



Provisional version

## Committee on Legal Affairs and Human Rights

# Urgent need to strengthen Financial Intelligence Units – Sharper tools needed to improve confiscation of illegal assets

## Report\*

Rapporteur: Ms Thorhildur Sunna ÆVARSDÓTTIR, Iceland, Socialists, Democrats and Greens Group

### A. Draft resolution

1. Numerous scandals, including the recent United States treasury's FinCEN leaks have shown that national and international efforts aimed at combatting money-laundering and terrorist financing have fallen far short of declared objectives. According to the World Bank, the world-wide proceeds of organised crime and high-level corruption amount to several trillions of US dollars - each year. Only a tiny fraction is successfully confiscated by law enforcement. The remainder, accumulating in the hands of organised criminals, corrupt public officials and terrorists, represents a huge threat for democracy, the rule of law and national security in all Member States. At the same time, successful confiscation of illegal assets represents a huge opportunity for States to generate resources needed to address the social problems caused by organised crime, corruption and terrorism. Urgent action to step up the tracking and confiscation of the proceeds of crime is therefore both necessary and potentially highly rewarding.
2. The Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval) and the Group of States against Corruption (GRECO) and the Egmont Group of Financial Intelligence Units play an important role in the fight against money-laundering and terrorism financing by setting relevant standards, monitoring their implementation and organising international cooperation and training activities.
3. The Assembly, in Resolution 2218 (2018), stressed the need to facilitate the confiscation of illegal assets. It recommended States to reverse the burden of proof regarding the legality of assets by requiring the persons concerned to establish the legitimate origin of suspect assets they hold.
4. The Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention, ETS no. 198) provides an important legal framework for FIUs and international cooperation in its field. Most, but not all member States of the Council of Europe have signed and ratified it.
5. In order for illegal assets to be successfully confiscated, they must be identified as suspicious and secured. Financial Intelligence Units (FIUs) set up by all Council of Europe member States and many others, under the auspices of the Financial Action Task Force (FATF) play a crucial role. FIUs receive so-called "suspicious transaction reports" (STRs) from the private sector (banks, insurance companies, lawyers), which they are required to analyse and act upon, including by freezing certain transactions temporarily and passing information on to law enforcement bodies for purposes of confiscation and prosecution.

---

\* Draft resolution and draft recommendation unanimously adopted by the committee on 9 November 2020.

6. Whilst the FATF standards allow for different organisational models of FIUs (administrative, law enforcement or hybrid models), they must be given the independence, competences and the human and material resources to fulfil their role effectively.

7. Under the Warsaw Convention, FIUs have the power to postpone suspicious transactions for some time pending further inquiries, domestically (Article 14) and upon the request of a foreign FIU (Article 47). This possibility is not yet included in the FATF's standards for FIUs.

8. The Egmont Group assists FIUs in increasing their effectiveness through training and staff exchanges and through fostering better and more secure communication among FIUs for the purposes of mutual exchange of information.

9. The effectiveness of FIUs can be assessed in terms of the rate of success in transforming STRs into actionable evidence for purposes of confiscating illegal assets and prosecuting relevant crimes ("conversion rate"), which depends on close cooperation and mutual feedback between the FIU with the reporting entities (banks etc.) on one side and the law enforcement authorities on the other.

10. The main issues FIUs face, as identified by regular national assessments conducted in particular by the FATF and Moneyval, include the following:

10.1. The uneven quality and large quantity of reports filed by the reporting entities (banks etc.), the release of assets by reporting entities before they have a feedback from the FIU, lack of knowledge on money-laundering/terrorism financing typologies by reporting entities as well as lack of effective feedback, guidance and training for reporting entities;

10.2. the lack of autonomy and independence of certain FIUs, understaffing as well as insufficient material resources (IT equipment and tools, archiving and data management and exchange systems) or inadequate technical capacities in the context of new challenges (growing demand for online services and internet payment systems, fintech) and the complex nature of criminal schemes and money-laundering paths (including cybercrime), inadequate use of their suspension powers even where they have this power;

10.3. the law enforcement authorities' inability to take prompt actions following up intelligence provided by FIUs to ensure the assets are frozen and/or seized while conducting an investigation; their inability to provide timely feedback to the FIU about the quality of the disseminated information and the actions taken.

11. The fight against money-laundering and terrorism financing is negatively impacted by so-called "golden passports" programmes involving the grant of citizenship in return for the investment of a large sum of money in the country concerned. These programmes, offered by Cyprus and Malta, in particular, have given rise to numerous abuses that have recently prompted the European Commission to launch infringement proceedings against the two countries.

12. A number of designated non-financial businesses and professions (DNFBPs) continue to represent the weakest links in the global anti-money laundering efforts, in particular casinos, lawyers, notaries, accountants, real estate dealers, dealers in precious metals and stones, as well as trust and company service providers. The supervision of these financial 'gatekeepers' is often assigned to the FIU, but proper supervisory resources are not allocated.

