



Council of the
European Union

Brussels, 12 January 2016
(OR. en)

15644/1/10
REV 1 DCL 1

GENVAL 18

DECLASSIFICATION

of document: ST 15644/1/10 REV 1 RESTREINT UE
dated: 30 March 2011
new status: Public

Subject: EVALUATION REPORT ON THE
FIFTH ROUND OF MUTUAL EVALUATIONS
"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"
REPORT ON LUXEMBOURG

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 March 2011

**15644/1/10
REV 1**

RESTREINT UE

GENVAL 18

**EVALUATION REPORT ON THE
FIFTH ROUND OF MUTUAL EVALUATIONS
"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**

REPORT ON LUXEMBOURG

DECLASSIFIED

RESTREINT UE

Table of Contents

<u>1.</u>	<u>Introduction</u>	5
<u>2.</u>	<u>National system and criminal policy</u>	7
<u>2.1.</u>	<u>Specialized units</u>	7
	<u>2.1.1. Investigative authorities</u>	7
	<u>2.1.2. Judicial authorities</u>	14
	<u>2.1.3. Asset Recovery Office (ARO) and other similar bodies, and implementation of Council Decision 2007/845/JHA</u>	20
	<u>2.1.4. Financial Sector Supervisory Commission (La Commission de Surveillance du Secteur Financier - CSSF)</u>	23
	<u>2.1.5. Insurance Inspectorate (Commissariat aux Assurances - CAA)</u>	27
	<u>2.1.6. Training</u>	29
<u>2.2.</u>	<u>Criminal policy</u>	32
	<u>2.2.1. In general</u>	32
	<u>2.2.2. With regard to public prosecutors</u>	33
	<u>2.2.3. With regard to the customs and excise administration</u>	34
	<u>2.2.4. Priority accorded to the investigation/prosecution of acquisitive crime in official investigation (police) or prosecution policy</u>	34
<u>2.3.</u>	<u>Conclusions</u>	35
	<u>2.3.1. Investigative authorities</u>	35
	<u>2.3.2. Judicial authorities</u>	36
	<u>2.3.3. Supervisory bodies</u>	37
	<u>2.3.4. Training</u>	38
	<u>2.3.5. Criminal policy</u>	39
<u>3.</u>	<u>Investigation and prosecution</u>	40
<u>3.1.</u>	<u>Information and databases available</u>	40
	<u>3.1.1. Databases and registers</u>	40
	<u>3.1.2. Cooperation at national level</u>	42
	<u>3.1.3. Cooperation at European level</u>	46
<u>3.2.</u>	<u>Financial investigations and use of financial intelligence</u>	49
	<u>3.2.1. Legal framework</u>	49
	<u>3.2.2. Special legal powers and tools for investigating the financial aspects of criminal activities</u>	50

RESTREINT UE

3.2.3.	Use and effectiveness of financial investigations in specific crimes	54
3.2.4.	Continuation of an investigation into the financial aspects of crime after closure of a case	54
3.2.5.	Involvement of private experts in the investigations	54
3.2.6.	Financial intelligence	55
3.3.	Cooperation with Europol and Eurojust	56
3.3.1.	Cooperation with Europol	56
3.3.2.	Cooperation with Eurojust	57
3.4.	Conclusions	57
3.4.1.	Financial investigation and use of financial intelligence	58
3.4.2.	Cooperation with Europol	58
3.4.3.	Cooperation with Eurojust	59
4.	Freezing and confiscation	60
4.1.	Freezing	60
4.1.1.	At national level	60
4.1.2.	Cooperation at European level - Implementation of Framework Decision 2003/577/JHA	61
4.1.3.	Mutual assistance in the area of freezing	62
4.2.	Confiscation (including FD 2005/212/JHA and FD 2006/783/JHA)	65
4.2.1.	Confiscation at national level	65
4.2.2.	Confiscation at European level	69
4.3.	Conclusions	70
5.	Protection of the financial interests of the Communities	71
5.1.	Available mechanisms, particularly cooperation with OLAF	71
5.1.1.	Measures to ensure pro-active transmission of information to OLAF	71
5.1.2.	Possible role of the European Commission in a criminal investigation involving fraud against the financial interests of the Communities	72
5.1.3.	Participation of OLAF officials in a criminal investigation	72
5.1.4.	OLAF participation in a joint investigative team (JIT)	72
5.1.5.	Experience with JITs dealing with fraud against the financial interests of the European Communities	73
5.1.6.	Support expected from OLAF in cases related to fraud against the financial interests of the Communities	74

RESTREINT UE

5.2. Conclusions	75
6. Recommendations	75
6.1. Recommendations to Luxembourg	75
6.2. Recommendations to the European Union, its Member States, institutions and agencies	77
Annex A: Programme for visit	78
Annex B: List of persons interviewed	79
Annex C: List of abbreviations/glossary of terms	80

DECLASSIFIED

RESTREINT UE

1. INTRODUCTION

At the meeting of the Multidisciplinary Group on Organised Crime (MDG)¹ on 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluations², two of which received substantial support. At the MDG meeting on 6 May 2008, the majority of delegations were in favour of selecting financial crime and financial investigations. On 17 June 2008, the Group decided that the subject of the fifth round was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant to countering financial crime. However, it was also agreed that the evaluation should go beyond simply examining the transposition of relevant EU legislation and take a wider look at the subject matter³, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG⁴.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed⁵. The significance of the exercise was once again underlined by the Council when establishing the EU's priorities for the fight against organised crime based on OCTA 2009 and ROCTA⁶.

Topics relating to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen⁷.

Experts with substantial practical knowledge in the field of financial crime and financial investigation were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

¹ Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Affairs and Evaluations (GENVAL).

² 6546/08 CRIMORG 34.

³ 10540/08 CRIMORG 89.

⁴ 16710/08 CRIMORG 210.

⁵ 9767/09 JAI 293 ECOFIN 360.

⁶ 8301/2/09 REV 3 CRIMORG 54.

⁷ 11060/09 JAI 404.

RESTREINT UE

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits⁸. Luxembourg was the tenth Member State to be evaluated during this round of evaluations.

The experts charged with undertaking this evaluation were Ms Mihaela Yordanova Hranova (Senior Police Investigator, Ministry of Interior, General Directorate for Pre-trial Proceedings, Sofia, Bulgaria), Ms Françoise Desset (Doyen des juges d'instruction au pôle économique et financier, Ministère de la Justice, Tribunal de Grance Instance de Pôle Financier, Paris, France) and Mr Augusto José Calado de Oliveira (Police investigator, Direcção Central de Investigação da Corrupção e Criminalidade Económica e Financeira, Portugal). Three observers were also present: Mr Yves Moiny (*OLAF*, European Commission), Ms Catherine Deboyser (Eurojust) and Mr Carlo van Heuckelom (Europol), together with Mr Hans Nilsson and Mr Peter Nath from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, based on findings arising from the evaluation visit that took place between 6 and 8 July 2010, and on Luxembourg's detailed replies to the evaluation questionnaire⁹.

DECLASSIFIED

⁸ 5046/1/09 REV 1 CRIMORG 1.

⁹ SN 2859/10 RESTREINT UE for the English language version.

2. NATIONAL SYSTEM AND CRIMINAL POLICY

2.1. Specialized units

2.1.1. Investigative authorities

2.1.1.1. The Grand Duchy Police

Composition

Within the Grand Duchy Police, the Economic and Financial Department and the anti-money laundering section of the Criminal Investigation Service's (CIS) Organised Crime Department are regarded as specialised units in the fight against economic and financial crime. The Analysis and Support Cell (CA2) of the CIS directorate provides them with back-up in some of their tasks by providing specialised and technical assistance.

These specialised units are at regional level supplemented by local EcoFin agents who are dealing with cases of a less complex nature (e.g. cases of simple bankruptcy etc.).

There is at present no other unit within the Grand Duchy Police with exclusive responsibility for financial investigations. That said, the Economic and Financial Department, CA2 and the anti-money laundering section certainly have investigators capable of performing this role. Clearly, therefore, financial investigations are the responsibility of investigators in these units.

The Economic and Financial Department currently comprises 36 investigators spread across five units:

- Companies and Associations (7 investigators)
- International Legal Assistance (8 investigators)
- Banks, Insurance Companies, Stock Exchanges and Taxation (10 investigators)
- Routine Economic and Financial Offences (7 investigators)
- EcoFin Rapid Reaction Cell (4 investigators).

The anti-money laundering section is currently staffed by six investigators.

