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Mechanisms for Combating Money Laundering in Algeria': The Financial Intelligence Processing Unit as a Model

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Abstract:

In line with its international obligations in this area, Algeria has taken steps to combat money laundering and terrorist financing by establishing a specialised unit known as the Financial Intelligence Processing Unit. This unit is responsible for carrying out its duties, particularly receiving and processing suspicious activity reports. To this end, the legislature has granted the unit powers to cooperate and communicate with various local and international sectors and bodies, as well as similar units around the world, in order to combat these emerging financial crimes. This initiative is of the utmost importance for achieving national security requirements in both financial and security terms.

Keywords: Financial Intelligence Unit, Suspicious Activity Reports, Financial Intelligence, Money Laundering, Terrorist Financing.

Mechanisms for Combating Money Laundering in Algeria: The Financial Intelligence Processing Unit as a Model

Introduction:

Money laundering and terrorist financing are among the most serious phenomena affecting developed and developing countries alike due to their impact on economic, security and social domains. Algeria is one such country, striving at all levels to combat these phenomena. The country has ratified numerous relevant international agreements, including the 2000 United Nations Convention against Transnational Organized Crime.

The country has also enacted several laws in this area and established bodies and institutions to prevent and combat these issues. One such body is the Financial Intelligence Processing Unit, which was established within the Ministry of Finance with the aim of aligning its legislation with international agreements, particularly the aforementioned United Nations Convention. The convention stipulates that member countries should consider setting up financial intelligence units to serve as the national centre for collecting, analysing and disseminating information on money laundering activities.

In this context, the following question arises: Does the Financial Intelligence Processing Unit effectively contribute to preventing and combatting money laundering and terrorist financing? This study addresses this issue by dividing into two main sections: the first focuses on the nature of the Financial Intelligence Processing Unit, while the second is dedicated to its tasks and powers.

Section One: The Nature of the Financial Intelligence Processing Unit

This section discusses the unit's establishment, definition, legal nature and organisational structure, with the aim of understanding the functions of its various components and the responsibilities assigned to each.

Section One: The Concept of the Financial Intelligence Processing Unit

Subsection One: Establishment and Organization of the Financial Intelligence Processing Unit

This unit was established following Algeria's ratification of the United Nations Convention against Transnational Organized Crime in 2000¹. This initiative aimed to align its legislation with international agreements, particularly this convention, especially Article 7, which emphasizes international cooperation and information exchange at both national and international levels. It mandates the creation of a financial intelligence unit to serve as a national center for collecting, analyzing, and disseminating information regarding potential money laundering activities.

The unit was established under Executive Decree No. 02/127 on 7 April 2002² and has since been amended and supplemented by Executive Decrees Nos. 06/275 on 6 November 2006 and 13/157 on 15 April 2013. Most recently, Executive Decree No. 22/36 was issued on 4 January 2022³ to define the tasks, organisation and functioning of the Financial Intelligence Processing Unit. This decree repealed Executive Decree No. 02/127, except for its first article.

The establishment of this body preceded the criminalisation of money laundering in 2004 under Law No. 04/15, which amended the Penal Code⁴ by adding Section 6 Bis, titled 'Money Laundering', to Chapter Three of the Penal Code relating to felonies and misdemeanours against property. However, the unit could not be activated until the enactment of Law No. 05/01 on 6 February 2005 concerning the prevention and combating of money laundering and terrorist financing, which was subsequently

¹- Algeria ratified the United Nations Convention against Transnational Organized Crime in 2000 under Presidential Decree No. 02/55 dated 05/02/2002, Official Gazette No. 09 dated 10/02/2002, p. 61.

²- Executive Decree No. 02/127 dated 07/04/2002 establishes the Financial Intelligence Processing Unit and regulates its organization and operations, Official Gazette No. 23 dated 07/04/2002, p. 16.

³- Executive Decree No. 22/36 dated 04/01/2022 defines the tasks of the Financial Intelligence Processing Unit and regulates its organization and functioning, Official Gazette No. 03 dated 09/01/2022, p. 12.

⁴- Law No. 04/15 dated 10/11/2004 amends and supplements Ordinance No. 66/156 dated 08/06/1966 concerning the Penal Code, Official Gazette No. 71 dated 10/11/2004, p. 8.

amended and supplemented¹. The legislator assigned the task of receiving and processing reports to the Financial Intelligence Processing Unit, recognising it as the centre for information on the informal or illegal financial sector. The Unit functions as an expert body that detects money laundering and terrorist financing.

Subsection Two: Definition of the Financial Intelligence Processing Unit and its Legal Nature

First- Definition of the Financial Intelligence Processing Unit

Several definitions can be outlined as follows:

1. The definition provided by the Financial Action Task Force (FATF): The FATF defines the financial intelligence unit in Recommendation 29, stating: ‘Countries should establish a financial intelligence unit to serve as a national centre for receiving and analysing suspicious transaction reports and other information related to money laundering and the underlying crimes. The financial intelligence unit should be able to obtain additional information from reporting entities and have timely access to the financial, administrative and law enforcement information necessary to perform its functions effectively.’²

2. Definition by the Financial Action Task Force (FATF):

2. Definition by the Egmont Group: The Egmont Group emphasises the definition provided in FATF Recommendation 29, adding that the FIU is part of the state’s operational network for combating money laundering and terrorist financing. It serves as the central authority for receiving reports from reporting entities, including suspicious transaction reports and other information mandated by national legislation, such as cash transaction reports.

