



UNDERSTANDING FIU OPERATIONAL INDEPENDENCE AND AUTONOMY

A product of the Egmont Centre of FIU Excellence and Leadership (ECOFEL)

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Egmont Group of Financial Intelligence Units

The Egmont Group of Financial Intelligence Units (Egmont Group) is a globally united body of financial intelligence units (FIUs). Founded in 1995, the Egmont Group facilitates the exchange of financial intelligence, expertise and cooperation to combat money laundering and the financing of terrorism.

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ECOFEL is the Egmont Group's engine and hub partnering with FIUs as they strive towards capacity building, leadership, and excellence within the global anti money laundering and counter financing of terrorism (AML/CFT) community. ECOFEL is an operational arm of the Technical Assistance and Training Working Group of the Egmont Group. ECOFEL, and activities related to this independent research report are funded by voluntary contributions with seed funding support from UK aid from the UK government.

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Table of Contents

Glossary Of Acronyms.....	2
Executive Summary.....	3
Chapter 1: Background and Objectives	5
Chapter 2: Methodology.....	7
Chapter 3: Importance of an Operationally Independent and Autonomous FIU.....	8
Chapter 4: Implementation of Egmont Group Membership Criteria and Conclusions from Mutual Evaluation Reports Related to FIU Operational Independence and Autonomy.....	10
Chapter 5: Challenges to FIU Operational Independence and Autonomy	14
Chapter 6: Characteristics of An Operationally Independent and Autonomous FIU	16
Chapter 7. Supporting Environment for FIU Operational Independence and Autonomy	20
Chapter 8: Conclusions	22
Reference Materials Consulted	24
Annex A. Experiences from Other Operationally Independent and Autonomous Institutions ...	25
Annex B. Egmont Group and FATF Requirements	27
Annex C. Operationally Independent and Autonomous FIU Self-Assessment Checklist	30

GLOSSARY OF ACRONYMS

AML/CFT	Anti-Money Laundering/Counter Terrorism Financing
EC	Egmont Committee
ECOFEL	Egmont Centre of Financial Intelligence Unit Excellence and Leadership
EG	Egmont Group of Financial Intelligence Units
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
ICP	Insurance Core Principles
ICRG	International Co-operation Review Group
IOSCO	International Organization of Securities Commissions
HoFIU	Heads of Financial Intelligence Units
LEA	Law Enforcement Authorities
LWG	Legal Working Group
MER	Mutual Evaluation Report
ML	Money Laundering
MSCWG	Membership, Support and Compliance Working Group
PPWG	Policy and Procedures Working Group
TATWG	Technical Assistance and Training Working Group
TF	Terrorism Finance
UNCAC	United Nations Convention against Corruption

EXECUTIVE SUMMARY

- 1. This paper has been drafted to assist governments (decision and policy makers), financial intelligence units (FIUs) and other key stakeholders in identifying and understanding the characteristics that define and shape FIU operational independence and autonomy.** The paper has been formulated in response to the Egmont Group of Financial Intelligence Units (EG) membership who have requested guidance on what characteristics should be in place to best facilitate operationally independent and autonomous FIUs. The paper focuses on describing characteristics that may foster FIU operational independence and autonomy, it is not intended to set a new standard, nor does it discuss strategies to achieve these characteristics.
- 2. Operational independence and autonomy of an FIU is seen as a fundamental condition to an effective anti-money laundering and counter financing of terrorism (AML/CFT) framework.** The consequences of FIUs having their operational independence and autonomy compromised has a significant impact on the efforts to combat money laundering (ML) and terrorist financing (TF). The credibility of an FIU with members of the private sector and domestic law enforcement is further influenced as is an FIUs ability to gather information it needs domestically to exchange information with international partners. Furthermore, it can have negative downstream effects on the quality and scope of investigations related to ML, TF, and predicate offences such as corruption and organized crime.
- 3. The identification of characteristics has been conducted in the form of review of mutual evaluation reports (MER) that have highlighted several common jurisdictional shortcomings related to FIU operational independence and autonomy.** These include issues related to the appointment of the Head of FIU (HoFIU) being subject to undue influence, challenges to the FIU’s independent decision-making capability when the FIU is located within the existing structure of another authority or when the mandates of administrative boards or committees are too broadly defined; as well as the exchange of information with foreign FIUs being constricted due to external approval processes.
- 4. Low ratings in a MER may result in the reviewed country being highlighted publicly as a jurisdiction with strategic deficiencies by the Financial Action Task Force (FATF) (so-called “grey lists” or “black lists”).** Such a process could imply significant damage to the economy and may lead to hampering foreign investment.¹
- 5. The characteristics of an operationally independent and autonomous FIU can be grouped into six (6) broad categories.** These include the FIU governance and organisational structure, budget

¹ Before a public identification, countries are under the revision process of the FATF’s International Co-operation Review Group (ICRG) to address their deficiencies.

and resources, the appointment and dismissal of FIU senior management and staff, the protection of information and information exchanges as well as characteristics linked to accountability, integrity, transparency and leadership. Characteristics include, but are not limited to, specific requirements outlined in the FATF standards.

6. **The foundational assumption is that the FIU has the authority and capacity to carry its functions freely, including the autonomous decision to analyse, request and/or disseminate specific information.** This criterion helps ensure that decision-making regarding the FIU's operations lies entirely within the FIU. This protects the FIU and the sensitive information it holds from undue influence(s) and is the basis underpinning international cooperation between FIUs.

7. **FIU core functions should be distinct from those of its parent entity and the FIU should be provided with adequate financial, human and technical resources that secures its autonomy and independence and allows it to conduct its mandate effectively.** This includes the ability to recruit and manage staff independently as well as the capacity to obtain and deploy resources free from any undue political, government or industry influence or interference.

8. **The appointment and dismissal of the Head of FIU (HoFIU) should be apolitical, timely and based on merit.** The role of HoFIU is critical to the success of the FIU and its political leveraging. As such it is important to have appointment and dismissal processes that are free from undue influence and lead to the best candidate being appointed.

9. **The FIU should be able to decide or engage independently with other domestic competent authorities or foreign counterparts with regards to the exchange of information.** This authority should not be subject to approval from a third party, whether a parent organisation or a minister.

10. **Challenges to FIU operational independence and autonomy are also explored.** Lack of understanding of the operational independence and autonomy by key stakeholders, restrictive governance structures and practices as well as undue influence by politicians and/or criminal organisations are all seen as factors that impede an FIU's ability to be operationally independent and autonomous.

11. **This document may serve as the basis for future EG workshops and provision of technical assistance.** Workshops and document dissemination will focus on EG members and candidate FIUs, policy-makers, other government agencies as well as other key stakeholders. It can also serve as a basis for an FIU to conduct a self-assessment of its own structures and activities to determine its own level of operational independence, autonomy and identify potential areas for improvement.

CHAPTER 1: BACKGROUND AND OBJECTIVES

12. **The topic of operational independence and autonomy of FIUs has been a subject of reflection and discussion for the EG for many years.** These include initiatives taken by the former Legal Working Group (LWG) examining instances where operational independence and autonomy may have been breached. Since then the Policy and Procedures Working Group (PPWG) has worked to define concepts and discuss how EG members can best promote and implement them in their own jurisdictions. This follows work undertaken by the PPWG during its meetings in Macau (July 2017) and Buenos Aires (March 2018) where a paper addressing indicia of operational independence and autonomy as well as red flags of concern based on the EG experience were discussed.

