

ASSET RECOVERY - THE ROLE OF FIUS

Public Summary



ASSET RECOVERY - THE ROLE OF FIUS



The purpose of this summary is to present key lessons, best practices, and representative case examples to help enhance the role of FIUs within the asset recovery process both at the national and international levels. The information in this public summary should assist the establishment of national strategies and facilitate effective cooperation between FIUs and law enforcement and with judicial authorities and asset recovery offices. This public summary presents sanitized, non-sensitive information extracted from the main report.

The Information Exchange Working Group (IEWG) is a forum for Egmont Group FIUs & Observers to leverage synergies associated with operational & strategic activities to enhance cooperation, information exchanges, & address challenges.

INTRODUCTION

1. An effective asset recovery regime is essential for each robust anti-money laundering and counter-terrorism financing (AML/CFT) system. It prevents criminals from benefiting from their ill-gotten funds, and may also return or repatriate stolen assets to victims and/or allow governments to use these assets to facilitate activities of public benefit.
2. “Appropriately conducted asset recovery may have a deterrent role for criminal organizations and may seriously hamper their ability to commit crimes. According to Europol, more than 5,000 organized crime groups are currently under European investigation. Organized crime is profit-driven, and its illegal activities generate huge profits: organized crime proceeds within the EU are presently estimated at €110 billion per year[1].”
3. A 2013 paper, authorized by Raymond W. Baker, Director of the Global Financial Integrity, estimated illicit financial flows "out of developing countries are approximately 1 trillion USD a year."
4. “US\$8.7 trillion: The sum of the value gaps identified in trade between 135 developing countries and 36 advanced economies over the ten-year period 2008-2017. US\$817.6 billion: The sum of the value gaps identified in trade between 135 developing countries and 36 advanced economies¹ in 2017, the most recent year for which comprehensive data are available[2].”
5. Successful asset recovery depends on multiple competent public authorities’ collective efforts and, in cross-border cases, on the comprehensive and timely international exchange of information. FIUs play a pivotal role in the asset recovery process. In most cases, this role is primarily in the first two phases: asset tracing and securing assets. However, some FIUs could have a more significant role in the subsequent process of confiscation of criminal assets due to their functions in investigations and/or prosecutions of money laundering and terrorism financing.
6. This paper examines the role of FIUs when dealing with asset recovery, considering the issue’s complexity. The report analysis is divided into two main sections, the first dealing with the legal basis of searching, tracing, and securing the assets internationally and domestically. The second is an overview of best practices, successful cases, and efficient cooperation between national and international parties.

[1]transcrime.it/wp-content/uploads/2015/03/OCP-Full-Report.pdf

[2]gfintegrity.org/report/trade-related-illicit-financial-flows-in-135-developing-countries-2008-2017/

"An effective asset recovery regime is an essential aspect of each robust anti-money laundering and counter-terrorism financing (AML/CFT) system."

INTRODUCTION

7. Primarily, the current report focuses on the FIUs' role in identifying assets (powers, instruments FIUs can use to identify or trace assets and types of information searches the FIUs might use to trace assets more efficiently) and securing assets (usually through transaction suspension/postponement). The report also provides recommendations and possible solutions for efficient cooperation between FIUs and other national and international bodies involved.
8. Key issues the Project considered:
 - What types of information do FIUs have access to, and how is this information requested/received by FIUs?;
 - What types of information do FIUs need to increase their effectiveness in the asset recovery process (asset tracing and securing) domestically and internationally?;
 - What is the level of cooperation between FIUs and other national bodies (e.g. AROs, LEAs, Prosecutor's Office, etc.) in respect to the asset recovery process?;
 - What types of transaction postponement and freezing powers are available to FIUs, and what actions should FIUs undertake in the securing stage of the asset recovery process?;
 - What stages of the asset recovery process will benefit most from an FIU's input and possible limitations/challenges that might occur?; and
 - FIUs' best practices/cases on this topic.
9. The report contains:
 - An overview of jurisdictions' solutions and models of the FIU's role and how they correspond to the number of compelling asset recovery cases
 - Available high-level data analysis of the current asset recovery process situation in different world regions.
 - Best practices on domestic and international asset recovery cooperation where FIUs were involved
 - An overview of different data types FIUs have access to
 - How the information is requested/received by FIUs, and
 - How it corresponds to the number of successful asset recovery cases and an overview of FIUs' best practices.
10. The project team considered FIU information (from the last five years), as previous data was already analyzed in earlier Egmont Group projects.

MAIN DEFINITIONS

11. As outlined in the UN Convention against Corruption (UNCAC Chapter V), asset recovery refers to the process by which the proceeds of corruption transferred abroad are recovered and repatriated to the country from which they were taken or to their rightful owners[3]. Although relevant for corruption-related assets, this definition can also be applied to asset recovery cases in general.

12. A similar definition is provided in the FATF report on Best Practices on Confiscation (Recommendations 4 and 38) and a Framework for Ongoing Work on Asset Recovery, where asset recovery is defined as the return or repatriation of illicit proceeds, where those proceeds are located in foreign countries[4].

13. These two definitions outline that before the return or repatriation of any illicit proceeds, there should be a process of confiscation and/or non-conviction-based confiscation. These two terms are further defined in the FATF Glossary[5], namely:

- Confiscation – the permanent deprivation of funds or other assets by a competent authority or a court (includes forfeiture, where applicable). Confiscation or forfeiture occurs through a judicial or administrative process that transfers the ownership of specified funds or other assets to the State. In this case, the person(s) or entity(ies) that have held an interest in the specified funds or other assets at the time of confiscation or forfeiture lose all rights, in principle, to the confiscated or forfeited funds or other assets. Confiscation or forfeiture orders are usually linked to a criminal conviction or a court decision whereby the confiscated or forfeited property is determined to have been derived from or intended for use in a violation of the law.
- Non-conviction-based confiscation –confiscation through judicial procedures related to a criminal offence for which a criminal conviction is not required.

14. The United Nations Convention Against Transnational Organized Crime (UNTOC) provides definitions of the terms “freezing” or “seizure,” which shall temporarily prohibit the transfer, conversion, disposition, or movement of property or temporarily assuming custody or control of the property based on an order issued by a court or other competent authority. The same Convention also defines the term “confiscation,” which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority. Article 12 of UNTOC urges State Parties to adopt such measures as necessary to identify, trace, freeze, or seize the proceeds of crime[6].

[3]uncaccoalition.org/learn-more/asset-recovery/#What-is-asset-recovery_

[4][fatf-gafi.org/media/fatf/documents/reports/Best%20Practices%20on%20%20Confiscation%20and%20a%20Framework%20for%20Ongoing%20Work%20on%20Asset%20Recovery.pdf](https://gafi.org/media/fatf/documents/reports/Best%20Practices%20on%20%20Confiscation%20and%20a%20Framework%20for%20Ongoing%20Work%20on%20Asset%20Recovery.pdf)

[5][fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf](https://gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf)

[6]unodc.org/unodc/en/organized-crime/intro/UNTOC.html

"As part of the report, the team drafted recommendations & possible solutions for efficient cooperation between FIUs & other national and international bodies involved."

MAIN DEFINITIONS

15. Another essential term that finds a place in the current report and is directly related to FIUs' abilities to secure assets is the "suspension/postponement" of a suspicious transaction. Although this term is not officially defined in the FATF Standards and is not included as a requirement under recommendation 29, and FIUs are not obliged to have such abilities, it has proven to be an effective instrument for the prevention of laundering criminal proceeds or financing terrorism (FIU best practices).

16. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism^[7], in article 14, stipulates that "each party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by the FIU or, as appropriate, by any other competent authorities or body, when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead to analyze the transaction and confirm the suspicion. Each party may restrict such a measure to cases where a suspicious transaction report has been submitted. The maximum duration of any suspension or withholding of consent to a transaction shall be subject to any relevant provisions in national law." Article 47 of the same Convention requires international cooperation related to postponing transactions based on a foreign request. Parties are required to adopt such legislative or other measures as necessary to permit urgent action initiated by an 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 as apply in its domestic law in respect of the postponement of transactions. Besides, some pre-requisites are prescribed to satisfy the requested FIU that the requesting FIU will provide a valid rationale, namely that:

- The transaction is related to money laundering; and
- The transaction would have been suspended, or consent to the transaction going ahead would have been withheld if the transaction had been the subject of a domestic suspicious transaction report.

17. At the EU level, Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing^[8] also requires that Member States shall ensure that the FIU is empowered to take urgent action, directly or indirectly, where there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction that is proceeding, to analyze the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities. The FIU shall be empowered to take such action, directly or indirectly, at the request of an FIU from another Member State for the periods and under the conditions specified in the national law of the FIU receiving the request.

^[7]rm.coe.int/168008371f

^[8]eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

28. Several studies, research, and reports on the topic of Asset Recovery (hereinafter – AR) define the processes main stages, described as follows:

- Identification Stage: Collecting information on criminally obtained assets through the use of intelligence, tracing of financial flows, and subsequent evidence gathering ;
- Suspension Stage: Securing of assets/asset seizure, freezing;
- Confiscation Stage: Court proceedings leading to a permanent change of the possession of the assets in favour of the state;
- Optional phase(s): Enforcing of orders and subsequent asset management; and
- Asset return/repatriation to the victims.

19. The AR process' success depends on the effective synergy of actions and extensive cooperation and coordination between authorities and agencies involved in every stage. Therefore, one of the main essential factors for asset recovery efficiency is the overall understanding by each competent authority of its role and functions in the process.

20. Jurisdictions have taken different steps to increase the efficiency of the asset recovery process. One such measure is drafting and implementing a special strategy for asset recovery.

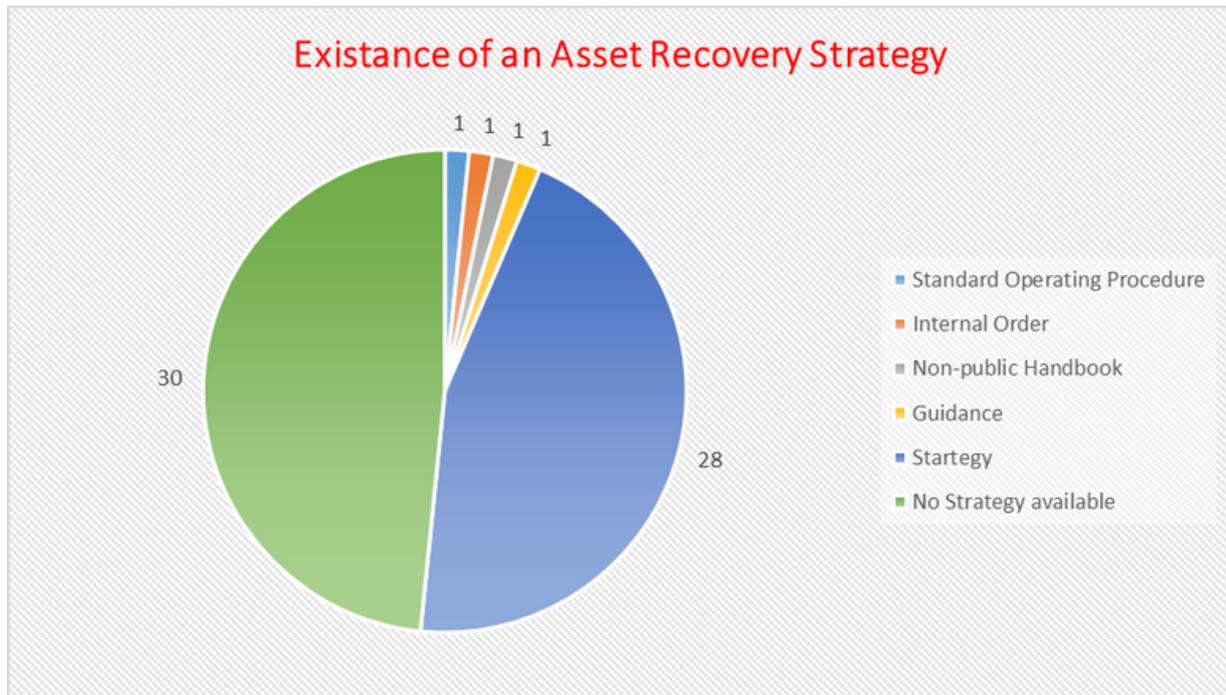
21. Based on the report's analysis, 32 out of 62 jurisdictions have a strategy implemented in their system, particularly:

- A standard operating procedure (1 jurisdiction);
- An internal order (1 jurisdiction);
- A non-public handbook (1 jurisdiction);
- Guidance (1 jurisdiction);
- Twenty-eight jurisdictions have a strategy for assets recovery or a national strategy that covers asset recovery.

