

How Financial Intelligence Units Can Support the More Effective Implementation of Sanctions Regimes

Discussion Paper, October 2023

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About FAST

This Discussion Paper is an output of Finance Against Slavery and Trafficking (FAST), a multi-stakeholder initiative based at United Nations University Centre for Policy Research (UNU-CPR) that works to mobilize the financial sector against modern slavery and human trafficking. Through its alliance-building approach and grounding its work in evidence-based approaches and rigorous analysis, FAST provides tools and training to financial sector stakeholders to take meaningful, sustained action against modern slavery and human trafficking.

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Executive Summary

Efforts to implement sanctions regimes are often hampered by the slow, difficult, and sometimes non-existent exchange of information between countries which targeted individuals and entities can take advantage of to evade sanctions. However, in the context of sanctions based on serious offences, such as modern slavery and human trafficking (MS/HT), implementation can be more effective and efficient using existing networks and processes managed by Financial Intelligence Units (FIUs). This UNU-CPR discussion paper demonstrates how leveraging the expertise, experience, and networks of FIUs is critical to the fight against these crimes and outlines several policy-relevant findings that can help to inform policies and strategies to address them.

Policy-relevant findings include:

- When a person, company, or group has been sanctioned for serious criminal activity – and this activity is considered a predicate offence to money laundering – an Anti-Money Laundering framework can be initiated with FIUs playing a leading role.
- Since common sanctions evasion techniques, such as the use of shell companies, family members, and intermediaries, are similar to money laundering techniques, an FIU is well suited to analyse information pertaining to acts of sanction evasion.
- The interconnection of FIUs through the Egmont Group provides a secure way of exchanging information on money laundering-related cases; an alternative information exchange platform for purely sanctions-related cases does not exist – which is a challenge since sanctioned individuals and entities often take advantage of the slow, difficult, and sometimes non-existent, exchange of information between countries.
- Once FIUs have analysed the AML-relevant sanctions case, they can share an intelligence package with national sanctions implementing authority; FIUs have mechanisms in place which enable them to cooperate and exchange information domestically with other relevant stakeholders under the AML framework.

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1. Introduction

Since the conflict in Ukraine began, the issue of sanctions has received significant attention. In the context of recent sanctions against Russian individuals and entities, a Russian Elites, Proxies, and Oligarchs (REPO) Task Force - involving Australia, the European Commission, and the G7¹ - was initiated as a multilateral effort to better coordinate the application of sanctions. Through information sharing and coordination between different jurisdictions, the Task Force has been able to identify, locate, and freeze the assets of sanctioned individuals and entities. Despite the freezing of tens of billions of dollars, and the freezing or seizure of high-value goods and property, some sanctioned individuals and entities have managed to evade sanctions and maintain their access to funds.² Although the REPO Task Force offers a good example of how jurisdictions can try to become more efficient and effective in implementing sanctions, there is no global organization that ensures the simple and secure exchange of information between jurisdictions to facilitate the tracking of sanctioned assets and to better tackle the evasion of sanctions.

There are sanctions that are not only a measure taken in response to adverse behavior by a country, person or entity, but also a reaction to a serious offence. According to the Financial Action Task Force (FATF) Recommendations, countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.³ Typical examples of serious offences that constitute a predicate offence connected to money laundering, which can lead to the imposition of sanctions at the same time, are terrorist financing, illicit arms trafficking, drug trafficking, and modern slavery and human trafficking (MS/HT), which includes forced labour, child labour, and

sexual exploitation.⁴ In the MS/HT context, Libya has been a particularly prominent example, where the United Nations Security Council (UNSC) has imposed sanctions. The UNSC Libya sanctions⁵ include targeted sanctions against six traffickers and smugglers, including individuals from the Libyan Coast Guard. However, other UNSC sanctions regimes, like the recent Haiti sanctions, allow for the listing of individuals based on their involvement in MS/HT as well.⁶