13. **The topic was addressed in the context of the EG Meetings which were held in Buenos Aires, Argentina, in March 2018.** During the Heads of FIUs (HoFIU) and Egmont Committee (EC) Intersessional Meeting, a discussion panel examined the concept in further detail and highlighted the need for operationally independent and autonomous FIUs in the fight against corruption. It was concluded that FIUs, to be effective in all their endeavours, must have a sufficient level of operational independence and autonomy. The Egmont Centre of FIU Excellence and Leadership (ECOFEL), has therefore worked to develop this paper, outlining the characteristics of an operationally independent and autonomous FIU.

14. **Previous discussions highlighted the need for a comprehensive study that could raise awareness and knowledge on an FIUs role, and more specifically on the characteristics of operational independence and autonomy.** This paper aims to respond to this need and assist FIUs by reflecting on relevant concepts to key stakeholders in their domestic AML/CFT frameworks about how operational independence and autonomy is translated into daily best practice, regardless of legal system and/or type of FIU.

15. **The objective of this paper is to provide FIUs and key AML/CFT stakeholders with a knowledge-base specifying characteristics that support the presence of operationally independent and autonomous FIUs, while also identifying challenges that can serve as impediments to these concepts.** Whilst, this paper does not intend to set new standards in a domestic setting, it aims to facilitate the enhanced understanding of the concept of operational independence and autonomy and its importance. The paper does not outline the mechanisms and strategies that can help FIUs achieve these characteristics.

16. **It is important to note that operational independence and autonomy are not a goal.** It is seen as a foundational element that helps support the effectiveness of an FIU and helps guarantee that FIUs operate free from undue influence. Moreover, operational independence and autonomy is

not a pretext for lack of transparency and secretiveness. Although the expectation is that an FIU has full decision-making authority regarding operational matters it does not preclude oversight mechanisms, including from Parliaments and Ministers, that evaluate the effectiveness of FIU operations subsequently if the confidentiality of information it receives and the intelligence it disseminates is kept confidential.

17. **It is recognised that the type of FIU and the powers that it has been conferred with will have an impact on the nature of the operational independence and autonomy challenges that an FIU will face.** Administrative, law enforcement and judicial FIUs may face different challenges regarding operational independence and autonomy. Furthermore, the additional mandates that have been conferred to FIUs be it supervision or the power to freeze or block transactions will also have an impact on the type of challenges that will be faced by the FIU.

18. **The targeted audience for this document includes:**

- Governments - ministries responsible for AML/CFT decision making;
- Heads of FIUs and FIU senior management;
- AML/CFT policy makers including legislative bodies, legislators and ministers;
- FIU domestic stakeholders such as law enforcement authorities (LEA), supervisors and regulators;
- Other government agencies; and
- Other international partner organizations.

19. **The example outlined in Box 1 highlights how limited operational independence and autonomy can lead to financial intelligence received by a foreign FIU being disclosed for political purposes and compromise the information's confidentiality as well as the FIU's international reputation.**

Box 1. Limited operational independence contributes to information from foreign FIUs being disclosed publicly.

The EG received a formal complaint in 2014 from a member FIU regarding another member FIU which was alleged to have breached the confidentiality of information received from its counterpart FIU. The complaint alleged that the information provided to the FIU was publicly disclosed by the President of the country receiving the dissemination from the foreign FIU.

The EG started the Support and Compliance Process with regard to the FIU. The complaint led to further scrutiny over the operational independence of the FIU under review, as it was established that the FIU is directly under the authority of the Attorney General. Documents

provided by the FIU under review indicated that the intelligence provided by the foreign FIU was provided to the Attorney General. The FIU under review believes that the unauthorized disclosure was perpetrated by an employee of the FIU who provided the foreign dissemination to her husband who worked for the President.

The Egmont Group recommended that the national legislation be amended to ensure operational independence of the FIU from the Attorney General. As a result, since insufficient progress was achieved, the FIU was issued a warning of suspension. The matter remains under review and the EG currently seeks further measures from the FIU to ensure their operational independence and autonomy is safe-guarded.

CHAPTER 2: METHODOLOGY

20. **The definition of characteristics and challenges as described in this paper have been formulated and informed by the implementation of the standards set by the FATF and principles outlined by the EG.** The characteristics have been informed by the FIU Independence and Autonomy document produced by the Forum of Heads of FATF FIUs. Furthermore, a review of all MER findings related to FATF Recommendation 29 (Rec 29) and Immediate Outcome 6 (IO6), and deliberations undertaken by the Membership, Support and Compliance Working Group (MSCWG) were also conducted. This review has not only informed the characteristics of operational independence but also highlights challenges that impede their presence.

21. **The paper has been subject to extensive review within the EG and with key stakeholders.** A Sub-Committee of the EC has overseen the drafting of this paper. In July, a draft was circulated to the HoFIU for comments. While in early August a validation workshop was held in Zurich, Switzerland, participants included EG members, international AML/CFT, anticorruption and transparency experts from public and private sector, international organizations, academia and civil society. Comments received from the HoFIU, conclusions of the workshop and feedback from the EC Intersessional Meeting in Vaduz, Liechtenstein, last August, further informed the content of this paper. Likewise, the Executive Training on FIU Operational Independence and Autonomy held on 26 September 2018, supported the consultation process in a more advanced stage. The HoFIU endorsed the paper during the EG Plenary Meeting on 27 September 2018, in Sydney, Australia.

CHAPTER 3: IMPORTANCE OF AN OPERATIONALLY INDEPENDENT AND AUTONOMOUS FIU

Experiences from Other Operationally Independent and Autonomous Institutions

22. **Experiences from other government institutions can be instructive in understanding concepts related to the operational independence and autonomy of FIUs.** Other government institutions that play a role in gatekeeping, ensuring the rule of law or the integrity of the financial system such as central banks, financial sector supervisors as well as law enforcement and prosecuting agencies can provide examples of how operational autonomy can be implemented. Annex A provides a detailed overview of the requirements imposed on these agencies as defined by various international standards. A summary of the findings is detailed in this chapter and helps inform the overall definition of characteristics of operational independence and autonomy for FIUs.

23. **International standards applicable to financial sector supervisors outline operational independence and autonomy requirements.** The Basel Core Principles, the Insurance Core Principles and the Objectives and Principles of Securities Regulation all highlight the importance of operational independence. They outline requirements that foster operational independence including: the ability to pursue activities free from undue political, governmental and industry interference, having adequate resources, the need to protect information, having appropriate legal protections, meeting high professional standards, as well as having in place rules regarding the appointment and dismissal of the head of agency.

24. **International standards governing the operations of prosecutors and anti-corruption agencies also require implementation of operational independence measures.** The Standards of Professional Responsibility and Statement of Essential Duties and Rights of Prosecutor's State that prosecutors shall perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability. Furthermore, the United Nations Convention Against Corruption (UNCAC) states that anti-corruption bodies should have *"the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided."*²

² UNCAC, Art. 6, para. 2.