Five main stages of the Asset Recovery Process:

- *Identification Stage*
- *Suspension Stage*
- *Confiscation Stage*
- *Optional phase(s)*
- *Asset return/repatriation to the victims*

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS



22. Out of those 30 jurisdictions that do not have a strategy, one FIU replied that such a strategy is being prepared.

23. An Asset Recovery Strategy can take the form of a regulatory document, guidance, operating procedure, or even internal order. Differences are also shown in the content of such a strategy.

24. As central authorities for combating money laundering, FIUs are an essential part of the asset recovery process along with other public services. Within the strategies of most cases, according to the replies to the questionnaire, an FIU's function is limited to:

- Locating illegal assets via FIU means of cooperation; and/or
- Analyzing intelligence on criminal assets and providing such information to local LEAs.

25. In some jurisdictions, the FIU is part of a multi-agency task force. As the questionnaires indicated, these task forces are usually led by an LEA. The strategy's objective is to coordinate or regulate the asset recovery process issues. Such task forces are created to increase investigations' effectiveness by involving all responsible national bodies: analysts from FIUs, investigators, ARO officers, prosecutors, etc. In one jurisdiction, the Head of FIU is also a member of an inter-ministerial committee on asset recovery.

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

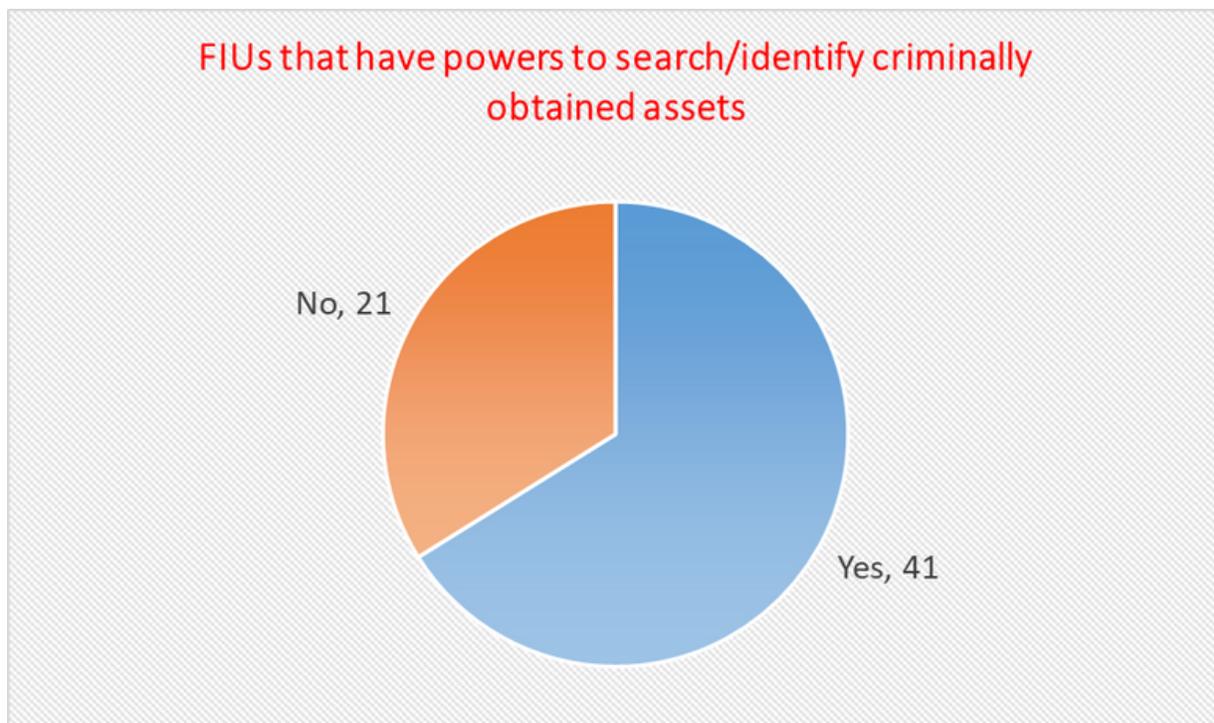
26. The FATF Recommendations determined three core functions of FIUs: receipt, analysis, and dissemination. According to the FATF Recommendations, another fundamental basis for FIUs to make an important input into AR is broad access to various financial information and other data sources, both domestically and internationally, cooperating with or through partner FIUs.

27. Comparison of FIU mandates within the different stages of the Asset Recovery Process (ARP) allowed the project team to conclude that FIUs can have a higher impact and effectively support the local and global AR efforts during the first two stages of the process: the Identification Stage and the Suspension Stage.

28. The questionnaire answers confirmed that most FIUs possess powers to search and trace assets and postpone transactions. According to the questionnaire, more than 60% of FIUs have the capacity to search, trace assets, and postpone transactions which shows that most FIUs are committed to relevant recommendations. Analysis of replies revealed no significant regional or other discrepancies concerning asset recovery. While only 62 jurisdictions replied to the questionnaires, the responses came from different regions, therefore providing a clear picture of this matter.

Searching/identification of criminally obtained assets

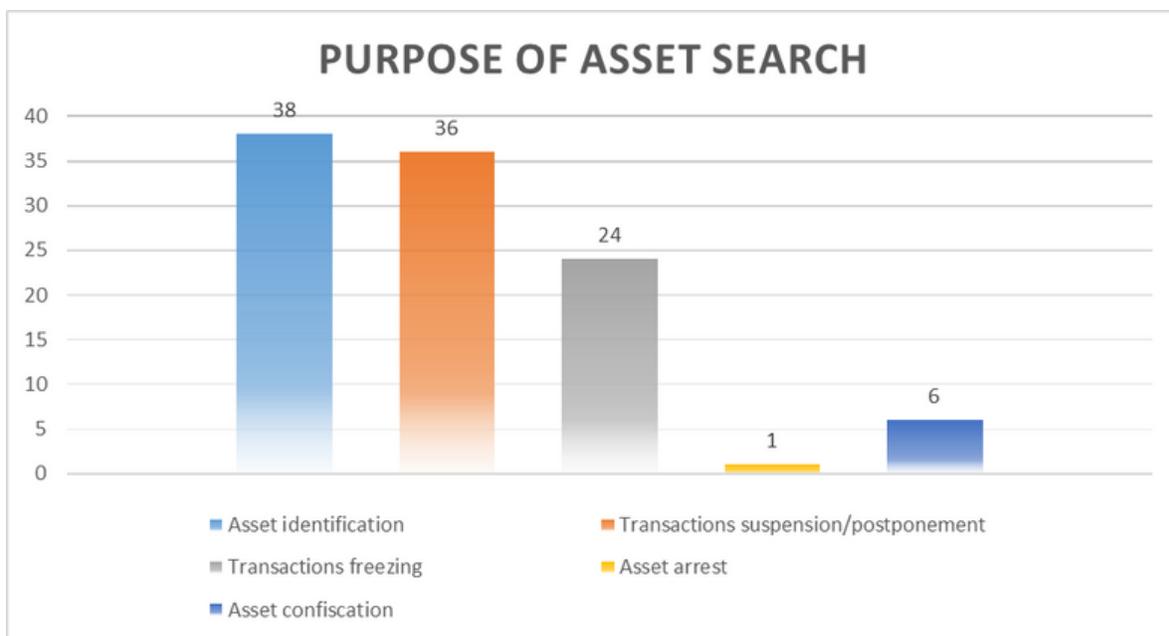
29. One core FIU power in the asset recovery process, as established in this report, is the search for assets; 41 FIUs have this power according to their national legislation, and 21 do not.



OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

30. To determine purposes of asset search, as it looks from an FIU's point of view, the following was established^[9]:

- 38 FIUs determined this comprised asset identification;
- 36 FIUs determined this comprised the suspension/postponement of transactions;
- 24 FIUs determined this comprised freezing of transactions;
- 1 FIU (of hybrid type) determined that this comprised asset arrest;
- 6 FIUs determines that this comprised asset confiscation.

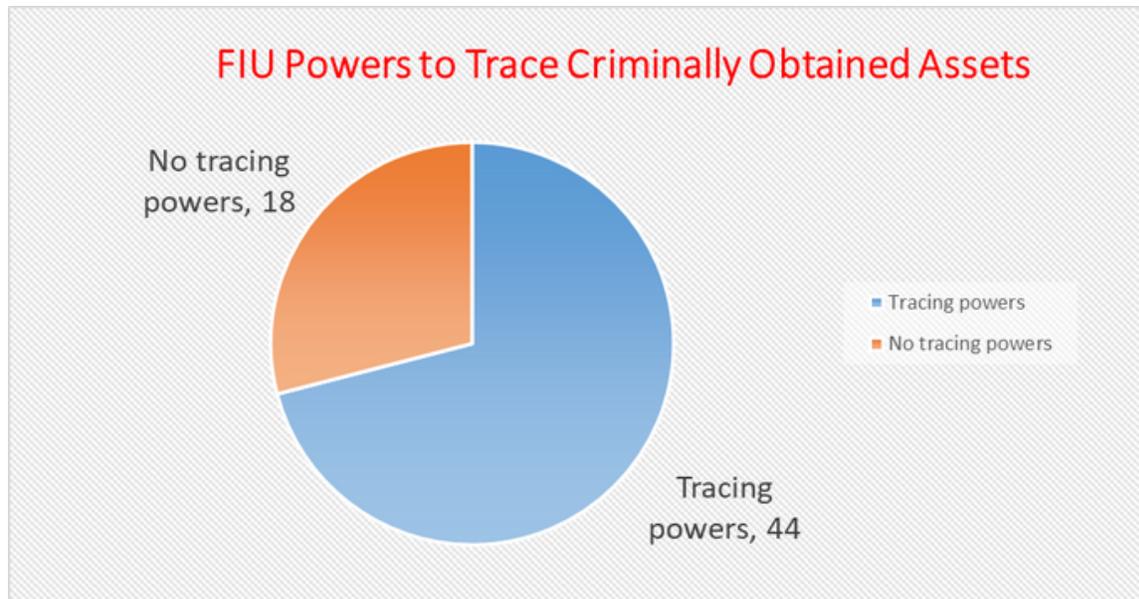


Tracing of Criminally Obtained assets

31. Another essential legal power of FIUs in the asset recovery process is tracing criminally obtained assets: 44 FIUs have such ability according to their national legislation and 18 do not. Simultaneously, seven do not have asset searching powers out of 44 FIUs that can trace the assets. Such a situation might create difficulties for those seven FIUs. It may prohibit or at least hamper FIUs' abilities to achieve the necessary level of effectiveness within the identification phase of the asset recovery process. This lack of legal capacity may force FIUs to only rely upon passively received information regarding potential criminal assets versus such that can be actively identified and obtained. Even though such FIUs can trace assets they are aware of, at the same time, without the power to search for these assets, such FIUs may experience difficulties locating unknown assets.

