Annex I

Terms of References JLS/D2/2007/08

Study on "Best practices in vertical relations between the Financial Intelligence Unit and (i) law enforcement services and (ii) Money Laundering and Terrorist Financing Reporting entities with a view to indicating effective models for feedback on follow-up to and effectiveness of suspicious reports"

1. INTRODUCTION

The Financial Action Task Force (FATF) Recommendation no. 31 provides that effective mechanisms should exist in order to enable national authorities to cooperate and coordinate domestically their activities to prevent money laundering and terrorist financing.

Council Decision 2000/642/JHA\(^1\) aims at improving the exchange of information between the Financial Intelligence Units ("FIUs") of the Member States. This Decision also has among its objectives the improvement of the exchange of information between FIUs and investigating authorities in the Member States.

This Decision foresees that the Council should assess Member States' compliance with it. The Commission services are currently preparing a report to the European Parliament and to the Council in order to facilitate such assessment. The Commission report should be complemented by detailed information on ongoing practices.

The importance of efficient feedback from Law Enforcement Authorities ("LEAs") to FIUs has been recognised in the EU Counter Terrorist Financing Strategy of December 2004\(^2\). Furthermore, the Commission Communication on Terrorist Financing of November 2005\(^3\) highlights that an efficient international cooperation between FIUs cannot be achieved without an efficient cooperation at national level among authorities involved in the anti-money laundering and counter terrorist financing regime.

Reporting structures in place between FIUs and LEAs are cornerstones of an efficient anti-money laundering and counter terrorist financing regime. It is of key importance for FIUs to know how the information gained through Suspicious Transaction Reports ("STRs") or other sources, and submitted to LEAs, have served investigative purposes. Thus, efficient "feedback" from LEAs on the use of the information received from FIUs can to a large extent contribute to improve the efficiency of the anti-money laundering and counter terrorist financing regime.

At the same time, it seems desirable to have an overview of the entire feedback reporting chain. The obligated persons under the anti-money laundering legislation such as credit and\(^4\)

---

\(^2\) "The fight against terrorist financing" presented by Secretary General/High Representative and Commission to European Council; 16089/04 of 14th December 2004 (Council document)
\(^3\) Commission Communication to the Council, the European Parliament and the European Economic and Social Committee “The Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector” [COM(2005) 620 final of 29.11.2005]
financial institutions continue to make considerable investments to ensure effective compliance with anti-money laundering and counter terrorist financing measures. The ability of such entities to identify what is genuinely suspicious and report it to the FIU in a timely and effective manner, can be enhanced by closer and more supportive relations between FIUs and reporting bodies. This would include the effective provision of “feedback” from FIU to reporting body covering, inter alia, follow-up to STRs, quality of reporting and dialogues on emerging trends and threats.

The need for efficient feedback from FIUs to obligated persons has also been recognised by Article 35 of the Third Money Laundering Directive which states that “Member States shall ensure that, wherever practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided”.

On this basis, there is a need for an assessment at EU level to better understand current feedback structures between FIUs and (i) law enforcement services and (ii) Money Laundering and Terrorist Financing Reporting entities existing in Member States of the European Union. Such assessment should identify best practice and shortcomings and suggest actions that could contribute to the improvement of existing feedback structures.

2. SCOPE OF THE STUDY

The Study should map and provide an in-depth analysis of existing feedback structures applied in 27 EU Member States between FIUs and (i) LEAs and (ii) money laundering and terrorist financing reporting entities.

The Study should draw on information gathered from relevant actors such as Financial Intelligence Units; Law enforcement agencies including police and other relevant investigative bodies; entities falling under reporting obligations (actors from the financial and of non-financial sectors); EU Member State competent authorities; The Egmont Group; Europol/ Eurojust; the Financial Action Task Force; the Council of Europe Moneyval Committee; the International Monetary Fund; World Bank; Task forces or other bodies focused on the fight against money laundering, terrorist financing or organised crime. Tenderers should demonstrate how such information could be optimally gathered and assessed.

This assessment should cover all types of reporting bodies, including bodies of the non-financial sector and financial institutions of a small size.

The assessment could include mapping existing training structures, indicators of STR performance, the typologies, as well as other cross-fertilisation tools among relevant bodies.

