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Financial INtelligence Unit (FIU)

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**A. Principles and rules for preventing money laundering and terrorism financing**

Money laundering is a crime by means of which the proceeds of a criminal activity are introduced into the legal economic system - through financial intermediaries or other qualified subjects[[1]](#footnote-1) - with a view to disguising or concealing their illegal origin. It’s not only a crime; it’s a phenomenon that harms the economy, alters the rules and conditions of competition in markets. It is a threat to the efficiency, the stability and the confidence of the financial system.

The most important and complex forms of money laundering tend to exceed the  
national boundaries, affecting different jurisdictions. The financial innovation and the increasingly globalization and market integration offer significant opportunities to the criminal activities: the material placement of the proceeds of crimes, the fulfilment of operations in order to separate funds from their illegal origin and the final integration in the legal economy can be managed quickly, in different locations, concealing the identities involved[[2]](#footnote-2).

Taking into account these peculiar characteristics, the international anti-money laundering strategies, in the last two decades, have seen a marked trend towards the strengthening and expansion of rules, controls and subjects involved[[3]](#footnote-3).

The initiatives in this field have developed two different approaches: the first, on the floor of the prosecution, with a widespread awareness about the need for the qualification of money laundering as a crime and the gradual adoption of an “all crimes” approach in the identification of the predicate offences; the second, on the side of the prevention, with financial and administrative tools focused on the detection of suspicious conducts and the protection of the integrity of the economy and the financial markets from any infiltration or contamination[[4]](#footnote-4).

At international level, the Financial Action Task Force (FATF), specialized agency set up at the OECD, is recognized as the main source of international rules and principles on the prevention and fight against money laundering and terrorism financing. The FATF Recommendations, developed over the past two decades[[5]](#footnote-5), are the terms of reference for other international agencies and for the rules issued at European and national level[[6]](#footnote-6).

The FATF Recommendations design measures aimed to strengthen the comprehensive guarantees and further protect the integrity of the financial system, providing national governments with effective tools to combat financial crime.

Such measures are based on specific obligations for the subjects (financial institutions, professionals and other operators) exposed to the risk of involvement in money laundering[[7]](#footnote-7), and require the obliged subjects to comply with duties of customer due diligence and record keeping, according to the effective risk and intended to grant the transparency of the beneficial ownership of each transaction. If a suspicion of money laundering or terrorism financing rises from a transaction or from a client profile, the obliged subjects are required to promptly send a report to the national *Financial Intelligence Unit* (FIU), a central specialized agency created in every country, charged with the financial analysis of the suspicious transactions reported and the dissemination of the resulting intelligence to the law-enforcement agencies[[8]](#footnote-8).

According to the FATF Recommendations a financial intelligence unit (FIU) “serves as a national centre for the receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis”.

The measures set up at FATF level are replicated in the European Union regulation, where three Directives have been issued in the last decades in order to create a harmonized regulatory environment among the Member States.

According to the developments of the international principles, the "Third AML Directive" (No. 2005/60/EC), currently into force, marked a change from the previous (No 91/308/EEC and No. 2001/97/EC): it was largely inspired by the “risk based approach” and strengthened and emphasized the principles and procedures that must govern the relationships between the obliged entities and their customers.

According to the “Third AML Directive”, in order to effectively combat money laundering and terrorism financing, each obliged entity has to comply with duties of customer due diligence and record keeping, based on the risk arising from clients or transactions. Furthermore, each Member State “shall establish a FIU as a central national unit responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering or potential terrorist financing. As a national, technical agency, the FIU must be given the degree of autonomy necessary to fulfil its responsibilities while being accountable for the results it achieves. It must be provided with adequate resources and must have access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires in order to perform its tasks”[[9]](#footnote-9).

In 2013, following the last revision of the FATF Recommendations, the European Commission launched a review of the European principles on the basis of an external study on 'implementation of the Third Directive’ (the "Deloitte study")[[10]](#footnote-10) and an intensive consultation of interested parties (private enterprises, civil society organizations, representatives of regulators and supervisors, etc.).

In light of the feedback received during the consultation process, the Commission issued a Proposal for a fourth Directive[[11]](#footnote-11), which will arise as a new reference for the evolution of the anti money laundering rules in the Member States[[12]](#footnote-12).

The Proposal does mark significant progresses on important aspects of the anti-money laundering regulation, such as the inclusion of tax crimes among the predicate offenses and a more precise definition of the risk based approach and its characteristics, also providing for the establishment of a supranational and national risk assessment exercise. In line with the FATF Recommendations, the text of the new Proposal establishes detailed measures for the transparency of institutions and companies and confirms the central role of the FIUs in the fight against money laundering and terrorism financing[[13]](#footnote-13).

**B. The FIUs. Basic characteristics**

FIUs meet the need to centralize information relating to transactions suspected to be related to money laundering or terrorism financing, in order to avoid dispersion and fragmentation and make more effective the investigation and the subsequent, possible prosecution of any financial offense[[14]](#footnote-14).

1. **Functions**

The core functions of an FIU call for objectivity in decision making, the timely processing of incoming information, and strict protection of confidential data.

FIUs serve as central agencies for the receipt of disclosures filed by reporting entities. At a minimum, this information should include suspicious transaction reports. The national legislation could require other information such as cash transaction reports, wire transfers reports and other threshold-based declarations/disclosures.

The financial analysis performed by the FIUs add value to the information received. The analysis may focus either on each single disclosure received or on appropriate selected information, depending on the type and volume of the disclosures received, and on the expected use after dissemination[[15]](#footnote-15).

FIUs conduct both operational and strategic analysis. The first is aimed to identify specific targets (e.g. persons, assets, criminal networks and associations), to follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of money laundering, predicate offences or terrorist financing[[16]](#footnote-16). Strategic analysis is focused on money laundering and terrorist financing related trends and patterns; this information is then also used by the FIUs or other state entities in order to determine money laundering and terrorist financing related threats and vulnerabilities (strategic analysis may also help to establish policies and goals for the FIUs).

In order to properly undertake their analysis, FIUs should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that they require.

The results of these analysis are disseminated, spontaneously or upon request, to relevant competent authorities (i.a., to the national law enforcement bodies), through dedicated, secure and protected channels, for further investigations and possible prosecutions.

Finally, FIUs exchange information each other, on a reciprocity basis, through securely protected channels. To this end, each national FIU should have an adequate legal basis for providing complete factual, and, as appropriate, legal information, including the description of the case being analysed and the potential link to the country of its counterpart. Upon request and whenever possible, FIUs should provide feedback to their foreign counterparts on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided.

1. **Independence and autonomy**

To ensure that the above mentioned requirements are met on an ongoing basis, FIUs need to be given enough operational autonomy to allow them to carry out their assigned tasks without undue interference[[17]](#footnote-17). According to the international standards, a FIU should be operationally independent and autonomous, meaning that the FIU should have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or disseminate specific information. In all cases, this means that the FIU has the independent right to forward or disseminate information to competent authorities.

Characteristics of operational and managerial autonomy are required by the international standards in defence of the independence of FIUs, the effectiveness of their action, the specialty of the functions related to the financial analysis, the heterogeneity of the information available in performing the analysis, that may be of financial, administrative or investigative type.

It’s worth noting that the autonomy and the independence of an FIU must be accompanied by adequate guarantees of accountability for the way in which the FIU carries out its mission[[18]](#footnote-18).

A number of factors enter into the definition of the autonomy and accountability of the FIUs. One is the placement of the FIU in the national administration. The law may also protect the independence of the FIU by defining the manner in which its head is appointed and replaced. Specific reporting arrangements may be set out. These factors are often intertwined and affect the degree of autonomy and accountability of an FIU. In addition to these legal factors, other factors may affect the autonomy of the FIU, such as the local conditions related to the relations between the political power and the administration, and the actual budgetary resources provided.

1. **Types of FIUs**

Different types of FIUs have been established in the world over the years. Taking into account the general purpose of combating money laundering, countries have generally given the national FIUs the three core functions that are part of the accepted definition of an FIU: reception, analysis and dissemination[[19]](#footnote-19). The administrative arrangements by which these functions are carried out, however, vary considerably from country to country.

In some countries, the function of the FIU as an additional tool for law-enforcement organizations in combating money laundering and associated crimes was emphasized, and this led to the establishment of the FIU in an investigative or prosecutorial agency. Other countries emphasized the need for a “filter” between the financial institutions and the police, and consequently their FIUs were established outside these agencies.

The wide variety of arrangements for FIUs may be summarized under four general headings: the administrative-type FIU, the law-enforcement-type FIU, the judicial- or prosecutorial-type FIU, and the “mixed” or “hybrid” FIU. Such classification is not exhaustive and other ways of classifying FIUs are possible[[20]](#footnote-20).

Administrative-type FIUs are usually part of the structure, or under the supervision of, an administration or an agency other than the law-enforcement or judicial authorities. They sometimes constitute a separate agency, placed into the organization of a ministry or administration but autonomous and independent. The objective of such an arrangement is to establish a “filter” between the financial sector (and, more generally, entities and professionals subject to reporting obligations) and the law-enforcement authorities in charge of financial crimes investigations and prosecutions[[21]](#footnote-21). The location of such FIUs varies: the most frequent arrangements are to establish the FIU in the ministry of finance, the central bank, or a regulatory agency.

