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Subject :	Addendum to "Final report on the fifth round of mutual evaluations: -Summary of results of the fifth round of mutual evaluations

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1. SUMMARY OF RESULTS OF THE FIFTH ROUND OF MUTUAL EVALUATIONS

1.1. Introduction

Below are reflected the main issues in the individual country reports produced during the fifth round of mutual evaluations. For deeper knowledge, please see the individual country reports. [1]

In its overall structure, to allow comparison and ease of reading, the text follows the structure of the reports on the individual Member States. It is thus structured in the following way. Following this introduction, national systems and criminal policy will be presented in chapter 5.2, followed by chapters on investigation and prosecution (chapter 5.3), freezing and confiscation (chapter 5.4), and protection of the financial interests of the communities (chapter 5.5).

In all chapters, a number of examples from individual Member States are provided to shed light on pertinent issues. Often, they are used to illustrate the diversity throughout the EU when it comes to aspects of financial crime and financial crime investigations. The national examples, even if they are not directly transferable to other Member States, should not be read as isolated cases. They should rather be approached as instances of good practices to be inspired by or illustrations of practices not necessarily duplicated elsewhere. They are not meant to point a finger at particular Member States, but rather to bring value to all.

[1] Romania: 17640/2/09 REV2; Austria: 6508/2/10 REV2; France: 7251/2/10 REV2; Hungary: 7711/2/10 REV2; Belgium: 9518/2/10 REV2; Bulgaria: 8586/2/10 REV2; United Kingdom: 9636/2/10 REV 2; The Netherlands: 11989/1/10 REV 1; Malta: 14069/2/10 REV 2; Latvia: 14873/2/10 REV 2; Luxembourg: 15644/3/10 REV 3; Estonia: 17768/2/10 REV 2; Poland: 8298/2/11 REV 2; Italy: 10989/2/11 REV 2; Portugal: 12286/2/11 REV 2; Slovak Republic: 13574/3/11 REV 3; Greece: 7614/2/12 REV 2; Finland: 7613/2/12 REV 2. Germany: 16269/2/11 REV 2; Lithuania: 17073/2/11 REV 2; Ireland:18514/2/11 REV 2; Cyprus: 9302/1/12 REV 1; Sweden: 8639/12. Czech republic: 11812/1/12 REV 1; Slovenia: 11482/1/12 REV 1; Denmark: 12659/12; Spain: 12660/12.

1.2. National systems and criminal policy

1.2.1. National systems

Many Member States evaluated have undertaken substantial reforms aimed at improving their capabilities to conduct financial investigations and fight financial crime.[1] Yet, this awareness remains often limited to the confiscation of proceeds of crime and does not fully exploit the potential of financial investigations. In spite of these changes which affect their internal organisation, the fight against financial crime still poses **major difficulties**. While this is apparent in almost all the Member States evaluated, the peer review also revealed a broad willingness to improve this situation.

The situation is constantly influenced by new proposals, projects and instruments within the EU. Overall, the evaluation round revealed a clear trend towards reform in all the Member States evaluated. Those Member States that acceded to the EU in the last years face some problems that are quite specific to them, in the area of harmonising legislation and its related implementation. The establishment of new laws or legal bases has not always been accompanied by parallel structural reforms.

Numerous countries have initiated major institutional reforms to reorganise their law enforcement authorities, in particular their police and customs systems. Internally, Member States have initiated various projects aimed at rationalising cooperation between various law enforcement authorities in order to better facilitate cooperation against financial crime. **Much remains to be done**, particularly in the case of Member States which have a wide variety of national law enforcement authorities, some of which have tasks that are sometimes ill defined or overlapping powers. There is still considerable compartmentalisation between ministries and agencies in many Member States and lack of coordination and cooperation between the relevant actors, hindering the effectiveness of financial investigations.

[1] The issues has also been addressed during the second round of mutual evaluations on law enforcement and its role in fighting drug trafficking and it is particularly noteworthy to recall recommendation of the report. Cf. the final report 9635/1/03 CRIMORG 43.

All Member States have built professional systems for dealing with financial crime and financial investigations. Often, the structure of the law enforcement and judicial authorities is clear, thus limiting possible conflicts of competences and overlaps. However, in other cases the competency to fight financial crime appears to be **quite fragmented**. Structures aside, with a few exceptions, prosecution authorities seem to maintain a hierarchical relationship with law enforcement agencies.

They are in charge of investigations, and law enforcement agencies work strictly under their orders. The current provisions in the **Czech Republic** laying down the administrative organisation of the prosecution services are very hierarchical. The chief prosecutor can influence the results of the prosecution process by giving direct instructions regarding a specific case, and at the highest level the Supreme Prosecutor's Office can even move a case to a higher level of the prosecution services or from one region to another. This might decrease the transparency of the internal allocation of cases and influence the effectiveness of financial investigations.

Moreover, the coordination role of the prosecutors depend on the availability of a working case management system providing an overview of all cases running. This is not the case in all Member States, which is a hindrance to a more pro-active and intelligence-led orientation. Partially linked to the above, in many instances, the expertise to collect, analyse, enrich and disseminate financial information, at the core of the effectiveness of a financial investigation, often lack strategic (what to do?) and technical expertise (how to do it?).

Resources allocated to financial investigation are not always sufficient. With some valuable exceptions, training is often insufficient in coverage and in expertise. Prosecution, generally leading the investigation, does not always have sufficient expertise in financial investigation impeding understanding of complex financial crime cases and frustrating police investigation efforts. A lack of proper IT tools has been recognised in some Member States.

1.2.1.1. Law enforcement authorities

Regarding the police, some Member States have **one national police force** situated under one Ministry, and cooperation with prosecutors and other relevant authorities is clearly regulated. In **Austria**, for instance, overlaps are avoided as the criminal police and the public prosecutor's office have to pursue investigations in agreement as far as possible. As far as the police itself is concerned, the fact that the structure of regional centres (LKAs) mirrors the structure at the central level (BKA) is an advantage, facilitating cooperation and coordination. Moreover, overlaps between the police and other services, such as tax investigators, are also uncommon since certain technical investigative mechanisms are shared. In addition, the prosecutor's office plays a coordinating role in complex cases involving more than one service.

The police of the **Czech Republic** is a single police force with several specialised branches and units such as the field police, criminal police, as well as units dedicated to, inter alia, information technology and forensics. In **Denmark**, prosecution and police are both placed directly under the Ministry of Justice, where one thus will find both the National Commissioner of the Police and the Director of Public Prosecution.

Greece has a single police force that work under the strict auspices of the Judiciary. Ideally, such a setting should provide for clearly defined competences, avoid overlaps and eliminate unproductive competition between police services. In Greece, however, the centre of gravity for the investigation of serious financial crimes seems to lie with a hybrid corps that appears to be depending from the Ministry of Finance: the Financial and Economic Crime Unit (SDOE). The distribution of tasks between Hellenic Police, SDOE and customs administration is not clear nor are the criterions to refer an investigation to one or the other investigative body.[1] The territorial distribution of investigations raises questions as well. This also raises questions on prioritization and dilution of capacity. On a managerial level, no well-concerted and strategy-driven action plan to counteract financial crime seemed to exist.

[1] Add to this the newly established Economic Police Service (EPS), which is competent for all of Greece and falls directly under the jurisdiction of the Chief police officer of the Hellenic police and under supervision of the Public Prosecutor for organised crime. The mission of the EPS is the prevention, investigation and the combating of economic crimes, with a focus on organised crime and crime against the state and national economy.

In **Portugal**, the structure of the law enforcement (and judicial) authorities tackling financial crime is straightforward. The competences, tasks and role of each body are clearly stated in the law. The Portuguese Criminal Police has sole responsibility for investigating economic and financial crime offences. The Criminal Police is also responsible for investigating tax offences involving sums exceeding EUR 500 000 and securities-related offences.

Some Member States have **several police organisations**, sometimes situated under different Ministries. At times, this creates overlaps and fragmentation, and results in unnecessary resources being spent on coordination. For instance, in **Belgium**, the competency and capacity to investigate financial crimes appear to be quite fragmented. Despite the reorganisation of the police services, a number of separate units embedded in different ministerial departments still remain competent to investigate financial crimes.

In **Cyprus**, the structures and division of tasks between the law enforcement agencies seems to be straightforward which seems to prevent unproductive competition between different police services. The agencies have a legal obligation to cooperate with each other. In **Estonia**, there are several administrative, law enforcement and judicial authorities with responsibilities and powers for the prevention of financial crime. The responsibilities are well defined and there are little or no overlaps.

From an institutional point of view, **France** has at its disposal a number of services, under different ministries, to deal with financial crime and conduct financial investigations. These are primarily the Directorate-General for Customs and Excise (DGDDI) within the Ministry of the Budget, Public Accounts, the civil Service and State Reform, the *Police Nationale* and the *Gendarmerie Nationale* within the Ministry of Interior and the Financial Intelligence Unit (FIU) *TRACFIN* within the Economic Affairs and Budget Ministries.

Several authorities in **Germany**, under the auspices of different ministries and at both federal and *Länder* level, share responsibility for investigating financial crime and conducting financial investigations. These authorities are primarily the police and customs. In **Hungary**, the structures and division of tasks between law enforcement agencies seem to be clear. The prosecution service and the Coordination Centre on Organised Crime prevent the agencies involved from overlapping and provide operational coordination. The agencies are obliged by law to cooperate with each other.

In **Ireland**, there are several specialised units or authorities that deal exclusively or mainly with financial crime or financial investigations. All agencies and relevant actors having a clear mandate assigned to them. The formal separation of powers is followed by informal processes. In addition, there is the Criminal Assets Bureau (CAB), which is a multi-agency structure including members of An Garda Síochána (Irish police force), Revenue officers (officials from our tax and customs service) and Social Protection officers (officials from our social protection/welfare service engaged in the provisions of income supports, employment services etc.). A key feature of CAB is the multi-agency structure which allows for access to information across the agencies represented at CAB.

In **Italy** many actors are involved in the fight against financial crime. Law enforcement agencies in Italy are under different ministries, with Arma dei Carabinieri under the Ministry of Defence, Polizia di Stato under the Ministry of the Interior, and Guardia di Finanza under the Ministry of Economy and Finance. This sometimes appeared to result in disproportionate efforts being invested in coordination rather than in the execution of the task at hand.

In terms of numbers, the **United Kingdom** by comparison is at an extreme position. There is no national police force in the United Kingdom. England and Wales have 43 geographical police forces, Scotland has eight, and Northern Ireland, the Isle of Man, Jersey and Guernsey have one each. In addition there are thematic police forces. Investigative agencies with a national remit include HM Revenue and Customs (HMRC), the Serious Organised Crime Agency (SOCA), the Serious Fraud Office (SFO), the Financial Services Authority in Scotland and the Scottish Crime and Drug Enforcement Agency (SCDEA). In addition, there are a number of national governments and local authorities with investigative departments that employ financial investigators and deal with financial crime.

Many studies have tried to estimate the relative value of particular organisational setups. No general and final verdict has been reached, perhaps because different organisational setups are in place to respond to specific needs depending on specific circumstances. For instance, at a general level, it can be argued that a single police force benefits a more expeditious exchange of information, and it is better aligned with the need of efficient command, control and communication. However, it can also be argued that a setup with multiple police forces in fact is quicker at responding to local and regional needs without having to channel information through a central point. Depending on choices made in terms of strategic and operational priorities, one setup will be deemed better, but it is not naturally or inherently so.

Three areas are identified as key components affected by and having an effect on organisational structures. **The first area is accountability**, in terms of democratic control and accountability. It can be argued that de-centralised systems are better equipped to promote efficient democratic control and accountability through their closeness to regional controlling bodies (if such exist; otherwise this example is obviously contradicted). On the other hand, democratic control and accountability may in fact be better provided for in centralised systems where some instance has an overview of the whole. The need for democratic control and accountability is unquestionable. How it is catered for is open for discussion.

The second area is steering. It can be argued that centralised systems promote focused action at the national level and specialisation between regional units. In terms of prioritisation, this is clear, at least in systems where priorities are centrally formulated. However, in terms of results, it is not as obvious. Regional units may in fact be better equipped to respond to regional problems, and thus be in a better position to provide positive results. Moreover, if prioritisation is driven too far, issues may fall between the chairs as resources will not be assigned to deal with non-priority cases. Too strict centralisation may also provoke unsound competition as units at the end are competing on the same market for both results and resources. On the other hand, too little centralisation could result in unclear, overlapping mandates, with no one taking responsibility for the whole, leading to a similar situation with a unfortunate silo approach and blind spots, provoking limited possibilities to cooperate across (regional) borders, both strategically and operationally.

Looking at steering in terms of command, control, communications and intelligence/information sharing (C^3I), centralised systems are better equipped to promote C^3I, if they are equipped to do so, meaning if they have working C^3I systems, including secure and reliable communication platforms and modern, accessible databases. Lacking such systems, de-centralised systems will be better equipped to fulfil their tasks because they arguably have easier access to important counterparts and the necessary information.

The third area is costs. Multiple organisational units will, if central support is lacking, invest in regional solutions which may prove to be far from cost effective. The plethora of police computer systems in existence is a case in point. However, to continue with this particular example,

centralised computer systems are not always developed quickly enough to respond to needs encountered at the operational level. At a more general level, de-centralised systems may result in a lack of common working methods, make it difficult to spread best practices, and risk spreading general competencies too thin across regional units. On the flipside of the coin, centralised systems may fail to forge working methods which actually work at all levels, make it difficult to formulate best practices as there may be less impetus from different subunits, and place the same requirements on regional units having to struggle with varying contexts.

1.2.1.2. Asset Recovery Offices (AROs)

A majority of the Member States have implemented Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime [1], and established an asset recovery office (ARO). There are, however, major differences between the Member States in terms of organisational setup, resources and planned or actual activities.

Organisationally, AROs will normally be found within prosecution offices or the police. They are either centrally organised or engaged with regional partners. In terms of resources, the strength of AROs range from one-man AROs to such with up to a dozen staff or more. In Germany and Sweden, there are two AROs. In terms of orientation, some Member States opted for a minimum interpretation of the requirements in Council Decision 2007/845/JHA and set up a contact point, whereas others have built systems where the ARO is fully integrated in operational activities, using SIENA with full access to police data including information from the FIU. For instance, in the Slovak Republic and in Cyprus, the ARO is a department of the FIU. In Denmark, the ARO and the FIU are two separate entities, but they literally sit next door to one another.

A few examples should suffice to bring home the point about the diversity throughout the EU when it comes to AROs.

[1] OJ L 332, 18.12.2007, pp.103-105.

In **Austria**, draft plans currently being analysed at the ministerial level provide for an increase in the number of financial investigators serving the ARO, as well as the establishment of regional asset recovery units in the LKAs. The creation of regional AROs, if it takes place as planned, could be considered as good practice, considerably enhancing financial investigations.

The ARO in the **Czech Republic** is well structured, interlinked with the regional/district police forces and clearly performs very well. Due to some technical reasons the Czech ARO has not yet been linked to the Europol SIENA System. In general financial investigations concerning asset tracing in **Germany** seem to be organised in an efficient manner. The police ARO traces assets in practice and the judicial ARO gives advice at the judicial level. The way criminal asset recovery is addressed at federal level in Germany appears exemplary. The German ARO maintains a well functioning network with its peers at *Länder* level and contributes significantly to training programmes. Cooperation with the competent judicial and prosecution authorities also seems very good. Even though the police/operational part of the ARO is placed under the auspices of the BKA, it is currently totally separated from the FIU.

In practice the ARO in **Latvia** under the Economic Police Department consists of one person and fulfils only basic functions of a contact point, as provided for in the Decision. There is an ongoing project to advance the situation. In **Lithuania**, no separate institution responsible for the recovery of property or assets has been established. The Lithuanian Criminal Police Bureau and the Prosecutor General's Office act, jointly, as the ARO *only* in cases involving international cooperation, such as imposing a temporary restriction of ownership rights based on a request from another Member State. The ARO has thus a very limited role and a hybrid structure. The **Luxembourg** Prosecution Office is designated as the Luxembourgian ARO, with only two prosecutors working part-time on ARO matters. The number of SARs is increasing steadily, which emphasises the poor staffing situation. In **Slovenia**, when setting up the ARO, the authorities chose the option from the Framework Decision about setting up a contact point, not a full ARO with full competencies. It will be staffed by one person. It will not have access to police data.

The **Malta** Police Force is said to have been designated as the national ARO[1]. The ARO is being set up within the Economic Crime Unit and is made up of two investigative officers.

The ARO in **Poland** within the police contributes to the implementation of a carefully determined, strategy-driven process which is properly linked to developments at EU level. The Polish ARO appears to be a genuine catalyst to increase national capacity to recover assets.

