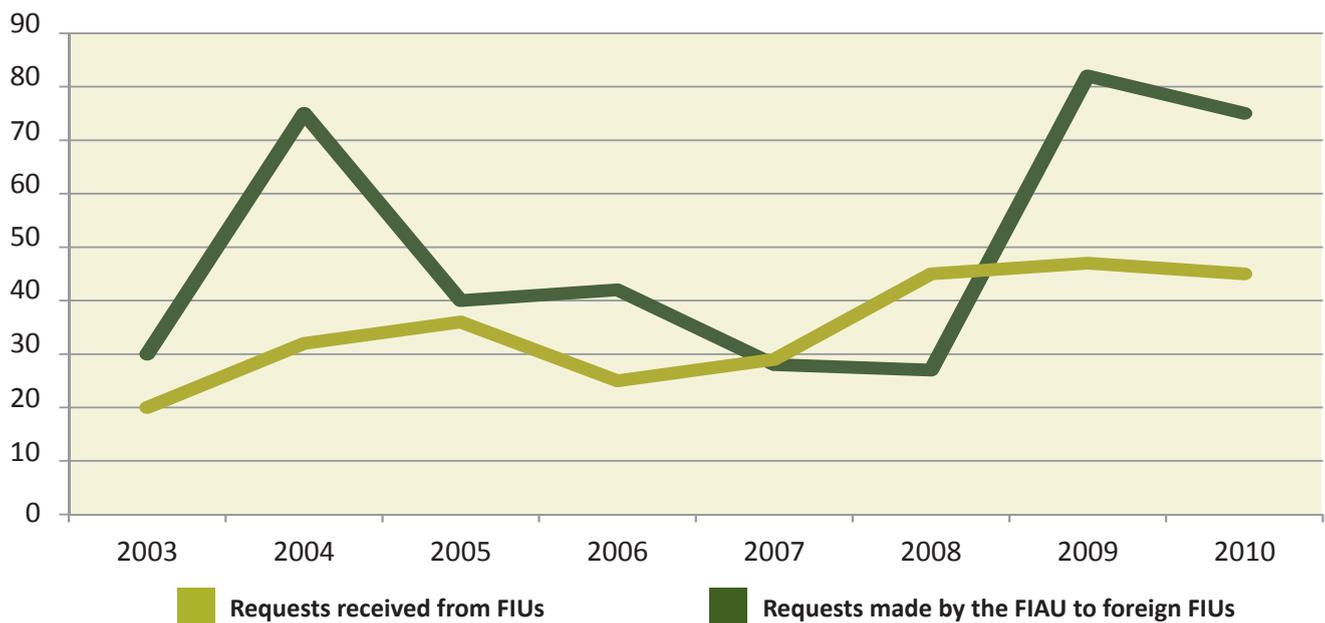
The 45 requests for assistance received by the FIAU in 2010 originated from 26 different FIUs. The responses to these requests were all made within the time-frames set out in the Egmont Group's Best Practices even in cases where enquiries required searches of external databases and queries to third parties, with the average response time being twelve and a half days.

Table 6 represents the number of requests for assistance made and the number of requests received by the FIAU over the past eight years. The figures once again confirm previous trends that the number of requests made by the FIAU generally supersedes the number of requests made to the Unit. Moreover, the graph contained in Chart 4 clearly highlights the fact that since 2008 the number of requests made to the FIAU generally remained constant. On the other hand, the number of requests made by the FIAU during 2010 dropped slightly from the previous year. Figures for 2010, however, still remained above average figures and the number of requests made to other FIUs remained relatively high when compared to the period between 2005 and 2008.

**Table 6: Requests for co-operation and assistance (2003 - 2010)**

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	47.62%
2004	33	76	130.03%
2005	37	41	10.81%
2006	23	43	86.96%
2007	29	29	0.00%
2008	44	28	-36.36%
2009	46	83	80.43%
2010	45	75	66.07%
<b>Total</b>	<b>278</b>	<b>406</b>	<b>48.20%</b>

**Chart 4: Comparative analysis of requests received and requests made by the FIAU**



## Requests for assistance made by the FIAU

As evidenced in Table 7, the highest number of requests for assistance by the FIAU was made to Member States of the EU, a figure which amounts to almost half the total requests made (49.3%). A further 30 percent of requests were made to countries in the Americas, with a small percentage of requests also being made to countries in the Middle East, Africa and Oceania. The FIU of the United States of America topped the list of FIUs receiving most requests from the FIAU during 2010, followed by Italy, Austria and the United Kingdom. A breakdown of requests made by the FIAU is provided hereunder:

- Thirty-seven requests to the FIUs of 15 EU Member States.
- Ten requests to the FIUs of seven European countries not in the European Union or the EEA.
- Twenty-two requests to 11 FIUs in the Americas.
- Two requests to two Asian FIUs.
- Two requests to a FIU in Oceania.
- One request to a FIU in Africa.
- One request to a FIU in the Middle-East.

## Requests for assistance made to the FIAU

Requests for assistance received by the FIAU during 2010 originated mostly from the FIUs of countries within the EU or the wider European region. In fact, the country which remitted the highest number of requests to the FIAU was Croatia, followed by France and Spain. The only EU/EEA member states which did not interact with the FIAU during 2010 were the Czech Republic, Estonia, Finland, Iceland, the Republic of Ireland, the Netherlands, Norway and Portugal.

It is interesting to note that two requests for information made to the FIAU prompted an analysis on the FIAU's part with one case eventually being forwarded to the Police for further investigation. In the other case the analysis was still underway in December 2010.

The requests for assistance made to the FIAU during 2010 were received from the following regions:

- Twenty-eight requests from the FIUs of 15 EU member states and EEA countries.
- Eleven requests from the FIUs of five European countries not in the EU or the EEA (nine requests of which were received from MONEYVAL member countries).
- Three requests from the FIUs of three countries in the Americas.
- Two requests from the FIUs of two countries in Asia.
- One request from the FIU of a country in North Africa.