In some countries, the emphasis on the law-enforcement aspects of the FIU led to the creation of the FIU as part of a law-enforcement agency. Under this arrangement the FIU acts as a body with appropriate law-enforcement powers. Acting close to other law-enforcement units, such as a financial crimes unit, it will benefit from their expertise and sources of information. In return, information received by the FIU can be accessed more easily by law-enforcement agencies and can be used in any investigation.

Judicial or prosecutorial-type FIUs are established within the judicial branch of the state and most frequently under the prosecutor’s jurisdiction, allowing the public prosecutors to direct and supervise criminal investigations. Disclosures of suspicious financial activity are usually received by the prosecutor’s office, which may open an investigation if suspicion is confirmed by the first analysis carried out under its supervision. The judiciary’s powers (e.g., seizing funds, freezing accounts, conducting interrogations, detaining suspects and conducting searches) can then be brought into force without delay. Judicial and prosecutorial FIUs can work well in countries where banking secrecy laws are so strong that a direct link with the judicial or prosecutorial authorities is needed to ensure the cooperation of financial institutions. The principal advantage of this type of arrangement is that disclosed information is passed from the financial sector directly to the judiciary power.

There is another category of FIUs that contain different combinations of the arrangements described previously. This “hybrid” type of arrangement is an attempt to obtain the advantages of all the elements put together. Some FIUs combine the features of administrative-type and law-enforcement-type FIUs, while others combine the powers of the customs office with those of the police.

Independently from each national arrangement, the international standards assign a key role to international cooperation between FIUs, in order to exchange information on suspicious transactions: FIUs must be able to cooperate regardless of their nature or the existence of international treaties or intergovernmental relations. Such approach is based on the autonomy and independence of the Units, their high technical skills and the specialty of their functions[[22]](#footnote-22).

**C. The Financial Intelligence Unit for Italy (UIF)**

1. **Organization and functions: a general overview**

The Legislative Decree no. 231 of 26 November 2007, transposing in Italy the "Third anti-Money Laundering Directive", established the Financial Intelligence Unit for Italy (UIF) within the Bank of Italy. The UIF, operational since 1 January 2008, has been defined by the same Decree as “the national structure charged with receiving information from persons obliged to provide it on suspected money laundering or terrorist financing, requesting it from same, analysing it and transmitting it to the competent authorities”.

With the establishment of the UIF at the Bank of Italy the legislator confirmed the choice made since 1997, for an FIU of administrative nature[[23]](#footnote-23), in continuity with the FIU functions assigned to the former Ufficio Italiano dei Cambi, which was abolished pursuant to Art. 62 of the same Lgs. Decree no. 231/2007[[24]](#footnote-24).

Therefore the anti-money laundering Italian framework is based on a clear distinction between the financial analysis and the investigations: the UIF is the authority competent to receive STRs, analyze them and disseminate the results of its financial analysis to the law enforcement authorities entitled to carry out further investigations (Special Foreign Exchange Unit of the Finance Police and the Bureau of Antimafia Investigation).

Pursuant to Art. 6, para. 2 of the Lgs. Decree no. 231/2007, the UIF performs its functions in complete autonomy and independence. Such characteristics can benefit from the considerable independence and autonomy of the Bank of Italy, according to the rules of the European System of Central Banks and those governing the national and European banking supervision.

The Lgs. Decree no. 231/2007, while entrusting the UIF with powers, tasks and responsibility consistent with said principles of autonomy and independence, has assigned a peculiar legal subjectivity to the Unit. It has no legal personality and its organization and functioning are provided for by a specific regulation issued by the Bank of Italy[[25]](#footnote-25); nevertheless, the UIF human, technical and financial resources are provided by the Bank of Italy, in accordance with internal regulations and principles of economical, proportional, efficient and effective management.

Aside from the structural and organizational aspects, the Decree intended to privilege a subjectivity strongly anchored to the core functions assigned to the UIF. That justifies the full autonomy and independence granted by law to the Unit as national center for allocation, coordination and channeling of data and information that are of significant public interest.

Accountability is an important complement of the autonomy and independence of the UIF. Together with the other authorities which are part of the AML apparatus, the UIF supplies each year to the Ministry of Economy statistics and information on the activity performed during the previous year as part of its functions. The statistics shall cover at least the number of reports of suspicious transactions received and analyzed. Such data allow the Ministry to present to the Parliament, by the end of May each year, a report containing an assessment of the action taken to prevent money laundering and terrorist financing and proposals to make it more effective.

Furthermore, the Director of the UIF transmits to the Parliament, via the Ministry of the Economy, an annual Report describing the activity performed during the previous year by the UIF, as part of the system serving to prevent and combat money laundering and the financing of international terrorism. The Lgs. Decree no. 231/2007 provides for the annual Report to be accompanied by a Report prepared by the Bank of Italy on the financial and other resources made available to the Unit.

The budget of the UIF is an independent item in the context of the budget of the Bank of Italy. It is therefore approved by the Board of Director of the Bank. It is for one year and it is defined on the basis of annually defined strategic goals.

The location at the Bank of Italy has entailed skilled human resources. As regards the personnel recruitment, the UIF can benefit from the selective competitions held by the Bank of Italy, which are also focused on the high knowledge of the economic and financial issues[[26]](#footnote-26).

The Director of the UIF is entrusted with the autonomous responsibility for the management of the Unit. He is appointed by the Directorate of the Bank of Italy, on the basis of a proposal from the Governor of the Bank, among persons with suitable integrity, experience and knowledge of the financial system[[27]](#footnote-27). The Director is responsible for the working of the structure, manages and controls the activity of the Unit, participates in national and international bodies engaged in AML/CFT activities[[28]](#footnote-28).

An advisory role at the UIF is assigned to the Committee of Experts, composed of four members appointed in compliance with a decree issued by the Ministry of Economy after consulting the Governor of the Bank of Italy. The Committee is entitled to provide general and abstract criteria for shelving the suspicious transaction reports and to set out general principles on the negotiation of memoranda of understanding. The Director can submit any other issue to the Committee for examination. Finally, the Committee is entitled of drawing up an opinion on the activity of the UIF, which is an integral part of the UIF’s annual Report sent to the MEF for the further transmission to the Parliament. The Committee is convened at least half a year and serves for a term of 3 years, which may be renewed for another three.

Pursuant to Art. 6, para. 6 of the Lgs. Decree no. 231/2007, the UIF performs the following activities:

1. analyzes financial flows with the aim of detecting and preventing money laundering and terrorist financing;
2. receives the suspicious transaction reports and conduct financial analyses thereon;
3. acquires additional data and information furthering the performance of its institutional functions from entities obliged to report suspicious transactions;
4. receives the communications of aggregated data in order to perform its strategic analysis;
5. has access to archives and data bases, publicly available or not.

Furthermore, availing itself of the information gathered in the performance of its activities, the UIF conducts analyses and studies on individual anomalies traceable to possible cases of money laundering or terrorist financing, on specific sectors of the economy deemed to be at risk, on categories of payment instruments and specific local economic conditions; develops and disseminates models and patterns representing anomalous conduct on the economic and financial plane that may be signs of money laundering or terrorist financing; may suspend transactions suspected of involving money laundering or terrorist financing for up to five working days, including at the request of the law enforcement or the judicial authorities.

1. **Receiving, analysing and disseminating suspicious transaction reports**

Pursuant to Art. 6, para. 6, lett. b) of the Lgs. Decree no. 231/2007, the UIF exercises the key functions of receiving and analyzing suspicious transaction reports (hereafter STRs) and of disseminating the results of its analysis to the competent authorities.

As regards the function of receiving, it’s important to highlight that the obligation to report a "suspicious transaction" to the UIF rises when the obliged entity (financial intermediary, non-financial operator or professional) "knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been carried out or attempted”. The suspicion may arise from the characteristics, size or nature of the transaction or from any other circumstance ascertained as a result of the functions carried out, also taking account of the economic capacity and the activity engaged in by the person in question, on the basis of information available to the reporting entity, acquired in the course of its work or following the acceptance of an assignment[[29]](#footnote-29).

It’s worth noting that the reporting obligation rises also in a state of doubt or not enough security about the actual existence of a case of money laundering. Indeed, the mere occurrence of "reasonable grounds to suspect"[[30]](#footnote-30) determines the existence of the reporting obligation for the operator.

The Lgs. Decree no. 231/2007 intended to delineate an independent definition of money laundering (art. 2), not recalling the Italian penal code (art. 648 *bis* and *ter*). This choice was imposed by the EU Directive, that fully defines those actions that "if committed intentionally, constitutes money laundering", aiming to create a coherent system of prevention and combating of money laundering at supra-national level, common to all Member States.

The notion of money laundering provided for by the Lgs. Decree no. 231/2007 could be defined as “administrative”: such definition is characterized by a greater flexibility in the identification of the behaviors and of the objective and subjective conditions that are required to enable the operators to report suspicious transactions. This results from a series of elements and, first of all, from the fact that the definition of money laundering also includes the activities of self-money laundering (operations aimed to conceal the illegal origin of the money, carried out by the same person who committed the predicate offense or participated in it), that in the Penal Code are not punishable independently from the predicate offense.

