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From:	Presidency
To:	JHA Counsellors / COSI Support Group
Subject:	Manual of Best Practices in the fight against financial crime: A collection of good examples of well-developed systems in the Member States to fight financial crime

At its meeting on 2 October 2012 COSI took note of the final report on the 5th round of mutual evaluations - "Financial crime and financial investigations" (doc. 12657/2/12 REV 2), and tasked the COSI Support Group to develop, in cooperation with CEPOL, a **Manual of Best Practices in the fight against financial crime** which could include *i.a.* a number of good examples of well developed systems in the Member States to fight financial crime such as those mentioned under point 4.2.2. of the final report.

Delegations will find attached the aforementioned Manual of Best Practices which was developed by a Project Group composed of experts from Cyprus, Finland, Luxembourg, Romania, Spain and the Commission. Work on the Manual was coordinated jointly by CEPOL and the General Secretariat of the Council.

The initial draft of the Manual¹ was presented at the COSI SG meeting on 10 April 2013 and the current document has been revised on the basis of subsequent delegations' comments.

¹ DS 1259/13

MANUAL OF BEST PRACTICES
IN THE FIGHT AGAINST FINANCIAL CRIME
A collection of good examples of well-developed systems in the Member States
to fight financial crime

April 2013

Standing Committee of Operational Cooperation on Internal Security (COSI)
Project Group on developing an annual of best practices
in the fight against financial crime



CYPRUS PRESIDENCY OF THE COUNCIL
OF THE EUROPEAN UNION



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FOREWORD BY CYPRUS AND IRISH PRESIDENCIES

"Manual of Best Practices in the fight against financial crime: A collection of good examples of well-developed systems in the Member States to fight financial crime"

Criminal organisations have a singular objective: financial gain. Criminal acts are driven by one overriding motive: profit. Hitting criminal organisations and individuals where it hurts most, by taking away their ill-gotten financial gains, is a significant contribution to the overall strategy of fighting criminality and disrupting criminal organisations.

Crime, whether specifically financial crime or crime in general, is not a national phenomenon, as the most recent SOCTA makes very clear. There are many examples of trans-national crime trends. In that context, the response cannot be a solely national one. The EU is ideally placed to develop policies and strategies to ensure better coordination and cooperation between Member States and law enforcement agencies to target criminal organisations and their activities. Practical assistance, such as this Handbook, represents a very positive and welcome contribution to the tools available to law enforcement agencies in this regard.

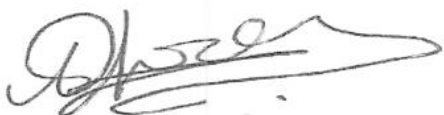
In October 2012 the Cyprus Presidency proposed to Member States the drafting of this manual following the adoption of the final report on the fifth round of mutual evaluations on "Financial crime and financial investigations". Work was completed during the Irish Presidency.

The final report highlighted certain national solutions in the fight against financial crime that were considered to be best practice and which deserved to be compiled and shared with national administrations across the Union.

COSI tasked its Support Group to develop this manual in cooperation with CEPOL. A project group was formed with experts from a number of Member States. Cyprus and Ireland would like to express our sincere thanks and appreciation to those experts, to

CEPOL and to the General Secretariat of the Council for their efforts in preparing and finalizing this handbook.

Financial crime constitutes a serious threat to society and it is important to know which tools and practices are the most effective in tackling this crosscutting phenomenon. The authors intended this document to be a practical reference tool and an easily accessible guide. We believe they have achieved this goal. We hope that policy makers and practitioners will use this handbook as a source of inspiration in their future work. As with any such guide it should be capable of being added to as new methods of countering financial gains from criminal activities are developed.



Mr Andreas P Louka
For the Cyprus Presidency Chair of COSI



Mr. Martin POWER
Irish Presidency Chair of COSI

1. INTRODUCTION

1.1. Financial crime and financial investigations as realities present in all cases of serious crime and organised crime

1. The 2011 Europol general report mentions among its main activities those that relate to money laundering and asset tracing and underlines that there are indications that 70% of all crimes are acquisitive, leading to immense criminal revenue. Thus, the majority of cases investigated by law enforcement have one common denominator: a financial motive for committing the crime. Following the money trail provides leads to the perpetrators, may disrupt their associates and make it possible to confiscate the proceeds of crime. This approach attacks the economic basis of criminal enterprise and prevents illegal proceeds from being reinvested in further criminal activities.
2. The Financial Action Task Force (FATF) revised standards, adopted in February 2012, provide a definition of 'financial investigation', meaning an enquiry into financial affairs related to a criminal activity, with a view to:
 - identifying the extent of criminal networks and/or the scale of crime;
 - identifying and tracing the proceeds of crime, terrorist funds or any other money;
 - assets that are or may become subject to confiscation; and
 - developing evidence which can be used in criminal proceedings
3. Serious and organised crime is a common threat identified by the Internal Security Strategy for the European Union: "Towards a European Security Model" (5842/2/10 REV 2). In its various forms it tends to occur wherever it can reap the most financial benefit with the least risk, regardless of borders.
4. In addition, the Communication from the Commission to the European Parliament and the Council titled "The EU Internal Security Strategy in Action: five steps towards a more secure Europe" (16797/10) proposes disrupting international crime networks as one of the five strategic objectives for 2011-2014 which will help make the EU more secure, highlighting the fact that despite growing cooperation between law enforcement authorities and the judiciary within as well as between Member States, international crime networks remain highly active, creating vast criminal profits. These profits are often used to penetrate the economy and

undermine public trust, and it is therefore essential to prevent crime, disrupt criminal networks and combat the financial incentive which drives them.

5. The final report on the 5th round of mutual evaluations on financial crime and financial investigations (12657/2/12 REV 2) identifies transnational organised crime as one of the major challenges jeopardising the creation of an area of freedom, security and justice and underlines that fighting the penetration of the lawful economy by serious and organised crime (including the financing of terrorism) is a particular concern.

The report also points out that financial crimes are becoming increasingly complex and are more often than not embraced by organised criminal groups as well as skilled individuals.

The report also recommends that, as far as possible, financial investigations should be carried out in all cases of serious and organised crime (which include terrorism), rather than only economic and financial crime offences as such.

6. Finally, in the Council conclusions on setting the EU's priorities for the fight against organised crime between 2011 and 2013 (11050/11), the Council of the European Union encouraged Member States to target criminal finances to combat organised crime, including the laundering of financial assets illicitly gained by organised crime groups.

Even though financial crime has not been set as one of the eight priorities for the fight against organised crime between 2011 and 2013, it must be noted that the cross-cutting feature of this kind of organised crime concerns all of them, so aspects of financial investigations are mentioned in the strategic goals of some of the eight priorities.

1.2. Aim of the manual, expected readership and follow-up

7. The aim of the manual of best practices in the fight against financial crime is to include good examples of well-developed systems in the Member States to prevent and fight financial crime to provide Member States with a description of the numerous innovative good practices and instruments that national authorities have developed on this issue. The manual is intended to be both a practical reference tool and an easily accessible guide which focuses on legal and operational challenges and opportunities and supports the relevant training modules developed among the Member States. In essence, the compilation should have a European added value. The manual takes into account the existing handbooks, in particular that produced by FATF, a number of findings and recommendations of the fifth round of mutual

evaluations as set out in its final report and addendum (12657/2/12 REV 2 and ADD 1 REV 1) and related best practices which, developed by the Member States, are included in the final report and addendum, both to tackle the management of financial crime prevention and to conduct financial investigations better.

8. This manual is addressed to high-level officials both in public administrations and law enforcement agencies, who (depending on their responsibilities) may make use of it when amending national legislation and working methods or to analyse the feasibility of adapting best practices to the specificities of their own institutions. It is also intended to provide guidance to management staff in charge of preparing further evaluation processes which may relate to financial crime

The manual should also facilitate cooperation between experts and investigators. Where available, contact points are included for each best practice so that users can obtain further information. Europol national contact points and Eurojust details may be used for these purposes too.

9. For clarity, the manual consists of four chapters. These chapters are closely linked to each other, but each offers added value to the others.
 - Chapter 1 provides general background about EU initiatives in the field and an overview of the manual, particularly its aim, target group, the proposed update mechanism and the methodology applied in identification of best practices.
 - Chapter 2 lists measures designed to improve the management of financial crime prevention, including a number of actions developed to prevent crimes.
 - Chapter 3 details specific best practices in financial investigations which aim to undermine the effects of the crime and to help identify the perpetrators involved.
 - Chapter 4 focuses on training — a fundamental aspect of strengthening specific areas of skill and expertise in financial investigations — and, secondly, on description of other existing manuals and handbooks where practical information on these issues can be found.

The sections of Chapters 2, 3 and 4 have similar structures, based firstly on an introductory part, which includes the challenges identified with regard to the point they address and a description of the related recommendation contained both in the FATF International Standards document and in the final report of the fifth round of mutual evaluations and,

secondly, a description of the best practices themselves, featuring in each case the identification of its key elements; a summary of its expected positive results (sometimes, when there are a number of best practices, the key elements/expected positive results refer to the topic itself); and the contact details of the experts concerned for obtaining further information about that specific best practice.

10. The best practices in this handbook, which is not an exhaustive catalogue, provide a current view of actions used in different EU Member States to prevent and combat financial crime and to conduct financial investigations. For this compendium to become a 'living resource', its entries would have to be updated and refined in due course by CEPOL when requested by COSI, when the latter identifies any need for amendment of the manual.
11. The manual collects examples of good practice in preventing financial crime and conducting financial investigations, from the following areas:
 - national strategic planning;
 - administrative and other relevant approaches to fighting organised crime, including cooperation with the private sector;
 - statistical data records;
 - risk-based analysis and profiling;
 - national or multidisciplinary agencies;
 - crime and management of confiscated assets;
 - central bank-account register systems;
 - Financial Intelligence Units (FIUs);
 - Asset Recovery Offices (AROs);
 - specific legislative measures on confiscation (with special reference to non-conviction-based confiscation);
 - financial forensics and analysis;
 - training programmes in financial investigations;
 - existing handbooks and manuals of investigative guidelines.

2. BEST PRACTICES FOR IMPROVING THE MANAGEMENT OF FINANCIAL CRIME PREVENTION

2.1. National strategic planning

a) Introduction

Financial crime is a threat to the citizens and the economy of Europe, to its businesses and state institutions. Member States create their financial crime and financial investigation policies and should make them parts of a long-term national strategy. That national strategy should include the definition of this type of crime, the threats, authorities and organisations involved in combating them, available means, objectives to be achieved, periodical review and the indicators established to evaluate its effectiveness.

FATF Recommendation 2 stipulates that countries should have national anti-money laundering (AML) and counter-terrorist financing (CFT) policies, informed by the risks identified, which should be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies.

Countries should ensure that policy-makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities, at the policy-making and operational levels, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

Recommendation No 3 to the Member States in the fifth round of mutual evaluations states that the financial crime and financial investigations policy should be reflected in a long-term national strategy. Whenever possible, a concept of financial-intelligence-led policing should be included in the strategy, to allow pro-active enforcement measures on the basis of analysis products. The strategy needs to be combined with a regular review and an evaluation methodology as well as a sound reporting mechanism for the entities involved. In setting up such a strategy, some basic criteria, rules or guidelines should be considered, to clarify the allocation of tasks between different authorities with selective competences, as well as the inclusion of key priorities, including serious international crime cases. The strategy should thus be supported by sound management within the police, in order to promote a proactive, intelligence-led approach.

b) Best practices

Spanish strategic planning

The fight against organised crime is at the core of the strategic planning of the Ministry of the Interior — in particular, this covers measures to fight drug trafficking, money laundering, human trafficking and corruption. These threats require a strategy based on national and international cooperation and optimising resources.

Within the Ministry of Interior there are two National Police Agencies: the National Police Force and the Guardia Civil. The Strategic Planning of both Police agencies are validated by The Coordination Executive Commission of the State Directorate Security (CECO).