3. United Nations Convention: The Financial Intelligence Processing Unit is referenced in the 2000 United Nations Convention against Transnational Organized Crime, which states: ‘Member countries should consider establishing financial intelligence units that serve as the national centre for collecting, analysing and disseminating information related to various money laundering activities.’³

Algerian legislation outlines the legal nature and tasks of this body. Article 2 of Executive Decree No. 22/36 stipulates that the Financial Intelligence Processing Unit is ‘an independent administrative authority with legal personality and financial autonomy, placed under the Ministry of Finance’. The decree also delineates the Unit’s role in combating money laundering and terrorist financing, outlining its authority to receive and process suspicious activity reports from reporting entities.

¹ - Law No. 05/01 dated 06/02/2005 relates to the prevention of money laundering and the financing of terrorism and their combat, Official Gazette No. 11 dated 09/02/2005, p. 3.

² - Recommendation No. 29 from the Financial Action Task Force established in February 2023, p. 22. Available at: www.fatf.gafi.org/recommendations.html. Date accessed: 30/01/2024.

³ - Article 7 of the United Nations Convention against Transnational Organized Crime 2000.

Secondly- the legal nature of the Financial Intelligence Processing Unit.

The Financial Intelligence Processing Unit is considered an independent administrative authority with legal personality and financial autonomy. The Algerian legislator adopted the public authority criterion in determining the unit's nature, recognising it as a public administrative authority. This means that it exercises a range of functions of public authority, which include various privileges, powers and exceptional competencies that enhance its legal status and grant it greater freedom in its operations. Consequently, the unit is subject to administrative law in its actions and to administrative courts in disputes. This makes the decisions of the Financial Intelligence Processing Unit subject to appeal before the administrative judiciary.

It also possesses additional powers to combat money laundering and terrorist financing, playing a preventive role that aligns with administrative oversight functions. This enables it to take the necessary measures in this area.

It is noteworthy that the position of the Algerian legislator regarding the legal nature of the Financial Intelligence Processing Unit has changed. Initially, under Executive Decree No. 02/127, the FIU was considered a public institution with legal personality and financial independence. However, this classification was deemed ambiguous by the Financial Action Task Force for the Middle East and North Africa in its 2010 mutual evaluation report on Algeria's efforts against money laundering and terrorist financing. Algeria was deemed uncooperative and non-compliant with Recommendation 26 of the FATF due to the lack of a legal concept for public institutions in national law.

According to Law No. 88/01, which sets out the framework for economic¹ public institutions, there are four types of public institution: economic public institutions; public entities with an administrative nature; public entities with an industrial and commercial nature; and public entities with special management. Thus, the term 'public institution' used in Executive Decree No. 02/127 was deemed vague and unclear².

This criticism prompted the legislator to issue Order No. 12/02, amending and supplementing Law No. 05/01 to explicitly state that the Financial Intelligence Processing Unit is 'an independent administrative authority with legal personality and financial autonomy'³. This clearly indicates a change in stance by the legislator regarding the unit's legal nature, a stance that was reaffirmed by Executive Decree

¹ - Law No. 88/01 dated 12 January 1988 concerning the framework law for public economic enterprises, Official Gazette No. 02 dated 13 February 1988.

² - Article 2 of Executive Decree No. 02/157.

³ - Article 3 of Ordinance No. 12/02 dated 13/02/2012 amending and supplementing Law No. 05/01 dated 06/02/2005 concerning the prevention of money laundering and the financing of terrorism and their combat, Official Gazette No. 08 dated 15/12/2012.

13/157¹, which amended and supplemented Executive Decree 02/127, as well as Executive Decree No. 22/36².

Section Two: The organisational structure of the Financial Intelligence Processing Unit

Referring to Chapter Three, titled ‘Organization and Operation of the Unit’, of Executive Decree No. 22/36³, the text states that the unit is managed by a President, who is assisted by a Council and administered by a Secretary General. This structure includes the Council, the General Secretariat, departments and services.

1. President of the Financial Intelligence Processing Unit

The President of the Unit is the head of the Council and is appointed by presidential decree, based on a proposal from the Minister of Finance, for a term of five years⁴, renewable. The President is classified and compensated according to the role of Secretary General in the central administration⁵. The President is assisted by three study and clearance officers, who are classified according to the role of Director in the central administration⁶.

The executive decree specifies several responsibilities for the President, indicating that these tasks are not exhaustive⁷. These include appointing and terminating positions for for which no other method of appointment has been established; ensuring the activation of departments; coordinating and supervising them; and maintaining the smooth operation of the unit. The President also exercises authority over all unit staff members.