**Table 7: Request for co-operation and assistance (2010)**

Requests received by FIAU			Requests made to other FIUs	
Number	Replies	Jurisdiction	Number	Replies
1	1	Albania	-	-
1	1	Anguilla	-	-
-	-	Austria	5	5
-	-	Bahamas	1	1
1	1	Bahrain	-	-
2	2	Belgium	-	-
-	-	Belize	2	-
-	-	Bermuda	1	-
1	1	Brazil	-	-
2	2	Bulgaria	-	-
-	-	British Virgin Islands	2	1
-	-	Cayman Islands	1	1
-	-	Columbia	1	1
-	-	Costa Rica	1	-
5	5	Croatia	-	-
1	1	Cyprus	2	2
-	-	Denmark	1	1
-	-	Dominica	1	1
1	1	Egypt	-	-
-	-	Finland	-	-
4	4	France	3	3
-	-	Guernsey	1	1
1	1	Germany	4	4
1	1	Greece	-	-
-	-	Hong Kong	1	1
-	-	Hungary	3	2
-	-	Isle of Man	1	1
1	1	Italy	7	4
2	2	Jersey	1	1
-	-	Latvia	1	-
1	1	Liechtenstein	-	-
1	1	Lithuania	-	-
3	3	Luxembourg	1	-
1	1	Macedonia	-	-
-	-	New Zealand	2	1
-	-	Nigeria	1	1
-	-	Panama	3	2
1	1	Philippines	-	-
1	1	Poland	1	1
-	-	Romania	1	1
-	-	Russia	2	1
2	2	San Marino	-	-
-	-	St Kitts & Nevis	1	1
-	-	Serbia	1	1
2	2	Slovakia	1	1
1	1	Slovenia	-	-
4	4	Spain	1	-
-	-	Sweden	1	1
-	-	Switzerland	3	3
-	-	Syria	1	-
-	-	UAE	1	1
3	2	U.K.	5	4
-	-	U.S.A.	8	7
1	1	Venezuela	-	-
-	-	Ukraine	1	1
<b>45</b>	<b>44</b>	<b>TOTALS</b>	<b>75</b>	<b>57</b>

## Compliance Monitoring

As stated earlier in the report, the FIAU is also required by the provisions of the PMLA to monitor the compliance by subject persons falling within the definitions of ‘relevant activity’ and ‘relevant financial business’ under the PMLFTR through on-site compliance examinations and off-site assessments. Such subject persons are required to have appropriate policies and procedures in place in relation to customer due diligence, record keeping, internal and external reporting procedures and training, amongst other obligations in terms of the PMLFTR. The aim of the setting up of a Compliance Section within the FIAU is to ensure that both financial and non-financial subject persons are aware of the relevant regulations and to monitor their adherence to the obligations emanating therefrom.

In fulfilment of the FIAU Development Plan, the FIAU sought to strengthen the Compliance Section of the Unit through the recruitment of a further two compliance officers in March and November of the year under review, bringing the staff complement in this Section up to three officers by the end of 2010. As a result of this development, the FIAU has been able to re-organise its resources internally in order to be able to set up off-site monitoring capabilities, to enhance internal processes and to raise awareness efforts among subject persons in the non-financial sector. The potentiality of the

Unit to carry out focused on-site compliance examinations has also increased significantly, as has its participation in the on-site compliance examinations conducted by supervisory authorities in accordance with the PMLA.

### On-site compliance examinations

In carrying out its compliance functions, the FIAU continues to co-operate and liaise with supervisory authorities. Indeed, during the year under review a number of on-site compliance examinations were carried out by the supervisory authority on behalf of the Unit or with the assistance of the officers of FIAU. In this regard the FIAU has co-operation agreements in place with the MFSA as the regulator of the financial services sector and with the LGA as the authority responsible for the supervision of the gaming sector.

In addition to the assistance provided to the MFSA and the LGA in their scheduled on-site compliance examinations in relation to AML/CFT issues, the FIAU also conducted a number of focused on-site compliance examinations independently.

The total number of on-site compliance visits conducted during the year under review was 24. Table 8 provides a breakdown of the examinations carried out, dividing them according to whether they were carried out by the FIAU, by the supervisory authority or jointly.

**Table 8: On-site AML/CFT examinations conducted by the different supervisory authorities (2010)**

SUBJECT PERSONS	FIAU	MFSA	FIAU & MFSA	FIAU & LGA	TOTAL
Casinos	-	-	-	1	1
Corporate Service Providers	1	-	-	-	1
Credit Institutions	1	1	3	-	5
Insurances	-	5	1	-	6
Investment Services	-	3	3	-	6
Trustees & Fiduciaries	1	1	3	-	5
<b>TOTAL</b>	<b>3</b>	<b>10</b>	<b>10</b>	<b>1</b>	<b>24</b>

The table above clearly demonstrates that the FIAU participated in half the compliance visits conducted by the MFSA in its different areas of competence and carried out independent focused AML/CFT visits to a provider of corporate services, a licensed credit institution as well as a trustee and fiduciary licence holder. The FIAU also carried out a focused visit in relation to a licensed casino with the assistance of the LGA.

The aim of the on-site compliance examinations is to assess whether subject persons are fulfilling their obligations under the PMLFTR and that procedures are in place in respect of:

- customer due diligence measures,
- record keeping,
- internal and external reporting,
- internal control, risk assessment, risk management, compliance management and communications, and
- training to employees.

Following agreements with supervisory authorities, the assessment of findings resulting from the AML/CFT reviews conducted during the on-site compliance examinations are carried out by the FIAU’s Compliance Section. This approach ensures consistency in the reports drawn up and enables the

Unit to gather an overall understanding of the AML/CFT issues present in the sectors covered. In practice, the procedure normally undertaken is that once the on-site compliance examinations are completed, the findings of the examinations carried out by the supervisory authority are passed on to the FIAU. The Unit then carries out an evaluation of the findings and draws up a compliance report which includes the findings of such visits, identifies possible shortcomings and provides recommendations for subject persons to rectify their position in order to ensure compliance with the provisions of the PMLFTR. Subject persons are then given a time frame within which to rectify their position and within which to provide the FIAU with information outlining the implementation of the recommendations.

The principal shortcomings identified by the FIAU following its assessment of the findings resulting from the on-site compliance examinations related to incomplete customer due diligence measures; inappropriate record keeping, risk assessment and risk management procedures; failure to implement appropriate internal reporting procedures; lack of AML/CFT training to employees; and incomplete due diligence requirements on employees. Action was taken by the FIAU to ensure that the shortcomings identified are addressed within time-limits established by the Unit.

### Off-site compliance examinations

During 2010 the Unit placed noteworthy emphasis on its off-site compliance responsibilities, particularly the review of subject persons' compliance procedures through the assessment of procedures manuals obtained by MFSA officers in the course of on-site compliance examinations carried out during the previous year. This exercise was mainly intended to assist subject persons in developing effective measures and programmes for the prevention of ML/FT and also served to place the FIAU in a better position to plan its on-site compliance examinations. Following these reviews, the subject persons concerned were given feedback from the FIAU in relation to any amendments required in order to ensure compliance with the PMLFTR.