The “administrative” definition of money laundering - wider than the one provided for in the Italian criminal legislation, thus including also self-money laundering - has vastly expanded the range of suspicious transactions reportable to the UIF. As a result of that, since 2008 there has been a significant increase of suspicious transaction reports sent to the UIF: in the last two years the number of reports amounted to approximately 65,000 (in 2007 the STRs were about 12,500). Also notable are the total amounts reported: in 2013 about 84 billion of euro[[31]](#footnote-31).

In cooperation with the other authorities involved in the domestic anti-money laundering system, the UIF has drafted and is currently implementing measures aimed at coping with the flow of reports. To this end, the Unit has carried out significant investments in professional and technological resources in recent years. In particular, it has undertaken a far reaching revision of operational procedures, methods and instruments, while the breadth and depth of analyses are correlated with the level of risk associated with each report. A contribution to the efficiency of the process is made by an Internet-based system developed in 2011 for collecting and handling STRs. Such system, named RADAR, supports the entire cycle of acquisition, analysis and transmission of reports, to improve the quality of the reports, the financial analyses and the timeliness of the information flows[[32]](#footnote-32).

The new system for managing STRs has increased the amount of information available and reduced the need for additional reporting requirements, with positive effects on the overall efficiency levels. More structured information in STRs help the UIF to improve its capacity to select the reports, contributing to perform more complete evaluations and facilitating the identification of the most relevant cases[[33]](#footnote-33).

Pursuant to Art. 6, para. 7, lett. c) of Lgs Decree no. 231/2007, the UIF has the power, on condition that such action is not prejudicial to investigations under way, to suspend the transactions suspected of money laundering or terrorist financing, for up to five working days, on its own initiative, or at the request of the Special Foreign Exchange Unit of the Finance Police, the Bureau of Antimafia Investigation or the Judicial Authority. This is a particularly incisive measure, which is taken in case of urgent necessity to block any transfer of funds suspected to be of illicit origin. It is usually adopted in close coordination with the Judicial Authority, in order to allow the appropriate precautionary measures (seizure, confiscation, etc..).

The UIF is entitled to perform the financial analysis, using all its powers of collection of relevant information. It should be noted that financial analysis concerns not only the suspicious transaction reports but also unreported suspicious transactions of which the UIF becomes aware on the basis of information contained in its databases or sent by the law enforcement agencies, the supervisory authorities or the professional associations, other foreign FIUs.

Moreover, in order to perform its analysis functions, the UIF has access to a wide set of sources (it’s important to mention, in this respect, the access of the UIF to the registry of accounts and deposits and to the tax registry at the Revenue Agency). It’s worth noting that the UIF has not access to law enforcement information for its domestic analytical purposes, but it can obtain this information when it comes to providing assistance to its foreign counterparts[[34]](#footnote-34).

The UIF examines any other fact that could be related to money laundering or terrorist financing. To this end it collects additional data from reporting parties, including by means of inspections, cooperates with foreign FIUs and, within Italy, exchanges information and cooperates with financial supervisory authorities, judicial authorities, law enforcement bodies and other competent authorities[[35]](#footnote-35).

The analysis of STRs by the UIF consists basically in investigating the financial aspects in order to understand the context underlying the report, ascertain the origin and destination of the funds and identify the possible aims of the transaction.

In line with the positions adopted at international level by the FATF, which provide for a selective approach in the treatment of STRs, the analytical process differs with the depth of financial investigation required, according to the risk of money laundering and the financing of terrorism inherent in the various transactions reported.

Financial analysis can proceed on several levels and is preceded by an enrichment phase consisting in the supplementation of the information originally notified by the reporting entities with additional information of help in assessing the transactions reported. Enrichment, triggered automatically by computerized procedures immediately after reports are received, concerns information in other databases owned by the UIF or available to it[[36]](#footnote-36).

If the analyst concludes that there is no risk of money laundering or terrorist financing, he proposes that reports be closed, considering it as unfounded. Although they have been closed, such reports are nonetheless transmitted to the investigative bodies with a standard technical report and may be re-examined later if new evidence should emerge making the hypothesis of money laundering plausible or if so requested by the investigative bodies[[37]](#footnote-37). The dismissal of such reports is notified to the reporting entities.

The investigation of the more complex transactions is carried out as part of a broader financial analysis whose direction and depth vary from case to case in accordance with the risk associated with the suspect transactions under examination. During investigations analysts may use multiple information sources and the broad powers of initiative provided by law; in particular, they may acquire data and information from reporting entities and all the persons required to make reports and use information obtained from institutional entities and foreign financial intelligence units.

The overall analysis of suspicious transaction reports, in the light of their recurrence in a systematic view, allows the UIF to outline types of behaviors characterized by a potential link with criminal conducts. In recent years, UIF has paid its attention to the trust and vehicles frequently used to shield the beneficial ownership and prevent a proper reconstruction of the cash flows. Similar purposes have emerged in the underwriting of life insurance policies to high financial content issued by foreign companies. In parallel with the intensification of the economic crisis has been observed a greater spread of usury (as evidenced by reports of suspicious transactions doubled in 2013 over the previous year). Important phenomena of international tax evasion, computer frauds based on identity theft, abnormal use of payment cards (not consistent with the true purpose of these instruments and the economic profile of the owners), cases of potential offenses against public interest or attributable to politically exposed persons, inappropriate use of public funds, failures in applying the rules on the traceability of financial flows in the field of public procurement, embezzlement of funds attributable to political parties, situations of bribery or corruption were detected[[38]](#footnote-38).

Apart from the cases of reports closed as unfounded, the UIF transmit the STRs, including a technical report containing the information on the transactions provoking the suspicion of money laundering or terrorist financing, without delay, including on the basis of memoranda of understanding, to the Special Foreign Exchange Unit of the Finance Police and to the Bureau of Antimafia Investigation, which will inform the National Antimafia Prosecutor, whenever the case submitted relates to organized crime[[39]](#footnote-39).

1. **Improving reporting awareness and ability**

The growing number of reports also expanded the volume of data available to the UIF, increased their information value, and had a positive effect on the Unit’s cooperation with other national and foreign authorities. The trend also points to intermediaries’ growing awareness of the importance of carefully examining customers and their transactions, as a first line of defense against criminal infiltration and contamination[[40]](#footnote-40).

The quality of reports is of fundamental importance if they are to make an effective contribution to combating money laundering. Common sense and an ability to discern and weigh anomalous factors in transactions must guide the activity of reporting entities.

Reports must derive from a reasonable suspicion, have passed through a fine filter and spring from a real desire to cooperate rather than from the fear of incurring the sanctions established by law. The spirit of the AML Italian legislation excludes the possibility of so-called “active cooperation” being restricted to activating automatic observation mechanisms, which would reduce the assessment of the risk inherent in each transaction to a mere bureaucratic formality.

To these ends, the UIF has the power of issuing instructions regarding the data and information that reports must contain. As said before, the general revision of the report form has made it possible for STRs to be more complete and uniform, enriching the suspicious facts reported with essential information and adequate reasons.

Furthermore, the UIF pursuits - with an intense awareness-raising activity - the objective of facilitating the identification of behaviors that can be connected to money laundering or terrorist financing and to increase the diagnostic skills of the reporting entities.

This objective has been carried out through the development of anomaly indicators and patterns and models of anomalous behaviour.

According to Art. 41, para. 2, of Lgs. Decree no. 231/2007, the UIF is in charge of proposing and periodically updating the anomaly indicators to assist the obliged entities in detecting STRs.

The indicators are formally issued by the Ministry of Justice, for the professionals (in consultation with the self regulatory bodies), the Bank of Italy for the financial intermediaries and the Ministry of Internal Affairs for non financial business and operators[[41]](#footnote-41).

The indicators of anomalies are a not exhaustive list of elements that makes reference to the subjective profiles and the objective aspects to facilitate the assessment of reporting entities. As clearly stated, the absence of indicators is not sufficient to rule out the transaction’s being suspicious.

Since its establishment, the UIF has elaborated and proposed anomaly indicators for almost all the range of reporting entities. The following measures have provided each category with specific indicators related to money laundering and to terrorist financing:

1. Decree of the Ministry of Justice of 16 April 2010 establishing anomaly indicators for the purpose of facilitating some categories of professionals and auditors in identifying suspicious transactions;
2. Bank of Italy measure of 24 August 2010 establishing anomaly indicators for intermediaries;
3. Decree of the Ministry of Internal Affairs of 17 February 2011 establishing anomaly indicators for the purpose of facilitating some categories of non-financial operators in identifying suspicious transactions, updated on 27 April 2012, thus extending the indicators to gaming operators with a physical network;
4. Bank of Italy measure of 30 January 2013 establishing anomaly indicators for auditors and auditing companies charged with reviewing the accounts of bodies of public interest.

The above-mentioned provisions have a uniform structure, with provisions of a general nature and an annex containing specific indicators, tailored to the characteristics of each category of reporting entities[[42]](#footnote-42).

Pursuant to Article 6, para. 7, lett. b) of Lgs. Decree no. 231/2007, the UIF also disseminates models and patterns of anomalous conduct from an economic and financial perspective that may be indicative of money laundering and terrorism financing. These are a complementary instrument designed, like the indicators, to assist the reporting entities in the identification of suspicious transactions to be reported.