Additionally, the President is responsible for overseeing the qualification procedures for relevant staff within the unit, ensuring the implementation of decisions made by the Council and striving to achieve the unit’s assigned tasks and objectives. Furthermore, the President has the authority to initiate legal action on behalf of the unit, represent the unit before national and international authorities and bodies, and conclude contracts, agreements and treaties.

The President is also responsible for preparing budget estimates, administrative accounts and the annual report on the unit’s activities. These are submitted to the Minister of Finance for approval by the Council. The President is responsible for proposing the organisation and internal regulations of the unit, and for ensuring their implementation.

¹- Executive Decree No. 13/157 dated 15 April 2013 amending and supplementing Executive Decree No. 02/157 dated 07 April 2002 concerning the establishment and organization of the Financial Intelligence Processing Unit, Official Gazette No. 23 dated 28 April 2013.

²- Article 2 of Executive Decree No. 22/36, previous reference.

³- Article 11 of Executive Decree No. 22/36, previous reference.

⁴- Article 12, same reference.

⁵- Article 14, same reference.

⁶- Article 15, same reference.

⁷- Article 13, same reference.

2. The Council of the Financial Intelligence Processing Unit

The Council of the unit consists of nine (9) members selected for their expertise in judicial, financial, and security fields, as follows:¹

- The President of the Council.
- Two judges from the Supreme Court.
- A senior officer from the National Gendarmerie, representing the Gendarmerie Command.
- A senior officer from the General Directorate of Internal Security.
- A senior officer from the General Directorate of Documentation and External Security.
- A police officer of at least the rank of chief, representing the General Directorate of National Security.
- A senior customs officer, representing the General Directorate of Customs.
- An official from the Bank of Algeria with at least the rank of study director.

Members of the Council are appointed by presidential decree for a term of five (5) years, subject to renewal.

It is noteworthy that the Council now consists of nine (9) members, including the president, under Executive Decree No. 22/36, as opposed to six (6) members under the repealed Decree No. 02/157². These members are chosen from various sectors and enjoy recognized expertise, representing different security entities, the financial sector, and the judiciary to ensure the unit's independence and efficiency. Additionally, Decree No. 22/36 stipulates the appointment of the President by presidential decree based on a proposal from the Minister of Finance, while it indicates the appointment of the remaining Council members also by presidential decree without specifying which authority has the power to appoint them, implying that they are chosen by the President of the Republic³.

The term of office for the Council members, including the President, is set at five years, renewable, instead of four years as per the repealed Decree No. 02/127, without specifying the number of renewable terms. This is a positive aspect, as a non-renewable term could lead members to seek immediate illegal advantages, especially knowing their membership is limited. Furthermore, renewal ensures a degree of stability in the unit's operations. However, the ability to renew terms without limitation could negatively impact the potential for monopolization of positions. It

¹- Article 16 of Executive Decree No. 22/36, previous reference.

²- Article 10 of Executive Decree No. 02/157.

³- QazouliAbd El Rahim, Farhi Mohamed, "A Review of the Regulatory Framework for the Financial Intelligence Processing Unit in Light of Executive Decree No. 22/36 dated 04 January 2022," Journal of Research in Law and Political Science, Volume 10, Issue 01, Year 2024, p. 30.

would have been preferable for the legislator to specify that membership in the Financial Intelligence Processing Unit Council is for five years, renewable only once.

The Council's tasks include approving the internal regulations, discussing matters relating to the organisation of the collection of all relevant data, documents and materials within its jurisdiction, and preparing annual work plans, multi-year programmes and the annual activity report for the unit. The Council also discusses the preparation and approval of procedures for utilising and processing suspicious activity reports, confidential reports and reports from similar foreign units, as well as the outcomes of utilising and processing these reports.

The Council also considers draft legislative or regulatory texts related to the prevention and combating of money laundering and/or terrorist financing, as proposed by the President or the relevant authorities, on which the unit is asked to provide an opinion. The Council develops relationships for exchange and cooperation with any national or foreign body or institution working in the same field as the unit, and discusses the unit's draft budget and acceptance of donations and legacies.

Council decisions are made by simple majority; in the event of a tie, the President's vote is decisive¹. Council members can participate in peer evaluation processes organised by regional or international bodies responsible for combating money laundering and terrorist financing².

It is important to note that Council members carry out their duties independently of the structures or institutions to which they belong during their term³. They are bound by professional secrecy, including towards their original administrations⁴.

3. The General Secretariat

The General Secretariat is headed by a Secretary General who is appointed by the President of the unit, following approval from the Council. The Secretary General is responsible for the unit's administrative and financial management under the President's supervision⁵.

The legislator has precisely defined how the Secretary General operates and identified the heads of departments who assist him, thereby distributing responsibilities within the General Secretariat. This facilitates the Secretary General's ability to perform his duties effectively. The three department heads who assist the Secretary General are the heads of the Human Resources, Training and General Means Department, the Finance

¹ - Article 17 of Executive Decree No. 22/36, previous reference.

² - Article 19, same reference.

³ - Article 18, same reference.

⁴ - Article 21, same reference.

⁵ - Article 24, same reference.

and Accounting Department, and the Internal Security Department. The department heads are appointed by the President of the unit¹.