The FIAU also identified the need to continue to raise awareness on ML/FT issues to subject persons in the non-financial sector. In this regard, the Unit has drawn up a plan aimed at reaching out to operators in the real estate sector and other non-financial sectors through information seminars and training workshops intended to explain the contents of the regulations and to deal with how these obligations are to be interpreted within the context of the specific sector.

Another important development during 2010 was the drawing up of comprehensive procedures for the reporting on an annual basis by the MLROs to the FIAU of specific information relating to compliance matters which will enable the Unit to carry out its compliance monitoring functions on the basis of updated and actual data. Through the receipt of this information from subject persons, the FIAU will certainly be in a better position to carry out its duty of off-site examination

through desk reviews and to enhance the statistics maintained on an ongoing basis. The procedure requiring subject persons to submit an Annual Compliance Report was presented for consultation in August 2010 in the draft document entitled Procedures and Guidance for the Implementation of the Provisions of the PMLFTR and will come into effect once the Procedures and Guidance are finalised and brought into force in 2011.

### Sanctions

During the year under review, the FIAU issued one fine which was imposed on a corporate service provider for having failed to carry out customer due diligence on customers existing prior to the entry into force of the PMLFTR, at appropriate times and on a risk-sensitive basis. The fine imposed was of two hundred and fifty euro (€250).

No written or verbal warnings were made to subject persons even though more than one situation arose where the need to amend internal procedures was identified and brought to the attention of the subject persons involved with a deadline within which to carry out changes to address the shortcoming identified.

### Money Laundering Cases

#### Judgements

Even though it may not be immediately apparent since only one ML conviction was handed down by the courts of criminal jurisdiction, the judicial activity in the ML sphere gathered considerable momentum during 2010 which by far supersedes the activity reported in previous years. In fact, our courts are currently dealing with a number of ML cases instituted in previous years which are still *sub-judice* together with eight separate new charges of ML which were brought before the courts in 2010. Additionally, the Civil Court in its Constitutional Jurisdiction delivered an interesting judgement on the interpretation Article 3(3) of the PMLA.

**The Police  
Vs  
Elton Brincat**

**Court of Magistrate (Court of Criminal Judicature)  
5<sup>th</sup> November 2010**

The defendant was charged with illegal possession of drugs and of having laundered proceeds derived from drug trafficking. The accused admitted to all charges and was sentenced to four years imprisonment and a fine of €3,000. Additionally, the sum of €19,300 which was found in the possession of the accused together with the drugs was confiscated.

**Mario Camilleri and Pierre Camilleri**

**Vs**

**The Attorney General**

**First Hall Civil Court (Constitutional Jurisdiction)**

**15<sup>th</sup> November 2010**

In this case, the plaintiffs requested the Constitutional Court to pronounce itself on two preliminary pleas of a constitutional nature which had been raised in the course of a criminal case instituted against them.

### Submissions of the plaintiffs:

The plaintiffs claimed that, among other things, Article 3(3) of the PMLA is in breach of the human right enshrined in Article 6(2) of the European Convention on Human Rights and Article 39 of the Maltese Constitution, both of which state that every person charged with a criminal offence shall be presumed innocent until proven guilty according to law.

Article 3(3) states that, in proceedings for the offence of ML, where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that money, property or proceeds was not money, property or proceeds derived from the offence of ML, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.

According to the plaintiffs this article imposes an *onus probandi* on the accused which goes against the fair balance envisaged by the right established in Article 6(2) of the Convention and Article 39 of the Constitution.

The plaintiffs claimed that the shifting of the burden of proof prejudiced the presumption of innocence in their regard, especially in view of the fact that the plaintiffs were not in a position to give a reasonable explanation as required under Article 3(3), as this would have necessitated providing information on a bank account belonging to a third party.

Additionally, the plaintiffs held that Article 3(3) breached the right of the accused to remain silent since even in situations where the plaintiff chooses not to avail himself of such right the prosecution would require a reasonable explanation. The prosecution, the plaintiffs argued, should not have such powers, especially in view of the fact that the prosecution would be assuming that the provenance of the funds in question is illegal. All such circumstances, it was claimed, render the right of the accused to be presumed innocent ineffectual.

### Submissions of the defendant:

The Attorney General claimed that Article 3(3) does not attribute guilt to the accused or charged person but is merely intended to establish whether the money, property or proceeds involved were derived from an illegal source. Therefore, in these situations there is a 'sharing' of the onus of proof.

It was further claimed that ultimately it is the prosecution that

has to prove whether the person actually laundered the money. Moreover, the legislator had not only included the shifting of the burden of proof in relation to the offence of ML but it had done so for a number of other crimes in view of their seriousness of the crime and the difficulty of the prosecution to prove that the crime was carried out. The defendant also noted that there are a number of defences that can be put forward by the accused or person charged to prove that it is impossible to provide a reasonable explanation on the source of the funds involved.

### Considerations by the Court:

The Court held that under the PMLA the prosecution is not required to prove the underlying criminal offence but only the existence of criminal activity on the basis of circumstantial evidence. The prosecution in this case, therefore, was not required to bring evidence of a conviction in relation to the drug trafficking and conspiracy. In actual fact the prosecution had brought substantial evidence of the underlying criminal activity and therefore there was no case of determining guilt to the detriment of the presumption of innocence.

The Court held that Article 39(5) of the Constitution itself includes a qualification which states that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Article 39(5) to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

The Court concurred with the arguments brought by the defendant in the case and held that the requirement to prove that the failure of the accused to prove that the funds derived from a legitimate source did not automatically lead to the conclusion that he was guilty of ML, since it is then the role of the prosecution to prove that ML took place.

It was also held that it is the Court which will make a determination on whether the explanation given by the accused is reasonable or otherwise and not the prosecution as erroneously held by the plaintiffs.

The Court, quoting a number of commentators and previous court judgements, concluded that the shifting of the burden of proof was not necessarily in conflict with the principle of presumption of innocence. Rather, the Court commented, the shifting of the burden of proof is the exception and not the rule, a mechanism whose use is limited to those instances where it is logical to require the accused to provide the evidence since the prosecution would not be in a position to do so. However, the Court noted, the prosecution should not be allowed to take advantage of this provision by claiming that the funds derive from criminal activity without having any evidence to prove this claim and then attempt to shift the burden of proof on the accused.

