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## Introduction

This paper discusses financial intelligence's ethical and legal considerations and explores the potential for misuse within Financial Intelligence Units (FIUs). More in detail, it examines the handling of information by FIUs from a legal perspective while also analysing how the structure of FIUs could allow for undue political influence under certain conditions. As a consequence, the structures designated to prevent or detect financial crimes could become part of the adverse circle instead of fighting it. Understanding the extent to which this process could lead to detrimental effects is the primary focus of the present paper.

The study begins by outlining the characteristics of FIUs. It then analyses the ethical and legal implications associated with their operations, emphasising the risks of misuse. The paper then shifts its focus to corrupt environments with a detailed examination of Argentina's case. The final section draws conclusions based on the preceding analysis and discussions.

## Financial Intelligence Units: Institutional Setup, Tasks and Challenges

In the early 1990s, recognising the need to combat money laundering and the absence of a centralised agency to handle the task, many countries began establishing Financial Intelligence Units (FIUs). These specialised entities, now present in most countries, collect, analyse, and disseminate financial information related to potential financial crimes (Marcus, 2019). FIUs play a crucial role in Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) efforts and have gathered under an international platform, the Egmont Group (hereby EG). Founded in 1995, the EG offers a global platform that unites like-minded FIUs, enabling them to share information about financial transactions related to criminal activities. With 174 member Units worldwide, the EG is now the leading international network of FIUs (Egmont Group, 2024). Moreover, recognising the importance of FIUs, the Financial Action Task Force (FATF) included recommendations on the establishment and functioning of FIUs at the national level in 2003 (Financial Action Task Force, 2003). Despite their shared affiliation with the EG, FIUs vary significantly in their governmental structure. The EG overview provides a detailed classification of the advantages and drawbacks of each model, which is depicted as follows (International Monetary Fund, 2004).

In administrative models, which represent the overwhelming majority, FIUs operate within ministries or existing agencies, with a few exceptions of standalone FIUs often supervised by a ministry or administration. Examples are the US FinCen and the Canadian FINTRAC. From this model, it is apparent that the FIU acts as a neutral intermediary between reporting entities and law enforcement authorities (LEAs), providing easy access to resources and expertise within the related administrative body. However, this arrangement allows for greater oversight by political authorities, who are part of the said ministries or agencies and could directly appoint the higher figures within the FIUs.

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Consequently, given the frequent occurrence of corruption in political circles, there is a risk of increasing undue influence. Another aspect is that the FIU lacks the legal powers of LEAs and judicial authorities, which may cause delays in law enforcement actions due to the FIU's detachment from the law enforcement administration (International Monetary Fund, 2004).

In the law enforcement model, the FIU is integrated within the police or a law enforcement agency and shares authority over money laundering and terrorism-related crimes. Examples of this approach include the British UKFIU and the Singaporean STRO. This model facilitates the exchange of information in investigations through international networks like INTERPOL and provides broader legislative power and quicker enforcement measures. However, due to the FIU's close association with enforcement and prosecution, reporting agencies may be reluctant to share information (International Monetary Fund, 2004).

The judicial model includes FIUs embedded within the judicial branch, like the Norwegian FIU and EFE. Although this is the rarest model, judicial FIUs enjoy greater freedom from political oversight. However, they share the same drawbacks as the law enforcement model and may struggle to share and access information with non-judicial FIUs (Unger et al., 2013).

The hybrid model encompasses FIUs that strive to combine the best features from each model to find a balanced approach.

Keys to FIUs' success are their autonomy and operational independence, emphasised in criterion 29.7 of the FATF Recommendations, which states:

“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” (Financial Action Task Force, 2024).

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Indeed, depending on their institutional setup, appointment and dismissal procedures, and the national political climate, FIUs can be subject to undue influence from the private sector or political authorities (Marcus, 2019). According to the EG, notwithstanding the institutional setup, operational independence and autonomy must be evaluated nationally (Egmont Group of Financial Intelligence Units, 2018).

Another critical aspect is the protection of information, highlighted by Criterion 29.6 of the FATF Recommendations, which cites:

“The FIU should protect information by:

- (a) having rules in place governing the security and confidentiality of information, including procedures for handling, storage, dissemination, and protection of, and access to, information;
- (b) ensuring that FIU staff members have the necessary security clearance levels and understanding of their responsibilities in handling and disseminating sensitive and confidential information; and
- (c) ensuring that there is limited access to its facilities and information, including information technology systems” (Financial Action Task Force, 2024).

According to Criterion 29.6, to operate in trust with all the stakeholders, the FIU should be able to act in confidentiality, acknowledge the responsibility of handling and disseminating information and ensure that access to information is restricted (Financial Action Task Force, 2024). Even though the wording leaves room for interpretation and does not address the legal and ethical considerations of Financial Intelligence, guidelines provided by the EG clarify that the FIU’s legal framework aims at safeguarding the information received and produced by the FIU, thus relying on national legal standards (Egmont Group of Financial Intelligence Units, 2018).