The models differ from the indicators in that they are intended to draw operators’ attention to specific sectors of operation or courses of conduct that may involve anomalies possibly arising from criminal phenomena[[43]](#footnote-43). The models make reference to subjective and objective anomalies that can be related to specific predicate crimes, abuse of payment instruments, or fraud or other typologies identified in specific sectors.

From September 2009 onwards, the Unit has sent out, through specific public announcements, a series of communications issuing models and patterns related to the following matters: firms in difficulty and usury (24 September 2009); Dedicated accounts ([13 October 2009](http://www.bancaditalia.it/UIF/prev-ricic/sos/norm-sos/norm-circ/FIU-Communication-13october2009.pdf)); Internet fraud (9 November 2009); Risk of carousel VAT frauds (5 February 2010); Operations connected with the abuse of public financing (8 July 2010); Leasing fraud (17 January 2011); Usury (9 August 2011); Factoring fraud (16 March 2012); International tax fraud and invoicing fraud (23 April 2012); anomalous conduct relating to the gaming industry (one addressed to banks, the other to the gaming industry, 11 April 2013); Anomalous use of trust (2 December 2013); Anomalous use of payment cards for cash withdrawals (18 February 2014) [[44]](#footnote-44).

It’s worth noting that neither the anomaly indicators nor the models and patterns are binding. However, they help to build objective and subjective profiles that assist the operators in identifying suspicious transactions and consequently in choosing those to report. There is no inevitable link between one of the cases described in the forms or the indicators occurring and the triggering of the obligation to submit a report, which arises only after the operator has made a careful assessment.

1. **Strategic analysis**

Lgs. Decree no. 231/2007 calls the UIF to perform, in addition to the tasks aimed to analyze single suspicious transactions and identify potential criminal activities, strategic analysis functions, targeted to identify phenomena, trends, potential weaknesses of the system. Strategic analysis allows the Unit to define priorities and strategies. The sharing of its results with other authorities and operators encourages the strengthening of the overall anti-money laundering system.

From the viewpoint of strategic analysis, UIF analyzes financial; conducts analyses and studies on individual anomalies related to possible cases of money laundering or terrorist financing, on specific sectors of the economy deemed to be at risk, on categories of payment instruments and on specific regions or areas; makes analyses to reveal if there is any money-laundering or terrorist financing activity in any particular areas of the country.

As regards the data available to perform strategic analysis, under the Lgs. Decree no.231/2007 (art. 6, par. 6, letter d), the UIF receives aggregate anonymous data regarding all transactions whose amount exceeds 15,000 euros from the main categories of reporting entities (banks, Poste Italiane, fiduciary and asset management companies, securities firms and insurers)[[45]](#footnote-45). Moreover, the Law no. 7/2000 establishes that every transaction in gold relating to investments or gold for industrial use worth € 12,500 or more must be reported to the UIF. Transactions involving jewellery do not fall within the scope of the reporting obligation. The report must be filed by only one party of the transaction, preferably the seller.

Furthermore, for its studies and analyses, in addition to its internal databases, the UIF has access to a wide range of additional sources providing data of various nature: economic, financial and socio-demographic variables help identify physiological determinants of financial flows, whilst connections with illegal activities may be detected by using data on crimes and investigations[[46]](#footnote-46).

In addition and in compliance with privacy general obligations, the UIF also processes data from other competent authorities, such as aggregated data on crime extracted from a database at the Ministry of Internal Affairs, macroeconomic indicators, from the National Institute for Statistics and data on taxable income, from the National Tax Authority.

Open source information from the internet greatly enriches the dataset that the UIF exploits for its analyses.

The techniques deployed for the strategic analysis can be different, depending on the complexity of the phenomena under investigations, the purpose of the analysis, the nature of the data available and of related information. Simple descriptive statistics are used to produce synthetic reports to monitor patterns of relevant aggregates. More sophisticated quantitative methods (such as econometric models or data mining techniques) are implemented in order to process the information that may be extracted from big quantities of data, by deploying sophisticated software and hardware tools.

The Lgs. Decree no. 231/2007 (art. 9, para. 9) requires that the general results of the studies the UIF performs shall be provided to police forces, financial sector supervisory authorities, the Ministry of the Economy, the Ministry of Justice and the National Antimafia Prosecutor. Moreover, the UIF provides the Bureau of Antimafia Investigation and the Special Foreign Exchange Unit of the Finance Police with the results of the analyses and studies carried out on specific anomalies indicative of money laundering or terrorist financing.

In addition to that, the UIF strives to develop its analyses so that they also feed back to operational analysis, providing it with useful outcomes, which may vary from the risk ranking of geographical areas or intermediaries (and the categories thereof) to the detection of single financial flows or transactions involving funds of illicit origin that may have not been reported as an STR.

As regards the operational implications of the UIF’s strategic analyses, it’s important to highlight that the results obtained are used to build indicators of money laundering risk or anomaly schemes, model and patterns, to identify intermediaries to be subject to onsite inspections, to detect unreported anomalous financial flows to be further analyzed.

To make available the results of its strategic analysis, the UIF initiated the regular dissemination of statistical data on its activity and the publication of issues and studies[[47]](#footnote-47).

In 2013, attention was focused on the use of cash, in order to identify areas in which the use of such payment instrument presents profiles of anomaly[[48]](#footnote-48), and on the determinants and anomalies of financial flows to the “offshore” financial centers[[49]](#footnote-49).

The results of the strategic analysis carried out by the UIF contributed to the development of a   
methodology for national risk assessment, in accordance with the new FATF Recommendations, with the aim of achieving the identification, analysis and assessment of threats of money laundering and terrorist financing, identifying the most relevant ones and their implementation methods[[50]](#footnote-50).

1. **Cooperation at national and international level**

The Italian anti-money laundering legislation tend to create a network of relationships based on a systematic institutional coordination and the development of synergies between actions carried out by the authorities involved. In this perspective, the Lgs. Decree no. 231/2007 (art. 9) provides the legal basis for a wide cooperation between the UIF and all the domestic authorities involved in the prevention and contrast of money laundering and terrorist financing. Arrangements in this field are useful to perform its institutional tasks.

With the aim of facilitating the activities connected with the investigation of suspicious transaction reports, the UIF exchanges regularly information with the law enforcement authorities; it also has the faculty to conclude memoranda of understanding, establishing the conditions and procedures for such bodies to exchange police data and information.

The UIF and the financial sector supervisory authorities exchange information, thus facilitating the development of the respective functions of supervision and monitoring. Moreover, financial sector supervisory authorities, interested administrative bodies and professional associations inform the UIF of possible cases of failure to make suspicious transaction reports and of every fact that could be connected with money laundering or terrorist financing observed in respect of the obliged subjects.

Information provided by supervisory or investigative authorities assists the UIF to target sectors and subjects at highest risk most in need of improving compliance.

Relationships between the UIF and the Judicial Authority have been developed along two directions: on one hand, the flow of suspicious transactions reports and the subsequent financial analysis conducted by the UIF are aimed at fostering the conduct of in-depth investigation by the law enforcement bodies and to facilitate the launch of the related judicial initiatives[[51]](#footnote-51); on the other hand, there are increasingly frequent requests by the prosecutors, concerning suspicious transaction reports, technical and financial analyses and information from other FIUs, through which the prosecution can take advantage for its own initiatives[[52]](#footnote-52).

Further opportunities for collaboration between the UIF and the Judicial Authority are expressly provided for by Lgs. Decree no. 231/2007: in this perspective, according to Art. 9, para. 7, where the Judicial Authority has cause to believe that money has been laundered or money, property or other proceeds of illegal origin have been used in transactions carried out at supervised intermediaries, it shall notify the competent supervisory authority and the UIF, for the acts for which they are competent. The information communicated shall be covered by professional secrecy. Notification may be delayed when it could be prejudicial to the investigation. The supervisory authority and the UIF shall inform the Judicial Authority of the steps taken and the measures adopted.

The increasing use of various forms of cooperation has led to the development of relations also based on consulting between the FIU and prosecutors more involved in the fight against organized crime, corruption and tax evasion, with positive results in investigations and prosecutions. It’s important to take into account that such intensive cooperation with the Judicial Authority is conducted in compliance with the distinction of roles between financial and investigative analysis as established by law[[53]](#footnote-53).

The UIF is also empowered to independently make arrangements with foreign counterparts. In particular, Art. 9, par. 3, of Lgs. Decree no. 231/2007 provides that “ By way of derogation from the obligation of professional secrecy, the UIF may exchange information and cooperate with homologous authorities of other states that pursue the same purposes, subject to reciprocity also as regards confidentiality of information, and may conclude memoranda of understanding to this end”.

UIF provides cooperation on money laundering, associated predicate offences and terrorist financing to foreign counterparts not only in the framework of the mentioned art. 9, par. 3, but also based on the provisions in the Council Decision 2000/642/JHA[[54]](#footnote-54), according to which “Member States shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Decision or in accordance with existing or future memoranda of understanding, any available information that may be relevant to the processing or analysis of information or to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved” (art. 1, par. 2).

The range of information that UIF is able to provide to its foreign counterparts is as broad as that available for its domestic analytical purposes[[55]](#footnote-55). UIF’s capacity to cooperate includes both spontaneous and upon request exchanges and, based on art. 9, paragraph 3, is subject to reciprocity principles[[56]](#footnote-56).

