

INTERNATIONAL COOPERATION BETWEEN FIUs: FEATURES, CHALLENGES, EVOLUTIONARY TRENDS IN THE LIGHT OF THE 4th EU AML/CFT DIRECTIVE

I would like to focus on some characteristics of the international cooperation between financial intelligence units (hereinafter FIUs) that make the exchange of information particularly valuable also in the prevention and detection of frauds to the EU's budget, as well on key challenges and evolutionary trends that could be relevant on this front.

Financial intelligence units are identified for the performing of specific core functions, being the central national unit responsible for receiving and analysing suspicious transaction reports transmitted by a set of obliged entities (financial institutions, professionals, other business operators) as well as other information referring to money laundering, associated predicate offences or terrorist financing. The FIU are responsible for disseminating the results of their financial analyses to domestic competent authorities and create a network with a worldwide dimension to share all the information at their disposal rapidly and effectively with their foreign counterparts. Cooperation between FIUs is for intelligence purposes, information and documents received shall be used for the accomplishment of FIU's tasks and any further dissemination to other authorities is subject –on a case by case basis- to strict rules of prior consent by the FIU that provides the information requested

The Italian FIU, the UIF, makes an extensive use of international cooperation especially in relation to cases that have a cross-border nature, with the main purposes of tracing transnational flows of funds; detect and identify assets held by natural and legal persons in foreign Countries; making request on behalf of the Italian law enforcement or judicial agencies also to facilitate further mutual legal assistance.

1. Which specific features of the international cooperation between FIUs are relevant?

An effective prevention and detection of frauds requires a multidisciplinary approach.

In this respect, it is worth noting that although FIUs can have different nature (administrative, law enforcement and judicial) the adopted model shall not affect the range of information provided in the international cooperation. The exchange of information between FIUs is therefore characterised by a **multidisciplinary content**, as the responding FIU shall reply to a request for information with all the financial, administrative and law enforcement information available or that can be obtained for performing domestic functions. In this context, any information that may be relevant to frauds as associated predicate crime, the relative money laundering activities as well as on any natural and legal persons involved in the case under analysis by the requesting FIU shall be provided by its foreign counterparts.

Any mechanism for exchanging fraud information shall be in real time, ensuring that fraudsters are promptly identified.

The need for timely information sharing between FIUs is ensured by the **use of direct and secure facilities** for the exchange of information both on operational cases and in relation to possible typologies detected in the different Member States.

The Egmont Secure Web connects 151 FIU members of the Egmont Group¹ and provides a secure on line mechanism for communication in real time, governed by the Egmont Group Principles of Information Exchange. It is a secure encrypted system managed through a centralized server and database which is held by the US FIU, capable to share information via secure e-mail.

At the European level a decentralised computer network, FIU.NET, supports the international cooperation between 28 FIUs. The decentralised architecture entails that there is no central database in one particular Member State where all the exchanged data is stored, as the data are stored on the FIU.NET databases at the premises of the FIUs involved in the exchanges. While the access to the ESW is provided through a stand-alone workstation, the FIU.NET system is fully integrated into the FIUs internal network and procedures, thus increasing the rapidity of exchange of information. Furthermore, FIU.NET is characterized by advanced functionalities, such as the creation of a “case file” through which, following an incremental approach, subsequent follow-ups can be added to the initial exchange of information, allowing the development of joint analysis on transnational cases.

Furthermore, the EU FIUs shall be empowered to **take urgent action to suspend a transaction related to money laundering and terrorism financing** also at request of an FIU from another Member States for the period specified in the national law of the FIU receiving the request². The said power ensures the possibility of seizing funds before starting a MLA request.

2. What major challenges affect the international cooperation?

In our experience **domestic features matters** and can deeply affects the exchange of information between FIUs.

As mentioned above, when receiving a request for information from a foreign counterpart the receiving FIU shall use all the information and powers granted for the domestic analysis of suspicious transaction reports.

As a consequence, deficiencies in the powers provided to the receiving FIU or loopholes in the range of databases at its disposal or in the way this access is granted under its domestic legislation can undermine an effective and swiftly international cooperation. For example, in cases of frauds with a multi-jurisdictional dimension international transfers are frequently used: in this respect, it is pivotal - in order to trace the funds and identify the beneficial

¹ The Egmont Group is an international organization currently composed of 151 FIUs aimed at promoting the development of FIUs, their information exchange in the fight against money laundering and terrorism financing, training and the sharing of expertise.

² Recital 7 of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

owners of the accounts involved - that the foreign FIU can provide, at request, all the necessary information obtained from the relevant banks.