4. The departments

In addition to the above, the unit also includes four technical departments, which are subdivided into sections. The heads of the departments and sections are appointed by the President of the unit².

A. Department of Investigations and Operational and Strategic Analysis: This department is responsible for collecting intelligence, establishing relations with correspondents, analysing suspicious activity reports from an operational perspective, and managing investigations. It also focuses on strategic analysis and trends. The department comprises three sections:

- Information Collection and Relations with Correspondents Section;
- Operational Analysis Section.

Strategic Analysis and Trends Section.

B. Legal Department: This department comprises two sections:

Relations with Judicial Authorities and Monitoring of Judicial Matters.

Legal Analysis Section.

C. Cooperation, Public Relations and Communication Department: This department handles bilateral and multilateral relations with foreign bodies or institutions operating in the same field as the unit. It also handles public relations with media outlets and outreach directed at subjects and the public. It contains three sections:

- Relations with Similar Units Section.

Relations with Regional and International Organisations Section.

- Guidance and Public Relations Section.

D. Documentation and Information Systems Department: This department is responsible for collecting information and creating the databases necessary for the unit's operations, as well as managing relationships with relevant parties. It comprises three sections:

- Documents and Archives Section.
- Information Systems Section.
- Information Security Section.

¹ - Article 25, same reference.

² - Article 28, same reference.

The legislator has notably equipped the unit with four departments, each with specific, legally defined tasks, which contributes to organising work within the unit and avoiding positive and negative jurisdictional conflicts¹.

Chapter Two: The Powers of the Financial Intelligence Processing Unit in Combating Money Laundering and Terrorist Financing

The legislator has assigned the Financial Intelligence Processing Unit a range of tasks at national and international levels, as set out in Executive Decree No. 22/36 and Law No. 05/01, as amended and supplemented by Order No. 12/02, dated 13 February 2012², and Law No. 23/01³.

Section One: Powers of the Unit at the National Level

The Unit primarily undertakes the following tasks at the national⁴ level:

First: Receiving Suspicious Activity Reports:

Article 4 of Executive Decree No. 22/36 states: ‘The Unit is responsible for combatting money laundering and terrorist financing. In this capacity, it is specifically tasked with receiving suspicious activity reports relating to all money laundering and terrorist financing operations, sent to it by the relevant entities and individuals, in accordance with Law No. 05/01.’

Moreover, Article 19 of Law No. 05/01, amended and supplemented by Article 10 of Law No. 23/01, states: “Those subject to the obligation to report suspicious activities must comply with the provisions outlined in Article 20 below.” Article 20 further specifies: “Without prejudice to the provisions of Article 32 of the Code of Criminal Procedure, those subject must inform the specialized authority of any transaction involving funds suspected to be derived from a crime or appearing to be directed towards money laundering or terrorist financing.”

From the above, it is clear that the Financial Intelligence Processing Unit serves as the central repository for receiving suspicious activity reports, which is one of its most important tasks. Reports of suspicious activities are submitted by specific entities defined by the legislator, referred to as the “subjects.” Additionally, the unit receives confidential reports from the General Inspectorate of Finance, tax authorities, customs, state property, the public treasury, and the Bank of Algeria. These reports are transmitted urgently and confidentially as soon as these bodies discover, during their

¹- Belkawass Sana, "The Financial Intelligence Processing Unit in Algeria: What Achievements in Effectiveness Under Executive Decree No. 22/36," Journal of Law and Political Science, Abbas Laghrour University, Khenchela, Volume 10, Issue 01, Year 2023, p. 56.

²- Ordinance No. 12/02 dated 13/02/2012 amending and supplementing Law No. 05/01 dated 06/02/2005 concerning the prevention of money laundering and the financing of terrorism and their combat, Official Gazette No. 08 dated 15/12/2012, p. 6.

³- Law No. 23/01 dated 07 February 2023 amending and supplementing Law No. 05/01 concerning the prevention of money laundering and the financing of terrorism, Official Gazette No. 08 dated 08 February 2023.

⁴- Article 4 of Executive Decree No. 22/36, previous reference.

monitoring and investigation duties, the existence of funds and transactions suspected to be derived from crimes or directed towards money laundering or terrorist financing¹.

1. Definition of a Suspicious Activity Report: A Suspicious Activity Report (SAR) is defined as the good faith disclosure of information regarding any transaction that appears suspicious in terms of its value or the circumstances in which it occurs. It is directed to the body specified by law: the Financial Intelligence Processing Unit (FIPU).

Law No. 05/01 concerning the prevention of money laundering specifies the format of reports and acknowledgements of receipt in Article 20/4. Consequently, Executive Decree No. 06/05 was issued on 9 January 2006, detailing the format, model and content of the SAR, leaving the format for acknowledgement of receipt to the Financial Intelligence Processing Unit.

2. Model of the Suspicious Activity Report: Article 20 of Law No. 05-01, as amended and supplemented, states that the report must adhere to the pre-prepared model set out in Executive Decree No. 06-05. This model is unique to the Financial Intelligence Processing Unit and is drafted on a specific template by the person submitting the report. It must be clearly written, without any unnecessary additions, and signed by the reporter, without a stamp or endorsement from their banking institution. Upon submission to the unit, an acknowledgement of receipt is given to the reporter.