13. The Assembly therefore invites all member States of the Council of Europe and those States which have observer or cooperative status with the Organisation to

13.1. strengthen their FIUs in line with the recommendations by the FATF and Moneyval, in particular by providing them with sufficient powers, human resources, IT tools, and training opportunities to enable them to cope with new challenges and the increasing complexity of money-laundering paths;

13.2. respect their FIUs' autonomy and refrain from any political interference in their work;

- 13.3. grant all FIUs the power to temporarily suspend suspicious transactions, including on the request of a foreign counterpart, as foreseen in Articles 14 and 47 of the Warsaw Convention);
- 13.4. strengthen the capacity of their law enforcement bodies (police, prosecution and courts) to take timely action following the transmission of financial intelligence by FIUs by creating specialised, well-trained and sufficiently resourced task forces working in close cooperation with the FIUs; keeping and publishing statistics permitting to evaluate the “rate of translation” of STRs into effective investigations, confiscations and prosecutions.
- 13.5. strengthen international cooperation between FIUs, by making relevant legislation and institutional set-ups interoperable, allowing for unbureaucratic exchange of financial intelligence and promoting informal exchanges of experience through bodies such as the Egmont Group of FIUs;
- 13.6. encourage their competent authorities to engage in a constructive dialogue with the private sector (reporting entities) in order to ensure the highest possible quality rather than quantity of STRs and other reports; consider offering mandatory or optional education to reporting entities;
- 13.7. allocate sufficient resources to FIUs to ensure effective supervision of DNFBPs, focusing on those with transnational operations;
- 13.8. sign and ratify the Warsaw Convention (ETS no. 198), if they have not already done so;
- 13.9. reverse the burden of proof regarding the legality of assets by requiring the persons concerned to establish the legitimate origin of suspect assets they hold;
- 13.10. end any citizenship-for-investment programmes they may still have on offer.

**B. Draft recommendation**

1. The Assembly refers to its Resolution xxx and stresses the crucial importance of the fight against money-laundering and terrorism financing for the preservation of democracy, the rule of law and national security.

2. It therefore invites the Committee of Ministers to

2.1. strengthen the Council of Europe's bodies playing a crucial role in the international fight against money-laundering and terrorism financing, in particular Moneyval, GRECO, and the Conference of the Parties to Convention 198 and their secretariats;

2.2. engage in cooperation in this field also with the European Union.

## C. Explanatory memorandum by Ms Ævarsdóttir

### 1. Introduction

1. On 09 October 2018, the motion for a resolution on “Urgent need to strengthen Financial Intelligence Units – Sharper tools needed to improve confiscation of illegal assets” ([Doc. 14638](#)) was tabled by the Committee on Legal Affairs and Human Rights (the committee) and referred back to the committee for report on 23 November 2018. The committee appointed me as rapporteur at its meeting in Berlin on 15 November 2019, following the departure from the Parliamentary Assembly of the Council of Europe (Assembly) of the former rapporteur, Mr Mart van de Ven (the Netherlands, ALDE).

2. The Assembly previously invited all Council of Europe member States to “step up international co-operation in the fight against corruption, [by] co-operating more efficiently in following the ‘money trail’ left by electronic transfers of funds, with a view to helping each other recuperate funds generated by corrupt practices”.<sup>1</sup> In the face of the staggering extent of money laundering and other financial crime in Europe, confiscation of illegal assets has potentially huge benefits as it strengthens the Council of Europe member States’ means of action and weakens the ever-growing “financial firepower” of organised crime and corrupt individuals to subvert democracy and the rule of law.

3. The present report is part of a “trilogy” of reports submitted by the Committee on Legal Affairs and Human Rights concerning the fight against money-laundering and terrorism finance by the confiscation of illegal assets. The first contribution in this context was the report by Mr van de Ven on “Fighting organised crime by facilitating the confiscation of illegal assets”, which focused on promoting non conviction-based confiscation and the reversal of the burden of proof, following in particular the Irish and Italian models.<sup>2</sup> Our colleague Mr André Vallini (France, SOC) is currently working on what would be the logical sequel to Mr van de Ven’s report, as it focuses on “How to put confiscated assets to good use”.<sup>3</sup> The issues covered in the present report – aimed at strengthening Financial Intelligence Units (FIUs) – are in a way “upstream” of the two other reports: strong FIUs help increase the amount of successfully confiscated illegal assets, especially when confiscation is aided by the reversal of the burden of proof regarding the legitimacy of the assets targeted for confiscation; and increased confiscations will in turn boost the assets available for the good uses being explored by Mr. Vallini.

4. The motion for a resolution underlying this report describes FIUs as essential authorities in the general anti-money laundering and countering the financing of terrorism (AML/CFT) apparatus of member States. Their work may lead to the confiscation of illegal assets, but also serious criminals being brought to justice, and, *finally*, to the protection of the systemic integrity of the financial sector and the global economy as a whole. FIUs deserve to be strengthened and this report will seek to make concrete recommendations for improvements.

5. At the committee’s (online) meeting on 9 September 2020, three experts<sup>4</sup> gave detailed insights into the functioning of their respective FIUs (Poland, Armenia and Latvia). Based on their own institutions’ experience and that accumulated by Moneyval, the Council of Europe’s relevant committee of experts, provided me with some useful input for the preliminary draft resolution and recommendation I have submitted.

6. The numerous FinCEN (the United States’ FIU) documents recently disclosed show once again the enormity of the problem. Over two trillion USD in suspicious transactions were revealed in the disclosed documents alone. The leaked documents show the limited effectiveness of the existing AML/CFT framework in the face of the lack of compliance of major banks and the lack of a speedy and effective reaction of many FIUs when they do receive the suspicious transactions or activity reports (STR/SAR) banks and other private sector actors are required to file.

<sup>1</sup> [Resolution 1943 \(2013\)](#) on “Corruption as a threat to the rule of law”.

<sup>2</sup> [Resolution 2218 \(2018\)](#) on “Fighting organised crime by facilitating the confiscation of illegal assets”.

<sup>3</sup> Motion for a resolution tabled by the committee on 12 March 2019, [doc. 14841](#).