25. **Like the institutions above, the presence of operational independence and autonomy serves as one of the conditions to achieve a high level of effectiveness for FIUs.** These concepts are fundamental to achieving success in fighting ML, TF and predicate offences including corruption. The concepts also create the foundation for trust with LEA, reporting entities and foreign FIUs that underpins successful information exchange.

26. **The consequences of FIU operational independence and autonomy being compromised are significant for an FIU's effectiveness and operations.** Undue influence on the FIU, political or otherwise, compromises an FIU's ability to determine objectively what analytical cases to pursue and disseminate. It can erode the trust that information submitted by reporting entities will be kept confidential, cast doubts on the objectivity of intelligence that gets disseminated to competent authorities and creates a situation where national and international stakeholders are unwilling to exchange information due to risk of information compromise.

27. **FIUs are a fundamental component of the national AML/CFT framework.** They play a central role in the national fight against ML, predicate offences and TF by providing financial information and intelligence that support the work of LEA, AML/CFT supervisors and foreign counterparts. A lack of autonomy or operational independence undermines not only the effectiveness of the FIU's activities but also has a downstream effect on national ML/TF investigations and prosecutions related to ML, terrorism and TF, corruption and organised crime.

28. **To combat ML, TF and predicate offences effectively, FIUs have a pressing need to function in an environment where their operational independence and autonomy is ensured.** Due to the nature of their mandate, there are several areas of the FIU's performance where operational independence and autonomy can be impacted as a result of the structure, policies or processes of the FIU and government. The FIUs receive and analyze significant amounts of information that potentially relate to sensitive matters such as corruption, organized crime and TF, which might make them the target of undue influence. It is, therefore, imperative that FIUs are provided with sufficient operational independence and autonomy to enable them to implement their mandate without undue interference and influence.

29. **Operational independence and autonomy are of pivotal importance in terms of international cooperation.** Exchange of information between FIUs is largely based on trust, thus foreign counterparts must have confidence that the FIUs they engage with have sufficient operational independence and autonomy to allow them to carry out their tasks without undue influence and have the ability to ensure the confidentiality of the information they receive. In cases where this trust does not exist, FIUs will lose the opportunity to benefit from international information sharing and

cooperation with their partners (See case outlined in Box 1). This lack, or the loss, of trust can also have a broader impact on the reputation of the country, its markets and institutions.

30. **It is critically important that an FIU functions with operational independence and autonomy to bolster its integrity and effectiveness.** Furthermore, operational independence and autonomy is a factor that will assist FIUs in establishing or enhancing their leadership role within domestic and international AML/CFT environments and promote the effectiveness of their national AML/CFT regime.

31. **The presence of operational independence and autonomy will also reduce the likelihood that the FIU is found to have shortcomings as part of the FATF mutual evaluation process.** The identification of shortcomings and the corresponding lower ratings during a FATF mutual evaluation can lead to the country being identified as having strategic deficiencies. This designation can lead to an enhanced follow-up process monitored by the FATF's International Co-operation Review Group (ICRG) as well as counter-measures being imposed by members of the FATF and FATF style regional bodies.

CHAPTER 4: IMPLEMENTATION OF EGMONT GROUP MEMBERSHIP CRITERIA AND CONCLUSIONS FROM MUTUAL EVALUATION REPORTS RELATED TO FIU OPERATIONAL INDEPENDENCE AND AUTONOMY

Implementation of EG Membership Criteria

32. **The EG, since its inception, has closely explored and discussed issues of operational independence and autonomy.** The EG follows any changes that might affect the operational independence and autonomy of the member FIUs. This process was undertaken by the LWG and later MSCWG. Each group reviewed an FIU's legislation prior to it achieving EG membership and discussed any concerns it might have had about the operational independence and autonomy of the FIU.

33. **In June 2014, the EG endorsed the Support and Compliance Process, which serves as a transparent, equitable and effective mechanism to ensure accountability of EG members and the reputation of the EG.** The Support and Compliance Process provides the EG with a mechanism to identify members that are deficient in meeting the requirements of the Charter and the Principles for Information Exchange between FIUs and to positively engage with them in an effort to enhance the members' effectiveness as AML/CFT global partners. The MSCWG is responsible for overseeing this process.

34. **The MSCWG examined FIU-related deficiencies stemming from the latest round of mutual evaluations, matters affecting FIU membership status, and formal complaints filed by member FIUs.**

These deficiencies include issues related to operational independence and autonomy. As of March 2018, the MSCWG reviewed two cases where the issue of operational independence and autonomy of FIUs has been raised.

35. **The two cases examined by the MSCWG dealt with FIUs which had been hosted by a larger organization and the role of the host organization in the FIU's operations, as well as the ability of the FIU to protect the information it received from foreign counterparts.** In the first case, the issue stemmed from an FIU's lack of independence from the larger organization within which it was located (See Box 2). The second case dealt with the inability of an FIU to ensure the confidentiality of information shared by another FIU, possibly caused by a lack of operational independence of the receiving FIU (See Box 1).

Box 2. Case of an FIU's lack of independence from a larger organization within which it was located

The Egmont Group received the news that the Head of a member FIU was prevented to enter the FIU premises by the local LEA and there were allegations that the FIU database was accessed by the local LEA with a goal to destroy information within the FIU of important cases of corruption and terrorism. Upon receiving the news, the Chair of the Egmont Group, in consultation with the EC, exercised his emergency powers pursuant to the Charter to order the disconnection of the FIU from the Egmont Secure Web (ESW) to prevent a security threat to the EG.

An EG fact-finding mission raised significant concerns about the FIU's operational independence and autonomy vis-à-vis the host agency. Concerns were related to the fact that the host organization was legislatively designated as the FIU and that it exercised significant controls over budgetary and administrative and human resource matters within the FIU. Furthermore, concerns about confidentiality were expressed relating to possible cases where the FIU shared information provided by foreign FIUs with the host agency without the prior approval and consent of the providing FIU. All these concerns expressed by the mission led to the initiation of a compliance process. The matter was referred to the LWG for review. Later, while the FIU was reconnected to the ESW, the LWG continued the compliance process.

The EG recommended that the national legislation be amended to ensure the operational independence of the FIU from the host agency. Although secondary legislation issued by the host agency was adopted to highlight the operational independence of the FIU, these measures were still deemed insufficient by the MSCWG to guarantee the operational independence of the FIU from the

host agency. This led to a warning of suspension. After a period of time the FIU was suspended from the EG membership and no longer has access to ESW. The matter is still ongoing, however, if no progress is achieved, the compliance process may lead to the expulsion of the FIU from the EG.