Common evasion techniques applied by sanctioned individuals include the sheltering of assets in sanctions-neutral jurisdictions or masking the ownership of their assets. Shell companies, family members, and intermediaries are often used to conceal the assets of sanctioned individuals.⁷ Experience suggests that sanctioned individuals and entities are likely to use methods and channels similar to those used in money laundering activities that help conceal their economic activity and evade the sanctions imposed on them.⁸

Financial Intelligence Units (FIUs) are critical in the fight against money laundering, its predicate offences, and the financing of terrorism, at both the national and international levels. Since some sanctions are established as a reaction to serious offences, which constitute predicate offences to money laundering, and sanction evasion techniques follow the same pattern as money laundering activities, this report examines the role FIUs could potentially play to better identify, locate, and freeze assets, and further support jurisdictions to address sanction evasions. The ultimate goal of this report is to illustrate how sanctions based on serious offences like MS/HT can be implemented more efficiently using existing networks and processes.

1 Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

2 REPO Task Force, *Global Advisory on Russian Sanctions Evasion Issued Jointly by the Multilateral REPO Task Force* (Washington: U.S. Department of the Treasury, 9 March 2023). Accessible at: https://home.treasury.gov/system/files/136/REPO_Joint_Advisory.pdf.

3 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF/OECD, 2012, updated February 2023), Recommendation no. 3. Accessible at: <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

4 Erica Moret, *What is the Role of Financial Sanctions in Tackling Modern Slavery and Human Trafficking?* (New York: United Nations University, 2022). Accessible at: <http://collections.unu.edu/view/UNU:8896#viewAttachments>.

5 "As Security Council imposes sanctions on six human traffickers in Libya, UN chief calls for more accountability," United Nations, 8 June 2018, <https://news.un.org/en/story/2018/06/1011751>.

6 Frank Haberstroh, "New UN Security Council Sanctions for Haiti Strengthen Fight Against Modern Slavery," UNU Our World, 14 November 2022, <https://ourworld.unu.edu/en/new-un-security-council-sanctions-for-haiti-strengthen-fight-against-modern-slavery>.

7 Yoshihiro Okumura, "Examining the Current State of Russian Sanctions Evasion", Dow Jones, 21 March 2023, <https://www.dowjones.com/professional/risk/resources/risk-blog/examining-the-current-state-of-russian-sanctions-evasion>.

8 Financial Transaction and Reports Analysis Centre of Canada, "Special Bulletin on Russia-linked money laundering activities," FINTRAC, May 2023, <https://fintrac-canafe.canada.ca/intel/bulletins/rml-eng.pdf>.

2. Sanctions: An Overview

Sanctions are restrictive measures of a political nature that seek to change a third party's unwanted behaviour. These third parties can be individuals, legal persons, organized groups, or entire States. Sanctions can have a multilateral or unilateral nature and can be imposed by the UNSC, other international and regional organizations, or individual States. They typically include asset freezes, travel bans, and restrictions on arms deals, and they can also be used to restrict trade in goods from key industries, such as oil, metals, and luxury goods, as well as impose restrictions on lending and the purchase of securities.

Targeted Financial Sanctions

Modern sanctions regimes are increasingly targeted, meaning that they target specific persons or entities rather than entire countries. Targeted sanctions against individuals usually restrict their freedom to conduct financial activities. These so-called 'targeted financial sanctions' comprise two types of measures: the freezing of assets, meaning the blocking of bank accounts and other assets of the targeted persons; and preventing funds or other assets from being made available, directly or indirectly, for the benefit of the designated person or entity.

Designated persons are usually decision-makers within a relevant country or persons who can influence these decision-makers, including high-ranking politicians, military leaders, and business executives.⁹ If the sanctions regime is not directed against a specific country's policy but against a negative act such as terrorism, arms trafficking, or MS/HT, criminal organizations, known perpetrators, and their front companies and middle men, can become the subject of targeted financial sanctions as well, regardless of their nationality.