<sup>4</sup> Ms Elżbieta Franków-Jaśkiewicz, Chair of Moneyval, Head of the International Cooperation Unit of the Financial Intelligence Unit (FIU) of Poland and General Inspector of Financial Information (GIFI), Mr Arakel Meliksetyan, member of Moneyval, Head of Financial Monitoring Centre (FMC), Armenia and Ms Ilze Znotina member of Moneyval, Head of Office for Prevention of Laundering of Proceeds Derived from Criminal Activity, Latvia;

7. The fight against money-laundering and terrorism financing is also negatively impacted by so-called “golden passports” programmes involving the grant of citizenship in return for the investment of a large sum of money in the country concerned. These programmes, offered by Cyprus and Malta, in particular, have given rise to numerous abuses that have recently prompted the European Commission to launch infringement proceedings against the two countries.<sup>5</sup> Such practices, strikingly illustrated by a recent scandal in Cyprus<sup>6</sup> are problematic also from an AML/CFT perspective, because the EU passports they purchase enable dangerous criminals from third countries to “fly under the radar” of EU AML/CFT measures that foresee more intensive controls vis-à-vis nationals of certain third countries that have notoriously weak law enforcement and a high level of corruption.

## 2. Role of Financial Intelligence Units and recent developments

### 2.1. Role of Financial Intelligence Units

8. FIUs are essential parts of effective AML/CFT frameworks in member States and worldwide. Their core mandate aims to create a connection or “buffer” between the private sector (financial and non-financial institutions<sup>7</sup>) and law enforcement authorities (i.e. the Police, Security Services, Prosecutors’ office). Their main functions are to receive, analyse and disseminate suspicious transaction or activity reports (STRs/SARs), filed by private sector actors (“reporting entities”) fulfilling their reporting obligations under AML/CFT legislation<sup>9</sup>. They also collect and analyse other information relevant to money laundering, associated predicate offences (including corruption, cybercrime and organised crime)<sup>10</sup> and terrorist financing. FIUs have at their disposal a broad range of tools which can be used to collect and assess information on suspicious transactions.

9. FIUs may have additional powers such as the power to postpone transactions, supervisory functions of the implementation of the AML/CFT obligations by reporting entities, issuance of guidance and provision of training on AML/CFT matters; as well as, given its role as the main player in the AML/CFT field, coordinating national initiatives at policy level.

10. The power to postpone a transaction is foreseen in Articles 14 (for domestic purposes) and 47 (at the request of a foreign FIU) of the Council of Europe’s Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention<sup>11</sup>). But this power is (regrettably, see paragraph 25 below) not yet included in the standards set by the Financial Action Task Force (FATF).

11. FIUs are established on the basis of financial, criminal and other policy considerations specific to each country, in accordance with their national legal and institutional framework. The structure of FIUs, their activities, working practices and methods of recording and analysing information vary considerably across member States. FIUs can be set up according to various models: administrative,

<sup>5</sup> See “Investor Citizenship Schemes: European Commission opens Infringements against Cyprus and Malta for “selling” EU citizenship”, at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1925](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925).

<sup>6</sup> Voir David Pegg, “Cyprus scraps ‘golden passport’ scheme after politicians caught in undercover sting; Official and lawmaker filmed pledging to support application from fictitious investor with criminal record”, in: **Guardian 13 October 2020**, at: <https://www.theguardian.com/world/2020/oct/13/cyprus-scraps-golden-passport-scheme-after-politicians-caught-in-undercover-sting>

<sup>7</sup> See [Financial Action Task Force \(FATF\) Glossary](#) for definitions of “Financial institutions” and “Designated non-financial businesses and professions” (DNFBPs).

<sup>8</sup> Suspicious Activity reports are mostly an American feature, mainly covering automatically generated reports about transactions above a certain threshold.

<sup>9</sup> See Recommendation 20, [FATF Standards](#). Obligations to report suspicions promptly also apply to DNFBPs, described in the FATF Recommendation 23. Europol describes a suspicious transaction as a “transaction that causes a reporting entity to have a feeling of apprehension or mistrust about the transaction considering its unusual nature or circumstances, or the person or group of persons involved in the transaction. Reporting entities assess the suspicion according to a risk-based approach for customer due-diligence, real-time payment screening, transaction monitoring and behavioural monitoring, to identify changes in the respondents’ transaction risk profile”. See Europol, Financial Intelligence Group, [From suspicion to action – converting financial intelligence into greater operational impact](#), 2017.

<sup>10</sup> For example, 4% of EU Suspicious Transaction Reports (STRs) relate to corruption, 30% to fraud and swindling and 39% to tax fraud. Op. cit. Europol, 2017.

<sup>11</sup> CTS no. 198, see paragraph 12, below.

law enforcement, judicial or hybrid.<sup>12</sup> The “administrative model” involves a centralised, independent, administrative authority, which receives and processes information from the private sector and transmits relevant information to law enforcement authorities<sup>13</sup> for investigation and prosecution. In addition to their core functions, the “law enforcement model” grants FIUs law enforcement powers with regard to AML/CFT issues and often also investigative competencies. The “judicial model” involves additional judicial powers including the powers to seize funds, freeze accounts, conduct interrogations, detain suspects, conduct searches, etc. Finally, the “hybrid model” serves as a disclosure intermediary and a link to both judicial and law enforcement authorities. It combines elements of at least two of the FIU models.<sup>14</sup>

## 2.2. *International standards and cooperation*

12. Given the international character of financial and other organised crime, international cooperation is essential, in particular in the development of international standards for the establishment and functioning of FIUs as well as the facilitation of international exchange of information. It is essential that FIUs act quickly in the context of a dynamic globalised criminal and corruption scene.