3. Content of the Suspicious Activity Report: The report must include details about the reporter, the client, the transactions in question, the reasons for suspicion and the reporter's opinion. The reporter must be someone who is required to report under Article 19 of Law No. 05-01. This includes financial institutions, non-financial businesses, and other professions. The report must include the reporter's address, phone number and fax number.

For a suspicious client, if an individual, their full identity and address must be specified. If a legal entity, the company's address, legal nature, activity, tax identification number and whether or not the client is a regular customer must be indicated, as well as the identity of authorised signatories for account transactions.

Regarding suspicious operations², the report should include the transaction date or the period during which it occurred (if available or recurrent), the transaction type, total value and number of transactions, and a precise description of the potential relationships between the parties involved, and whether the transaction is domestic or international. If international, it should specify whether it involves transferring funds abroad or the reverse. The report should also include the date of issuance of negotiable

¹ - Article 21 of Law No. 05/01 as amended and supplemented by Ordinance 12/02.

² - Article 5 of Executive Decree No. 06/05.

instruments (commercial papers, etc.), the source of funds, the bank through which the transaction was conducted, the account number and holder, and the correspondent bank.

The grounds for suspicion are the reasons or justifications for suspicion. These may be linked to the client's or beneficiary's identity or status, the source or destination of the funds, the amount of the transaction, the absence of an economic justification or the illegality of the transaction's subject matter. Previous records relating to the client or account also constitute grounds for suspicion, for example if their name has previously been listed in the registry of individuals banned from issuing cheques at the Central Bank of Unpaid Amounts, if they are on the list of individuals prohibited from using bank cards, or if their name or account number has been catalogued in the Central Risk Index.

4. Timeframe for reporting suspicion:

According to Law No. 05/01, reports of suspicion must be made as soon as suspicion arises, even if executing those transactions is impossible, or after the transactions have been completed¹. Furthermore, it specifies that all information aimed at confirming the suspicion must be communicated without delay to the relevant authority².

5. Confidentiality of suspicion reports:

Those required to report must maintain confidentiality and must not disclose the report to the person involved in the suspected transaction. This is inferred from Article 33 of Law No. 05/01, as amended and supplemented by Article 10 of Order No. 12/02, dated 13 February 2012. 'Managers and employees of financial institutions and those required to report who intentionally inform the owner of the funds or transactions subject to suspicious reports about the existence of this report, or disclose information regarding the results pertaining to them, shall be punished by a fine ranging from 2,000,000 to 20,000,000 DZD, without prejudice to harsher penalties and any other disciplinary sanctions.'

6. Consequences of the Suspicion Report:

A. Lifting professional secrecy: The obligation to report suspicious financial transactions is an exception to the general rule of maintaining professional secrecy. This exception has been designated by the legislator for certain professions that are required to report. It is assumed that individuals in these professions will keep confidential information about their clients' activities private. However, the legislator has sought to limit the absolute nature of professional secrecy for reporting subjects in order to prevent its use in money laundering, particularly through reporting to the Financial Intelligence Processing Unit, as set out in Law No. 05/01.

¹ - Article 20/2 of Law No. 05/01 as amended and supplemented.

² - Article 20/3 of Law No. 05/01 as amended and supplemented.

B. Exemption from Liability for Reporting Obligations: Article 24 of Law No. 05/01 states: ‘Natural and legal persons subject to the obligation to report suspicious activity who act in good faith shall be exempt from any administrative, civil or criminal liability.’ This exemption from liability remains in effect even if investigations yield no results, or if proceedings conclude with decisions not to pursue, or acquittals.

Therefore, no legal action can be taken against individuals or entities subject to the obligation to report suspicious activities for breaching professional secrecy regarding suspicious financial transactions, even if the information proves unproductive and the proceedings end in acquittal, provided good faith is established.

Conversely, individuals or entities subject to the reporting obligation may face penalties for deliberately failing to report suspicious transactions, including fines ranging from 1,000,000 to 10,000,000 DZD, without prejudice to harsher penalties or other disciplinary sanctions¹.

2. Subjects required to report suspicion:

According to Article 4 of Law No. 05/01, as amended and supplemented, financial institutions and non-financial businesses and professions are required to report. Financial institutions include any natural or legal person engaged in commercial activities involving one or more of the following operations conducted on behalf of a client: receiving funds and other refundable deposits; providing loans or advances; leasing (except for consumer-related loans); transferring funds or values; granting guarantees; or subscribing to obligations. These operations include receiving funds and other refundable deposits; providing loans or advances; leasing (except for consumer-related loans); transferring funds or values; granting guarantees; and subscribing to obligations. They also include the issuance and management of all means of payment, monetary market instruments, currency exchange, interest rates and indexes, among others.