### The Court's decision:

Since the presumption which arises by virtue of Article 3(3) is rebuttable and not in itself unreasonable and since the rights of the plaintiffs were not breached, the plaintiffs' claims were dismissed by the Court.

## 3. MANAGEMENT AND TRAINING

### The Board of Governors

The Board of Governors met regularly in 2010 with ten meetings being held during the year. In fulfilling its functions as the policy-making body within the structures of the Unit, the Board dealt with numerous policy-related issues and oversaw the activities of the Unit through its regular meetings.

Discussions were held on various internal matters and matters affecting the areas of responsibility of the Unit, including international developments insofar as the interests of the FIAU are concerned. In particular, the Board examined and oversaw the work to be carried out to identify legislative developments deemed necessary in the light of Malta's international obligations, the preparation for the fourth-round MONEYVAL Mutual Evaluation of Malta, the ongoing steps to strengthen the co-operation with other FIUs and supervisory authorities, the continued development of the structures of the Unit, the issuance of implementing procedures and guidance and the strengthening of liaison and co-operation mechanisms with the Police.

### The Director

The Director continued to implement the plans for restructuring of the Unit agreed upon by the Board, particularly through the establishment of new working procedures and the enhancing of tools utilised to carry out the functions of the Unit. Priority was given during the year to the strengthening of the analytical capabilities of the FIAU staff and to the increasing of staff complement in the Compliance Section and the Financial Analysis Section in order for the Unit to be in a better position to carry out its responsibilities effectively and in a timely manner.

In implementing the policies established by the Board, efforts were made to strengthen the collaboration of the FIAU with its foreign counterparts and with supervisory authorities; to streamline procedures for the carrying out of on-site compliance examinations; to invest in the training of staff, particularly those involved in carrying out tactical, operational and strategic analyses; to contribute towards the work of MONEYVAL and the Egmont Group; 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; to register improvements in the standard and periodicity of feedback and guidance being provided to subject persons and to continue to take concrete steps to ensure that all subject persons within the non-financial sector are made aware of the extent of their responsibilities under the PMLFTR.

### Resources

During the course of the year under review the staff complement of the FIAU was increased to eleven with the addition of two Compliance Officers and a Financial Analyst, thereby bringing the total number of employees close to double that prevailing in 2008.

A new and improved website was launched by the FIAU in 2010. The new website contains a number of features which facilitate browsing and make it easier for users to retrieve and download documents. Additionally, the news and events section is regularly updated to keep subject persons informed of any material developments in the field of AML/CFT.

Other developments during the year included the completion of a fully-equipped training/meeting room within the premises of the FIAU offices and the implementation of a new accounting software which is capable of assisting the officers of the Unit in compiling data for the Financial Data Reporting System introduced by the Ministry of Finance, the Economy and Investment for the consolidation of financial data pertaining to Government entities. In the area of security, the FIAU also adopted secure messaging software which ensures that information circulated by email to communicating partners in a secure manner.

### Training

The increasingly dynamic nature of the AML/CFT sphere and the ever-evolving threats of ML/FT require the officers of the FIAU to constantly keep abreast with international developments and to strengthen their knowledge and expertise on an ongoing basis. In view of these necessities, in 2010 a number of officers of the FIAU pursued various training courses in their field of competence.

In a drive to ensure that the analytical capabilities of the officers of the FIAU are broadened, both the FIAU's senior financial analysts followed advanced courses organised by the United Kingdom National Policing Improvement Agency during the year. One of the courses being pursued by a member of staff and which is expected to be completed during 2011 is an online course dealing with internet research skills designed specifically for financial investigators. The course consists of a four-level programme aimed at assisting financial investigators in the use of the internet as an effective intelligence-gathering and research tool. Another member of the FIAU staff attended a five-day course on enhanced financial investigation skills which was held in London, dealing mainly with financial intelligence gathering, the use

of the internet as a research tool and the manner in which financial instruments and companies may be used as vehicles for crime. Tuition fees for both courses were sponsored by the British High Commission.

One of the FIAU's financial analysts attended another course organised by the United Kingdom National Policing Improvement Agency which was held in Malta in collaboration with the Internal Audit and Investigations Department within the Ministry of Finance, the Economy and Investment. The ten-day course dealt with anti-fraud and corruption issues, including an overview of the anti-fraud and corruption legislation in Malta, computer crime, fraud prevention and deterrence and the techniques used in the investigation of corruption.

A regional conference organised jointly by the governments of Poland and Romania which was held in Bucharest between 22<sup>nd</sup> and 23<sup>rd</sup> November was also attended by a senior financial analyst. This conference marked the closing event of the Twinning project financed by the European Commission through the 2007 Facility Transition Programme entitled "Fight against money laundering and terrorism financing". The two-day programme addressed current and future initiatives related to analysis of new trends and techniques of ML and threats and vulnerabilities of financing of terrorism. The conference was attended by delegates from most of the EU Member States and other FIUs from the European region, as well as a number of international organizations involved in the fight against ML/FT.

As in previous years, the FIU.NET Bureau organised a workshop for FIU.NET users to further strengthen the use of FIU.NET which, as explained in other parts of the report, is a secure system for the exchange of information between FIUs situated in the Member States of the EU. The workshop, which was held in London, was attended by one of the financial analysts.

Upon joining the FIAU team, the two newly-recruited financial analysts attended a basic tactical analysis training course organised by the Egmont Group. The Tactical Analysis Training Workshop was held between 6<sup>th</sup> and 8<sup>th</sup> December 2010 at the premises of the World Bank in Paris. The aim of the course was to provide financial analysts within FIUs with the opportunity to acquire new skills and to develop their knowledge and analytical techniques with an aim at strengthening the level of analysis of suspicious transaction reports received by FIUs. The course covered a number of topics, including principles of analysis, risk assessment and prioritization, adding value to data, analysis and presentation of intelligence findings.

In the field of AML/CFT compliance, the Legal & International Relations Officer and one of the Compliance Officers of the FIAU attended a training seminar on AML/CFT issues and supervision. The seminar, held in Cyprus from 28<sup>th</sup> to 29<sup>th</sup> January 2010, was organized by the Central Bank of Cyprus in collaboration with the Central Bank of the Netherlands. The seminar dealt mainly with the challenges encountered by supervisory authorities in AML/CFT supervision and compliance monitoring and best practices in the area of AML/

CFT supervision. One of the trainers of this seminar was the Deputy Chairman of the FIAU, Mr. Herbert Zammit LaFerla, who delivered a presentation on the practical issues being encountered in prevention, regulation and supervision.