13. To counter the money laundering/terrorist financing (ML/TF) threats, in 2005, the Council of Europe adopted the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198), also known as the Warsaw Convention. The Convention calls on “each Party to adopt such legislative and other measures as may be necessary to establish an FIU” as defined in the text.<sup>15</sup> Relevant international AML/CFT standards include in particular those set up by the Financial Action Task Force (FATF), an inter-governmental body established in 1989 to promote effective implementation of legal, regulatory and operational AML/CFT measures.<sup>16</sup> The FATF has developed a series of recommendations including one specifically directed at FIUs (see, Recommendation 29 and its related Interpretive Note). The European Union Directive 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing (Fourth EU AML/CFT Directive) contains provisions dealing with FIUs in European Union (EU) States. Amendments to this Directive are also contained in the EU Directive 2018/843.

14. In addition, cooperation between FIUs is defined by the Warsaw Convention which states that “Parties shall ensure that FIUs [...] shall cooperate for the purpose of combating money laundering [...]” (Article 46). The 2003 United Nations Convention Against Corruption (UNCAC) and the 2000 United Nations Convention against Transnational Organized Crime (UNTOC) both urge countries to “ensure that their administrative, regulatory, law enforcement, and other [competent] authorities have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by [their] domestic laws and, to that end, [...] consider [establishing FIUs].” The FATF Recommendation 40 also states that “countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing”.<sup>17</sup>

<sup>12</sup> At EU level, twelve countries classify themselves as administrative (Belgium, Bulgaria, Czech Republic, Spain, France, Croatia, Italy, Latvia, Malta, Poland, Romania, Slovenia), while 10 have a law enforcement status (Austria, Germany, Estonia, Finland, Ireland, Lithuania, Portugal, Sweden, Slovak Republic, United Kingdom), five are hybrid (Cyprus, Denmark, Greece, Hungary and the Netherlands) and one is judicial (Luxembourg).

<sup>13</sup> FIUs can forward information to tax authorities if they have investigative functions.

<sup>14</sup> For more information, see <https://www.egmontgroup.org/fr/node/1591>.

<sup>15</sup> States are also called to establish FIUs by the 2003 United Nations Convention Against Corruption (UNCAC) and the 2000 United Nations Convention against Transnational Organized Crime (UNTOC).

<sup>16</sup> There are currently 37 jurisdictions represented in the FATF, including the following member States of the Council of Europe and observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly: Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Luxembourg, Mexico, The Netherlands, Norway, Portugal, the Russian Federation, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The Council of Europe’s Moneyval is an Associate Member of the FATF.

<sup>17</sup> The UN Convention against Corruption also states that “States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions” (Art. 58). The United Nations Security Council’s

15. Furthermore, in 1995, the Egmont Group of Financial Intelligence Units (Egmont Group) was established in order to enhance the exchange of intelligence between jurisdictions. The Egmont Group is one of the main contributors and promoters of technical standards for member States. For instance, the Egmont Group Charter and its Principles for Information Exchange set out important guidance concerning the role and functions of FIUs, and the mechanisms for exchanging information between FIUs, including a secure platform for the rapid exchange of information between participating FIUs.<sup>18</sup> The Egmont Group, headquartered in Toronto/Canada, also organises trainings and staff exchanges as part of its capacity building efforts.

16. Exchanges of best practices, monitoring and evaluation have been developed through relevant Council of Europe bodies such as the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval)<sup>19</sup>, the Conference of the Parties to the Warsaw Convention (COP to CETS 198), the Group of States against Corruption (GRECO), and the Council of Europe's Economic Crime and Cooperation Division.

### 2.3. *Some issues requiring special attention*

17. FIUs receive hundreds of thousands of STRs from financial and non-financial institutions complying with relevant regulations, under threat of heavy penalties. However, recent reports conclude that whilst the number of STRs increases, only a very small percentage of those result in successful asset recovery. For example, in 2014, FIUs in the European Union received altogether almost 1 million STRs, among which 65% were reports sent to the FIUs in the United Kingdom and the Netherlands. On average, just 10% of STRs to FIUs in the European Union led to further investigations (figure unchanged since 2006), and only 1% of criminal proceeds were successfully confiscated.<sup>20</sup>

18. Common issues include:

- Concerning the receipt of STR: uneven quality and large quantity<sup>21</sup> of reports filed by the reporting entities, the release of assets (i.e. conducting transactions) by reporting entities before they have a feedback from the FIU, lack of knowledge on ML/TF typologies by reporting entities as well as lack of effective feedback, guidance and training for reporting entities; the recent FinCEN disclosures seem to indicate that reporting entities, including large banks, continue serving clients and carrying out activities that they had themselves reported as being suspicious. This shows the importance of rapid feedback from FIUs to the reporting entities – presuming that there is no ill intent on their side.
- Concerning the analysis and dissemination of STRs: the lack of autonomy and independence of certain FIUs, understaffing as well as insufficient material resources (IT equipment and tools, archiving and data management and exchange systems) or inadequate technical capacities in the context of new challenges (growing demand for online services and related internet payment systems, fintech<sup>22</sup>) and the complex nature of criminal schemes and money-laundering paths (including cybercrime), inadequate human and technical resources to conduct operational and strategic analysis (including

---

recent [Resolution RES/2462 \(2019\)](#) called upon UN Member States to combat and criminalise the financing of terrorists and their activities, and urged all Member States to implement FATF Standards.