Review of Findings in Mutual Evaluation Reports

36. **A key observation of a thorough review of the 50³ mutual evaluation reports (MERs) published as of May 2018 suggest that the operational independence and autonomy of FIUs is not only a matter of technical compliance but also of effectiveness.** In these MERs, concerns were raised, and strengths were highlighted regardless of the legal system and/or type of FIU, especially in the following circumstances which are elaborated later in this section:

- Appointment of the HoFIU;
- FIU hosted by a larger organization;
 - Issues related to staff hiring, appointment and tasking
 - Budget access and allocation
- An administrative board or committee in place; and
 - Scope of decision making
- Exchange of information with foreign partners.

i) Appointment of the HoFIU

37. **The processes and procedures related to the appointment and dismissal of a HoFIU may be an important indicator on how the operational independence and autonomy of the FIU had been envisaged in a jurisdiction.** In some cases, assessors have expressed concerns when the appointment of the HoFIU has no explicit term of office nor conditions that govern their dismissal. No specific concerns were expressed regarding the unjustified dismissal of a HoFIU. While this is highlighted here as an issue identified in MERs it will be expanded upon in Chapter 6.

ii) The FIU is Located Within the Existing Structure of Another Authority

38. **Operational independence and autonomy issues have been identified when the FIU is located within an existing structure of another authority, namely, within a central bank, LEA, or regulator/supervisory authority.** Assessors have raised concerns when:

³ Andorra, Armenia, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Bhutan, Botswana, Cambodia, Canada, Costa Rica, Cuba, Denmark, Ethiopia, Fiji, Ghana, Guatemala, Honduras, Hungary, Iceland, Ireland, Isle of Man, Italy, Jamaica, Macao, Malaysia, Mexico, Mongolia, Nicaragua, Norway, Panama, Portugal, Samoa, Serbia, Singapore, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United States, Vanuatu, Zimbabwe.

- The hiring, firing or replacing of staff requires approval from another rank within the organization;
- FIU staff may be tasked to perform other duties different from the FIU's core functions;
- The FIU does not have its own budget, rather is embedded within the larger organization's budget;
- The FIU does not have complete authority to allocate its budget, for example the FIU requires prior approval to improve its infrastructure, including securing its facilities, or to hire new staff; and/or
- The FIU does not have the ability to obtain the resources necessary to independently perform its mandate.

39. **The last round of MERs identified concerns regarding operational independence and autonomy when the FIU was located within a larger organization.** A review of MERs based on the 2013 FATF methodology identified concerns expressed by assessors regarding an FIU's recruitment process being directed by the existing structure within which the FIU was located. In the evaluations that were reviewed, the assessors indicated that these concerns were mitigated by measures that ensured that FIU core financial intelligence activities were prioritized and an explicit restriction was placed on FIU staff performing any non-FIU related duty within the host organization. Nevertheless, some concerns remained due to the role of larger organizations in the staffing process of the FIU.

iii) Existence of an Administrative Board or Committee Exercising Undue Influence

40. **The scope of powers of FIU governance boards or committees has been identified as potentially posing a source of infringement of operational independence and autonomy.** In this regard, assessors have expressed concerns when:

- The legal framework is not clear enough and there is room for loose interpretation of the board or committee's powers related to the FIU's operations;
- The composition of the board or the committee includes officials from other public and/or private entities which may represent their own organisation's interest rather than that of the FIU; and/or
- The powers assigned to the boards affect the confidentiality and dissemination functions of the FIU.

41. **Board and committee related concerns were raised more cautiously, since there was no evidence of actual undue influence and interference in FIU operations.** Consequently, assessors were more cautious in making direct conclusions that operational independence and autonomy had been compromised.

Exchange of Information with Foreign FIUs

42. **Assessors highlighted that FIUs' operational independence and autonomy was compromised when the FIU must obtain external approval to engage with foreign counterparts.** Assessors highlighted the need for FIUs to be able to enter freely into information exchange agreements such as memoranda of understanding with both domestic and foreign counterparts without external approval.

CHAPTER 5: CHALLENGES TO FIU OPERATIONAL INDEPENDENCE AND AUTONOMY

43. **FIU operational independence and autonomy may be further compromised by several other forms of challenges.** In addition to the cases collated from various mutual evaluations in Chapter 4, FIUs have encountered challenges in maintaining their operational independence and autonomy over time. The legal structure and powers that have been conferred to an FIU will impact how and if its operational independence may be affected. This Chapter outlines some of the challenges that FIUs have encountered in the past when trying to establish and maintain operational independence and autonomy.

44. **Lack of understanding of the FIU's operational independence and autonomy by parent organization, governance board and/or politicians may lead to independence and autonomy restrictions.** The concepts of operational independence and autonomy may not be fully understood by FIU counterpart stakeholders, which can in turn lead to external bodies trying to influence FIU operations and decision making. It is important that parent organizations, administrative boards, politicians and other key stakeholders understand the characteristics of an operationally independent and autonomous FIU to ensure that at a minimum the characteristics listed in Chapter 6 are fully implemented and safeguarded.

45. **Accountability measures and oversight by boards or committees have been used as a pretext for requiring the FIU to share sensitive operational information.** As noted by the Forum of Heads of FATF FIUs in a paper discussing FIU independence and autonomy, *"it is important to balance the need for transparency and administrative accountability with the need to secure and protect the confidentiality of information and prevent undue access by third parties, for example, by putting in place a framework to allow the FIU to refuse to provide operational information or protect such*

information as sensitive and/or classified, and disseminating it by strictly following the rule of 'need to know'."⁴

46. **Restrictive governance structures and practices have impeded FIU ability to obtain and deploy resources needed to carry out its functions.** FIUs have been confronted by a parent organization, a governing board or a politician that exerts influence or makes decisions that undermine the authority and decision-making ability of the FIU. Activities that have impeded on the operational independence and autonomy of the FIU include: dismissing the HoFIU without cause; intervening in the FIU's recruitment of staff; providing insufficient budgetary and human resources; interfering in the execution of the FIU's budget or the deployment of FIU resources; recruitment/staffing and management arrangements that result in high staff turnover; an FIU reorganization that results in the weakening of FIU powers; and/or the significant loss of experienced staff, etc.

47. **It is recognized that oversight of FIU activities may be undertaken by parent organisations, committee, boards and/or parliamentary or Ministerial Committees.** It is important that the scope of this oversight be limited to strategic, policy and effectiveness questions. If the oversight mandate includes examining the effectiveness of FIU operations, the confidentiality of the information the FIU receives and the intelligence it disseminates should be maintained. Board or parent organizations should not be involved in the operational decision-making of FIUs.

Box 3. Case of an FIU's lack of independence from an administrative board

The legislation establishing the FIU provides that it shall be independent in the performance of its functions and shall not be subject to the direction, instruction or control of any person or authority. However, another section of the legislation dilutes this autonomy by providing functions to an Administrative Board that has amongst its functions the giving of direction to the Executive Director in connection with the management, performance, operational policies and implementation of the policies of the FIU. The Board can also prescribe such administrative measures as may be required to safe guard all revenue of the FIU as well as appoint, remove and suspend the members of staff of the FIU. The scope of responsibilities of the Board could have a direct impact on the ability of the FIU to make independent decisions on its operations.

48. **Restrictive governance structures can impact the FIU's ability to cooperate domestically and internationally if travel is restricted.** International cooperation and exchange of information is critical to the effectiveness of every FIU. If the FIU does not have the ability to make decisions regarding

⁴ FATF, Forum of Head of FATF FIUs: FIU Independence and Autonomy, 21-23 February 2018, Paragraph 20.

travel it can impede its ability to collaborate with international counterparts in the exchange of information and consequently reduce the effectiveness of financial intelligence packages sent to domestic partners. The refusal of travel can be used to thwart the work of an FIU, in turn exerting undue influence. Furthermore, the EG Charter specifies that all EG members are expected to attend and participate in the annual EG Plenary meeting and the HoFIU meeting. Travel to international fora also provides an opportunity for FIUs to foster bilateral and multilateral relationships that facilitate future information exchanges.