^[9] It should be considered that 35 FIUs choose more than 1 purpose of asset search. At the same time, a single FIU that determines the purpose of asset search as asset freeze, is the hybrid type of FIU.

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS



Postponement of transactions

32. Another significant legal power is related to the ability of FIUs to postpone transactions. The joint Egmont Group/World Bank/UNODC paper on “Suspending Suspicious Transactions” defines this as an administrative power to order the postponement of reported suspicious transactions as a means of preventing the flight of suspect funds or assets. It should go beyond the reach of national law enforcement and prosecutorial authorities during the time it takes for those national authorities to seek and obtain freezing or seizing orders from the judicial or other competent authorities.

33. Currently, 21 out of 62 FIUs lack the power to postpone/suspend transactions. In instances where no other suspension mechanisms are available to substitute this FIU power effectively, it may constitute an issue for almost two-thirds of respondent jurisdictions, as criminals may abuse this inability and move their illegal financial activity to jurisdictions without suspension powers. It may allow criminals to move ill-gotten funds through (transit) accounts without fear of having such funds temporarily suspended.

FIU Legal powers regarding asset search and tracing

34. One core element of all FIU powers and the initial source of suspicious activity FIUs receive is suspicious transactions and/or activities reporting.

35. 1. At the same time, the questionnaire analysis showed the importance of other legal powers associated with FIUs' asset recovery process, which have a significant impact. To establish the level of importance of specific FIU powers, the questionnaires contained questions related to this matter. Those legal powers could be divided into two groups related to the financial side:

- Legal powers related to establishing financial flows; and/or
- Legal powers related to establishing assets.

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

36. It is also worth mentioning that FIUs are well equipped to identify the ultimate beneficial owner of the suspicious funds or other assets by being able to follow the money on a national and international level.

37. The first group of legal powers contains the ability to request information on the flow of funds on financial accounts, which was rated 9.76 out of 10 by FIUs, and access to wire-transfers information, which was rated 9.07 out of 10.

38. One trend concerning FIU-Financial institutions' cooperation was establishing a database for transactions exceeding the legally provided threshold (which contains wire-transfers information). Such a database usually contains information concerning all transactions conducted within a jurisdiction's financial system above a pre-determined, legally provided amount. Some countries use a variety of such databases, which contain information about a particular group of transactions such as:

- Cash transactions;
- Transactions conducted by PEPs and their close associates;
- Wire transfers to foreign jurisdictions and others.

39. Information from these databases for these threshold transactions is analyzed independently or as an addition to STRs or active cases. Having such information within an FIU also decreases the number of requests to reporting entities. It positively impacts the timely access to such information, as the FIU does not need to wait or retrieve this information, as it is already stored within their system. Besides, keeping such information in internal databases helps integrate other FIU data and use IT technology for information analyses.

40. The ability to request information on the flow of funds allows continuing an investigation after the initial search in FIU databases or other information sources. This legal power is also indicated in FATF Standards, which states that the FIU should be able to obtain and use additional information from reporting entities as needed to perform its analysis properly. Having a rating of 9.76, this power is the most valued by FIUs for asset recovery purposes.

41. Such high ratings for the abovementioned powers show the value of public-private cooperation for FIUs and the importance of information banks and other financial institutions have at their disposal.

"FIUs are well equipped to identify the ultimate beneficial owner of suspicious funds or other assets by following the money on a national and international level."

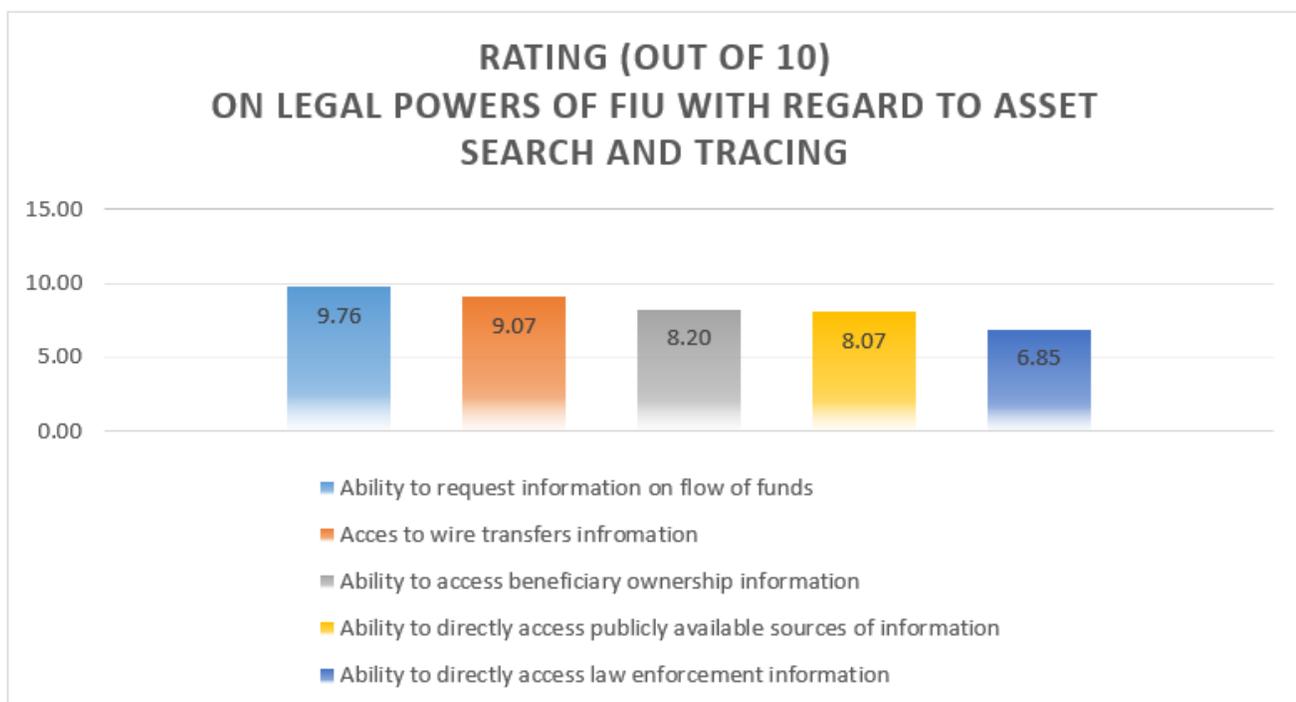
OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

42. The second group of legal powers contains the ability to access beneficiary ownership information, which was rated 8.2 out of 10 by FIUs. The ability to directly access publicly available data, rated 8.07 out of 10, was another high-value information source. Lastly, FIUs rated lowest the ability to access law enforcement information directly, 6.85 out of 10.

43. High scores at the a.m. ratings on legal powers related to identifying assets (rated 8.2, 8.07, and 6.85) show that FIUs rely more on information on financial flows (rated 9.76 and 9.07) before purchase or after a sale, rather than information on the asset itself.

44. Ability to directly access publicly available information sources. While rated at 8.07 only right now, it can change in the future. The popularity of data science and the use of big data analytics is slowly prevailing in FIUs' AML/CFT prerogatives.

45. The emergence of public databases/registers, on the other hand, shows that jurisdictions and FIUs, in particular, perceive publicly available information sources as a relevant tool to facilitate the asset recovery process. In terms of time management, it can also be considered that access to publicly available data sources may partially obsolete the need for sending requests to some foreign partners and waiting for information.

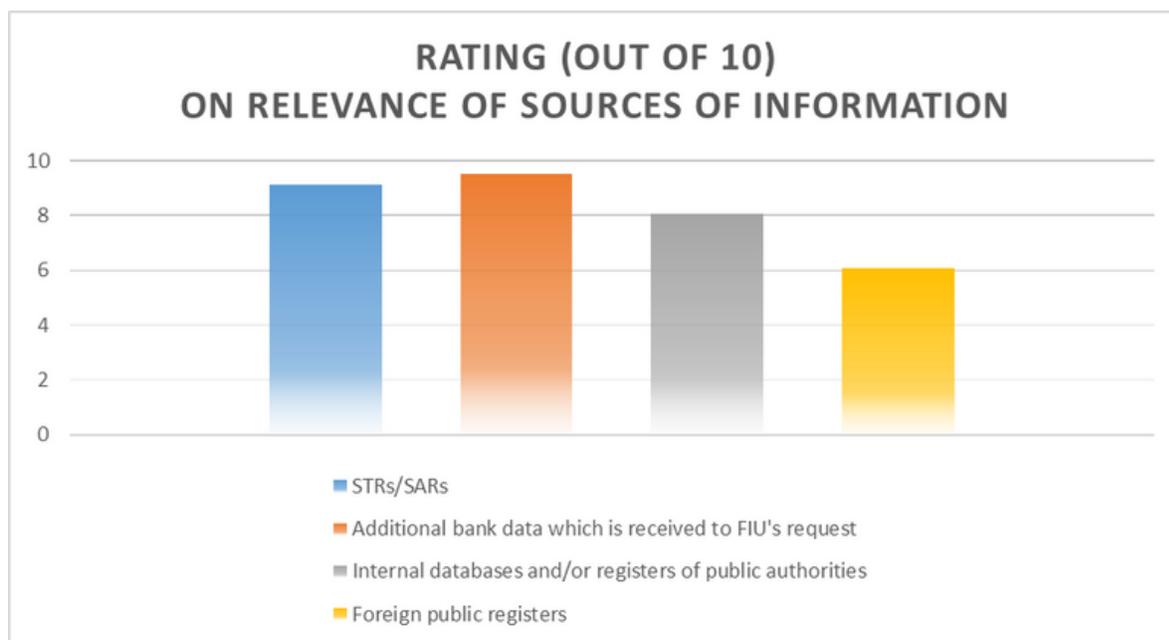


OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

Sources of Information

46. FIUs act as national centers for collecting, analyzing, and disseminating financial intelligence related to money laundering, terrorist financing, and related predicate crimes within the national anti-money laundering system. There are many sources of information and ways to obtain it. As above, the information sources that FIUs can use regarding the asset recovery process, could be divided into two groups:

- Information on financial flows;
- Information on assets.



47. Information on financial flows is one of the most relevant sources, as FIU's responses to the two questionnaires can be considered.

48. STRs/SARs, as an information source for the asset recovery process, are rated 9.1 out of 10 by FIUs. This high rating supports the previously indicated hypothesis about STRs being a core element of the FIU's work. The importance of this source is also shown by the number of highest questionnaire scores awarded by the FIUs, as 32 out of 62 FIUs scored ten on the analysis of reports.