At the time of the visit, **Portugal** remained one of the few EU Member States not to have set up an ARO. However implementation was underway and a working group had been set up to prepare draft legislation on the creation of an ARO[2]. **Romania** did not meet the deadline for setting up an ARO stipulated in Council Decision 2007/845/JHA and the process is still ongoing.

In **Spain**, the Code of Criminal Procedure provides for the establishment of an ARO. However, as the detailed regulations required for its implementation have not yet been completed, it continues to be the responsibility of several bodies, including the Intelligence Centre against Organised Crime (CICO) and the Anti-drug Prosecution Office; both of them functioning as ARO-designated contact points.

The set-up of the ARO in **Sweden** is two-fold. It comprises the Proceeds of Crime Unit of the Economic Crime Authority and the Financial Intelligence Unit of the National Criminal Police. Both these units represent the Swedish ARO. Furthermore, a national multi-agency specialist unit for proceeds of crime issues was set up at the Economic Crime Authority on 1 June 2010.

The role and mission of an ARO, as set out in Council Decision 2007/845/JHA, and consolidated in the practice of many Member States, envisages a wider role of an ARO than merely a contact function. An ARO staffed by only a few persons cannot easily fulfil the deadline for information exchange in urgent cases (8 hours), nor can it take into account absences as a result of sickness, holidays, etc. With a few exceptions, AROs seem to be short on both staff and resources. Moreover,

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1 The General Secretariat of the Council has not yet received the official notification, as stipulated in Art. 8 (1) of the Decision.

2 Following the on-site visit to Portugal Law № 45/2001 creating the ARO had been approved by the Assembly of the Republic on 6 April 2011 and published in the Official Gazette on 24 June 2011.

if the ARO does not have access to police databases, which is often the case, this can complicate the situation or simply cause delays in information sharing. Taking into account established practice, it appears that access to police databases is crucial for collaboration between AROs, but it is clearly not the case that AROs are equipped this way across the EU. In addition, databases regarding financial data, such as a central bank account registers, would further support the work of an ARO. However, only a few Member States have yet established such central bank account registers.

Speedy international cooperation poses a major challenge with regard to cross-border criminal investigations. To overcome this, and to speed up the handling of a case, the use of informal channels should be promoted, such as work through the ARO and CARIN networks, the employment of SIENA for data exchange and Eurojust or EJN to find contact points if they are not already known. However, this should be done with care, avoiding the establishment of a plethora of cooperation channels, with the risk of producing both overlaps and blind spots. Central control is necessary, in some form. Perhaps the system also needs reform in terms of its legal framework, promoting further approximation between national systems. It can be questioned whether the system as it is implemented today is straightforward enough to meet up with the cross-border operational requirements it is there to support. It can be further questioned whether the implementation is in fact correctly done across the board. In Sweden, for instance, it is further complicated with the Economic Crimes Agency (EBM) covering both judicial issues and economic crime, and the financial police (FIPO) the operational/police issues.

1.2.1.3. Financial Intelligence Units (FIUs)

The Financial Intelligence Units (FIUs) in the Member States also vary considerably in their organisational setup, functions and resources. Many Member States have established administrative FIUs placed under their judicial authorities or even directly under the Ministries. Others decided to set up operational or police FIUs, placed within their police structures. Yet another, fairly small group of Member States, created some sort of "hybrid" FIUs, mixing police and prosecutor competencies.

A few issues were highlighted during the evaluation regarding the FIUs in the Member States.

First, there is the question of mandate. Some of the FIUs are administrative, without investigation powers. The FIU in the **Czech Republic**, for instance, has an administrative setup and appears to cooperate relatively well with the police. However, its possibilities to cooperate with other law enforcement agencies and prosecution services seem somewhat limited. The FIU provides information to the Unit Combating Corruption and Financial Crimes (UOKFK) in all crimes areas, but requests for information received by the FIU from the police are only answered when they concern money laundering or terrorism financing. In the **Slovak Republic**, the FIU is seated within the police although it has no investigative powers. The FIU in **Portugal** does not deal directly with investigations either. Other FIUs, such as the one in **Denmark**, have full investigative powers. In **Cyprus**, the Unit for Combating Money Laundering (MOKAS), performing the role of the Cyprus FIU and at the same time being designated as ARO, has very broad powers. It is more of an investigative body furnished with law enforcement powers. Their investigative powers allow them to go beyond the competencies of administrative FIUs.

A streamlining between FIUs across the EU would help foster international cooperation, as everyone would know who their counterpart is and how the FIU is set up. Today, confusion may arise not only because the mandate issue is not clear within the Member States or similar between them, but also because different ministries are involved as well as operational agencies. This results in losses in efficiency and timeliness.

Secondly, the way in which FIUs have been resourced, especially in terms of staff, varies across the Member States. Some FIUs are staffed quite substantially whereas others are merely "one man shows". Even if the staffing may be considered enough given the task at hand, it can be argued that one or two persons cannot alone complete all tasks of an FIU, especially not if international cooperation is factored into the equation. For instance, **Luxembourg** has a judicial FIU. The judicial nature does not seem to impede the effectiveness of their AML arrangement, though one might doubt whether the resources of the FIU are proportionate, given the size of the financial services industry in Luxembourg.

Thirdly, closely linked to the issue of resources, is the question of which tools are available to the FIU. The necessary computer tools and databases have to be there to support the fulfilment of even the most limited tasks of an FIU, *inter alia* strategic analysis. For example, the FIU in **Malta** have no automated case management system and no crime analysis software at its disposal. This, combined with limited capacity to undertake analytical efforts, supports the absence of a pro-active approach to financial crime. On a similar note, **Poland** has no operational database on financial intelligence contained in STRs. This is primarily due to the fact that Poland opted for an FIU of an administrative nature, which provides only limited opportunities to share intelligence and to conduct integrated analysis in a proactive way.

Fourthly, cooperation and information sharing raises a series of concerns. Sometimes, information can be sent to investigative agencies within a country. For instance, in **Bulgaria**, financial intelligence is handled mainly by the Financial Intelligence Directorate (FID), which is a Bulgarian FIU of an administrative type. If there is a suspicion that a crime has been committed, FID sends a notification to the responsible investigative authorities. Sometimes, this is not possible as the information is only allowed to be sent to the prosecution office. In **Romania**, financial intelligence can only be disclosed to the prosecution offices, which may limit the potential for proactive and integrated analysis. On the other hand the composition of the Romanian FIU Board seems to be a good solution fostering coordination, exchange of information and mutual feedback. In **Poland**, the information within the FIU is completely shielded from the outside and the FIU only communicates suspicious transactions to the competent public prosecutor's office when it has decided there is due suspicion of money laundering activity, based upon an analysis conducted by its own department. It is unclear which precise analysis processes are conducted and which analytical procedure is followed. In the **United Kingdom**, cross-matching and referencing the SAR database with other crime intelligence will allegedly violate the "principle of confidentiality". In developing the analytical capacity of the SAR database, this might impede any attempt to introduce a financial intelligence-led policing concept. If the SAR database is to remain a simple repository without any analysis functionalities, it will lose much of its potential.

In **Germany**, on the other hand, the FIU cross-checks STR information with its STR database and with all the other BKA databases, and can request and exchange information with foreign FIUs. The FIU at the BKA has extensive access to customs databases. It allows the police to access intelligence and information available to the customs authorities. The FIU also has access in some cases to information held by the tax authorities, provided that the tax secrecy is lifted. Information from these searches can be submitted to the *Land* criminal police office that initially received the STR. It is unclear to what extent the FIU proactively provides intelligence on STRs to investigative bodies. The German FIU exploits the available data in the STRs as well as analyses trends in modus operandi and produces cross-analysis to identify data that is not yet provided by the reporting entities. However, the analytical capacity of the FIU could be further strengthened and its role in this activity made more proactive by providing analysis on its own initiative to the *Länder* concerning significant cases. It is unclear to what extent the FIU currently performs this task.

Sometimes, it is doubtful whether law enforcement agencies receiving reports from the FIU have sufficient capabilities to deal with them. For instance, in **Latvia** limited human resources and lack of a prioritisation mechanism seem to be major challenges in this regard.

The problem of cooperation and information sharing is multiplied when the international dimension is added. For instance, if the United Kingdom attitude described above towards the "confidentiality of SARs" prevails, it will make interoperability at EU level much more difficult.

Add to this the inflow of information and required reporting units. Not all of them fulfil their obligations, and FIUs generally lack the sanctioning tools necessary to make them comply. This will unavoidably have an effect on the quality of STRs. In **Italy**, for instance, it appeared that in general the FIU does not conduct regular inspections of reporting entities, but acts rather upon external information on breaches of reporting obligations. The limited powers and limited direct access to relevant databases of some FIUs impede their potential valuable contribution to financial investigations. The revised FATF standards would probably command some reforms in this regard.

1.2.1.4. Customs and tax authorities

The part of customs and tax authorities in the fight against financial crime is in some Member States relatively small but specialised. In most cases this is because customs or tax investigations are confined, in many national legal systems, to certain specific criminal offences or to offences which can be linked to, for example, tax fraud. This often reflects a fairly strict internal compartmentalisation as regards the exchange of information held by the police, customs and tax authorities, potentially leading to a loss of valuable information when two investigation services appear to be working on the same case from their respective angle without their respective awareness, leading to a duplication of efforts and a loss of time. However, there has been a positive development in this regard. In many Member States this has resulted in major reforms designed to improve information sharing also with a view to better international cooperation. Apart from efforts in the **United Kingdom** to bring together customs and police services in SOCA, several Member States are making special efforts not only to coordinate information exchange better but also to improve their work by using synergies between certain customs, tax and police services. Still, other Member States continue to operate within silos, hindering information flows and the effectiveness of financial investigations.

The mandate of customs and tax agencies varies between the Member States. For instance, in Denmark, Poland, Finland and Sweden the customs and tax authorities have their own investigative bodies with far-reaching powers, whereas the investigative powers of the customs and tax authorities are comparatively limited in Portugal. As a matter of fact, the Tax Agency in **Sweden** plays such an important role in crime fighting that Sweden is recommended to consider defining the Swedish Tax Agency or the tax crime units thereof as a law enforcement authority.

The issue of tax secrecy is sometimes a stumbling block for information sharing. For instance, in the **Czech Republic**, information can directly only be exchanged between the tax authorities and the UOKFK. The police bodies can request information from the tax authorities only with the previous consent of the public prosecutor and only for an investigation, not for intelligence purposes. This legal obligation can be a serious obstacle for an integrated and effective detection and investigation of financial crime.

Moreover, since 2011, the Czech unit combating organised crime is reportedly no longer allowed to contact the tax authorities in order to obtain information. This is a serious obstacle to their (financial) investigations.

In **Germany**, the Federal Ministry of Finance adheres to a relatively strict interpretation of the tax secrecy provisions. Whilst the Fiscal Code allows tax authorities to pass on information covered by tax secrecy if there is a compelling public interest, data exchange with or through Europol as regards VAT fraud has thus far not been allowed due to tax secrecy.

The FIOD in the **Netherlands**, on the other hand, can work under more open provisions. The FIOD[1] is a well organised service which is, by itself, a large centre of expertise capable of carrying out highly specialised investigations into complex forms of fiscal and vertical financial fraud. The main power and effectiveness of the FIOD is based on the fact that it has full access to the most relevant databases in the Netherlands, as well as, due to its place in the structure, benefiting from full access to tax-related data. It also has three liaison officers with the FIU.

FIOD is allowed to have access to the police database on a "hit/no hit" basis. However, the Dutch police cannot directly ask the FIOD for bank-related information in their possession, but it has to apply for access with the tax authority. The flow of information in the other direction can only take place under the authority of a prosecutor if a suspect has been named. This seriously hampers the proactive use of tax-related data.

In **Estonia**, customs and police have identical powers in matters within their respective areas of competence. Similarly, the Customs Service in **Sweden** has, specifically as regards monitoring and controlling the cross-border flow of goods, very similar legal powers to the police. In addition, the work of the tax crime units is always undertaken as part of a preliminary investigation and is led by a prosecutor. The tax crime units are authorised to carry out surveillance and intelligence work.

[1] Financial crime is the responsibility of the Fiscal Information and Investigation Service-Economic Investigation Service (FIOD).

1.2.1.5. Judicial authorities

More often than not, a prosecutor or an investigative judge - when such exist - leads criminal investigations including financial investigations. Noticeable exceptions are Finland, Ireland and the United Kingdom where the police/law enforcement is in charge of the investigation until the case is brought to trial by a prosecutor.

Often, prosecution authorities seem to maintain a hierarchical relationship with law enforcement agencies. They are in charge of investigations, and law enforcement agencies work strictly under their orders. As the processes in both areas do not appear to be integrated or attuned to one another to any great extent, the structure seems rather static.

Apart from this, a general challenge is the large caseloads that prosecutors and courts have to deal with. Although this is a problem encountered by all, it logically leads to further problems. Three main issues have been identified as potential challenges or shortcomings.

First is the issue of case management. Even if the general caseload were brought down to a minimum, there are still major hurdles in terms of procedures slowing down the handling of cases. From a financial investigation perspective, a question is when a financial investigation starts in conjunction with a criminal investigation, if such is necessary at all. The answer is not at all times given.

The second challenge is the general lack of specialisation in financial crime within prosecution services and of investigating magistrates. Often, they have to handle a general caseload preventing them from specialising in financial crime investigations that - given the complexity of many of the cases - require a very specialised knowledge. This is even more so at the regional or district levels. However, reducing the caseload would not necessarily provide room for specialisation unless this is provided for. This has to do with, *inter alia*, resources and judicial processes. As for resources, the question is whether a Member State can afford it. From a process perspective, the question is whether they can do it. The assignment of cases, for instance, would have to change from allotting to selection or prioritisation. This is not possible today in all Member States.

The third limitation relates to coordination and cooperation, both at national and international level. Not only are prosecutors or investigating magistrates struggling to handle large general caseloads, they also have to coordinate activities between themselves and numerous law enforcement agencies involved in the fight against financial crime. Adding the international level only underscores the problem, especially since there seems to be a general lack of understanding about which tools are available at the EU level.

There are of course positive examples contrasting many of the issues above. Nevertheless, the issues should be considered so that efficient solutions can be found across the board.

A few examples should suffice to illustrate the diversity throughout the EU when it comes to judicial authorities and their involvement in the fight against financial crime and financial investigations.

In **Austria**, prosecuting authorities have a clear division of tasks (including all stock exchange - related crimes delegated to one specific unit in the capital) making overlaps highly infrequent. However, a lack of specialised prosecutors dealing with financial crimes is regarded to some extent as a discrepancy between the prosecution service and the police, which has separate structures devoted to white-collar crime. The consequences of the recent establishment of a separate prosecution service dedicated to corruption cannot be assessed at this stage.

In **Belgium**, even though it cannot be denied that several important reforms have been undertaken, the Public Prosecution Service's organisation for dealing with financial crime has not been rationalised to such a degree that it can effectively deal with this phenomenon. At district level prosecutors are coping with the situation to the best of their ability with the limited resources they have at their disposal. Various Belgian actors have strongly criticised the fact that the Federal Prosecutor's Office has no specialist department for financial crimes[1]. Apparently the level of cooperation and understanding between the Federal Prosecutor's Office and the other levels within the Prosecution Department is not as good as it might be.

[1] Some magistrates of the federal prosecutor's office are specialised in financial disputes although they are not grouped together in a particular division.

There are 37 financial prosecutors in **Finland**. The prosecutors have direct access to the Police Operative Data Management System (PATJA). Once a pre-trial investigation is closed, the case information is transferred to the prosecutor. Around 80-90 per cent of the cases sent to prosecutors are followed by an indictment. In Finland, there are no specialised judges dealing with financial issues. Sometimes this may result in different readings of evidence, especially in complicated cases, for instance when the criminal activity is connected or mixed with legal trade activity.

In **Germany**, the public prosecution office leads investigations, although in cooperation with the investigating authority. Thus the prosecution offices and the judiciary should be aware of and actively be using the products and services of EU law enforcement agencies in cases with a cross-border dimension. However, for example Europol's Analysis Work Files (AWF) seemed in general relatively unknown amongst prosecutors. Even though the investigating authorities can advise the public prosecution office on the use of EU systems and tools and even recommend it, the public prosecutor ultimately takes the decision on possible information sharing through designated EU instruments. Without sufficient knowledge and awareness of its added value, information sharing will not become a priority.

The German central database of prosecutions, in which all the prosecuting authorities enter their on-going prosecutions, provides an effective mechanism for avoiding competing prosecutions. If there are overlapping prosecutions in different geographical areas, one lead prosecutor is designated. Such a central database is obviously useful not only in the context of financial investigations, but in prosecutions for all kinds of offences. However, in the context of financial investigations this is likely to be especially useful since financial crime by its very nature is likely to be spread over various geographical regions and even across national borders.