The Spanish National Police Force strategic planning for the period 2013-2016 is structured in 8 Functional Areas:

- Integral fight against terrorism.
- Fight against organized and serious crime.
- Cyber-security.
- Border Police and fight against illegal immigration.
- Public order.
- Vulnerable groups.
- Humanitarian aid.
- And Secure Economy and Trade

To drive the work of the National Police Force, this Strategic Planning led to an Operational Global Plan.

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Focusing the resources of the National Police Force in these Strategic Objectives, **the expected positive results** are the improvement of the financial investigations in the mentioned areas and the enhancement of the collaboration with public and private partners in order to combat in a more effective manner organized and serious crime. The strategic planning foresees the necessary links with external partners. This relationship is essential in order to achieve the information about new trends, support, feedback, and expertise in the field of economic and financial investigations.

The Spanish Guardia Civil's strategic planning has the following **key elements**:

- A senior body for validation, the coordination executive commission of the state security directorate;
- A management system, already tested in previous years;
- A strategic map which enables the Guardia Civil to guide its organisation to achieve its objectives successfully;
- valid consolidated experience to establish, assign and asses the strategic objectives;
- valid indicators to evaluate the outcomes.

This strategic planning includes:

- functional areas by which the Spanish Government's directives on security policy are structured;
- a description of every strategic objective;
- quantifiable indicators to check the degree of success achieved in each strategic objective;
- the unit responsible for measuring them.

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As regard its **expected positive results**, this careful planning will make it easier to use material and human resources to improve the fight against financial crime, and the assessment and monitoring procedures reveal actual results and pinpoint significant deviations so that they can be corrected. It is a good example of best practice; financial crime investigation outcomes can be measured and the strategy is flexible: it can be adapted to changing situations.

Contact details for further information are as follows:

Cuerpo Nacional de Policía (National Police Force)

Comisaría General de Policía Judicial

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Calle Julián González Segador, s/n, 28043, Madrid

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Spanish Guardia Civil, Judicial Police Technical Unit, **DELETED**

Address: Principe de Vergara, 246, 28018 Madrid (Spain)

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The Belgian National Security Plan

The National Security Plan (NSP) sets priorities in two areas: strategy and police security policy, where national priorities are identified. This security plan also lays the foundations for cooperation between the police and the judiciary.

Tackling serious financial and economic crime as well as corruption, fraud and money laundering is a matter of security policy. Besides the offences mentioned, dealing with serious information and communications technology (ICT) crime is also part of the National Security Plan. Terrorist acts, money laundering, swindling, illegal gambling and trade in unlawful goods etc. via the internet have become widespread phenomena, and the internet provides a very useful communication tool for criminals. By attacking IT systems in the public sector or the business sector, they can very effectively undermine their operational capabilities or even put them out of action. Combating cybercrime requires the use of special resources and expertise. A proceeds-oriented approach to crime has formed part of the strategic and operational objectives of the (federal) police and has in particular been included in the national security plan and in current specific action plans.

The NSP is translated into regional actions thus tackling security threats across the country in a coordinated and complimentary manner. Since the overall objective of the NSP is a safe society, each authority in Belgium has been assigned its own particular responsibilities deriving from the plan.

Key elements: This crime policy contains clear guidelines on several types of financial crime. In terms of content, the police have very significant input into the National Security Policy. The police can therefore provide a clear and detailed action plan based on the priorities identified. This happens not only at central level, but also at district level where action plans suited to the specific situation in the district are developed.

Regarding its **expected positive results**, taking into account the priorities established in the NSP,

the judicial police and the authorities involved will get a better view of the scale and impact of organised crime and criminal activities that have a destabilising effect on society, as well as of supra-local crime and criminal activities – whether linked or not to the former type of crime – which, given their complex nature, require specialised inquiries.

Contact details for further information are as follows:

CG - CELLULE POLITIQUE ET STRATEGIE

Address: Avenue de la Couronne, 145A, 1050 Bruxelles (Ixelles)

Post : Rue Fritz Toussaint , 8, 1050 Ixelles

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2.2. Administrative and other relevant approaches to fighting organised crime, including cooperation with the private sector

a) Introduction

Within the administrative approach, a public administration takes actions involving the exercise of its specific powers and responsibilities which hinder or frustrate the activities of organised crime. The central principle of this approach is that national, regional, and local administrative bodies can play a major role in preventing and combating crime.

The instruments include monitoring and checking, screening, information exchange, policy with regard to the granting and withdrawal of permits, registration mechanisms and measures aimed at potential perpetrators, but also at the situations and opportunity structures that facilitate and sometimes even encourage organised crime.

The administrative approach is a multidisciplinary approach which is not an alternative to the criminal justice-based approach. It is complementary to action against criminal groups under criminal law. When a criminal investigation and prosecution by the police and judicial authorities is combined with administrative and tax measures, this may create the best way to fight organised crime: an integrated approach.

The FATF guidance on financial investigations in paragraph 32 of the chapter on “asset recovery” states that “countries should also strategically look at options other than criminal confiscation, such as non-conviction-based (NCB) or even administrative proceedings”

Also in the FATF guidance, in the chapter on “data sources and types of information”, paragraph 53 states that “in order to conduct financial investigations, law enforcement should have access to the widest possible range of financial, administrative and law enforcement information”.

Recommendation No 7 of the final report of the fifth round of mutual evaluation mentions, as one of the inspiring examples to be considered, "the Dutch innovative administrative approach to the fight against organised crime."

b) Best practices

The Netherlands approach: local authority initiatives

One of the conclusions of the Dutch parliamentary committee of inquiry into investigative methods (the Van Traa Committee) in 1996 was that an exclusively criminal-law approach was not producing the desired results. It was recommended that there should be a search for a preventive approach, or a combination including enforcement measures, to curb organised crime.

This led to a new approach to fighting crime, one in which public administrations played a more active role, an approach based on responsibility shared between the police, the judicial authorities, business and government.

In order to provide local authorities with the necessary tools to take preventive action, the BIBOB Act was developed. The local authority of Amsterdam was the pioneer in this regard. This is hardly surprising, because the capital can be considered for the parliamentary committee of inquiry as "a focus of both national and international organised crime", particularly in the city's so-called red-light district.

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The **expected positive results** of the administrative approach may lead, in a subsequent investigation phase, to measures such as the withdrawal of a licence, the imposition of an additional tax assessment, the launching of a criminal investigation or even the acquisition of a property.

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Spanish notaries — centralised prevention body (OCP) — information shared with judicial and administrative authorities to further investigations related to money laundering

Spanish notaries have shown a clear commitment to detection and communication of information on suspicious activities related to money laundering before finding themselves in the legal position of "individual obliged" [to report information].

The key landmark is the issuing by the Finance Ministry of Order 2963/2005 of 20 September 2005. That order came into force in 2006 and provides for the establishment of a specialised unit within the Notaries General Council, the Centralised Prevention Body (OCP).

This unit consists of several professionals with wide experience in investigation and money-laundering prevention systems. There are also experts in information technologies in this unit, which is necessary in order to manage the “single index” (a database in which the notaries record all their activities), establishing links between operations carried out at different times and places.

Expressed simply, the following functions are carried out by the OCP:

- coordinating notaries' activities relating to prevention of money laundering;
- analysing operations detected in the single index, as well as those reported directly by notaries;
- alerting the Spanish FIU to suspicious operations that could relate to money laundering;
- establishing internal procedures relating to money-laundering prevention;
- training notaries and their employees

The key element for financial investigations is to answer requests from judicial or administrative authorities in order to develop investigations relating to money laundering

Responses from notaries to judicial or administrative requests also improve substantially as a result of centralised information provision.

Requests relating to acts and agreements made by a person before every notary in Spain are replied to almost immediately by the OCP. The requesting procedure is carried out through a safe web platform on the internet, using cryptographic cards containing digital signatures; this system is used to get information such as:

- activities of persons (natural/legal);
- copies of a registry/policy or attached documents;
- registry or policy templates.
- requests for warnings about a person.

Since 2005, the OCP has answered:

- 50 046 information requests relating to people, sent by judicial, administrative or police bodies;
- 8 261 documents requests sent by judicial, administrative or police bodies.

The **expected positive result** of this OCP is to provide significant added value in terms of money laundering prevention and also to contribute to preventing or hindering the using of notaries in money laundering schemes.

Contact details for further information are as follows:

Órgano Centralizado de Prevención de Blanqueo de Capitales

Consejo General del Notariado

Address: Paseo del General Martínez Campos, 46, 6º

PO Box 28010. Madrid, Spain

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Website: www.notariado.org

2.3. Statistical data records

a) Introduction

Financial investigations increasingly require the development and implementation of tools generating statistics and allowing for automation, cross-linking and analysis of various information and investigation data, showing the different stages reached as well as results. Such tools are instrumental in ensuring that not only are details of individual cases made available, but an overall picture of all investigations in particular areas can also be obtained, monitored and analysed.

FATF Recommendation 33 stipulates that countries should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their anti-money-laundering systems and counter-terrorism-financing systems. This should include statistics on the suspicious transaction reports received and disseminated; on money-laundering and terrorist-financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for cooperation.

Recommendation No 7 in the final report of the fifth round of mutual evaluations states that the Member States should improve the collection and analysis of statistical data about the investigations carried out by law enforcement agencies and about the crimes, criminals, assets frozen or confiscated and assets actually recovered, and the application of EU legal instruments. In relation to forfeiture of assets this should include not only information about orders for forfeiture but also about the amounts collected as a result. Results achieved, weaknesses of the recovery system and countermeasures undertaken by criminals should be discussed regularly by all entities involved. This would provide an effective management and policy-setting tool.

b) Best practices

The Czech Republic central case management system ETR

The Czech Republic is integrating functions of information systems — both specific to financial investigations as well as relating to all other police subsystems — into a comprehensive overarching ETR information system.

The ETR has a number of **key elements**: it is currently widely used throughout the police and is in the process of being established as the central case-management system.

All police officers use the ETR and work in the same application. Police officers of the nationwide units as well as those in the regional branches work in this system. However, the systems are run separately at regional and national levels: for example, a regional unit cannot access the ETR of a nationwide unit. Even though the ETR is a case-management system, it also includes other functions such as a statistical tool. This tool provides extensive options for analytical inquiries regarding seized assets, such as an online overview of seized assets; the option to compare seized assets with assets returned to the damaged party and the amount finally confiscated; and an overall tool for monitoring and evaluation. This system provides an overview of all ongoing criminal proceedings in the Czech Republic in which assets have been seized. It also makes it possible to track:

- which items were seized;
- which police unit/department was involved;
- which legal provision was used;
- the value of the seized assets;
- the amount of returned property/value; and
- the final decision of a court on confiscation.

There is also another e-tool that serves the purpose of what is called "blocking". This is a system that allows cross-references between cases and suspects: a case officer asks about a suspect to see if he is the subject of another case somewhere else. If the query comes from the regional level, a blocking will result, indicating that the person is the subject of a case in another region. The person who made the initial query can get in touch with the relevant office/units. Passive searches are also possible. In these passive searches the regional level can inquire about a national level case, and the national level will be notified about the inquiry.

As to its **expected positive results**, the ETR makes it possible to ensure effective management of cases as well as the collection of statistics on, for example, the number of financial investigations (started and completed) and the overall assets seized. It is a good example of a best practice where the overall impact of financial investigations is clearly indicated and which provides a perfect feedback and evaluation tool on the effectiveness of asset recovery activities.

Contact details for further information are as follows:

Policie České Republiky

útvár odhalování korupce a finanční criminality Odbor mezinárodních vztahů

Address: Poštovní schránka 62/OKFK; 170 89 Praha 7.

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2.4. Risk-based analysis and profiling applied by Customs

a) Introduction

In recent years, criminal activities relating to online trade and transit traffic are among the new economic crime phenomena which have added to the challenges faced by economic crime investigators. As prevention of economic crime has become more complicated, crime intelligence activities based on crime analysis and risk analysis have increased in importance in recent years, with regard to the correct allocation of resources, among other things. Close cooperation between the different activities of customs, particularly control and fiscal activities, is essential.