<sup>18</sup> The Egmont Group has developed several other reference documents on the role of FIUs, including: [Operational Guidance for FIU Activities and the Exchange of Information](#) (2013, rev. 2017), [White Paper on "The Role of FIUs in Fighting Corruption and Recovering Stolen Assets"](#) (2013), [Best Practices on "Enterprise-wide STR Sharing: Issues and Approaches"](#) (2011).

<sup>19</sup> Moneyval currently evaluates the following jurisdictions: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Republic of Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, North Macedonia and Ukraine.

<sup>20</sup> See Europol, Financial Intelligence Group, [From suspicion to action – converting financial intelligence into greater operational impact](#), 2017.

<sup>21</sup> An excessive volume of reports by reporting entities can reflect situations of “defensive reporting”. It makes it difficult for FIUs to identify suspicious transactions requiring further investigations.

<sup>22</sup> Financial technology, often shortened to fintech, is the technology and innovation that aims to compete with traditional financial methods in the delivery of financial services.

development of typologies), inadequate use of their suspension powers if they have such capacity;

- Concerning the use of the disseminated information by the law enforcement authorities: inability to take prompt actions to ensure the assets are frozen and/or seized while conducting an investigation, inability to provide timely feedback to the FIU about the quality of the disseminated information and the actions taken (launch of an investigation or conclusion that the report does not provide sufficient grounds for investigation).

19. These issues have been identified by regular national assessments conducted by the FATF, Moneyval and other relevant bodies that are part of the global AML/CFT network. Evaluation reports are produced on the basis of the FATF [Methodology](#) on “Assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems” (updated in October 2019). Evaluations are conducted on the basis of set goals (“Immediate Outcomes”). Of particular interest to this report, Immediate Outcome 6 (IO6) aims for “Financial intelligence and all other relevant information [to be] appropriately used by competent authorities for money laundering and terrorist financing investigations.” The information gathered in Appendix I provides extracts of the country-specific evaluations, which list issues and rate member States’ level of effectiveness in achieving set goals. For instance, only two Council of Europe member States (Spain and the Russian Federation) and one Observer State (Israel) have convinced the FATF and/or Moneyval of having reached a high level of effectiveness for IO6. One member State (Austria) was rated as having a low level of effectiveness. 11 member States have a substantial level of effectiveness and 15 States have a moderate level. The Appendix also compiles ratings related to the technical compliance with FATF Recommendation 29 directly aimed at FIUs. The United Kingdom and one Observer State (Canada) received the lowest ratings among States (i.e. partially compliant). 16 member States were rated compliant and 12 member States largely compliant.<sup>23</sup>

### 3. Measures to strengthen Financial Intelligence Units

#### 3.1. Strengthening operational autonomy and independence

20. In [Resolution 2130 \(2016\)](#) on “Lessons from the ‘Panama Papers’ to ensure fiscal and social justice”, the Assembly recommended that member States “ensure the existence of effective and independent national FIUs, which are free of any political interference in their operational decision making.” The presence of an FIU as an autonomous central, national agency allows for the impartial assessment and dissemination of financial information and protection of confidential information.<sup>24</sup>

21. These principles are described in the Interpretative note for FATF’s Recommendation 29: “the FIU should be operationally independent and autonomous, meaning that the FIU should have the authority and capacity to carry out its functions freely [...]”. Indeed, the FIU should be able to disseminate, spontaneously and upon request, information and the results of its analysis to relevant competent authorities. In addition, “if the FIU is located within the existing structure of another authority, the FIU’s core functions should be distinct from those of the other authority”. It “should be provided with adequate financial, human and technical resources, in a manner that [...] allows it to conduct its mandate effectively”. FIUs should be protected from “any undue political, government or industry influence or interference, which might compromise its operational independence”.

22. Independence is also essential in the context of international cooperation. The FATF states that “the FIU should be able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information.” This includes adequate powers to sign Memoranda of Understanding with foreign counterparts, and powers to collect and analyse information on behalf of the foreign counterpart.

<sup>23</sup> Among observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly, one was rated with a substantial level of effectiveness towards IO6 and 6 with a moderate level. 3 were rated compliant to FATF R.29 and 4 were rated largely compliant. All evaluations are accessible in the [FATF consolidated assessment ratings](#).

<sup>24</sup> World Bank, UNODC and Egmont Group, “[Financial Intelligence Units Working with Law Enforcement Authorities and Prosecutors](#)”, 2018.

### 3.2. *Strengthening the capabilities of national authorities*

23. Member States are encouraged to “adopt such legislative and other measures as may be necessary to institute a comprehensive domestic regulatory and supervisory or monitoring regime to prevent money laundering and shall take due account of applicable international standards, including in particular the recommendations adopted by the FATF”.<sup>25</sup> Further immaterial and material assets must be considered to strengthen the capabilities and efficiency of FIUs.

24. Adequate resources and skill sets must be ensured for FIUs to conduct both operational and strategic analysis. Operational analysis shall identify specific targets, to follow the trail of particular activities or transactions and to determine links between those targets and crime. Strategic analysis must identify trends and patterns but also threats and risks involved in the current AML/CFT context. Strategic analysis may also help establish policies and goals for the FIUs, or more broadly for other entities within the AML/CFT regime. FIUs and their staff are therefore also required to have a sound knowledge of analytical software to process the information efficiently and establish typologies, schemes and relevant links. Solid training in this highly technical area is essential to strengthen the capabilities of FIUs and cope with time-pressured needs.