In **Greece**, there are public prosecutors who deal exclusively with financial crime. In the public prosecutor's office attached to the Court of First Instance in Athens, which is the biggest public prosecutor's office in the country and concentrates the highest percentage of cases of financial crime, six Public Prosecutors for financial crime have been appointed.

Italy has a highly trained and specialised police force, particularly the *Guardia di Finanza*. In addition, there is the *Direzione Nazionale Antimafia* (*D.N.A.*), an autonomous prosecutorial body which is independent from the Ministers for the Interior and Justice. In **Ireland**, the Director of Public Prosecutions formally does not play a role in criminal investigations other than to offer advice to the investigators. Moreover, a Superintendent can decide on prosecution of simpler cases in District Courts. Here, the police functions as prosecutor. In complex cases, An Garda Síochána, Ireland's National Police Service, will send an investigation file to the Director of Public Prosecutions for decision. An Garda Síochána may also seek the advice of the Director on procedural and other issues during the investigation.

The choice of cases for prosecution in the **Netherlands** is based on a flexible approach and dialogue between the main stakeholders. Prioritisation of cases, in line with national and regional priorities, also seems to be a commendable solution as it gives the authorities the power to shape crime policy and to address the most harmful phenomena. The Dutch legal system provides prosecutors and judges with effective tools to address illegal assets. The Public Prosecution Service's Criminal Assets Deprivation Bureau (*Bureau Ontnemingswetgeving Openbaar Ministerie,* BOOM) is the specialised confiscation agency of the Public Prosecution Service. BOOM operates only in larger, more complex confiscation cases exceeding one hundred thousand Euros. Other "regular" confiscations in criminal cases are handled by the Public Prosecution Service.

The judicial organisation in **Portugal** in the field of financial and economic crime shows the necessary degree of specialisation. Important innovations have been introduced into the Portuguese prosecution system, aimed at streamlining the performance of domestic investigations and also facilitating the relationship with foreign judicial authorities and international bodies. For instance, the Central Department for Criminal Investigation and Prosecution (DCIAP) has powers to coordinate and direct investigations and to prevent crime at national level, and specialised sections dealing specifically with the investigation of financial and economic crime also exist at the district level. While prosecutors in Portugal seem to be fairly well specialised in financial and economic crime matters, this does not seem to apply to judges. Such expertise on the bench could be achieved by setting up specialised chambers and/or by allowing cases to be tried at a few centralised courts. A true specialisation of magistrates can be achieved only if they can focus their daily work on such matters (and not merely by attending a few specialisation courses).

In **Romania**, the division of tasks between different prosecuting services seems to be fairy clear. A simple mechanism to resolve conflicts of competence between key prosecuting services is in place as they are all supervised by one official. In practise however an investigation may be supervised by different prosecution services at its different stages, depending on the specific information discovered and confirmed. Moreover, there is no possibility for any of the authorities to actually verify whether any proceedings are being conducted against the same person by another service. The same applies to law enforcement units in different territorial districts. In practice various services may not be aware of personal or factual links between their cases, something which is of outstanding relevance for financial investigations. The specialisation within the prosecuting service is not reflected in courts of justice, where no specialised panels devoted to financial crimes exist. Juvenile crime and corruption are the only exceptions where special panels have been established within courts of law. The Romanian eagerness to address phenomena such as corruption and organised crime has lead to an *ad hoc* approach which has resulted in a significant number of centralised specialised entities. It is noteworthy that the centre of gravity lies with the Prosecution Office attached to the Supreme Court. This may lead to a situation where police officers have very little investigative autonomy and are strictly directed by the prosecutor. Moreover, the leading prosecuting services responsible for financial crimes have their own police capacities, which complicates the overall picture and in practice may lead to overlapping investigations.

1.2.2. Training

Training efforts are continuously developing within the Member States in the field of financial crime. A plethora of approaches have come to existence, responding to the needs of national priorities. With a few exceptions, several issues are open to improvement to most if not all of the Member States. Training would not only improve expertise in itself. The adherence to similar financial investigation methods and techniques would also facilitate police and judicial cooperation, paving the way towards a better mutual recognition of evidence, an area where a lot remains to be done (for instance, financial crime analysis through mobile phone forensics and accounting forensics).

First, as it is today, most Member States provide their financial investigators and analysts with *ad hoc* training which, at a minimum, does not provide for methodological continuity. Consequently, there is a need for set curricula for training in financial crime, combined with clear accreditation processes. Even when expertly designed training schedules do exist, the sophisticated training provided for investigators does not always have a counterpart for prosecutors or especially in the courts. The latter is particularly troublesome, as judges lacking sufficient training in the field in question could become dependant on expert witnesses whose level of integrity and knowledge the judges cannot assess. The use of experts as witnesses is not a sufficient support to non-specialised judges, and does not substitute for specialisation, since the judges themselves need a certain level of specialisation to benefit from the expertise provided by the experts.

The implementation of a European Training Scheme (ETS) policy as foreseen in the Stockholm Programme concerning law enforcement training in cross-border matters, will offer training and coherence in this area. One of the focal areas of the ETS policy will be specific policing themes and prioritised crime phenomena which include financial crime. In addition, the ETS policy will cover general training-related issues such as common curricula, common training standards and quality standards for training and trainers. The European Police College (CEPOL) should play a major role in the implementation of ETS.

Second, the training needs to get necessary resources, firstly by providing modules of a certain length needed for providing the required knowledge. Currently, modules are generally too short to provide the needed knowledge, and students are left with only general insight into the matter at hand. Financial investigations are highly specialised and this must be reflected in the training available.

Third, well-developed, stringent training modules in financial crime need to be followed by diplomas which clearly state the knowledge gathered from the training. Such accreditation will serve many purposes, cross-border comparison being one of them, inter-institutional comparability another. This should be followed by a mechanism for built-in monitoring of continued professional development, clearly stating necessary requirements. If they are not met, a new accreditation process should be initiated along the lines of the future ETS policy.

Fourth, training modules in financial crime should be compulsory for staff intending to work as financial investigators or analysts. Moreover, specialised sessions should be provided to current staff aiming at making a career or specialising in certain aspects of financial investigations. This is most of the time not the case today. Often, day-to-day requirements at work hinders investigators and analysts from taking part in the training, and skills are often provided merely as "on the job" training.

Fifth**,** financial investigators and analysts should have relevant backgrounds (audit, accounting and relevant forensic sciences) which in many instances requires recruitment from the private sector. Persons choosing a financial investigator or analyst career path should be better paid so as to better ensure development of long-term institutional expertise and recognition of personal efforts in training at an advanced level.

Sixth, training modules should, as far as it is possible, be made multidisciplinary in teacher and student participation. There are many advantages to create such multidisciplinary groups. If nothing else, it would reflect the complexity of the issues at hand. From a participant point of view, the involvement of the judiciary is necessary albeit often forgotten.

Seventh, common EU resources should be further used by the Member States. Some are quite good at using training financed or provided by EU agencies. With reference to the ETS policy, the development of common EU training standards could be considered, reflecting the requirements discussed above, drafted by the concerned actors (CEPOL and its members in cooperation with the European Judicial Training Network and its members) in coordination with the EU and possibly with some EU financial support.

These issues aside, the EU hosts a set of positive examples where Member States have developed impressive systems which should be seen as best practices by others. Consequently, as a complement or alternative to the drafting of standards, a scheme for sharing and transferring good practices could be envisaged.

The police in **Belgium**, for instance, has developed a comprehensive financial investigation training programme, consisting of four modules, each of which is designed for the appropriate level of investigators. The highest level is organised in cooperation with Belgian universities at academic level and aims at integrating public and private sector forensic audit training.

In **Cyprus**, the police is rolling out a comprehensive and qualitatively well developed modular training trajectory for all of its officers. The Bologna process is partly applied, which is worth noting and laudable. In the basic training modules, attention is being given to different aspects of financial crime and financial investigation. More in-depth training and knowledge is provided to senior rank training modules. All training courses are in the process of getting accredited for ETCS purposes.

In the **Czech Republic**, it is apparent that all officers, public prosecutors and judges have a great opportunity to enhance their skills in a very well-organised and coherent training. The police and the Judicial Academy provide common and specialised training possibilities at a high level of quality to all relevant authorities.

In **France**, major efforts have been undertaken to train staff employed in fighting economic and financial crime. The specialised training for financial crime appears to be of a very advanced standard, particularly the training certified by a university degree. As for the latter, the experts found it important to share experience and best practice among services (law enforcement, customs, judiciary and FIU) and possibly to look into a more integrated training effort.

The police in **Germany** has a high standard of training that comprises comprehensive financial investigation training modules as part of the curriculum. Ad hoc training courses and seminars are available, and the BKA plays an important role in different areas to support the Federal States in their training efforts. Specific training on financial investigation and financial crimes seems sufficient in relation to prosecutors and trial court judges.

Authorities in **Portugal** transform new criminal trends that are detected in the field into new training modules and are also proactively exchanging information on crime phenomena with other administrations.

Authorities in the **United Kingdom** have placed special emphasis on providing high quality and up-to-date training packages for both law enforcement agencies and the Crown Prosecution Service involved in the field of financial investigation, asset seizure and confiscation. Standardised high quality training schemes have been elaborated by the NPIA. ACPO plays an important role in training and strategic coordination of the police forces.

A sound case-management system, flagging possible operational overlaps, is in place. The skills acquired through the training trajectory and the content of the programme appear to be of a high standard. What is particularly positive is the built-in monitoring of continued professional development. Investigators are aware that, if these requirements are not met, they will lose their accreditation and the specific competencies it entails.

In terms of training, challenges, however, do persist. The issues identified below are in no way limited to the particular Member States in the examples provided.

In **Belgium**, impressive as the training system for the police may be, the problem is that specialisation as a financial investigator is not a very rewarding career, for which reason there is not much enthusiasm amongst CID staff about signing up for this specific career development route. As for the judiciary, there appears to be hardly any specific training on financial investigations and financial crimes. Prosecutors have to rely on their own initiative to get external training. There does not seem to be any structured or tailored continuing professional training programme for prosecutors and examining magistrates. The investigating judge, who plays a crucial role in the Belgian system as he is actually leading most of the serious crime investigations, is a generalist covering all crime areas, precluding a high specialisation and commensurate training in the field of financial investigations.

In **Bulgaria**, it seems that there is uneven judicial practise in implementing the provisions concerning money laundering, especially that there is no need for a conviction for a predicate offence to initiate an investigation and successfully prosecute money laundering. Bulgarian authorities should prevent such occasions inter alia through the development of dedicated specific training on financial investigations and financial crimes.

Prosecutors and judges in **Cyprus** do not have any specific training to deal with complex financial cases nor do they receive any continuing professional training during their careers. They are considered to be generalists and work accordingly.

In **Estonia**, there seems to be no training in countering financial crime and conducting financial investigations incorporated into regular law enforcement or prosecutor training curricula. Such training might be beneficial and would be efficient in setting a standard and uniform knowledge base not only for law enforcement and prosecution authorities, but for all cooperating authorities which each have their own role in the overall crime prevention strategy.

The investigative authorities in **Finland** appear to have a sound initial training that is supplemented by specialised training in matters relating to financial and economic crime. This applies to all investigation services. These courses, however, cover the typical elements of financial investigations and it was not clearly displayed whether these trainings also comprise the methodology of investigating complex financial aspects of activities of organised groups or persons involved in corruption deals where, for instance, legal activities have been blended with illegal ones. There appear to be no specialised training for the investigation of fraud in connection with the financial funds of the EU.

In **Germany**, the level of training and specialisation of investigating magistrates seems insufficient. As with the police, there seems to be no process or procedure that would confirm or substantiate the required expertise or specialisation for magistrates involved in the financial investigations.

In **Greece**, the police has a generic standard training for police officials and tuition on financial crime has been added to the curriculum of all ranks. At the time of the on-site visit no formal accreditation process for financial investigators had been developed. Specific training on financial investigation and financial crimes for the judiciary is, as it appears, almost non-existent. Prosecutors have to rely on their own initiative to get external training. Besides "on the job training", there does not seem to be any structured and tailored training trajectory that provides magistrates with continued professional training. There is no formal accreditation process or procedure that would corroborate or substantiate the required expertise or specialisation for magistrates involved in the financial investigation or sentencing process at any stage.

In **Italy**, prosecutors could benefit from more specialisation and training in economic and financial crime-related matters. In addition, it appeared that prosecutors at regional level do not receive any special training or preparation but are rather learning through practice.

In **Lithuania**, training on financial crime and financial investigations provided for the police and other law enforcement authorities seems relatively basic and non-specialised. There are some recent initiatives for training in asset tracing/asset recovery and investigation of fraud-related crime as well as financial crime. This development is positive, but training on financial investigations and financial crime would ideally require a more integrated approach featuring for example a formal accreditation system and permanent specific training modules. Specific training on financial crime targeted for the judiciary and specifically for the investigating judges seems scarce. Prosecutors appear to receive ad-hoc training and are naturally trained "on the job". Furthermore, there seems to be some unawareness among some members of the judiciary as regards the need and benefits of specific training.

Law enforcement in **Luxembourg** lacks a comprehensive and qualitatively well-developed training programme for financial investigators. The rather low ratio of financially skilled and specialised investigators is currently not compensated for and is even amplified by the huge pressure which is impacting on the financial investigators as a result of the disproportionate amount of MLA requests they receive from foreign jurisdictions. In **Malta**, there is very limited training policy, which seems to be based, especially outside the police, on ad hoc seminars and training events.

It cannot be assessed to what extent financial investigations and relevant tools are covered by training schemes for prosecutors in the **Netherlands** who do not work for the specialised service BOOM. Judges do not receive sufficient training and thus are not always able to address complex financial crimes properly.

A major problem in **Poland** is the apparent difficulty in maintaining the required level of specialisation at central level and establishing such a level at regional level. Polish police recruitment and training are centrally structured and generalist. No specific training trajectories and strategies have been developed for specialised functions, such as financial investigation. Specific ad hoc training courses are organised and set up for selected officers. However, there appears to be little structure, and in particular a lack of long- and short-term training programmes. The overall level of specialisation in conducting financial investigations seems to be rather low.

In **Spain**, the Judicial School of the General Council of the Judiciary includes training stages for professional judges serving both in organs specialised in prosecution and in those responsible for pre-trial investigations. However, all these training activities are voluntary for judges and magistrates.

In the **Slovak Republic**, as financial investigations do not entail any particular procedures and there are no financial investigators as such, there is no separate, coherent training policy in the field of financial investigations. There is also lack of specialisation in law enforcement, prosecution and judicial authorities, when it comes to financial crime. The level of expertise is inconsistent. It is more apparent on the district level, where the caseload seems to be biggest and a handful of people must deal with all types of crimes, so that it is virtually impossible to become specialised. It was even stated that from some districts it is impossible to send a representative to be trained because of the workload.

1.2.3. Criminal policy

A criminal policy in its widest sense is of course present in all Member States. Questions raised during the evaluation missions often referred to a) its link to an overall internal security strategy, and b) its link to either a policing strategy or a more specific financial crime strategy. There is no unison model in place, as the country-specific examples below will illustrate.

A specific long-term policy towards financial crimes and financial investigations is at times lacking. Medium-term (annual) action plans of different operational services are in place, but their links to an overall policy plan many times seem to be rather weak. Often, the general approach to financial crime seems to be based on existing legal provisions and principles such as "crime must not pay" illustrating a limited awareness on the financial investigation potential.

A positive example contrary to the above is **Belgium**. In Belgium, the National Security Plan sets priorities in two areas: strategy and police security policy. Tackling serious financial and economic crime as well as corruption, fraud and money laundering is a matter of security policy. On the basis of the National Security Plan, Belgium has a comprehensive and solid foundation for the development and implementation of a coherent and consistent criminal policy. This criminal policy

also contains clear guidelines on several types of financial crime. In terms of content, the police have a very strong input into the National Security Policy. The police can therefore provide a clear and detailed action plan based upon the priorities identified.

The relationship between ministries and agencies in policy formulation is an interesting issue which sheds light on the interlink between policy and operational activities, and between policy makers and agencies. In **Austria**, for instance, there seem to be inadequate mechanisms for coordination and exchange of views at strategic level. Major strategic challenges and legal problems are viewed differently by the authorities involved. The impression of the evaluating team is thus similar to an assessment by the Austrian Court of Auditors (Rechnungshof), which states in its report[1] that there is no organised cooperation between the two Ministries (of the Interior and Justice) or the police, the prosecution and the courts, which means that efficient strategies cannot be developed. The evaluators are of the opinion that the Ministry of Finance and its services should also be added to this list of authorities. In **Ireland**, on the other hand, all policy work is influenced through constant contacts between the Ministry of Justice and the agencies. In setting the three year Policing Strategy and the Annual Policing Plan, for example, there is consultation between the Ministry of Justice, An Garda Síochána and the Revenue Commissioners so as to identify priorities and set down a planned response.