Such an approach is also in line with the new FATF recommendations, particularly Recommendations 1 and 2, which call for a risk-based approach to the prevention of money laundering and terrorist financing, with a view to efficient allocation of resources. Furthermore, Recommendation 15 underlines the importance of identifying and assessing the money laundering or terrorist financing risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms. The risk-based approach chosen by the Customs is an example of allocating resources particularly to the investigation of such methods and products used by criminals as emerge along with the development of technology, such as online trade. That approach draws a parallel with the approach underlined by FATF in the combat against money laundering and terrorist financing. Both above FATF recommendations and the recommendations given in the final report of the fifth round of mutual evaluations also highlight the importance of effective mechanisms of cooperation and availability of information to the competent authorities both at the national level and in cross-border situations.

b) Best practices

Finnish cooperation between Customs' Economic Crime Division and Corporate Audit and process harmonisation

At Finnish Customs, the cooperation on prevention of economic crime is coordinated by the Economic Crime Division Steering Group. The utilisation of the existing data resources of Finnish Customs concerning international goods flows is important in view of effective and successful economic crime prevention. Finnish Customs has ensured seamless cooperation between economic crime intelligence and investigation through operative and organisational solutions. At the same time, Finnish Customs has produced separate instructions and process descriptions for the cooperation of the administrative control activities and the Economic Crime Division.

The modelled joint process of Finnish Customs supports joint target selection. Corporate audit targets are selected using administrative risk analysis, where in particular commercial information², information available to Customs on the line of business concerned and e.g. customer information are taken into account. Targeted profiling performed by Crime Intelligence is based on the available preliminary investigation and intelligence information. The best practice is precisely the tying together of the above-mentioned processes in such a way that the integrity and objectivity of crime prevention is preserved while joint target selection is employed to ensure selection of essential targets as well as resourcing.

Administrative risk analysis, the data resources available to Customs, international connections and the targeted profiling performed by Crime Intelligence, based on preliminary investigation and intelligence data, are all **key elements** in the cooperation process of the Economic Crime Division and the Corporate Audit. The modelling and tying together of these separate processes by means of joint agreement and joint target selection results in the selection of essential targets as well as in the safeguarding of resources for administrative and criminal procedure measures³. At the same time, the provisions on protection against self-incrimination as well as the prohibition of double penalties (the *ne bis in idem* principle confirmed by the European Court of Human Rights in its judgments) can be effectively taken into account between the administrative stage and the procedure.

² Commercial information refers here to import and export data and also data from transit procedure system.

³ Criminal procedure measures refers here to economic crime intelligence process and pre-trial investigation.

In Finland Customs is one of the pre-trial investigation authorities. The investigation authority's own officers appointed as chief investigators are responsible for leading the pre-trial investigation. Customs Criminal Service and police have parallel powers to execute coercive measures with the exception that Customs cannot do test purchase and has no power to use undercover officers.

The Finnish Customs Investigation Service is also drafting a plan for initiating cooperation with the other units of Finnish Customs. The objective of all these actions is to base crime intelligence and analysis on information that is as precisely analysed and carefully assessed as possible.

The selection of essential targets, the safeguarding of resources for administrative and criminal procedure measures and, on the other hand, the avoidance of unintended overlapping of targets can be seen as **expected positive results** of the cooperation and the joint target selection. Finnish Customs has found that creating models for cooperation has been useful and that it has clarified the processes. As a result, similar modelling is being planned for other units as well.

Contact details for further information:

Finnish Customs Investigation Service, Economic Crime Division,
Economic Crime Intelligence Unit

DELETED

Address: Vilhonvuorenkatu 12 B, Helsinki
PO Box 62, 00501 Helsinki, FINLAND

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3. BEST PRACTICES FOR CONDUCTING FINANCIAL INVESTIGATIONS

3.1. National or multidisciplinary agencies

a) Introduction

When investigating a complex crime, such as those of financial nature, bringing people together in a team with different competences provides a strong basis for combating it effectively. The multi-agency platforms developed in several Member States seem to be the most efficient tools for fighting organised financial crime, especially when planning of the investigation is defined, prioritised and steered jointly.

FATF Recommendation 31 states that countries should ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Countries should also make use, when necessary, of permanent or temporary multidisciplinary groups specialised in financial or asset investigations.

Recommendation No 8 in the final report of the fifth round of mutual evaluations states that the Member States should set up permanent cooperation structures or mechanisms between all separate law enforcement authorities (police, customs, border guards, etc.), including also relevant non-law-enforcement authorities, with a view to their acting jointly against financial crimes. Such a multi-agency structure or mechanism should be composed of members of different authorities, offering a multidisciplinary partnership approach in its investigations into the suspected proceeds of criminal conduct.

The multidisciplinary approach has certain **key elements**: it involves easier communication and cooperation between different law enforcement agencies; it requires smaller costs and it achieves more valuable results; it is more efficient because of the integrated management of the case.

b) Best practices

The Irish Criminal Assets Bureau (CAB)

The Criminal Assets Bureau (CAB) was established in 1996 and it identifies assets of persons which derive (or are suspected to derive) directly or indirectly from criminal conduct. It then takes appropriate action to deprive persons of such proceeds of crime.

The mission of the Criminal Assets Bureau is:

- to identify the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct;
- to take appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate; and
- to pursue any investigation or do of any other preparatory work in relation to any proceedings arising from the above-mentioned objectives.

The Criminal Assets Bureau is a multi-agency organisation consisting of members of An Garda Síochána, along with staff from Customs & Revenue Commissioners, Departments of Social Protection, Justice and Equality. It has established its own in-house expertise, which is provided by accountants, analysts and IT personnel. Staff from the Department of Justice and Equality are allocated to the Bureau while staff from An Garda Síochána, Revenue Commissioners and Social Protection are seconded to the Bureau.

The Criminal Assets Bureau operates on a national level. However, all of the cases of the Criminal Assets Bureau are brought to the High Court in Dublin.

The basis for starting an investigation would be fulfilment of the following requirements:

- evidence of criminality,
- evidence of assets.

Intelligence would come from a wide variety of sources, including earlier convictions. The suspected proceeds of crime have to be higher than EUR 13 000. Actions by the Criminal Assets Bureau are against property, *in rem*, not persons. It is non-conviction-based and the respondent is the person controlling the asset.

In its work, the Criminal Assets Bureau uses a multi-agency, multidisciplinary partnership approach in its investigations into the suspected proceeds of criminal conduct. It works closely with international crime investigation agencies and has successfully targeted proceeds of foreign criminality from countries such as the US and the UK. The Criminal Assets Bureau also works with international bodies such as the European Commission and the Camden Asset Recovery Interagency Network (CARIN). Significant benefits accrue in the international arena from this multi-agency approach.

The Criminal Assets Bureau has developed a network of divisional assets profilers in each of the 26 police divisions, albeit under the control of the local police chief, who are tasked with identifying persons for possible investigation where they believe such persons are in possession of assets derived from criminal activity.

The Criminal Assets Bureau has a closed internal database detailing all activities of the Bureau, including data received, stored, investigated and actions taken within the Bureau. This database is designed to record all activities of the Criminal Assets Bureau. These databases relate to the ownership of assets within the State. They include databases relating to the ownership of vehicles, the ownership of land, the details of registered companies and businesses and the ownership of boats.

Contact details for further information are as follows:

Chief Bureau Officer

Criminal Assets Bureau

Address: Harcourt Square, Harcourt Street

Dublin 2

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Website: <http://www.garda.ie/Controller.aspx?Page=28&Lang=1>

The Danish Task Force East

To enhance their efforts in tackling organised crime gangs, i.e. drug gangs, motorcycle gangs etc., the Danish authorities have set up Task Force East, a specialised intelligence-led unit, to concentrate on economic crimes committed by criminal groups targeting the assets and finances of various individuals.

Task Force East is a special task force, covering five police districts including the Zealand Police District. It targets bikers and gangs by proactive, forward-looking investigations and optimising national and local intelligence. Task Force East is a fairly new unit, and small in the overall system. Although it is not a key component of the legal system, it represents a novel approach on addressing cases involving multiple types of crime, for instance drugs and money.

Task Force East focuses particularly on gangs and biker crime. It was set up as a result of problems occurring in 2008-2009 linked to shootings in the streets of Copenhagen between outlaw motorcycle gangs and street gangs. Task Force East works with proactive, forward-looking investigations into the gangs of Copenhagen and the wider Zealand region. There are some 13 or 14 street gangs, along with Hell's Angels and other outlaw motorcycle gangs. The work started with a focus on violence, but soon the economic dimension was added.

Task Force East is about serious organised crime, with a particular focus on the financial aspect of organised crime. Partners in the task force include, inter alia, the Danish Tax and Customs Administration, the State Prosecutor for Serious Economic Crime, the police and prosecutors.

Task Force East can target companies involved in criminal activities, such as small companies owned by members of the gangs, for instance cleaning services or personnel hiring companies. They have very good cooperation with the banks and can monitor accounts in real time. Information from the banks is channelled via the money laundering secretariat at the State Prosecutor for Serious Economic Crime to Task Force East.

Task Force East has a focus on Zealand, so there is as yet no cooperation with AWF Monitor. As a result, Task Force East does not take advantage of those opportunities, but also they do not provide details of cases which could be useful to find relationships, inter alia regarding the Hell's Angels and their international operations. However, Task Force East is part of a JIT with Sweden and Germany; initially concerned with cloned cars but now with drugs.

Task Force East has very good results in provisional seizure of property. One of its goals is to bring out intelligence from the investigations for use by others. The intelligence is handed over to the National Investigation Centre.

Task Force East can put surveillance on suspects, looking at the chain between mules and higher-level criminals. They have a common investigation database. However, there is no direct access to the cooperating agencies' databases.

Contact details for further information are as follows:

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Copenhagen Police

Task Force Øst

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By a decision of the Director of the Financial Crime Investigation Service (FCIS) and the Head of the State Tax Inspectorate, it was decided to establish the Risk Analysis Centre (RAC). The officials of the FCIS and the State Tax Inspectorate performing within their competences the analysis of the information, tax administration, investigation of violations, carrying out operational activity and pre-trial investigations, were appointed by orders of the chief executives of the parties. The RAC can receive from the other parties, via the officials appointed by those parties, information needed for the implementation of the tasks and performance of the functions of the Centre.

The main objectives of the RAC are:

- to analyse and exchange available information on tax violations and acts against the financial system, aiming to identify the threats to the state financial system and collection of taxes;
- to cooperate within their competences, organising and implementing the targeted measures, preventing, uncovering and investigating violations of the tax law or those crimes that are assigned to the competences of the parties.

The RAC implements its objectives by monitoring and analysing the situation in different spheres of economic activity, aiming to determine changes, tendencies and the reasons for them in so far as they are related to possible violations of tax law or to crimes against the financial system. On detection of cases of tax evasion or persons in whose activity there are indications of criminal activity, the RAC:

- informs the party to the competence of which the investigation is assigned;
- gives suggestions to the relevant party/parties on priority activity directions; assesses and summarises the activity results of the Centre;
- performs within its competences any further investigation according to the detected facts;
- and presents suggestions on the improvement of the use of the databases of the parties.

The FCIS starts financial investigations when it receives reports on infringements from the tax authorities. Additionally, when investigations are carried out on trafficking in drugs or human beings, the relevant institutions often receive information indicating that the suspect has property. In these cases the criminal investigation is carried out parallel to the financial one. For example, after the Lithuanian Criminal Police Bureau has finished the investigation on drugs, the FCIS concludes the investigation on illicit enrichment.

Contact details for further information are as follows:

DELETED

Financial Crime Investigation Service

Ministry of the Interior

Address: Šermukšnių str. 3, 01106 Vilnius

Lithuania

DELETED

The Swedish Cooperation Council

On 17 July 2008, the government passed a decision on strengthening cooperation between authorities to reinforce the fight against serious organised crime from a multidisciplinary perspective (Cooperation on Organised and Serious Crime, GOB). The emphasis of the government was to build on what was already established and ongoing, but with decidedly local support. As a follow-up to this, several multi-agency platforms were formed, such as the Cooperation Council and the Operational Council.

The task of the Cooperation Council is to decide on strategic direction, based on a situation report drafted by all participating authorities in the National Intelligence Centre (NIC).

The following authorities participate in the Cooperation Council: National Criminal Police, Security Police, Prosecution Authority, Economic Crime Authority, Tax Agency, Probation Service, Enforcement Authority, coast guard and Customs.