Nevertheless, not all the FIUs have the power to request additional information to reporting entities for domestic financial analysis or in response to a request from a foreign counterpart, despite this power shall be granted both in line with the international standard and pursuant to the 4th EU Directive³.

In other instances additional information can be requested by the FIU only under the condition that there is prior suspicious transaction report from the obliged entities from which the information needed should be obtained.

Furthermore, the prompt identification of bank accounts and other financial business relationships held by natural and legal persons involved in the case under analysis is crucial.

In this respect, only some Member States have system of banking accounts registers in place, which hampers the possibility of rapidly having a full picture of all the assets held by natural or legal persons in the Country, without prior notification to the owner. It is worth noting that under the 4th AML Directive the provision of a system of banking accounts register is strongly encouraged, but it is not mandatory⁴.

A smooth exchange of information between FIUs can be also hindered by **restrictive conditions applied by the receiving FIU to provide the requested information**, such as the need for indicating the exact or the type of predicate offence involved.

Also, not all the FIUs are empowered under their domestic legislation to suspend suspicious transactions for domestic purposes or on the basis of a foreign request.

Moreover, the allowed possibilities of refusing to exchange information both when limited to FIU –FIU⁵, and in cases of dissemination to other authorities of the information provided can be misused and lead to a considerable degree of discretion. In particular, under the international standard and the EU legislation the dissemination of the information provided through the exchange with a foreign FIU to other competent authorities is subject to the principle of prior consent granted by the FIU receiving the request. Although the FIU receiving the request shall grant prior consent to the largest extent possible and promptly, the FIU providing information is allowed to deny the dissemination⁶ not only when the said consent could impair a criminal investigation, but also in cases of refusals based on the “scope of AML/CFT provisions” or on the “accordance with fundamental principles of national law” which could limit international cooperation.

³ Article 32 (3) of Directive (EU) 2015/849.

⁴ Recital 57 of Directive (EU) 2015/849.

⁵ Under Art. 53, para. 3 of Directive (EU) 2015/849 an FIU may refuse to exchange information only in exceptional circumstances where the exchange could be contrary to fundamental principles of its national law. Those exceptions shall be specified in a way which prevents the misuse of, and undue limitations on the free exchange of information for analytical purposes”.

⁶ See Art. 55 (2) of Directive (EU) 2015/849.

3. *What are the relevant evolutionary trends in the international cooperation between EU FIUs?*

Some evolutionary trends in the international cooperation between the FIUs can be particularly helpful to strengthen also the role played by the Units in the prevention and detection of fraud cases.

In particular the 4th EU Directive explicitly recognises the EU Financial Intelligence Units' Platform (the 'EU FIUs Platform'), an informal group composed of representatives from FIUs established in 2006 and aimed not only at facilitating cooperation among FIUs, but also in **favouring joint analysis of cross-border cases** and trends and factors relevant to assessing the risks of money laundering and terrorist financing at national and supranational level.

The international cooperation is effective if domestic authorities have adequate powers and access to an adequate set of information: in this respect, and the EU legislation **strengthens the FIU functions and powers** as well as sets out more detailed provisions on the independence and autonomy of the FIUs, as well as on the need for adequate resource to perform the institutional tasks.

Transparency of legal persons is a key factor also in preventing and detecting cases of frauds: accurate and updated information on the ownership structure of the entities and on beneficial owners shall be provided timely through international cooperation. In this respect, the 4th AML Directive not only provides that legal entities and legal arrangements are required to obtain and hold adequate, accurate and current information on their beneficial ownership⁷, but also that the said information shall be accessible to FIU without restriction and can be provided within international cooperation.

Cross-border criminal activities are getting more and more sophisticated: in this respect to address the transnational character of frauds and related money laundering activities an **exchange of information developed following the logic of "request-reply" in a bilateral dimension is not always effective**. The 4th AML Directive establishes that apart from the exchange of information spontaneously or upon request when an FIU receive a STR that concerns another Member State it shall promptly forward it to the FIU of that Member States.

A multi-jurisdiction cooperation through specific provisions is also favoured, which make reference, for example, to the establishment of joint analyses conducted together with other FIUs on cross border cases, beyond bilateral and multilateral analyses, as well as to the exploitation of technologies to match FIUs data in order to detect subjects that operate in several member States. In this context, from the operational point of view, through FIU-NET, more flexible requests (known/unknown requests) have been developed aimed at ascertaining whether particular subjects have been reported to the requested FIU, also in the absence of a full description of the case and of ground for suspicion⁸. In case of positive matches, this can

⁷ See Articles 33 and 34 of Directive (EU) 2015/849.

⁸ See Article 53 (1) of Directive (EU) 2015/849.

be followed by a traditional request, aimed at acquiring all the information at disposal of the requested FIU.