Sometimes, policy documents are not clearly linked to operational activities. For instance, the Integrated Governmental Strategy to Prevent and Counter Corruption and Organised Crime in **Bulgaria** is a general document of a political character, and it needs to be complemented with a detailed action plan with concrete, measurable goals**,** combined with a timetable and a review mechanism. Although the financial strength of organised crime is considered as a problem, it is not properly reflected in proposed counter-measures, such as an extensive use of financial investigations, wide use of seizure and extended application of confiscation and similar types of punishment. Finally, although there is a framework for operational cooperation, the evaluators were not made familiar with any high-level management mechanism that would foster efficient strategic cooperation and dialogue between the authorities involved.

[1] Der Bericht des Rechnungshofs der Reihe Bund 2008/12 an den Nationalrat vom 9.12.2008 "Geldwäschebekämpfung und Vermögensabschöpfung" available at *www.rechnungshof.gv.at*

There is clear, consolidated legislation in **Cyprus**, enacted in 2010, which helps in the process of preventing and combating economic crime. Cypriot authorities have at their disposal a well-established and effective legal framework for investigation and prosecution. The expert team was not made aware of the existence of a national strategic security or policing plan, especially not with regards to financial crime, nor of a coherent and consistent crime proceeds oriented law enforcement policy.

In the **Czech Republic**, the Czech government introduced a proceeds-oriented strategy already in 2008-2009 for the fight against financial crime and for financial investigations. When the figures of seized and confiscated assets did not increase, the authorities scrutinised and analysed in detail the impediments and obstacles that the authorities had to face. As figures from 2011 show, the persistency of the Czech authorities has paid off.

Although a nationwide strategic security or policing plan as such does not exist in **Denmark**, policy objectives are embedded in managerial contracts with senior police managers for the duration of their mandates. Police work is governed through the policing strategy. The policing strategy is linked to the political level via a political agreement where general priorities are set. There is no separate financial crime strategy in Denmark. Overall the Danish authorities have adopted good policies and strategies in the area of policing and appear to continue to enhance their efforts with regard to tackling organised criminal gangs using the powers and resources of the national and regional economic crime units and the tax authorities.

Criminal policy in **Estonia** places strong emphasis on the seizure and confiscation of proceeds of crime; however practice does not fully reflect this prioritisation. The Estonian police has adopted guidelines for tracing and seizing the proceeds of crime. These guidelines are applied by other authorities including the prosecution service. Common interagency guidelines should be considered by other Member States in order to establish common practice regarding the proceeds of crime. However, the scope should be widened to cover more facets of financial crime than merely seizure and confiscation of proceeds of crime.

Finland has adopted and effectively applied a broad, holistic approach in fighting financial crime and conducting financial investigations. Specific Action Programmes to Combat Financial Crime have been regularly adopted and implemented since 1996. They envisage specific actions based on agreed priorities, with a clear indication of the deadlines for implementation and the responsible institutions. These programmes build on each other, thus providing for continuity and sustainability in pursuing the specific goals. It seems, however, that the system in Finland to a large extent is nationally centred with a well placed and integrated structure, thus providing for a comprehensive framework to fight financial crime. Given that crime is increasingly sophisticated and cross-border in nature, the EU policy dimension could be better integrated into the Finnish policy-making cycle.

In **France**, criminal investigations are driven by a "proceeds-oriented" policy through legislative measures, and financial investigations in France have become increasingly oriented towards property seizures in order to facilitate the seizure of criminal assets and increase the number of confiscations. Despite the explanations given, none of the services visited during the evaluation, however, made reference to an integrated national strategic approach (an inter-ministerial programme or plan) to financial investigations that would encompass and coordinate the multitude of efforts undertaken by the French government, legislature and authorities to date. This "proceeds-oriented" approach to financial investigations appears not to take sufficiently into account the potential added value of financial investigations as parallel investigations into all criminal investigations concerning serious and organised crime, including terrorism financing.

In **Greece**, there is a national strategy comprising several comprehensive measures to enhance combating financial crime and to alleviate the difficult situation of the state budget. This strategy has apparently led to reinforcing the competence and effectiveness of the SDOE by strengthening both its capacity and capabilities. In addition, there were certain signs of policy-driven action in the individual entities.

Germany has a well-concerted and strategy-driven action plan to counter financial crime at the federal level. Clear setting of objectives and performance measurement are considered paramount. However, these are mainly competences pertaining to the *Land* level, and the *Länder* obviously differ from one another. Germany's criminal policy has adopted an approach which regards effective criminal prosecution as comprising both the perpetrator's conviction and the confiscation of the incriminating assets. In terms of legislation, this is expressed in the fact that provisions on forfeiture and confiscation have been included in the Criminal Code.

In **Hungary**, the authorities have at their disposal a well-established and effective legal framework for investigation and prosecution, including data gathering and covert operations that are undertaken by a separate specialised service. On the other hand there is no separate organisational or tactical framework for financial investigations and financial issues are, generally speaking, not considered an important priority for action by investigating authorities. The lack of an overarching strategy successfully influencing the behaviour of stakeholders either nationally or locally is the main weakness of the Hungarian system. Thematic strategies are rarely up-to-date and they do not contain any provisions concerning asset recovery. They do not seem to influence the daily work of the services. In particular, the prosecution service seems to be a reactive body with no clear prioritisation of financial crime and financial investigations, whereas the police has an Action Plan indicating the importance of these crimes.

In **Italy**, the fight against organised crime is a priority. In order to counter organised crime the Italian legislator has adopted several legal provisions, some of which are specifically aimed at tackling the proceeds from crime. In this way, the combating of all financial crime related to Mafia crime has encouraged Italy to set up new structures, policies and tools. The policy of tackling illegal proceeds originates from an awareness that law enforcement measures alone do not reduce the danger emanating from criminal organisations based on profit, the latter being the reason for their existence and the basis for their effectiveness, stability and credibility. On the other hand, investigations into financial crimes which are not linked to organised crime suffers from insufficient human resources allocated to it, resulting in delays and a high degree of withdrawal from the investigations.

A National Criminal Investigation Model is being currently developed in **Latvia** in order to create a new, intelligence-led and proactive priority-setting scheme for law enforcement, covering all Latvian law enforcement and national security agencies. The model is also said to be developed in close cooperation with the prosecution. The project does not explain how it will enhance financial investigations. State policies and strategic plans available, as well as daily practice, indicate that criminal assets, their tracing, seizure and subsequent confiscation are not yet regarded as priorities. There is no national policy or strategy for financial crimes and financial investigations. Thus the existing authorities and their committed staff may not always be used in an optimal way.

The national strategy set by the government of **Lithuania** has resulted in the Programme of the Government of Lithuania, and the Plan for the strengthening of criminal prosecution for fraud. The Office of the Prime Minister formulates several plans, such as the plan against the shadow economy. They all contain concrete measures with designated agencies or institutions, including a reporting obligation on implementation. Several plans and a general criminal policy thus exist but there is no clear and nation-wide policy in place for the fight against financial crime involving all relevant actors. The current anti-financial crime legislation in Lithuania is very modern and advanced. However, in order to target its use and take full advantage of it, a clear integrated national policy that is based on well-defined and intelligence-led priorities and that includes both preventive and repressive measures is required.

In **Luxembourg**, even though it has adequate legal instruments enshrined in its Criminal Code and Code of Criminal Procedure, there was no evidence presented of the existence of a nationwide strategic security or policing plan, especially not with regard to financial crime. A policy on criminal asset recovery has apparently not been considered. As a result, any arrangements along those lines seem to be embryonic.

Malta is a small jurisdiction in comparison to other Member States. This is reflected in the size and internal organisation of its authorities, as well as in the cooperation model, which is based on personal relations between officers. This partially explains why the Maltese authorities are not, except in the fields of corruption and fraud, guided by any national strategy or plan. It leads however to the general assessment that the Maltese services, especially the police and the

prosecution, are very reactive and lack a proactive attitude. There were no identified priorities or objectives set with regard to financial crime, let alone any effort being made to produce an assessment of the threat imposed by financial crime, in support of any policy cycle. Apart from political decisions, the problem seems to be related to lack of capacity-building and the hesitation from senior management.

The system in the **Netherlands** is based on a clear government policy, focused and aimed at criminal assets. The Dutch approach is flexible and pragmatic, based on a variety of tools - from prevention and administrative measures[1] to prosecution and penal sanctions. This general approach is reflected in comprehensive, medium-term strategies referring to unlawful behaviours from those of a local nature to international and organised crime. The implementation, however, seems to be fragmented. This, coupled with the Dutch focus on confiscation, may have slowed down the realisation of the full potential of financial investigations.

In **Poland**, criminal asset recovery is the only area covered by its criminal policy where tangible results have been achieved and where a concise and well thought-out strategy is being implemented. The good work being delivered by the ARO proves that a strategy-driven approach can work within the existing Polish law enforcement structure. A similar approach comprising financial crime and financial investigations more broadly should be introduced, based on the positive example provided in the field of criminal asset recovery.

[1] The Dutch administrative approach is particularly interesting. On 1 June 2003, the Dutch Public Administration Probity Act (BIBOB) entered into force. Through this, Dutch administrative authorities having to decide on whether to grant a permit, subsidy or building contract to an organisation or a company have the option to refuse this if they suspect that the service to be provided is being used for criminal objectives. In addition to relying on their own enquiries, the authorities may use the BIBOB Bureau of the Ministry of Justice to seek further advice on the applicant requesting the service. This Bureau has access to secured sources such as the police files and the Tax and Customs Administration. The BIBOB Bureau, which is part of the Ministry of Justice, not only inspects the antecedents of the applicant, but also checks his or her immediate environment such as other persons in leading positions in the relevant organisation and business relationships.

There seems to be no strategic document describing a specific long-term policy towards financial crimes and financial investigations in **Portugal**, with the exception of the law defining the biannual priorities in the prevention and fight against crime, where economic and financial crimes are included. There is no special legal framework for financial investigations, as these are carried out within the framework of regular criminal investigations. Tracing, seizing and confiscation of assets is not a separate goal of criminal investigations in Portugal.

In **Romania**, there is no overall strategic approach to financial crime and related investigations that would entirely cover and guarantee the coherence of actions in the field of prevention, investigation, prosecution and asset recovery. Neither a comprehensive policy document nor an action plan relating to financial crimes is available. Apart from the lack of a strategic approach, no overarching coordination mechanism at national level was presented.

The **Slovak Republic** appears to follow a proceeds-oriented policy**.** Despite the fact that the detection of proceeds of crime is not considered a separate task of law enforcement authorities and there is no legislative, internal-organisational or strategic document defining such activity as a separate goal of activity of law enforcement agencies it is however, considered an integral part of criminal investigations. The approach in criminal investigations seems to be more on a reactive level, the investigations are evidence- and conviction-orientated, and the criminal proceeds are not pursued separately.

In terms of criminal policy, **Slovenia** has definitely taken a focused and proactive approach towards financial crime. The Slovenian authorities highlight that investigations conducted by specialised investigative teams need to be intensified, and that efforts need to be made to ensure that more complex economic crimes are investigated by specialised investigative teams composed of experts in various domains. In their view, this requires that the heads of the competent State prosecutor's offices and other State bodies and institutions generate interest in such team work. Moreover, Slovenia argues that financial investigations are among the basic investigation tools for detecting and investigating crimes. In their words, efficient financial investigations are a precondition for an efficient system of proceeds confiscation. This Slovenian position is commendable. It remains to be seen how the policy will be translated into practice. At present this is not possible to assess.

Criminal investigations in **Spain** are not driven by a "proceeds-oriented" policy but are instead oriented to confiscation and seizure of assets from criminal organisations, as a means of fighting against and dismantling this type of criminal activity. There are no special policies in place for this type of criminal investigation, and no priority is given to the investigation/prosecution of acquisitive crime in the Spanish official investigation (police) or prosecution policy compared to other forms of crime. There are, however, special units in every police force, and a specialised public prosecutor's office with their assigned police and support units from the tax authority, forming a part of an overall strategy against smuggling and fraud.

Measures to prevent profit gained from crime are given high priority in law enforcement in **Sweden**, and both actions against financial crime in general and financial investigations more specifically are promoted. The government has adopted a number of measures with a view to strengthening the work of the authorities. However, there seems to be no specific integrated national asset recovery policy in Sweden. A well-defined criminal policy for preventing criminal profit exists, but an elaborated strategy of asset recovery seems to be missing from it.

Criminal policy in the **United Kingdom** ensures that the recovery of proceeds of crime is an integral part of and given prominence in all criminal investigations. The strategy is that financial investigations are foremost in the minds of all investigators and that all criminal investigations should be accompanied by financial enquiries with a view to confiscation. The existing mechanisms facilitate dialogue and general coordination between the services involved. The system in the United Kingdom provides investigators with numerous and effective tools to conduct financial investigations. The question remains whether the focus on confiscation has hindered the full potential of financial investigations.

1.3. Investigation and prosecution

1.3.1. Databases

Most law enforcement and prosecution authorities have appropriate access to relevant databases. The authorities often have at their disposal a wide range of databases, the contents of which are indispensable for conducting investigations into financial crime and the financial aspects of crime, and they are accessible either to the public or only to the appropriate authorities. In addition to their information value, they provide assistance for the competent authorities in recovering criminal assets (for instance land registry and vehicle databases).

A noticeable exception is the lack of a centralised real estate registry in **Romania**. Otherwise, the banking system seems to be the only general exception to this, where a central database of accounts is available in some Member States. Questions related to bank accounts are many times forwarded to a single contact point representing banks, which provides the requested data, or the authorities have to approach individual banks one at a time. This procedure is impractical, especially when urgent requests are to be handled. On the other hand, it should be noted that there is generally good cooperation between the police and the private sector (banks), in some Member States based on informal, personal contacts.

To date, six Member States have central bank account registries, namely France, Germany, Italy, Portugal, Romania and Slovenia. Another five Member States are currently considering setting up such central bank account registries, namely Bulgaria, the Czech Republic, Hungary, Poland, and the Slovak Republic.

A few national examples will be presented below as regards access to information and databases, to bring home points of general value to other Member States as well.

In **Austria**, law enforcement and prosecution authorities have appropriate access to relevant databases. The banking system seems to be the only exception, as no central base is available there. Currently questions related to bank accounts are forwarded to a single contact point representing banks, which provides the requested data within two weeks. The law enforcement experts interviewed view this procedure as impractical, especially as regards urgent requests. However, this critical assessment is not shared by the Ministry of Justice. Moreover, in Austria databases and IT analytical tools are quite often of an internal character, which means other interested services do not have access to them. Thus the databases cannot be cross-checked and certain links between, for example, customs-related crimes and ordinary crime may remain undiscovered.

In the **Czech Republic**, the Unit Combating Corruption and Financial Crimes (UOKFK) has established and uses several comprehensive databases as well as the central case management system ETR which enables also the collection of statistical data resulting from criminal investigations. The added value of the ETR is clear, as it provides a useful tool for the monitoring of the progress of seizing and freezing, comprehensive case management for financial investigations, as well as overall asset recovery statistics.

Of all the databases used by investigative services, the national database in **France** on bank accounts (FICOBA) was the one most intensively used and the one that was rated as very useful for facilitating their work. According to the practitioners met during the visit, cooperation among the appropriate services within the EU would benefit considerably from similar databases in other Member States.

In **Germany**, information regarding bank accounts can be collated nationwide by means of an automated procedure for the retrieval of account details. Every bank with a registered office in Germany must have a database in which it stores master data in respect of all bank accounts held by the bank. The Federal Financial Supervisory Authority (BaFin) can access each database via an automated procedure. The BaFin is a very good tool and platform for both the public prosecution offices and law enforcement agencies to access bank data. The real-time access allows the Bafin to check almost instantly whether a person has a bank account with a German financial institution, even if the backlog of demands made to the BaFin seems to imply that the execution of a request may take up to three weeks. The fact that the BKA, at the request of the law enforcement authority of another Member State, is able to make requests to the BaFin to find out whether a person has a bank account in Germany, is an exemplary model of a smooth exchange of information within the EU. The only condition which is apparently required is that there must be an ongoing criminal investigation in the requesting Member State. This type of cooperation thus goes well beyond what is required under the Protocol of 8 October 2001 to the Mutual Assistance Convention of the EU.

One weakness of the investigative system in **Hungary** is access to bank-related data. The decentralised character of the system and lengthy procedures may seriously impede law enforcement action, especially as far as financial investigations are concerned. In general, financial investigations in **Lithuania** are supported by access, direct or indirect, to necessary databases by law enforcement and other relevant authorities. Additionally, the databases and registers provide assistance for the investigative authorities in recovering criminal assets (for example bank accounts, land register, and vehicle database). However, there is as of yet no general direct access to all available databases relevant for financial and economic crime cases, or for real-time consultation[1].