The Operational Council makes decisions on the national operational focus of the fight against serious organised crime. It decides for example on the use of the national special action groups in individual cases.

A National Intelligence Centre (NIC) has been established at the National Criminal Police to produce and analyse intelligence from all the cooperating authorities and thus produce supporting data for the Cooperation Council.

The NIC produces an annual joint status report on trends in serious organised crime for the Cooperation Council. The status report then forms a supporting document for decision-making with a strategic focus.

The NIC also produces and analyses operational intelligence and produces supporting documents for actions by the Operational Council.

The authorities participating in the NIC are the members of the Cooperation Council minus the Prosecution Authority and with the addition of the Social Insurance Agency and the Migration Board.

The task of the Regional Intelligence Centres (RIC) is to support efforts to combat serious organised crime. Their work is led by steering groups representing the participating authorities. These steering groups decide which authority is the most appropriate to continue work on a specific issue or a case that has been jointly identified.

The RICs work on cross-agency cases within the framework of the national fight against serious organised crime. There are currently eight RICs established at the police authorities. The same authorities are represented as in the NIC.

Once a year the government issues what are called "regulatory letters", which do not as such define official priorities in the fight against serious organised crime, but invite the relevant authorities to focus on certain crime phenomena or approaches to combating them. For example, in 2011 the government introduced requirements concerning proceeds of crime to the relevant authorities. On the other hand, the work in the joint multi-agency platforms is more intelligence-led and based either on a multi-agency overview or assessment of the crime situation, or practical case demands based on need to know concerning a certain criminal issue.

The government focus expressed in the regulatory letters can also act as a starting point, or the need to know, for the intelligence process based on which an assessment is produced and possible further activities defined in the GOB context.

Contact details for further information are as follows:

Swedish National Police Board
Cooperation Council
Address: Box 12256
102 26 Stockholm

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Finnish Police, Customs, Border Guard (PCB) Cooperation

The Intelligence Division of the National Bureau of Investigation facilitates the criminal intelligence and analysis function for the police, customs and border guard. The purpose of the Act on Police, Customs and Border Guard Cooperation is to promote joint operations between the police, the customs and the border guard authority (PCB authorities) and the development of joint operational policies for the PCB authorities so that the tasks and individual measures assigned to the PCB authorities for the prevention, detection and investigation of offences (crime prevention), surveillance and related international cooperation are appropriately, effectively and economically performed. Joint operations means carrying out action involving crime prevention, surveillance or international cooperation on behalf of another PCB authority or assisting with tasks in this field and cooperation with PCB authorities in a common area of operation.

The aims of PCB operations are:

- producing information for law enforcement authorities;
 - national and international criminal intelligence gathering and analysis ;
 - target combating (selection of targets for prevention);
 - maintaining crime situation awareness;
 - rapid information exchange on detection of criminals, increasing the likelihood of their being caught and crime prevention;
 - support for operational activities.
-
- This also applies to information from the FIU located within the NBI which, by the abovementioned procedure, identifies offences and passes them on for investigation to various police units. The FIU can provide information on its own initiative or on request as required to another unit.

With regard to its **expected positive results**, the multidisciplinary approach makes it possible to ensure effective and integrated management of complex cases. A broader approach facilitates cooperation between experts and investigators on every level, so that all the resources are used to achieve the same goal: identifying the perpetrators and their associates, documenting their criminal activity and enabling potential confiscation of the proceeds of crime.

Contact details for further information are as follows:

The Finnish PCB Criminal Intelligence and Analysis Centre

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3.2. Management of confiscated assets linked to crime

a) Introduction

Financial investigations require that criminals are deprived of the proceeds of their crimes (asset recovery). Once the assets are recovered, there is a need for effective management of the frozen property with a view to its possible subsequent confiscation. This asset management should ensure that the seized assets are managed, before being confiscated and disposed of, in an adequate way that strives to minimise depreciation in value and/ or to avoid disproportionate management costs relative to the value of the recovered assets.

Finally, in the 'disposal phase' the issue arises of what to do with the money when confiscated assets are sold. The re-use of confiscated assets for social purposes or for incentive schemes for law enforcement agencies can have a strong positive impact on the effectiveness of the overall confiscation procedure; in order to avert strong negative repercussions on the whole procedure, appropriate measures should be taken to prevent criminal groups from reacquiring confiscated asset.⁴

FATF Recommendation 38 stipulates among other things that countries should also have effective mechanisms for managing such property, instrumentalities or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets.⁵

The FATF report 'Best practices on confiscation (Recommendations 4 and 38) and a framework for ongoing work on asset recovery'⁶ outlines the ideal asset management regime in a precise and exhaustive manner:

Recommendation No 23 in the final report of the fifth round of mutual evaluations states that sound management of seized goods, including their conversion into cash, needs to be promoted and applied more extensively. The setting up of dedicated asset management offices should be considered.

⁴ A subgroup on the re-use of confiscated assets of the ARO platform is expected to complete its work early in 2013. Among other things it has a mandate to discuss problems encountered in the asset disposal phase and in the re-use of assets, actual and possible ways to overcome them and best practices. The subgroup works in synergy with the project RECAST (REuse of Confiscated Assets for social purposes: towards common EU Standards)

⁵ International standards on combating money laundering and the financing of terrorism and proliferation. The FATF recommendations - February 2012 – p. 28

⁶ FATF, October 2012

b) Best practices

The Netherlands Criminal Assets Deprivation Bureau (BOOM)

Concerning the **key elements** of asset management as practised in Netherlands, let us emphasise that the Dutch actually reused existing institutions to deal with the management of seized assets. There is no specific legislation with regard to the Dutch AMO (Asset Management Office); the Minister of Security and Justice decided that the BOOM is the Dutch AMO. The Dutch AMO is part of the Public Prosecution Service; the AMO is a judicial structure. As of the end of 2012, the AMO had 12 staff members, mainly asset managers. The AMO and ARO (Asset Recovery Office) are both departments within BOOM, which facilitates their daily collaboration. The AMO provides an advisory service for both internal and external partners in the process. The AMO liaises with public prosecutor's offices, enforcement authorities, bailiffs, lawyers, suspects and other interested parties in cases where prejudgement seizures have occurred. The AMO follows the instructions of the prosecution service regarding the assets they manage. Assets cannot be sold without the authorisation of the prosecutor. In a nutshell, the conditions for selling can be summarised as follows:

- the assets concerned are replaceable and their value is easy to determine;
- if assets are held in kind, this might lead to depreciation or damage;
- or the costs of storage or management are disproportionate to their value.

Information on confiscated assets is collected online by the actors involved in the disposal phase; a data management system supports the disposal of confiscated assets. Seizures are automatically signalled upon registration to BOOM, which then takes all the necessary precautions as rapidly as possible. There are no problems in dealing with real estate property under joint ownership. There are legal provisions on the disposal of properties with mortgages and of real estate under joint ownership.

Concerning the **expected positive results** of this pragmatic Dutch system, the Dutch AMO aims to stop the depreciation of movable property and limit management costs, the office adopts appropriate measures to prevent assets from being returned to offenders and it collects relevant statistics on freezing and confiscation at national level. The final report of the fifth round of mutual evaluations states that this [Dutch] solution seems to be practicable and deserves to be promoted in other jurisdictions which face problems with storage of seized goods. The white paper on best practices in asset recovery states that this system re-uses existing institutions, bodies and procedures, with proven effectiveness; through their functions widening, they have been recycled as tools aimed to

recovery and management assets; for example, the CJIB (Central Fine Collection Agency).⁷

Contact details for further information are as follows:

BOOM, Bureau Ontnemingswetgeving Openbaar Ministerie

Address: Postbus 837

8901 BP Leeuwarden

The Netherlands

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Website: www.om.nl

The Italian National Agency for the Management and Use of Seized and Confiscated Organised Crime Assets

Italian law establishes two ways with regard to the orientation to the social use of forfeited goods: first, similar to other countries in Europe, part of the goods are transferred to the central administration; second, restoring the heritage to the communities. Up to 1 May 2012, the first way has received 13.06%, and the second way, 86.94%

The National Agency for the Management and Use of Seized and Confiscated Organised Crime Assets (ANBSC) carries out AMO functions in Italy since its setting up in February 2010 and it is considered to be an effective tool for optimizing the recovery of illegally gained assets and the management of seized assets.

By 7 January 2013 ANBSC confiscation assets included 11,238 real estate properties.

Its **key elements** are as follows:

- It has a quite broad remit which comprises the management of seized and confiscated assets, properties and companies as well as their disposal.
- The management includes all aspects of the confiscated asset: from legal to tax, to those pertaining to the laws and workplace safety.
- The Agency maintains an updated database identifying all seized and confiscated assets.
- It conducts a follow-up of assets or properties following their disposal. Once assigned, the ANSBC goes on controlling and overseeing about the use of the goods. The ANSBC can cancel the transfer or nominate a representative when the good is not used as provided on agreement, or has not been used along one year.

⁷ White Paper on Best Practices in Asset Recovery (CEART PROJECT; ISBN 978-84-8150-303-6), p. 97.

- The agency liaises with the judicial authority to arrange for the future assignment of seized property once the final decision on confiscation has been made.

The **expected positive results** are as follows:

- By gathering data on seized and confiscated assets (both in criminal and civil (preventative) proceedings) and on the related procedures; a proper planning on their disposal; data analysis and identification of key problems in terms of asset disposal can be easily identified;
- By supporting judicial authorities with the administration of assets seized to organised crime, allowing Justice field to focus on specific criminal matters and save time to those authorities avoiding them to deal with such assets.;
- As the Agency may adopt urgent acts to quickly assign confiscated assets, it provides great flexibility to facilitate the work of Police and Judicial Institutions.
- The follow up mechanism prevent from new reuse of confiscated assets from organised crime.

It has been recently introduced changes in the Italian law that allows ANBSC to speed up the destination of the goods subject to mortgage, providing a simplified procedure for the determination of good faith by the mortgage lender.

Contact details for further information are as follows:

Agenzia Nazionale per l'Amministrazione e la Destinazione dei Beni

Sequestrati e Confiscati alla Criminalità Organizzata

Address: Via dei Prefetti, 22

00186- Roma

Italy

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Website: <http://www.benisequestraticonfiscati.it/Joomla/index.php>

3.3. Central bank account register systems

a) Introduction

The success or failure of a financial investigation is often decided by the speed of access of the law enforcement agencies to financial data held by financial institutions. Tracing criminal proceeds is also far more efficient when the financial flows resulting from criminal activity can be followed up properly by law enforcement agencies at a domestic and at international level.

FATF Recommendation 31 stipulates that countries should ensure that competent authorities conducting investigations are able to use a wide range of investigative techniques suitable for the investigation of money laundering, associated predicate offences and terrorist financing. These investigative techniques include undercover operations, intercepting communications, accessing computer systems and controlled delivery. In addition, countries should have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts.

Recommendation No 16 in the final report of the fifth round of mutual evaluations states that the Member States are invited to consider the setting up of central registers of bank accounts, or alternative efficient mechanisms, in order to provide the relevant investigating authorities with access to necessary data, especially to allow speedy identification of bank accounts available to a person under investigation.

The **key elements** of a central bank account registers are as follows: it includes basic information regarding the identity of the holders; the information can be accessed in an administrative or a criminal procedure; one query returns all basic data about the suspects' accounts — there is no need for a separate subpoena for every bank.

b) Best practices

The French FICOBA (National Bank Account Database)

France has a national bank account database (FICOBA), created in 2003. The database, administered by the Directorate-General for Public Finances, lists all accounts opened in France. It covers accounts of all types (bank accounts, post office accounts and savings accounts, as well as share portfolios, etc.) held either by natural or legal persons. TRACFIN has direct access to FICOBA. Apart from customs officials that have access to FICOBA the judicial authorities can acquire information via the instruments provided by the penal procedural code.

However, FICOBA does not list safe deposit boxes held by persons, or non-banking financial products such as life insurance, nor does it contain any record of past transactions on an account. To obtain this information, the judge or investigator must apply directly to the bank or post office.