In the course of the year, the members of the staff of the FIAU also attended a number of conferences organised in Malta by different associations and institutes within the financial services sector on various topics such as Islamic finance, trusts and foundations, company law, financial services and consumer protection.

The Board of Governors also nominated the Legal & International Relations Officer of the FIAU to attend the annual evaluator training seminar organised by MONEYVAL. The seminar took place from 12<sup>th</sup> to 16<sup>th</sup> July 2010 in Andorra la Vella and was attended by 34 delegates from 22 different countries. The purpose of the seminar was to train future evaluators who would be involved in the 4<sup>th</sup> Round of mutual evaluations by MONEYVAL.

A MONEYVAL training seminar for evaluation rapporteurs on the Council of Europe Convention on laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) which was held in Strasbourg in June was attended by the Director.

In addition to the training received by the various members of the FIAU's staff, the FIAU was also very active in providing training in various forums. The Director participated in the KPMG Money Laundering Reporting Officers Training where he delivered a presentation on the functions, roles and responsibilities of the MLRO within the Maltese regulatory regime. A similar seminar was organised by the Institute of Financial Services Practitioners intended to train MLROs and prospective MLROs. During the course of this seminar, the Director provided training in relation to the functions and powers of the FIAU, the legal and regulatory framework as well as the obligations and duties of subject persons, their internal obligations, the risk-based approach and the tools in relation to asset recovery.

Another conference organised by the Institute of Financial Services Practitioners, in which the Director participated, was held to present the guidance notes drafted by the Institute for its members. In the course of this conference the Director delivered a presentation relating to the regulator's perspective to compliance monitoring. The Director also participated as a speaker in a seminar organised by the Malta Institute of Accountants which focussed entirely on compliance with AML/CFT obligations from the perspective of accountants, auditors, legal professionals and tax advisors.

The Director, together with two officers of the FIAU, also participated in a one-day conference which was organised by the Chamber of Advocates in collaboration with the FIAU and the Department of Commercial Law of the University of Malta. The conference, which dealt specifically with the Maltese AML/CFT framework, covered a number of topical and practical matters including the obligation to report suspicious

transactions, the application of confidentiality, professional secrecy and data protection provisions, the perspectives of legal practitioners, financial services practitioners and members of the notarial profession, judicial co-operation, the risk-based approach and the funding of terrorism.

As in previous years, members of the staff of the FIAU were requested to participate as trainers in a number of ongoing courses. Following the issuance of the FIAU's Implementing Procedures and Guidance, referred to in more detail below, the Director and the Legal & International Relations Officer delivered presentations on the salient features of this document in the course of one of the sessions of the KPMG AML Roundtable VI which was held in October. The Legal & International Relations Officer also provided a presentation on money laundering and funding of terrorism issues from a tax advisors perspective within a management course organised annually by the Malta Institute of Management.



## 4. OTHER DEVELOPMENTS AND INITIATIVES

### Legislative Developments

#### Amendments to the PMLA

The PMLA was amended by virtue of Act VII of 22<sup>nd</sup> June 2010 introducing two new articles – Article 4B and Article 30B.

Article 4B implements the provisions of Article 19 of the Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198). It is to be noted that a regime regulating the issuance of monitoring orders had already been in place under Article 435AA of the Criminal Code (Cap. 9 of the Laws of Malta) in relation to criminal offences under the Code, including FT. The application of the power to issue such orders was therefore extended to also cover ML offences.

Further to such amendment, where the Attorney General has reasonable cause to suspect that a person is guilty of ML, he may apply to the Criminal Court for the issuance of a monitoring order whereby a bank is required to monitor the bank accounts of the suspect or of any other accounts related to the suspect. On the demand of the Attorney General, the bank will then communicate the information resulting from the monitoring to the person or authority indicated by the Attorney General, which could be the FIAU. This power gives the Attorney General the possibility to make use of the resources available within other entities such as the FIAU for the purposes of implementing these orders. Once such information is collated the designated person or authority is required to transmit this information to the Attorney General. This power also applies to those instances where the Attorney General receives a request to issue a monitoring order from a judicial or prosecuting authority situated outside Malta.

Article 30B confers a similar monitoring power to the FIAU itself. By virtue of this provision, in fact, the FIAU may now request any subject person, whether carrying out relevant activity or relevant financial business, to monitor the transactions or banking operations being carried out through an account which is connected to a person, whether natural or legal, suspected of being involved in ML. Where such an order is issued upon subject persons, they shall communicate the information resulting from the monitoring to the FIAU and the FIAU may use that information for the purpose of carrying out its analysis and reporting functions under the PMLA.

The monitoring powers granted to the Attorney General and the FIAU have different objectives, which complement each other. The monitoring powers granted to the FIAU assist the FIAU in conducting its analysis of STRs, especially in

determining whether a reasonable suspicion of ML/FT exists, since in certain circumstances a determination as to whether a suspicion of ML/FT exists may only be established on the basis of information gathered from the monitoring of an account over a period of time. On the other hand, the monitoring powers granted to the Attorney General are intended as an investigative tool. These powers also enable the AG to fulfil requests by relevant foreign authorities to monitor specific accounts.

#### Other legislative developments

A number of legislative developments taking place during 2010 which are worth mentioning are: (1) the implementation, through Legal Notice 464 of 2010, of Council Framework Decision 2006/783/JHA of 6<sup>th</sup> October 2006 on the application of the principle of mutual recognition to confiscation orders as amended by Council Framework Decision 2009/299/JHA of 26<sup>th</sup> February 2009 and Council Framework Decision 2005/212/JHA of 24<sup>th</sup> February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property; and (2) the amendment, by virtue of LN467 of 2010, of LN397 of 2007, through which the right to issue a cross-border freezing order was extended beyond the Criminal Court to all courts of criminal jurisdiction.

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

The JCPMLFT is an *ad hoc* committee set up to provide a forum for discussion and exchange of views relating to the prevention of ML/FT with a view 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 Legal & International Relations Officer of the FIAU acting as secretary.

The Committee is made up of representatives from the Attorney General's Office, the Police, the Central Bank of Malta, the Malta Financial Services Authority, the Lotteries and Gaming Authority and other associations and bodies representing persons subject to the PMLFTR. The latter include the Institute of Financial Services Practitioners, the Malta Banker's Association, the Malta Insurance Association, the Malta Funds Industry Association, the College of Stock Brokers, the Malta Institute of Accountants, the Malta Stock Exchange, the Chamber of Advocates, the College of Legal Procurators, the College of Notaries, the Malta Institute of Taxation, the Federation of Real Estate Agents, the Society of

Trust and Estate Practitioners and the Association of Licensed Financial Institutions.