Non-financial businesses and professions are defined as any natural or legal person engaged in activities other than those conducted by financial institutions. This includes organised liberal professions, such as lawyers conducting transactions with financial characteristics on behalf of their clients; notaries; judicial officers; auctioneers; accountants; certified public accountants; customs brokers; stockbrokers; real estate agents; service providers for companies; car dealers; gaming and betting operators; and traders in precious stones, metals, antiques, and artworks. Natural and legal persons who provide consultancy services or conduct operations involving deposits, exchanges, investments, transfers or any other movement of funds in the course of their duties are also included.

¹ - Article 32 of Law No. 05/01 as amended and supplemented by Article 10 of Ordinance 12/02.

These individuals are obligated to report any suspicions of money laundering or terrorist financing¹.

The legislator imposes financial penalties on subjects who deliberately and knowingly fail to submit and/or send suspicious activity reports. They are also penalized if they intentionally inform the owner of the funds or transactions subject to the report about the existence of such a report. The same applies to managers and employees of financial institutions under the Central Bank of Algeria who repeatedly and deliberately violate preventive measures against money laundering and terrorist financing related to due diligence regarding clients and record-keeping.

It is noteworthy that the Financial Intelligence Processing Unit received a total of 6,354 suspicious activity reports between 2018 and 2020, categorized as follows:

For banks and financial institutions, including Algeria Post, the reports were estimated at 2,126 in 2018, 2,281 in 2019, and 1,921 in 2020.

In contrast, the number of reports from non-financial institutions did not exceed 26. Thus, the total number of reports from both financial and non-financial institutions was 2,130 in 2018, 2,300 in 2019, and then decreased to 1,924 in 2020.

It is also important to note that the number of suspicious activity reports submitted to the Financial Intelligence Processing Unit by obligated subjects rose from 1,290 reports in 2015 to 2,030 in 2019, representing an increase of 78%, and then stood at 1,949 in 2020. The detailed breakdown is as follows:

- 1,290 in 2015.
- 1,240 in 2016.
- 1,239 in 2017.
- 2,130 in 2018.
- 2,300 in 2019.
- Then decreased to 1,924 in 2020.

It is estimated that the Financial Intelligence Processing Unit receives 99% of suspicious reports from banks and financial institutions, suggesting that non-financial obligated subjects do not fully grasp the importance of the reporting mechanism in preventing and combating money laundering.

Regarding the receipt of confidential reports, statistics indicate that the Unit received a total of 418 reports between 2018 and 2020, detailed as follows:

- The unit received 218 reports from the Customs Administration in 2018, 199 in 2019 and 60 in 2020.

¹ - Article 19 of Law No. 05/01 as amended and supplemented by Ordinance 12/02.

- The Bank of Algeria provided three reports in 2018, four in 2019 and seven in 2020.
- The Financial Intelligence Processing Unit received only seven reports from other entities in 2020. Thus, the total number of reports received in 2018 was 221, decreasing to 123 in 2019 and then to 74 in 2020.

The Customs Administration was the most frequent source of reports submitted to the unit, compared to the Bank of Algeria and other entities. The Tax Administration and the General Inspectorate of Finance did not send any reports to the unit during this period¹.

Second: Analysis and processing of information

Upon receiving reports of suspicious activity, the unit processes them by collecting, examining and analysing all relevant information in order to determine the source of the funds and the true nature of the suspected transactions. All appropriate means and methods are used to direct the findings to the authorities responsible for investigation or prosecution.

The unit has the right to request any useful information or documents related to the suspicion from the relevant individuals and entities, who must respond within thirty (30) working days². Executive Decree No. 22/36³ stipulates that the Financial Intelligence Processing Unit may sign information exchange agreements with the relevant authorities regarding suspicious reports. This enhances coordination between the local competent authority and the Financial Intelligence Processing Unit when obtaining necessary information.

Third: Taking Precautionary Measures

The Financial Intelligence Processing Unit can provisionally object to banking transactions for any natural or legal person suspected of money laundering for up to 72 hours. If this period is insufficient to conduct the investigations, an extension can be requested from the President of the Court of Algiers (Sidi Mohammed), after consultation with the Public Prosecutor⁴. The court president may extend the deadline and order the temporary judicial custody of the funds, accounts and securities involved in the report. The Public Prosecutor at the Court of Algiers may also submit a petition for this purpose⁵.

Fourth: sending the suspicion file to the competent public prosecutor.

¹- Report on the activities of the Financial Intelligence Unit for the years 2018-2020. Available at: www.ctrf.mf.gov.dz/.

²- The Financial Intelligence Processing Unit may seek assistance from the Intelligence Directorate, the National Gendarmerie, the General Directorate of National Security, and Customs.

³- Article 4 of Executive Decree No. 22/36, previous reference.

⁴- Article 17 of Law No. 05/01.

⁵- Article 18 of Law No. 05/01.

Once the Financial Intelligence Processing Unit has completed its investigations and examinations, it will act on the reports and information under investigation. This will result in one of two scenarios:

1. First scenario:

If there is no evidence of money laundering relating to the financial operations reported by financial institutions, the unit will dispose of the reports and information as the investigation yielded no evidence of a crime.