25. Timely access to relevant information is essential for FIUs to undertake their functions properly. When needed, they should be able to obtain additional information from reporting entities as well as financial, administrative, law enforcement and other sources. Direct access to various databases (i.e. personal records, travel data, real estate information, vehicle registers and others) should be encouraged as much as the right to privacy allows. A reasonable balance must be found with tightening data-protection laws, information security and confidentiality rules. The FATF recalls that “information received, processed, held or disseminated by an FIU must be securely protected, exchanged and used only in accordance with agreed procedures, policies and applicable laws and regulations”. For instance, “FIUs must ensure that staff members have the necessary security clearance levels and understanding of their responsibilities in handling and disseminating sensitive and confidential information. The FIU should ensure that there is limited access to its facilities and information, including information technology systems” (Interpretative Note to FATF Recommendation 29). To this view, adequate resources must be dedicated to help FIUs cope with increasingly complex and constantly evolving IT systems.

26. As mentioned above (paragraph 9), the power to postpone domestic suspicious transactions is held by many FIUs, but not all. Article 14 of the Warsaw Convention states that it is necessary to permit urgent action to be taken by the FIU or, as appropriate, by any other competent authorities or body. This power helps prevent the flight of suspect funds or assets beyond the reach of national law enforcement and prosecutorial authorities during the time it takes for those national authorities to seek and obtain a freezing or seizing order from the judicial or other competent authorities. The Convention indicates that the “maximum duration of any suspension or withholding of consent to a transaction shall be subject to any relevant provisions in national law.” The Convention (Article 47) also requires Parties to adopt such legislative or other measures to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions that apply in its domestic law with respect to the postponement of transactions.<sup>26</sup> But this power is not yet included in the standards set by the Financial Action Task Force (FATF). According to experts I have consulted, it would be a big step forward if this power would be granted to all FIUs. If a suspicious transaction is not held up, even for a short time pending further inquiries or until a judicial freezing order can be obtained, the funds in question simply “disappear”.

### 3.3. *Evaluation of effectiveness*

27. The assessment of FIUs’ effectiveness is based on the evaluation of their performance and results. More precisely, for an anti-money laundering and terrorism financing system to be effective, it should ensure that relevant financial intelligence and other information is collected, analysed and disseminated in a form and quality that can be used by the competent law enforcement authorities to investigate and prosecute money laundering, associated predicate offences and terrorist financing. The

<sup>25</sup> See article 13 of the Warsaw Convention.

<sup>26</sup> Moneyval, [Research Report](#), *The postponement of financial transactions and the monitoring of bank accounts*, April 2013; World Bank, [Study on “Suspending suspicious transactions”](#), 2013.

following questions arise: Are the FIU's efforts properly targeted to successfully tackle the prevailing money laundering and terrorism financing risks in a given country? To what extent is FIU analysis and dissemination supporting the operational needs of the competent authorities? Are the resources distributed in line with the FIUs' core functions? <sup>27</sup>

28. The rate of success in transforming STRs into actionable evidence for purposes of confiscating illegal assets and prosecuting relevant crimes has been described as the "conversion rate". The "conversion rate" will depend first and foremost on the qualities of STRs, which must include promptness, comprehensiveness, accuracy of analysis conducted and reflected in the report by the reporting entity. In turn, the quality of the FIU's analysis will depend on good overall financial intelligence, which must be reliable, timely, accurate, relevant, and up to date. The level of the conversion rate will depend on the close cooperation and coordination of the FIU with relevant entities – i.e. reporting entities and law enforcement authorities. The objective is to avoid a gap between those receiving and analysing financial information and those mandated to conduct investigations and prosecutions. In many jurisdictions, cooperation between FIUs and law enforcement authorities could be much improved by ensuring that law enforcement authorities have the resources and skills to use the information and analysis provided by FIUs. The information received should support the law enforcement authorities' own analysis and investigations so that they can identify and trace suspect assets, and take any necessary action.<sup>28</sup> Indeed, FIUs have greater chances of ensuring a high conversion rate if they reach out and cooperate both with the reporting entities and with the law enforcement authorities. Such dialogue includes, as appropriate, individual feedback, guidance on AML/CFT typologies or training programmes, to improve both the quality of STRs which the FIUs receive from the reporting entities and the usefulness of information the FIUs pass on to law enforcement.<sup>29</sup>

29. Statistics on the effectiveness of FIUs and the "conversion rate" of STRs are scarce. Indeed, the effectiveness of the STR regime is difficult to measure as there are many factors to take into consideration (for instance, the initial quality of the STR received from reporting entities, formal and informal cooperation mechanisms between relevant entities, law enforcement authorities' capacities to conduct investigations following an STR, among others). Data collection is still not standardised, which makes information from different countries difficult to compare and the effectiveness of the broader European AML/CFT framework more difficult to assess.

#### 3.4. *Improving cross-border cooperation*

30. One of the key elements in the functioning of FIUs is their ability to cooperate effectively with their foreign counterparts and competent international bodies. Effective information exchange between FIUs helps them anticipate emerging challenges, including rapidly growing cross-border cybercrime, the use of new technologies such as anonymisation tools which frustrate the identification of beneficial owners, fintech and monetary instruments such as crypto-currencies at the disposal of criminal and terrorist groups and other actors whose modus operandi can change rapidly.<sup>30</sup> Bilateral and multilateral cross-border cooperation allows FIUs to develop and share technical expertise.