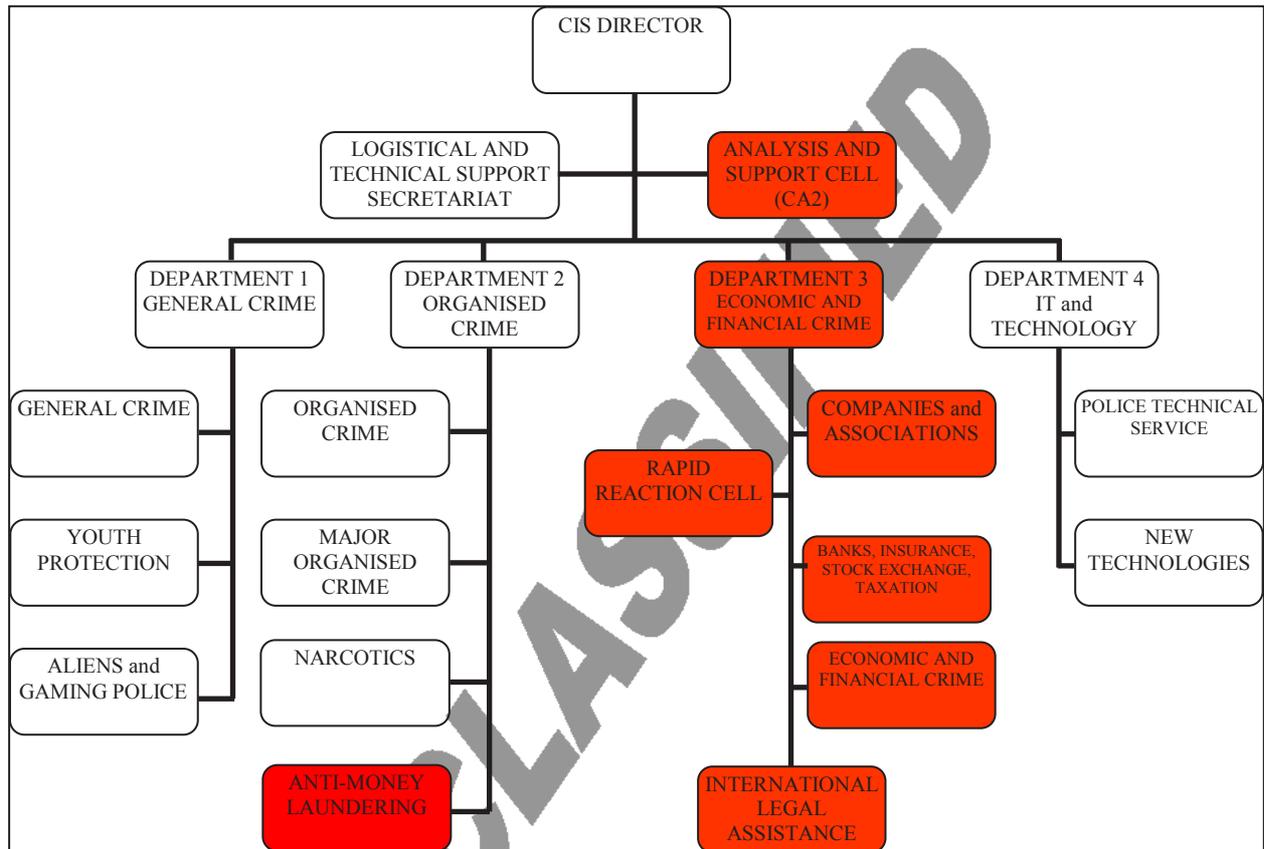
The CA2 at present has four financial analysts as well as three investigators.

Lastly, it should be noted that the investigators can request assistance from the Operational Analysis Unit of the Grand Duchy Police's Information Directorate. Use of this facility makes it possible to analyse rapidly a mass of information such as bank transactions, telephone communications, assets and liabilities of any kind or complex corporate arrangements. This unit has a staff of six.

RESTREINT UE

Location in the internal structure

The organisation chart below shows the location within the internal structure of the CIS of the units specialising in economic and financial crime. The CIS in turn is a central service coming directly under Director General of the Police (DGPOL).



Level of expertise

Investigators in the abovementioned units comprise personnel from the following career paths:

- senior management (university degree);
- inspector (secondary education diploma or *bac-2*);
- civilian personnel (secondary education diploma).

Regardless of the career path, no specific diploma in economics or finance is required in order to be accepted into one of the units responsible for economic and financial crime.

RESTREINT UE

Any expertise in a related area may be of an advantage when it comes to selecting new members. Furthermore, several senior managerial staff holds university degrees in economics or business management.

Mission

The (operational and strategic) mission of all sections of the Economic and Financial Department as well as the Anti-Money Laundering Section and the Analysis and Support Cell is to combat economic and financial crime, including money laundering, at both national and international level by performing the criminal investigation duties laid down in Book 1 of the Code of Criminal Procedure.

This mission is supplemented by a range of tasks at international level.

Powers

The powers enjoyed by the different units of the CIS are described below.

Companies and Associations Section (SOAS)

This section is responsible for investigations in the following areas:

- bankruptcies
- professional bans
- offences under the law on commercial enterprises, the provisions of the Commercial Code, the rules of the commercial and companies register, as well as holding companies and non-profit-making organisations.
- typical examples: misuse of company assets, reckless and fraudulent bankruptcy, false accounting and commercial fraud.

International Legal Assistance Section (EJIN)

This section deals with requests for legal assistance sent to the Grand Duchy of Luxembourg in connection with economic and financial crime.

RESTREINT UE

Banking, Insurance, Stock Exchange and Taxation Section (BABF)

This section has particular responsibility for investigating offences under:

- legislation on the financial and insurance sectors
- legislation on collective investment undertakings, insider trading, direct and indirect taxation.

It is also responsible for counterfeiting and false means of payment. This section is the Luxembourg Central Bank's (BCL) sole interlocutor.

The BABF is thus in a position to:

- utilise the information it receives regarding counterfeiting and false means of payment
- notify EUROPOL after the above information has been utilised
- define the type of counterfeiting/falsification for non-EURO notes.

Typical examples of the investigative tasks performed in this section are: illegal banking activities, insider offences, tax, fraud, counterfeit currency and theft by using false keys.

Routine Economic and Financial Offences Section (IEFC)

This section is responsible for investigating:

- offences under legislation on the domiciliation of companies;
- offences under legislation regulating access to the occupations of craftsman, retailer, manufacturer and certain liberal professions,
- fraud and other economic offences laid down by the Criminal Code.

Typical examples of the investigative tasks performed in this section are: unlawful domiciliation, fraud, unauthorised establishment, corruption, abuse of trust and fraud.

Rapid Reaction Cell (CRR)

The Cell was set up in 2007 to make the CIS more responsive as regards medium-scale national economic and financial investigations.

Investigations assigned to the Cell are dealt with more swiftly, which increases the likelihood of an investigation being successful, especially in the initial stages (including seizure of the proceeds of the offence). The advantage lies in assigning cases to a group of investigators. The CRR is responsible for all kinds of medium-scale economic and financial investigation.

RESTREINT UE

Typical examples of offences dealt with by the CRR comprise unauthorised establishment, illegal financial activity, reckless and fraudulent bankruptcy, fraud, abuse of trust and misuse of company assets.

Anti-money laundering Section (ANBL)

This section is concerned with:

- the laundering in Luxembourg of the proceeds of a crime committed abroad;
- obligations of financial sector professionals regarding money laundering and the financing of terrorism;
- money laundered from a predicate crime committed in Luxembourg (including investigation into the assets of the perpetrators of that crime);
- inspections at the request of the Financial Intelligence Unit;
- financial analysis at the request of the Financial Intelligence Unit;
- execution of international letters rogatory and replies to international requests;
- financing of terrorism.

Analysis and Support Cell (CA2)

The Analysis and Support Cell has the following tasks:

- execution of international letters rogatory comprising a single assignment;
- implementation of certain specific assignments in the framework of more complex international letters rogatory;
- taking over a specific aspect of a wider investigation;
- technical support for CIS investigators;
- operational criminal analysis;

2.1.1.2. Customs and Excise Administration

Within the Customs and Excise Administration the Litigation and Cooperation Division is the unit specialising in the combating of financial and economic crime.

RESTREINT UE

The Divisional Inspectorate at Luxembourg Airport and the Monitoring and Surveillance Unit responsible for checking passengers are the departments belonging to the executive that specialise particularly in cash controls.

The Division has a staff of four officers, three in the grade of inspector. The Divisional Inspectorate at Luxembourg Airport has two inspectors and two lieutenants with special responsibility for controls on cash transfers and the proper implementation of the procedural arrangements regulating these controls.

As regards cash transfers, the Division is responsible for implementing Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community.

In addition, the Litigation and Cooperation Division has special responsibility for conducting inquiries into cases of financial and economic fraud detected by the external services and adjudicating on them on behalf of the Head of the Administration.

Where economic fraud is concerned, the Administration is authorised to investigate, uncover and, where appropriate, prosecute, detected cases of fraud in order to protect the Community's financial interests (Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests; law of 30 March 2001 approving the Convention based on Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests).

The Administration is authorised to investigate and detect the offences referred to in Article 506-I of the Criminal Code¹⁰.

¹⁰ "1) Persons who by any means knowingly facilitate misleading evidence of the origin of the assets referred to in the first paragraph of Article 31(1) forming the direct or indirect subject or proceeds (...) of an offence under Articles 220 and 231 of the General Law on Customs and Excise shall be liable to a term of imprisonment of one to five years and a fine of between 1 250 euros and 1 250 000 euros, or one of these penalties".

RESTREINT UE

Offences under Articles 220 and 231 of the General Law on Customs and Excise¹¹ mean the fraudulent import and export or transit of goods, in particular the illegal cross-border trade in taxable goods carried on in violation of tax obligations; another is the illicit traffic in drugs and psychotropic substances, weapons, munitions, explosive materials, cultural goods, dangerous and toxic waste, nuclear material or materials or equipment intended for the manufacture of atomic, biological and/or chemical weapons (prohibited goods); drug precursors; and finally any other trade in goods prohibited by Community or national customs rules.

As regards controls on cash (Regulation (EC) No 1889/2005), the Division has special responsibility for coordination, monitoring to ensure proper implementation, processing of information, the forwarding of information to the Financial Intelligence Unit (FIU) at the public prosecutor's office, national and international cooperation, and collaboration with the European Anti-Fraud Office (OLAF).