"STRs/SARs, as an information source for the asset recovery process, are rated 9.1 out of 10. This high rating supports the previously indicated hypothesis about STRs being a core element of FIUs' work."

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

49. Another vital information source related to financial flows is additional bank data provided to FIU's requests. It was rated 9.5 out of 10 by FIUs, with 39 out of 62 FIUs scoring 10, which shows the high relevance of this information source for the asset recovery process.

50. Financial institutions, apart from information provided within the STR/SAR, also hold a significant amount of additional data which can be used during analysis, for example:

- Detailed information on funds flow to identify specific trace of funds;
- Copies of registration and/or identification documents to reveal all involved parties;
- Specific agreements and invoices to obtain further details like transactions purposes, locations, type of goods, price, etc.;
- KYC documents; and
- Other data elements, account statements and all the information received from financial institutions are used to improve the quality of the case and show new leads, which helps to identify other (previously unidentified) assets that could be eventually frozen or seized.

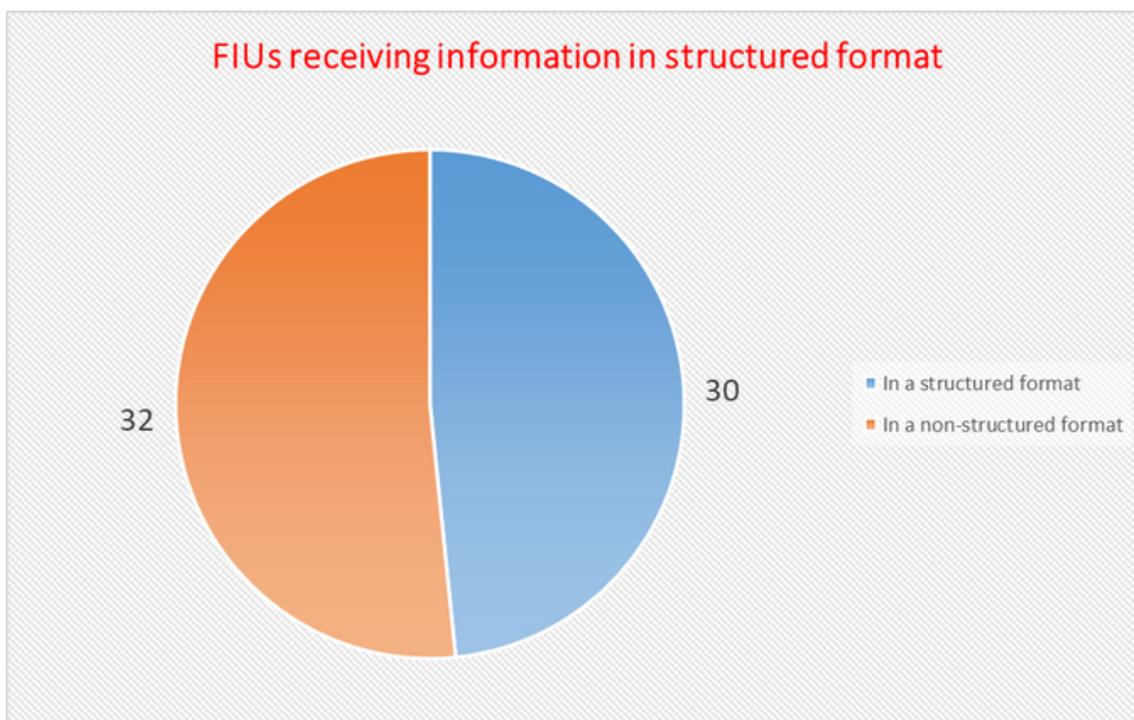
51. Analysis of information received from financial institutions is a core function of FIUs, particularly in the asset recovery process. One of the issues in analyzing financial information is the time spent dealing with incoming data.

52. While responding to the questionnaire, FIUs indicated that one of the obstacles in the asset recovery process is a lack of time to analyze data and consider further steps. When dealing with suspended financial transactions or foreign requests for assistance in this matter, FIUs need to make decisions quickly to stop the funds from being withdrawn.

53. One issue prolonging the analytical process is working with non-structured data. Unfortunately, based on the questionnaire results, only 30 out of 62 FIUs receive information from financial institutions in a structured format. Twenty-five out of those 32 FIUs that do not receive data in a structured format believe it is crucial to have it structured and find it helpful in increasing their analysis' effectiveness.

"FIUs indicated that one asset recovery process obstacles is a lack of time to analyze data and consider further steps. When dealing with suspended financial transactions or foreign requests for assistance in this matter, FIUs need to make decisions quickly to stop the funds from being withdrawn."

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS



54. Information analysis is not the only objective of the asset recovery process. As indicated in this report's sanitized case examples, criminals nowadays move money and other assets through different jurisdictions. Therefore, effective international cooperation is also essential. Information exchange between FIUs is an easy and quick way to obtain financial intelligence, and there must be no obstacles in providing such information to foreign FIUs.

55. Cumulatively six jurisdictions may have issues with providing information on financial flows upon request of foreign FIUs, out of which three jurisdictions are financial centers in their regions.

56. For example, only four out of 62 jurisdictions responded that they could not request information on the movement of funds from a bank at a foreign FIU's request.

57. Inability to make such requests creates significant obstacles for the countries where the predicate offence was committed, as they cannot obtain important information on financial movement via FIU means. Moreover, reporting entities from jurisdictions through which financial transactions were conducted might not have known that those funds are suspicious or even criminal in nature. Therefore, they did not provide an STR for their FIU to start a case.

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

58. Out of the 58 jurisdictions that can request information on the movement of funds from a bank solely at the request of a foreign FIU, two cannot request such information without receiving a prior STR from a reporting entity. There were more jurisdictions with similar obstacles, but a request from a foreign FIU counts as an STR in their example. Therefore, they can request further information from their reporting entities solely on that basis.

59. One more important power available in the FIU arsenal is the ability to request monitoring of banking transactions.

60. Thirty-nine jurisdictions replied that they could monitor the flow of funds on accounts, which is significant considering there are no such requirements in the FATF Standards. On the supranational level, the Warsaw Convention (CETS 198) includes provisions describing jurisdictions' actions – Parties to a.m. Convention aimed at monitoring banking transactions. According to Art. 19 of the Warsaw Convention, "each party shall ensure that at the request of another party, it can monitor during a specified period, the banking operations that are being carried out through one or more accounts."

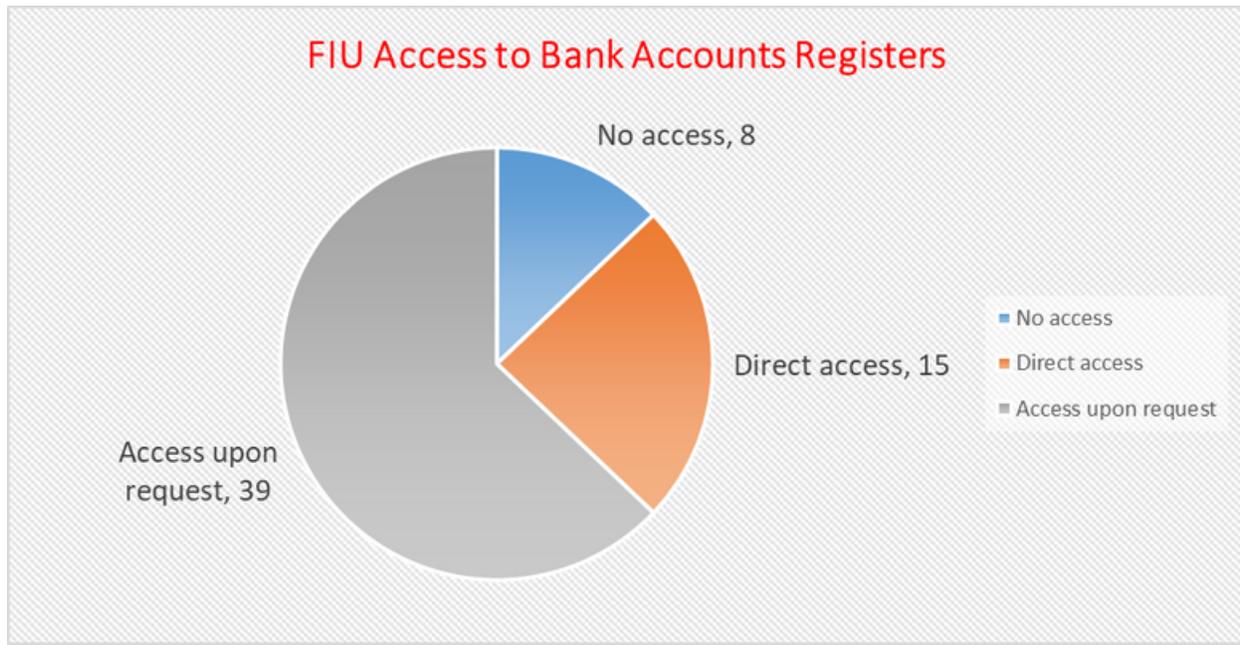
61. Among 39 jurisdictions with a positive reply, some specified that the FIU could monitor transactions on accounts related to different types, for example, withdrawals of specific amounts of money. Also, FIUs may specify timeframes for such monitoring: 72 hours in advance, not more than 90 days etc. In other cases, it was pointed out that in the absence of a monitoring period an FIU can establish such timeframes depending on the needs of the case under analysis. One jurisdiction replied that the FIU could monitor the flow of funds on accounts only in TF-related cases.

62. The other information source that could be included within the first group on financial flows is Bank Accounts Registers. While technically, these registers contain information on assets and not financial flows, that information is crucial for effective analysis. It provides data about the bank the FIU should contact for more details on the subjects of their investigations.

63. According to questionnaire replies, 54 out of 62 FIUs currently have such registers in their jurisdictions. However, only 15 FIUs have direct access, while the majority (or 39 FIUs) receive the necessary information upon request. Allowing FIUs to directly access the register mentioned above is vital for the effective use of FIU power to suspend/postpone transactions. For example, by directly accessing the a.m. registers, FIUs can quickly identify all accounts of a corrupt foreign official or a significant beneficiary of a fraud scheme. Most financial investigations take time, and involved assets could be revealed at later stages.

"One more important power available in the FIU arsenal is the ability to request banking transaction monitoring."

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS



64. Information on assets is the second group of information sources, as indicated within the report. This group can also be divided by the following information sources.

