

Appendix C

FATF Guidelines: Providing Feedback to Reporting Institutions and Other Persons

Best Practice Guidelines

Introduction

1. The importance of providing appropriate and timely feedback to financial and other institutions which report suspicious transactions has been stressed by industry representatives and recognised by the Financial Intelligence Units which receive such reports. Indeed, such information is valuable not just to those institutions, but also to other associations, to law enforcement and financial regulators and to other government bodies. However, the provision of general and specific feedback has both practical and legal implications which need to be taken into account.
2. It is recognised that ongoing law enforcement investigations should not be put at risk by disclosing inappropriate feedback information. Another important consideration is that some countries have strict secrecy laws which prevent their financial intelligence unit from disclosing any significant amount of feedback which can be given. However, those agencies which receive suspicious transaction reports should endeavour to design feedback mechanisms and procedures which are appropriate to their laws and administrative systems, which take into account such practical and legal limitations, and yet seek to provide an appropriate level of feedback. The limitations should not be used as an excuse to avoid providing feedback, though they may provide good reasons for using these guidelines in a flexible way so as to provide adequate levels of feedback for reporting institutions.
3. Based on the types and methods of feedback currently provided in a range of FATF member countries, this set of best practice guidelines will consider why providing feedback is necessary and important. The guidelines illustrate what is best practice in providing general feedback on money laundering and the results of suspicious transaction reports by setting out the different types of feedback and other information which could be provided and the methods for providing such feedback. The guidelines also address the issue of specific or case-by-case feedback and the conflicting considerations which affect the level of specific feedback which is provided in each country. The suggestions contained herein are not mandatory requirements, but are meant to provide assistance and guidance to financial intelligence units, law enforcement and other government bodies which are involved in the receipt, analysis and investigation of suspicious transaction reports, and in the provision of feedback on those reports.

Why is Feedback on Suspicious Transaction Reports Needed?

4. The reporting of suspicious transactions¹³ by banks, non-bank financial institutions and, in some countries, other entities or persons is now regarded as an essential element of the anti-money laundering programme for every country.

Recommendation 15 of the FATF 40 Recommendations states that:

If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

5. Almost all FATF members have now implemented a mandatory system of reporting suspicious transactions, though the precise extent and form of the obligation varies from country to country. The requirement under Recommendation 15 is also supplemented by several other recommendations such as that financial institutions and their staff should receive protection from criminal or civil liability for reports made in good faith (Recommendation 16); customers must not be tipped off about reports (Recommendation 17); and financial institutions should comply with instructions from the competent authorities in relation to reports (Recommendation 18).
6. It is recognised that measures to counter money laundering will be more effective if government ministries and agencies work in partnership with the financial sector. In relation to the reporting of suspicious transactions, an important element of this partnership approach is the need to provide feedback to institutions or persons which report suspicious transactions. Financial regulators will also benefit from receiving certain feedback. There are compelling reasons why feedback should be provided:
- It enables reporting institutions to better educate their staff as to the transactions which are suspicious and which should be reported. This leads staff to make higher quality reports which are more likely to correctly identify transactions connected with criminal activity;
 - It provides compliance officers of reporting institutions with important information and results, allowing them to better perform that part of their function which requires them to filter out reports made by staff which are not truly suspicious. The correct identification of transactions connected with money laundering or other types of crime allows a more efficient use of the resources of both the financial intelligence unit and the reporting institution;
 - It also allows the institution to take appropriate action, for example to close the customer's account if he is convicted of an offence, or to clear his name if an investigation shows that there is nothing suspicious;
 - It can lead to improved reporting and investigative procedures, and is often of benefit to the supervisory authorities which regulate the reporting institutions; and

- Feedback is one of the ways in which government and law enforcement can contribute to the partnership with the financial sector, and it provides information which demonstrates to the financial sector that the resources and effort committed by them to reporting suspicious transactions are worthwhile and that results are obtained.
7. In many countries the obligation to report suspicious transactions only applies to financial institutions. Moreover, the experience in FATF in which an obligation to report also applies to non-financial businesses or to all persons is that the vast majority of suspicious transactions reports are made by financial institutions, and in particular by banks. In recent years, though, money laundering trends suggest that money launderers have moved away from strongly regulated institutions with higher levels of internal controls, such as banks, towards less strongly regulated sectors, such as the non-bank financial institution sector and non-financial businesses. In order to promote increased awareness and co-operation in these latter sectors, FIUs need to analyse trends and provide feedback on current trends and techniques to such institutions and businesses if a comprehensive anti-money laundering strategy is to be put in place. The empirical evidence suggests that where there is increased feedback to, and co-operation with, these other sectors, this leads to significantly increased numbers of suspicious transaction reports.