The topic which dominated the agenda of the meetings held in 2010 was the draft Procedures and Guidance for the Implementation of the Prevention of Money Laundering and Funding of Terrorism Regulations, the details of which are discussed in the following section of this report. The main aspects of the draft Procedures and Guidance were presented to the Committee at its 40<sup>th</sup> meeting, which prompted extensive discussions. The members of the Committee were given the opportunity to present the comments made to the FIAU during the consultation period in the course of the 41<sup>st</sup> meeting of the Committee. It is expected that this matter will continue occupying a prominent position on the agenda of future meetings until the final version of the Procedures and Guidance is issued.

Apart from the discussions in relation to the Procedures and Guidance, a number of presentations were delivered by various members of the Committee on the ML/FT challenges, risks and vulnerabilities encountered in their respective sector. The members who contributed to this initiative during the meetings held in 2010 were the representatives of the College of Stock Brokers, the Institute of Financial Services Practitioners, the Chamber of Advocates and the Society of Trust and Estate Practitioners.

## Procedures and Guidance Implementing the Provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations

On 17<sup>th</sup> August 2010 the FIAU issued a consultative document containing draft Procedures and Guidance implementing the provisions of the PMLFTR. In the course of the consultation period, which ended on 29<sup>th</sup> October 2010, the FIAU received a number of comments from the members of the Joint Committee for the Prevention of ML/FT and other individual subject persons.

The Implementing Procedures and Guidance will replace guidance notes currently in place in various sectors which are still based on the provisions of the law prior to the entry into force of the 2008 Regulations. Their primary purpose is to interpret the obligations set out in the PMLFTR and to establish measures required for the carrying into effect of the provisions of the PMLFTR. The Implementing Procedures and Guidance, which will be issued under Regulation 17 of the PMLFTR, will also provide guidance as to how the provisions of the Regulations should be effectively implemented in practice. Additionally, the Implementing Procedures and Guidance are meant to assist subject persons in implementing AML/CFT procedures and controls and to set out industry-specific good practice.

The part of the Implementing Procedures and Guidance issued

for consultation is the general part which will be applicable to all subject persons. This part, in fact, contains a number of chapters which correspond to the main obligations set out in the PMLFTR. These include, *inter alia*, a chapter on customer due diligence, record-keeping, reporting and awareness and training. It is worth noting that for the first time the Implementing Procedures and Guidance provide guidance on the implementation of the risk-based approach, a concept that has at its centre the principle that resources are to be allocated proportionately in accordance with the extent of the ML/FT risks posed. Provisions have also been introduced providing guidance on the manner in which the verification of the identity of a person may be carried out through the use of electronic means.

The FIAU is currently reviewing the comments received during the consultation period and a final version of the document will be issued in the second quarter of 2011. The second part of the process leading to the issuance of comprehensive Implementing Procedures and Guidance will consist in the drafting of sector-specific procedures and guidance prepared in collaboration with the members of the Joint Committee representing subject persons.

## FATF Statements

The International Co-operation Review Group of the Financial Action Task Force was set up to monitor 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 public statements from time to time to notify 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 risks posed by such jurisdictions.

During 2010 the FATF issued three public statements. As in previous years, Iran featured in all three statements as it continues to pose a very high risk of terrorist financing due to its failure to criminalise terrorist financing and effectively implement suspicious transaction reporting requirements. The FATF reaffirmed its call on members and other jurisdictions to apply enhanced customer due diligence to transactions and business relationships with Iran and to apply effective counter-measures to protect their financial sectors. Other jurisdictions that featured in the public statements were Angola, the Democratic People's Republic of Korea, Ecuador, Ethiopia, Pakistan, São Tomé and Príncipe and Turkmenistan.

In 2010, in addition to the three public statements, the FATF issued another document entitled 'Improving Global AML/CFT Compliance: update on-going process' containing a list of jurisdictions with strategic deficiencies that provided a high-level political commitment to address the deficiencies through implementation of an action plan developed

together with the FATF. It should be noted that the situation in each jurisdiction differs and therefore the level of risk posed by such jurisdictions is different. The jurisdictions which appeared on the list are: Angola, Antigua and Barbuda, Azerbaijan, Bangladesh, Bolivia, Ecuador, Ethiopia, Ghana, Greece, Honduras, Indonesia, Kenya, Morocco, Myanmar, Nepal, Nigeria, Pakistan, Paraguay, Philippines, Qatar, São Tomé and Príncipe, Sri Lanka, Sudan, Syria, Tanzania, Thailand, Trinidad & Tobago, Turkey, Turkmenistan, Ukraine, Venezuela, Vietnam, and Yemen.

Both the public statements and the document entitled 'Improving Global AML/CFT Compliance: On-going Process' have been posted on the FIAU's website and circulated to all subject persons operating within the area of financial services. Additionally, the FIAU forwarded both documents to all the representatives sitting on the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism. The members of the Committee representing persons who qualify as designated non-financial businesses and professions were asked to circulate both documents to their members and to bring their contents to their notice.

## Freezing Orders

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Pursuant to an informal agreement between the Courts of Malta and the FIAU reached following a discussion within the JCPMLFT on practical difficulties encountered by subject persons in fulfilling their duties under the law, it was decided that the notices of orders issued by the courts of criminal jurisdiction in terms of Article 5 of the PMLA and Article 23A of the Criminal Code (Cap. 9 of the Laws of Malta) would be uploaded to the website of the FIAU. Following this agreement, the court orders which are officially published in the Government Gazette are now being reproduced on the FIAU's website for information purposes only, thereby providing a valid resource to the officers of subject persons in the monitoring process for the detection of freezing orders.

## 5. PARTICIPATION IN INTERNATIONAL FORA

### EU Committee on the Prevention of Money Laundering and Terrorist Financing

The CPMLTF is a committee set up to assist the EU Commission in the implementation of the 3<sup>rd</sup> AML Directive (Directive 2005/60/EC). The Committee was established under Article 41 of the 3<sup>rd</sup> AML Directive itself and meets five times a year. Even though the Committee is not a policy-making body, it serves as an important platform for the discussion of policy issues related to AML/CFT. The FIAU represents Malta on the CPMLTF and during 2010 all the meetings of the Committee were attended by FIAU officers.