Within the Customs and Excise Administration the Litigation and Cooperation Division is the main interlocutor with OLAF in all Community areas in which the Administration is responsible for enforcement.

The Division is the competent authority as regards enforcement of Council Regulation (EURATOM, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

An official in the Litigation and Cooperation Division is authorised to participate in a joint inspection team (Ministry of Agriculture; Finance Inspectorate; Customs) in the framework of Council Regulation (EC) No 485/2008 of 26 May 2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund.

The Division is a consultative body for all matters concerning customs disputes, controls on cash and national and international cooperation. It is the main interlocutor when it comes to passing on to

¹¹ Cf. Mémorial A 1977, No 65, p. 1865.

RESTREINT UE

the Financial Intelligence Unit information on cash controls and on predicate and related offences detected during customs inspections¹².

As regards cash controls, officers of the Divisional Inspectorate at Luxembourg Airport have the same powers and competencies as in customs and excise matters, i.e. those deriving from the General Law mentioned above.

2.1.2. *Judicial authorities*

2.1.2.1. *Composition and location in the internal structure*

The country is divided into the two judicial districts of Luxembourg and Diekirch.

The Luxembourg district court is made up of a president, three senior vice-presidents, twenty vice-presidents, a senior examining magistrate, a senior juvenile court and guardianship judge, two juvenile judges, two guardianship judges, twenty-three senior judges, thirty-one judges, a public prosecutor, two deputy public prosecutors, five principal assistant prosecutors, eight senior assistants and 11 assistants. The public prosecutor of the Luxembourg district court also appoints assistants who deal with economic and financial cases under the direction of a deputy public prosecutor, a principal assistant or a senior assistant. The Diekirch district court is made up a president, a senior vice-president, a vice president, a juvenile judge, a guardianship judge, a senior judge, two judges, a public prosecutor, a principal assistant, a senior assistant and two assistants.

The Luxembourg public prosecutor's office – economic and financial section – has 13 public prosecutors (*magistrats*), including those performing FIU tasks (two full-time prosecutors and three part-time, assisted by a financial analyst)¹³ who specialise in economic and financial crime.

2.1.2.2. *Powers*

In principle, criminal cases, including those involving financial crime, are covered by the general criminal jurisdiction rules: the place where the offence was committed and the place of residence or of arrest of the perpetrator.

¹² Cf. Article 5 of Regulation (EC) No 1889/2005 and Article 506.1 of the Criminal Code.

¹³ The expert team has been informed after the visit that on 1 December 2010 the FIU has been reinforced by two financial analysts and one secretary.

RESTREINT UE

Each public prosecutor or examining magistrate is therefore competent to deal with matters falling within his jurisdiction, including the execution of letters rogatory.

However, the Luxembourg State Prosecutor is competent throughout the national territory of the Grand Duchy of Luxembourg to direct investigations and prosecutions of the various offences linked to money laundering and the financing of terrorism. The Luxembourg examining magistrate is likewise competent nationally for cases in the same areas that are subject to preliminary investigation.

The State Prosecutor takes all the necessary steps to investigate and prosecute criminal offences in accordance with the provisions of Article 24 of the Code of Criminal Procedure (CICR).

Under the provisions of Article 16 of the CICR the State Prosecutor is responsible for enforcing the criminal law within the territory of Luxembourg. To that end he may call upon the law enforcement agencies in accordance with Article 18(3) of the Code. Article 23 CICR stipulates that the State Prosecutor receives complaints and accusations and assesses what action should be taken. He takes or orders all the necessary steps to investigate and prosecute breaches of the criminal law (Article 24). Where perpetrators are caught in the act, the State Prosecutor may order searches/seizures for the purpose of investigating and seizing items relevant for the purpose of establishing the truth pursuant to Articles 31, 33 and 34 of the Code of Criminal Procedure. Article 31 lays down that, in such cases, the law enforcement official who is informed of it should immediately notify the State Prosecutor, proceed forthwith to the scene of the crime and establish all the relevant facts. He is responsible for preserving any evidence that might disappear and anything that might serve to reveal the truth. He seizes goods, documents and effects that were used or intended to be used to commit the crime and those which were the object of the crime, and anything which appears to have been the proceeds of the crime. He also seizes all objects in general that may be of use in determining the truth or the use of which might be detrimental to the proper conduct of the investigation and all objects liable to be confiscated or returned. He shows the objects seized to the persons who apparently participated in the crime, if present, and asks them to identify them. If the objects seized do not need to be kept in the same state, the State Prosecutor may order that they be deposited in the consignment office if the objects in question are those for which deposit accounts are normally opened, such as amounts in national or foreign currency, deeds or precious metals.

RESTREINT UE

Article 33 CICR provides that if the nature of the crime is such that proof can be obtained by the seizure of papers, documents or other objects in the possession of the persons who apparently took part in the crime or hold items or objects relating to the offence, the law enforcement official proceeds without delay to the homes of those concerned to conduct a search, which he makes the subject of an official report, and effects the seizure. Such a search may take place at any hour of the day or night. The official alone, together with the persons designated in Article 34 CICR and those whom he may approach pursuant to Article 36 CICR, has the right to examine papers and documents before seizing them. However, he is obliged to take in advance all appropriate measures to ensure that professional secrecy and the rights of defence are respected. All objects and documents seized are immediately listed after being presented for identification purposes to the persons who apparently took part in the offence, if they are present and to the persons referred to in Article 34 CIRC. However, if listing them on the spot proves difficult, they are sealed until listed in the presence of the persons who were present during the search. The official report of the searches and seizures is signed by those who apparently participated in the offence, by the persons in whose residences they took place and by the persons present during the search and seizures; if a person refuses to sign, this is recorded in the official report. The law enforcement official provides them with a copy of the official report. The objects and documents seized are deposited with the registry of the district court or entrusted to a custodian of seized goods. With the agreement of the State Prosecutor, the law enforcement official maintains the seizure only of objects and documents that are useful for establishing the truth.

Lastly, Article 34 CICR states that, subject to the provisions of Article 33 CICR regarding compliance with professional secrecy and the rights of defence, the operations laid down by that Article are carried out in the presence of the person at whose residence the search takes place. If that is not possible, the law enforcement official is obliged to invite that person to nominate a representative of his choice; failing that, he selects the two witnesses he requires for that purpose from among persons not subject to his administrative authority. The written report of these operations is signed by the persons referred to in the text; if a person refuses, this is recorded in the report.

RESTREINT UE

The prosecutor also has the option of an investigative procedure provided for in Article 24-1 CICR and referred to as the "simplified investigation". This "mini-procedure" remains at the level of the Prosecutor and allows him to gather evidence and carry out a search without a preliminary inquiry. In such cases the task of the examining magistrate remains confined to the implementation of certain coercive measures.¹⁴

2.1.2.3. *Judges involved in the pre-trial phase*

The leading examining magistrate is responsible for managing the examining magistrate's chambers and allocates cases among the examining magistrates responsible for information. He himself performs the tasks of examining magistrate. In addition to the leading examining magistrate, there are a further 12 examining magistrates at the Luxembourg City district court, six of them are responsible for dealing with economic and financial crime. The district court in Diekirch has one examining magistrate.

The examining magistrate of the district court is competent to conduct investigations opened following an indictment from the State Prosecutor in the case of indictable offences, which obviously include offences linked to financial crime or cases of the same kind referred to him through a civil-law complaint.

At the level of the office of the examining magistrate at Luxembourg City district court, financial cases are dealt with by examining magistrates who are able to draw on the broadest professional experience in conducting investigations into economic and financial crime.

As for the examining magistrate, he has the power, under Article 51 CICR, to carry out any investigative acts which he deems relevant for the purpose of establishing the truth, in particular to order search and seizure measures. In his investigation he seeks evidence for and against the party concerned.

¹⁴ The Luxembourg authorities have informed after the visit that the Law of 27 October 2010 that has entered into force on 1 December 2010 has further strengthened the legal framework in fighting money laundering and terrorist financing by e.g. extending the procedure of the simplified investigation to the physical transport of cash entering, transiting or leaving the territory of the Grand-Duchy.

RESTREINT UE

The examining magistrate has several investigative techniques he may implement, including in particular Article 67-1 CICR concerning the tracing of telecommunications, tracing of the origin or the destination of telecommunications and Article 88-1 CICR concerning telephone tapping. In this context, it should be noted that the recent Law of 3 December 2009 introduced provisions to regulate two special search methods, observation and infiltration¹⁵. Furthermore the experts have been informed after the visit that the entry into force of the Law of 27 October 2010 on 1 December 2010 having approved the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union and the Protocol to the Convention of 16 October 2001 has introduced new provisions, namely from Articles 1 and 2 of said Protocol.

In the course of a judicial investigation, pursuant to Article 66 CICR, the examining magistrate may issue a search order with a view to seizing all items that may be relevant for the purpose of establishing the truth.

Article 66 CIRC thus provides for the examining magistrate to carry out the seizure of all objects, documents, effects and other items referred to in Article 31(3) CIRC, i.e. those objects, documents and effects that have served to commit the crime or which were intended to commit it and those which were involved in the crime, all the objects that appear to have been the proceeds of the crime in question, all the objects in general that may be of use in determining the truth or use of which would be detrimental to the proper conduct of the investigation and all the objects liable to be confiscated or returned.

This provision constitutes the legal basis of the search and seizure order with regard to any third party from whom property is seized.