General Feedback

Types of Feedback

- 8 Several forms of general feedback are currently provided, at both national and international levels. The type of feedback and the way in which it is provided in each country may vary because of such matters as obligations of secrecy or the number of reports being received by the FIU, but the following types of feedback are used in several countries:
 - (a) statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures;
 - (b) information on current techniques, methods and trends (sometimes called ‘typologies’); and
 - (c) sanitised examples of actual money laundering cases.
9. The underlying information on which general feedback can be based is either statistics relating to the number of suspicious transaction reports and the results achieved from those reports, or cases or investigations involving money laundering (whether or not the defendant is prosecuted for a money laundering offence or for the predi-

cate offences). As these cases or investigations could result from a suspicious transaction report or from other sources of information, it is important that those agencies which provide feedback ensure that all relevant examples are included in the feedback they provide. It is also important that all relevant authorities, together with the reporting institutions, agree on the contents and form of sanitised cases, so as to prevent any subsequent difficulties for any institution or agency. It would also be beneficial if certain types of feedback, such as sanitised cases, are widely distributed, so that the benefits of this feedback are not restricted to the reporting institutions in that particular country.

Statistics – What Types of Statistics Should Be Made available ?

10. Statistical information can be broken down into at least two categories:

- (a) that which relates to the reports received and the breakdowns that can be made of this information; and
- (b) that which relates to reports which lead to or assist in investigations, prosecutions or confiscation action. Examples of the types of statistics which could be retained are:

- **Category (a):** Detailed information on matters such as the number of suspicious transaction reports, the number of reports by sector or institution, the monetary value of such reports and files, and the geographical areas from which cases have been referred. Information could also be retained to give a breakdown of the types of institutions which reported and the types of transactions involved in the transactions reported.
- **Category (b):** Information on the investigation case files opened, the number of cases closed and cases referred to the prosecution authorities. Breakdowns could also be given of the year in which the report was made, the types of crimes involved and the amount of money, as well as the nationality of the parties involved and which of the three stages of a money laundering operation (placement, layering or integration) the case related to. Where appropriate, statistics could also be kept on the reports which have a direct and positive intelligence value, and an indication given of the value of those reports. This is because reports which do not lead directly to a money laundering prosecution can still provide valuable information which may lead to prosecutions or confiscation proceedings at a later date (see paragraph 18).

11. A cross-referencing of the different breakdowns of category (a) information with the types of results achieved under category (b) should enable FIUs and reporting institutions to identify those areas where reporting institutions are successfully identifying money laundering and other criminal activity. It would also identify, for example, those areas where institutions are not reporting or are reporting suspicions which

lead to below average results. As such it would be a valuable tool for all concerned. However, as with any statistics, care needs to be taken in their interpretation and in the weight that is accorded to each statistic. In order to extract the desired statistics efficiently, it is of course necessary that the suspicious transaction report form, whether it is sent on paper or online, is designed to allow the appropriate breakdowns to be made. Given the difficulties that many countries have in gathering and analysing statistics, it is essential that the amount of human resources required for this task are minimised, and that maximum use is made of technology, even if this initially requires capital expenditure or other resource inputs.

How Often Should Statistics Be Published?

12 Statistics are the most commonly provided form of feedback and are usually included in annual reports or regular newsletters, such as those published by FIUs. Having regard to the resource implications of collecting and providing statistics, and to the other types of feedback available, the publication of an annual set of comprehensive statistics should provide adequate feedback in most countries.

