European Parliament

Fighting tax crimes – Cooperation between Financial Intelligence Units

Ex-Post Impact Assessment

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Link to the full study

Part I: EU FIUs and the applicable EU legal framework

Key Findings:

EU FIUs have different structures, resources and powers across the Member States. These differences affect the ways in which EU FIUs collect and analyse information, and ultimately impact exchange of information between them:

(1) At a practical level, time delay in responses to requests affects FIUs cooperation, and the quality and content of the replies to requests are not necessarily helpful.

(2) Not all EU FIUs are empowered to approach banks and financial institutions with requests for information. This means that the capacity of some FIUs to request information from reporting entities on behalf of foreign FIUs can sometimes be hampered.

Concerning tax-related crimes, specific issues arise:

(3) Tax crime was only recently recognised as a predicate offence of money laundering (in the fourth AML Directive). Although the directive explicitly indicates that differences between national law definitions of tax crimes shall not impede the ability of FIUs to exchange information, cooperation between FIUs can still be refused on the grounds of the significant differences across Member States as to how predicated offences to money laundering are defined and criminalised.

(4) In some EU Member States, mutual cooperation between FIUs and tax authorities still lacks clear agreement and/or memorandum of understanding to ensure tax compliance.

(5) Not all EU FIUs have proper access to information on bank account holders and beneficial ownership. Central registers of bank accounts are not necessarily in place in all EU Member States. While the fourth AML Directive encourages EU Member States to put such systems in place, this is not mandatory. As regards access information on beneficial owners, the obligation to set up central registers for this purpose laid down in the fourth AML Directive has not to date been fulfilled in all Member States. As a result, only a few EU FIUs can obtain such information at present. This lack of dedicated centralised national databases is an area of concern shared by many EU FIUs.

Part II: Comparative analysis of Financial Intelligence Units (FIUs) in Canada, France, Switzerland and United Kingdom

Executive summary:

This part looks at the differences between FIUs as well as the tensions and difficulties involved in developing international cooperation between them. It is based on a comparative analysis of the designated FIUs in the following countries: France, UK, Canada and Switzerland. The note has two main sections.

The first section underlines the ongoing redefinition of both 'dirty money' and FIUs identity. On one hand, it recalls that the scope of the notion of 'dirty money' has been radically extended from the proceeds of drug trafficking to illicit flows of money in general, including, after years of explicit exclusion, tax evasion. The striking definitional malleability of 'dirty money' has largely transformed financial intelligence practices, starting with a focus on both the origin and destination of money. Reporting entities' obligations and FIUs' powers have continued to increase significantly in the period considered here. The tremendous development of financial intelligence capabilities has been justified largely in the name of counter-terrorism, particularly in the EU following the adoption of the second Anti-Money Laundering Directive in December 2001. This prioritization of terrorist financing is very often associated with an increased effort in the fight against financial crime as a whole. However, our fieldwork found much more mitigated results with regard to 'mutual benefits' from terrorist financing to tax evasion. There are concerns that the effort to deal with terrorism is to focus on a tree and ignore the wood. On the other hand, the first section also examines key differences between countries with regard to the three core functions of FIUs (information collection, analysis, and dissemination). FIUs officials no longer define their units as exclusively anti-money laundering agencies, as was the case in the early years of their emergence. They define themselves largely as specialised intelligence services that have become multi-taskers even if the wider question of FIU identity remains a matter of debate between and within FIUs. This transformation in FIU identity does not eliminate the differences in the ways FIUs operate – far from it. Nevertheless, the main differences are not where they might be expected to be. **This study emphasises that the classic typology of FIUs ('judicial model'; 'law-enforcement model'; 'administrative model'; 'hybrid model') is not sufficient to identify the key operational differences between FIUs**. Moreover, it masks numerous critical elements that make a difference in practice, including those between FIUs that fall into the same model. It gives the mistaken impression that every question relates to status problems. On the contrary, we argue that being grouped into the same model often means very little in practice with regard to the three core functions of FIUs.

With regard to the first core function (information collection), the four FIUs we analysed do not receive the same disclosures of financial transactions from reporting entities, a variation that has nothing to do with the classic typology. With reference to the second core function (information analysis), there are at least two critical issues at stake. First, another typology is needed that differentiates between FIUs depending on whether or not they have a national monopoly on analysing the financial transaction reports they collect. Second, the other critical difference between FIUs relates to the ability to get direct and/or indirect access to other state databases. Which databases can an FIU access as part of its analytical activities? Here, the classic typology masks major disparities between FIUs in the same model. Third, with reference to the third core function (analyses/financial intelligence dissemination), there is almost a difference in kind between countries where FIU dissemination is directed towards prosecution authorities and countries where FIU dissemination of financial intelligence goes well beyond prosecution authorities, including tax administration, intelligence services and social protection institutions.

Finally, this section shows that the **challenge of suspicious transaction reports still lies in knowing where to draw the line between defensive reporting and intelligence-relevant reporting**. Depending on the national context, defensive reporting from obliged entities (mainly financial institutions) may result either in over-reporting – creating more 'noise' than actionable intelligence for law enforcement – or under-reporting – reporting only when there is no other choice to avoid sanctions because the client is already being prosecuted or has been the subject of scandal-driven media coverage. Moreover, the prevalence of interpretation over facts is, inevitably, an unavoidable element in the rationale at the core of any suspicion-based model of denunciation. To the extent that they are not based on any clear-cut threshold, suspicious transaction reports de facto introduce a significant margin of interpretation. Along these lines, 'suspicion' is at the heart of financial intelligence practices but it is not interpreted the same way from one country to another (from 'unqualified suspicion' to 'well-founded suspicion').

The second section sheds light on the cooperation channels the FIUs use, at European and International level. On one hand, international cooperation between financial intelligence units is promoted as a way to prevent the internationalisation of financial flows from being used to make it more difficult to discern criminal activity. In practice, different types of situations encourage FIUs to cooperate with foreign counterparts. Regardless of the motive for requesting information, the FIUs use from one to three cooperation channels depending on geographic location, legal framework, and technical capacity:

- The Egmont Secure Web (ESW): 152 national FIUs can make and respond to requests via the ESW, which is promoted as the international FIU-to-FIU channel of communication.

- The FIU.NET: It is restricted to EU Member States only, with potential extension to other European countries such as Iceland and Norway in the near future.
- Other recognised cooperation channels: FIUs also use other channels – secure e-mails or even fax messages – to exchange information with the minority of their counterparts that are neither members of the Egmont Group nor FIU.NET.

Although cooperation channels such as the ESW and the FIU.NET are based on the same goal of information sharing between financial intelligence units, the briefing note insists on a number of significant differences between them, from the technological side to the possibility of multilateral information exchange.

On the other hand, **cooperation practices between FIUs regularly come under fire in relation to a series of obstacles**, including some that are particularly problematic in tax-related cases:

- General inability to request information from reporting entities
- Conditional (in)ability to obtain information from reporting entities
- Inability to get access to beneficial ownership information
- Lack of (access to) databases
- Timeliness issues and lack of reciprocity
- Lack of spontaneous dissemination and 'abusive' restriction on the use of information