2.1.2.4. *Financial Intelligence Unit in Luxembourg (FIU)*

Composition and situation within the public prosecutor's office

The Financial Intelligence Unit (FIU) in Luxembourg is of a judicial nature. Since 1993 the functions of the FIU, i.e. receiving reports of suspicious money-laundering transactions or terrorist financing, analysing and using the result of this analysis for the purposes of prosecution, have been performed by the prosecutors of the public prosecutor's office in charge of economic and financial affairs. Under the **Law of 12 November 2004 on the fight against money laundering and terrorist financing (LCB/FT)**, the specialisation of the FIU prosecutors which had already emerged in practice since 2002 was enshrined in the legislation.

¹⁵ Cf. Articles 48-12 et seq CICR.

RESTREINT UE

The FIU is an integral part of the public prosecutor's office of the Luxembourg court and at the time of the evaluation comprised 7 persons in total. Under the overall lead of the State Prosecutor and the deputy State Prosecutor, the FIU is managed at operational level by a principal assistant. Apart from this full-time coordinating examining magistrate, a further full-time examining magistrate and two half-time prosecutors, also specialised in economic crime, serve in the FIU. A full-time financial analyst and a criminal police officer who is a member of the anti-laundering section of the Grand Duchy police (*ANBL*) and present at the FIU three days a week assist these prosecutors with their duties¹⁶. The FIU secretariat is composed of two persons. In their answers to the questionnaire that Luxembourg authorities have indicated that it was planned to increase the number of FIU staff.¹⁷

Competences and powers of the FIU

The FIU has national competence in combating money laundering and terrorist financing.

The FIU is responsible not only for the conventional financial intelligence tasks, but also for the prosecution of complex money laundering and terrorist financing cases or of those which do not originate solely from a criminal investigation into the predicate offence of which money laundering is the financial aspect.

Being a unit within the public prosecutor's office and composed of public prosecutors, the FIU has all the powers of a public prosecutor described in the CICR.

In addition, the LCB/FT explicitly confers on the FIU the following specific powers in the implementation of that law:

- Article 5(1)(a) of LCB/FT stipulates that professionals must inform [the FIU] "promptly ... where they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being committed or has been committed or attempted";
- Article 5(1)(b) LCB/FT furthermore stipulates that the FIU may request Luxembourg professionals to provide "all necessary information". It is clear from these provisions that the FIU receives suspicious transaction reports (STRs) and, in the course of analysing them, can have forwarded to it any information it deems useful. It may also have professionals send it

¹⁶ The rest of the time the officer conducts LCB/FT awareness raising and coordination measures and more extensive searches of relevant police files within the Grand Duchy Criminal Police.

¹⁷ The expert team has been informed that the FIU would be reinforced by three additional staff members in 2010 and another three in 2011.

RESTREINT UE

any information of relevance for analysing any suspicion of money laundering or of terrorist financing, whatever the source of the suspicion. For example, it is normal practice for the FIU to apply Article 5(1)(b) LCB/FT on the basis of a request from a foreign FIU. Banking secrecy does not exist with regard to the FIU in connection with the implementation of Article 5 of LCB/FT. depending on the information supplied, the communication of information involves the forwarding of documents in support of that information¹⁸.

- Article 5(3) LCB/FT enables the FIU to order the freezing of transactions/accounts suspected of being linked to a money-laundering activity or to a person suspected of money laundering. The freezing is valid for 3 months, and this enables a seizure by judicial process of the assets targeted to be implemented, if appropriate (order by an examining magistrate without a time limitation). To order an operation to be blocked/frozen, a mere suspicion of money laundering/terrorist financing is sufficient. This measure may be introduced at the request of any foreign prosecuting authority, pending the application of mutual assistance in judicial matters.

Information exchange

The FIU is a member of the Egmont Group of Financial Intelligence Units and has a secure network for transmitting information with more than 107 countries throughout the world. At European level, the FIU is a founding member of the FIU.NET, which is the secure network for information exchange between European FIUs.

Exchanges of information are governed by Article 26-2 CICR (principle of reciprocity and authorisation prior to disclosure), Council Decision 2000/642/JHA and the principles of the Egmont Group.

2.1.3. *Asset Recovery Office (ARO) and other similar bodies, and implementation of Council Decision 2007/845/JHA*

The Economic and Financial Prosecution Service at the Luxembourg district court has been designated as the Luxembourg asset recovery office (ARO) in accordance with Council Decision 2007/845/JHA.

¹⁸ Cf. Grand Ducal Regulation of 1 February 2010 providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing, Article 8.

RESTREINT UE

Two prosecutors (a delegate to the CARIN network and the EU-ARO platform and his deputy) are have special responsibility for international cooperation on the recovery of criminal assets – carrying out requests for the enforcement of confiscation orders from Member States of the European Union and third states; tracing and seizing assets by way of international mutual assistance in criminal matters is dealt with by economic and financial prosecutors, including FIU prosecutors, who are in charge of following up requests for mutual judicial assistance involving coercive measures, although it is for the examining magistrate to enforce them and assess whether they are compatible with legal requirements. Luxembourg reported that the international element tended to predominate in financial crime, as this type of offence was not so widespread domestically. Therefore, where assets are detected in Luxembourg, they were often found to originate in crime perpetrated abroad.

2.1.3.1. Relation to other competent authorities

Since asset recovery duties are performed by prosecutors from the Luxembourg district court, relations with the other authorities involved, such as the police and customs, are the same as for other prosecutors working in the prosecution service.

2.1.3.2. Mandate and powers

As the ARO is manned by members of the prosecution service their judicial powers are the same as when carrying out their normal duties, laid down in Articles 22 et seq. CICR that have already been described in sub-chapter 2.1.2 above.

2.1.3.3. Staff and own database

The two prosecutors within the ARO do not have permanent auxiliary staff or seconded experts to support their work. They can, however, call upon the services of the prosecution service secretariat.

2.1.3.4. Databases accessible to the ARO

The ARO does not have a dedicated database, except for a list of the particular cases the office has dealt with. Its members can, however, access the general database of criminal cases, which contains information on assets and/or property which has been seized.

RESTREINT UE

Judges from the economic and financial prosecution service of Luxembourg district court engaged in asset recovery work have direct access to the computerised prison register, which groups together judicial and prosecution information, whether on national cases (prison system files, police records) or international cases (files on requests for international legal assistance in criminal matters).

Police information is supplied to the asset recovery office by members of the Criminal Investigation Department.

As regards access to administrative data other than those in the State Prosecutor's databases, Article 48-24 CICR, introduced by the Law of 5 June 2009, has replaced Article 1.4 of the Law of 22 July 2008 on access for judges and CID officers to certain personal data processed by legal persons governed by public law; and governs access to several databases that are indispensable when conducting an investigation.

Cooperation with the tax authorities is regulated by Article 23 CICR and by the Law of 19 December 2009 on inter-departmental and judicial cooperation and strengthening the powers of the Inland Revenue, the Land Registry and Estates Department and the Customs and Excise Office. Article 16 of this Law stipulates that: "*the Inland revenue and the Land Registry and Estates Department shall forward to the courts, at their request, information which may be useful in criminal proceedings*" and that "*where it comes to the knowledge of the Inland revenue or the Land Registry and Estates Department, in the course of their duties, that an offence has been committed, they shall be required to inform the State Prosecutor immediately and to forward to him all the information, reports and deeds related to that offence*".

2.1.3.5. Cases covered by the ARO other than those related to criminal proceedings

When carrying out their ARO duties, prosecutors have the same remit and the same powers as in the course of their normal duties, and may therefore deal with cases pending in the civil courts (e.g. civil enforcement proceedings at the same time as confiscation enforcement proceedings) or the commercial courts (e.g. proceedings for the bankruptcy or winding-up and liquidation of a Luxembourg company whose assets have been seized or confiscated).

RESTREINT UE

2.1.4. *Financial Sector Supervisory Commission (La Commission de Surveillance du Secteur Financier - CSSF)*

The Financial Sector Supervisory Commission (*CSSF*) is a public institution with legal personality and enjoying financial autonomy.

It operates under the authority of the Minister whose responsibilities include the financial centre (currently the Minister for Finance). The *CSSF* has taken over the responsibilities previously held by the *Institut Monétaire Luxembourgeois (IML)*, which became the *Banque centrale du Luxembourg (BCL)* on 1 June 1998 and has incorporated the responsibilities of the former *Commissariat aux Bourses*. These institutional changes have not affected the legislative and regulatory framework of prudential supervision.

2.1.4.1. *Tasks of the CSSF*

The *CSSF*'s task is defined in Articles 2 et seq of the amended **Law of 23 December 1998 establishing a financial sector supervisory commission**. These provisions state in particular that the *CSSF* is the competent authority for prudential supervision of credit institutions, other financial sector professionals (PSF), undertakings for collective investment, pension funds having the form of a SEPCAV or an ASSEP, authorised securitisation undertakings, fiduciary-representatives dealing with securitisation undertakings, SICARs and the *Entreprise des postes et télécommunications* in the case of postal financial services. It is also the competent authority for the prudential supervision of payment systems, securities settlement systems approved by the Minister and securities markets, including their operators.