13. **It is recommended that:**

- **Statistics are kept on the suspicious transaction reports received and on the results obtained from those reports, and that appropriate breakdowns are made of the available information;**
- **The statistics on the reports received are cross-referenced with the results so as to identify areas where money laundering and other criminal activity is being successfully detected;**
- **Technological resources are used to their maximum potential; and**
- **Comprehensive statistics are published at least once a year.**

Current Techniques, Methods and Trends

14. The description of current money laundering techniques and methods will be largely based on the cases sent to the prosecution authorities, and the division of such cases into the three stages of money laundering can make it easier to distinguish between the different techniques used, though it must be recognised that it is often difficult to categorically state that a transaction falls into one stage or another. If new methods or techniques are identified, these should be described and identified, and reporting institutions should be advised of such methods as well as of current money laundering trends. Information on current trends will be derived from prosecutions, investigations or the statistics referred to above, and can usefully be linked with those statistics. An accurate description of current trends will allow financial institutions to focus on areas of current and future risk.

15. In addition to any reports that are prepared by national FIUs, there are a number of international organisations or groups which also prepare reports of trends and techniques, or hold an exercise to review such trends. The FATF holds an annual typologies exercise where law enforcement and regulatory experts from FATF members, as well as delegates from relevant observer organisations, review and discuss current trends and future threats in relation to money laundering. A public report is then published which reviews the conclusions of the experts and the trends and techniques in FATF members and other countries, as well as considering a special topic in more detail. This report is available from the FATF or the FATF Website (<http://www.oecd.org/fatf/>). In addition, Interpol publishes regular bulletins which contain sanitised case examples.
16. Other international groups, such as the Asia-Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, and the Organisation of American States/Inter-American Drug Abuse Control Commission will also hold typologies exercises which could provide further information on the trends and techniques that are being used to launder money in the regions concerned. International trends could usefully be extracted and included in feedback supplied by national FIUs where they are particularly relevant, but in relation to more general information, reporting institutions should simply be made aware of how they can access such reports if they wish to. This will help to avoid information overload.
17. It is recommended that:
 - New money laundering methods or techniques, as well as trends in existing techniques are described and identified, and that financial and other institutions are advised of these trends and techniques;
 - Feedback on trends and techniques published by international bodies be extracted and included in feedback supplied by national FIUs only if it is particularly relevant, but that reporting institutions are made aware of how to access such reports.

Sanitised Cases

18. This type of feedback is sometimes regarded by financial sector representatives as even more valuable than information on trends. Sanitised cases¹⁴ are very helpful to compliance officers and front line staff, since they provide detailed examples of actual money laundering and the results of such cases, thus increasing the awareness of front line staff. Two examples of methods used to distribute this type of feedback are a quarterly newsletter and a database of sanitised cases. Both methods provide a set of sanitised cases which summarise the facts of the case, the enquiries made and a brief summary of the results. A short section drawing out the lessons to be learnt

from the case is also provided in the database. The length of the description of each case could vary from a paragraph outlining the case, through to a longer and more detailed summary.

19. Care and consideration needs to be taken in choosing appropriate cases and in their sanitisation in order to avoid any legal ramifications. In the countries which use such feedback, the examples used are generally cases which have been completed, either because the criminal proceedings are concluded or because the report was not found to be justified. Inclusion of cases where the report was unfounded can be just as helpful as those where the subject of the report was convicted on money laundering.
20. **It is recommended that sanitised cases be published or made available to reporting institutions, and that each sanitised case could include:**
 - a description of the facts;
 - a brief summary of the results of the case;
 - where appropriate, a description of the enquiries made by the FIU; and
 - a description of the lessons to be learnt from the reporting and investigative procedures that were adopted in the case. Such lessons can be helpful not only to financial institutions and their staff, but also to law enforcement investigators.

Other Information Which Could Be Provided

21. In addition to general feedback of the types referred to above, there are other types of information which can be distributed to financial and other institutions using the same methods. Often this information is provided in guidance notes or annual reports, but it provides essential background information for the staff of reporting institutions and also keeps them up to date on current issues. Examples of such other information include:
 - **An explanation of why money laundering takes place, a description of the money laundering process and the three stages of money laundering, including practical examples;**
 - **An explanation of the legal obligation to report, to whom it applies and the sanctions (if any) for failing to report;**
 - **The procedures and processes by which reports are made, analysed and investigated, and by which feedback is provided, allow FIUs to provide information on matters such as the length of time it can take for a criminal proceeding to be finalised or to explain that even though not every report results in a prosecution for money laundering, the report could be used as evidence or intelligence which**

contributes to a prosecution for a criminal offence, or provides other valuable intelligence information;

- a summary of any legislative changes which may have been recently made in relation to the reporting regime or money laundering offences;
- a description of current and/or future challenges for the FIU.