49. **Undue political influence in the operations, resource deployment and decision making of an FIU is in clear violation of concepts of operational independence and autonomy.** Although it is recognized that the political realm will have a role in setting strategic direction and budgetary priorities for government entities, this should not extend to involvement regarding how the FIU chooses to conduct its operations including: what cases should be analyzed, disseminated or closed; how it is organized; how resources are deployed; and what staff are recruited.

50. **Criminal organizations may try to exercise undue influence on FIU operations by impeding an investigation or seeking information that can later be leveraged.** Criminal organizations may try to exploit an FIU staff with weak integrity to influence the outcome of the analytical process and prevent the dissemination of information that would be harmful to their organization. They can also seek to obtain information that could subsequently be exploited for blackmail.

CHAPTER 6: CHARACTERISTICS OF AN OPERATIONALLY INDEPENDENT AND AUTONOMOUS FIU

51. **The identification of characteristics of an independent and autonomous FIU has been informed by the requirements outlined in the FATF standards, experiences of similarly independent bodies as well as EG members' experience and practices.** Previous sections have outlined shortcomings identified in MERs, EG experiences with respect to member FIUs as well as operational independence and autonomy practices adopted by central banks, LEA and intelligence agencies. These diverse sources have informed the characteristics that are listed below.

Governance and Organisational Structure

52. **The FIU has the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or disseminate specific information.*** At a minimum the FIU must have the ability to:

* Refers to requirements outlined in criteria for Rec. 29.

- Prioritize its analytical activities based on parameters that it establishes;
- Decide which data to utilise in FIU analytical products;
- Decide which cases to close and when to close them;
- Decide how to analyse the information that it is able to obtain; and
- Decide which agencies/persons to disseminate the FIU's financial intelligence and in what format; and
- Decide what requests to answer and in what manner.

This authority should also include the ability to exercise its core functions independently including the ability to obtain information without having to rely on the assistance of a third party.

53. **When an FIU is located within the existing structure of another authority, the FIU's core functions are distinct from those of the other authority.** * The FIU must segregate its functions and resources from the larger agency to ensure that it limits access and control over its assets and decision making. This includes having distinct information technology servers, distinct premises that are only accessible to FIU staff and management, independent document management arrangements, etc. In practice, it should mean that FIU staff and management cannot be reassigned without the explicit authorisation of the HoFIU. Furthermore, the FIU should have a say in the managerial and strategic developments of the host organisation.

54. **The FIU has functional protection which protects it from liability.** FIU employees should be subject to protection from criminal or civil prosecutions if they have conducted their activities in good faith. The absence of such protections can lead to the use of litigation as a means to impede the activities of the FIU.

55. **The HoFIU defines the job profile of senior management and staff.** HoFIU and FIU senior management will have a better understanding of the operational needs of the FIU. As such it should have the ability to define the job profile of its management and staff to ensure that the recruitment process focuses on the skills and competencies required by the FIU. Furthermore, staff should not be imposed externally on the FIU either by a parent organization or an external board.

Budget and Resources

56. **The FIU is provided with adequate financial, human and technical resources, in a manner that secures and promotes its autonomy and independence and allows it to conduct its mandate effectively.** In determining whether sufficient resources have been attributed an assessment must be made as to whether the FIU has the necessary financial, human and technical resources to receive

and analyse information and disseminate financial intelligence. The process and procedures by which the FIU is provided with resources should exclude situations that may lead to undue intervention and influence. The level of adequate resources will vary according to the context and risk environment of each FIU. For example, an FIU that receives lower volumes of suspicious transaction reports (STR) will not require the same amount of resources as an FIU working in a jurisdiction where the volume of financial transactions and reporting is higher.

57. **The FIU obtains and deploys the resources needed to carry out its functions on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence***. The FIU must have the freedom to obtain and decide how to spend funds allocated based on its operational needs, including involvement in international activities. Its resources (human, financial and technical) should be managed distinctly from those of the larger agency in which it is located as this practice will ensure the FIU's operational independence. The FIU will be accountable for sound financial management and shall report on the usage of its funds to external stakeholders.

58. **The FIU has the authority to decide when and where to travel based on its operational needs.** Recognizing the international nature of work undertaken by FIUs, there may be a need for FIU staff to travel regarding the strategic and operational needs of the FIU, to obtain training, or to participate in international meetings and fora in order to strengthen relationships with foreign FIUs and exchange information on FIU best practices and lessons learned. The authority of an FIU to decide when and where it travels does not preclude the presence of rules governing the formal approval of such travel and that the travel must be within the FIU's budgetary envelope.

Appointment and Dismissal of FIU Senior Management and Staff

59. **The process to appoint the HoFIU is apolitical, timely and based on merit.** The process should be documented and transparent. Regardless of the process used to appoint the HoFIU, mechanisms should be put in place to ensure that the HoFIU is not beholden to the individuals or body that has made the appointment. The appointment should not be subject to political or personal affiliation and be based on relevant qualifications, professional skills and proven and documented experience. The process should be timely, so as to not create a leadership void between appointments.

60. **The basis for dismissal of a HoFIU is transparent and based on unsatisfactory performance or breach of duty that should be duly detailed and documented.** The grounds could include gross misconduct, mental or physical incapacity or failure to satisfy the terms and conditions of service.

61. **The HoFIU has the authority to hire senior management and staff based on operational requirements.** The HoFIU should have the decision-making ability to hire its personnel and set staffing

requirements based on the operational needs of the FIU taking into account the FIU budget allotment. The reassignment of FIU staff should lie with the HoFIU or FIU senior management alone and should not be subject to external intervention.

62. **FIU staff are not subject to assignments outside an FIU's core mandate.** To ensure that FIU resources are dedicated to its core functions FIU staff should not be subject to assignments that are not directly related to the FIU's core mandate or AML/CFT activities more broadly.

Protection of Information

63. **The FIU is able to protect the data it receives and the financial intelligence and other information it generates.** The FIU's legal framework should protect the confidentiality of the information that the FIU receives and produces. This includes protecting this information from access from the FIU's parent agency. In practical terms this means the FIU should retain control over who has access to its IT systems and data, including physical documentation.

Information Exchange

64. **The FIU is able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information***. This includes the ability to sign memoranda of understanding to exchange information with domestic partners and to facilitate direct access to the widest range of financial, administrative and law enforcement information that it requires to properly undertake its functions. The FIU should also have the authority to exchange information and sign MOUs with international counterparts.

Accountability, Integrity, Transparency and Leadership

65. **The FIU is accountable for its activities.** Operational independence and autonomy cannot be present if the FIU is not fully accountable and responsible for the decisions and actions that it takes and the manner in which it manages its operations. This accountability speaks to the FIU's ability to perform its functions in accordance with the mandate it is given in legislation and that it does not act beyond its powers. It can also include reporting to Parliament on its overall activities through annual reports and other budget reporting obligations to ensure the sound management of public resources. Accountability is the foundation upon which the FIU will be able to have the authority and capacity to carry out its functions freely including the independent decision to analyse, request and/or disseminate specific information.