The topic which dominated the agenda of the CPMLTF meetings during 2010 was the issue of cross-border reporting and supervision. The difficulties encountered by payment institutions registered in one Member State ("the Home MS") while offering services in another Member State ("the Host MS") through an agent, particularly in respect of the responsibility for reporting and for supervision, was brought to the attention of the European Commission by a number of Member States. The main difficulties encountered related to the uncertainty as to whether suspicious transactions identified in the Host MS were to be reported to the FIU in the Host MS or to the FIU in the Home MS where the payment institution was situated. The issue was later extended to a discussion on the issue of AML/CFT supervision in such situations.

Following extensive discussions and written comments submitted by Member States, including comments by the FIAU, in the last meeting of 2010 the European Commission presented a non-paper to clarify the matter. The Commission concluded that where a suspicious transaction was identified by an agent, the reporting of such suspicion should ideally be made to the FIU of the Host MS, since such FIU would be better placed to evaluate the report. However, the 3<sup>rd</sup> AML Directive provides a number of legal impediments to this course of action since it requires reporting to be done to the FIU where the entity filing a report is situated, which in this case would be the payment institution and not the agent. In view of the existence of such impediments the Commission is considering future legislative clarifications on this issue. In the meantime, in order to circumvent the difficulties arising in such circumstances FIUs are expected to co-operate with each other to facilitate the smooth cross-border transmission of suspicious transaction reports.

As to the issue of cross-border supervision the Commission considers that the supervisory authorities of both Home MS and Host MS should cooperate closely for the purpose of monitoring and enforcing compliance of agents with the obligations emanating from 3<sup>rd</sup> AML Directive.

Another matter which was discussed at length during the meetings of the CPMLTF during 2010 was the revision of the Common Understanding between Member States on third country equivalence following criticism by the FATF in the course of the mutual evaluations of two Member States of the EU. A task force was set up to revise both the Common Understanding itself, as well as the criteria for the recognition of third country equivalence. The process is still ongoing and discussions are expected to continue during the 2011 meetings.

During 2010 the Commission initiated work with a view to issuing a report on the application of Directive 2005/60/EC as foreseen by Article 42 of the same Directive. The Commission informed the CPMLTF that a contract had been awarded to Deloitte & Touche to conduct an external study on the application of the Directive. The objectives of the study are to examine the operation of the AML Directive with regard to selected issues and to undertake a specific examination of the impact of the Directive on independent legal professionals. The report will be uploaded on the website of the FIAU when it is published officially.

### EU FIU Platform

The FIU Platform is an informal grouping of representatives of the FIUs of all the Member States which was set up in 2006 by the European Commission. The main purpose of this forum is to facilitate the co-operation among FIUs. The FIAU attended both meetings of the FIU Platform held in 2010.

One of the main topics discussed in the course of the meetings held in 2010 was the revision of Council Decision 2000/642/JHA concerning arrangements for co-operation between FIUs of the Member States in respect of exchange of information. In this regard, a questionnaire was circulated among Member States to identify the difficulties encountered by Member States in the exchange of information between FIUs.

Among the conclusions reached in the course of this exercise, it was established that some administrative FIUs would tend to have more difficulties providing law enforcement information in a timely manner while some law enforcement FIUs would tend to face the same issue when requested to provide financial information. Additionally, it was determined that some FIUs are limited by the apparent legislative requirement to have received a prior STR in order to be able to provide the requested information. The list of questions linked to time limits within which information is exchanged led to a wide consensus on the need to ensure an adequate balance between practicality and the establishment of clear parameters. Further debate on this topic is expected to continue in future Platform meetings.

In the course of the 2010 meetings the issue of possible discrepancies between the principles laid out in the Data Protection Directive (95/46/EC) and the measures required under the third AML Directive was also discussed at length. The debate was initiated following a project by a Working Group set up in terms of Article 29 of the Data Protection Directive to ensure that AML/CFT practices did not breach data protection principles. The work of this Working Group is still ongoing.

## The Egmont Group

The Director participated in the 18<sup>th</sup> Plenary of the Egmont Group held in Cartagena (Colombia) and the other two meetings of the Legal Working Group of the Egmont Group held in 2010 in Grand Baie (Mauritius) and Chisinau (Moldova). The FIAU, which has been a member of the Egmont Group since 2003, has in recent years been 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 provides a forum for FIUs from around the world to enhance support to their respective governments in the fight against ML, FT and other financial crimes. The Group was first set up in 1995 in Belgium as a small group of FIUs seeking to explore ways of co-operation among themselves. The Group has now grown to incorporate within it 120 FIUs and today sits at the strategic and operational heart of information exchange. Representatives of member FIUs meet regularly to find ways to cooperate, especially in the areas of information exchange, training and the sharing of expertise.

The Egmont Group 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. This international network of FIUs aims at improving the interaction among FIUs in the areas of communications, information sharing and training

coordination through the creation of systems to facilitate the exchange of information, the strengthening of 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 18<sup>th</sup> Egmont Group Plenary in Cartagena held in June, 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 230 participants representing FIUs from 90 jurisdictions and 11 regional and international bodies.

The Cartagena Plenary meeting brought together the Egmont members for training, liaison and in-depth corporate discussions to further the development of the international FIU network. The Plenary saw a change in the Chair of the Egmont Group, with Mr. Luis Urrutia, Head of the Mexican FIU, concluding his term as Chair. The Heads of FIUs unanimously endorsed Mr. Boudewijn Verhelst, Deputy Head of the Belgian FIU, as the new Chair of the Egmont Group.

During the plenary session, a keynote presentation by the IMF focused on the impact of the financial crisis and FIUs were encouraged to contribute to ML and FT risk assessments and to cooperate with other national authorities in order to target resources to areas of greatest vulnerability. The World Bank emphasized the importance of financial inclusion as a means of strengthening AML/CFT regimes, resulting in less demand on the informal sector and an improved ability to monitor and trace transactions. A need to work on anti-corruption initiatives was also stressed, with many FIUs indicating that corruption is a significant factor that influences their ability to work effectively at both the national and international level.

Training sessions held throughout the plenary week focused on topics of operational concern to FIUs. Other sessions included an examination of bulk cash smuggling, the methods used to launder money through Free Trade Zones, work with supervisors and regulatory entities, STR sharing and the use of IT tools in FIU case development. The meeting also looked at a



*The participants at the 18<sup>th</sup> Egmont Group Plenary held in Cartagena (Colombia)*

Financial Instruments Manual developed by the UNODC and received information on the topic of 'Proliferation Financing'.