2. Second Scenario:

If the examination and investigation reveal evidence of suspicion, the unit must send the file to the competent Public Prosecutor, as required by Article 4 of Executive Decree No. 22/36, whenever the reported facts may be linked to money laundering or terrorist financing. According to Law No. 01-05, as amended and supplemented, the security and judicial authorities must be informed whenever there are justifiable grounds for suspicion, provided that the observed facts are subject to criminal prosecution¹.

In this regard, the Financial Intelligence Processing Unit has referred several files to the Public Prosecutor of the Court of Algiers, categorised by the type of suspected crime, based on analyses conducted on suspicious activity reports and confidential reports.

For money laundering: A total of 79 cases were registered, including 20 in 2018 and 59 in 2019. The rulings varied from conviction to acquittal.

- For terrorist financing: A total of 76 cases were registered, including 37 in 2018 and 39 in 2019. Again, rulings varied between conviction and acquittal.

- For both money laundering and terrorist financing, one case was registered in 2018, resulting in an acquittal.

In 2020, the unit referred 11 files to the Public Prosecutor of the Court of Algiers. Seven of these files were subject to administrative freezing of funds, followed by judicial freezing, thus undergoing precautionary measures in accordance with Articles 17 and 18 of Law No. 05/01².

Fifth: Proposing Legal Texts

The Algerian legislator has granted the Financial Intelligence Processing Unit the authority to propose legislative texts and establish regulatory frameworks in the financial sector and its overseers. Most of the legislative and regulatory powers granted to the unit fall within its preventive jurisdiction.

¹ - Article 16 of Law No. 05/01 as amended and supplemented.

² - Report on the activities of the Financial Intelligence Unit for the years 2018-2020. Available at: www.ctrf.mf.gov.dz/.

Article 4 of Executive Decree No. 22/36 states that the Financial Intelligence Processing Unit has the authority to propose legislative and regulatory texts in the field of combating money laundering and terrorist financing. The unit has exercised this authority concerning the reporting of suspicious activities about the transactions in question. The legislator has empowered the unit to cover various formal and substantive aspects of suspicious activity reports, leading the unit to propose the format and content of these reports and their acknowledgment of receipt.

Sixth: Issuing guidelines, instructions and codes of conduct

The Financial Intelligence Processing Unit establishes the necessary procedures for preventing money laundering by issuing guidelines, instructions and codes of conduct in communication with institutions and bodies with supervisory authority¹. In this regard, on 23 April 2015, the unit issued guidelines under Article 10 Bis 4 of Law No. 05/01 concerning due diligence measures for clients of non-financial businesses and certain financial institutions not subject to the authority of the Bank of Algeria².

These guidelines aim to define the due diligence measures that obligated subjects must respect, particularly those not covered by the Bank of Algeria's guidelines. Failure to understand the duties of due diligence and the lack of standards in this area can expose financial institutions and non-financial businesses to significant risks due to non-compliance, which can harm the institution's reputation and lead to administrative or even criminal penalties. The guidelines also draw the attention of financial institutions and non-financial businesses to the elements of customer identification obtained during the initiation of the business relationship or afterwards, as these can help to establish a customer risk profile.

The guidelines also address how to verify customer identity and monitor transactions through a risk-based approach. Additionally, they discuss the due diligence obligations related to clients that non-financial businesses and professions must undertake, particularly for real estate agents, dealers in precious metals and stones, lawyers, notaries, and other independent legal professions, as well as for life insurance activities and investment services.

In July 2024, the Financial Intelligence Processing Unit issued guidelines concerning notaries' obligations to combat money laundering and terrorist financing. These guidelines include a glossary of terms used by notaries. They address notaries' obligation to be vigilant and to implement a written programme for the prevention, detection and combating of money laundering and terrorist financing. This programme must take into account the risks associated with these activities and include internal control policies and procedures.

¹ - Article 6 of Executive Decree No. 22/36.

² - For more information, refer to the guidelines on customer due diligence measures for non-financial businesses and professions and certain financial institutions not subject to the authority of the Bank of Algeria issued by the Head of the Financial Intelligence Processing Unit, Document No. 578/2015/م.ج. dated 23 April 2015.

The guidelines also discuss due diligence obligations towards clients to mitigate associated risks, ensuring that notaries have internal customer identification standards that are continuously aligned with potential risks. These standards must consider essential risk management elements and control procedures, particularly in policies for accepting new clients, identifying actual beneficial owners and continuously monitoring all clients, whether individuals or entities.

The guidelines stipulate that notaries must retain client-related documents. They also address suspicious activity, high-risk countries and information relating to training and internal control for notaries. The guidelines also cover the implementation of United Nations Security Council decisions made under Chapter VII of the UN Charter, particularly those concerning the freezing of assets and prohibiting the establishment of business relationships or execution of transactions, as well as indicators of suspicious transactions¹.

Section Two: Tasks of the Financial Intelligence Processing Unit at the International Level

The Financial Action Task Force (FATF) calls for extensive international cooperation in combating money laundering and terrorist financing. Therefore, countries must collaborate spontaneously and upon request, establishing legal bases for this cooperation², with Algeria being one of these countries.