* Refers to requirements outlined in criteria for Rec. 29

66. **The FIU ensures the integrity of its staff and management.** Given the sensitive nature of the work of the FIUs, integrity of the FIU staff and management is essential to ensure both the protection of sensitive information as well as to foster the trust of the private sector, domestic and international partners. This should include the presence of a code of ethics or conduct that governs the behavior of FIU staff and management. The lack of integrity within an FIU will create vulnerability, which individuals wanting to exert undue influence can leverage to potentially compromise the FIU's operations and decision-making authority. Conversely, the operational autonomy and independence of the FIU can in turn bolster its integrity.

67. **FIU funding and governance is transparent.** The fight against ML and TF has the promotion of financial transparency as one of its objectives. Similarly, it is important that the funding and governance structures of the FIU are also transparent recognizing that operational independence and autonomy needs to be accompanied with checks and balances through various government reporting requirements that ensures financial transparency, accountability and integrity. Given the nature of FIU operations the concept of transparency of its operations in the context of government reporting will need to be balanced with the FIU's obligation to protect the information that it receives and the intelligence that it generates.

68. **The FIU demonstrates leadership to promote the operational independence and autonomy of the FIU.** The leadership demonstrated by the HoFIU as well as the FIU senior management sets the tone in terms of how the FIU manages external influences. Often the HoFIU must explain to decision makers and external stakeholders the parameters that are required to ensure operational independence and autonomy and consequently set clear boundaries in terms of external intervention and influence.

69. **The evaluation of operational independence and autonomy should not be limited to the examination of the governance structure but also take into account how the governance structure is applied in practice.** It is possible that a structure that did not have any operational independence or autonomy issues at one point in time may encounter issues in the future depending on the actions of the individuals involved.

CHAPTER 7. SUPPORTING ENVIRONMENT FOR FIU OPERATIONAL INDEPENDENCE AND AUTONOMY

70. **Several factors contribute to the operational independence and autonomy of an FIU.** These factors may not be within the direct control of the FIU (contrary to some characteristics) but nonetheless create an environment that make the implementation of operational independence and autonomy possible.

71. **The overall performance of the FIU benefits from being in an environment with favorable and strong structural elements and contextual factors, since these underpin and influence the effectiveness of the AML/CFT measures within a country and may explain the quality of their performance.**⁵ The operational independence and autonomy characteristics of an FIU depend on a number of specific factors including a good understanding of the characteristics of operational and autonomous FIUs by the FIU itself; key stakeholders; and decision-makers as well as robust national coordination.

72. **Contextual factors present in a jurisdiction play an important role in promoting or hindering the effectiveness of AML/CFT measures including the operational independence and autonomy of FIUs.** These factors include the maturity and sophistication of AML/CFT institutions in the country and the level of corruption.⁶

73. **The maturity of institutions that have an AML/CFT mandate plays an important role in defining the environment in which the FIU operates.** It is important for key institutions in the fight against ML/TF to not only understand the role of the FIU but also their own role within the AML/CFT framework. The maturity of supervisory agencies, law enforcement, prosecutors and the judiciary help promote the concepts of operational independence and autonomy not only within the FIU but also across the value chain.

74. **The level of corruption in a jurisdiction can have a significant impact on the operational independence and autonomy of an FIU.** Higher levels of corruption can lead to interference from politicians and/or government officials in operational cases to curtail anti-corruption efforts. It also creates an environment where employees of the FIU are more likely to be subject to have their integrity compromised.

75. **It is important that the FIU as well as LEA, supervisors, regulators, legislators, legislative bodies and Ministers understand what the characteristics of an operationally independent and autonomous FIU are.** As FIUs implement independent and autonomous operations that are free from undue influence and interference, their key partners must have a good understanding of the role of

⁵ Structural elements include “*political stability; a high-level commitment to address AML/CFT issues; stable institutions with accountability, integrity, and transparency; the rule of law; and a capable, independent and efficient judicial system*”. Other contextual factors “*include the maturity and sophistication of the regulatory and supervisory regime in the country; the level of corruption and the impact of measures to combat corruption; or the level of financial exclusion*”. FATF (2013-2018), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated February 2018, FATF, Paris, France, www.fatfgafi.org/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneylaunderingandterroristfinancingcompliance.html

⁶ Idem, p.7.

the FIU as well as the constraints and flexibility under which the FIU must operate to achieve the characteristics that are outlined in Chapter 6.

76. **Robust national coordination should be in place to ensure that operational independence of the FIU does not isolate it from other AML/CFT stakeholders.** The presence of operational independence and autonomy is meant to protect the objectivity of the FIU to allow it to respond to the needs of AML/CFT stakeholders. National coordination mechanisms should promote, *inter alia*, FIU collaboration with reporting entities, supervisors, LEA, prosecutors and asset recovery agencies to ensure the overall success and effectiveness of the national AML/CFT system.

77. **The visibility of the FIU in within the government and in the public can help the FIU identify partners and advocates that can be of support during instances of undue influence.** As an FIU achieves greater visibility within government institutions, civil society and the public it can garner advocates that can leverage public pressure and can come to the defense of the FIU in cases of undue influence and other forms of intervention. It should however be noted that this additional visibility can also lead to greater scrutiny of the FIU's activities.

CHAPTER 8: CONCLUSIONS

78. **As the FATF focuses on effectiveness of AML/CFT measures, operational independence and autonomy plays an important precondition to FIUs achieving the characteristics of an effective system.** It is recognized that operational independence and autonomy serves as one of the foundations that allows the FIU to obtain the trust of the private sector, competent authorities and foreign FIUs. It empowers the FIU to make independent decisions on what will be the subject of analysis, whether cases will be disseminated and who will be the recipient. It also allows FIUs to make decisions that support their operational needs and effectiveness.

79. **This paper identifies a series of characteristics that can promote FIU operational independence and autonomy as well as challenges that can impede it.** The paper has outlined characteristics related to FIUs governance and organizational structure, budget and resources and protection of information. All the characteristics are aimed at providing conditions where the FIU has the ability to carry out its functions freely including the autonomous decision to analyse, request and/or forward or disseminate specific information.

80. **In exploring challenges that impede operational independence and autonomy, the paper outlines circumstances that can facilitate undue influence from the political realm and criminal**

organizations. Factors that can undermine operational independence and autonomy include: lack of understanding of the FIU's role and the concepts of operational autonomy and independence; lack of integrity of FIU management and staff; and restrictive governance structures and practices. It is highlighted that regardless of the governance structures adopted by an FIU, operational independence and autonomy is always evaluated according to the factors present at a given point and time.

81. **Characteristics outlined in this paper may serve as the basis for future EG technical assistance and workshops.** Executive training sessions, webinars and regional workshops may be effective methods to present and disseminate the characteristics of FIU operational independence and autonomy.

82. **The paper can also be used by FIUs to expand the understanding of FIU operational independence and autonomy amongst key decision-makers and stakeholders.** In addition to sparking discussions within jurisdictions it is anticipated that this paper will be used by other international organisations to promote the concept of operational independence and autonomy within FIUs.