[1] With the exception that the new cooperation agreements between the police / the FCIS and the State Tax Inspectorate grant these authorities direct access to the bank account database managed by the State Tax Inspectorate. However, it is still unclear as to which databases the direct access is specifically not available.

In **Cyprus**, the police have a database where all information received from informants is collected. The database is also available for other services. This certainly deserves attention from other Member States. Generally speaking, in Cyprus all law enforcement authorities have excellent databases managed through efficient computing infrastructures. But this does not stop many services and agencies from developing their own databases. A uniform model at national level for managing information and better regulating the processing of financial intelligence is lacking. A similar fragmentation is present elsewhere. In **Poland**, for instance, the acquisition of the information necessary to conduct financial investigations is difficult because it is contained in a large number of databases scattered across different administrations, some of which do not have on-line access. The situation is quite similar in **Romania**. Here, a significant challenge relates also to internal databases run by different services. There is very limited mutual access and limited interoperability of the databases. In practice, different services, while investigating, prosecuting or judging certain cases, may not be aware of other procedures concerning the same person, group, assets, etc. Moreover, reluctance to consult foreign databases was clearly visible among law-enforcement services, even in obvious cases where foreign nationals were involved.

1.3.2. Financial investigations

In the majority of the Member States financial investigations i.e. the investigation into the financial aspects of crime are led by prosecutors. There are two main exceptions to this. First is when investigating magistrates, when there are such present, lead a financial investigation. Second, in some Member States, the pre-trial investigation is relatively independently run by the police. As noted elsewhere, in **Denmark**, prosecution and police are both placed under the Ministry of Justice, and the 12 Commissioners heading the police districts are "double-hatted", locally being responsible for both police and prosecution.

Problems encountered by the Member States related to financial crime investigations include, but are not limited to, a few main topics:

- Organisational hindrances affecting the smooth cooperation between competent authorities,
- Limited resources,
- Procedural issues, including length of judicial proceedings which may lead to case dismissal,
- Issues related to prioritisation, firstly, the lack of a clear focus on financial crime, secondly, the lack of focus on investigating such crimes to the end.

A few examples will bring home these points. Again, the examples are not limited to being a reflection of the situation in these particular Member States, but rather examples relevant to a broader EU audience.

In **Belgium**, as noted above, a number of separate units embedded in different ministerial departments still remain competent to investigate financial crimes. The Belgian liaison officer system is worth mentioning as a good case of bridging information gaps. Via a liaison network, requesting authorities can access the databases run by another authority, thus enabling information to be accessed and exchanged between them.

In **Cyprus**, the police are legally barred from using special investigative techniques, such as interception of telecommunications etc. and are even not allowed to record the contents of a conversation from police officers operating under cover. [1] Cyprus is one of the few jurisdictions where these vital special investigation techniques are not allowed by law. This is a significant obstacle for the police to efficiently conducting investigations in a technologically-driven world.

In **Finland**, the police has broad powers to lead criminal investigations. In general, a criminal investigation is centred around the police discretion to decide on investigative actions and coercive measures (for instance preliminary confiscation) during a pre-trial investigation. The police for instance have the right to file directly an MLA request with the competent authorities of another country or to refer directly to the court a request for permission in relation to the imposition of coercive measures. Furthermore, in Finland the so-called target selection system is applied where, instead of dealing with single offences, the whole criminal activity of the selected target is tackled in a comprehensive way. The Finnish authorities assess the target selection method as an effective tool in complex long-term cases.

The prosecution offices in **Greece** respond in an exclusively reactive way to financial crime. No special capacities appeared to have been reserved to conduct pro-active investigations.

[1] The Constitution of Cyprus of 1960 in its Article 17 does not allow any communication intercept measure at all. Although the Law on the Retention of Telecommunication Data for the Investigation of Serious Criminal Offences (Law No 183 (I)/2007) allows to retrieve any data regarding communications (e.g. telephone numbers, location of mobile phone, IP address) no authorization exists to intercept the contents.

Authorities in **Hungary** have at their disposal a well-established and effective legal framework for investigation and prosecution, including data gathering and covert operations that are undertaken by a separate specialised service. They also have access to numerous databases. On the other hand there is no separate organisational or tactical framework for financial investigations and financial issues are, generally speaking, not considered an important priority for action by investigating authorities.

A recurring problem in **Italy** is the excessive length of judicial proceedings. Although strong evidence may have been collected, the majority of judicial proceedings on financial crimes may simply be dismissed because the limitation period has expired, thus precluding the possibility of a court decision on the merits of the case.

The setup in **Ireland** with Divisional Assets Profilers is a very noteworthy example of spreading the good practise of the criminal model of asset forfeiture. However, as these profilers are not solely used for financial investigations, there is a constant risk that they will be used for other purposes. Still, financial investigations form part of all criminal investigations and are deemed by the Irish authorities an effective tool in combating all serious organised crime. Irish authorities conduct financial investigations in the intelligence phase. The analysed financial intelligence information is used as an indicator to initiate a criminal investigation and financial investigation.

In **Latvia**, overall awareness of the importance and usefulness of financial investigations seems to diminish by every step of criminal proceedings (from investigation to prosecution to court). Financial aspects of crime do not seem to play any significant role in investigations, nor are financial investigations based on any special procedural provisions. In most cases, should financial aspects arise during an investigation, no additional resources or expertise will be allocated.

Malta has the necessary mechanisms to conduct investigations, including their financial aspects, and to gather and exchange relevant information. Legal tools for investigations are in place, but contained in different legal acts. Thus the structure of the law is not immediately clear. Moreover, apart from the oversight procedures in place, the evaluators remain concerned if the authorisation of special investigative techniques in judicial proceedings by a minister rather than a judicial body guarantees the impartiality of investigations, for instance against publicly exposed persons.

In the **Netherlands**, the system provides investigators with numerous and effective tools to conduct financial investigations. Moreover, tracing, seizing and confiscation are an additional objective of criminal investigations. In the Netherlands, mainstreaming of financial investigations is regarded as a priority and numerous steps are being taken in order to draw the attention of law enforcement personnel to asset-related aspects of crime. The requirement that even officers dealing with neighbourhood policing are supposed to launch asset-related investigations, even for minor cases, may have a major impact on local communities and indeed alter the law enforcement philosophy. Unfortunately, officers often prefer to deny the existence of assets as confirmation would increase the amount of work they have to do. In addition, prosecutors who are not specialised, i.e. those who do not belong to specific units dealing with financial investigations, are not always able to deal with finance-related cases like money laundering. The above findings are also reflected in the Dutch National Threat Assessment of 2008, stating that:

> "investigations into money laundering and other forms of financial/economic crime are unpopular with the police and the Public Prosecution Service. Rather than conducting financial investigations, the police seem to prefer the more traditional forms of investigation. Financial investigations require specific knowledge and skills that are often lacking. The financial expertise that is present or has been built up often drains away to the business community, where good money is paid for this expertise. Finally, 'last but not least', financial investigations are extremely labour-intensive and when people and resources are scarce, that will be an important consideration when deciding whether an investigation is to be launched."

There is little reason to question the relevance of these conclusions today. The transferability to other Member States should also be clear.

In **Romania**, finance-related tools seem to be of secondary importance during investigation and prosecution, as the gathering of necessary evidence and identification of the perpetrators would be the main goal in general. The implications are twofold: first, possible criminal connections, also of an international nature, may remain undiscovered and, secondly, possibilities of asset recovery after a final conviction are limited. At the trial stage, certain aspects of a finance-related crime may also be overlooked, as there are no specialised judicial panels in courts that would be able to analyse complex cases. On the other hand, cases related to money laundering are judged by tribunals (second-level courts) which should mean they are addressed by senior and more experienced judges. External expertise, from the private sector for example, is available to courts. However, this option is restricted by the limited financial resources of the judicial system.

In the **Slovak Republic**, as the authorities are obliged to investigate all known offences, prioritisation is possible only to a limited extent. Financial aspects of crime do not seem to play any significant role in investigations, nor are financial investigations based on any special procedural provisions. In addition, in general, neither officers in the field nor their superiors and prosecutors regard tracing and seizing of criminal assets as priority. In most cases, should financial aspects arise during an investigation, no additional resources or expertise will be allocated. This indicates that criminal assets, their tracing, seizure and subsequent confiscation are not yet regarded as priorities.

In **Spain**, financial investigations that are carried out within the framework of criminal investigations have no specific legal framework. In practice, financial investigations in Spain are mostly related to crimes of economic nature (including fraud, deception and tax fraud).

1.3.2.1. Resources

The issue of resources, their availability and employment, merits a discussion of its own. All Member States have agencies which appear to be more or less adequately resourced to cover their day-to-day workload. However, units responsible for financial investigations are often understaffed. For instance, in **Austria**, the overall impression of the evaluators was that certain units responsible for financial investigations are heavily understaffed given the potential added value they could present for financial investigations. Human resources policy is considered a serious obstacle for financial investigations, as the remuneration of experts engaged in analytical tasks can be lower than that of those undertaking operational activities. This may be seen as disadvantage preventing certain officers from choosing this specialisation. Moreover, HR policy is considered to be to some extent inflexible and incentives for experts in certain specific fields, like accounting, are limited. The current system does not motivate officers to acquire new skills or undertake specialised training.

In **Cyprus**, the rather low ratio of investigators skilled and specialised in the financial aspects of crime is currently not compensated by any means and is even amplified by the huge pressure which is impacting on the financial investigators resulting from the disproportionate amount of mutual legal assistance request they receive from foreign jurisdictions. Obviously, this is a result of Cyprus' emerging status as a financial centre, having a financial industry that is not really proportional with the size of the jurisdiction itself.

According to the authorities in the **Czech Republic**, the frequent restructuring of the Czech police is perceived by the practitioners as a serious challenge, as is also the constant brain drain of investigators leading to the loss of many well-trained and experienced financial investigators. As one option to resolve the latter, a bonus system for financial investigators in successful confiscation cases is currently being discussed; the results of which might be interesting for other European police forces in the light of the emerging discussions on how to reuse confiscated assets.

In **Estonia**, the human resources for preventing financial crime and conducting financial investigations are limited. This has become particularly evident with regard to the staff that is tasked with tracing and confiscating proceeds of crime. Numerically reduced and inadequately paid staff may not always be able to confront criminal groups having access to vast financial resources, legal and financial expertise. In **Italy**, financial crime which is not linked to organised crime suffers from a lack of human resources allocated to combat it and consequent delays, leading to a high degree of withdrawal from the investigations. Moreover, as noted during the evaluation in **Latvia**, decreased salaries may result in declining commitment and even corruption among law-enforcement, prosecutors and judges.

In many Member States, it is difficult not only to keep staff but also to replace personnel leaving the service. This leads to a rising number of vacancies and subsequently an increased workload on the remaining staff. In some Member States such as Luxembourg and Romania the situation is quite acute. Apart from the obvious challenges this presents in terms of human resource management, this does not only have an effect on the general workload of a particular service, but also on how much resources can be devoted to proactive financial intelligence rather than reactive investigations.

For instance, in **Luxembourg**, neither the FIU nor the police displays any proactive attitude for sharing financial intelligence and the reason for that is probably the extreme workload of the police. They simply do not seem to be getting round to conceiving and implementing a strategy-driven and financial intelligence-led approach. The importance of Luxembourg as a world financial centre appears to be well reflected in the size of its banking and insurance supervisory bodies. This however, stands in stark contrast to the size of and staff numbers in the relevant units of the Grand Duchy Police's CID (SPJ) which appears to be critically understaffed in the Ecofin sector. With the actual number of staff, the SPJ does not seem to be in a position to adopt a more proactive approach that would allow it to do more than merely react to events.

In **Poland**, a rather large number of specialised officers have left the service, which further diminishes the expertise-gathering capacity of the institutions. In **Portugal**, despite a generally good legal framework obstacles to their work concerning the investigation of financial crimes exist, created by the general lack of human resources. In **Romania**, it is a difficult task to replace prosecutors retiring/leaving the service. This leads to a rising number of vacancies and, as the evaluators discovered, heavy understaffing of certain units. The excessive burden of work with investigators having to process about 1000 files a year points to serious shortcomings in HR policy. In addition, minor and serious cases have to be given equal treatment from a procedural point of view. In the long term this has negative effects on the quality and efficiency of investigation and prosecution. The same applies to law-enforcement agencies, where specialised and experienced personnel may wish to leave the service, mainly for financial reasons. In the **Slovak Republic**, there seem to be some problems with personnel due to retirement and a change of social benefits. In particular senior investigators seem to have left the Criminal Police in the last years.

In **Sweden**, although the shortage of resources of the FIU has been highlighted in the last FATF evaluation in 2005, where it was mentioned that the number of staff is not adequate, the personnel situation has not changed since. This obviously has an impact on the capacity of the FIU which does not seem to have the resources to investigate money laundering cases on its own.

1.3.2.2. Financial intelligence

In some Member States, financial intelligence information is considered a vital indicator for the initiation of criminal investigations. However, the term "financial intelligence" is defined in a wide range of different ways throughout the EU. Sometimes, it solely refers to the use of STRs, sometimes it refers to intelligence work in the broadest sense of the word. Sometimes, the term is not comfortably used at all.

The lack of a unison approach to financial intelligence is surprising, with positive and proactive EU experiences in mind, such as Europol's long-term intelligence efforts and the establishment of both a European Criminal Intelligence Model (ECIM) and the EU Policy Cycle against organised crime; all of which are clearly intelligence oriented favouring the principle of intelligence-led policing. It is also troubling, as the fight against crime in general, and financial crime in particular, require a stringent and proactive approach in support of efficient prioritisation and resource allocation between authorities, cases and, dare we say, between countries.

In **Austria**, financial intelligence information is considered a vital indicator for the initiation of criminal investigations. The evaluators were informed of some significant cases triggered by financial intelligence, which proves that it is appropriate for use in the detection of crime. The cases discussed, where financial intelligence revealed criminal activities or indicated their scale, previously unknown to the law enforcement authorities, are a sound argument for enhancement of the relevant units.

In some Member States, including **Belgium,** and **Poland** (where the information within the FIU is completely shielded from the outside), the sharing of financial intelligence between different law enforcement bodies is not possible, and this is an impediment to enhanced cooperation between customs and the police.

In **Cyprus**, neither the FIU nor the police display any pro-active attitude for sharing financial intelligence. The evaluation team did not see any evidence of a strategy-driven and financial intelligence-led approach. The compliance of mandatory reporting bodies with AML relations does not seem to be monitored, let alone enforced.

Within the legal sphere in **Estonia**, the concept of financial investigations is primarily understood as the activities carried out by the FIU, which has its headquarters in the Criminal Police Department, in the context of combating money laundering.

In **Latvia**, financial intelligence seems to be understood narrowly and limited mainly to data handled by the FIU. Moreover, the potential of the unit, with the valuable intelligence and committed staff it has at its disposal, seem not to be exploited to the extent possible. Cooperation at national level takes place on a case-by-case basis and could be improved.

The management of financial intelligence, understood as reports from the regulated sector about unusual transactions, is one of the strongest points of the system in the **Netherlands**. The distinction made between “unusual” and “suspicious” transactions as well as the "hybrid" character of the FIU is commendable. This solution sets the ground for a balanced practice to reconcile respect for fundamental rights and data protection with the needs of an effective detection system.

The FIU operates a database containing financial intelligence on suspicious transactions. As it is interoperable with all criminal intelligence and police databases and provides a vast range of analytical functionalities, it can be clearly defined as a best practice. It is a powerful tool to support the financial intelligence-led policing concept as it offers great opportunities to share intelligence and to conduct integrated analysis in a proactive way.

In general the authorities in **Portugal** seem to have developed a number of possibilities for proactive ways of detecting financial crime. Customs have developed models for screening cargo. Importantly, legislation allows the police to engage in intelligence gathering before the start of formal investigations.

In **Sweden**, both before and during preliminary investigations, the police have an important part to play in the effort to trace and secure the proceeds of crime. The criminal intelligence operations of the police are carried out in line with the national intelligence model which means, for instance, that intelligence work is primarily carried out before a preliminary investigation has been launched. Through intelligence gathering, processing and analysis the police are often able to determine whether there is evidence of criminal proceeds in a given case. When a preliminary investigation is undertaken, police surveillance and interrogation and other measures play a part in providing the evidence the prosecutor needs before considering various coercive measures and any claims in respect of crime proceeds.