FICOBA contains information from compulsory tax declarations by the bodies which manage the accounts (banking and financial institutions, giro cheque centres, companies on the Stock Exchange, etc.).

For legal persons, the name, legal form, SIRET number and address are recorded. FICOBA data are kept for three full years after closure of the account in the case of accounts held by natural persons and ten full years after closure of the account in the case of accounts held by legal persons. The experts considered the three-year period for keeping records for natural persons did not comply with Article 32 of Directive 2005/60/EC, which stipulates a five-year retention period for both natural and legal persons. FATF Recommendation 10 stipulates the same period.

Contact details for further information are as follows:

Banque de France

Address: 31 Rue Croix des petits champs

75001, PARIS, France

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Ministère de l'intérieur

Direction Centrale Police Judiciaire

l'état- major de la sous-direction de la lutte contre la criminalité organisée et la délinquance financière

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The German Federal Financial Supervisory Authority (BaFin)

Since 1 April 2003, all credit institutions in Germany have been legally obliged to store accounts and deposits with the names and birthdates of the holder and other authorised persons and the name of the beneficial owner of the bank account, in a special data file. This applies to both natural and legal persons. The Federal Financial Supervisory Authority (BaFin) in Bonn does not store any data in its own centralised database but has centralised access to the individual credit institutions' databases via an online system. The system does not allow direct access for police or other law

enforcement authorities, but , law enforcement authorities, in fulfilling their legal tasks (according to section 24c, subsection 3, No 2 of the Banking Act), are entitled to request information from BaFin by means of a written procedure, currently by fax or mail. Queries can be made using the surname, first name and, if available, date of birth and also by providing a company name.

By such a query, law enforcement can obtain information on account numbers, the name of the relevant credit institution, account opening and closing dates, third-party signature rights and possibly differing beneficial owners. No information on the type of account is released by BaFin, for example whether the account is a savings, loan or a deposit account. Furthermore, no information on the account balance or transactions is released to law enforcement. In this system, law enforcement, in fulfilling its legal tasks, can obtain basic information on the location of bank accounts and the holders of the bank accounts at German federal level. This information then serves as a basis for further legal action, such as the opening or freezing of the identified bank accounts using orders issues in the competent courts.

Contact details for further information are as follows:

Bundesanstalt für Finanzdienstleistungsaufsicht

Graurheindorfer Str. 108

53117 Bonn, Postfach 1253, 53002 Bonn

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Website: <http://www.bafin.de/EN>

The Italian Financial Relations Database

Italy has a national financial relations database, maintained by the Revenue Agency. It is a section of the central tax database (*Anagrafe Tributaria*). This database covers all relations (even occasional relations) between natural or legal persons and financial intermediaries. The information available is restricted to the existence and type of relation but not to the specificities of transactions. The Financial Relations Records does not contain detailed information (account number, date or amount of transactions, etc.) connected to a single person or individual on bank accounts. This archive makes it possible to find out by electronic means (since January 2005) the following information:

- personal information on customers (individuals or corporate bodies) and any other account holders/co-owners;

- amount and kind/type of relations and the financial institution where the bank account is kept;
- start/end date of bank account.

The notices concern bank accounts kept since the first of January 2005. Information connected to nominees or persons acting on behalf of others also goes into the archive together with information on transactions carried out outside the nation by resident financial operators (if they do not have legal autonomy). The information contained in the data base is sent by financial operators to the Revenue Agency (in accordance with Legislative Decree number 231/2007).

Traders are obliged to report any existing relationship and transaction carried out outside a continuous relationship, and to specify its nature and give the details of the holders and subjects maintaining a financial relationship or conducting any operation outside a continuous relationship, on their own behalf or on behalf of a third party, including the taxpayer's code number.

The database contains about 1,200 million bank accounts, 185 million notices on banking transactions not inserted in bank accounts, and over 9 000 financial institutions (banks, financial intermediaries, trusts, companies, etc.). Through specific conventions and protocols concluded with the Revenue Agency, the database is also available to the following entities in the course of their activities:

- DIA (Anti-Mafia Investigative Directorate);
- UIF (Financial Intelligence Unit);
- Equitalia (privately organised Italian Agency for the collection of taxes);
- Customs Agency;
- Judicial authorities;
- Guardia di Finanza - During fiscal investigations the Guardia di Finanza Corps is entitled to access the data autonomously;
- Polizia di Stato (no protocol yet);
- COSOB (no protocol yet).

Contact details for further information are as follows:

Agenzia delle Entrate

Address: via Cristoforo Colombo n. 426 C/D 00145 Roma

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Website: http://www1.agenziaentrate.gov.it/inglese/revenue_agency

The Portuguese banking system database of accounts

Portugal has set up a centralised register of bank accounts. The Portuguese Parliament approved Law 36/2010 of 2 September 2010 - a legislative initiative of the Government included in a package of anti-corruption laws - which amends the General Regulation on Credit Institutions and Finance Companies, creating within the Banco de Portugal a centralised database of bank accounts, the banking system database of accounts, in accordance with the procedure provided for in Article 3 of that Regulation.

The banking system database of accounts can provide information to judiciary authorities (judges and public prosecutors) in criminal proceedings, although some reporting entities have not yet sent the requested information, and thus the information in the database is still incomplete.

Pursuant to Law 36/2010, the database contains information about bank accounts, account holders and persons authorised to manage the accounts. The Banco de Portugal has already implemented Law 36/2010, by issuing Instruction 7/2011 of 15 April 2011, which specifies, among other things, which are the reporting entities, the type of information to be provided by them and the time and deadlines of the reports.

According to Instruction 7/2011, the database includes information from the reporting entities on the following type of bank accounts: deposit bank accounts, financial instrument accounts, credit accounts and payment accounts. The reporting entities are banks and other credit institutions, financial companies and payment institutions, whose head office is established in Portugal and the branches in Portugal of credit institutions, financial companies and payment institutions established in foreign countries, including branches located in the financial centres (free trade zones) of Madeira and Azores.

The information contained in the database on closed accounts will be kept for 15 years as from the date of closure of the accounts.

Contact details for further information are as follows:

Banco de Portugal

Address: Rua Comércio 148 1100 Lisbon, Portugal

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The Romanian Central Account Electronic Database

The Romanian central account electronic database consisted initially of information on holders of

all bank accounts that were active in 2003, the year of its creation. Starting with 2003, under Article 54(1) of the Romanian Fiscal Procedural Code, banks have been required to communicate to the Ministry of Finance the list of natural and legal persons or any other entities without legal personality that open or close accounts, as well as their legal status and domicile or legal residence. The communication is made twice a month, with reference to the accounts opened or closed during the preceding period.

The register is run by the Ministry of Finance and includes the following data:

- the fiscal identification number of the credit institution/the personal identification number of the client (fiscal identification number for legal persons),
- the client's full name, the client's code, as allocated and used by the bank, the beginning of the commercial relationship with the bank (opening of the first account) and the date of its end (the closing of the last account).

No information on beneficial owners, account types, account numbers, balance or transactions is available. More detailed information can subsequently be obtained from the bank. The credit institutions do not have direct access in order to feed the database themselves. The information is collected by the Ministry of Finance in a standardised format, as a text file, on optical disks or via e-mail.

Direct access is available:

- only to regional tax authorities, their access rights (read only) being limited to tax payers registered in their geographical area of competence.
- The national FIU has access to all data via the Ministry of Finance's database replica, which the agency operates, and which is fed in the same non-automated manner as the original (the Ministry of Finance also redirects the data collected data to the FIU).
- The Romanian ARO also has direct online access to all data.

Law enforcement agencies and the National Integrity Agency also have access to data via written request, sent by regular mail. Usually the answer is received in a matter of days. In case of urgency the information can be obtained very quickly, but the presence of the requesting agency's delegate is required to collect the letter (unfortunately no electronic channels are available).

In conclusion, looking at the benefits of central bank, their main **expected positive result is that** their records facilitate complex financial investigations. When investigating a financial crime, a central bank account register saves time and material resources. It is more efficient to trace the

criminal proceeds if the investigation team has direct access to basic data regarding the bank accounts. A central bank account register is a very efficient investigation tool in money laundering cases, when it is very important to have a bigger and clearer picture of the possible laundering schemes as soon as possible.

Contact details for further information are as follows:

Agencia Națională de Administrare Fiscală

Str. Apolodor nr. 17

Sector 5, București – 050741

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3.4. Financial Intelligence Units (FIU)

a) Introduction

Many Member States have set up administrative FIUs under their judicial authorities or under the Ministries, in fact some have no investigative powers. Others decided to set up operational or police FIUs within their police structures. A small group of Member States have created "hybrid" FIUs, combining police and prosecutor responsibilities.

The final report of the fifth round of mutual evaluations concludes that there is a need to improve cooperation in the field of financial crime, through closer collaboration between FIUs, AROs, police, tax and customs authorities, both at the national and the international level.

FATF Recommendation 29 stipulates that countries should establish an FIU that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis.

Key finding No 4 of the final report suggests that the FIUs in the Member States vary considerably in their organisational setup, functions and resources, and that this diversity may lead to obstacles in international cooperation.

The **expected positive results** of the two "hybrid" FIUs referred to below lie in the combination of administrative and law enforcement functions. Putting people with different specialist competences together in a team when investigating a complex crime seems to provide a sound basis for an efficient fight against organised financial crime.

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 FIU's mandate is not clear or similar between them, but also because different ministries as well as operational agencies are involved. This results in losses in efficiency and timeliness. The way FIUs have been staffed also varies. Some are staffed quite substantially whereas others are merely "one man shows". The necessary computer tools and databases have to be made available to support the fulfilment of all the tasks of an FIU, *inter alia* strategic analysis.

b) Best practices

The Danish money laundering secretariat

Both the FIU and the ARO are part of the State Prosecutor for Serious Economic Crime. The Money Laundering Secretariat is the Danish FIU, it has full investigative powers and it is an operationally independent unit within the office of the State Prosecutor for Serious Economic Crime.

The three main **key elements** of this FIU are:

- the fact that it is both police and prosecutorial,
- that it consists of personnel from various authorities, and
- its case management system.

It is a hybrid FIU, with both police and prosecutorial but not administrative features. It is currently staffed by three prosecutors, seven police officers and four administrative staff. Three revenue officers are also stationed at the FIU on a part-time basis, working under the instructions of the FIU.

The unit is responsible for the receipt, analysis and dissemination of reports of possible money laundering and terrorist financing. It works closely with the ARO and the tax authorities. STRs are disseminated to the police for investigation. They are also distributed to the tax authorities and the Financial Services Authority. Revenue officers stationed in the FIU have access to STRs as well.

The State Prosecutor for Serious Economic Crime administers the central intelligence database, which is mostly used by the FIU. In 2012 the FIU implemented a fully integrated case management system, with an external web interface for reporting.

The Danish FIU can share information with other FIUs for intelligence purposes within the scope of anti-money-laundering and counter-terrorism financing activities, including information from the FIU database. As a hybrid FIU (police/prosecutorial), information may be shared or disseminated through different channels according to the nature or origin of the information among others with the ARO, the police and tax authorities.

The FIU may postpone a transaction by way of seizure of the account in question. The seizure is subject to subsequent court review if not done on the basis of a court order. It may also request a bank not to execute a transaction or to postpone it.

Contact details for further information are as follows:

The Danish Money Laundering Secretariat,
part of the State Prosecutor for Serious Economic Crime,
Address: Bryggervangen 55, 3., 2100 Copenhagen, Denmark

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The Cyprus MOKAS (Unit for Combating Money Laundering)

The Unit for Combating Money Laundering (MOKAS) is the Cyprus FIU and ARO. It has very broad investigative powers that allow them to go far beyond the usual remit of administrative FIUs.

The three main **key elements** of this FIU are:

- its broad investigative powers;
- the multidisciplinary staff composition; and
- access to numerous databases covering different sectors.

MOKAS functions under the auspices of the Attorney General of the Republic, an independent official under the Constitution, and it is composed of three lawyers of the Office of the Attorney General, four police officers seconded from the Economic Crime Investigation Office and two customs officers of the Department of Customs and Excise. The representative of the Attorney General heads the Unit. The composition of the Unit includes other professionals, such as accountants, financial analysts and administrative staff. The staff receives training on an ongoing basis.