83. **The self-assessment checklist found in Annex C, can also be used by FIUs to assess their own level of operational independence and autonomy.** The use of the checklist can assist FIUs in identifying areas where operational independence and autonomy can be strengthened.

REFERENCE MATERIALS CONSULTED

- Basel Committee on Banking Supervision, *Basel Core Principles for Banking Supervision*, September 1997, <https://www.bis.org/publ/bcbs30a.pdf>
- Egmont Group of Financial Intelligence Units, *Egmont Group Charter*, July 2013 <https://egmontgroup.org/en/document-library/8>
- Egmont Group of Financial Intelligence Units, *Egmont Group Criteria for Membership*, adopted by the MSCWG in February 2016 (internal document).
- Egmont Group of Financial Intelligence Units, *Egmont Group Principles for Information Exchange Between Financial Intelligence Units*, July 2013, <https://egmontgroup.org/en/document-library/8>
- Egmont Group of Financial Intelligence Units and World Bank, *Survey of FIU Governance Arrangements. An Egmont Group and World Bank Project. Final Report*, 11 March 2009 (internal document).
- FATF (2018), *Forum of Heads of FATF FIUs: FIU Independence and Autonomy*, endorsed by the Heads of FATF FIUs in February 2018 (internal document).
- FATF (2012-2018), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France, www.fatf-gafi.org/recommendations.html
- FATF (2013-2018), *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems*, updated February 2018, FATF, Paris, France, www.fatfgafi.org/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneylaunderingandterroristfinancingcompliance.html
- International Association of Insurance Supervisors, *Insurance Core Principles*, <https://www.iaisweb.org/page/supervisory-material/insurance-core-principles>
- International Association of Prosecutors, *Standards of Professional Responsibility and Statement of The Essential Duties and Rights of Prosecutors*, <http://www.iap-association.org/>
- International Organization of Securities Commissions, *Objectives and Principles of Securities Regulation*, <https://www.iosco.org/>
- Mutual Evaluations Reports [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate))
- United Nations, *United Nations Convention against Corruption*, New York, 2004, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

ANNEX A. EXPERIENCES FROM OTHER OPERATIONALLY INDEPENDENT AND AUTONOMOUS INSTITUTIONS

1. **Central banks, financial sector supervisors and LEAs can provide examples of how operational autonomy is implemented in other government institutions (as detailed below).** The Basel Core Principles for Banking Supervision outline as its core principle the need for banking supervisors to be operationally independent and to have adequate resources.¹
2. **The first Basel Core Principles speaks of “a clear, achievable and consistent framework of responsibilities and objectives set by legislation for (each of) the supervisor(s) involved, but with operational independence to pursue them free from political pressure and with accountability for achieving them.”** The concept of adequate resources is defined as the ability to meet the objectives set, provided on terms that do not undermine the autonomy, integrity and independence of the supervisory agency. This includes adequate resources related to staffing, funding and technology.²
3. **Law enforcement and intelligence agencies are also often governed by principles of operational independence and autonomy.** However, these principles are not mandated specifically by international standards and are more often defined in domestic legislation or practice.
4. **The Insurance Core Principles (ICP) endorsed by International Association of Insurance Supervisors – offers its own interpretation to the concepts of operational independence and autonomy.**³ The ICP 2 states: *“The supervisor, in exercise of its functions and powers, (i) is operationally independent, accountable and transparent, (ii) protects confidential information, (iii) has appropriate legal protection, (iv) has adequate resources, (v) meets high professional standards.”* The ICP 2 emphasizes that *“(i) independence should be accompanied by accountability to ensure that the supervisor performs its functions in accordance with the mandate it is given in legislation and does not act beyond its powers, (ii) there are explicit procedures regarding the appointment and dismissal of the head of the supervisor and members of its governing body, if such a governing body exists. When the head of the supervisor or members of its governing body are removed from office, the reasons are publicly disclosed; (iii) the supervisor and its staff are free from undue political, governmental and industry interference in the performance of supervisory responsibilities. The supervisor is financed in a manner that*

¹ Basel Committee on Banking Supervision <https://www.bis.org/>

² Basel Committee on Banking Supervision, *Basel Core Principles for Banking Supervision*, <https://www.bis.org/publ/bcbs30a.pdf>

³ International Association of Insurance Supervisors <https://www.iaisweb.org/home>

does not undermine its independence. The supervisor has discretion to allocate its resources in accordance with its mandate and objectives and the risks it perceives."⁴

5. **The International Organization of Securities Commissions (IOSCO) has also established the requirements regarding operational independence of its members.**⁵ Principles 2 and 3 from its Objectives and Principles of Securities Regulation state that *"...(2) the regulator should be operationally independent and accountable in the exercise of its functions and powers; (3) the regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers."* The concept of operational independence is further elaborated in the Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation.

6. **The International Association of Prosecutors also deals with the operational independence issue in the "Standards of Professional Responsibility and Statement of The Essential Duties and Rights of Prosecutors".**⁶ Paragraph 2 of the Standards state *"The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference."* The same paragraph also refers to the right of non-prosecutorial authorities to give general or specific instructions to prosecutors and emphasizes that *"such instructions should be: (i) transparent, (ii) consistent with lawful authority, (iii) subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence."* Further reference can also be found in Paragraph 6, where the Standards state that prosecutors shall perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

7. **Operational independence and autonomy is also a requirement for anti-corruption bodies in the UNCAC.**⁷ The UNCAC links the issue with the requirement to provide resources, including specialised human resources to the anti-corruption bodies. Article 6, paragraph 2 states: *"Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided."*

⁴ International Association of Insurance Supervisors, *Insurance Core Principles*, <https://www.iaisweb.org/page/supervisory-material/insurance-core-principles>

⁵ International Organization of Securities Commissions, *Objectives and Principles of Securities Regulation*, <https://www.iosco.org/>

⁶ International Association of Prosecutors, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, <http://www.iap-association.org/>

⁷ United Nations, *United Nations Convention against Corruption*, New York, 2004, <https://www.unodc.org/unodc/en/treaties/CAC/>

ANNEX B. EGMONT GROUP AND FATF REQUIREMENTS

1. **The FATF and the EG have considered the issue of operational independence and autonomy of FIUs by publishing various standards, guidance and other papers.** This annex summarizes the areas where the Egmont Group and the FATF have outlined requirements and guidance regarding operational independence and autonomy.

EG Charter

2. **The Charter of the EG (the Charter) includes the definition of an FIU as stated within the text of the FATF Recommendation 29 (Rec. 29) and its Interpretative Note (INR 29).** As the Charter is binding for all member FIUs, the definition and the content of the INR 29 including the paragraphs that deal with operational independence and autonomy of the FIUs are binding as well. The preamble of the Charter clearly depicts the resolve of the EG to promote operational independence of FIUs:

PREAMBLE:

The Financial Intelligence Units (FIUs) recognized and accepted as members of the Egmont Group of Financial Intelligence Units (EG) by their global peers, through Heads of FIU (HoFIU)... resolve to [...]support the EG members to enhance their capacity by promoting operational independence of FIUs, offering training and technical assistance, promoting personnel exchanges, developing operational and strategic collaboration, and maintaining and granting access to a secure channel for information exchange between EG FIUs; and [...]