1.3.3. Cooperation

1.3.3.1. Cooperation at the national level

With a few exceptions, the cooperation between the agencies is often clearly regulated in national law or mutual agreements. More often than not, formal requirements are complemented by informal arrangements. There are many examples of good cooperation across the board; amongst and between investigative authorities and the judiciary, ministries, other agencies involved and on the international level. All Member States emphasise the good cooperation which is in place within their respective jurisdictions. Some Member States have developed national case management systems which helps them avoid overlaps and duplication. This good practice should be considered across the EU. In **Lithuania**, for instance, the prosecution service keeps a register including data on all pre-trial investigations and prosecutions. All relevant services have access to this register.

However, it does not contain all relevant information on all investigations, and there is a chance that the Prosecutor General's Office does not always have resources to fully monitor the overall allocation of cases and identify possible links between the cases. Thus overlaps between the cases - and services - may occur.

Positive examples aside, despite major efforts in all the countries evaluated, there are still many difficulties involved in cooperation and the sharing of information, principally between police and customs services. Difficulties in internal cooperation are also caused by the complexity and variety of different law enforcement authorities inside the same territory. The sharing of information between the central level and the regional levels is also an issue, as is the information exchange between agencies and ministries. All of this is accentuated when adding the international dimension.

The results of this can be captured in four points:

- Waste of time and resources
- Decreased speed in investigations
- Duplication of efforts or issues "falling between the proverbial chairs"
- Lack of concrete and positive results

A brief list of examples will point at the differences which exist when it comes to national cooperation.

In **Austria**, both law enforcement and prosecution seem to have appropriate tools at hand to avoid parallel, uncoordinated action by different regional units against the same person or for the same crime. Thanks to these tools, certain links between files can be identified. Moreover, a prosecutor plays a coordinating role in complex cases involving more than one service. Good personal relations, fostering cooperation between different services, were mentioned many times by the experts interviewed. In Austria, the criminal police and the public prosecutor's office have to pursue investigations in agreement as far as possible. However, there seem to be no organised cooperation between the two Ministries (of the Interior and Justice) or the police, the prosecution and the courts, to the detriment of the development of efficient strategies.

Institutional arrangements in **Belgium** to counter financial crime are extremely complex and derive from a division of powers between the various entities that are laid down in the Belgian Constitution. While certain areas are exclusively a federal domain, responsibilities in other areas are shared with the regions and communities with an occasional overlap of functions. However, within the integrated police, structured on two levels, the Belgian police has apparently rationalised its structure to enhance its capacity to investigate financial crimes and to eliminate unproductive competition between different police services.

In **Bulgaria**, the agencies in question, generally speaking, have the necessary legal tools to investigate and prosecute crimes. However, a limited inflow of intelligence, such as STRs from some professions, or procedural obstacles concerning the admissibility of intelligence as evidence, can hamper their activities. Access to certain data, especially when speed is of the essence, seems to be a weak point of the law enforcement system. The lack of centralised databases of bank accounts and real estate poses a significant problem for investigators.

Owing to the restricted geographical size of **Cyprus**, all officials involved in combating financial and economic crime seemed to be in touch with each other and there appears to be close cooperation between the various authorities. As it is a small jurisdiction, the authorities have a direct overview of crimes on the island and can react to them quickly. On the other hand, however, it seems that all services, especially the police, customs and the prosecution, are rather reactive. Their activities are apparently not based on any comprehensive threat assessments or analysis anticipating future criminal trends, and as a consequence there is no proactive approach to financial crime.

The **Czech Republic** has a very elaborate and well-functioning set-up as regards fighting financial crimes and conducting financial investigations as well as prosecuting the cases. The Czech Republic has also already established specialised prosecutors and judges within the system of the prosecutor's service and the courts. The Czech Republic has thus set up specialised services, both investigative and in particular prosecutorial, to deal with any specific type of crime, including financial crime, and to conduct financial investigations. The specialisation development evident within the prosecution service and the police is not reflected in the courts of justice. There are currently no specialised panels or courts devoted to financial crimes.

As noted elsewhere, information flow works without trouble in **Denmark** between the ARO and the FIU. Denmark's setup combining police and prosecutors further adds to its efficiency.

In **Estonia** there is excellent cooperation between the customs and the police. The first step taken was to merge customs services with those of the tax authorities. The Estonian authorities then developed a bureau of investigation to work proactively on common objectives. This facility has doubtlessly been strengthened by the fact that the customs and the police have identical powers in matters within their respective areas of competence. Estonian law enforcement authorities have appropriate mechanisms for the coordination of operational activities. The development of the digital E-File system in particular allows better cooperation. The E-File project functions as a central storage for files and metadata used by more than one organisation, including law enforcement and judicial authorities. The E-File policy in Estonia facilitates the overall application of justice and provides cost efficiency, legal certainty and upholds due process as well as shorts the time required for the criminal process. Furthermore the E-File system provides an excellent basis for analysing and utilising statistical data as well as for management and resource allocation.

Finland has a well organised and structured law enforcement setup with a solid functioning coordination mechanism between law enforcement authorities (police, customs and border guard). There is a clear division of tasks and responsibilities as regards preventing and combating financial crime. One of the specific features of Finnish law enforcement is the so-called Police, Customs, Border Guard (PCB) Cooperation; a close cooperation mechanism between the three law enforcement services, the most significant practice of which is the joint PCB criminal intelligence and analysis function.

Co-locating the two major police forces in **France** in one ministry has the potential to produce synergetic effects that could be beneficial for the effectiveness of law enforcement in the field of crime under review. However, given the situation following the recent restructuring, law enforcement services would benefit particularly from an effort to coordinate the fight against financial crime. Although during the visit to France the authorities reiterated their determination to coordinate efforts, a determination underlined, in institutional terms, by the existing inter-

ministerial bodies, the expert team was not in a position to establish definitively whether the different actors, with their distinct competencies, were currently coordinated as well as they could be, as required to tackle this particularly complex field of crime. A national strategic programme (or a plan) involving all the agencies and authorities that have a role in fighting financial crime would be a valuable asset in this respect.

As a federal state **Germany** has a rather complex structure that significantly varies from other Member States. The sheer size of the country and the fact that police and justice are competences that primarily remain with the *Länder* complicates matters since this means that structures, strategies and policies can differ significantly from one *Land* to another. In addition, the federal structures have only limited ability to impose harmonisation and can only advise or consult on most of these matters. At the federal level, mainly the *Zollkriminalamt* (*ZKA*) and *Bundeskriminalamt* (*BKA*) play the most significant role with regard to financial investigation and financial crime. The *ZKA* deals with the criminal investigation of crime phenomena that fall within its competence. The *BKA* provides a solid structure for the coordination of criminal investigations, operational and strategic analysis, and conducts a number of investigations autonomously under the supervision of the competent prosecuting authorities.

The Coordination Centre on Organised Crime in **Hungary** was established in order to coordinate law enforcement activities. There is no specific catalogue of crimes falling within its responsibility. Certain authorities such as the police and customs but also prosecutors and military agencies are obliged to report any type of offence if related to organised crime. Nevertheless, the policies of the services in question, including the separation of databases and their future development, different objectives and internal regulations show there is no strategic coordination of law enforcement.

The distribution of powers seems to be quite unambiguous in **Ireland**, with all agencies and relevant actors having a clear mandate assigned to them. The formal separation of powers is followed by informal processes. The Criminal Assets Bureau (CAB) in particular is a multi-agency organisation which uses a multidisciplinary partnership also with international partners. A good practice is that the agencies in the Criminal Assets Bureau bring with them their own powers, complementing one another and thus promoting efficient operational work.

In accordance with the statutory objectives of CAB there are a number of mechanisms available to CAB in targeting, where appropriate, the proceeds of crime. The remit of CAB includes confiscating, freezing or seizing of criminal assets; applying, where appropriate, the relevant powers of the Taxes Acts to the profits or gains derived from criminal conduct and suspected criminal conduct and, in certain circumstances, taking action under the Social Welfare Acts in relation to persons engaged in criminal conduct or suspected criminal conduct.

In **Italy**, the five police services are fully aware of the need to coordinate and share the information that is stored in a unified police database. The databases contain information from all police entities and, conversely, are accessible to all police bodies.

In **Latvia**, since there are many investigative authorities that do not share information routinely, it may occasionally happen that different bodies start an investigation into the same suspects, duplicating their work during the initial stages of an investigation.

The number of coordination and consultation mechanisms and the close cooperation between various public and private bodies is characteristic for the **Netherlands**. Numerous non-governmental players as well as authorities, whose primary tasks are not of a law-enforcement nature, are involved and cooperate in a coordinated manner. Administrative agreements as well as tripartite consultations are used as valuable mechanisms of coordination leading to an informed division of labour. The administrative approach works very well and allows for the efficient sharing of intelligence across all public bodies.

The police service in **Poland** has a straightforward uniform structure which seems to prevent unproductive competition between different police services and the Central Bureau of Investigations seems to play an important role. Nevertheless the regional offices seem to have a sufficient level of autonomy to serve regional prosecution offices under whose auspices investigations are conducted. However, the actual division of tasks between the police force and tax authorities with police powers remains somewhat unclear and gave rise to some concerns as to efficiency and effectiveness in cases with overlapping jurisdiction.

The main problems that arise in **Portugal** with regard to national coordination are related to the implementation phase, in terms of the concrete operational capabilities of different bodies and authorities to successfully investigate financial crimes and to adequately support the prosecution offices. In cases of serious tax fraud, multidisciplinary teams with participants from the Criminal Police, Customs and Tax authority were formed to investigate as well; this was also considered to be a good approach.

In the **Slovak Republic**, the competences of the OCB, the Criminal Police Bureau, the ACB and the Financial Police seem to be somewhat overlapping and not very well defined. The system of dividing competencies between different law enforcement authorities appeared to be rather unusual and it was not possible to conclude to which extent this resulted in overlaps or duplication of efforts when conducting investigations. There are many selective powers in different authorities when pursuing criminals. ACB, OCB and CPB all have the possibility to select their cases. Anything not falling into the special competencies falls into the remit of the ordinary criminal police.

Despite the significant number of police forces and agencies involved, as well as different judicial systems within the **United Kingdom**, no practical coordination problems at operational level were reported. This is due to an effective case-management system where inquiries can be made in order to discover links between investigations. In Scotland a similar role is played by the Scottish Intelligence Database, which can serve for coordination purposes. All officers have access to that database, which contains all pieces of intelligence available. In the United Kingdom, although the law enforcement agencies are fragmented, numerous effective coordination and cooperation mechanisms have been established.

1.3.3.2. International cooperation

Much can be done to enhance international cooperation to fight financial crime. Shortcomings that were identified during this evaluation exercise mainly relate to three issues:

- National obstacles to international cooperation
- Familiarity with and use of EU legislation
- Familiarity with and use of EU agencies

There seems to be a general lack of awareness of existing EU instruments and cooperation mechanisms (such as EJN, Eurojust) and a preference for using older non-EU instruments in cross-border cases. More importantly, a relatively strict interpretation of data protection and secrecy laws can be seen in some cases to hamper international data exchange and proactive intelligence sharing towards EU platforms such as Europol. Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the EU could provide a sufficient legal base for intelligence exchange without the need to resort to mutual legal assistance.

In general, non-implementation of the mutual recognition instruments creates serious difficulties for international cooperation in criminal matters. Important EU instruments on freezing and confiscation and instruments supporting such measures have in many cases not been transposed. Furthermore, not all Member States have ratified the EU Convention on Mutual Legal Assistance of 29 May 2000 and its Protocol of October 2001, along with other important mutual recognition instruments.

Other problems which have been identified relating to requests of mutual legal assistance include lack of speed as regards replies, information that is not sufficient, no answers to follow-up questions, and information on the circumstances of crime not provided where the answers are formal. **Spain** notes a few further problems encountered, including delay in time management and replies to rogatory letters, together with lack of cooperation by some judicial authorities of other states which, even when they have ratified the Protocol of 2001, they invoke bank secrecy when requesting ownership of an account, necessitating a second court of that country to obtain the required banking information.

In terms of cooperation with EU agencies, which will be further discussed below, a major shortcoming is that Europol does not have access to valuable data from FIUs in all Member States. This can sometimes be explained by the organisational setup in the Member States, where the police (itself without FIU data) represents the Member State in relevant AWFs at Europol. This issue could relatively easy be addressed and resolved, and through such improved mechanisms at national level international cooperation would be enhanced.

Positively, the authorities in the **Netherlands** state that improving cooperation with EU agencies is one of the main objectives of the reinforcement programmes of the Dutch government in the field of financial-economic crime and organised crime. A specific programme is being developed at the moment to strengthen this cooperation and to make better use of the existing instruments and possibilities (for instance Europol, Eurojust and Joint Investigation Teams, JITs). Raising awareness amongst the law enforcement agencies is supposed to play an important role. Many other Member States are taking steps in a similar direction.

On a more critical note, the **United Kingdom** strategy focusing on financial investigations and criminal assets lacks a well-developed international component, to a large extent neglecting the potential added value of international cooperation. The actual application of the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU raises numerous questions. Provisions of the Crime (International Cooperation) Act 2003 seem to be of primary importance in this regard. Nevertheless, the evaluators were advised during the evaluation visit that this law, even though it is a 2003 Act, only came into force in 2009 and is not being widely applied in practice. Regarding Article 1 of the 2001 Protocol and the requirement to be able to assist another Member State to identify whether a natural or legal person who is the subject of a criminal investigation holds or controls bank accounts in the United Kingdom territory and to provide the details of the accounts, it seems that, in practice, this is not possible. Similarly, in respect of monitoring banking transactions, as required under Article 3 of the 2001 Protocol, the common position both for England and Wales and for Scotland was that Mutual Legal Assistance requests to obtain account monitoring orders cannot be executed.

1.3.3.3. Cooperation with Europol and Eurojust

All Member States pronounce they cooperate well with both Europol and Eurojust. However, there seems to be a certain level of confusion about what these two EU structures can and cannot do for the Member States. Their respective catalogues of products and services list a range of valuable assets which can be used to a much larger extent than what is the case today. The issue of coordination between police and prosecutors on the one hand, and between Europol and Eurojust on the other, is another re-current theme in the evaluations of the Member States. Prosecutors and judges in general seem to focus on coping with day-to-day business and do not seem very familiar with current forms of cross-border financial crime or mechanisms to address them.

For instance, prosecutors and courts in **Finland** have acknowledged a lack of experience in cooperating with Europol. In **Greece**, the representatives of the prosecution offices and the judiciary appeared to be unaware of the products and services of either Europol or Eurojust to strengthen their efforts in countering serious and organised financial crime, thus accounting for a complete absence of any integrated approach. AWFs and the existence of the Pan European integrated platform for pro-active sharing of relevant crime intelligence, for instance, seemed to be unknown and were therefore not properly exploited. In **Poland**, examining magistrates from the prosecution office are largely unaware of the added value and assistance that Europol and Eurojust are able to lend to them. Even at national level, they do not seem to have a thorough understanding of how to make use of these bodies for their own purposes. There seems to be a discrepancy between what is expected from Europol and Eurojust and what their tasks and functions are. Numerically speaking, **Spain** has less experience in cooperation with Eurojust than with Europol. However, contacts have proved very fruitful thanks to the coordination with units from other Member States.

Cooperation with Europol

The evaluation of the 27 Member States has shown that all the partners are broadly interested in the roles and mission devolved to **Europol**. However, despite the fact that those interviewed were generally interested, sometimes even quite enthusiastic, cooperation with Europol is far from ideal.

In **Cyprus**, for instance, the experts noted a considerable degree of unawareness regarding the structure of cooperation through Europol. Customs seemed to be scarcely aware of how cooperation through Europol is structured and how to address it and the awareness about the current constellation of EU forums in matters of police cooperation could also be considered insufficient. In addition, a key requirement for an optimal use of the AWF instrument is to adopt a proactive attitude. This, however, is an aspect where there seemed to be room for improvement in all segments of the Cypriot law enforcement community.

Although **Italy** is one of the biggest EU Member States, the number of cases initiated by Italy at Europol seemed to be comparatively low although in 2010, Italy's cooperation with Europol was showing clear signs of improvement. In **Lithuania**, the use of the products and services on financial crime provided by Europol, and cooperation in general via Europol, is straightforward. Some services, such as the police or the FCIS, use Europol to an extent to support and benefit their investigations, but this does not apply to all competent authorities or in all relevant cases. Even though Lithuania participates actively in some Europol AWFs, this is not the case with financial crime AWFs, such as AWF Sustrans and AWF MTIC. For example, a more proactive approach aimed at sharing financial intelligence contained in the STRs would be welcome.

To the extent that **Poland** does make use of Europol, there is no emphasis on financial crime. There is a substantial misunderstanding between law enforcement agencies and the prosecutors on the exact conditions in which Polish crime intelligence can be proactively shared with international partners. This is a serious matter of concern not limited to Poland. In **Romania**, it seems that there was only a very general knowledge about the competence and potential assistance which could be given by Europol to national authorities.