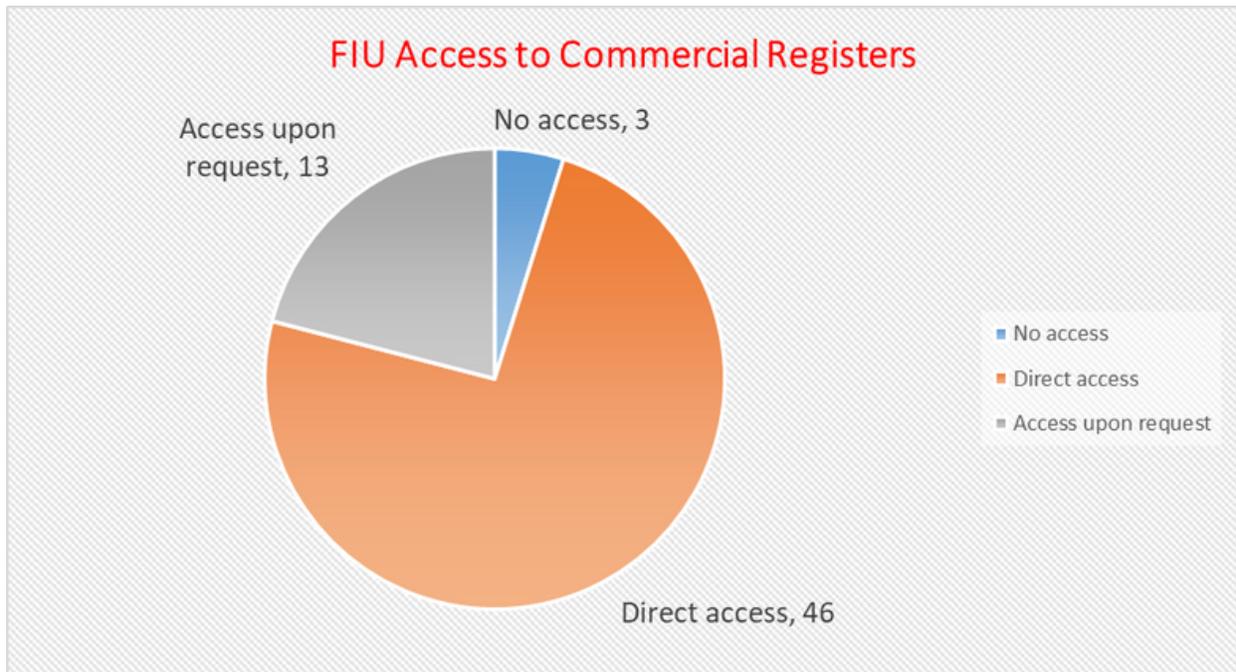
65. The first source is internal FIU (closed) databases and/or registers of public authorities. Rated at 8.05 out of 10, this source is highly relevant and can provide different results.

66. Police databases might hold information on alleged confirmed illegal activity, involvement in organized crime, and other types of groups. This allows connecting individuals, entities, and financial flows, which couldn't be revealed another way.

67. Commercial registers are the source of identification and registration information on entities and their related persons. 59 out of 62 FIUs have access to such registers, with 46 FIUs having direct access and 13 obtaining such through a specific request for information.

"Police databases might hold information on alleged confirmed illegal activity, involvement in organized crime, and other group types. This connects individuals, entities, and financial flows, which couldn't be revealed another way."

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

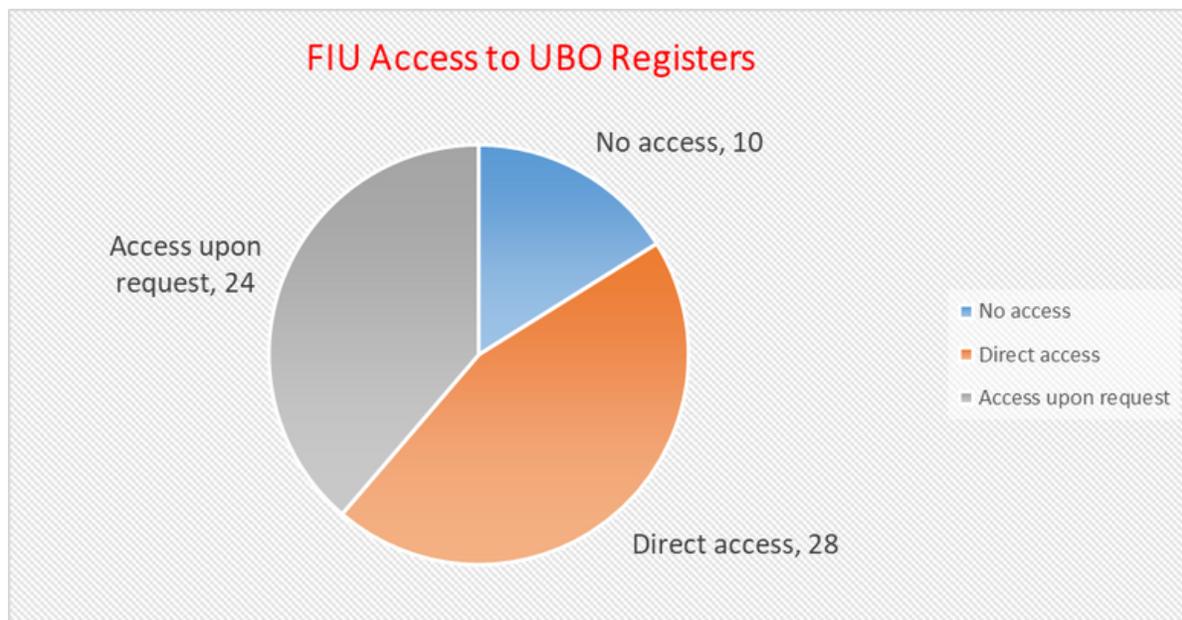


68. An analyst might reveal new associated entities and individuals with data from the commercial register, e.g., addresses and activity type. All this information might be crucial in the asset recovery process. It could develop new leads and enable foreign partners to quickly find assets and provide information on them at the FIU's request.

69. Registers of the company's ultimate beneficial owners (UBOs) are another source of information on assets. As indicated in the questionnaires, 52 out of 62 FIUs already have access to information regarding ultimate beneficiary owners, with 28 FIUs having direct access to such a UBO register, and 24 can obtain such information upon request.

"Information concerning beneficial owners of a company can be extremely valuable. FIU analysts will most likely obtain copies of contracts, letters, invoices, and other documents during the analysis process."

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS



70. Information concerning beneficial owners of a company can be extremely valuable. FIU analysts will most likely obtain copies of contracts, letters, invoices, and other documents during the analysis process. In most cases, persons indicated in those contracts are either directors or authorized persons/signatories. To obtain information on UBOs, FIUs usually need to send additional requests to local financial institutions or foreign FIUs, which would address their own financial institutions. Having a specific register for this matter, particularly a public one, will save time for analysts and discard unnecessary correspondence.

71. Another essential and time-saving information source for the asset recovery process is a Real Estate Register. It is available in 58 out of 62 FIUs. It provides FIUs with the necessary information to confirm the validity of information indicated in STRs or other sources. In the case of continuous investigations, it also allows identifying assets belonging to criminals for further possible confiscation.

72. A similar issue also occurs with access to the Motor Vehicles Register. It is available in 59 out of 62 FIUs. Some jurisdictions indicated that apart from the vehicles register, they have registers for sea vessels, aircraft, etc.

73. Apart from the a.m. registers/databases, FIUs also have access to other registers, in particular:

- State contract register (public procurement register);
- Database of cross-border cash movement;
- Passport database;
- Asset declaration; and
- Others.

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

74. While internal (closed) registers of public services are essential, as indicated by jurisdictions, the same cannot be concluded regarding foreign public registers. This information source was only scored at 6.07 concerning its relevance to the asset recovery process.

75. The explanation for this low rating might be justified because public registers usually have limited information, and not all of them are translated into English. On the other hand, a request to a foreign FIU is needed to obtain classified/sensitive information. All 62 FIUs indicated in the questionnaire that they could provide information from registers upon request from a foreign FIU. It explains the not-so-high rating on having direct access to foreign public registers. Usually, an FIU can quickly obtain all relevant information from such register, including classified ones.

FIU Methods and software

76. As indicated above, information analyses received from financial institutions is a core function of FIUs, particularly in the asset recovery process.

77. Historically, anti-money laundering work has gone from analyzing individual invoices and contracts to investigations of massive amounts of data from different sources, including internal databases, national databases, international studies, open-source information, and consultation and feedback from key industry stakeholders.

78. One issue in big data analysis is the time spent on it. While responding to the questionnaire, FIUs indicated that one of the main obstacles in the asset recovery process is a lack of time to analyze collected/available data and consider further steps. Different solutions and analytical tools were proposed and implemented to conduct successful investigations and increase the effectiveness of an FIU.

79. One such tool is a software application specifically designed for financial investigation purposes.

80. Specialized analytical software – there are several specialized software tools developed as a working application to specifically meet FIU needs concerning (i) data collection and its management, (ii) analytical and secure document management, and (iii) secure communication channels with reporting entities, (iv) workflows, and (v) statistics.

"One of the issues in big data analysis is the time spent. While responding to the questionnaire, FIUs indicated that one of the main obstacles in the asset recovery process is the lack of time to analyze collected/available data and consider further steps."

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

81. In questionnaire replies, 13 out of 62 FIUs indicated that they use such specialized software to trace funds flow.

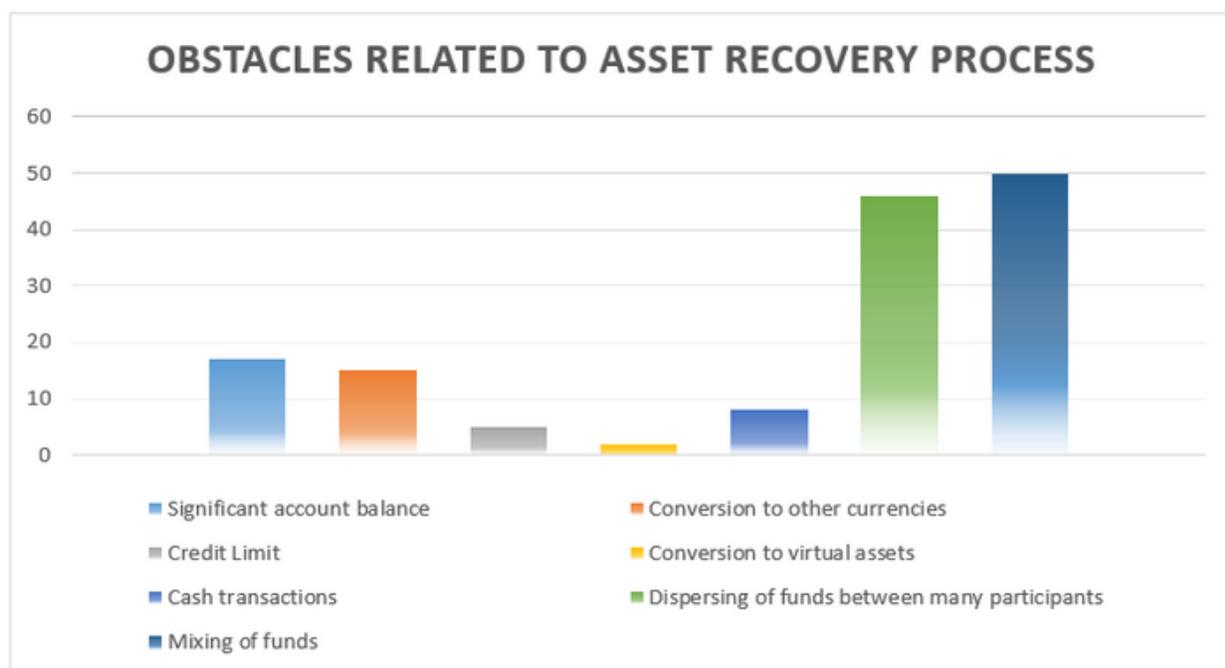
82. 14 out of 62 FIUs indicated using their own internally built analysis software. In instances where in-house systems were described, it was noted that they are used as a primary system for searching and analyzing data submitted on transaction reports, allowing users to perform analysis functions including examining funds flows, report verification, report suspension, etc.