According to the international standards, each FIU must grant its prior consent to its information being further used or disseminated by the foreign counterparts to which it is forwarded. The legal basis for this is provided by the mentioned Council Decision 2000/642/JHA, also establishing that “an FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, in exceptional circumstances, where divulgation of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State concerned or would otherwise not be in accordance with fundamental principles of national law” (art. 5, par. 3). The Council Decision also maintains that any refusal to grant consent should be appropriately explained.

UIF exchanges information through the dedicated channels used by FIUs globally for their cooperation (namely, the Egmont Secure Web and the regional FIU.NET network). UIF only uses these channels, that ensure security and confidentiality and allow to identify univocally and clearly each counterpart. The access to and the use of the channels and gateways for international cooperation are strictly limited and regulated and appropriately secured by internal rules of procedure[[57]](#footnote-57).

UIF can co-operate freely with its foreign counterparts, without any need for bilateral or multilateral agreements. At the same time, UIF can negotiate and sign directly (that is, with no need for third parties’ authorizations) memoranda of understanding with any foreign counterparts that need them to be able to co-operate[[58]](#footnote-58).

Based on the same legal basis that allows UIF to share information internationally, UIF provides feedback to the foreign counterparts on the use and usefulness of the information received. This is particularly the case where such information is forwarded to law enforcement agencies and prosecutors (based on the prior consent) and then used either in the context of ongoing investigations or as a means to target, prepare and file international rogatory letters.

1. **Controls and inspections**

The UIF exercises its competences by activating controls and extensive powers to request data and documents. The inspections constitute a particularly incisive tool.

The UIF inspection activity is directed, on the one hand, towards financial analysis of reported suspicious transactions and the hypotheses of omitted reporting it finds out from third-party authorities (Art. 47, para. 1, lett. a) of Lgs Decree no. 231/2007, defined as “targeted inspection”) and, on the other, towards general inspections (art. 53, para. 4 of Lgs. Decree no. 231/2007) aimed at verifying the adequacy of reporting procedures and fulfilment of active cooperation. For this last purpose, the FIU may request the collaboration of the Special Foreign Exchange Unit of the Finance Police.

The targeted inspections are mainly aimed at acquiring on site details on the flows of funds referring to specific transactions. Such inspections permit flexibility of intervention and speedy gathering of relevant information, namely in cooperation with the investigative and judicial Authority. In addition, they are increasingly carried out as part of the Unit’s cooperation with the authorities involved in preventing and combating money laundering, particularly with the judicial and investigative authorities.

The UIF inspection activity can be addressed to all the range of reporting entities and it is performed by the UIF through on site controls and off site controls.

During inspections carried on by the UIF under Art. 47, para.1, let. a) and under Art. 53, para. 4 operational and procedural dysfunctions detected are reported to the Bank of Italy as supervisory authority regarding the intermediary’s compliance with the anti-money laundering legislation (in particular, the rules on organization, customer due diligence and compliance with data recording and retention requirement). The information that the Unit acquired through its inspections is transmitted, where deemed relevant, to the Bank of Italy in its capacity as supervisory authority.

In 2013 the UIF intensified its efforts in the inspection activity, starting an ongoing conversion of strategies that involve the use of inspections not only as a tool for verifying the compliance in fulfill the reporting obligations but also deepening segments and phenomena at particular risk. According to that, inspections have been were oriented toward critical areas such as asset management, banking online, abnormal use of payment cards, transactions in shares of foreign companies in exchange with Italian banks and financial intermediaries.

1. **Secrecy and confidentiality**

Legislative Decree no. 231/2007 contains rules concerning the protection of confidentiality of information managed by the UIF and of the reporting entities.

Art. 9, para. 1, provides that all the information in the possession of the UIF is covered by professional secrecy, including *vis-à-vis* the public administration apart from the cases of communication expressly provided for by the same Lgs. Decree.

Moreover, Art. 45, para. 4, states that the flows of information on suspicious transaction reports between the UIF, the Finance Police, the Directorate of Antimafia Investigations, the supervisory authorities and the professional associations shall be sent electronically, in such a way as to ensure their confidentiality and security. According to the same Art. 45, para. 5, the law enforcement agencies adopt, on the basis of memoranda of understanding and having consulted the Financial Security Committee, adequate measures to ensure the maximum protection of the identity of the reporting entities[[59]](#footnote-59).

Pursuant to Art. 46, para. 1, “whosoever may in any case be aware of a report’s having been made shall be prohibited from passing on this information except in the cases envisaged by this decree” The violation of the said obligation is sanctioned with a criminal sanction, provided for in Art. 55, para. 8.

It’s worth noting that from its establishment, the UIF has developed various initiatives for the IT modernisation in handling, storage and use of information related, in order to increase the standards of security and confidentiality of the data handled. All the exchanges of information with other FIUs is realised through the protected Egmont Secure Web and FIUNET, whose access is granted to a limited number of authorised persons.

Specific rules govern the STRs transmitted by legal professionals. They can send STRs directly to the UIF or to their professional association (specifically named by a decree of the Ministry of the Economy, in agreement with the Ministry of Justice). The same associations, after receiving a STR from one of their members, transmit it - without delay - to the UIF, without naming the source. In order to comply with this rule, UIF has signed specific Memoranda of Understanding with the national associations of notaries and labour consultants (named with specific Ministerial Decrees)[[60]](#footnote-60), establishing the implementing measures for the transmission of STRs from professionals to the UIF, protecting the identity of the reporting individuals.

**D. Other functions assigned to the UIF**

The tasks of the UIF also extend to preventing and combating terrorist financing as a combined effect of the provisions of Lgs. Decrees 109/2007 and 231/2007, with particular regard to the reception and examination of suspicious transaction reports. Regulation (EC) No. 423/2007, as amended by Regulation (EC) No. 1110/2008, includes combating the financing of the proliferation of weapons of mass destruction among these tasks[[61]](#footnote-61).

In 2010, Regulation (EC) No. 961/2010 repealed the two earlier regulations and introduced measures restricting financial transactions alongside the obligations to send reports and to impose freezes. As part of the activity to combat the financing of terrorism and proliferation, the UIF’s financial analysis also concerns reports of suspected financing of terrorism and of plans for the proliferation of weapons of mass destruction. The Unit’s tasks include compiling notifications of freezes and disseminating, on its website and by other means, the lists of persons designated by the competent international authorities.

With the aim of preventing and combating money laundering, the regulations governing the gold market make it obligatory to declare operations amounting to €12,500 or more relating to investments in gold and transactions in gold material mainly for industrial use, and transmit the same declarations to the UIF (or give it to a bank for transmission to the UIF)[[62]](#footnote-62).

Finally, in order to combat the financing of Internet-based child pornography, Article 19 of Law 38/2006 provides for the issue of a regulation defining the procedures for the confidential transmission of information between the UIF, the National Centre established at the Ministry of the Internal Affairs and the financial system. In this field the UIF is assigned to receive information from banks, post offices and financial intermediaries providing payment services, on relationships and transactions ascribable to persons involved in marketing child pornography, and to transmit the information acquired to the Centre at the Ministry of the Internal Affairs[[63]](#footnote-63).

1. **The effectiveness of the UIF’s activity: some conclusive remarks**

The characteristic trait of the UIF’s activity is receiving, analyzing and disseminating STRs and other information relevant in order to prevent possible money laundering, terrorist financing and other related predicate offenses. The system based on STRs is one of the cornerstones of the Italian discipline of prevention of money laundering.

Is such system effective? Does it work efficiently? In order to answer this question, it must be taken into account the above mentioned clear distinction between the preventive approach, aimed to protect the integrity of the financial markets, and the repressive one, focused on the prosecution of the money laundering related crimes. From the point of view of the prevention, the evaluation of the effectiveness of the anti-money laundering system cannot be based on the number of convictions for the offense of money laundering, but must take into account the size and the proportion of reports significant for the purposes of preventing the integrity of the financial system and identifying and prosecuting serious criminal cases.

The value of such system is shown by the contribution that STRs - and the financial analysis performed at the UIF - provide to the investigations and prosecutions aimed to identify and prosecute not only episodes of money laundering but also other serious crimes identified as predicate offences. In recent years, numerous STRs transmitted by the Unit to the law enforcement agencies have been deemed worthy of investigation findings. This has been confirmed by the last available annual Report of the Ministry of Economy to Parliament (for 2012), according to which nearly a half of the suspicious transaction reports has taken into account as relevant for in-depth investigations and criminal proceedings, aimed at the repression not only of money laundering, but also of various predicate offenses[[64]](#footnote-64).

The efficiency and effectiveness of the anti-money laundering system also relies on the experienced network of institutional relationships based on the coordination between the authorities involved, the development of synergies between the actions carried out by each one and the convergence of the objectives pursued. Established relationships between the UIF and the other national authorities involved in the anti-money laundering legislation aim at checking fulfillment of the obligations imposed by the rules and allow to share methodologies useful to monitor and evaluate specific risk situations.

Furthermore, international cooperation - developed through the extensive worldwide network of FIUs - is crucial to address the global dimension of money laundering and identify transnational flows of funds of illicit nature. The network of the FIUs has proved effective not only for the deepening of suspicious transactions, but also in the course of investigations and prosecutions, allowing judicial authorities to capture useful information, to formulate appropriate international requests of data and information and, in some cases, to obtain temporary blocks of funds in function of the subsequent request for seizure.

