

Miroslav Radojicic: Principles of international cooperation in prevention of financial abuse

International cooperation in prevention of financial abuse, particularly money laundering, is mostly carried out through institutional intertwining of financial intelligence units of member states. Chapter V of the Warsaw Convention address cooperation among FIUs through Articles 46 and 47 in the following manner:⁹¹

Article 46

Co-operation between FIUs

1. Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.
2. For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.
3. Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.
4. Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.
5. When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.
6. An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.
7. Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.
8. When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.
9. Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse

⁹¹ Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Council of Europe
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008370c>

its consent to such use unless it does so on the basis of restrictions under its national law⁹² or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.

10. FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.
11. The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.
12. The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.
13. Parties shall indicate the unit which is an FIU within the meaning of this article.

Article 47

International co-operation for postponement of suspicious transactions

1. Each Party shall adopt such legislative or other measures as may be necessary 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 as apply in its domestic law in respect of the postponement of transactions.
2. The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:
 - a) the transaction is related to money laundering; and
 - b) 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.

General principles of international cooperation are defined by Article 15 of the same convention in the following manner⁹³:

Article 15

General principles and measures for international co-operation⁹⁴

1. The Parties shall mutually co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.
2. Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:
 - a) for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
 - b) for investigative⁹⁵ assistance and provisional measures with a view to either form of confiscation referred to under a) above.

⁹² Nagy, I. Z. : A jövedelemeltitkolás okai, következményei és visszaszorítási lehetőségei.

⁹³ Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Council of Europe
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008370c>

⁹⁴ Nagy, I. Z.: Die Gründe der Einkommenshinterziehung mit besonderer Rücksicht auf Ungarn

⁹⁵ Nagy, I. Z.: The Economic and Psychological Context of Tax Evasion in the Example of Hungary.

- c. Investigative assistance and provisional measures sought in paragraph 2.b shall be carried out as permitted by and in accordance with the internal law of the requested Party. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its law.
- d. Each Party shall adopt such legislative or other measures as may be necessary to ensure that the requests coming from other Parties in order to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of internal procedures.

Section II addresses investigative assistance, through Article 16 (Obligation to assist), Article 17 (Requests for information on bank accounts) and Article 18 (Requests for information on banking transactions).

Monitoring mechanism⁹⁶ and settlement of disputes are regulated in Chapter VI, Article 48:

1. The Conference of the Parties (COP) shall be responsible for following the implementation of the Convention. The COP:
 - a) shall monitor the proper implementation of the Convention by the Parties;
 - b) shall, at the request of a Party, express an opinion on any question concerning the interpretation and application of the Convention.
2. The COP shall carry out the functions under paragraph 1.a above by using any available Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval) public summaries (for Moneyval countries) and any available FATF public summaries (for FATF countries), supplemented by periodic self-assessment questionnaires, as appropriate. The monitoring procedure will deal with areas covered by this Convention only in respect of those areas which are not covered by other relevant international standards on which mutual evaluations are carried out by the FATF and Moneyval.
3. If the COP concludes that it requires further information in the discharge of its functions, it shall liaise with the Party concerned, taking advantage, if so required by the COP, of the procedure and mechanism of Moneyval. The Party concerned shall then report back to the COP. The COP shall on this basis decide whether or not to carry out a more in-depth assessment of the position of the Party concerned. This may, but need not necessarily, involve, a country visit by an evaluation team.
4. In case of a dispute between Parties as to the interpretation or application of the Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the COP, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.
5. The COP shall adopt its own rules of procedure.
6. The Secretary General of the Council of Europe shall convene the COP not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the COP shall be held in accordance with the rules of procedure adopted by the COP.

Conclusions

The thesis has reiterated the international aspect of organised crime and underlined that financial abuse, particularly money laundering, is a problem of international character, suggesting that possible activities carried out in isolation i.e. on an individual country level, could have rather limited effects. In a large number of cases it is even impossible to conduct entire investigation and analytical assessment of a case pertaining to analysis of suspicious transactions without due support of another FIU. Such conclusion related primarily to data on a party or related transactions. Any analysis of

⁹⁶ Nagy, I. Z.: Spezielle Eintreibungstechniken zur Senkung der Außenstände

financial flows starts necessarily from the point of entry of money into the financial system of a country and after several steps it reaches its final point, the point of money exiting the financial system. This final step is not necessarily in the same country as the entry point, which is to say that money transfers have taken only one step to move into financial systems of another country or several countries for that matter.

Therefore, states ought to ensure that their authorities adhere to international norms and standards (adopted as national legislation), whereby it is essential that international cooperation be established among respective state authorities, primarily FIUs. In technical terms, it is vital to establish and maintain effective systems that facilitate smooth and swift exchange of information among peer institutions of different states, at a request or unprompted, regarding financial abuse, not only money laundering and predicate criminal offences. It is important to allow for unobstructed exchange of information free of unnecessary impeding requirements, regardless of whether a request for help includes fiscal issues or the official secret matter, personal data protection and information secrecy. Such "sensitive" cases at a request of peer institutions from the international environment should be addressed by competent national bodies, through inquiries and other investigation activities, on behalf of and at a request of peer institutions from abroad, whereby it is a prerequisite that state to which request is addressed has in place the capacities necessary to carry out this investigation.

Literature:

1. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Council of Europe
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008370c>
2. Nagy, I. Z.: The Economic and Psychological Context of Tax Evasion in the Example of Hungary. DANUBE: LAW AND ECONOMICS REVIEW 2:(3) pp. 55-68. (2011)
3. Nagy, I. Z. : A jövedelemelvitkolás okai, következményei és visszaszorítási lehetőségei különös tekintettel Magyarországra. In: Nagy Imre Zoltán (szerk.) Vállalkozásfejlesztés a XXI. században: tanulmánykötet. 203 p. Budapest: Óbudai Egyetem Keleti Károly Gazdasági Kar, 2011. pp. 69-98. ISBN: 978-615-5018-18-3
4. Nagy, I. Z.: Spezielle Eintreibungstechniken zur Senkung der Außenstände. In: Kadocsa Gy (szerk.) MEB 2006: 4th International Conference on Management, Enterprise and Benchmarking. 360 p. : Budapest BMF, 2006. pp. 196-208. ISBN: 9637154477
5. Nagy, I. Z.: Die Gründe der Einkommenshinterziehung mit besonderer Rücksicht auf Ungarn. In: Kadocsa Gy (szerk.) MEB 2009 – 7th International Conference on Management, Enterprise and Benchmarking: Proceedings: Menedzsment, Vállalkozás és Benchmarking Nemzetközi Konferencia. 419 p. Budapest: BMF, 2009. pp. 185-201. ISBN: 978-963-7154-88-1