It is the national centre for receiving, requesting, analysing and disseminating disclosures of STRs and SARs and other relevant information concerning suspected money laundering or financing of terrorism-related activities.

The Unit is responsible for *inter alia* the gathering, classification, evaluation and analysis of information relevant to laundering offences and terrorist financing. It conducts investigations where there are reasonable grounds to believe that such an offence has been committed, cooperates and exchanges information with FIUs abroad and issues instructions to persons engaged in financial or other business activities for the suspension or non-execution of a suspicious transaction.

The Unit cooperates with the police and in particular with the Drugs Law Enforcement Unit and the

Economic Crime Investigation Office in investigating domestic cases and in the investigation of STRs and analysis.

Members of the Unit, acting upon a judicial order, may conduct a search in any premises including those of a financial institution.

The Unit may apply to the court to secure an order for the disclosure of information. In some cases it may obtain financial information without a judicial order.

It has the power to issue an administrative order for the postponement of transactions at a preliminary stage (analysis of information/intelligence). Moreover, it can apply to the Court and obtain a freezing order. The above-mentioned powers can be exercised on behalf of foreign authorities as well. It may also register and enforce foreign freezing/confiscation orders before the Cyprus courts.

Apart from maintaining its own FIU database, the Unit has access to financial information (customs information in relation to cash declarations) and to administrative (companies register, immigration records, vehicle register), commercial (world-check, world compliance, Lexis-Nexis, Complinet, Creditinfo) and law enforcement (criminal records, departure/arrival records, stop list records and criminal analysis) databases, which enables it properly to fulfil its functions and analyse the STRs. For analytical work MOKAS investigators use the i2[®] Analyst's Notebook. It also has access to a joint database developed by the three law enforcement bodies of Cyprus (police, customs and MOKAS).

Contact details for further information are as follows:

Unit for Combating Money Laundering,

Address: Pericleous 7, 2020 Strovolos Nicosia, P. O. Box 23768, 1686 Nicosia

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3.5. Asset Recovery Offices (ARO)

a) Introduction

Financial investigations require depriving criminals of the proceeds of their crimes, i.e. of their ill-gotten gains. Asset seizure should be considered as being equally important as the conviction of the perpetrator; thus asset recovery, though time-consuming and resource-intensive, should be systematically integrated as early as possible into criminal investigations. Furthermore, when assets have to be recovered from foreign countries, differing legal rules or procedures may complicate cross-border tracing and seizure of assets. Therefore, the issue of a common approach to the fight against financial crime and the question of time and resource management become of utmost importance.

FATF Recommendation 4 stipulates that countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of *bona fide* third parties: (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or (d) property of corresponding value.

Such measures should include the authority to: (a) identify, trace and evaluate property that is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and (d) take any appropriate investigative measures.

FATF Recommendation 38 stipulates *inter alia* that countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered; proceeds from money laundering, predicate offences and terrorist financing; instrumentalities used in, or intended for use in, the commission of these offences; or property of corresponding value. This authority should include being able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law.⁸

⁸ International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: the

Recommendation No 5 in the final report of the fifth round of mutual evaluations states that as far as possible, asset tracing and seizure should be systematically integrated into the planning of any criminal investigation and their results should be a supplementary performance indicator for the responsible units and officials. Application of confiscation, fines and similar measures provided for by law can be a vital indicator of the efficiency of both law enforcement and the judiciary.

Recommendation No 6 in the same final report states that in order to facilitate final judicial decisions, necessary steps such as financial profiling, search and seizure need to be made at the earliest possible stage of the procedure, enabling the investigations to clearly establish the facts of the case. The possibility of a wider use of existing measures such as forfeiture or procedural provisions, for instance, and when applicable, the reduced burden of proof or "reversed burden of proof" regarding the illicit origin of proceeds, should be further examined, while taking due account of fundamental rights and freedoms and fundamental principles of national laws, such as respecting the rights of the defence and the presumption of innocence.

Recommendation No 8 in the final report of the fifth round of mutual evaluations states that the Member States should set up permanent cooperation structures or mechanisms between all separate law enforcement authorities (police, customs, border guards, etc.), including also relevant non-law enforcement authorities, with a view to their acting jointly against financial crimes. Such a multi-agency structure or mechanism should be composed of members of different authorities, offering a multidisciplinary partnership approach in its investigations into the suspected proceeds of criminal conduct.

In addition to the German example given below other excellent ARO's are some of the institutions described in the sections above, therefore please refer to:

- Section 3.1: Irish Criminal Assets Bureau
- Section 3.2: The Netherlands Criminal Assets Deprivation Bureau.

b) Best practices

The German ARO, an active and cooperative international partner.

The German ARO is a very active and cooperative partner with its peers within the Member States. Its set-up is tailored to meet the diversity of requests and issues in financial investigations. Whenever possible, the operational day-to-day exchanges of information with other Member States,

FATF Recommendations. February 2012, p. 28

notably on police channels, pass through the Bundeskriminalamt (BKA), which can again be cited as good practice. The police ARO, embedded in the BKA, plays a lead role in the operational EU ARO network, which uses the products and services provided by relevant EU agencies and institutions and other international organisations (e.g. Interpol) with discernment.

Some of the **key elements** of the Asset Recovery Office in Germany are the following.

The German ARO has a dual structure:

- Division III 1 of the Bundesamt für Justiz (Federal Office of Justice) acts as the national judicial ARO, focusing on an advisory and training role on the one hand, and serving as the central point for national and international requests by judicial authorities, and
- Unit SO 35 in the BKA (the Federal Criminal Police Office) acts as the police-based operational part of the ARO with responsibility for practical cooperation between law enforcement authorities.

Unit SO 35 constitutes the BKA's specialised department for asset recovery. The department deals with both national and international matters. More precisely it carries out the following tasks:

- financial investigations as part of on-going proceedings to recover assets;
- central functions in the field of asset recovery;
- tasks associated with Germany's central Asset Recovery Office (ARO) on the basis of Council Decision 2007/845/JHA of 6 December 2007; CARIN contact point; and tasks assigned to the central authority according to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Unit SO 35 is responsible for information-sharing in accordance with the provisions of Council Decision 2007/845/JHA, by forwarding incoming requests from AROs in other Member States or other offices responsible for such matters and requesting further action. For example, if there is an ongoing criminal investigation in the requesting Member State, the BKA can, at the request of the law enforcement authority of the Member State, find out whether a person has a bank account in Germany. This goes well beyond what is required under the Protocol of 8 October 2001 to the Mutual Assistance Convention of the European Union.

Division III 1 within the Bundesamt für Justiz, in its capacity as judicial ARO, handles requests from judicial authorities and other matters of a judicial nature. It cooperates closely with Unit SO 35 within the BKA, namely the police or operational ARO, as well as with the Ministries of Justice of the sixteen 'Länder'. The Bundesamt für Justiz supports the operational activities of the BKA's

Along with Unit SO35, it participates in the various networks in the field (such as ARO and CARIN). Moreover, it conducts a number of training sessions per year for members of the judiciary, prosecutors, and law enforcement personnel, both in the national and international level.

As to **expected positive results**, the German ARO's organisation and functioning ensures that it is a very active and cooperative partner for its international peers. This enables a smooth exchange of information with other Member States. As the German ARO maintains a well-functioning network with its national peers at Länder level as well and as cooperation with the competent judicial authorities works well, the ARO acts as one central gateway for the Member States.

Contact details for further information are as follows:

Judicial ARO:

Bundesamt für Justiz - BfJ –

Referat III 1

Police ARO:

Bundeskriminalamt Wiesbaden

SO 35

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Website: www.bundesjustizamt.de

3.6. Specific confiscation legislative measures (special reference to non-conviction based confiscation)

a) Introduction

In most countries the traditional approach is to confiscate assets linked to a specific crime, following a criminal conviction for that crime. This approach can never ensure the recovery of all criminal assets. In some cases, a conviction will have been obtained for the relevant crime, but authorities will be unable to prove that particular assets are in fact proceeds of this crime. In other cases authorities may have insufficient evidence to obtain a criminal conviction. There are also instances where it is not possible to confiscate criminal assets because a conviction cannot be obtained, for example when the suspect has died, has fled the jurisdiction, is unable to stand trial due to mental or other serious illness, has immunity from prosecution or prosecution is time-barred.

In all the above cases, non-conviction based confiscation is an effective method of depriving criminals of their wealth. Under a non-conviction based procedure, authorities bring action against an asset (“in rem”) rather than against a person, on the grounds that such an asset, on the balance of probabilities, is believed to derive from criminal activity. During the procedure the affected person(s) has the possibility to prove that the asset has a legal origin.

FATF Recommendation No 4 stipulates that countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

Recommendation No 17 in the final report of the fifth round of mutual evaluations stipulates that Member States should consider the possibility of non-conviction based confiscation of illicit proceeds resulting from criminal offences.

Provisions on non-conviction based confiscation are also recommended in international conventions (United Nations, Council of Europe) and have been widely supported by practitioners in the CARIN Network and the EU Asset Recovery Offices' Platform.

Non-conviction based confiscation provisions having general application exist in some Member States (e.g. Ireland, the United Kingdom, Italy and Bulgaria). However, most Member States have non-conviction based confiscation procedures which apply only in cases where conviction cannot

be obtained or prosecution cannot be carried further. The relevant procedure may be held in front of a criminal, civil or administrative court, depending on the country concerned.

As it does not relate to assets for which a criminal conviction has been obtained, non-conviction based confiscation raises issues with regard to fundamental rights, notably the right to property (Article 17 of the EU Charter of Fundamental Rights) and the presumption of innocence (Article 48(1) of the Charter). So far the decisions of the European Court on Human Rights have confirmed that the non-conviction based confiscation provisions challenged did not violate fundamental rights. In its jurisprudence the Court gives great weight to the procedural guarantees in place: a measure will be usually proportional if the individual had effective means to contest it.

b) Best practices

The Irish non-conviction based legislation (civil forfeiture)

In Ireland, the non-conviction based model for the confiscation of proceeds of crime was introduced through the provisions of the Proceeds of Crime Act 1996. It presents a number **of key elements**:

While traditional conviction based models act *in personam* against a convicted person, the Irish non-conviction based model acts *in rem* on the property that constitutes the proceeds of crime. It applies civil law rather than criminal law concepts. Therefore with regard to evidence it applies the civil law standard ‘on the balance of probabilities’ rather than the criminal standard of ‘beyond reasonable doubt’.

The civil court must be satisfied that, on the balance of probabilities, the specified property constitutes directly or indirectly the proceeds of crime. Then the burden shifts to the affected person to show that the property was obtained legitimately.

The non-conviction based confiscation is not considered punitive or criminal in nature. The affected person is not necessarily a suspect in relation to the crime from which the proceeds have derived, and the prosecution does not need to show a link between the person in whose possession the assets are seized, and the crime. The effect of the confiscation order is solely to deprive the holder of the property which has been shown to constitute, directly or indirectly, proceeds of crime, or that was acquired with proceeds of crime.

Non-conviction based confiscation does not operate as an alternative to criminal prosecution. Where there is sufficient evidence to pursue criminal proceedings, criminal prosecution will be prioritised.

The Irish legislation provides for a number of important safeguards such as notice provisions, the opportunity for the affected person to seek to vary an order, the opportunity for any persons claiming ownership to be heard, provision for legal aid, provision for compensation etc. These safeguards are vital in ensuring that the system is fair and that fundamental rights are respected.

The **expected positive results** of non-conviction based confiscation are to allow confiscation even in cases where the authorities have insufficient evidence to obtain a criminal conviction, where they are unable to prove that particular assets are proceeds of the specific crime for which a person has been convicted and where it is not possible to launch prosecution or obtain a criminal conviction for technical reasons (death, illness, flight, immunity, prescription).