31. In Resolution 2218 (2018) on "Fighting organised crime by facilitating the confiscation of illegal assets", the Assembly noted that "effective international co-operation in tracking, freezing and

<sup>27</sup> Other more specific questions could include: have FIUs set themselves reasonable objectives and priorities? Are they able to duly undertake their core analytical function without being side-tracked by other objectives? Do all relevant authorities receive relevant and accurate information that helps them perform their duties? To what extent is financial intelligence and other relevant information provided by FIUs actually accessed and used in criminal investigations to find evidence and trace criminal proceeds? See also, FATF, [Methodology](#) on Assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems, updated October 2019.

<sup>28</sup> Some countries have systems where the information disseminated by FIUs trigger "automatic investigations". Such system may have some positive elements to it. However, it may also flood understaffed, overwhelmed and inadequately trained law enforcement authorities, which may for example prefer to focus on small predicated cases rather than bigger complex ones, lose themselves in lengthy procedures, or fail altogether to turn disseminated financial information into proactive investigations. See also, World Bank, UNODC and Egmont Group, "[Financial Intelligence Units Working with Law Enforcement Authorities and Prosecutors](#)", 2018.

<sup>29</sup> Europol reports that a number of EU FIUs note that the persistent increase in STR reporting volumes is a huge challenge. Defensive and/or over-reporting may also result in reports of limited quality that are difficult to develop. Op. cit. Europol, 2017.

<sup>30</sup> 2018-2021 Egmont Group Strategic Plan.

confiscating criminal assets depends on an appropriate legal framework that ensures sufficient harmonisation of procedures while allowing for different national approaches, without discrimination". The different national approaches must be interoperable. This should be feasible in practice, provided that mutual trust is built over time and that the principles of interdependence (the recognition that AML/CFT cannot be done without collaboration), fairness, and reciprocity with respect to the sharing of financial information, are recognised and upheld everywhere. I should like to add that fair distribution, agreed in advance, of the confiscated proceeds of crime among the States whose FIUs and other investigative bodies are involved in tracking the funds through different jurisdictions could incentivise more energetic international cooperation. Considerable investigative resources must be mobilised to dismantle a sophisticated international money-laundering operation in all jurisdictions through which the funds have passed. It would therefore would not be fair (and not motivating for the others) if the country of final destination were to keep all the confiscated assets.

32. The Council of Europe's Warsaw Convention (above paragraph 12) is an important legal instrument to promote international cooperation in the AML/FT field. It has been signed and ratified by most, but still not all member States of the Council of Europe.<sup>31</sup> The following countries have not yet signed the Warsaw Convention: Andorra, the Czech Republic, Ireland, Norway and Switzerland. The following have signed, but not yet ratified the Convention: Estonia, Finland and my own country, Iceland.

33. Several forums have proved to be successful in facilitating the adherence to common international standards and sharing expertise regarding FIUs. Such collaborative, proactive networks can identify weaknesses and deficiencies in the functioning of FIUs and methods they may use. For instance, the above-mentioned Egmont Group endeavours to ensure that over 160 member FIUs respect a number of key standards in order to enable maximum cooperation between them. To enhance the quality of their performance, namely their capacity to interact, cooperate and exchange information effectively, the Egmont Group has also put in place the Egmont Secure Web, which is a secure channel widely used for the exchange of information between members of the Group. In a longer term, it aims to develop an operational database that would be accessible to all members (ECOFEL programme) and facilitate multilateral exchange of information. It also aims to develop new partnerships. Whether through the Wolfsberg Group or via other channels, the Egmont Group works towards expanding dialogue with private sector institutions. The Egmont Group also closely monitors decisions taken by international political bodies such the G20 Anti-Corruption Working Group (ACWG) established in 2010, and their implications for its operations.

34. The Council of Europe's Economic Crime and Cooperation Division is responsible for European and neighbourhood cooperation and assistance activities and reforms concerning, among others, good governance, corruption, money laundering, asset recovery, terrorist financing, organised crime and mutual legal assistance in criminal matters. It has developed a variety of tools, methodologies and guidance on implementation of standards and recommendations by involving in house expertise and utilising a broad database. For example, a joint EU/Council of Europe project (Controlling Corruption through Law Enforcement and Prevention) helped Moldova improve anti-corruption, anti-money laundering and asset recovery procedures, while strengthening key institutions, including the FIU and the newly established Asset Recovery Office and facilitating interagency cooperation between them. Furthermore, the project supported the Moldovan FIU in drafting a new AML/CFT Strategy.<sup>32</sup>

35. Europol is also well positioned to see how financial intelligence, in particular relating to cross border criminal activity, assists investigators across Europe in dismantling organised criminal groups. It hosts the permanent secretariat of the Anti-Money Laundering Operational Network (AMON). FIU.net, a decentralised computer network of the EU member States' FIUs, has been operational since 2002<sup>33</sup> and is embedded in Europol since 2016. This platform works in cooperation with the European Counter Terrorism Centre (ECTC) and complements other key Europol tools such as Terrorist Finance Tracking Program, the Focal Point Sustans (support to anti-money laundering investigations) and the network of the EU Asset Recovery Offices (AROs). Furthermore, the European Commission set up an Expert Group which functions as an "FIU Platform" for EU Member States to provide operational advice and expertise and facilitate cooperation between national FIUs. Issues covered include effective international FIU co-operation, the identification of suspicious transactions with a cross-border

<sup>31</sup> See [Chart of Signatures and Ratifications of Treaty 198](#)

<sup>32</sup> Action against Economic Crime, [Cooperation Highlights](#), 2018, p.38.