1. These subjects may be involved in laundering activities, not only when ignoring the origin of the assets but also, sometimes, playing an active role in the realization of illicit purposes. On the international strategies on combating money laundering and terrorist financing, see E. Aninat, D. Hardy and B.R. Johnston, *Combatting Money Laundering and the Financing of Terrorism, Finance and Development*, Vol. 39, no. 3, September 2002, pp. 44-47; J. Broome, *Anti-Money Laundering - International Practice and Policies*, Thomson, Sweet & Maxwell Asia, 2005; see also A. Veng Mei Leong, *Chasing dirty money: domestic and international measures against money laundering,* in “Journal of Financial Crime”, Vol. 10, No. 2, 2007, pp. 140-156; M. Pieth and S. Eymann, *Combating the Financing of Terrorism: Is It Working?*, Verlag Peter Lang, May 2009. As regards the Italian literature, see S. Giacomelli e G. Rodano, *Denaro sporco. Economie criminali, politiche di contrasto e ruolo dell’informazione*, Roma, Donzelli, 2001; M. Condemi, *Uso illecito del sistema finanziario a scopo di riciclaggio ed effetti monetari dell’attività criminale*, in Aa.Vv., *Scritti in memoria di Pietro De Vecchis*, Bank of Italy, Rome, 1999, p. 227 e ss. See also G. Rey, *Analisi economica ed evidenza empirica dell’attività illegale in Italia*, in V. Zamagni (ed.), *Mercati illegali e mafie. L’economia del crimine organizzato*, Bologna, Il Mulino, 1993, p. 15 e ss. [↑](#footnote-ref-1)
2. Reference is made to the three stages into which the international literature articulates the conducts aimed to the laundering of criminal proceeds: “placement” of the proceeds of crime, for example, in financial intermediaries or institutions; “layering”, consisting in carrying out operations aimed to separate the funds from their illicit origin (often diverting funds to foreign countries); final “integration” of funds in the circuits of the legal economy. See E. Cappa and L.D. Cerqua, *Il riciclaggio del denaro. Il fenomeno, il reato, le norme di contrasto*, Milano, Giuffrè, 2012; D. Masciandaro, *Banche e riciclaggio*, Milano, Giuffrè, 1994.; S. Faiella, *Il riciclaggio e il crimine organizzato transnazionale*, Milano, Giuffrè, 2009. [↑](#footnote-ref-2)
3. As regards the development of the international rules see M. Condemi and F. De Pasquale (ed.), *Lineamenti della disciplina internazionale di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo*, Bank of Italy, Legal researches, Rome, 2008. [↑](#footnote-ref-3)
4. If the efforts in the fight against money laundering and terrorist financing are to be successful, traditional law-enforcement methods need to be supported by the contribution of the financial institutions, that hold critical information on transactions that may hide criminal schemes. The access of the anti money laundering authorities to these information, normally covered by confidentiality regimes, is essential to trace criminal money channels, through financial analysis, and enable subsequent possible investigations and prosecutions. See J. Hart, *Criminal infiltration of financial institutions: a penetration test case study*, in “Journal of Money Laundering Control”, Vol. 13, No. 1, 2010, pp. 55-65; B.R. Johnston and I. Carrington, *Protecting the financial system from abuse - Challenges to banks in implementing AML/CFT Standards*, in “Journal of Money Laundering Control”, Vol. 9, No. 1, 2006, pp.48-61; W. Hetzer, *Money Laundering and Financial Markets*, in “European Journal of Crime”, Criminal Law and Criminal Justice, Vol. 11, 2003, pp. 264-277. [↑](#footnote-ref-4)
5. The FATF Recommendations were substantially revised over the years and, most recently, in February 2012. The New Recommendations are available at [www.fatf-gafi.org](http://www.fatf-gafi.org). [↑](#footnote-ref-5)
6. The FATF Recommendations, as most of the rules, guidelines, recommendations and other instruments used in international financial relations, are generally referred to as "soft law": they derive their strength by virtue of the spontaneous transposition into domestic regulations or through mechanisms of "peer pressure" or "market discipline". The FATF provides a decisive contribution to the rapprochement of the regulations and the homogeneity of anti-money laundering national rules and cooperation between the authorities of different countries. The FATF also plays an intensive role in the evaluation of the alignment of the countries to the Recommendations, in order to identify "strategic deficiencies" and to encourage national legislators to take appropriate countermeasures to mitigate the risks and to intensify the necessary international pressure. [↑](#footnote-ref-6)
7. The "risk-based approach" is the core of the FATF Recommendations. It applies to countries and to the individual operators: the impact of national measures and of the obligations for the individuals can be calibrated according to the risks of money laundering and financing of terrorism. [↑](#footnote-ref-7)
8. With reference to the financial intermediaries, the anti-money laundering obligations are integrated within the prudential supervision: stability-oriented controls and prudential measures also aim to preserve the integrity of the financial system and the reliability and correctness of customers relationships. Both prudential and anti-money laundering obligations presuppose adequate organizational, procedural and technological safeguards. The costs faced by operators in fulfilling the anti-money laundering obligations are justified in the advantages arising from the protection against the risks (operational and reputational) related to the involvement in illegal behaviors. Legal professionals and other non-financial operators are involved in the anti-money laundering obligations because their activities are frequently required by criminals to complete illicit transactions or laundering schemes. Sometimes, the access to specialized legal skills and services is necessary in order to assist the laundering of the proceeds of crime and the funding of terrorism, employing methods as misuse of client accounts, purchase of real properties, creation or management of trusts and companies, etc. See FATF, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, in<http://www.fatf-gafi.org/topics/methodsandtrends/documents>. As regards the anti-money laundering requirements for professionals, see, i.a., He Ping, *Lawyers, notaries, accountants and money laundering*, in “Journal of Money Laundering Control”, Vol. 9, No. 1, 2006, pp. 62-70. [↑](#footnote-ref-8)
9. See, in the Italian literature, L. Salazar, *Riciclaggio dei capitali: Direttiva comunitaria e legislazione italiana*, in *Foro It.*, 1991, IV, col. 273 ss.; A. De Guttry, *Commento alla Direttiva 91/308/CEE del Consiglio delle Comunità Europee del 10 giugno 1991 relativa alla prevenzione dell’uso del sistema finanziario a scopo di riciclaggio dei proventi di attività illecite*, in A. De Guttry and F. Pagani (ed.), *La cooperazione tra gli Stati in materia di confisca dei proventi di reato e lotta al riciclaggio*, Padova, 1995, pp.293 ss.; E. U. Savona, *Luci e ombre di un esperimento regionale: la direttiva anti-riciclaggio dell’Unione Europea*, in C. G. Cortese and V. Santoro (ed.), *Il riciclaggio del denaro nella legislazione civile e penale*, Milano, 1996, pp.86 ss. As regards the evolution of the European legal framework, see P. Costanzo, *La disciplina comunitaria: dalla Direttiva 91/308/CEE alla Direttiva 2001/97/CE*, in M. Condemi and F. De Pasquale (ed.), *Profili internazionali …*, pp. 59 ss. As regards the Third AML Directive, see E. Cassese and P. Costanzo, *La terza Direttiva comunitaria in materia di antiriciclaggio e antiterrorismo*, in “Giornale di diritto amministrativo”, 2006, no.1, pp.5 ss. [↑](#footnote-ref-9)
10. *Final Study on the Application of the Anti-Money Laundering Directive*, Deloitte, December 2010, http://ec.europa.eu/internal\_market/company/docs/financial-crime/20110124\_study\_amld\_en.pdf. [↑](#footnote-ref-10)
11. COM(2013) 45/3, *Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing,* Bruxelles, February 2013. [↑](#footnote-ref-11)
12. It’s important to highlight the choice made by the Proposal for maintaining a minimum level of harmonization. This approach leaves room for possible misalignments between the rules of transposition issued at national level, allowing regulatory arbitrages and avoidance behaviors, that could affect the overall effectiveness of the anti money laundering system. [↑](#footnote-ref-12)
13. It’s worth noting that the above mentioned Proposal for a Fourth Directive recognizes a European Platform of FIUs as a venue for development of guidelines for the application of the European rules, coordination of cooperation activities, joint analyses of cases of mutual interest. [↑](#footnote-ref-13)
14. FIUs have now been in existence for over twenty years, and more almost 140 have been admitted into the Egmont Group, the international association of FIUs created in 1995 in order to develop cooperation and share best practices between FIUs. At the Egmont Group the FIUs meet regularly to find ways to cooperate, especially with regard to information exchange, training, and the sharing of expertise. Countries must go through a formal procedure established by the Egmont Group in order to be recognized as meeting the Egmont definition of an FIU. The Egmont Group as a whole meets once a year. Since the Egmont Group is not a formal organization, it has no permanent secretariat. Administrative functions are shared on a rotating basis. Aside from the Egmont support position, working groups and the newly established Egmont Committee are used to conduct common business. [↑](#footnote-ref-14)
15. International Monetary Fund, *Financial Intelligence Units: an overview*, IMF Legal Dep., Washington, 2004. [↑](#footnote-ref-15)
16. In addition to the information that obliged entities report to the FIU (under the receipt function), the FIU should be able to obtain and use additional information from reporting entities as needed to perform its analysis. Furthermore FIU should have access to the widest possible range of financial, administrative and law enforcement information. This should include information from open or public sources, as well as relevant information collected and/or maintained by, or on behalf of, other authorities. [↑](#footnote-ref-16)
17. International Monetary Fund, *Financial Intelligence Units…*, pp. 23 ss. [↑](#footnote-ref-17)
18. The means by which FIUs are accountable for their actions and the person or body to which they are formally accountable will vary from country to country. Accountability mechanisms, however, need to ensure that the special powers entrusted to the FIU are not abused and that the public resources put at its disposal are used efficiently for the intended purposes. [↑](#footnote-ref-18)