On the other hand, there are many positive examples where cooperation with Europol has been arranged in constructive ways. For instance, in the **Czech Republic**, cooperation with Europol is well established and sound and all relevant authorities are well aware of the services and products provided. Furthermore, not only the law enforcement authorities but also the prosecution services participate actively in the ARO Platform and the CARIN Network. Cooperation through Europol and the use made by the **United Kingdom** of products and services offered by Europol to the Member States is commendable. The United Kingdom underlines that Europol should be increasingly the United Kingdom's gateway for EU financial enquiries, in support of all cases within the Europol mandate. It is considered to be an intelligence-gathering option, prior to a mutual legal assistance intervention. The United Kingdom actively both use and support the ARO and CARIN networks.

Although a real will exists and manifests itself in the development of cooperation with Europol, one cannot but note that for the time being bilateral cooperation, in particular with neighbouring states, in many cases still prevail over multilateral channels. Member States which have not done so should not only provide a general impetus to make good use of Europol, but also indicate that the Europol channel must, in the long term, become the preferred channel for the exchange of information and intelligence-sharing in connection with cross-border financial crime.

Cooperation with Eurojust

During the course of the evaluation it has become apparent that judicial authorities in a considerable number of Member States, even at top management level, had little or no knowledge of the exact tasks and functions of **Eurojust**. For instance, in general terms, the authorities in **Slovenia** recognise the support and coordination by Eurojust in large multinational criminal investigations into serious and organised crime. However, Eurojust has so far not been involved in any Slovenian case of investigation of financial crime. Similarly, judicial authorities in **Poland** very rarely use the assistance Eurojust can offer to facilitate judicial cooperation and to coordinate investigations and prosecutions internationally. The fact that Eurojust is used very rarely, if at all, especially for transmitting freezing orders which could be crucial to secure assets or evidence abroad swiftly, means that its potential is not used to the extent possible.

Many examples to the contrary exist. In the **Czech Republic**, the evaluation team was informed of a high participation of the Czech authorities in JITs. Also the active participation of the prosecution services under the umbrella of Eurojust was noted. Authorities in **Denmark** make frequent use of Eurojust support in cases concerning financial crime. Financial crime cases are in fact some of the most typical cases handled by the Danish desk at Eurojust. The assistance of Eurojust is generally considered to be highly relevant due to the fact that financial crime cases very often include cross border activities by the criminals involved.

In **Finland**, there is a high degree of awareness among investigative and prosecuting authorities on the role and advantages of using Eurojust. Consultations with the National Member of Eurojust are regularly taking place, especially with regard to the execution of MLA requests, freezing and confiscation orders, and facilitation of freezing orders to secure the claims for victim compensations. Moreover, international cooperation against financial crime in the form of JITs is widely used by Finland. Europol is informed about all the relevant JITs and is currently a participant in practically all JITs where Finland is involved.

In **Lithuania**, all law enforcement and prosecution authorities seem to be aware of Eurojust and several of them had sought assistance from the Lithuanian desk at Eurojust. In **Sweden**, according to the representatives of the Economic Crime Authority, cases involving international cooperation would almost systematically be referred to Eurojust, no matter how complex the case or which type of support would be required. The Economic Crime Authority in particular would make use of Eurojust with a view to speeding up the process of mutual legal assistance requests or decisions on judicial cooperation.

1.4. Freezing and confiscation

Freezing and confiscation are key components in successfully fighting financial crime. This is often reflected in national legislation in the Member States. However, for various reasons, the available EU tools related to freezing and confiscation are not frequently used. [1] In some instances, the necessary EU legislation has not been transposed into national law. Certainly the relatively slow process of implementation of the instruments in many Member States partially explains its lack of practical use, but primarily it appears that relevant judicial authorities simply prefer to use long-established mutual legal assistance instruments instead.

It seems that the short time span since the transposition in the Member States as well as lack of practical experience make it difficult to evaluate the added value. Seizure is used during financial investigations if assets are traced. There do not seem to be any problems with courts to obtain seizure/confiscation orders in some Member States, whilst in many Member States there are recurring problems between law enforcement and judiciary to this effect.

A weakness of the freezing regime may also be related to management of seized objects. Few Member States have set up specific asset management offices. Asset management is instead handled by individual authorities, in practise often the police.

An important divider between Member States is the presence or not of non-conviction based confiscation. Some Member States such as the United Kingdom and Ireland have such a system in place; others provide other types of similar regimes, such as extended confiscation, value confiscation or illegal enrichment. The majority of the Member States, however, do not.

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[1] Framework Decisions 2005/212/JHA, 2006/783/JHA and 2003/577/JHA, and Council Decision 2007/845/JHA.

Another divider is the general view on asset recovery. Asset recovery convey a message of social refusal of crime and can be an efficient way to tackle organised crime. However, this is not always reflected in daily practice. Prosecution services often avoid financial investigations in the field of asset recovery as they create a significant additional workload without affecting the desired outcome of the proceedings, namely conviction. Law enforcement agencies, on the other hand, are often focusing on "traditional" crimes such as drug offences and avoid costly financial investigations, even when they are limited to the tracking and tracing of proceeds of crime. In such circumstances, there is little incentive to fully embrace asset recovery as an important tool in fighting financial crime.

The tracing of assets is a further issue to address. In **Finland**, for instance, there is a legal obligation for the investigative authorities to trace the proceeds of crime as part of the pre-trial investigation. This is not the case across the EU. With a few exceptions (Bulgaria, Finland, Sweden), the majority of the Member States further lack a specific authority dedicated to search property after the final decision of the court for its execution and possible confiscation in a situation where the property has not been frozen during the preliminary stage of criminal proceedings. This is a clear drawback. It is paramount that the legal system can secure the execution of the confiscation order in every circumstance. Otherwise, criminal gains can easily be brought back into circulation after a completed trial.

A few examples suffice to shed light on the still present diversity between the Member States.

In **Austria**, as far as freezing and confiscation are concerned, the law seems to have all the necessary provisions and mechanisms in place. Implementation of the relevant Framework Decisions is deemed to be appropriate. However, practical use, especially of Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property or evidence, is very limited. Amongst other explanations, reference is made to the fact that it is still possible to send a request for seizure of the property concerned on the basis of the traditional MLA regime instead of a "request" under the Framework Decision. The extent of information to be provided in the certificate is, in the opinion of Austrian authorities, more burdensome than a request for seizure of property under the traditional MLA regime. Consequently, the Austrian authorities are of the opinion that the Framework Decision is of little added value compared to the previous regime.

In **Belgium**, the close collaboration between various authorities concerned with the identification, seizure, freezing and confiscation of assets is positive. Examples include the use of liaison officers from the Federal Police's Economic and Financial Crime Directorate (*DJF*) with the Belgian Financial Intelligence Processing Unit (CTIF) and the Central Body for Seizure and Confiscation (*OCSC)*, the use of informants and the establishment of contact points between the Central Anti-Corruption Office (*OCRC)* and various government departments with which it has concluded agreements.

Generally speaking, authorities in **Bulgaria** have all necessary tools to freeze and confiscate assets. It is however not clear whether the two punitive measures provided for by the criminal law, namely confiscation and fines, are applied very often. It seems that, while aware of the possible future application of the civil mechanism, prosecutors do not apply them very often. The civil procedure should supplement the mechanisms of the penal law and not substitute them.

In **Cyprus**, the legal framework for freezing and confiscation seems to be well established and comprehensive. The provisions of the relevant Framework Decisions seem to have been transposed appropriately. The legal system has a set of measures that can be used in order to secure assets and deprive criminals of their resources after a final judicial decision.

The authorities in the **Czech Republic** seem to have all necessary tools in place to freeze and confiscate criminal assets. It seems that in the Czech Republic confiscation is pronounced by the courts only on assets that have been identified in the course of the investigation or the trial and not necessarily on the overall crime proceeds that are resulting from the crime. Thus criminals can end up profiting financially from crime even when punished by a prison sentence. In order to increase the overall effectiveness of the confiscation system, the tracing of crime proceeds should also be possible after the conviction of the offender by the court.

Germany has implemented and transposed the most relevant EU-level legal instruments in the area of freezing and confiscation of assets. However, the practical implications of these tools are difficult to assess due to the limited experience and information from the *Länder*.

The legal framework in **Hungary** for freezing and confiscation seems to be well established and comprehensive. The provisions of the relevant Framework Decisions seem to have been transposed appropriately. The legal system has a set of measures that can be used in order to secure assets and deprive criminals of their resources after a final judicial decision. Nevertheless, it seems that the Hungarian authorities in most cases limit themselves to seizing the immediate instrumentalities and illegal goods discovered during operations, but have no culture of investigating the proceeds of crime, which is reflected in final judicial decisions. The proceeds of crime are seldom investigated, restrained or confiscated. Although there was recognition, particularly among police and customs, that asset recovery was a way to tackle organised crime, as evidenced by the police's Action Plan and the existence of the FIU, ARO and local economic crime units, this was not reflected in daily practice. Restraint of property (seizure, sequestration) appeared to be a rare occurrence and there were no available comprehensive statistics to examine.

The authorities in **Latvia** seem to have all the necessary tools to freeze and confiscate criminal assets. The reversed burden of proof is also available and applied in practice. However, the evaluators do not have statistical data to assess in how many cases it would be applicable, how many motions of this kind were made by the prosecution and, consequently, in how many cases and for what reasons the reversed burden was rejected by courts. Asset freezing, confiscation and asset recovery do not seem to be priorities for the law enforcement agencies and prosecution. Those measures are generally undertaken to compensate for damages caused by crime.

One of the most interesting recent legal developments in **Lithuania** in the area of financial investigations is the concept of illicit enrichment (Art 189(1) of the CC). The theoretical principles of the legislation are clear: the presumption of innocence is absolute, and the principle of burden of proof holds. If during the pre-trial investigation phase the suspect cannot prove the legal source of the assets, the prosecutor needs to prove the *illicit* origin of the income during the proceedings in court. In practice the parallel existence of the concepts of extended confiscation and illicit enrichment may seem somewhat confusing. Illicit enrichment could be seen to constitute an actual charge against the suspect whereas extended confiscation is considered to be only part of the sentencing.

As far as freezing and confiscation are concerned, legislation in **Portugal** seems to provide all the necessary provisions and mechanisms. Seizure in financial investigations is facilitated by a wide and comprehensive legal regime concerning (a) the proceeds of crime, (b) their instrumentalities and (c) the income and goods exceeding legitimate income. The confiscation procedure also has a good clear legal basis.

Financial investigations, including asset freezing, confiscation and asset recovery do not seem to be primary objectives of law enforcement in **Romania**. Those measures are generally undertaken to repair damages produced by a crime as well as to guarantee the enforcement of a fine. Although there are no serious legal obstacles, measures of this kind are apparently not considered as steps taken against organised crime in order to deprive criminals of their wealth. Thus, criminals may benefit from crime even if punished. The available European tools related to freezing and confiscation are not frequently used as they have only recently been transposed into Romanian law.

Over the last few years the importance of seizing criminal assets has been increasingly acknowledged by courts in the **Slovak Republic**. Problems in this area are that assets are often transferred to third parties to avoid seizure and confiscation. The authorities in the Slovak Republic seem to have all the necessary tools in place to freeze and confiscate criminal assets.

Whereas the **United Kingdom** has mechanisms to deal with foreign requests, it would appear that they often have difficulty in freezing/confiscating property and repatriating such property to the requesting state. Issues raised in this regard were the costs involved because of the United Kingdom's judicial systems and the necessity to appoint a receiver to manage the assets and conduct investigations. The Scottish Authorities, on the other hand, appear somewhat more amenable with regard to the registering of external confiscation orders but again do not have any great experience in this regard. Scottish authorities can obtain account monitoring orders or customer information orders for foreign authorities as they do under domestic law, although to date they have not been asked to do so.

1.4.1. Freezing

With a closer focus on freezing, particularly the implementation of Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence and its use in practise, there are some important conclusions to be presented. Although most Member States have implemented Framework Decision 2003/577/JHA (24 Member States to date), in practise the use is very limited.

There is often confusion about who can do what and when related to freezing. Importantly, even if many confess to the added value of Framework Decision 2003/577/JHA in particular, it seems that its substantial value is reduced by what is experienced as difficulties to actually use it.

For instance, in **Austria**, many authorities are of the opinion that the Framework Decision is of little added value compared to the previous regime. While at international level **Belgium** would have the possibility of cooperating with other Member States on the basis of Framework Decision 2003/577/JHA, practice shows that they prefer to cooperate under the Belgian Law of 20 May 1997. In the **Czech Republic**, the Framework Decision did not replace the procedure that applied to international treaties. So, it is up to a public prosecutor or a court whether they ask for evidence or freezing of assets by a freezing order or by an MLA request. According to the Czech Republic, when it comes to property, the Framework Decision provides an added value, since it in practice transfers the responsibility for a case to the state that conducts the criminal proceedings. As regards evidence, the Framework Decision has, according to the relevant Czech authorities, in practice worsened the cooperation for several reasons. [1]

[1] Firstly, it has established 32 categories of criminality where dual criminality is not required. However, there is no assessment of dual criminality at all in the 1959 Convention, if there is no need to execute it by using a search. Secondly, the freezing order needs to be both recognised and executed whilst an MLA request of a foreign authority needs only be executed in the Czech Republic and no recognition is required. Thirdly, it is necessary to send to the executing state not only the freezing order, but also an MLA request which indicates that the seized evidence should be transferred to the issuing state. Fourthly, a court or a public prosecutor usually needs not only the material evidence, but also other kinds of evidence, for example a witness hearing. It is thus much easier to ask for all necessary assistance via one and the same MLA request. If judicial authorities should issue a freezing order for the material evidence and a separate MLA request for other kinds of evidence, costs for the translation are doubled. A further drawback from the perspective of the Czech practitioners is that it is not possible to use a freezing order for freezing items that shall be returned to victims.

So far only one freezing order based on the Framework Decision 2003/577/JHA has been issued by **Finland** and none has been received. Traditional MLA requests are preferred (mainly because of lack of training, of nation-wide awareness regarding the Framework Decision and little experience). In **France**, meetings with practitioners of the judiciary revealed that "on the ground" the EU instruments are still not used to the extent they could be. In this particular case, for instance, the Convention of the Council of Europe on mutual legal assistance of 1959 was still more widely used than Framework Decision 2003/577/JHA, and awareness of the Community instruments appeared to be quite low. Despite the advantages of applying Framework Decision 2003/577/JHA noted by practitioners, it was perceived as introducing an additional administrative burden compared to rogatory letters.

The use of mutual legal assistance in **Ireland** is still largely based on the 1959 Council of Europe Convention. New legislation is incoming and will probably be enacted by early 2012. In **Poland**, the fact that the "old regime" of mutual legal assistance and Framework Decision 2003/577/JHA coexist and that practitioners are free to choose which instrument they want to employ has not necessarily helped to promote application of Framework Decision 2003/577/JHA. The overall number of incoming and outgoing freezing requests is very low and allegedly lower than the number of traditional MLA requests for seizure. The Polish authorities stated that at present Framework Decision 2003/577/JHA has not proved to have significant added value and that the idea behind this instrument, i.e. to simplify, speed up and render the seizure procedure within the EU more effective, had yet to be realised. It was noted that at the moment practitioners were somewhat hesitant about using this instrument more often and that, instead of the mechanisms of Framework Decision 2003/577/JHA, traditional MLA requests marked as "urgent" were used. It was pointed out that the national provisions dealing with freezing orders are relatively new and the practitioners are still more used to drafting traditional requests. However, it was also emphasised that this was regarded as being a problem throughout the EU as Poland did not receive many requests originating from other Member States.

In **Portugal**, implementation of the relevant Framework Decisions is deemed to be appropriate. However there is no practical use of the relevant framework, such as Framework Decision 2003/577/JHA. The authorities in the **Slovak Republic** maintain that given the present state of differences between Member States' respective legal provisions, the procedure under

FD 2003/577/JHA is not practicable and does not contribute to the efficiency of the procedure and therefore advocate further steps (for instance in the form of uniform rules that are unambiguously laid down in a supranational document) to increase the practical efficiency of this Framework decision.

According to **Spain**, the transition from traditional cooperation methods to a system based in mutual recognition provides added value by itself, providing for speedier transfer, limitation of the causes for rejection and enhanced visibility of the European Judicial Area. By not having to process all requests through a Central Authority, the process becomes more agile and flexible. However, Spain holds it that, generally, it is worrying that sometimes some judicial authorities in certain Member States hamper this mutual recognition. For instance, Spain has noted a certain tendency to review the relevant matter from the perspective of the executing state law instead of recognising and implementing it, in accordance with the applicable instruments on the matter.