The fourth subparagraph of the aforementioned Article 2 specifically confers competence on the *CSSF* for monitoring compliance with professional obligations relating to the fight against money laundering and terrorist financing by all persons subject to its supervision, without prejudice to Article 5 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing.¹⁹

¹⁹ The evaluation team has been informed after the visit that, by the Law of 27 October 2010 reinforcing the legal framework for the fight against money laundering, the *CSSF* has been given other tasks. Thus, Article 11 (1) of the Law states that it also ensures that natural or legal persons who are known to maintain, directly or indirectly, relations with the field of organised crime which are not strictly professional, may not take control, directly or indirectly, of persons subject to surveillance, whether as beneficial owner, by acquiring significant or controlling interests, by occupying a management post or otherwise. Implementation of this task includes an evaluation of the aptitude and good repute of managers, including their competence and integrity. For this purpose, the *CSSF* may ask the advice of the State prosecutor at the district court in Luxembourg city and the Grand Ducal police.

RESTREINT UE

The *CSSF*'s prudential supervision of companies in the financial sector, as enshrined in its organic Law of 23 December 1998, is aimed at the promotion of "*a considered and prudent business policy in compliance with the regulatory requirements*", the protection of "*financial stability of the supervised companies and of the financial sector*", "*supervising the quality of the organisation and internal control systems*" and "*strengthening the quality of risk management*".

The *CSSF* examines all applications made by undertakings or persons seeking to carry out a financial activity in the Grand Duchy of Luxembourg and requiring the authorisation of the Minister for Finance. It ensures that the laws and regulations on the financial sector are enforced and observed and that international agreements and European Directives in the fields for which it is responsible are implemented. In the event of any violation by one of its taxable persons of the applicable laws and regulations, the *CSSF* may impose administrative penalties.

On the basis of Article 23(2) and (3) CICR, the *CSSF* is required to inform the Luxembourg public prosecutor's office of any illicit or fraudulent activities that may have come to its knowledge as it exercises its activities, including money laundering and terrorist financing offences.

2.1.4.2. Organisation of the *CSSF*

The *CSSF* has a staff of 338 and its organisational structure currently includes the following:

- four services with cross-sectoral tasks: General supervision, Legal Department, General Secretariat and Internal Audit;
- nine departments with institutional responsibilities: Banking Supervision, CIU Supervision, - Investment Firms Supervision, Supervision - Other PSFs Securities Market Supervision, Pension Fund, SICARs Securitisation Supervision, CIU Management Companies Supervision, a department responsible for information systems and supervision of support PSFs", and one for public oversight of the audit profession;
- a support service dealing with Personnel, Administration and Finance.

Within the Legal Department which reports directly to the Director-General, there is a unit responsible for, inter alia, matters linked to money laundering and terrorist financing and for cooperation with the public prosecutor's office. This unit is composed of 6 persons and its responsibilities include the representation, at national and international level, of the *CSSF* in connection with the Law of 12 November 2004 on the fight against money laundering and terrorist financing (LCB/FT); analysis, from a prudential point of view, of copies of suspicious transaction reports received and, where appropriate, the checking of data of candidates for authorisation. They

RESTREINT UE

may also propose on-the-spot LCB/FT-checks if they identify a shortcoming in the case of a professional and, if appropriate, take part in such checks.

It should be noted that a special **On-the-spot-checks– Inspection** Division has been set up within the General Supervision Department also reporting directly to the Director-General.

This division, in cooperation with the supervision departments, deals with the planning, coordination and follow-up of on-the-spot checks carried out by the various departments concerned under an annual programme which it prepares for this purpose.

It places particular emphasis on checks on newly -authorised professionals and on cross-sectoral checks in which officers from different departments and the Legal Department take part. The evaluators were informed that for 2010, 33 on-the-spot checks with regard to money laundering and terrorist financing were planned.

As for CIUs, the unit is assisted in particular by a division responsible for Inspection and management of particular situations, which is also in charge of organising and carrying out, if appropriate, on-the-spot checks in this specific area.

The division itself performs on-the-spot checks (including checks on newly- established professionals), cross-sectoral checks or ad hoc tasks, if appropriate in cooperation with the department(s) concerned.

In addition, the division draws up and develops, together with the departments concerned, standard questionnaires to be used for on-the-spot checks. It provides for the centralisation of questionnaires, tools and methods used to carry out on-the-spot checks and the reports on on-the-spot checks.

Officers from the various prudential supervision departments are also involved on a permanent basis in LCB/FT, especially in on-the-spot checks, analysis of auditors' reports and LCB/FT procedures of the various professionals.

In their answers to the questionnaire the Luxembourg authorities have emphasised that during these on-the-spot checks the *CSSF* ensures that the legislation and regulations on all financial sector activities are properly enforced; this also includes the detection of possible offences.

2.1.4.3. Powers of the *CSSF*

In accordance with Article 53(1) of the **Law of 5 April 1993 on the financial sector (LSF)**, the *CSSF* has a broad range of supervisory and investigatory powers needed for the exercise of its functions.

RESTREINT UE

The powers to inspect financial institutions, including on-the-spot-inspections, to gain access to any document and obtain any item of information is confirmed by Article 40 of the LSF, which requires credit institutions and other financial sector professionals *"to provide the fullest possible response to, and cooperation with, any lawful demand which addressed to them by the authorities responsible for applying the law in the exercise by those authorities of their powers"*.

Under the provisions of Article 54(2) LSF the CSSF may also request external auditors or experts to carry out on-the-spot inspections or investigations of persons subject to supervision, and instruct an external auditor to check on one or more specific aspects of the activities and operations of a professional of the financial sector concerned, including with regard to money laundering and terrorist financing.

The CSSF also has a power of injunction set out in Article 59 LSF, which provides that *"where a person subject to supervision by the CSSF is not complying with the provisions of any laws, regulations or memorandum and articles of association relating to him, [...] the CSSF shall enjoin that person, by registered letter, to remedy, within such period as it may prescribe, the situation found to exist or to cease any practice that is contrary to the relevant legal, regulatory or statutory provisions"*. After that period, if the situation in question has not been remedied, the CSSF may order the suspension of persons, voting rights or the pursuit of business. These measures may be disclosed to the public.

The financial institutions supervised by the CSSF may be subject to administrative penalties²⁰ of a financial nature in addition to the other administrative measures at its disposal.

Finally, under Article 11(1) LSF, the CSSF may withdraw the authorisation *"if the conditions for the grant therefore cease to be fulfilled"*.

²⁰ Cf. Article 63 LSF stipulating that *"an administrative fine of between 125 and 125000 euros may be imposed by the CSSF on persons responsible for the administration or management of institutions subject to supervision by the CSSF under this law, and on natural persons subject to such supervision,(...)"*

RESTREINT UE

Apart from the powers laid down in the LSF and the ensuing penalties vis-à-vis banks and other financial sector professionals, specific laws govern the CSSF's competence in other areas that fall under its supervision and may also provide for such means of intervention and penalty.²¹

2.1.5. Insurance Inspectorate (*Commissariat aux Assurances - CAA*)

2.1.5.1. Legal basis of the CAA

Article 1 of the amended **Law of 6 December 1991 on the insurance sector (LSA)** stipulates that "*Under the authority of the Minister [currently the Minister for the Treasury and the Budget], a public institution shall be set up with legal personality and enjoying financial autonomy, entitled "Commissariat aux Assurances".*

2.1.5.2. Task of the CAA

The CAA's task is defined in Articles 2 et seq LSA. Among its tasks, the CAA receives and examines applications for authorisation; carries out "*supervision of the insurance and reinsurance sector and insurance intermediaries in accordance with the requirements of the laws and regulations concerning supervision of the insurance sector*" and ensures "*compliance with professional obligations with regard to combating money laundering and terrorist financing by persons subject to its supervision, without prejudice to Article 5 of the law of 12 November 2004 on the fight against money laundering and terrorist financing*".

Since 2008, within its special competence, it has also had regulatory power.

2.1.5.3. Powers of the CAA

The LSA gives the CAA the task of exercising supervision over the insurance sector and insurance intermediaries. It is also responsible for ensuring compliance with professional obligations concerning LCB/FT by undertakings and persons subject to its supervision and to the law on

²¹

These laws are:

- Law of 20 December 2002 relating to collective investment undertakings, with regard to CIUs and management companies (Article 108),
- Law of 15 June 2004 relating to risk capital investment company (Article 17),
- Law of 22 March 2004 on securitisation (Article 85),
- Law of 10 July 2005 on prospectuses for securities (Article 25),
- Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs) (Article 65),
- Law of 9 May 2006 on market abuse (Article 33),
- Law of 13 July 2007 on markets in financial instruments (Article 41),
- Law of 18 December 2009 concerning the auditing profession (Article 67).

RESTREINT UE

LCB/FT (Art. 2(4) of the LSA). The powers available to the CAA to ensure compliance with the LCB/FT obligations are not expressly described in the law. On the other hand, the powers of accounting or prudential supervision are mentioned explicitly in the law.

As for insurance undertakings, Article 43 of the LSA stipulates that the CAA "*shall ensure application of the laws and regulations concerning relations between the parties to insurance contracts and operations and, in particular, compliance with the provisions governing the insurance contract*".

For this purpose, the CAA may apply various powers:

1. In the case of financial supervision, the CAA checks the accounting records and other relevant documents (Article 43.2);
2. The CAA has the power to request any information and/or documents relevant for assessing the functioning of insurance operations in general;
3. Finally, in order to check the balance sheets, the financial situation and other information, the CAA may inspect the books, accounts, registers or other acts and documents without having to travel.

As the appropriate Luxembourg authorities have emphasised in their answers to the questionnaire, the expression "*opérations d'assurance en général*" (insurance operations in general) used in Article 43 LSA is very broad and is used to indicate that the powers are not limited by law to the specific task set out in the first subparagraph but extend to all areas falling within the remit of the CAA under Article 2 of the law.