19. FIUs, at a minimum, receive, analyze, and disclose information on suspicious or unusual financial transactions provided by financial institutions or other operators to competent authorities. Although every FIU operates under different guidelines, most FIUs can exchange information with foreign counterpart FIUs. In addition, many FIUs can provide data and information to their counterparts, which can also be very helpful to investigators. [↑](#footnote-ref-19)
20. International Monetary Fund, *Financial Intelligence Units…*, pp. 9 ss. [↑](#footnote-ref-20)
21. It’s worth noting that financial institutions should not have a clear evidence that a transaction they are facing involves criminal activity or that the customer involved is part of a criminal operation or organization. They therefore would be reluctant to disclose it directly to a law-enforcement agency. In these cases an administrative type FIU will be able to substantiate the suspicion and send the case to the authorities in charge of criminal investigations and prosecutions only if the suspicion is substantiated. [↑](#footnote-ref-21)
22. One of the main goals of the Egmont Group is to create a global network by promoting international cooperation among FIUs. The ongoing development and establishment of FIUs exemplify how countries around the world continue to intensify their efforts to focus on research, analysis, and information exchange in order to combat money laundering, terrorist financing, and other financial crimes. [↑](#footnote-ref-22)
23. This model is particularly suited to enhance and distinguish the deepening financial reports with respect to the investigation. It emphasizes the delicate function assigned to the UIF, of connection and filter between private subjects that are under the obligation of reporting and the investigative and judicial authorities . [↑](#footnote-ref-23)
24. It is worth noting that the former Financial Intelligence Unit, Ufficio Italiano dei Cambi, was already defined (according to Legislative Decree no. 319 of 26 August 1998) as an “instrumental entity of the Central Bank”. The UIC had been charged with anti-money laundering compliance responsibilities since 1991 but only in 1997 did it receive exclusive responsibility for receiving, analysing and disseminating STRs to its law enforcement counterparts. Furthermore, after the enactment of the Decision 2000/642/JHA, which was directly effective in the Member States, Law no. 388 of 29 December 2000 introduced a few regulation according to which the Ufficio Italiano dei Cambi was entrusted with the tasks of acting as the Italian Financial Intelligence Unit. [↑](#footnote-ref-24)
25. The Regulation issued by the Bank of Italy on 21 December 2007 confirms that “all the functions performed by the UIF, thus included the core functions of STRs financial analysis, are performed in full autonomy and independence”; [↑](#footnote-ref-25)
26. The UIF is staffed with approximately 130 persons. The Divisions entrusted with the financial analysis of the suspicious transactions reports have a staff of almost 70 analysts. [↑](#footnote-ref-26)
27. According to the Art. 6, para. 3, of Lgs. Decree no. 231/2007, the appointment shall last five years and may be renewed only once. [↑](#footnote-ref-27)
28. The Regulation issued by the Bank of Italy on 21 December 2007 details the requirements and competences of the Director, thus providing for the following tasks of: a) issuing organizational regulations with external relevance; b) convening and chairing the Committee of experts; c) joining the competent national and international organization or appointing the competent UIF representatives; d) directing the UIF personnel, promoting the specific training activities and providing the evaluative criteria; e) delegating typologies of actions to the managers of the UIF. The Regulation provides for the following grounds of dismissal: “Director s may be removed from the position in the same way as laid down for the appointment if they no longer met the conditions for the performance of their functions or are guilty of serious shortcomings.” In the event of the absence or incapacity of the Director, the functions thereof are performed by the Deputy Director, appointed by the Governor. [↑](#footnote-ref-28)
29. Under the previous legislation (art. 3, co. 1, d.l. 143/1991 converted into l. 197/1991), the reporting obligation was not anchored to a mere suspicion, but to the fact that the subject was "led to believe" the illicit origin of the money or of the goods on the basis of certain characteristics. The evaluation of the operator, therefore, was related to the possible criminal origin of the money, goods or other property involved in the transaction, that led the operator to believe that he was in the presence of a case of money laundering defined in the Penal Code. In addition, the reporting obligation existed when it was mature enough the awareness of the existence of a crime. The mere suspicion relating to the transaction was not, therefore, inherently likely to configure the activation of the reporting obligation. [↑](#footnote-ref-29)
30. This case is of Anglo-Saxon derivation, and was provided for in the United Kingdom legislature in 2002. In particular, pursuant to art. 329 (Failure to disclose: regulated sector) of the Proceeds of Crime Act (2000), the reporting obligation also exists where there are "reasonable grounds for knowing or suspecting," as well as the assumption of full knowledge or suspicion. This case appears to differentiate itself from suspicion or outright full knowledge because it is based on factors and assumptions of an objective nature: it is the case in which the operator has objective evidences that the client could be involved in a case of money laundering. [↑](#footnote-ref-30)
31. Almost all of the reports received concerns suspicions of money laundering; numerically marginal remain the reports related to terrorist financing or programs of proliferation of weapons of mass destruction, also included in the system of prevention. Also the quality of the information reported to the UIF has shown a significant improvement in terms of completeness and clarity. The UIF provides support to operators for the development of appropriate capacities to diagnose and representation of suspicions. [↑](#footnote-ref-31)
32. In order to govern the new system, on May 2011 the FIU issued instructions on the data and information to be included in STRs. A new report format – the same for all reporting entities and entirely electronic – has been launched, increasing the amount of structured information available. Reporting entities are called upon to provide a more detailed and complete description of transactions, the parties involved and the relations/links between them. They are also required to set out, in a separate descriptive section, the reasons for the suspicion.. [↑](#footnote-ref-32)
33. More ambitious objectives have been set for the future, through the implementation of a data warehouse, allowing more effective use of the information available. See UIF, *Annual Report for 2013*, Rome, July 2013 [↑](#footnote-ref-33)
34. This is a critical aspect, considering that the experience of recent years has shown how the value of the results and the performance of the analysis functions depend on the quality and amount of available information. In this respect, it would be necessary to address the Italian legislation in order to provide for the possibility of the UIF’s wide access to the law enforcement data (not only when such information serve in response to requests from foreign FIUs). [↑](#footnote-ref-34)
35. To this end, in the view of enriching the data available for its analysis functions, the UIF has signed Memoranda of Understanding with the Revenue Agency (on 16 June 2009, replaced by the updated Convention on 7 June 2012) establishing the conditions on the UIF access to the account and deposit registry; the Customs and Monopoly Agency (13 December 2013), establishing the conditions of the access to cross border declaration data. As regards the relationships with supervisory authority, the UIF has signed Memoranda of Understanding with the Bank of Italy (2 April 2009, updated on 20 January 2011), the IVASS (16 March 2011) and the Consob (7 June 2013). [↑](#footnote-ref-35)
36. The above mentioned future construction of a data warehouse will further enhance the automatic enrichment of reports and improve the exploitation of the information possessed not only by the FIU and the Bank of Italy but also by third parties. [↑](#footnote-ref-36)
37. It’s important to highlight that, according to the article 47 of the Leg. Decree 231/2007, all the closed reports are kept on file for ten years, following procedures that allow consultation by the investigative bodies, on the basis of the memoranda of understanding. In 2013 the FIU closed … reports that it deemed to be unfounded from a financial standpoint on the basis of the information in its possession. [↑](#footnote-ref-37)
38. In recent months, the interest of the Unit has been also addressed to the possible use for illegal purposes of virtual coins (Bitcoin), in consideration of some STRs received on sales of such abnormal instrument and the initiatives that are being defined at the international level. [↑](#footnote-ref-38)
39. As regards a general overview of the UIF’s activity, see G. Castaldi, *L’Unità di informazione finanziaria (UIF): funzioni e organizzazione*, Sassari, 17 April 2009; G. Castaldi, *L’Unità di informazione finanziaria (UIF) nel “sistema” italiano antiriciclaggio: l’attività svolta; i problemi aperti*, Napoli, 2 July 2009; G. Castaldi, *L’azione di prevenzione e contrasto del riciclaggio*, Commissione Parlamentare d'inchiesta sul fenomeno della mafia e sulle altre associazioni criminali anche straniere, Rome, 28 June 2011; C. Clemente, [*L’Unità di Informazione Finanziaria per l’Italia nel sistema di prevenzione del riciclaggio*](http://www.bancaditalia.it/homepage/notizie/uif/clemente-040214.pdf), Rome, 4 February 2014 ; C, Clemente, [*L’Unità di Informazione Finanziaria per l’Italia nel sistema di contrasto alla criminalità economica e al riciclaggio*](http://www.bancaditalia.it/homepage/notizie/uif/audizione-commissione-antimafia_2.pdf), 11 June 2014, Senato della Repubblica, Roma, Commissione d'inchiesta sul fenomeno delle mafie; C. Clemente, [*Presentazione del Rapporto sull'attività svolta nel 2013*](http://www.bancaditalia.it/UIF/interventi/InterventiUIF/rapp_uif_2013.pdf), Rome, 9 July 2014. All these documents are available in Italian at http://www.bancaditalia.it/UIF/interventi. [↑](#footnote-ref-39)