Contact details for further information are as follows:

Chief Bureau Officer

Criminal Assets Bureau

Address: Harcourt Square, Harcourt Street

Dublin 2

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Website: <http://www.garda.ie/Controller.aspx?Page=28&Lang=1>

3.7. Financial forensics and analysis

a) Introduction:

Financial investigation is a data-intensive process. The quality of the intelligence, analysis and evidence obtained with a view to identifying the extent of criminal networks and/or the scale of criminality, identifying and tracing the proceeds of crime and developing evidence which can be used in criminal proceedings (interpretative note to FATF Recommendation 30) — all depend on the ability to cross-link information gathered. Thus financial investigations "are not to be limited to asset recovery investigations, a subset of financial investigations" (final report). As a financial investigation can be lengthier and costlier than a criminal investigation, possibly slowing down criminal procedure, there is a need to start it as early as possible in parallel to the criminal investigation.

Furthermore, the analysis of massive and/or complex amounts of data and information requires specific skills, protocols and methodologies that make it possible to rapidly process information tailored to an investigation's needs. Full use of the capabilities of EU agencies (Europol, Eurojust, CEPOL) is necessary support cross-border investigation, build mutual trust and enhance expertise.

The FATF guidance paper on financial investigation states that "[...]particularly in large, complex financial investigations, it is important [...] to integrate information from different law enforcement and intelligence sources which had previously been separated by organisational and technical boundaries so as to leverage existing technologies and develop new technologies in order to provide cross-agency integration and analysis of various forms of data".

Recommendation N° 1 of the final report of the fifth round of mutual evaluations (hereafter "final report") states that "financial investigations should, as far as possible, be carried out in all serious and organised crime cases (which include terrorism) beyond the sole [sic] economic and financial crime offences".

b) Best practices

The Netherlands KECIDA (Knowledge and Expertise Centre for Intelligence Data Analysis)

The Knowledge and Expertise Centre for Intelligence Data Analysis (KECIDA) offers to all NL law enforcement agencies its financial forensic expertise and tailor-made analytical approaches to financial investigations.

KECIDA presents a number of **key elements** in providing a wide range of products and services at strategic and operational level. These include:

- analysing structured or unstructured data from one or more sources;
- providing ranked lists of concrete deviations;
- providing profiles and/or indicators that enable the client to identify deviations;
- identifying networks;
- developing new data analysis techniques and testing existing ones;
- advising on the design of data analysis systems in an existing or new organisation.

Forensic analysis expertise developed by KECIDA in practice is as follows (examples hereafter are fictitious and only intended to serve as illustrations):

1. Advice on the design of data analysis in an existing or new organisation

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2. Testing of existing methods and techniques for data analysis and development of new ones

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3. Profiles/indicators on the basis of intelligent data analysis enabling the client itself to find deviations thus enabling proactive detection on which to build-up a subsequent criminal and financial investigation

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4. Ranked lists of concrete deviations on the basis of intelligent data analysis

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With regard to its **expected positive results**, the financial forensics and analysis expertise developed by KECIDA is found both cost- and time-effective in the processing and analysis of massive and/or complex amounts of data and information. It thus enhances the quality of the financial investigation within a shorter time, found to be better in line with the requirements of criminal investigations. KECIDA's critical mass also ensures cross-fertilisation of expertise between law enforcement agencies, thus avoiding possible knowledge gaps and heavy set-up costs, should such agencies opt to develop their own structures.

Contact details for further information are as follows:

Knowledge and Expertise Centre for Intelligent Data Analysis
part of the Netherlands Forensic Institute
Netherlands Forensic Institute
Ministry of Security and Justice
Address: PO Box 24044 | 2490 AA The Hague | The Netherlands

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Website: www.forensicinstitute.nl

4. TRAINING AND AWARENESS

4.1. Training programmes in financial investigations

a) Introduction

The investigation and prosecution requires highly specialised skills and knowledge to deal successfully with cases such as terrorist financing, money laundering and large-scale fraud deriving from manipulation of complicated financial systems. It calls for comprehensive training and learning solutions at the level of both the Member States and the European Union (EU).

Extensive training needs to continue and cannot be limited to investigators. Within law enforcement authorities it should cover middle and senior managers, so that they can fully understand and make use of investigators' skills and powers.

FATF recommendation No 18 explicitly talks about training as an integral part of required efforts to make it possible to deal efficiently with the challenges of money laundering and terrorist financing. At the same time, most FATF recommendations refer to very specific tasks that the Member States should be able to deal with that would require highly skilled experts.

Recommendation 4.1.2 (points 10, 13, and 14) of the Final report of the fifth round of mutual evaluations signifies importance of training particularly:

- Training on financial matters shall be included in the curricula of investigators, prosecutors and judges. Joint trainings should be organised ;
- Personnel management policies should include amongst other incentives training in order to strengthen existent units;
- Among other training tools temporary exchange of staff should be considered.

EU Member States are addressing the above needs by making specialist training available to their staff. Several Member States have developed very comprehensive programmes, targeting staff involved in all the steps of investigation and prosecution. The next section, on best practice, will look at a few approaches and will be useful a source of information when Member States are re-evaluating and designing their training for financial investigators.

The European Police College (CEPOL) — the EU agency tasked with training of EU police personnel — offers EU-wide specialist training and learning options for Member States' senior officers and experts, blending classroom training with self-paced learning options. This includes, among others, courses on investigating fraud, money laundering, asset recovery, EU police cooperation tools; a Common Curriculum on money laundering has been made available for Member States either to use in its entirety or to integrate parts of it into their national training, thus harmonising approaches to training at EU level.

b) Best practices

Cyprus

Cyprus has developed a comprehensive training programme for law enforcement officers. Prosecutors and judiciary do not have similarly structured training.

Police

Cyprus police, through the Police Academy, is rolling out a comprehensive, well-developed modular training for all its officers. It offers training programmes for investigators, specialised courses on financial and economic crime and a financial crime investigation.

The key elements of the applied system can be summarised as follows:

- the basic training on financial crime investigation is included in the mainstream training path and in-depth dedicated training is provided for specialised officers;
- the Bologna Process is partly applied and all training courses are in the process of being accredited for ECTS purposes;
- lecturers from other government agencies and the private sector are involved in delivering lectures and training courses. These include the Ministry of Justice, the General Attorney's office, FIU, JCC (a private-sector credit card organisation), the Central Bank of Cyprus, the Association of Chartered Accountants, to name but a few. The Academy actively cooperates with EU agencies, particularly the European Police College (CEPOL) and OLAF, thus benefiting from their experience.

Expected positive outcomes of this training include greater awareness of financial aspects of everyday investigations and their crosscutting nature; application of Bologna would certainly allow better monitoring of continued professional improvement efforts throughout officials' careers and would definitely result in an overall qualitative improvement of financial investigation in Cyprus. Involvement of experts from various fields as well as active participation in training offered at EU and international fora contribute to broad-based and up-to-date training of high quality.

In addition to the general training system, the Financial Investigation Unit (FIU) has issued written guidance to the police and public prosecutors, explaining how to use financial investigations and emphasising their importance, this being an important tool in implementing methods and applying legal standards at the practitioner's level.

Financial Intelligence Unit

All new members of staff, following the decision to employ them, receive basic training on the applicable legislation and on investigation issues.

The FIU employs accredited accountants who belong to professional organisations in both Cyprus and the UK. The financial analysts are university graduates with relevant degrees with an investigative background, which is a benefit in tracing assets.

All members of the Unit receive adequate ongoing relevant training for combating money laundering and financing of terrorism, both domestically and abroad. The **key elements** of training include tracing of assets, obtaining disclosure orders, analysing financial information, investigation and supervision techniques, study of trends and typologies, as well as IT and software training. They participate in training seminars of international organisations dealing with the issues e.g. the Council of Europe, the European Union, the Egmont Group, Europol and Interpol.

Highly skilled FIU investigators are the **expected positive outcome** of an approach where educated professionals are trained in specific subjects relating to investigation.

Contact details for further information:

Address: Cyprus Police Academy P.O.B.23636,

Nicosia, Cyprus

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Website: www.police.gov.cy

Czech Republic

The Czech Republic has ensured that all officers, public prosecutors and judges have an extensive opportunity to enhance their skills in a very well organised and coherent training programme. The police and/or the Judicial Academy provide common and specialised training opportunities at high levels of quality to all relevant authorities.

Police

The system of training derives from a high-level strategic document on tracing, seizing and confiscating assets of crime adopted by the Minister of the Interior.

The **key elements** of the police training include the use of a two-tier system:

- The Police Academy delivers a set of courses blending classroom activities with distance education, which in total does not exceed twelve months. The studies are concluded by a final exam. Such a set of courses can vary depending on training needs, and may include: seizure and draining of proceeds of crime in the practice of police authorities, corruption, its prevention and legal framework, an eight-week economic crime course, financial investigation and control of criminality, legalisation of proceeds of crime and terrorism financing, and money laundering.
- Apart from basic police training, police schools (Ministry of the Interior) deliver seminars on the seizure of proceeds of crime, fight against corruption, etc.
- The Unit Combating Corruption and Financial Crimes (UOKFK), where all investigators must have a university degree (law, economics, police academy) and seven to nine years of work experience in the police, is actively involved in training at the police academy and the judicial academy as well as training regional specialists by organising various seminars on financial crime. In this manner, field expertise is made available to a wide range of investigators dealing with financial crime.

Customs authorities

A two-tiered training system for customs officials involved in financial investigation is **the key element of training**:

- every customs official in the units undergoes extensive basic customs training, which is focused on:
 - o initial training (legislation, public governance, public finance, the EU, communication and psychology) (44 hours);
 - o the basics of customs (32 hours);
 - o basic theoretical professional preparation (both Czech and Union customs law, Czech tax law, Czech administrative law, Czech criminal law and customs policy and tariff) (112 hours);
 - o basic practical professional preparation (customs proceedings, tax proceedings, control activities, mobile supervision and surveillance and TARIC) (176 hours); and
 - o preparation for the service (132 hours);
- officers performing criminal investigation duties take the following courses:
 - o mandatory course on basics of criminal law, substantive criminal law, criminal procedural law, practice of criminal proceedings, criminalistics, intelligence activity (128 hours);
 - o search (tracing) in the field of tax, focusing on the theory of law and model examples of practical application of the theory of law (64 hours);
 - o as well as lecturers from the General Directorate of Customs and from the general financial directorate, the public prosecutor's office, the FIU and the Police (UOKFK) participate in giving this training.

Judicial authorities (judges and public prosecutors)

Specialised training for the judicial authorities is organised by the Judicial Academy. The Judicial Academy provides professional training for people acting within the scope of activity of the Ministry of Justice.

The Judicial Academy, individually or in cooperation with other bodies such as UOKFK, organises its training for regional judges and prosecutors through a number of seminars. Topics have a wide range and vary from year to year, covering subjects such as international judicial cooperation, economic and financial crime, tracing and seizing of assets in criminal proceedings, cooperation of financial authorities with law enforcement authorities, issues of tax proceedings and criminal proceedings, monitoring financial flows in relation to organised crime, tax crime and related issues, financing terrorism; operations of the FIU, etc.

Well educated and trained law enforcement and judicial personnel, well versed in financial investigations, is the **expected positive outcome** of the Czech Republic's well-developed and thorough training system. Active involvement of UOKFK experts in training of both law enforcement and judiciary officials ensures harmonised sharing of knowledge and best practices.

Contact details for further information:

Ministry of the Interior

Security Research and Police Education Department

Address: Nad Štolou 3 P.O. Box 21/VO

170 34 Praha 7

Website: www.mvcr.cz

Judicial Academy

Address: Masarykovo náměstí 183/15 767 01

Kroměříž Czech Republic

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Website: <http://www.jacz.cz/>

Germany

The German police and the judiciary have a high standard of training that includes comprehensive financial investigation training modules as part of the curriculum. Systematic training is available for all law enforcement officers, prosecutors and judges. This section further elaborates on training of the police and customs, as they offer a distinct, strong educational system.

Justice

Advanced courses are offered to judges and prosecutors, in particular ones specializing in economic/financial offences and organized crime. Similar training is available to mutual legal assistance specialists. Whereas the authorities of the each federal states have their respective curricula and offers, training is also offered on the national level, e.g., at the German Judicial Academy (Deutsche Richterakademie). The judicial ARO for Germany puts a particular emphasis on legal education in the areas of financial investigations and asset recovery. Taken together with other pertinent actors from the federal level, such as the Federal Ministry of Justice and the German Foundation for International Legal Cooperation, more than twenty relevant workshops, trainings, and other events were held, targeted at German and international practitioners.