The Dual Nature of Some Targeted Financial Sanctions

Whenever a State engages, for instance, in illegal arms trafficking, including the proliferation of weapons of mass destruction, funds its military operations through criminal activities, or has a political leadership with direct links to terrorist groups or organized crime, directing sanctions against a State's policy or against an unwanted behavior can overlap. In these cases, security and geostrategic considerations on the one hand, and crime prevention and human rights interests, on the other, appear to be inextricably intertwined.¹⁰

Within UNSC country sanctions, one can find human traffickers being sanctioned because the trafficking activity amounts to a war crime or another violation of international law, as these will generally constitute a 'threat to or breach of peace,' the threshold declared in Chapter VII of the UN Charter for the imposition of sanctions by the UNSC.¹¹ Several targeted sanctions from UNSC sanctions regimes are directed against individuals who use child soldiers. The use of child soldiers not only constitutes a violation of international law and an international crime, but is also a grave form of child labour, and consequently of MS/HT. UNSC sanctions regimes with corresponding designation criteria and/or listings include, amongst others, those against Mali,¹² the Central African Republic,¹³ and South Sudan.¹⁴

Warring parties have also used crimes like MS/HT and migrant smuggling as a source of income. Criminal behavior can therefore fuel entire armed conflicts that pose a threat or breach of peace. In addition, rogue State security forces and armed groups can take advantage of unstable

9 With this approach, it is intended to exert sufficient pressure on the political course of a country without unduly burdening its entire population with sanctions. However, there is still a risk that sanctions trigger a vicious cycle whereby financial institutions withdraw their services from certain countries in light of increased compliance requirements – so-called 'de-risking' – which can potentially lead to the widespread financial exclusion of ordinary people.

10 Modern slavery is prohibited under international human rights law. National and regional sanctions programmes directed against human rights violations therefore regularly include involvement in modern slavery as a designation criterion and can therefore lead to the listing of relevant perpetrators.

11 United Nations Charter, Chapter VII: Action with Respect to Threats to the Peace, Breaches of Peace, and Acts of Aggression (Articles 39-51).

12 United Nations Security Council, "Resolution 2374, adopted by the Security Council at its 8040th meeting," United Nations, 5 September 2017, S/RES/2374, para. 8 (c).

13 United Nations Security Council, "Resolution 2127, adopted by the Security Council at its 7072nd meeting," United Nations, 5 December 2013, S/RES/2127, para. 20, 56; and "Resolution 2134, adopted by the Security Council at its 7103rd meeting," United Nations, 28 January 2014, S/RES/2134, para. 32.

14 United Nations Security Council, "Resolution 2206, adopted by the Security Council at its 7396th meeting," United Nations, 3 March 2015, S/RES/2206, para. 7 (e).

situations and the vulnerability of affected populations to enrich themselves through trafficking activities and other crimes. This can be seen in the context of the Libyan Civil War, where there are forced labour cases in migrant detention centers operated by armed groups, human trafficking networks taxed by Islamic State, and other reported cases of human exploitation that fund warring parties or enrich individuals.¹⁵

However, at times, organized crime can become so harmful or destructive that it has to be considered a breach of the peace, even in the absence of an armed conflict. In the case of the Haiti sanctions, for instance, the UNSC responded to such a situation by creating the possibility to list individuals based on their involvement in MS/HT, arms trafficking, and other crimes.¹⁶

The dual nature of some sanctions directed against behaviours that are both a security risk and a crime is probably nowhere more evident than in the case of terrorism. Terrorist attacks can cause damage that is on a par with military actions and can seriously affect social stability and a population's sense of security. At the same time, terrorism is a criminal offence in most jurisdictions that can be prosecuted with the means of criminal law. The same is true for acts that are linked to and enable terrorism, like its financing, the provision of weapons to terrorist groups, and other acts of support. The UNSC counter terrorism sanctions regime (1267) therefore also allows for the listing of relevant persons based on the designation criteria of "financing" and "otherwise supporting" Al-Qaida or Islamic State.¹⁷

Necessary Involvement of Financial Institutions

The implementation of targeted financial sanctions is only possible with the involvement of the financial industry, since financial institutions manage the accounts to be frozen. Furthermore, they can monitor and consequently prevent the transfer of funds and other financial assets to sanctioned individuals. Countries therefore usually require financial institutions to comply with sanctions and to have appropriate compliance systems in place to monitor

transactions. This is similar to the requirements that States place on financial institutions in the context of fighting money laundering. In the money laundering context, financial institutions are also legally obliged to monitor the transaction behavior of their customers for illicit activities, and non-compliance can result in considerable fines or criminal penalties.