The CAA carries out on-the-spot checks of the LCB/FT arrangements in the framework of its prudential supervision, to which insurance undertakings are subject.

As regards intermediaries, the first paragraph of Article 110 LSA stipulates that the "*CAA is responsible for supervision of the obligations ensuing from this law and its implementing regulations*". The Article goes on to indicate that "*with a view to exercising its supervision, the CAA may be provided with all useful documents and papers by the Luxembourg intermediaries and, if necessary, by the principal insurance undertakings. It may also carry out on-the-spot checks on the business premises of the same persons and, if appropriate, on the business premises of the principal insurance undertakings. Finally, it may accept all useful information from other administrative or judicial bodies or from third persons*".

The CAA may also impose penalties under Articles 46 and 111 LSA.

2.1.6. *Training*

2.1.6.1. *Investigative authorities*

Grand Duchy Police

While professional experience of a general nature in the area of investigations is a more particular characteristic of members drawn from the inspector career group, civilian personnel have often gained professional experience in the private sector (e.g. trusts, banks) before joining the police.

This is also the case with some senior managers.

To improve their knowledge of economic and financial crime, investigators can take part in all kinds of external training courses, both nationally and internationally); the experts were however, unable to assess to what degree this possibility was used. With regard to internal training in economic and financial matters, the experts were informed that the current training offered and adapted to the needs of new investigators was spread over 27 days in 2010. This training enables young members of the CIS to acquire a basic knowledge of economic and financial investigation, thereby enhancing their skills in that area.

Furthermore the experts were informed that the local actors from the 50 inspectorates were instructed on Ecofin matters once a year, a training in which the examining magistrates also participate.

Customs and Excise

Apart from providing general training in litigation matters, the Litigation and Cooperation Division has special responsibility for training officers to carry out cash controls with regard to Regulation (EC) No 1889/2005 of 26 October 2005 on controls of cash entering or leaving the Community²².

2.1.6.2. *Judicial authorities*

General training

There are certain prerequisites for becoming a public prosecutor: a person must have Luxembourg nationality and an adequate knowledge of the country's three administrative languages (French, German and Luxembourgish). Another requirement is the successful completion of a four-year

²² Cf. OJ L 309 of 25.11.2005, p. 9ff.

RESTREINT UE

university course in law²³ and of additional courses in Luxembourg law. Candidates must also have obtained the diploma awarded on completion of the judicial probationary period. The judicial probationary period lasts two years and must be completed in chambers. A probationary period in court is provided for. Trainee prosecutors are provisionally appointed by Grand Ducal decree for a one-year period. They follow a theoretical course at France's National School for the Judiciary (*ENM*) in Bordeaux. This is followed by a course of practical study that takes place in Luxembourg in the courts, public prosecutors' offices, with the police or in prisons, etc. Depending on vacancies, a permanent appointment is possible once the probationary period has been completed.

The Ministry of Justice is responsible for the preliminary and further training of prosecutors. A commission made up of senior prosecutors and officials provides such training.

Further training courses for judges are provided by the *ENM*, the European Institute of Public Administration (Luxembourg) and the Academy of European Law (Germany) that contain anti-organised crime and financial crime modules. Internal trainings are also organised on current topics.

In addition, as a member of the European Judicial Training Network, Luxembourg uses the network for training.

Financial Intelligence Unit

All prosecutors seconded to the FIU have experience of or have received specialised training in economics and finance. Some FIU staff has recently participated in further training courses given by the Luxembourg Institute for Training in Banking (*IFBL*), which supplements the traditional training provided to prosecutors through the French National School for the Judiciary (*ENM*) or the Academy of European Law (*ERA*).

Specific ongoing training of members of the FIU in combating money laundering is provided since they participate actively in the work of the FATF, the Egmont Group and the platform of European FIUs. A debriefing session is organised systematically after each of these meetings, in order to inform the other FIU members of any important information established. They also take part as speakers in conferences held on the subject. Each new member receives in-house training, which

²³ The expert team has been informed after the visit that due to the Bologna process the time was currently five years.

RESTREINT UE

consists in sharing the coordinating examining magistrate's knowledge of LCB/FT, including typologies and cases pending. This ongoing training is in addition to the continuous training open to all judges within the *ENM* or the *ERA*.

Asset Recovery Office

The duties of the ARO are performed by prosecutors of the Luxembourg district court. The experts have not received information on any specific training these persons would receive with respect to this particular task.

2.1.6.3. *Financial Sector Supervisory Commission (CSSF)*

The *CSSF* staff are trained on a continuous basis in combating financial crime and, in particular, money laundering and terrorist financing.

A training plan is drawn up for each *CSSF* official, to help him or her adapt and develop according to the requirements of the post occupied. The training plan gives each official an individual "profile" composed of a number of subjects necessary to perform the specific duties.

The subject of money laundering and terrorist financing and other violations of the laws concerning the financial sector are among the general training subjects, not only from the point of view of the number of officers having followed either basic or more advanced training in this area but also in terms of budget. Over the past five years, the *CSSF* has spent around EUR 85 000 on continuing vocational training for its officers in economic and financial criminal law. The subjects dealt with ranges from combating money laundering and terrorist financing to connected issues such as fraud in general, bank-card fraud, new technologies, corruption, European criminal law, offences relating to illegal conduct on the financial markets, predicate money-laundering offences, company-law offences, etc.

Depending on the number of participants, these training courses are organised within the *CSSF* itself or else the *CSSF* uses the services of specialised institutes. In general, speakers come from well-known national and international public institutes which guarantee expertise in the field: e.g. *Institut National de l'Administration Publique (INAP)*, the Financial Intelligence Unit (FIU-Lux), University of Luxembourg, Institute for International Research, US Office of the Comptroller of the Currency (OCC), Financial Stability Institute Basle, French *École Nationale de l'Administration (ENA)* and the European Institute for Public Administration (EIPA). Other training courses have been held by public-sector undertakings such as PWC Academy or Cetrel S.A.

CSSF officers also take part in seminars organised by the different European committees in connection with money laundering and terrorist financing or financial criminal law in general.

RESTREINT UE

As for training courses organised by the *CSSF* itself, these are intended mainly to update the knowledge of *CSSF* officers following the publication of either a new law or a new key circular on the subject.

These subjects are not only dealt with in continuing vocational training for officers, but also form part of the training programme for officers newly recruited to the *CSSF* in the context of specific training courses.

Course documentation is accessible via the *CSSF*'s internal network for all officers concerned, and *CSSF* officers are notified of new developments via service notes, specific instructions or circulars. Finally, staff participation in on-the-spot checks is also considered to be an effective and significant means of training in that it enables less experienced staff to benefit from the know-how and knowledge of more specialised staff as regards checking the practical implementation of the applicable legislation and regulations.

2.1.6.4. Insurance Inspectorate (Commissariat aux Assurances (CAA))

At the beginning of their career, all *CAA* staff must take an examination on Luxembourg's laws and regulations, including the LCB/FT. Otherwise training is carried out in an impromptu manner. The *CAA* is negotiating with the Ministry of the Civil Service in order to obtain structured and adapted training, including with regard to LCB/FT.

2.2. Criminal policy

2.2.1. In general

Under Article 16 of the Code of Criminal Procedure (CICR) the public prosecutor's office is responsible for public prosecution and enforces application of the law. In the event of a criminal offence, the aim of a criminal investigation is to gather sufficient evidence on the constituent elements of an offence and to find out who committed it. Once it is established that an offence has been committed and the perpetrator is identified, the aim of the investigation is clearly to render the proceeds of the offence unavailable.

A criminal investigation under Luxembourg's criminal law is therefore initially more a matter of establishing that a crime has been committed and identifying the perpetrators as opposed to focusing on the proceeds. The proceeds of the crime are targeted at a second stage.

RESTREINT UE

There is not yet any formal or official policy of tracing proceeds of crime via financial investigations, owing to the fact that the proceeds generated from ‘domestic’ criminal activities were described as being “generally speaking only limited”. Public prosecutors are, however, following the **Law of 1 August 2007 on confiscation**, instructed to ensure that the new legal provisions on confiscation, in particular those on confiscation of an amount equivalent to the proceeds of the crime (introduced as a general rule by the new text), are taken into account in each case where the offences in question have generated significant financial assets: this should occur as early as the judicial investigation stage and may even involve the seizure of assets not linked to the criminal offence, thus implying a minimum form of asset investigation.

2.2.2. *With regard to public prosecutors*

The Financial Intelligence Unit (FIU) specialises in financial investigations aimed at depriving criminals and offenders of any financial advantage derived from their offences.

Since 1989 Luxembourg has gradually been establishing a strategy to combat money laundering and the financing of terrorism in line with international standards.

Since the **Law of 17 July 2008 transposing the third EU AML/CFT Directive** into Luxembourg law and the **Law broadening the scope of the underlying offences** via an amendment to Article 506-1 CICR, financial offences are regarded as predicate offences even outside any context of organised crime or corruption. The Law of 1 August 2007 on confiscation extends confiscation measures by establishing as ordinary law most of the provisions that were hitherto specific to money laundering. The combination of these provisions of the Criminal Code therefore allows effective action to be taken not only against money laundering but also against financial crimes insofar as they are aimed at depriving the perpetrators of such offences of the direct or indirect financial benefit they hoped to gain.²⁴

If the facts reveal that significant proceeds have been generated and that this was the main motivation behind the criminal conduct, the investigation into the facts and the perpetrators and

²⁴ The Luxembourg authorities have informed after the visit that in this context Article 32-1 of the Criminal Code which governs special confiscation has also been amended by the Law of 27 October 2010 reinforcing the legal framework for the fight against money laundering, particularly with regard to the condition of ownership of the property to be confiscated, which is no longer required except for property confiscated by equivalent.