83. Another powerful tool for analyzing large amounts of data is visualization software. Such software allows FIUs to graphically observe how money moves, making it easier to trace the flow of funds on multiple fronts. Visualization removes unnecessary data information and highlights only essential and helpful information. Visualized data also is provided in a format that is easier for interpretation by an analyst and other involved parties, i.e. investigator, prosecutor, judge.

84. FIUs use specialized commercial tools and/or open-source solutions for such visualization.

Obstacles

85. Even if FIUs receive information from financial institutions in a structured format, there are other obstacles related to the asset recovery process.



OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

86. As seen in the diagram above, 17 FIUs decided that significant account balance is an obstacle in asset tracing; 15 FIUs agreed that converting to other currencies could be challenging, and only 5 FIUs agreed that it is a credit limit^[10]. It should be noted that 2 FIUs put conversion to virtual assets, and 8 FIUs put cash transactions as an obstacle.

87. In comparison, dispersing of funds between many participants was determined as an obstacle by 46 FIUs, and the mixing of funds flow was mentioned by 50 FIUs.

88. This shows that the main problem in AML/CFT systems nowadays is analyzing so-called mixing accounts. These types of accounts receive and send a significant number of transactions daily while having a positive account balance to obscure the source of the funds transferred from mixing accounts or obscure the further flow of funds sent to mixing accounts.

89. Difficulties in asset tracing have been identified regarding mixing accounts. FinTech can also be affected and used for fund mixing.

90. While responding to the questions concerning possible solutions for this issue, jurisdictions were not unanimous with their ideas. The following list could be put forward after combining all replies and analyzing them:

- Usage of special software;
- Analyzing transactions based on patterns;
- Analyzing additional supporting documents, i.e. agreements, invoices, payment orders, etc.;
- Checking counterparties and their business activities to distinguish legal funds from criminal ones;
- Collaborating with law enforcement authorities to use a broad arsenal of legal powers;
- Using visualization tools, as described above.

91. Apart from the a.m. obstacles, jurisdictions indicated many difficulties concerning asset tracing. Problems indicated by FIUs are mostly related to a lack of information to conduct effective searches and investigations.

92. There are also difficulties related to the inability to analyze a significant amount of data quickly and effectively in complex money laundering schemes, including involving several jurisdictions and/or FinTech service providers, including Virtual Assets Service Providers (VASPs).

^[10]Credit limit could be an obstacle if there's a credit line with a possibility to go overdraft of the account. In some cases and if there are lot of daily transactions on the account, it could be difficult to establish sources of funds used for specific transactions, if they were funded by overdraft of credit funds.

OVERVIEW OF FIU'S ROLE IN THE ASSET RECOVERY PROCESS

93. Virtual assets (cryptocurrencies) have become more popular over the last few years. Nine jurisdictions indicated that converting assets to virtual assets or vice-versa is a particular difficulty in the asset recovery process. Investigation of virtual assets demands specialized software and training to use it. Therefore, not all countries are proficient with VA-related investigations.
94. The ability to quickly send funds through online banking makes it nearly impossible to react because (i) reporting entity first needs to inform an FIU; (ii) FIU needs to analyze an STR; (iii) in some cases, FIU also needs to make additional requests for information, including to foreign FIUs.
95. Successful asset recovery becomes complex, untimely, or even problematic without the power to suspend financial transactions or without sufficient resources (tools) to analyze big data. During the time used by the FIU to analyze data and obtain other relevant information, a criminal organization could already send funds through several jurisdictions and convert the assets. At some point, if criminals choose to withdraw funds in cash, it means the FIU would be already late reacting.
96. One FIU provided an example of how time can be essential. The inability to exchange and analyze information rapidly is even worse if FIU-LEA cooperation is added to the mix.
97. This highlights the importance of quick access to foreign information for FIUs and law enforcement authorities or at least publicly available ones. While public information is straightforward to access, there is still a matter of taking time to locate it and find the exact type of registers/databases that analysts/investigators need to confirm suspicions and/or gather enough information for further actions. Inability to reach relevant data in a timely manner can lead to a loss of assets before being suspended.
98. Apart from the a.m., several jurisdictions also point out that it is challenging to trace assets when they are transferred to jurisdictions that don't provide information promptly or provide limited data due to their inability to collect/provide it based on legislative restrictions. The MLA process is sometimes lengthy, as indicated by jurisdictions in the questionnaire. Therefore, effective FIU-FIU collaboration is vital during the identifying and tracing stages of the asset recovery process.

SUSPENSION/FREEZING POWERS OF FIUS

99. Nowadays, the seizure and confiscation of criminal assets contribute to combating serious forms of crime by depriving criminals of the proceeds of their illegal activities.

100. Some FIUs have the legal power to freeze or suspend/postpone financial transactions in case of suspicions of money laundering, terrorist financing, or, in some jurisdictions – proliferation financing. This power to freeze funds or assets is possible because of FIUs' central role between the financial sector and law enforcement authorities.

101. In some jurisdictions, the AML/CFT framework requires reporting entities, when possible, to report suspicious transactions before the transactions are carried out to enable the FIU to freeze them.

102. FIUs can therefore play an essential role in recovering criminal assets.

103. This is only possible if the financial sector and FIUs use effective measures and mechanisms to suspend a transaction and/or temporarily freeze funds or criminal assets.

104. The effectiveness of such a framework greatly depends on the financial sector's responsiveness and the implementation of legal freezing measures to avoid any capital flight risks.

Freezing or suspension/postponement power

105. When the preventive framework allows a transaction to be suspended/postponed or funds to be frozen on a customer's account (apart from freezing terrorist assets under the United Nations Resolutions), in most cases, the FIU has this power.

106. Out of the 64 FIUs that took part in the survey:

- 49 FIUs (76% of respondents) have freezing or suspension/postponement powers
- 15 FIUs (24% of respondents) do not have such powers

107. The FIUs with this power can take action:

- Upon receipt of a suspicious transaction report (STR) received from an obliged entity
- Upon receipt of information regarding the suspicious transaction from a public authority
- Upon request of a judicial authority or a police authority
- Upon request of a counterpart FIU

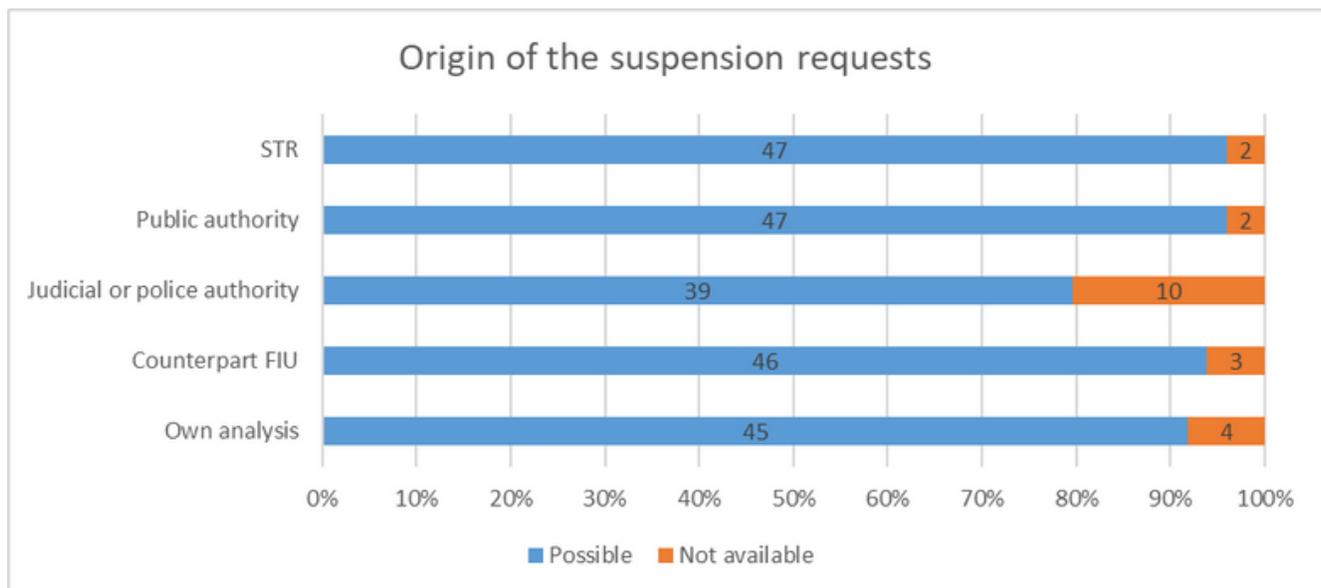
SUSPENSION/FREEZING POWERS OF FIUS

108. Many FIUs can use their freezing power on their initiative as part of the analysis of a suspicious transaction report, for instance. Some FIUs can freeze a transaction at a financial institution, even without receiving a suspicious transaction report from this financial institution.

109. An FIU management body can also decide whether a transaction should be frozen without referring to the judicial authorities, for example.

110. In several countries, a public authority, a judicial authority, or a police authority can report information to the FIU. This information is equivalent to a suspicious transaction report. A freezing or suspension/postponement measure of a transaction can be based on the financial analysis initiated by the FIU based on this suspicious transaction report.

111. Finally, in the framework of international cooperation, many FIUs can also use their freezing powers based on information received from a counterpart FIU.



SUSPENSION/FREEZING POWERS OF FIUS

27

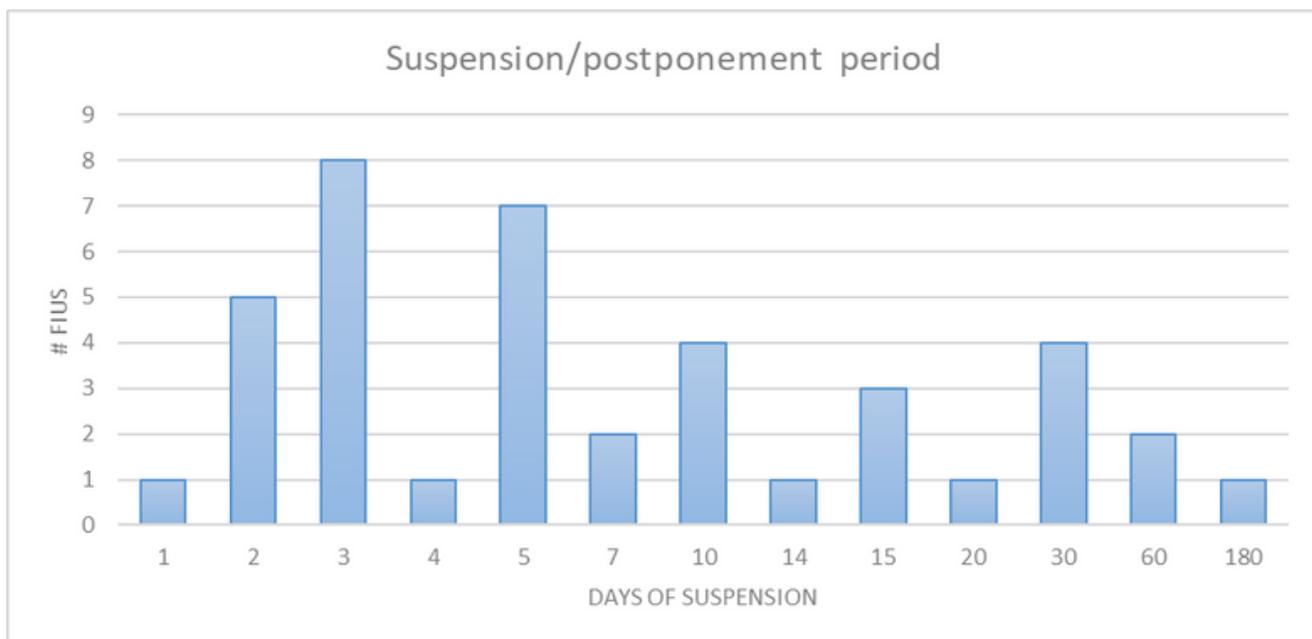
112. When the FIU itself does not have the power to suspend/postpone, this power is mainly given directly to law enforcement authorities.