Banks usually use different monitoring systems to screen transactions for sanctions-relevant activities than they do for detecting suspicious transactions related to money laundering/terrorist financing (ML/TF). In particular, the monitoring of sanctions is done in real time while ML/TF monitoring is typically performed after the transactions have already taken place. The real-time monitoring for sanctions is a consequence of the prohibition of providing funds which requires banks to stop relevant transactions before carrying them out; whereas in the fight against money laundering, the focus is on generating financial intelligence for law enforcement and recognizing long-term transaction patterns, without impeding the functioning of the global financial system.

Sanctions Compliance and Anti-Money Laundering

Real-time monitoring for possible sanctions violations by banks is based on various screening parameters, such as relevant country indicators and keywords that suggest the presence of certain industries or critical goods. If a hit is generated, a compliance officer reviews the transaction for its possible relevance and decides whether the transaction can be cleared. In the case of targeted financial sanctions, the system screens primarily for the names of listed persons and keywords that indicate an affiliation with sanctioned organizations or terrorist groups. It is also possible to screen for the names of persons or companies that are known to be used as intermediaries or front companies by the sanctioned parties in order to circumvent screening measures and evade sanctions. Sanction monitoring is thus primarily a monitoring of persons and structures that are known a priori. It therefore rarely generates new intelligence on sanction evasion networks and evasion typologies.

15 United Nations Security Council, "Final Report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011)," United Nations, 8 March 2021, S/2021/229. paras. 40 et seq.; United Nations Security Council and "Final Report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011)," 9 December 2019 (S/2019/914), paras. 18, 48, 52, 54, 57.

16 Frank Haberstroh, "New UN Security Council Sanctions for Haiti Strengthen Fight Against Modern Slavery," United Nations University, 14 November 2022, <https://unu.edu/article/new-un-security-council-sanctions-haiti-strengthen-fight-against-modern-slavery>.

17 United Nations Security Council, "Resolution 2368, adopted by the Security Council at its 8007th meeting," United Nations, 20 July 2017, S/RES/2368, para. 2. An example of such a listing is Amir Muhammad Sa'id Abdal-Rahman al-Mawla, who was designated for helping to "drive the abduction, slaughter, and trafficking of Yazidi religious minorities in northwest Iraq," among other crimes. See: United Nations, "Addition of the entry specified below," United Nations, 21 May 2020, SCA/2/30 (09). Accessible at: <https://www.esteri.sm/pub1/EsteriSM/dam/jcr:5f498918-b2a9-4259-879b-f5239046b790/21.05.2020%20AQ.pdf>.

Moreover, in the few cases where new information on relevant figureheads and front companies is generated and reported to competent authorities, it is often difficult to follow up on them if they are based abroad. Cross-border data exchange on sanctions-relevant information is often not legally possible and cross-border platforms for data exchange, with a few exceptions within the EU and among G7 countries, do not exist. This is largely due to sanctions ultimately being restrictive tools for the implementation of foreign and security policy interests that are not, or not necessarily, shared by other States. This of course makes it difficult to assemble partial findings from different countries into an overall picture of far-reaching international sanctions circumvention structures. This is a considerable weakness when one considers that sanction evaders, like money launderers, often seek to conceal the origin of the transferred funds by routing several cross-border transactions through the accounts of different front and offshore companies.

The reality of the international anti-money laundering framework is fundamentally of a different nature. Monitoring for certain persons who are known money launderers or criminals, comparable to targeted sanction

screening, is only a partial component of the approach used. Monitoring activities also need to focus on the detection of transaction patterns, certain indicators, or conspicuous changes in the transaction behaviour of bank customers, indicating a possible money laundering activity. If such indications are detected, the behaviour is checked by a compliance officer for its economic plausibility and reasonable transparency. If the compliance officer is not reasonably convinced of the legitimacy, they send a Suspicious Activity Report (SAR)/Suspicious Transaction Report (STR) to their national FIU. The FIU has the possibility to enrich the information with supplementary financial intelligence, and in the case of cross-border transactions, to request information from the third country's FIU on the companies involved, their ownership structure, and conspicuous transaction behaviour. In a best case scenario, this leads to the unmasking of international money laundering networks and those behind them.