## **Ethical and Legal Considerations and Potential for Misuse of Information**

Ethical and legal considerations in the realm of Financial Intelligence (FININT) concern the use, storage or transmission of data and information gathered, acquired, or received via FININT. When discussing FININT’s application within FIUs, attention shifts to public-private partnerships (PPPs), Suspicious Activity Reports (SARs), and the relations between transnational FIUs.

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Regarding legal issues, the first challenge is the absence of a clear legal foundation. Many countries' legal frameworks do not provide rules for voluntary cooperation between the public authorities and private sector entities but instead rely on coercive measures. The doubt on the legal basis remains valid also for the transfer of information from authorities to obliged entities and the latter's possibility to process data. PPPs often assume that the authority to establish customers' profiles, i.e. Customer Due Diligence (CDD) powers, has sufficient legal backing under AML/CTF regulations. However, this is ambiguous, as CDD powers under AML/CTF were designed for obliged entities, not public authorities (Vogel & Lassalle, 2024).

Additionally, in the past de-risking, i.e. financial entities' choice to restrict or terminate client relations based on their risk evaluation, used to be based mainly on contractual relationships between obliged entities and customers. However, recent de-risking relies on private parties' CDD measures informed by public authority data. These de-risking measures, therefore, affect obliged entities and authorities, should they be subject to closer legal scrutiny. At the same time, there is a limitation, namely that private parties enjoy contractual freedom, so public-private partnerships must be approached cautiously to prevent reputational harm to customers from mere suspicion (Vogel & Lassalle, 2024).

At the same time, FIUs can request financial data from banks over the course of investigations and receive FININT from the private sector through the SARs regime. This regime involves reports of suspected money laundering, terrorist financing or proliferation financing activities made by regulated entities (usually banks) to national FIUs. The volume of this type of reporting has grown significantly in recent years. A pattern has emerged where there is a unilateral flow of information from private parties to FIUs without feedback from the Units, rendering the gathered information less useful. Moreover, collecting and storing such sensitive information could lead to adverse consequences against customers, such as de-risking and profiling (Dehouck, 2023; Vogel & Lassalle, 2024).

Finally, public-private data processing could bring about a high degree of intrusiveness. As observed by Vogel and Lasalle, European case law highlights specific cooperative activities that need particular oversight and legal limitations. For instance, when public authority monitoring requires private entities to intrude into individuals' lives, track their geolocation, or monitor a large pool of unsuspecting customers. Although these criteria set high standards and provide valuable guidelines, they are not universally applied (Vogel & Lassalle, 2024).

Ethical considerations, which overlap with legal issues, include proportionality, the misuse of intelligence, citizens' ability to exercise their rights, and transparency and accountability. Ethical standards need to be considered not only when thinking about ways to improve the legal framework but also when developing awareness in civil society.

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On proportionality, curtailing data collection to necessary information and proportionate to the risk involved is considered the correct approach. Otherwise, information could be over-collected, risking the unjust targeting of specific individuals. Furthermore, the illegitimate use of intelligence occurs whenever intelligence activities extend beyond their legal boundaries (Dehouck, 2023).

Although it is difficult to show how the agencies handle information transparently, transparency and accountability mechanisms are pivotal for the proper functioning of the FIU and for avoiding rights violations. Opaque handling of the operations without oversight in specific contexts could lead to abuse of office. Also, for this reason, citizens should be aware of the management of their data, particularly if affected by PPP operations (Dehouck, 2023).

Even the EU, in its AML and CTF legislation, still needs to clarify which data protection regime should apply to the FIU's processing of personal data (Quintel, 2022). The EU data protection acquis, notably the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED), safeguard personal data. While the former governs general processing, the latter encompasses law enforcement authorities' processing of personal data for legal purposes.

Moreover, Financial Intelligence often circulates through informal networks. At the international level, FIUs rely on "circuits of trust", the interpersonal networks that facilitate information exchanges based on transnational personal connections. In these circuits of trust, FIUs' employees operate in a legal grey area where they often lack insight into how the intelligence they share is handled, whether it is shared further or stored, and for how long. This uncertainty affects both valuable intelligence and seemingly irrelevant information. As a result, the FIUs' circuits of trust do not function according to legal provisions but by understanding the counterparts' trustworthiness (or untrustworthiness), eventually distancing this process from democratic oversight (Lagerwaard & de Goede, 2023).

In the EU, policymakers have been focused on enhancing operational cooperation among countries but have yet to identify which legislation should establish a legal framework for such exchanges, particularly regarding FIU.net, the decentralised information-sharing network between EU FIUs (Mouzakiti, 2020).

## **The Worst-Case Scenario: Corruption**

Corruption is the abuse of entrusted power for private gain, where the term "entrusted power" encompasses both the private and public spheres (Lee-Jones, 2018). Corruption is categorised into grand and petty (or bureaucratic) with both exerting significant impacts on societies (Ackerman & Palifka, 2016). In some cases, corruption becomes intrinsic to society itself; in this case, it can be considered systemic. Systemic corruption is not confined to a single sector but permeates multiple realms. Indeed, it erodes the public and private sectors comprehensively, encompassing a country's administrative, political, judicial or law enforcement systems.