113. The decision to suspend a transaction can sometimes be taken directly and automatically by the obliged entity itself without the direct intervention of the FIU. For instance, this is the case in one jurisdiction, where the law requires obliged entities to suspend a transaction when a customer's name is included on a domestic or international list of suspicious individuals.

114. This mechanism is similar to the one related to freezing terrorist assets.

Suspension/postponement period

115. The number of suspension period days varies greatly among FIUs. The diagram below shows the project survey results.



116. In some jurisdictions, the suspension/postponement period can be very long – up to 180 days. It should also be highlighted that some FIUs, not listed in the graph above, have a suspension period of unlimited duration, in which case the judicial authorities decide on the length of the suspension measure or have a system where the suspension period varies according to specific parameters (a domestic case or case with an international dimension, whether the decision is automatically taken by the obliged entity or the FIU or upon request of a counterpart FIU, see the case below).

SUSPENSION/FREEZING POWERS OF FIUS

28

117. A short suspension/postponement period has the advantage of less risk of tipping-off, where the customer suspected of ML/TF transactions could be alarmed and become aware of the freezing measure. Once the customer is tipped off, they could take action to move funds with other banks or in different countries and hamper proceedings and any potential asset recovery and repatriation.

118. In case of a lengthy suspension/postponement period, the FIU must give the customer the possibility of appealing this decision and respect the other fundamental rights of the customer affected by this suspension. Therefore, regarding the duration of the suspension period, a balance has to be struck between the fact that a lengthy suspension period provides opportunities to LEAs to take proper procedural actions to secure assets and that it also increases the risk of the customer turning against the FIU to appeal the decision. The FIU could then hesitate to suspend a transaction because the customer could potentially turn against it. The efficiency of the system would therefore be reduced.

119. Furthermore, financial institutions generally grant FIUs several days, where the financial institution itself, at their discretion, keeps the transaction blocked to enable them to urgently carry out the first analysis and decide whether or not to freeze it. Some FIUs stated that this "interim" period was imposed on the financial institutions by AML/CFT law.

120. The suspension period may also vary according to case complexity.

Power to extend suspension measures

121. Of the 49 FIUs that have suspension powers:

- 18 FIUs can request an extension (i.e. 37%);
- 31 FIUs do not have this power (i.e. 63%).

122. The extension period varies depending on the case.

123. If certain conditions are met, and specific procedures are completed, some FIUs can extend or request to extend a suspension/postponement measure beyond what the law allows them to do on their initiative.

124. Even though some FIUs can get an extension, the final decision whether or not to extend a suspension/postponement measure often lies with domestic judicial authorities.

125. This procedure has the advantage of the FIU getting more time to analyze suspicious transactions, identify the funds' criminal origin, and demonstrate potential money laundering offence. The disadvantage is that the customer is informed. Starting legal proceedings to obtain an extension is also binding.

SUSPENSION/FREEZING POWERS OF FIUS

29

126. When the FIU wants more time to analyze a suspicious transaction report and submit a more comprehensive and extensive file to judicial authorities, it may be appropriate to request an extension of the suspension/postponement measures.

127. Other FIUs cannot extend a suspension and must disseminate the file to judicial authorities if they believe that the freezing or suspension measure should be extended.

128. If this is the case, when an FIU decides to suspend a transaction, the FIU must have enough indications that the funds are of criminal origin and convince judicial authorities to order the judicial seizure of the funds. If not, the judicial authorities would have to release the funds due to insufficient proof. The project team identified this as one reason why the number of freezing measures is lower in FIUs with this obligation. These FIUs will be less inclined to freeze funds if there is no prospect that the judicial authorities will, after that, apply more permanent seizure.

End of the suspension period

129. When the suspension period comes to an end and no other decision or seizure has been announced by a competent authority, generally judicial authorities, the obliged entity can release the transaction or unfreeze the accounts held at their institution.

130. The law stipulates that in the absence of suspension by the FIU or extension of the suspension by a judicial authority, the financial institutions themselves decide whether they carry out a transaction or refuse to carry out a transaction, knowing they are protected, at the civil and criminal level, if they disclose to the FIU in good faith.

131. There are legal difficulties in providing authorization to carry out a transaction for many FIUs.

132. Moreover, a financial transaction can be part of a more complex money-laundering scheme that the FIU is unaware of.

Monitoring accounts

133. Most FIUs (40 out of 49 that have suspension/postponement powers, i.e. 81%) have the ability to instruct monitoring or surveillance of suspicious bank accounts via the respective financial institution, which should report the financial transactions conducted on this account on a specific interval.

134. However, as is the case in many countries, when a financial institution is queried on one of its customers, it automatically leads to enhanced due diligence about the customer's transactions, as well as when an FIU requests a financial institution to suspend the transactions on one of its customer's accounts. Even if the FIU does not have the power to monitor transactions, this can be done indirectly through the bank. Suspending a transaction could indeed lead to a de-risking effect, as the financial institution could then decide to de-bank its client. Moreover, in rare cases where the suspension measure pronounced did not ultimately lead to dissemination and where the funds are consequently released, the financial institution could also wrongly decide to de-bank its client.

OUTCOMES, MAIN CHALLENGES, SOLUTIONS, AND BEST PRACTICES

30

135. The evolution of international AML/CFT standards, numerous papers and studies of Key International Organizations, years of FIUs activities and self-improvement on national levels make FIUs important institutions among others in the asset recovery process.

136. Considering numerous FIU powers to trace assets, access a variety of registers and databases, monitor movement on accounts and postpone financial transactions, the most appropriate time for FIUs to be engaged in the AR process is the beginning of the investigation or even intelligence stage. In other words, as previously mentioned, during the first two stages of the process: The Identification stage and the Suspension stage.

137. Exploring the role of FIUs in the AR process, the project team considered the best FIU profile to be the most effective and valuable for a.m. aims.

4. Analysis of questionnaires replies demonstrates that FIUs possess powers to search and trace assets in most cases. Such abilities are used to identify assets and postpone financial transactions.

138. FIUs should have all possible powers to establish financial flows and assets and identify the ultimate beneficial owner of suspicious funds or assets. It should be able to:

- Have efficient procedures and tools (especially IT) for analysis of STR/SAR/UTR and other available data in a timely manner
- Have broad access to various information sources (BOI, wire transfers, OSINT, numerous registers, and databases)
- Request information related to the flow of funds, assets and their beneficiaries from various sources
- Obtain data preferably in a structured format
- Provide the broadest range of information upon request of a foreign FIU
- Monitor financial flows on accounts
- Use specialized analytical software to analyze a significant amount of data
- Cooperate with ARO on an operational level
- Postpone financial transactions.

139. The a.m. list may be used as a self-check list to assess FIU's ability and the possibility of making an impact in asset recovery.

140. Positive answers on questionnaires in most jurisdictions demonstrate that most FIUs are well equipped and meet most, and in ideal cases all, the a.m. features, meaning they can play a significant role in asset tracing, searching, and identification.

OUTCOMES, MAIN CHALLENGES, SOLUTIONS, AND BEST PRACTICES

31

141. Positive answers on questionnaires in most jurisdictions demonstrate that most FIUs are well equipped and meet most, and in ideal cases all, the a.m. features, meaning they can play a significant role in asset tracing, searching, and identification.

142. Nevertheless, AR is still an issue for many jurisdictions, even where FIUs demonstrate the highest scores.

143. Reasons for such situations might be related to vague understanding by other agencies involved in the AR process regarding the FIU's abilities and role. In some instances, other domestic authorities do not see FIUs as a viable source of information or are considered just as analysis hubs. The other reasons may be difficulties transforming FIU intelligence information into evidence, the absence of sufficient resources to take asset recovery functions that FIUs have and perform efficiently, complicated money laundering schemes, lack of adequate asset recovery culture, and other obstacles.

144. From outside FIUs, except what has been mentioned, there may be a lot of other barriers that hamper cooperation and coordination between FIUs and other agencies to gain success in the AR. Simultaneously, some factors significantly impact FIUs' actions to trace and search assets, identify a property and link to suspected criminal acts committed by criminals and their associates.

List of solutions to increase the efficiency of FIUs' engagement in the AR process:

1. Solutions to cooperation process:

- The strong commitment demonstrated by the involvement of different national competent authorities in the AR investigation, cooperation/coordination between FIU and national LEAs;
- Good working relationships effective and reliable routes of communication between key industry players;
- Joint participation FIU with LEA and other relevant authorities in asset recovery task forces;
- Effective and reliable ways of communication between the FIU and reporting entities (sharing information with RE);
- Powers of the FIU to access or request different types of information and to exchange information swiftly on a national and international level;
- Power of FIU to suspend financial transactions, including upon international request;
- Timely disclosure of information on the postponement to the LEAs and Prosecution;
- Timely follow-up actions of the LEAs and Prosecution, feedback from LEAs;
- Clear dissemination rules in FIU information exchange;
- FIU's ability to request information from a VASP and analyze them by, for example, using specific software;
- Multinational investigatory assistance and cooperation;

OUTCOMES, MAIN CHALLENGES, SOLUTIONS, AND BEST PRACTICES

32

- Involvement of Stolen Asset Recovery Initiative and World Bank agreement in AR process;
- Operational collaboration with ARO;
- Actions of FIUs should be followed by international legal assistance and order for the seizure;
- Use of spontaneous disclosures from the foreign FIUs.

2. Solutions to analytical process:

- Swift FIU action to avoid further disbursement of funds and allow LEA to take additional steps;
- Efficient STR analysis as a primary intelligence source for the investigation;
- Qualitative and accurate analysis conducted by the FIU based on different information sources ;
- Legally defined powers of the requested foreign FIU to conduct a sector-wide search for identification of assets or related data;
- Use of modern IT solutions for collection, analysis, and dissemination;
- Efficient analysis of account statements and entities profiles;
- Analyzing transactions based on patterns, in case of complex transactions, analyze additional supporting documents, i.e. Agreements, invoices, payment orders, etc.;
- Checking counterparties and their business activities to distinguish legal funds from criminal ones;
- Using visualization tools.

145. The project team identified several essential areas or obstacles to further evaluation, positively impacting FIU involvement in Asset Recovery cases and other ML/TF investigations.

146. The large amount of data received by FIUs should be duly processed by modern IT solutions, providing an opportunity to structure incoming data and further conduct its effective analysis. Obtaining information in a standardized format from reporting entities would highly increase the ability of FIUs and other competent authorities to trace financial flows on time.

147. The problem of mixing financial flows on so-called transit accounts is also an issue and demands proper consideration by FIUs. Rapid exchange of account statements information between FIUs and in parallel, for example, data on international trade operation - information on cross-border goods flows may help address this phenomenon. Clustering of information, different analytical solutions, and the use of AI or machine learning IT products can help solve this issue.