Money laundering monitoring and the subsequent reporting and public framework of data enrichment and sharing therefore aim to identify a priori unknown perpetrators. By its very nature, it is intended to generate new financial intelligence and to uncover far-reaching criminal networks.

3. The Power of FIUs and the Egmont Group

FIUs are an invention of the FATF. Recommendation 29 of the FATF's Recommendations states that "Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis."¹⁸ To conduct a proper analysis, FIUs usually have access to a wide range of financial, administrative, and law enforcement information. Whereas the core function of an FIU is to receive and analyse information relating to money laundering, its predicate offences and terrorist financing, further competencies may vary from one FIU to another. There are FIUs that have, for instance, competencies to postpone/suspend transactions, to perform criminal investigations, and/or to freeze/seize funds or other assets. When it comes to sanctions very few FIUs worldwide are responsible for their implementation. FIUs usually address sanctions within the context of sanctions evasion since in many countries this constitutes a predicate offence to money laundering.

FATF recommendation 20 requires a financial institution to report its suspicions promptly to the FIU in case it suspects, or has reasonable ground to suspect, that funds are the proceeds of a criminal activity. FIUs are thus the central hub that receives all the STRs from the financial institutions of a given jurisdiction. They have an enormous wealth of information that they can share with national authorities (for example, law enforcement authorities) but also with foreign FIUs. The Egmont Group¹⁹ was founded in 1995 to facilitate and encourage cooperation and the exchange of information and knowledge among FIUs. As of 2023, 170 FIUs worldwide are members of the Egmont Group, covering all the regions of the world. FIUs that are members of the Egmont Group can share information with each other via the Egmont Secure Web, an electronic communication system that enables the encrypted exchange of financial information among members, in a direct and efficient manner. *The Principles for Information Exchange between FIUs*,²⁰ which is a binding document for its members, ensures that FIUs exchange information freely, spontaneously, and upon request, and that they can rapidly, constructively, and effectively provide the widest range of international cooperation to counter money laundering, associated predicate offences, and the financing of terrorism.

18 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*.

19 "About the Egmont Group", Egmont Group of Financial Intelligence Units, last accessed on 9 August 2023, <https://egmontgroup.org>.

20 Egmont Group of Financial Intelligence Units, *Principles for information exchange between Financial Intelligence Units* (Ottawa: Egmont Group, July 2013, amended May 2022). Accessible at: <https://egmontgroup.org/wp-content/uploads/2013/10/2.-Principles-Information-Exchange-Revised-May-2022-01.pdf>.

4. FIUs and their Role in Sanctions Implementation

There are a few FIUs worldwide, for example the FIUs of Czechia, Estonia, and Liechtenstein, which are not only the national hub for the receipt and analysis of STRs from reporting entities, but also the sanctions implementing authority of their respective country. They are thus also responsible for ensuring that financial institutions comply with the sanctions framework in place. In order to fulfill their double mandate, these FIUs receive both sanctions-related information and ML/TF-related information from financial institutions. They can use their operational expertise in analysing ML/TF cases, as well as financial information gathered through the STR reporting framework, to recognize possible sanctions violations.

The overwhelming majority of FIUs worldwide, however, are not the sanctions implementing authority of their respective country. Their activities may nevertheless include the analysis of sanction evasion cases, provided that sanctions evasion is considered a predicate offence to money laundering in the respective jurisdiction. If this is not the case, and the evasion of sanctions is not considered under the relevant money laundering laws, it remains out of the scope of the relevant FIU's responsibilities.