<sup>33</sup> Council Decision 2000/642/JHA.

dimension, the standardisation of reporting formats through the FIU.net network or its successor and the joint analysis of cross-border cases as well as trends and factors relevant to assessing AML/CFT risks both on the national and supranational level.<sup>34</sup>

#### 4. Conclusions

36. Fighting money laundering and terrorist financing is a complex endeavour at both national and global levels. Financial Intelligence Units, and the international networks of peer support and peer review platforms they are associated with, have confirmed that these authorities are key actors in the AML/CFT framework. However, this framework needs to be better exploited so as to ensure FIUs provide a meaningful contribution to the fight against money laundering, associated predicate offences (including corruption, cybercrime and organised crime) and terrorist financing.

37. The recently disclosed FinCEN<sup>35</sup> documents demonstrate that the existing framework is still far too weak. The documents show that even large, globally operating banks defied the rules and continued working on a massive scale with clients about whose activities they had themselves sent STRs or SARs.<sup>36</sup> One of the best-known European experts in the field, Mr Daniel Thelesklaf, former chair of Moneyval and until recently head of the Swiss Moneylaundering Reporting Office (MROS), recently blew the whistle on the weakness of the Swiss AML system.<sup>37</sup> Mr Thelesklaf dared clearly name the most important problem, namely the lack of political will. In Switzerland, the 60 MROS staffers were hopelessly overwhelmed with huge numbers of SAR/STRs, often presented in bulk, on paper, requiring much manpower just to seize the data in the software. He pointed out that Swiss law enforcement depended on mutual legal assistance (MLA) from the countries of origin of the funds. But as long as the suspects had not fallen out of grace with the corrupt regimes of these countries (as had been the case in a recent case concerning the daughter of an ex-President of Uzbekistan), such MLA was never forthcoming, as in the cases of billions of Venezuelan funds channelled to Switzerland by corrupt officials enjoying the protection of the regime. The only realistic solution, in Mr Thelesklaf's opinion, would be a reversal of the burden of proof, enabling the confiscation of funds except when the account holder can prove their legitimate origin. I should like to recall that this solution was strongly endorsed by the Assembly in Resolution 2218 (2018). But Mr Thelesklaf was pessimistic as to the chances of such legislation to be passed in Switzerland. In his view, AML/CFT regulations in Switzerland were only introduced under international pressure and limited to the minimum required to escape criticism.

38. I suspect that the lack of political will is a problem in many jurisdictions. Our Latvian expert, at the committee hearing, eloquently described the recent improvements in her country's AML/CFT system. But these were introduced only after several high-profile scandals<sup>38</sup>, under American and European Union pressure. Interestingly, the FinCEN leaks reveal that the competent German authorities had assessed the Latvian set-up in 2005 (just before the above-mentioned scandals) and found that it was "beyond the standards applied in Germany".<sup>39</sup> Ironically, this may even have been a correct assessment, as the German FIU has been notoriously inefficient, reportedly turning Germany into, inter alia, the Italian mafia's favourite money-laundering venue.<sup>40</sup>

39. National legislation and regulations must protect the operational autonomy and independence of FIUs and encourage a culture of communication among competent bodies. FIUs still lack adequate resources and training on operational and strategic analysis and fintech and high-technological trends to be fully effective. Work on facilitating adherence to international standards and relevant expertise

<sup>34</sup> EU Financial Intelligence Units' Platform [web profile](#). See also, EU [Directive 2015/849](#), para. 54.

<sup>35</sup> Financial Crime Enforcement Network, effectively the FIU of the United States of America.

<sup>36</sup>

<sup>37</sup> See his interview in La Tribune de Genève, 21 September 2020, at <https://www.tdg.ch/notre-defense-contre-le-blanchiment-dargent-est-un-echec-456984065155>.

<sup>38</sup> For example the Danske and Swedbank scandals (see: <https://www.occrp.org/en/the-fincen-files/rinse-profit-repeat-how-a-small-team-of-estonians-turned-a-danish-bank-into-a-laundromat>)

<sup>39</sup> See <https://www.occrp.org/en/the-fincen-files/european-regulators-failed-to-spot-suspicious-money-flooding-through-latvias-banks>

<sup>40</sup> See MAZ 9.7.2019, available at: <https://www.maz-online.de/Nachrichten/Wirtschaft/Die-italienische-Mafia-liebt-Deutschland-weil-hier-Geldwaesche-so-einfach-ist> ("the Italian mafia loves Germany because moneylaundering is so easy here")

needs to be stepped up. Furthermore, AML/CFT regimes are slowly opening up to wider international cooperation and adjusting to the reality, including its threats and risks, of what has become a global issue.

40. According to the World Bank, the world-wide proceeds of organised crime and high-level corruption amount to several trillions of US dollars - each year. Only a tiny fraction is successfully confiscated by law enforcement. The remainder, accumulating in the hands of organised criminals, corrupt public officials and terrorists, represents a huge threat for democracy, the rule of law and national security in all Member States. At the same time, successful confiscation of illegal assets represents a huge opportunity for States to generate resources needed to address the social problems caused by organised crime, corruption and terrorism. Urgent action to step up the tracking and confiscation of the proceeds of crime is therefore both necessary and potentially highly rewarding, in the literal sense of the word. This should help us with generating the necessary political will in all our countries to finally get serious about fighting money-laundering and confiscating illegal assets on a far larger scale. The longer we wait, the more urgent it becomes to question the reasons behind this evident lack of political will.