Although, generally speaking, the Framework Decision 2003/577/JHA is considered by the judicial authorities in **Sweden** as a valuable instrument, it seems that the new legislation implementing it is actually seldom, if ever, used in practice. In the **United Kingdom**, international cooperation, especially the formal implementation of the relevant EU legal acts, seems to require more effort. Framework Decision 2003/577/JHA has been implemented in part, only as far as the freezing of evidence is concerned. This law however only came into force in 2009 and it has not yet been used. Nevertheless, this kind of assistance has already been provided via the well-established mutual legal assistance mechanism. The Framework Decision on the freezing of property has not yet been implemented, even though the deadline for its implementation was 2 August 2005. Thus, there is no law in place enabling the recognition and immediate execution of a property freezing order obtained in another Member State as is the objective and as is provided for in Article 5 of the Framework Decision. Nevertheless, the United Kingdom has in place a mechanism to effectively freeze property in response to an overseas request. This can be done following a mutual legal assistance request.

1.4.2. Confiscation

With a closer view on confiscation, all Member States have legal provisions in place, displaying a wide range from civil confiscation, extended confiscation, third party confiscation, etc. As of 19 April 2012, 21 Member States had implemented Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

A few examples will point at the differences which exist when it comes to confiscation.

In **Austria**, comprehensive statistics are not available. Those quoted show extremely limited practical use of confiscation as such. The evaluators have high praise for the fact that the Ministry has identified this shortcoming and addresses it in the decree that is designed to promote the use of confiscation. In addition to reminders and clarifications regarding the law, the Ministry re-establishes a reporting obligation for prosecutors that is, as the evaluators understand it, meant to allow a coherent review of the current situation and lead to improvements of the system.

In **Bulgaria**, the national system is strengthened by a separate agency dealing with civil confiscation: the Commission for the Establishing of Property Acquired through Criminal Activity (CEPACA.). Its establishment and activities are important indicators of the importance the Bulgarian authorities attach to the fight against organised crime. The reversed burden of proof, which can be applied in the procedure, is also regarded a vital element that enhances general effectiveness of the legal system. The achievements of CEPACA and lessons learned may, in a medium-term perspective, be inspiring for other jurisdictions willing to implement civil confiscation. The effectiveness of CEPACA is impaired as it starts its operations only when charges are pressed or coercive measures are undertaken. This is an unfortunate provision which leads to a situation in which CEPACA starts its activities at a very late stage. It may in some cases allow suspects to hide or move their assets, so that they are not available to CEPACA.

Legislation in **Germany** offers, in combination with the possibility for attachment *in rem*, within a civil law legal system, an equivalent to non-conviction based confiscation. This is a fairly recent evolution in legislation, and it still remains to be seen how broadly courts will apply the relevant provisions. It seems that courts and legislators remain rather reluctant towards the notion of extended confiscation, although important trial cases are still pending before higher courts.

When there is not enough information to build evidence for conviction, **Ireland** would go for non conviction-based confiscation. Here, the burden of proof is reversed. It was indicated during the visit that that there are clear advantages of using a civil case in order to put pressure on the criminal case. The coupling of the civil and criminal procedures seems very efficient.

The law in **Romania** offers certain limited options that may be used in targeting organised crime. It allows the confiscation to items that have been instrumental, in any way, in committing a crime, if they belong to the offender or if they belong to another person who was aware of the purpose for which they were used. On the other hand, those provisions are seen as an extra challenge by law enforcement services, which need to gather additional evidence indicating use of the means in question for criminal activities and, where necessary, proof showing that the owner was aware of the criminal purpose for which his property was used.

The Proceeds of Crime Act 2002 (POCA) provides the authorities in the **United Kingdom** with numerous and very effective tools to address criminal assets. Civil recovery seems to be a highly valuable instrument that may be applied in cases where penal procedure and confiscation are not efficient. The lower level of proof and the fact that the procedure is conducted against assets, not persons, has proved to be very advantageous and efficient.

1.4.3. Statistics

Another important aspect in terms of a meaningful evaluation is the general lack of statistics when it comes to freezing and confiscation. Statistics can fulfil many important functions, many of them in principle covered by the heading "management". Statistics help managers see what is going on, allowing them to guide future activities, especially if something is seen as following an erroneous trajectory. Political prioritisation most often also needs access to high-quality statistics, unless other, intelligence-led prioritisation tools are (also) used. From an evaluation point of view, statistics are necessary to be able to estimate the effectiveness of a system.

However, as noted above, comprehensive statistics are generally not available, and this lack of statistics is not compliant with the terms of Article 33 of the 3rd Anti-Money Laundering Directive[1]. As data on seizure, freezing and confiscation, including the actual execution, are not available, it is not possible to identify weaknesses in the procedure and areas requiring further improvement. Many times, when statistics are available, they show limited practical use of confiscation as such. One conclusion may be that prosecutors are not keen to make use of the provisions on confiscation as they create significant additional workload. The extra effort needed in such cases does not affect the desired outcome of the proceedings, namely conviction. Thus there is no incentive for the prosecution to apply this provision, as the basic result of the trial remains the same.

A few examples should suffice to illustrate the point about the diversity throughout the EU when it comes to statistics.

As noted above, the authorities in the **Czech Republic** seem to have all necessary tools in place to freeze and confiscate criminal assets. However, due to the lack of statistics it is difficult to evaluate in how many cases the tools were actually applied, how many motions were made by the prosecutor, etc. It is also not clear, whether the two punitive measures provided by criminal law (confiscation and fines) are applied very often.

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1 "1. Member States shall ensure that they are able to review the effectiveness of their systems to combat money laundering or terrorist financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems.
2. Such statistics shall as a minimum cover the number of suspicious transaction reports made to the FIU, the follow-up given to these reports and indicate on an annual basis the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences and how much property has been frozen, seized or confiscated.
3. Member States shall ensure that a consolidated review of these statistical reports is published".

In **Germany**, the federal administration is clearly making an effort to collect and disseminate good practices to all *Länder*. Some statistics such as on amounts confiscated within the scope of the investigative proceedings are available. However, the lack of statistics is a general and rather cross-cutting issue that prevents the analysis of real overall effectiveness and practical results. In **Estonia**, numbers are seldom available. According to the information received, there is a wide discrepancy between the number of frozen and confiscated assets. In **Latvia**, generally speaking comprehensive statistics are not available because different institutions keep their own fragmented records. Therefore it is not possible to compare the value of assets frozen or confiscated. In consequence neither can the overall effectiveness of the system be assessed nor all blockages and weaknesses be identified.

In **Hungary**, there is a very imperfect statistical mechanism in place, which may allow certain criminal trends to remain hidden. The available data show very limited use of confiscation and similar measures. In **Malta**, the experts were shown fragmentary statistics, gathered independently by different services. This may be one of the reasons why a full picture of law-enforcement and judicial actions and a comprehensive assessment of their efficiency cannot be drawn. Although the available tools seem to be well known to practitioners and to be commonly applied, the lack of comprehensive statistics hampers overall assessment of the system.

In **Poland**, the statistics provided on the precise activities of the police services appear somewhat contradictory and confusing. Furthermore, these statistics are not integrated with the judicial statistics on indictments and convictions and it therefore seems difficult to measure the overall performance of the police in this field effectively. For a jurisdiction of the size of Poland, the figures appear to be comparatively low, especially as regards seizures of criminal assets. Moreover, no figures on any confiscations were made available.

In the **Slovak Republic**, statistical data, most importantly about the final decisions about confiscations (or forfeiture), do not seem to be gathered and analysed at the state level. The statistical data seems to be collected only for frozen assets. The further progress to keep track of the successfulness of securing the assets for the state is not followed.

1.4.4. Asset management

As already noted, a weakness of the freezing and subsequent confiscation regime may be also related to management of seized assets. Few Member States have set up specific Asset Management Offices (AMO). Asset management is instead handled by individual authorities, often the police but sometimes spread across various authorities. Especially during long proceedings, assets may suffer a significant loss of value and are possibly subject to a liability of the custodians (i.e. governmental agencies). This may be a problem for the accused if he or she is acquitted. In the event of conviction, the item may not represent the value expected by the court. This leads to a conclusion that a more flexible approach should be applied and that certain high-value goods, prone to losing their value, could be converted into cash immediately after seizure.

Another issue to be considered, only circumstantially touched upon during the evaluation, is what to do with the money when confiscated assets are sold. In **Italy** and elsewhere, money from crime is earmarked for social purposes. In other Member States, the money goes into the general state budget, possibly with a part of the funds earmarked for the investigating authorities. There is a need to shed some more light on this particular issue.

Again, a few examples will be provided to show the variety of approaches between the Member States.

In **Austria**, a certain weakness of the freezing regime may be related to management of seized objects. Under the current law seized items, such as cars, have to be stored by law enforcement authorities. During long proceedings, they may suffer a significant loss of value.

In **Bulgaria** there is no mechanism for management of frozen assets. This may lead to situations where suspects are entitled to use the assets, for example luxury cars, till the end of the trial. Thus, assets which are supposed to be confiscated in the future may be destroyed or hidden by the perpetrators.

The system in **Estonia** appears to be deficient when it comes to the management of seized criminal assets. Every department even within the same law enforcement agency is independently responsible for the management of seized assets and different departments have different systems.

The National Agency for the Management and Use of Seized and Confiscated Organised Crime Assets is a fairly new body in **Italy** which was set up in February 2010. It is considered to be an effective tool for optimising the recovery of illegally gained assets and the management of seized assets. The remit of the new body is quite broad and comprises the management of seized and confiscated assets, properties and companies as well as their disposal.

Greece has no centralised system for the management of seized assets. Both governmental and even private entities can be entrusted with this task.

In **Ireland**, a receivership process takes care of confiscation and disposal of confiscated assets. The Criminal Assets Bureau manages all assets which are confiscated, via a legal officer through the courts. If the court agrees, for instance, the Criminal Assets Bureau sells. In **Lithuania**, the ARO is not performing the daily management of the seized and confiscated goods and money, and it seems that there is no separate Asset Management Office (AMO) in place. The activities of the ARO within the **Malta** Police Force are complemented by an Asset Management Unit (AMU) established by the Courts of Justice. In the **Netherlands**, the system of management of seized assets works well as seized items, such as cars, except those of a unique character, may be converted into cash. This solution seems to be practicable and deserves to be promoted in other jurisdictions, which face problems with storage of seized goods.

In **Portugal**, the management of assets and the way in which assets can be transferred into the community's ownership are problematic. The management of seized assets also seems to be problematic in the **Slovak Republic**. As the court procedures can be quite lengthy, the value of seized goods can decrease significantly. Confiscation is regarded as the most complicated part of the prosecution procedure. The asset management function in **Slovenia** is divided between customs, police, prosecutors etc. depending on the property. The courts decide on the assignment to the designated authority. So, no unique Asset Management Office has been set up (and will not according to the legal provisions in place). With such a setup, there is a risk that problems will occur, with five or so agencies dealing with property, especially with an ARO with *no* authority to direct them in these cases.

In **Spain**, a judge, court or the Office of Public Prosecutors are in charge of protecting the goods although, under some circumstances, it may be the Criminal Police commanded by the Judicial Authority who is in direct charge of the goods. In the case of proceedings related to drug trafficking or money laundering, police authorities may request the management of the impounded goods. The future ARO in Spain will also operate as an Asset Administration Office coordinated with the National Action Plan on Drugs.

1.5. Protection of the financial interests of the European Union

In general terms, a mechanism for informing OLAF about outcomes of criminal cases related to fraud against the financial interests of the European Union, especially those where OLAF was involved, needs to be developed. The role of OLAF staff should also be studied with a view to finding a common approach between the Member States. First, when it comes to their participation in JITs and what they can and cannot do. Second, when it comes to their conducting on-the-spot checks and controls of economic operators and the support they can get from the Member States. In general, the function of OLAF in providing Commission support for the judicial authorities in all matters of fraud and corruption against the Communities' financial interests needs to be promoted and explained to judicial practitioners. This should also include an explanation of the kind of data that OLAF should receive from the Member States. To be noted, on the basis of a Commission proposal, there is currently a negotiation going on in the Council to change the Regulation dealing with the status of OLAF.

A few examples from the evaluation of the Member States can be fruitful to shed light on pertinent issues related to OLAF.

In **Austria**, the evaluators were not made aware of any overarching mechanism of coordination and cooperation with OLAF. Although the daily cooperation is based on a flexible and pragmatic approach, a mechanism for informing OLAF about outcomes of criminal cases related to fraud against the financial interests of the Communities, especially those where OLAF was involved, needs to be developed. The function of OLAF in providing Commission support for the judicial authorities in all matters of fraud and corruption against the Union's financial interests needs to be promoted and explained to judicial practitioners.

In **Belgium**, there do not appear to be any obstacles to the information flow between those agencies. OLAF is informed about fraud cases falling within its competence. It is possible for OLAF officers to participate in an investigation team as expert auditors. However, they are not allowed to employ coercive measures.

In **Denmark**, the State Prosecutor informs OLAF of the outcome of criminal cases related to fraud against the financial interests of the Union. It is possible for the European Commission to make a referral and play a role as an expert or a witness regarding cases involving fraud against the financial interests of the communities. In practice OLAF facilitates contact to another EU-unit in order to give a witness statement in a court trial in Denmark. There are no examples of OLAF agents participating in a Danish investigation.

Although the law in **France** does not include any provision for OLAF to participate in a JIT, this participation, as mentioned in the explanatory report to the EU Convention on Mutual Assistance in Criminal Matters of 29 May 2000, could be based on Art. 7.1 of the 2nd Protocol to the Convention for the Protection of the Financial Interests of the European Community.

Germany has currently no procedural solution to provide OLAF access to its judicial files for the purpose of administrative (internal or external) investigations. However, information pertaining to an administrative OLAF investigation has been shared by Germany in some cases, even when it originates in a judicial file.

In **Ireland,** OLAF can play a role in criminal investigations mainly as experts. This would generally be on invitation and would be with an observer status. In addition, Council Regulation (EC) No. 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Union's financial interests against fraud and other irregularities provide for Commission Inspectors to carry out investigations in Ireland and confers powers of investigation on Commission Inspectors. A Commission Inspector will be accompanied by an Administrative (National) Inspector during such investigations.

In **Luxembourg**, a mechanism for informing OLAF about outcomes of criminal cases related to fraud against the financial interests of the European Union, especially those in which OLAF was involved, needs to be established. The function of OLAF in providing Commission support for the judicial authorities in all matters of fraud and corruption against the financial interests of the EU could be promoted and explained to judicial practitioners.

In **Romania**, as far as the protection of the financial interests of the Union is concerned, the main administrative and legal tools are in place. DLAF appears to be a service with a high professional standard. The existence of a central service responsible for the protection of the financial interests of the EU against fraud certainly contributes to the efficiency of the system in general. In matters of direct expenses, it allows OLAF to identify easily the competent service to assist the office in on-the-spot checks carried out by Regulation (EC) No. 2185/1996.

The **Slovak Republic** aims at protecting the financial interests with its National Strategy for the Protection of Financial Interests of the EC in the Slovak Republic, approved by the government in 2007 and updated in May 2009. Under this National Strategy the coordination of the Slovak Activities against frauds and irregularities affecting the EU budget are defined. The document formulates a strategic approach based on three pillars: prevention, detection together with investigation and thirdly, sanctioning. As far as the structure is concerned, a decentralised system is put in place. The coordination is ensured by the Government Office, which is the central contact point for OLAF.

In **Spain**, the European Commission can play a role in a criminal investigation involving fraud against the financial interests of the European Union, either as a civil party or even as a plaintiff. However, Spain argues that it seems difficult to convince judges of the real and effective damage caused to the financial interest of the European Union if the European Commission does not show any interest in exercising its right to civil action.

Sweden has a well-organised system of authorities which ensures a high level of protection of the financial interest of the EU. In general terms the cooperation between the Swedish authorities and OLAF is functioning well and Swedish authorities are aware of the role of OLAF and how it can support in the financial crime/financial investigations context. In the absence of a formalised protocol of best practice regarding the cooperation between the national judicial authorities and OLAF, direct contacts and information exchange between the parties has been facilitated by Swedish legal advisors seconded to OLAF.

There is no designated authority or service in the **United Kingdom** to assist OLAF in conducting its on-the-spot checks and controls of economic operators on the basis of Regulation (EC) No 2185/1996. Although the United Kingdom appears to have designated its national Eurojust Member as a competent authority in order to receive information obtained by OLAF during its investigations, it is not clear to OLAF who is the "judicial authority" to which information is to be forwarded pursuant to Article 10(2) of Regulation (EC) No 1073/1999. The United Kingdom does not have a mechanism to ensure that information in respect of criminal cases relating to fraud against the financial interests of the EU and their outcome is communicated to OLAF. For criminal investigations, OLAF can assist in a joint working capacity. OLAF agents would not have legal powers but could be part of the case team.