In an international context, this diversity of FIU responsibilities poses challenges to international cooperation and the exchange of information via the Egmont Secure Web. Under their respective national laws, FIUs might only be allowed to share information with foreign FIUs with regards to offences which are predicate offences to money laundering in the respective jurisdiction. Therefore, if the jurisdiction of one FIU recognizes acts of sanctions evasion as a predicate offence to money laundering and the jurisdiction of another FIU does not, the exchange of information on the possible evasion of sanctions is generally not possible.

However, a different situation may arise when the sanctions-related intelligence to be shared involves the activities of a person, company, or group sanctioned for criminal activity. Serious offences, such as terrorist financing, illicit arms trafficking, drug trafficking, or MS/HT, are always ML/TF-relevant since they constitute predicate offences to money laundering, regardless of the counterparts' legal frameworks on the treatment of sanctions evasion. In these scenarios, in addition to the sanctions framework, the anti-money laundering (AML) framework comes into play, for which all types of FIUs have a central role.

Consequently, financial institutions can also report information linked to such AML-related sanctions; not only to the national sanctions-implementing authority but also to the respective FIU in the form of an STR. FIUs have a wealth of experience analysing complex money laundering cases. Since common sanctions evasion techniques, such as the use of shell companies, family members, and intermediaries, are similar to money laundering techniques,²¹ an FIU is well suited to analyse information pertaining to acts of sanction evasion as well. Additionally, the interconnection of FIUs through the Egmont Group provides a secure way of exchanging information on these cases, for which an alternative information exchange platform for purely sanctions-related cases does not exist. Sanctioned individuals and entities take advantage of the often slow, difficult, and sometimes non-existent, exchange of information between countries related to sanction evasions. In the case of AML-relevant sanctions, FIUs can counter this problem and can share or request AML-relevant sanctions information through the Egmont Secure Web.

Understanding the critical role FIUs can play in the implementation of sanctions regimes:

- An AML framework can be initiated when an individual or entity is sanctioned for serious criminal activity - and this activity is considered a predicate offence to money laundering.
- Since common sanctions evasion techniques are similar to money laundering techniques, an FIU is well suited to analyse information pertaining to acts of sanction evasion.
- The interconnection of FIUs through the Egmont Group provides a secure way of exchanging information on money laundering-related cases.
- Once FIUs have analysed an AML-relevant sanctions case, they can share an intelligence package with national sanctions implementing authority; FIUs have mechanisms in place enabling them to cooperate and exchange information domestically with other relevant stakeholders under the AML framework.

21 Yoshihiro Okumura, "Examining the Current State of Russian Sanctions Evasion."

Once FIUs have analysed the AML-relevant sanctions case, they can share an intelligence package with the national sanctions implementing authority. FIUs have mechanisms in place which enable them to cooperate and exchange information domestically with other relevant stakeholders under the AML framework. Under this system, it is also possible that the sanctions implementing authority shares information with the FIU in cases of AML-relevant sanctions. The FIU can then use this information for its analysis, check its databases to see whether there is information on the relevant individuals or entities, and/or request information from foreign FIUs on behalf of the sanctions implementing authority. At the same time, FIUs can forward the intelligence gathered to competent national law enforcement authorities to investigate the relevant offences, such as money laundering or its predicate offences, for example MS/HT.

The process described above, through the involvement of FIUs, allows countries to more effectively enforce sanctions

related to serious offences, such as terrorist financing, illicit arms trafficking, drug trafficking, or MS/HT. Sanctions implementing authorities can greatly benefit from the expertise, experience, and network of FIUs, which allows countries to address critical challenges, such as the evasion of sanctions or the lack of information exchange between countries. FIUs can also benefit from the information linked to AML-related sanctions that they receive from financial institutions since this information can potentially enrich a case an FIU is already investigating, and an AML-related sanctions STR can provide completely new intelligence that strengthens the efforts of FIUs and law enforcement authorities as they attempt to address money laundering and its predicate offences.

In AML-relevant sanctions, FIUs can therefore play a major role in freezing the assets of criminal individuals and entities engaged in terrorism, MS/HT, and other major crimes, depriving them of the economic resources they need to conduct further crimes.

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