148. In the asset recovery process context, particularly in tracing, searching, identification, or freezing stages, an important place is given to cooperation of FIUs with ARO, which grants the possibility to:

- Exchange crucial information for successful AR;
- Establish connections of the subjects of ARO's/FIU's actions;
- Reveal information for further assets' freezing/suspending;
- Establish location and amount of criminal proceeds concerning which civil confiscation can be applied;
- Coordinate both agencies' actions.

Challenges/barriers/obstacles in cooperation between FIU and ARO:

- Legal obstacles that prevent operational collaboration between ARO and FIU;
- Inability to use FIU disseminations as evidence or difficulties in transforming intelligence into evidence;
- Challenges in linking assets with money laundering;
- Need for modern digital information exchange solutions for ;
- No practical rules for cooperation;
- Traced information is not structured;
- Unsatisfactory feedback mechanism between FIUs and LEAs;
- Time lag on case file by ARO and long and complicated asset recovery process.

149. The report demonstrates that there is relatively limited cooperation between FIUs and AROs. Reasons for this may be different places of these authorities in the national system, which directly influences their engagement time in the AR process and the status of information produced by them. In some jurisdictions, legal barriers prevent those two agencies from cooperating. The conclusion can be made that there is a need to focus efforts all over the world to promote a better understanding of benefits, what such cooperation provides in the asset recovery process and stimulate it, especially intending to prevent duplication of work, coordinate joint actions, and build effective links during the suspension of financial transactions by FIU and further actions of ARO or LEA (who acts as ARO) to secure suspended assets and vice versa.

150. Considering the power of FIUs to suspend financial transactions, the project team can conclude that each AML/CFT framework is different, and there is not just one type of FIU. As a result, there is no suspension model or mechanism applicable universally in all countries. The players involved also vary among jurisdictions.

151. Each country is different regarding the reporting system (objective reporting with thresholds, subjective reporting), the economy, and the legal, political, or cultural system. That is why best practices remain theoretical and cannot be uniformly applied in all jurisdictions.

152. The following best practices and conclusions aim not to promote any specific system but to highlight some practices that could potentially improve the effectiveness of existing suspension mechanisms.

"Unlimited informational cooperation on the FIU-ARO level is observed in 11 jurisdictions. In those jurisdictions, FIUs can provide information upon request spontaneously or receive only specific data to/from ARO."

OUTCOMES, MAIN CHALLENGES, SOLUTIONS, AND BEST PRACTICES

34

Suspension Powers

153. Most responding jurisdictions have granted their FIU the power to decide whether or not to suspend a transaction.

154. The decision process must be easy to implement and result from a decision reached by a limited number of people authorized to make it. In some, the Director of the FIU decides whether transactions should be suspended. The decision to suspend/postpone is immediately communicated to the reporting entity involved.

155. When the suspension measure requires the authorization of the judicial authorities (for instance, to extend the suspension beyond the period in which case the FIU can decide without having to refer to others), the time for authorities to respond might be longer, and additional measures should be taken to avoid assets disappearing.

Speed (application of timely measures)

156. In general, as soon as the reporting entity identifies a suspicious transaction and reports it to the FIU, the case must be analyzed as quickly as possible. When large amounts of suspicious funds are involved, they could disappear, which requires a quick response and rapid decision-making.

157. Prioritizing suspicious transaction reports is a critical element of an FIU's internal organization. When urgent suspicious transaction reports are not identified as such, the suspension/postponement is not possible.

158. Several FIUs have a department that distributes suspicious transaction reports to the relevant departments of the FIU upon receipt. This department carries out a first analysis of the suspicious transaction reports, including urgent disclosures, and distributes the suspicious transaction reports to the relevant department of the FIU.

159. Urgent suspicious transaction reports are usually marked and can be separated from other suspicious transaction reports.

160. When FIUs have suspension powers, they can collect and analyze as much financial information as possible from other financial institutions before suspending.

161. FIUs can also rely on international cooperation between FIUs when international transfers are involved and freeze funds abroad. It is acknowledged that collaboration between FIUs is swifter than cooperation between judicial authorities or even law enforcement services (for MLA purposes, for example).

OUTCOMES, MAIN CHALLENGES, SOLUTIONS, AND BEST PRACTICES

35

162. Communication between FIUs and financial institutions should be well-organized to avoid untimely decisions, which cannot reach the reporting entity when necessary. It would result in the decision not being implemented correctly and effectively.

163. Best practices include: direct phone contact with the respective financial institution, having a contact person in each major financial institution, requiring the FIU to send a written confirmation of suspension to the financial institutions, having the power to inform the supervisory authority of the financial institution in case of non-compliance with the suspension, given a possible administrative and financial sanction if applicable, without prejudice to any criminal sanctions.

Flexibility

164. The FIU has to collect as much information as possible that could facilitate the decision-making process of prosecution authorities. Each case is different, and its analysis can take time. A certain degree of flexibility can benefit financial institutions, the FIU, and the prosecution authorities.

165. Firstly, an AML/CFT framework allowing financial institutions themselves to determine a timeframe (that varies according to the situation and is not always the same for all cases) gives the FIU the possibility of having as much time as possible according to the complexity of the case to process the disclosure and, where applicable, freeze a transaction.

166. An FIU should not be put under pressure to analyze a disclosure if the financial transaction deemed suspicious will occur in several weeks (a notarial act that only needs to be drawn up in several weeks). However, financial institutions must play their part and not set very short timeframes that do not allow the FIU to analyze the case effectively. A variable timeframe for FIUs by financial institutions only works if there is a good understanding between the FIU and the financial institutions. This freedom indirectly increases this confidence. Moreover, depending on the nature of the transaction and the customer's profile, a set timeframe could affect the tipping-off risk.

167. Secondly, the suspension period determined by the FIU should not be too long and inflexible either.

168. Some FIUs can determine the suspension period themselves, ranging from one to five days, following the AML legislation. According to the case circumstances, a short and flexible timeframe will minimize tipping-off risks.

OUTCOMES, MAIN CHALLENGES, SOLUTIONS, AND BEST PRACTICES

Cooperation and mutual confidence

169. There should be good cooperation between FIUs and the judicial authorities that would subsequently need to seize the funds frozen by the FIU.

170. On the other side is the cooperation with law enforcement. In this case, FIUs mostly reply to liaison officers and different channels for communication, usually set up through MoUs. When these FIUs have police liaison officers working at their offices, they can set up communication channels (24-7), keeping the police informed of significant cases disseminated to judicial authorities in which large sums of money or assets could be seized.

171. Cooperation between the FIU and law enforcement authorities can be enhanced when the FIU works directly with the asset recovery office (if such is established in the jurisdiction). Notifying the asset recovery office that a transaction or account has been frozen/suspended/postponed or that large sums that can be seized are available on a bank account is a best practice that increases the effectiveness of the suspension mechanism and the overall asset recovery.

172. A mechanism or legal provision requiring an FIU to inform the asset recovery office when funds are frozen is a critical best practice.

173. Giving suspension powers to financial institutions based on indicators could be more suitable in some specific isolated instances, considering the characteristics and particularities of some jurisdictions.

174. When the financial sector is reluctant to disclose to the FIU or law enforcement, for security reasons, for example, including an obligation in the AML Law for the financial sector to suspend a transaction if it meets specific predefined criteria could be more effective than leaving the financial sector the choice whether or not to carry out the transaction and only afterwards disclose this to the FIUs.

Protection of obliged entities

175. Protection of the obliged entity instructed by the FIU to suspend/postpone a transaction is vital to ensure the sustainability and effectiveness of the AML/CFT framework. In some jurisdictions, when financial institutions and their employees may be threatened or their names/involvement further disclosed because of disclosing a transaction or suspending a transaction upon the request of an FIU, they will be less likely to cooperate. It would be particularly critical if they are in a situation where they feel their security is not guaranteed.

176. The prohibition of tipping-off could also put financial institutions and their employees in a delicate position and affect their security if they cannot inform the customer that the FIU has frozen the transaction. A freezing or suspension measure of a reasonable timeframe (see above) is an essential best practice.

177. This aspect of the framework becomes even more vital in the case of an administrative-type FIU.

OUTCOMES, MAIN CHALLENGES, SOLUTIONS, AND BEST PRACTICES

37

178. For police FIUs or judicial FIUs, an administrative freezing measure imposed by the FIU can easily become a judicial seizure. The customer may be informed that funds have been frozen due to a judicial decision.

Objectifying suspension cases

179. The use of red flags or specific indicators on suspension could facilitate the detection of suspicious transactions that could be suspended by financial institutions, which could, in theory, increase the number of suspended transactions.

180. However, suspension measures are often taken on a case-by-case basis. It would not be straightforward to automate this type of process without the risk of freezing transactions unnecessarily.

181. Including high thresholds or the involvement of PEPs or tax havens in red flags for the suspension of transactions could result in a transaction unnecessarily being blocked given that such transactions could turn out to be lawful after having analyzed the customer's profile.

182. So, it is preferable that financial institutions use indicators or red flags as tools to detect suspicious transactions as part of KYC measures and due diligence measures concerning customer transactions but that they do not use red flags to objectify objective and threshold-based disclosures.

183. The use of domestic or international lists of suspicious individuals could nevertheless be effective in jurisdictions where the financial sector would be less likely to cooperate with the FIU for security reasons.

184. The effectiveness of a suspension mechanism for transactions in a jurisdiction should not be measured solely on the number of suspensions per year according to the total number of STRs or other requests received.

185. To protect the obliged entity and reduce the risk of tipping-off, a transaction is not always suspended to enable investigators to monitor the customer without alarming the customer. Furthermore, large amounts may remain on a customer's account, and the customer may not have indicated an intention to withdraw funds in the immediate future. In this case, a freezing or suspension measure is not appropriate. The number of suspension requests as such is therefore not very relevant as a criterion.

186. Therefore, the suspension of a transaction should be considered part of an entire process, i.e. until the judicial authorities can seize previously frozen assets. The number of cases of suspensions of transactions/freezing of assets sent to the judicial authorities, together with the remaining balance on the frozen accounts, should be compared to the number of finalized files and the amounts eventually recovered by the judicial authorities.

OUTCOMES, MAIN CHALLENGES, SOLUTIONS, AND BEST PRACTICES

38

Fundamental rights

187. In some jurisdictions, respect for fundamental rights enshrined in the constitution, for instance, is an essential factor that should be taken into consideration when a mechanism for suspending transactions is put into place. The suspension of a transaction should not hamper the freedoms of individuals granted by a country's constitution concerning financial transactions. When creating or developing a system to suspend transactions, a balance should be struck between respecting the fundamental rights and protecting citizens and society against criminal groups and financial crime.

188. Some FIUs are compelled by fundamental national rights not to request additional information from financial institutions when receiving an STR. As a result, their investigative powers for suspending a transaction are limited. Furthermore, this national dimension becomes problematic for international suspension/freezing requests.

189. A national regulatory framework based on international recommendations should facilitate the application of global suspension/freezing requests to protect the integrity of the entire financial system.

Procedures

190. The procedures to use/follow by analysts upon receipt of an STR that could be subject to a suspension measure should be clearly documented within each FIU. All analysts likely to deal with this type of urgent case and subsequent suspension measure should be aware of the different operational steps to take, in particular in urgent cases, to examine the various cases and to be able to prioritize them.