EG Principles of Information Exchange

3. **The EG Principles for Information Exchange Between FIUs (the Principles) also deal with aspects of operational independence and autonomy of FIUs, though implicitly.** The Principles point to the need for operational independence and autonomy when exchanging information between FIUs. Paragraph 11 of the document states: *“FIUs should exchange information freely, spontaneously and upon request, on the basis of reciprocity. FIUs should ensure that they can rapidly, constructively and effectively provide the widest range of international co-operation to counter money laundering, associated predicate offences and the financing of terrorism.”* This paragraph coupled with other paragraphs of the document implies that there should be no influence or interference from outside the FIU regarding international information exchange, as the FIUs should exchange all accessible and obtainable information freely, rapidly and constructively.

EG Criteria for Membership

4. **The MSCWG adopted the Criteria for Membership that gathers criteria from the Charter and the Principles and contains explanatory paragraphs that deal with operational independence and autonomy of FIUs.** The EG uses this document to inform potential candidate FIUs of the relevant criteria they should meet to become a member.¹

FATF Recommendation 29

5. **Criterion 29.7 of the FATF Assessment Methodology explicitly requires FIUs to be operationally independent and autonomous.** The FATF's Interpretative Note to Rec. 29 discusses operational independence and autonomy in the following terms: *"The FIU should be operationally independent and autonomous, meaning that the FIU should have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or disseminate specific information. In all cases, this means that the FIU has the independent right to forward or disseminate information to competent authorities."*

6. **Criterion 29.7 focuses on the FIU's ability to carry out its functions freely, to make independent arrangements with domestic and foreign counterparts, to have distinct core functions from its parent authority, and to obtain and deploy resources needed to carry out its functions free from undue political, government or industry influence.** Furthermore, the INR 29 provides further guidance on the concepts of operational independence and autonomy. The requirements outlined in criterion 29.7 as well as the INR 29 discussion on operational independence can be found below.

Paper from the Forum of Heads of FATF FIUs: FIU Independence and Autonomy

7. **The Forum of Heads of FATF FIUs has also developed a paper on FIU independence and autonomy.** It serves as a reference for FIUs who are dealing with issues of independence and autonomy and those who seek to understand how these issues impact on FIUs. The paper provides deeper insight into the issue of FIU operational autonomy and independence. It elaborates on the relevance of FIU independence and autonomy to the AML/CFT system as well as identifying a number of factors affecting FIU autonomy and independence.

¹ The document gathers the criteria from both the Charter and the Principles without any additional criteria.

CRITERION 29.7

29.7. *The FIU should be operationally independent and autonomous, by:*

- (a) having the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or forward or disseminate specific information;*
- (b) being able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information;*
- (c) when it is located within the existing structure of another authority, having distinct core functions from those of the other authority; and*
- (d) being able to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence.*

EXCERPTS OF INTERPRETIVE NOTE TO RECOMMENDATION 29

OPERATIONAL INDEPENDENCE

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

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

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

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

F. UNDUE INFLUENCE OR INTERFERENCE

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

ANNEX C. OPERATIONALLY INDEPENDENT AND AUTONOMOUS FIU SELF-ASSESSMENT CHECKLIST

The checklist below can assist FIUs in assessing their level of operational independence and autonomy. FIUs should rate whether each characteristic is implemented and present in their FIU based on the rating scale described below. A rating score is then calculated. Based on the rating score an overall assessment of operational independence and autonomy is provided (see assessment scale at the end of this Annex).

Rating Scale:

No implementation of characteristic (Very significant shortcomings)	Minimal implementation of characteristic (Significant shortcomings)	Partial implementation of characteristic (Moderate shortcomings)	High implementation of characteristic (Minor shortcomings)	Characteristic fully implemented (No shortcomings)
1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

CHARACTERISTICS (See Chapter 6 for description of each criteria)	RATING
<i>Governance and Organisational Structure</i>	
The FIU has the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and /or disseminate specific information.*	
When an FIU is located within the existing structure of another authority, the FIU's core functions are distinct from those of the other authority.*	
The FIU has functional protection which protects it from liability.	
The HoFIU defines the job profile of senior management and staff.	
<i>Budget and Resources</i>	
The FIU should be provided with adequate financial, human and technical resources, in a manner that secures its autonomy and independence and allows it to conduct its mandate effectively.*	
The FIU should be able to obtain and deploy the resources needed to carry out its functions on an individual or routine basis, free from any undue political, government	

* Requirements outlined in criteria for FATF Recommendation 29.

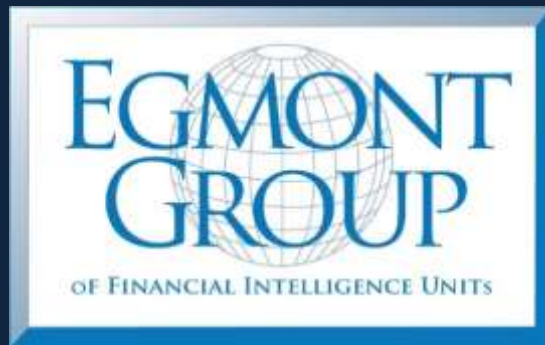
2018 UNDERSTANDING FIU OPERATIONAL INDEPENDENCE AND AUTONOMY

or industry influence or interference, which might compromise its operational independence. ¹⁵	
The FIU has the authority to decide when and where to travel based on its operational needs.	
<i>Appointment and Dismissal of FIU Senior Management and Staff</i>	
The process to appoint the Head of FIU (HoFIU) is apolitical, timely and based on merit.	
The basis for dismissal of a HoFIU is based on unsatisfactory performance or breach of duty that should be duly detailed and documented.	
The HoFIU has the authority to hire senior management and staff based on operational requirements.	
FIU staff are not subject to assignments that are outside of the FIU's mandate.	
<i>Protection of Information</i>	
The FIU is able to protect the data it receives as well as the financial intelligence and other information it generates.	
<i>Information Exchange</i>	
The FIU is able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information.*	
<i>Accountability, Integrity, Transparency and Leadership</i>	
The FIUs is accountable for its activities.	
The FIU ensures the integrity of its staff and management.	
The FIU's funding and governance is transparent.	
The FIU demonstrates leadership to promote the operational independence and autonomy of the FIU.	
TOTAL	

Assessment Scale Operational Independence and Autonomy

Assessment	Rating Range
Very weak level of operational independence and autonomy	17-33
Weak level operational independence and autonomy	34-50
Moderate level operational independence and autonomy	51-67
High level operational independence and autonomy	68-74
Very high level operational independence and autonomy	85

* Requirements outlined in criteria for FATF Recommendation 29.



UNDERSTANDING FIU OPERATIONAL INDEPENDENCE AND AUTONOMY

A product of the Egmont Center of FIU Excellence and Leadership (ECOFEL)

This paper has been drafted to assist governments (decision and policy makers), financial intelligence units (FIUs) and key stakeholders in identifying and understanding the characteristics that define FIU operational independence and autonomy.

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