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According to the EG, the “level of corruption in a jurisdiction can have a significant impact on the operational independence and autonomy of an FIU” (Egmont Group of Financial Intelligence Units, 2018). When corruption levels are high, national FIUs may face undue pressure from government officials or politicians, impeding anti-corruption efforts. Moreover, in systemic corrupt environments, corruption can also infiltrate FIUs themselves, compromising the integrity of their employees (Egmont Group of Financial Intelligence Units, 2018). For this reason, the fact that in certain countries there is a political wedge in appointing a part or all of the members of FIUs can be considered a negative aspect.

Apart from all the considerations mentioned in the previous section that apply also when considering corrupt environments, some others arise when thinking about the potential misuse of FININT. One is cherry-picking cases or information useful to the government, and another is exploiting FATF standards to suppress the opposition (Reimer, 2022).

## **The Case of Argentina**

Argentina serves as a case illustrating both a positive and a negative scenario. Indeed, like many others worldwide, the country has witnessed humongous corruption scandals in the last forty years, albeit, as few others, it has seen a brief period of admirable efforts. Due to multiple corrupt administrations and persistent scandals, Argentina, and by extension its Unit, was not considered credible in prosecuting money laundering and related crimes (Federici, 2016).

However, under President Macri, who was elected also thanks to his anti-corruption platform, the Argentinian FIU (Unidad de Información Financiera, UIF) flourished again. President Macri restored credibility in this authority by appointing Mariano Federici, then Senior Counsel for the International Monetary Fund Legal Department, as Head of the UIF and allowed for investigations that brought national and international recognition (K2 Integrity, 2021). The Unit promptly recognised the lack of the previous mandate and started shaking the Argentinian political environment by investigating multiple cases, such as the Notebook scandal and the case of Lázaro Báez (Hudson Institute, 2021).

The former political establishment, particularly former president Cristina Fernández de Kirchner, was under scrutiny, and financial schemes started being unveiled, showing the country’s entrenched corruption. Considering its prosecutorial power, the Unit also worked closely with the judiciary power to conduct investigations.

The collapse of the favourable period ended when, at the national elections, Ms Kirchner returned to power as Vice-President. Right before the elections of 2019, Mr Federici and the UIF presented a list of facts they investigated to prove their point that Lázaro Báez was the “front man” for all the financial crimes of Ms Kirchner and her deceased husband (Hudson Institute, 2021). As soon as the election results were clear and considering the potential risks, Mr Federici left the country to the US and transferred to the private sector.

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When digging deeper into the provisions regulating the UIF, some seem unsettling, considering some of the observations made in the previous sections. Indeed, according to Law 26.683, substituting some articles of Law 25.256, the UIF works in autonomy within the Ministry of Justice and Human Rights, and it also holds prosecutorial powers (K2 Integrity, 2021; Ley 25246, 2000; Ley 26.119, 2006). After setting the spectrum of crimes covered by the Unit, the law explains that the national government would designate the President and the Vice-President of the Unit, after being suggested by the Ministry of Justice and Human Rights. Moreover, under Article 9, the government also has the power to remove the president and vice president in case of poor performance, negligence of their duties or for committing certain crimes (Ley 26.119, 2006).

Certain provisions leave quite a consistent room for interpretation. Moreover, there is a high risk of undue political influence, for which the appointment of positions in the FIU could become politicised and an enabler of corruption or even means to cover it up. On the positive side, the UIF's institutional setup allowed Macri's administration to show its strong willingness to fight corruption, which eventually translated into successful actions under the leadership of Mr Federici. At the same time, on the negative side, the UIF's setup also allowed for past mismanagements brought about by previous administrations willing to cover up and enable grand corruption schemes for their interests.

In systemically corrupt countries, multiple elements are needed to carry out effective policies that could lead to changes, and the will of various environments (social, administrative, political, financial) is the most important. Argentina, however, was not in the circumstances for deep reform, considering that long-term changes in such environments do not include only positive transformation in the perception of the national FIU's credibility but encompass national legal and administrative reforms as well.



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## Conclusions

The present paper has examined critical issues surrounding the regulation and functioning of Financial Intelligence Units (FIUs) within corrupt environments, bringing the Argentinian experience as a poignant example. The discussion has exposed inherent risks associated with weak regulatory provisions governing FIUs, particularly when the units operate in politically influenced and corrupt environments.

The paradigm of the Argentinian Unit under different administrations reflects the impact of regulatory gaps and political influence on the effectiveness of anti-corruption measures. The UIF's trajectory shows how the mere political will of a government can shape the priorities and capabilities of an FIU in both a positive and a negative direction.

The situation in Argentina stands as a cautionary tale about the importance of robust and autonomous regulatory frameworks for FIUs. Weak provisions and regulatory ambiguity can expose FIUs to undue political influence, jeopardising their integrity and effectiveness in combating financial crimes and corruption. The latter point applies to all the abovementioned risks of misuse and ethical and legal considerations.

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