Police

A key element of police education is well-established modular training standards, and courses for various criminal-police areas of operation and activity are developed in a systematic manner. The training and advanced training courses are graded according to level and specialist area into:

- basic modules (introductory course)
- advanced modules (refresher course)
- special modules (further development training course).

The training for general investigators involves basic information (legal and tactical) and methods applied to financial investigation.

Several consecutive special training courses teach the expertise required in the field of financial investigations. **Key elements** of the advanced training programme are the following courses:

- Financial Investigations (General and Advanced Modules)
- Separate Financial Investigations (Money Laundering)
- Basic and Specialised Course on Economic Crime
- Asset Recovery (Basic Course and Specialised Module)

The BKA's Serious and Organised Crime departments primarily employ police officers who have trained at the Federal University of Applied Administrative Sciences and a number of commercial/accounting experts who have trained in various fields (business administration, tax consultancy, economics, accounting, and accounting clerks).

All 77 Federal Police district offices have designated contact officers who are tasked with assisting other colleagues involved in financial investigations. The designated officers also act as multipliers during advanced training for investigating officers.

Customs

Training in customs administration is two years for the middle grade and three years for the upper grade. After successfully completing their training in administrative law, new staff members pass through several training courses in which their specialist qualifications are tested.

The Customs Criminological Office and the customs investigation officers responsible for investigations have several years of experience in customs administration. They take part in special training courses to prepare for their tasks in the Customs Investigation Service.

Extensive training is offered to staff working in the field of asset recovery, where **the key elements** are:

- a one-week training course - Basic Course in Asset Recovery Measures for Financial Control;
- This course is followed by a five-week special training course called 'Asset Recovery Measures for Full-Time Asset Recovery Officials', in which know-how from the basic course is broadened and practical aspects of provisional asset recovery added.

Strongly built educational systems for both police and customs aim to have a significant and high-quality impact, which is the most important **expected positive outcome**. German investment in education and training is outstanding. Assignment of contact officers cascading knowledge is expected to support financial investigations across all sectors.

Contact details for further information are as follows:

German Police University

Address: Zum Roten Berge 18-24

D-48165

Münster

Website: www.dhpol.de

The United Kingdom

The UK has a very elaborate training system on financial investigations, asset recovery and financial crimes. It covers investigative personnel, the prosecution and the judiciary, though to differing extents. This is a specificity of the British system, where financial investigators in England, Wales and Northern Ireland undergo specialised training and are certified.

Note: Training in Scotland is different and is not included here. It is as comprehensive and covers the same layers of investigation and prosecution.

Investigative personnel

The Proceeds of Crime Centre (POCC) at the College of Policing (College) trains and accredits all financial investigators in the UK. **Key elements** of training are its delivery in three main disciplines of financial intelligence, money laundering investigation and asset recovery via a suite of nine courses, applying a mixture of e-learning and classroom-based education methods:

- **Prerequisites course:** covers the law, powers, and investigation techniques;
- **Financial Investigation course:** leads to accreditation; covers money laundering investigations and powers given by Proceeds of Crime legislation; includes practical exercises;
- **Confiscation course:** in-depth training on confiscation, accredits financial investigator to apply to the court for a restraint order;
- **Money Laundering course;**
- **Tutor Training course:** one-day event to train potential tutors who will be responsible for overseeing the work of new financial investigators;
- **Enhanced Financial Investigation Skills course:** covers complicated financial investigations, including investigations overseas;

- **Senior Appropriate Officer course:** for senior officers with responsibility for authorising certain powers;
- **Proceeds of Crime Management:** gives training to senior staff with no experience in financial investigation;
- **Civil recovery investigation course.**

Once the training has been completed, the investigators are assessed through the submission of a professional development portfolio before becoming accredited as Financial Investigators. The POCC is then responsible for the monitoring of all Financial Investigators' continuous professional development through a series of assessed activities and submissions via the POCC e-learning site and the Financial Investigation Support System (FISS).

FISS supports the initial training and development of financial investigators through the provision of course-booking facilities, interactive pre-course learning, and recording of the transfer of learning to the workplace through an online Personal Development Portfolio. It provides policy and procedural guidance, case law, templates and other reference material essential to successful day-to-day operational delivery and provides a platform for continuing professional development through the dissemination of regular updates, assessed activities and gateways to further training and qualifications.

Expected positive outcomes of the UK system are a harmonised and standardised approach to financial investigations across England and Wales; monitoring of specialist skills development both through further education as well as with a support of FISS. This should enable investigative officers to keep abreast with legislative and operational changes.

Prosecution

In 2002, the Crown Prosecution Service (CPS) produced a confiscation and money laundering training package available to all prosecutors and caseworkers as an e-learning package. **The key element** was establishment of a cascading system: the course was initially given to a minimum of two lawyers from each of the 42 CPS areas.

These lawyers formed a national network of Proceeds of Crime lawyer champions and each of them signed a training contract by which they agreed to cascade the training to the lawyers within their Areas. Subsequently, a training package was delivered to CPS caseworkers in cooperation with the Regional Asset Recovery Team lawyers.

Judiciary

The head of the judiciary's responsibilities include ensuring there is provision of training for judges and magistrates, which is exercised through the Judicial Studies Board (JSB). This ensures that there is no ministerial influence on judicial training, as part of the general commitment to maintaining judicial independence.

A key element of training is the combination of training and provision of guidance on new legislation including that of targeting terrorist and money laundering offences. These subjects are part of the Criminal Continuation Seminars attended by all Crown Court judges in a rolling three-year programme. Any significant developments in the law and practice applying to such trials are covered during the seminars and are the subject of Criminal Appeal Office Bulletins published periodically.

The JSB has produced a guide to the Proceeds of Crime Act 2002 accessible to the judiciary via a private JSB training website. The guide contains a step-by-step guide to confiscation orders, and information on money laundering, receivership orders and restraint orders and help on cases with an overseas element.

Expected positive outcomes of the integrated training delivered to the prosecution and judiciary are to raise general awareness of financial aspects of crime across all sectors as well as increased specialisation of some who can then cascade the knowledge.

Contact details for further information are as follows:

The College of Policing

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Website: www.college.police.uk

4.2. Existing handbooks and manuals of investigative guidelines

a) Introduction

Financial crime has become increasingly complex and international in recent years, which makes investigation more resource-intensive. This means that the requirements for the quality and management of investigations have increased. At the same time, fast case handling has become more important. For example the United Nations Office of Internal Oversight Services and European Anti-Fraud Office OLAF have produced their own Investigation Manuals to be used by their staff.

FATF Recommendation 30 calls for a proactive approach by the designated law enforcement authorities. At least in all major proceeds-generating offences, these designated law enforcement authorities should develop a proactive parallel financial investigation when pursuing money laundering, associated predicate offences and terrorist financing. This should include cases where the associated predicate offence occurs outside their jurisdictions. Countries should ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Countries should also make use, when necessary, of permanent or temporary multidisciplinary groups specialised in financial or asset investigations. Countries should ensure that, when necessary, cooperative investigations with appropriate competent authorities in other countries take place. Furthermore, FATF Recommendations 37 to 40 provide more detailed recommended practices of international cooperation, including the provision of the widest possible range of mutual legal assistance.

In the Final report of the fifth round of mutual evaluations on financial crime and financial investigations some key challenges facing financial investigations have been identified. These include challenges relating to case management (including time and resource management and interagency cooperation); complexity of legal rules determining financial crimes and criminal procedure and the complexity of the financial investigations themselves; challenges relating to evidence and electronic data as evidence in particular; and the time and resources required for financial investigations.

According to recommendation 7 in the final report of the fifth round of evaluations, an overarching financial crime and financial investigations policy should be drawn up in all Member States, covering all relevant authorities, including prosecution, aimed at speeding up complex and lengthy investigations in the field of financial crime. It should reflect relevant priorities agreed at EU level and set the basis for proactive investigations. More attention should be paid to the potential added value of international cooperation, especially at EU level.

All these challenges can be addressed with common guidelines and common, well-structured and consistently applied investigation plans.

b) Best practices

The Finnish Investigative Plan

Over several years, Finland has developed a template for an investigation plan the use of which was not initially obligatory and has since been made compulsory for financial crime investigations conducted by the police.

The template is used for work planning, enhancing commitment, scheduling and management. It provides an overall picture of the case and investigation and serves as an introductory framework. The investigative plan template serves as a planning tool and as a checklist of items to be covered during pre-trial investigations into financial crimes. A clear plan assists, for example, in the gathering of case material, in planning interrogations, and in cooperation and coordination with prosecutors and other authorities during pre-trial investigations. Although the template has been designed specifically for investigations into financial crimes, it can also be applied to other crimes.

The investigation plan is an agreement between the head of investigation and the investigator on the procedure and duration of the investigation. The plan intensifies, clarifies and standardises the investigation of economic crime and promotes cooperation between investigator and prosecutor through the targeting and defining the limits of the investigation.

The **key elements** of the investigation plan: The template for an investigation plan is a document relating to the planning and implementation of the pre-trial investigation, including but not limited to:

- targeting and defining the limits of the investigation;
- general description;
- description of offences;
- parties involved;
- evidence (thematic);
- timetable for investigation;
- implementation (investigation measures).

When evaluating the **expected positive results** of the investigation plan template, the above-mentioned challenges should be kept in mind. Proper planning jointly with the prosecution enables the investigation team to avoid unnecessary investigative and coercive actions, gathering of unnecessary evidence and in narrowing the eventual case file. The investigative plan template supports effective resource allocation and acts as a management tool. Furthermore, it should be considered a mechanism upholding the due process of law to the benefit of the subjects of the case and also for the legal protection of the investigators, as it is a jointly drafted document to which one can also refer subsequently in cases of claimed abuse of powers. Finally, the investigation plan can be used as a basis for the summary of the case findings, thus supporting and speeding up the preparation of prosecution and leading to an overall decrease of the time spent on financial crimes.

Contact details for further information are as follows:

Ministry of the Interior, Police Department, Policing Planning

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Address: Kirkkokatu 12, Helsinki

PO Box 26, FI-00023 Government, FINLAND

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The Danish Investigation Guide for Large Cases

Denmark has developed an investigation model for the investigation of large cases which acts as a type of case management tool, aptly named "Investigation Guide for Large Cases". The key elements of the Guide are that investigation of large cases should be based on:

- a project -based method,
- setting targets and sub-targets and regularly evaluating them,
- interdisciplinary cooperation (often across sectors) in all phases,
- strengthened focus on how to prune a case,
- ongoing assessment and allocation of resources,
- dialogue between the project manager and the prosecutor as the end-user of the product.

The guide should serve as best practice with a view to achieving the optimum effect using as few resources as possible, while also providing the best possible framework for discussing case progress, both internally and in relation to the supervisory authority.

The twelve police districts are encouraged and in some cases required to use this model in their investigations. According to the evaluation report on the 5th round of mutual evaluations on Denmark the model is found to be useful and beneficial.

The **expected positive outcomes** of the model is bringing together the various competences required to conduct a complex and prolonged economic crime investigation at various stages of the investigation and sets out a strategic management system for the running of the investigation. It serves as a guideline for the investigation of complex economic crimes and is built on experiences that members have acquired over a number of years. The State Prosecutor for Serious Economic and International Crime opens some 60-70 cases per year, all based on this model.

The investigation model prescribes that cases that are complex, voluminous and are expected to take a long time should be dealt with in project form (project-organised investigation), where it is possible to combine personnel competences, test new working methods etc.

Within the strategic management there is a steering group that has overall responsibility for the project and sets the goals and resource framework to get the job done. A project leader is appointed who is deemed to have the necessary competence and experience to lead the project group, consisting of the unit's investigators, office staff and prosecutors – as well as external people with special skills who can be incorporated into the working group as circumstances dictate.

Contact details for further information are as follows:

The State Prosecutor for Serious Economic and International Crime

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Address: Bryggervangen 55, DK-2100 Copenhagen, DENMARK

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Email: **DELETED**

-and **DELETED**