Analysis should further highlight any differences among feedback structures due to aspects such as a) nature of the FIU (administrative, law enforcement and prosecutorial unit); b) differences in the money laundering and terrorist financing threats.

On the basis of this assessment, the Study should identify what practices have proven to be effective in each country, with a view to defining best practice at EU level.

The Study should also specify shortcomings and obstacles to improvement of existing feedback structures. An assessment should be provided on the exact nature of identified shortcomings and obstacles (legislative environment, regulatory practices, and operational practices).

Finally, the Study should provide Recommendations at the European level for actions to be undertaken to improve efficiency of existing feedback systems, with respect to both relations between FIUs and (i) LEAs and (ii) money laundering and terrorist financing reporting entities. Considerations could touch upon actions of legislative or non-legislative nature.

The scrutiny will be conducted by an independent expert / institution in an impartial and non-judgemental fashion. The expert is expected to indicate the origin of information provided as an evidential base for their observations and provide the documentation shared with them over the course of the assessment. The references on which the Study is based and explanation of methodological issues should be annexed to the Study.

3. REPORTS AND DOCUMENTS TO BE SUBMITTED

During the process, the following reports shall be submitted by the contractor: inception report, interim report, draft final report and final report. Each report will be examined by a steering group, which may ask for additional formation or propose changes in order to redirect the work if necessary. Reports must be accepted by the steering group. The contractor shall be required to submit the following reports:

An **inception report** within two weeks of the date of signature of the contract, to detail the proposed approach including: envisaged information collection activities, geographical scope of information gathering, key informants and stakeholders, analytical tools, and other methodological considerations. The inception report must include a clear work programme with estimated timelines. The inception report will be discussed with the European Commission within one week from date of receipt. The inception report will be deemed to have been accepted by the Commission if the Commission does not expressly inform the contractor of any comments within this timeframe. Within one week of receiving any comments on the inception report, the contractor will send the Commission a revised version, which will either take account of the comments or put forward alternative points of view.

An **interim report** within four months of the date of signature of the contract. The contractor shall comply with any request by the Commission to attend an assessment meeting at the European Commission within one month of the submission of the interim report. The interim report will be deemed to have been accepted by the Commission if the Commission does not expressly inform the contractor of any comments within 20 days of its receipt.

A **draft final report** within six months of the date of signature of the contract. The contractor shall comply with any request by the Commission to attend a final assessment meeting at the European Commission within one month of the submission of the draft final report. The draft final report will be deemed to have been accepted by the Commission if the Commission does not expressly inform the contractor of any
comments within 45 days of its receipt. Within 20 days of receiving any comments on the draft final report, the contractor will send the Commission the final report, which will either take account of the comments or put forward alternative points of view.

The final report will thus be submitted at the latest within nine months of the date of signature of the contract.

The contractor is expected to start the work immediately after the contract has been signed. The deadlines have to be strictly respected. This means that an intensive work input is required immediately after signing the contract and over the whole duration of the contract.

The report must be written in clear and easy understandable language. The presentation of the texts, tables and graphs must be clear and complete and meet commonly recognised standards for reports intended for publication.

The interim report, draft final report and final report shall be in English or French and shall be provided in four paper copies and an electronic copy compatible with the Commission’s computer facilities (Word).

4. OVERALL MANAGEMENT OF THE CONTRACT

A steering group will be set up, consisting of officials from different Commission’s services whose knowledge and experience in this field will be an important contribution. This ad hoc body is responsible for monitoring the study: examination of the aspects to be analysed, discussion of the methods used, monitoring of the work and commenting on the conclusions of the contractor.

The contractor must take account of the steering group’s comments and recommendations and keep it informed on the progress work when asked to do so.

The contractor will be required to attend meetings with the steering group in accordance with heading 6 below.

5. PLACE OF WORK

The place of work will be at the contractor’s premises. The meetings with the steering group and the presentation will take place at the designated Commissions offices in Brussels.

6. MEETINGS WITH THE COMMISSION

The contractor will attend a kick-off meeting after submission of the inception report at the Commission’s premises in Brussels. Two additional meetings in Brussels should be foreseen for the discussion of both the draft interim report and the draft final report. Finally, a presentation must be given after finalisation of the report.

7. MAXIMUM BUDGET

The maximum amount which will be paid for the study is **150,000 Euro**.

While setting their travel budgets, tenderers are invited to take into account the requirements and the geographical coverage needed.