40. It’s worth noting that almost 85 percent or STRs come from banks and post offices, that appear aware or the importance of the reporting system in the fight against money laundering. The number of reports submitted by professionals and non-financial operators remains small (in 2013, about 2,800 reports, amounting to just over 4 per cent of the total) and almost entirely attributable to notaries and gaming operators. Among the non-financial operators, for example, the offices of the Public Administration does not actually appear involved in the reporting system, depriving it of a contribution potentially relevant. UIF is currently working with other authorities in order to raise awareness of the above mentioned categories of operators and identify the areas of public activity for which it is appropriate to provide anomaly indicators and instructions for reporting. [↑](#footnote-ref-40)
41. Before the anomaly indicators are issued, they are submitted to the Financial Security Committee, thus ensuring a coordination with all the competent authorities [↑](#footnote-ref-41)
42. Even if the Lgs. Decree provides only for a formal consultation of self-regulatory bodies, it is worth nothing that the UIF, before the proposal, has consulted informally all the competent category associations, in order to properly tailor the indicators to the different activities performed. [↑](#footnote-ref-42)
43. The models are a product of the operational and strategic analysis, developed on the basis of the financial analysis of the STRs, of the typologies identified during inspections, and are issued directly by the UIF, but always benefiting from the cooperation of the supervisory authorities, the Finance Police, the competent association of categories, the self-regulatory bodies. [↑](#footnote-ref-43)
44. Moreover, the UIF alerted reporting entities on areas of possible exposure to money laundering and terrorism financing with specific communications, in February 2010 and in February 2012, regarding, respectively, the operations of repatriation or regularization under article 13-bis of Decree Law 1 July 2009, no. 78 (referred to as the “tax shield”), and the anomalous use of payment cards for cash withdrawals. The second communication has been further developed with the issuing of the above mentioned pattern of anomalous conduct. [↑](#footnote-ref-44)
45. Most part of the data reported originates from banks and post offices (more than 96 per cent of the total number of aggregate records and of the total amounts transacted). Data are aggregated according to a set of classification criteria, that have been increased since January 2012; the information reported currently includes the client’s residence and economic sector, the intermediary’s branch where the transaction took place, the type of the transaction, the total amount transacted and the corresponding cash component, plus the number of transactions that have been aggregated in a single record. [↑](#footnote-ref-45)
46. In more detail and under a specific formal agreement, the Bank of Italy grants the UIF access to relevant databases, such as, for example, the data base containing monthly reports by banks and other financial intermediaries required to provide detailed data on their activity, balance sheet and overall financial situation, and the register of cash transactions performed at Bank of Italy’s branches. [↑](#footnote-ref-46)
47. See, http://www.bancaditalia.it/UIF/pubblicazioni-uif/quaderni\_analisi\_studi. [↑](#footnote-ref-47)
48. Preliminary results indicate that the operations that are not explained by the fundamental economic, demographic and financial structure or the territory are concentrated, with some exceptions, in the southern regions of Italy with the highest criminal infiltration index. [↑](#footnote-ref-48)
49. The results show that countries at risk attract a volume of financial flows higher by more than 30 percent compared to what is justified by fundamentals economic and socio-demographics. The analysis also allowed the UIF to define an indicator of anomaly for a classification of countries of destination of funds and Italian provinces of origin. [↑](#footnote-ref-49)
50. The reconnaissance of the areas most at risk and of the vulnerabilities in the national system of prevention, investigation and prosecution should lead to delineate the areas to which steer future policy interventions to reduce vulnerabilities and increase the effectiveness of the system. [↑](#footnote-ref-50)
51. While analyzing a STR, when the UIF becomes aware of sufficient evidence to identify a crime (also different from money laundering or terrorist financing), it shall, pursuant to art. 331 Code of Criminal Procedure, complaint to the Judicial Authority. [↑](#footnote-ref-51)
52. Furthermore, it’s worth noting that the coordination with the Judicial Authority is essential in order to allow the UIF to suspend suspicious transactions, and to verify that, as expressly required by law, the suspension does not prejudice to any ongoing investigations and to ensure the consolidation of the effects of possible decision of seizure or confiscation [↑](#footnote-ref-52)
53. The cooperation of the UIF with the Judicial Authority has progressively intensified: the requests received by the judicial authority in 2013 were 216, compared to 53 of 2008, and have given rise to an intense dialogue to provide the elements immediately available and those acquired through further investigation and contacts. Significant forms of cooperation were developed with the National Anti-Mafia Directorate and, through it, with some district departments. [↑](#footnote-ref-53)
54. Council Decision of 17 October 2000 no. 2000/642/JHA (“Concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information”), which is directly applicable without any need for transposition. [↑](#footnote-ref-54)
55. The cooperation that UIF can provide includes suspicions of money laundering and associated predicate offences, regardless of the type and nature. According to Art. 9, para. 3, of the Lgs. Decree no. 231/2007 any “information” can be exchanged including, “in particular”, data and information concerning suspicious transactions”. Upon this legal basis, UIF is able to provide to foreign FIUs all information available at the time of the request (e.g., STR material including banking and financial information, further information collected or intelligence developed through the analysis). It’s worth noting that possible differences in the range of predicate offences between the countries involved may affect the exchanges, preventing the requested foreign FIU from providing information on peculiar offenses (for example, tax offenses) and from consenting to its further use for intelligence or investigation by competent authorities in the requesting country. [↑](#footnote-ref-55)
56. Moreover, despite not having access to law enforcement information for its domestic analytical purposes, UIF can obtain this information when it comes to providing assistance to foreign counterparts. In fact, based on art. 9, par. 3, for international cooperation purposes UIF “may also make use of specifically requested information in the possession of the Bureau of Antimafia Investigation and the Special Foreign Exchange Unit of the Finance Police”. In accordance with this provision, when a foreign FIU requests law enforcement information on a particular case or subject, UIF approaches the mentioned authorities to obtain the police information respectively available which, as soon as received, is forwarded to the requesting foreign counterpart. [↑](#footnote-ref-56)
57. The Unit has adopted, in 2013, new work processes and new methods of dialogue with its foreign counterparts which, by making the full potential of dedicated computing platforms, increased the effectiveness of information exchange. In the European context the FIU was among the first to activate the intersection of entire databases to identify occurrences of situations reported in different countries. [↑](#footnote-ref-57)
58. Article 9, par. 3, explicitly empowers UIF to “conclude memoranda of understanding” with its foreign counterparts. MoUs are also envisaged by the Council Decision 2000/642/JHA (although currently this is not common practice within the EU due to the particularly high level of integration and cooperation among European FIUs). [↑](#footnote-ref-58)
59. On 23 July 2010 the UIF signed a Memorandum of Understanding with the Special Foreign Exchange Unit of Finance Police and the Directorate of Antimafia Investigations in order to ensure that the information are sent electronically, in such a way as to ensure that the report only reaches the people concerned and that the information sent is received intact and in its entirety [↑](#footnote-ref-59)
60. See the two Decrees of the Ministry of the Economy, in agreement with the Ministry of the Justice, both issued on 27 February 2009. [↑](#footnote-ref-60)
61. As part of the fight against the proliferation of weapons of mass destruction, the United Nations adopted measures for preventing and combating the financing of proliferation programmes and placed a ban on assisting or financing persons involved in such activities. The European Union, implementing the resolutions adopted by the United Nations, has issued a series of measures including Regulation (EC) 267/2012, which establishes restrictive measures against Iran (freezing of funds and economic resources of individuals or entities associated with the development of sensitive activities in terms of proliferation). The FATF has developed guidelines for implementing the financial sanctions adopted by the United Nations. Specific measures have been introduced in the Recommendations to address the financing of the proliferation of weapons of mass destruction, in conformity with the UN Security Council resolutions. [↑](#footnote-ref-61)
62. As a rule, the declaration must be sent by the end of the month following that in which the transaction was carried out; in the case of physical cross-border transfer, the declaration must be made and sent before the transfer takes place. A copy of the declaration and of the document attesting its having been sent to the UIF must accompany the gold. [↑](#footnote-ref-62)
63. The UIF is also required to verify, together with the other competent units of the Bank of Italy, compliance with the relevant provisions in force by banks, electronic money institutions, post offices and financial intermediaries providing payment services, and to report violations to the Ministry for the Economy for the imposition of sanctions. [↑](#footnote-ref-63)
64. Indications on the overall effectiveness of the anti-money laundering system could be also drawn from the final results of the STRs, but such assessments are currently hindered by the lack of an adequate feedback to the UIF on the investigative and judicial processes resulting from the reports analyzed and transmitted. See C. Clemente, *Presentazione del Rapporto sull’attività svolta dall’UIF nel 2013*, Rome, 6 July 2014. [↑](#footnote-ref-64)