RESTREINT UE

their prosecution should as far as possible also aim to determine the value of the proceeds raised during detection and seizure with a view to confiscation. Public prosecutors were also recently instructed to add the criminal offence of laundering to the predicate offences in their closing speeches for the prosecution, as the commission of an offence with a view to seeking and acquiring financial assets is also included in this type of crime. If necessary, this also allows the special provisions on confiscation to be applied in the absence of a conviction.

2.2.3. *With regard to the customs and excise administration*

The customs and excise administration is responsible for the application of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community.

2.2.4. *In order to fulfil the obligations arising from this Regulation, customs and excise officials have all the powers and competences conferred upon them by the general law on customs and excise, i.e. the power to check natural persons, their luggage and their means of transport, the power to look for and record offences, to draw up legally enforceable reports, the power to launch administrative investigations, and the power to retain or seize goods. If a check on a movement of cash detects signs of illegal activities, the case is reported to the FIU. A specific procedure for such cases is currently being drawn up.²⁵ Priority accorded to the investigation/prosecution of acquisitive crime in official investigation (police) or prosecution policy*

According to the information received, any major case, particularly in terms of proceeds or in the event of a significant seizure of assets, is accorded a level of priority as regards the investigation, pre-trial investigation and prosecution, subject to the resources of the criminal police authorities upon which the bulk of the work falls.

In their answers to the questionnaire the Luxembourg authorities highlighted that under the law on international mutual assistance in criminal matters, procedures in that area which involve coercive

²⁵ Attention is drawn in this context to the new powers conferred on the customs and excise administration through the adoption of the Law of 27 October 2010 organising inspections of the physical transportation of cash entering, transiting or leaving the Grand Duchy of Luxembourg.

RESTREINT UE

measures (seizures) are to be handled as urgent cases, which can cause serious problems insofar as the urgent handling of a large number of mutual assistance procedures constitutes a considerable workload which impacts on the availability to deal with national cases.

This information was confirmed by the Grand Duchy Police during the visit; according to the information received, the resources available stood in stark contrast to the demand created by this instrument.

In their answers to the questionnaire, the Luxembourg authorities have stated that depriving a perpetrator of the advantage he hoped to gain from an offence constituted a primary objective of the investigative process and was, together with the conviction of the perpetrators, one of the main objectives of any financial investigation.

2.3. Conclusions

- Although Luxembourg does not have a scale problem with crime originating from inside the country, its role as a major financial market – with some 150 financial institutions registered - has to be regarded as being of special importance in the international context, both with regard to the EU Member States and third countries and there is the threat of its being misused as a possible platform for the interests of organised crime networks that are mainly connected to money laundering and the financing of terrorism.
- With regard to Luxembourg's importance, it would be worth while to consider adopting a common strategy encompassing all public and private institutions that are either involved in or have a special responsibility for controlling, detecting or preventing abusive or criminal practices that could jeopardize the financial interests of Luxembourg or of other countries.

2.3.1. Investigative authorities

- Given Luxembourg's importance as a financial centre and as regards the actual workload encountered, the Grand Duchy Police's CID (*SPJ*) appeared to be critically understaffed in the Ecofin sector. With the actual number of staff, the *SPJ* seemed not to be in a position to adopt a more proactive approach that would allow it to do more than merely react to events.
- There have been certain problems with regard to the development of the staff situation in the ECOFIN department of the Grand Duchy Police, where – in order to be effective – a particular level of expertise and experience is required.

RESTREINT UE

The ECOFIN department has faced three problems:

- (1) rapid in-house turnover of specialised academic staff;
- (2) rapid erosion of its specialised academic staff towards external departments;
- (3) replacement of these persons by less specialised academic staff and by staff coming from a career as inspector.

The result has been a drop in the average competence level, placing the burden of increased training on fewer and fewer shoulders of experienced inspectors in all career paths.

The evaluators were informed however, that the level of experience was in the process of building up again, through practice and the organisation of specialised courses for all newly recruited staff.

2.3.2. *Judicial authorities*

- Although the judicial model of the FIU is not disputed by the experts as the advantages were emphasised by the Luxembourg authorities during the visit, it has to be noted that this unit lacks proper staffing and suffers from a structural deficit regarding analysis and IT capability.
- With regard to the organisation of the FIU, it was not possible to understand why there were problems with the secondment of FIU liaison officers from the authorities responsible for combating money laundering and terrorist financing; such personnel could provide the unit with instant access to all relevant databases and information that could be useful for a quicker and more efficient response.
- Although the organisational layout of the asset recovery office (ARO) is not questioned as such, the experts concluded that there were some factors that could be revisited when assessing the effectiveness of the office, namely the fact that staff also entrusted with other duties were in charge of the office; access to the different databases necessary for the work of the ARO was a problem, as was the absence of a dedicated database. Furthermore the experts concluded that the measures and structures in place for the handling of seized and confiscated assets could be improved. Given the standards set in some other Member States with regard to criminal asset recovery, the Luxembourg authorities would do well to study the existing structures, also with a view to refining its own policy on criminal asset recovery;

RESTREINT UE

2.3.3. *Supervisory bodies*

- The importance of Luxembourg as a world financial centre appears to be well reflected in the size of its banking and insurance supervisory bodies, namely the *CSSF* and the *CAA*. This however, stands in stark contrast to the size of and staff numbers in the relevant units of the Grand Duchy Police.
- The *CSSF* in particular has at its disposal a whole array of powers and competencies and sanctions for the adequate supervision of the banking sector in Luxembourg, and it appears to be sufficiently linked to the public prosecutor's office via a unit in its legal department.²⁶
- Given these capacities within the *CSSF*, which are also contrast with the resources available within the FIU and the ARO, the number of inspections and the ensuing sanctions appeared to be relatively disproportionate.
- Given the fact that no unannounced inspections are carried out, not even by way of exception, the experts concluded that this practice was not conducive to supervision. If the balance between transparency and administrative practice requires the notification a supervised entity of an upcoming inspection in advance then it can on the contrary be assumed that general prevention would improve if inspections were carried out without prior notification.
- The expert team also concluded that the *CSSF* might consider setting up a code of best practice²⁷ that would lay down the rules of conduct, clarify conflicts of interest and protect acts of denunciation by all entities and officials within its realm of inspection.
- Furthermore, given the particular circumstances in Luxembourg and their impact on resources, the experts saw fit to conclude that one possible approach could be to enhance the powers of the regulatory authority. This could relieve the law enforcement agencies of the tasks that they are not always able to perform because of their lack of resources.

²⁶ The Luxembourg authorities have informed after the visit that, through the Law of 27 October reinforcing the legal framework for the fight against money laundering, a new Article 9-1 has been added to the AML/CFT law which stipulates that the competent supervisory authorities for combating money laundering and terrorist financing and the Financial Intelligence Unit cooperate closely and are authorised to exchange the information required for performing their respective tasks.

²⁷ The expert team was informed after the visit that such a code of best practice has been disseminated by an appropriate note of the *CSSF* in August 2010.

2.3.4. *Training*

2.3.4.1. *Law enforcement*

- Luxembourg's law enforcement lacks a comprehensive and qualitatively well-developed training programme for financial investigators. Yet at a central level, the Grand Duchy Police has knowledgeable and skilled officers working in financial crime investigation. This was, however, reported to be the result of a one-shot procedure where senior officers were recruited with a solid academic education and vast experience of the well-developed financial industry of the country. Due to further career development, this influx has largely been diluted and was not repeated to keep the acquired level of expertise. In-stream is organized centrally and combined with a fast turnover of personnel; an alarming situation was evoked by the statistics presented with regard to the "brain drain" of the financial investigation capacity. A separate career path for financial investigators might be worth considering as a remedy. .
- As the training and maintenance of the required professional skills seems to be rather illusory and not very well structured, the design of a formalized accreditation system might also be recommended. It would certainly allow better monitoring of continued professional improvement throughout the officials' careers and would definitely result in a more structured and continuous approach.
- The rather low ratio of financially skilled and specialized investigators is currently not compensated for by any means and is even amplified by the huge pressure which is impacting on the financial investigators as a result of the disproportionate amount of MLA requests they receive from foreign jurisdictions. Obviously, this derives from Luxembourg's status as a primary financial centre, and the fact that it has a financial industry that is slightly out of proportion with the size of the jurisdiction itself. It goes without saying that the current situation of understaffing combined with the disproportionate workload of the available financial investigators impacts largely on most of the EU Member States. Despite of the dedication and ability of Luxembourg's police officers in this area of crime, their lack of resources impacts indirectly on the course of justice in the countries concerned. Luxembourg, in this respect, clearly suffers from a "scale" problem or even a situation that is anomalous which urgently needs to be acknowledged at a political level. Consequently, this also affects the national situation. The interviewed experts stated that the shortage of resources and capacity has repercussions at national level and results in an undesirable degree of impunity

RESTREINT UE

as far as financial crime is concerned. According to the information received during the evaluation visit, fraudulent and systematic bankruptcies in particular pose an increasing problem which law enforcement is not able to properly address due to lack of time and resources.