Feedback Methods

22. **Written Feedback:** As noted above, two of the most popular methods of providing general feedback are through annual reports and regular newsletters or circulars. As noted above, annual reports could usefully contain sets of statistics and description of money laundering trends. A short (for example, four-page) newsletter or circular which is published on a regular basis two or four times a year provides continuity of contact with reporting institutions. It could contain sanitised cases, legislative updates or information on current issues or money laundering methods.
23. **Meetings:** There are a range of other ways in which feedback is provided to the bodies or persons who report. Most FIUs provide such feedback through face-to-face meetings with financial institutions, either for a specific institution or its staff, or for a broader range of institutions. Seminars, conferences and workshops are commonly used to provide training for financial institutions and their staff, and this provides a forum in which feedback is provided as part of the training and education process. Several countries have also established working or liaison groups combining the FIUs which receive the reports and representatives of the financial sector. These groups can also include the financial regulator or representatives of law enforcement agencies, and provide a regular channel of communication through which feedback, and other topics such as reporting procedures, can be discussed. Finally, staff of FIUs could use meetings with individual compliance officers as an opportunity to provide general feedback.
24. **Video:** Many countries and financial institutions or their associations have published an educational video as part of their overall anti-money laundering training and education process. Such a method of communication provides an opportunity for direct feedback to front line staff and could include material on sanitised cases, money laundering methods and other information.
25. **Electronic Information Systems** obtaining information from websites, other electronic databases or through electronic message systems have the advantage of speed, increased efficiency, reduced operating costs and better accessibility to relevant information. While the need for appropriate confidentiality and security must be maintained, consideration should be given to providing increasing feedback through a password protected or secure website or database, or by electronic mail.

26 When deciding on the methods of general feedback that are to be used, each country will have to take into account the views of the reporting institutions as to the degree to which reporting of suspicious or unusual transactions should be made public knowledge. For example, in some countries, the banks have no objection to sanitised cases becoming public information, in part because of the objective and transparent nature of the reporting system. However, in other countries, financial institutions would like to receive this type of feedback, but do not want it made available to the public as a whole. Such differing views mean that slightly different approaches may need to be taken in each country.

Specific or Case-by-Case Feedback

27. Reporting institutions and their associations welcome prompt and timely information on the results of reports of suspicious transactions, not only so that they can improve the processes of their member institutions for identifying suspicious transactions, but also so that they can take appropriate action in relation to the customer. There is concern that by keeping a customer's account open, after a suspicious transaction report has been made, the institution may be increasing its vulnerability with respect to monies owned to them by the customer. However, specific feedback is much more difficult to provide than general feedback, for both legal and practical reasons.
28. One of the primary concerns is that ongoing law enforcement investigations should not be put at risk by providing specific feedback information to the reporting institution at a stage prior to the conclusion of the case. Another practical concern is the question of the resource implications and the best and most efficient method for providing such feedback, which will often depend on the amount of reports received by the FIU. Legal issues in some countries relate to strict secrecy laws which prevent the FIU from disclosing specific feedback, or concern general privacy laws which limit the feedback which can be provided. Finally, financial institutions are also concerned about the degree to which such feedback becomes public knowledge, and the need to ensure the safety of their staff and protect them from being called as witnesses who have to give evidence in court concerning the disclosure. This was dealt with in one country by a specific legislative amendment which prohibits suspicious transaction reports being put in evidence or even referred to in court.
29. Given these limitations and concern, current feedback information provided by receiving agencies to reporting institutions on specific cases is more limited than general feedback. The only information which appears to be provided in most countries is an acknowledgement of receipt of the suspicious transaction report. In some countries this is provided through an automatic, computer-generated response,

which would be the most efficient method of responding. The other form of specific feedback which is relied on in many countries is informal feedback through unofficial contacts. Often this is based on the police officer or prosecutor who is investigating the case following up the initial report, and serving the reporting institution with a search warrant or some other form of compulsory court order requiring further information to be produced. Although this gives the institution some further feedback information, it will only be interim information which does not show the result of the case, and the institution is left uncertain as to when it will receive the information.