A strong emphasis was placed on the need to work effectively with law enforcement authorities at the national level, with many FIUs sharing their best practice experience. Several international organizations jointly presented their ML/FT assessment projects and risk based approach studies highlighting the Egmont Group's enhanced focus on understanding current and future ML and FT threats.

The Heads of FIUs met on two occasions during the plenary week and took decisions on some key issues of significance to the long-term operation and direction of the Egmont Group. On the basis of an update from the Legal Working Group on the Egmont Group Terrorism Financing compliance review outlining the positive progress of the one remaining non-compliant FIU that had been suspended at the 2009 Plenary, the Heads of FIUs agreed to lift the suspension and were pleased to note that all Egmont member FIUs are now compliant with the Egmont Group requirements. Moreover, pursuant to previous onsite visits carried out by the Outreach Working Group and scrutiny of the Legal Working Group, four candidate FIUs (the FIUs of Afghanistan, Cameroon, Ivory Coast and Uruguay) were presented to the Heads of FIUs and all were endorsed as Egmont Group members.

In March, in Grand Baie, Mauritius, the Legal Working Group gave two important rulings on the implementation of the Egmont Group Principles of Information Exchange. In the first case it reaffirmed a March 2009 ruling that a FIU cannot require the identification of the predicate offence as a condition for the exchange of information since this prerequisite would undermine the principle of free exchange under the Egmont Group Principles. In its second opinion, the Legal Working Group emphasised that the refusal by an FIU to disclose a suspicious activity report in its possession to an Egmont member FIU on grounds of bank secrecy is a practice that violates Egmont standards. More specifically, it was noted that the clause in the Egmont Statement of Purpose recognising the right to subject co-operation to additional conditions based on national legislation cannot be construed as to invalidate the fundamental Egmont standard governing the dissemination capability any FIU should have in the international co-operation context between Egmont members.

In between the Cartagena meeting and Chisinau meeting held in October a sub-group of the Legal Working Group revisited the Terms of Reference and Selection Procedure for the Chair of the Egmont Group, proposing some important amendments that were discussed and accepted by the Egmont Committee in Moldova. In the October meeting, participants of the Legal Working Group additionally noted and reviewed the outcomes of discussions on a written proposal by a sub-group of the Legal Working Group to the FATF Expert Working Group B (EGB) for the revision of FATF Recommendation 40 on FIU-to-FIU co-operation.

The Legal Working Group also discussed the developments affecting FIU-Netherlands Antilles, which was divided into two autonomous regions with two separate FIUs. It was resolved that the FIU of Curaçao is effectively the successor of the FIU Netherlands-Antilles, however the FIU of St. Maarten will be a new unit and would therefore have to be vetted in accordance with the usual procedure for new members should it wish to apply for membership.

## MONEYVAL

MONEYVAL held three plenary meetings in 2010, 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) and Dr. Jason Grima (Attorney General's Office, Legal Expert). The Director of the FIAU also attended the December plenary, particularly in view of discussions related to Malta's Second Progress Report.

In the course of the 2010 plenaries a horizontal review of the Third Round Mutual Evaluations was presented and adopted. Discussions on First and Second Progress Reports of the Third Round Mutual Evaluations also continued. A number of such reports, including Malta's Second Progress Report, were adopted by the plenary. In the December plenary Malta's Fourth Round Mutual Evaluation was announced. The on-site evaluation is expected to take place between 29<sup>th</sup> May and 4<sup>th</sup> June 2011.

### Second Progress Report

Under the established procedure for the MONEYVAL third evaluation round, all countries are required to provide a progress report twelve months after the adoption of their mutual evaluation report, based on a questionnaire prepared by the Secretariat. Such reports are subject to routine updates every two years between evaluation rounds. Following the First Progress Report submitted and adopted by MONEYVAL in December 2008 at its 28<sup>th</sup> Plenary, Malta was required to submit the Second Progress Report on its AML/CFT regime. The Second Progress Report was adopted by MONEYVAL in December 2010 at its 34<sup>th</sup> Plenary meeting.

The Second Progress Report sets out the legislative and institutional measures implemented between December 2008 and November 2010 to further strengthen the AML/CFT regime in Malta and to ensure continued compliance with all international developments. A copy of the adopted Second Progress Report may be viewed on the FIAU website.

### Mutual Evaluations

Between 7<sup>th</sup> and 12<sup>th</sup> June the then Deputy Chairman of the FIAU, Mr. Herbert Zammit LaFerla, participated in the fourth



round evaluation of Cyprus as a financial expert. The visit was coordinated by the Unit for Combating Money Laundering (MOKAS). The team met with the Minister for Finance, the Attorney General, as well as representatives from thirty organisations and agencies including law enforcement agencies, government departments, financial services supervisors and the private sector. The draft report will now be prepared for review and adoption by MONEYVAL at its 36<sup>th</sup> Plenary meeting.

Between 6<sup>th</sup> to 11<sup>th</sup> September an officer of the FIAU, Mr. Daniel Gatt, participated in the Fourth-Round Mutual Evaluation of San Marino as a law enforcement expert. The visit was coordinated by the Financial Intelligent Unit of San Marino (Agenzia d'Informazione Finanziaria) and the country's Ministry of Foreign Affairs. The evaluation team had an audience with the two Capitani Reggenti and met with the Secretaries of State for Foreign Affairs, Finance, Justice, Industry, Education and for Tourism. Furthermore, the team met with officials and representatives of all relevant government agencies, specialised agencies, judicial and law enforcement authorities as well as with representatives of professional associations and the private sector. The draft report will be prepared for review and adoption by MONEYVAL at its 36<sup>th</sup> Plenary meeting.

### **EAG/MONEYVAL Experts' Meeting on Typologies**

MONEYVAL members and members of the Eurasian Group (the FSRB for Eurasian countries) convened together with observers, international organisations and private sector representatives for the first time in a joint typologies exercise, which was held in Moscow from 9<sup>th</sup> to 10<sup>th</sup> November. The meeting was opened with addresses by Mr. Vladimir Nechaev, MONEYVAL Chairman, and Mr. Yury Chikhanchin, Head of Rosfinmonitoring. During the two-day meeting, participants from 29 countries, including the Legal & International Relations Officer of the FIAU, examined a number of emerging ML and FT methods and trends in the context of the following typology research projects:

- Criminal Money Flows on the Internet.
- Risks of misuse of E-money in ML/FT schemes.
- Risks of misuse of non-traditional financial institutions in ML schemes.
- ML/FT using Alternative Remittance Systems.
- Risks of ML via foreign trade operations.