In this context, the activities of financial intelligence units are characterised by their international nature, which is required to combat money laundering, a form of transnational organised crime. Consequently, the Financial Intelligence Processing Unit in Algeria has entered into numerous bilateral and multilateral agreements and cooperation protocols with financial intelligence units in other countries. From its inception until the end of 2020, the unit signed twenty-one memoranda of understanding and information exchange agreements with similar units in Africa, Europe and Asia, including:

- The National Financial Information Processing Unit (CENTIF) of Senegal on 4 December 2007;

Financial Information Processing Unit (CTIF-CFI) of Belgium on 27 April 2010;

- The Anti-Money Laundering and Terrorist Financing Unit of Jordan on 5 May 2011.

Through these agreements and protocols, the unit establishes a policy of cooperation and mutual exchange, facilitating the exchange of financial information and data with its counterparts worldwide³.

¹- Financial Intelligence Processing Unit, guidelines related to anti-money laundering and combating the financing of terrorism obligations for notaries, dated 08 July 2024.

²- Recommendation No. 40 from the Financial Action Task Force.

³- Ben Ghbriid Abdel Malik, "The Specificities of the Intelligence Work of the Financial Intelligence Processing Unit," Journal of Law and Human Sciences, Volume 14, Issue 03 (2021), p. 18.

The Financial Intelligence Processing Unit responds to requests received from similar financial intelligence units in other countries concerning preliminary inquiries within the scope of its competencies, either internally or by receiving requests for additional data, documents or necessary information. The unit conducts these exchanges within the legal boundaries specified. Additionally, it provides assistance in investigations or prosecutions, benefiting from this cooperation to accomplish its tasks of identifying financial transactions related to money laundering or terrorist financing at the national level¹.

Notably, the legislator has not restricted the unit's powers in the field of international cooperation with similar financial intelligence units in other countries, but has surrounded them with a set of regulations that include various criteria and international principles established in this field. Most of these principles are derived from the fundamental principles governing international relations, such as the principle of reciprocity.

The law also permits the unit to organise within the framework of applicable procedures with regional or international organisations that bring together financial intelligence units. Algeria is a member of the Middle East and North Africa Financial Action Task Force (FATF). In 2020, the Financial Intelligence Processing Unit participated in meetings of international bodies concerned with combating money laundering and terrorist financing, as well as various related events.

This included the 29th plenary session of the FATF, which took place in Paris, France in February 2020, as well as the last two plenary sessions, held via video conference in October 2020 and February 2021. It also participated in the 33rd plenary session of the GAFIMOAN, held in a hybrid format in Egypt in November 2021.

Conclusion:

Despite all the efforts made, the legal instruments provided to the Financial Intelligence Processing Unit by the legislator for preventing and combating money laundering have many gaps and require a review of the legal texts. The unit often receives a high volume of suspicious activity reports regarding transactions suspected of involving money laundering and terrorist financing, but these reports often lack strong and serious indicators, leading to wasted time and effort. This situation also infringes the rights of individuals due to the actions taken against them, as evidenced by the significant number of cases referred to the judiciary that resulted in acquittals.

Furthermore, the majority of reports of suspicious transactions related to money laundering and terrorist financing received by the unit originate from banks, Algeria Post, the Customs Administration and other financial institutions. This is despite the law stipulating that other entities, including non-financial businesses and professions,

¹ - Articles 25 and 26 of Law No. 05/01 as amended and supplemented.

are also subject to the obligation to report suspicious activities. This indicates a lack of compliance on their part.

Notably, the number of suspicious activity reports has recently decreased compared to previous years, despite an increase being expected, particularly following the issuance of Law 23/01, which amends and supplements Law 05/01 concerning the prevention and combating of money laundering and terrorist financing.

Nevertheless, the Financial Intelligence Processing Unit remains one of the most important tools in the fight against money laundering and terrorist financing, despite its shortcomings. Improvement in its activities is expected, particularly given that the state is implementing a national strategy for the prevention and combating of money laundering and terrorist financing for the period 2024 to 2026. This strategy includes new measures aimed at enhancing the unit's performance in this area.

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4. Law No. 5/01 of 6 February 2005 concerning the prevention and combating of money laundering and terrorist financing, Official Gazette No. 11 of 9 February 2005.
5. Law No. 23/01 of 7 February 2023 amending and supplementing Law No. 05/01 concerning the prevention of money laundering and terrorist financing (Official Gazette No. 8 of 8 February 2023).
6. Ordinance No. 12/02 of 13 February 2012 amending and supplementing Law No. 05/01 of 6 February 2005 concerning the prevention of money laundering and terrorist financing and their combat, published in the Official Gazette No. 8 of 15 December 2012.
7. Executive Decree No. 2/127 of 7 April 2002 concerning the establishment, organisation and operation of the Financial Intelligence Processing Unit (Official Gazette No. 23 of 7 April 2002).
8. Executive Decree No. 22/36 of 4 January 2022 defining the tasks, organisation and management of the Financial Intelligence Processing Unit (Official Gazette No. 3 of 9 January 2022).