30. Depending on the degree to which the practical and legal considerations referred to in Paragraph 28 apply in each country, other types of specific feedback are provided; this includes regular advice on cases that are closed, information on whether a case has been passed on for investigation and the name of the investigating police officer or district, and advice on the result of a case when it is concluded. In most countries, feedback is not normally provided during the pendency of any investigation involving the report.
31. Having regard to current practice and the concerns identified above, and taking into account the requirements imposed by any national secrecy or privacy legislation, and subject to other limitations such as risk to the investigation and resource implications, it is recommended that whenever possible, the following -specific feedback is provided (and that time limits could also be determined by appropriate authorities so that it is assured that the feedback is timely), namely that:
 - (a) Receipt of the report should be acknowledged by the FIU;
 - (b) If the report will be subject to a fuller investigation, the institution could be advised of the agency that will investigate the report, if the agency does not believe this would adversely affect the investigation; and
 - (c) If a case is closed or completed, whether because of a concluded prosecution, because the report was found to relate to a legitimate transaction or for other reasons, then the institution should receive information on that decision or result.

Conclusion

32. In relation to both specific and general feedback, it is necessary that an efficient system exists for determining whether the report led or contributed to a positive result, whether by way of prosecution or confiscation, or through its intelligence value. Whatever the administrative structure of the government agencies involved in collecting intelligence or investigating and prosecuting criminality, it is essential

that whichever agency is responsible for providing feedback receives the information and results upon which that feedback is based. If the FIU which receives the report is the body responsible, this will usually require the investigating officers or the prosecutor to provide the FIU with feedback on the results in a timely and efficient way. One method of efficiently achieving this could be through the use of a standard reporting form, combined with a set distribution list. Failure to provide such information will make the feedback received by reporting institutions far less accurate or valuable.

33. It is clear that there is considerable diversity in the volume, types and methods of general and specific feedback currently being provided. The types and methods of feedback are undoubtedly improving, and many countries are working closely with their financial sectors to try to increase the amount of feedback and reduce any limitations, but it is clear that the provision of feedback is still at an early stage of development in most countries. Further co-operative exchange of information and ideas is thus necessary for the partnership between FIUs, law enforcement and the financial sector to work more effectively, and for countries to provide not only an increased level of feedback, but also where feasible, greater uniformity.

Notes

- 1 Higgins, J. Kevin (2000). 'Offshore Financial Services: An Introduction', *The Eastern Caribbean Banker*, Vol. 2.
- 2 Response of the Working Group on Offshore Centres, 'Financial Stability Forum', April 2000.
- 3 Source: UK Electronic Money Association on mitigating the risks of money laundering and compliance with the identification requirements.
- 4 'Clean Money, Dirty Money, Corruption and Money Laundering in the UK,' Transparency International (UK), Policy Research Paper 002, June 2003.
- 5 This also captures private banking.
- 6 This includes, inter alia, consumer credit, mortgage credit, factoring, with or without recourse and finance of commercial transactions (including forfeiting).
- 7 This does not extend to financial leasing arrangements in relation to consumer products.
- 8 This applies to financial activity in both the formal or informal sector, e.g. alternative remittance activity. See the Interpretative Note to FATF Special Recommendation VI. It does not apply to any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds. See the Interpretative Note to Special Recommendation VII.
- 9 This applies both to insurance undertakings and to insurance intermediaries (agents and brokers).
- 10 References to financial institutions in the FATF recommendations also relate to the designated professions and businesses.
- 11 Recommendation 12 extends the customer due diligence procedures for financial institutions that are contained in FATF Recommendations 5 and 6 to the professions and designated businesses.
- 12 Recommendation 12 extends the record-keeping procedures for financial institutions that are contained in FATF Recommendation 10 to the professions and designated businesses.
- 13 In some jurisdictions the obligation is to report unusual transactions, and these guidelines should be read so as to include unusual transactions within any references to suspicious transactions, where appropriate.
- 14 Sanitised cases are cases which have had all specific identifying features removed.