2.3.5. *Criminal policy*

- Luxembourg has not implemented a coherent and consistent crime proceeds-oriented law enforcement policy. Even though it has adequate legal instruments enshrined in their Criminal Code and Code of Criminal Procedure, there was no evidence presented of the existence of a nationwide strategic security or policing plan, especially not with regard to financial crime.
- It appears as if the crime of money laundering is not conceived of or treated as an autonomous offence by law enforcement agencies and the judiciary.²⁸ Nevertheless, its broad application has proven to be an extremely effective and powerful tool in other jurisdictions when it comes to combating serious and organized crime, with the target being the leadership of the organised crime groups.
- A policy on criminal asset recovery has apparently not been considered. As a result, any arrangements along those lines seem to be very embryonic and have not been fully developed. This creates difficulties in several areas, not least as regards the management of seized assets. Swifter adoption of the standards of neighbouring countries is to be recommended.
- An extremely powerful tool that complements criminal asset confiscation is the non-conviction based recovery of illicit proceeds. Consideration should be given to introducing this instrument into the Luxembourg legal system, even though it is civil-law based. At the very least, cross-border recognition and implementation of civil-law seizure should be made possible in an EU context.²⁹

²⁸ The Luxembourg authorities noted that Luxembourg case law had clearly identified that money laundering is treated as an autonomous offence. Furthermore they informed that the Law of 27 October 2010 reinforcing the legal framework for the fight against money laundering introduced a new Article 506-8 into the Criminal Code, worded as follows: "The offences referred to in Article 506-1 shall be punishable irrespective of any prosecution or sentence for one of the predicate offences set out in that Article".

²⁹ The Luxembourg authorities noted in this context that the Law of 14 June 2001 approving the Council of Europe Convention (ETS No 141) and the Law of 1 August 2007 on confiscation introduced legal provisions relating to requests for enforcement of foreign confiscation and restitution which enable a confiscation order resulting from "in rem" proceedings to be recognised irrespective of any conviction.

3. INVESTIGATION AND PROSECUTION

3.1. Information and databases available

3.1.1. Databases and registers

3.1.1.1. Bank accounts

Luxembourg does not have a central register of bank accounts.

The FIU however, keeps a database of business relationships where money laundering or terrorist financing is suspected. The FIU's powers (Article 5(1)(b) LCB/FT) also allow it to launch certain detailed inquiries in order to locate a bank account.

The identification of bank accounts and the obtaining of information regarding bank accounts is extensively described in sub-chapter 3.1.2 below.

3.1.1.2. Real estate - Mortgages

The remit of the mortgage registrar (*service de la publicité hypothécaire*) covers all mortgage-related formalities such as registration, recording deeds of transfer and property seizures, duties on these formalities, keeping mortgages and issuing reports and certificates.

Pursuant to Article 2146 of the Civil Code, mortgages must be registered at one of the three Luxembourg registration offices for the district where the property subject to the lien or mortgage is located.

3.1.1.3. Land registers, the Land Registry database

Property registration documentation in Luxembourg can be divided into two parts:

- firstly, written documentation (or property entries) providing information on the rights to a property and the holders of those rights;
- secondly, the land registry map, showing land in graphic form, which is the corollary to the written documentation.

RESTREINT UE

Luxembourg has an integrated management system for the land registry (*PF*) that links it with the land registry and topography department (*ACT*), the land registration and estates department (*AED*) and the notaries.

Data contained in files extracted from land registers that contain current data on the description of properties and rights with regard to cadastral parcels are disclosed solely on written application to the director of the mortgage registration office under certain conditions that are laid down in Article 23 of the Grand Ducal Regulation of 9 March 2009

3.1.1.4. National address database

A centralised database of official addresses in Luxembourg called the "National register of towns, villages and streets" has been set up by the Land Registry and Topography Office (*ACT*) and the Luxembourg Centre for Information Technologies (*CTIE*).

This register is the reference database for Luxembourg addresses used by the State and supplies "address" data for a large number of IT applications, through automatic access.

In addition to addresses indicated by the local authorities, which supply the bulk of the data for the register, information from various state administrations enables the *ACT* to update the database continuously.

3.1.1.5. Register of Commerce and Companies

All legal persons have to register with the Register of Commerce and Companies.

Trading companies, economic interest groupings, branches of foreign companies in Luxembourg, non-trading companies, pension -saving associations, agricultural associations, state-owned undertakings, local authorities (communes) and other legal persons subject to statutory registration requirements have to be entered in this Register..

Article 1 of the amended **Law of 19 December 2002 on the Register of Commerce and Companies and the Bookkeeping and Annual Accounts of Companies (LRCS)** also provides for non-profit organisations and foundations to be registered.

This public register is operated under the authority of the Minister for Justice. It is administered by a dedicated economic interest grouping comprising the State, the chamber of commerce and the chamber of skilled trades.

RESTREINT UE

Article 20 of the amended Grand Ducal Decree (RGD) of 23 January 2003 regulates the consultation of files administered by the Register of Commerce and Companies. Consultation may be electronic, via the Register's Internet site, or on the spot, provided that a paper file has been kept. The administrative authorities and the courts have free computer access to all the information on the Register of Commerce and Companies. In addition, all the deeds and documents lodged with the Register of Commerce and Companies published in the C series of the Official Gazette are available on the Grand Duchy's e-justice portal via the internet³⁰.

3.1.1.6. *Luxembourg register of naval vessels*

A Luxembourg Public Maritime Register was set up by the amended **Law of 9 November 1990**. All data contained in these databases are accessible via the means laid down in the CICR.

3.1.1.7. *Luxembourg register of aircraft*

The Luxembourg register of aircraft was set up by Grand Ducal Decree of 27 July 1961 and became the list of registrations by Grand Ducal Decree of 23 April 1979.

The list of registrations is publicly available on the internet.³¹

3.1.2. *Cooperation at national level*

3.1.2.1. *Legal Framework*

With regard to obtaining bank account information where it becomes necessary to identify an unknown bank account belonging to a specified person, to identify the unknown owner of a specified bank account, to identify operations from and to a specified bank account in the past or to monitor operations to and from a specified bank account in the future, the legal situation in Luxembourg is as follows:

In the context of a judicial investigation into a crime or an offence, only the examining magistrate (hereinafter referred to as EM) may, by virtue of Articles 65 and 66 CICR, issue a search and seizure order with a view to seizing in a broad sense all the objects, documents and effects referred to in Article 31(3) CICR. The details of this procedure have already been referred to in more detail in paragraph 2.1.2.3 of this report.

³⁰ <http://www.legilux.public.lu/entr/index.php>

³¹ http://www.dac.public.lu/services/espace_aeronefs/registre/index.html

RESTREINT UE

Article 66 therefore stipulates that the examining magistrate implements the seizure of all objects, documents, effects and other items referred to in Article 31(3), i.e. the objects, documents and effects which were used to commit the crime or were intended to be used and those which were involved in the crime, as well as everything which seems to have constituted the proceeds of the crime, and, generally speaking, all items which may be of use in establishing the truth or use of which might be detrimental to the proper conduct of the investigation and all items liable to be confiscated or returned.

This provision constitutes the legal basis for the search order and seizure in respect of all seized third parties, including in particular banking establishments or other *PSFs* (Financial Sector Professionals) with a view to searching for and seizing, in either paper or electronic form, the information under b. and c. above or any other information concerning accounts (holder, economic beneficiary, history of the account, etc.).

The State Prosecutor also has powers of search and seizure under the procedure pursuant to Articles 31, 33 and 41 CICR regarding the commission or attempt to commit an offence. The FIU within the public prosecutor's office also enjoys the prerogatives referred to in Article 5(1)(b) and (3) of the AML/CFT in the field of money laundering and the financing of terrorism.

In practice, the examining magistrate's order is communicated and enforced directly by law enforcement officers in respect of the financial institutions concerned.

The identification of an unknown bank account belonging to a specified person and the monitoring of operations to and from a specified bank account in the future are regulated by **draft Law No 6017³²** that will

1. approve the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union
2. approve the Protocol of 16 October 2001 to the Convention on mutual assistance in criminal matters between the Member States of the European Union

³² The draft Law No 6017 was the subject of the Law of 27 October 2010 which has entered into force on 1 December 2010, after the on-site visit had taken place. The Law provides in particular for the principle of "no tipping off" in the event of transmission of documents or information in implementation of a request for international legal assistance. Likewise, the action for annulment provided for in the former Law has been abolished.

RESTREINT UE

3. amend certain provisions of the Code of Criminal Procedure and the law of 8 August 2000 on mutual assistance in criminal matters.

The draft law was deposited with the Chamber of Deputies on 20 March 2010 and the Council of State issued an opinion on it on 4 May 2010. The experts were informed after the visit that the draft law and opinion were examined by the Legal Committee of the Chamber of Deputies and forwarded to the president of the Council of State on 17 August 2010.

The real-time surveillance of bank accounts will also be regulated by draft law No 6017 and will only be implemented once the law has been adopted.

3.1.2.2. *Types of crimes covered*

All crimes and offences can be covered by the investigation measures described above. With regard to financial crime, the offences include the following, but the list is not exclusive:

- laundering offences
- misuse of company assets
- offences related to fraudulent bankruptcy
- all forms of fraud and breach of trust
- public or private (active and passive) corruption offences
- uttering in relation to the above offences
- insider trading

3.1.2.3. *Duration of a measure regarding a bank account*

The seizure of documents (or of account assets) is not time-limited, but it should be specified that it is normally carried out by means of copies or electronic versions, which are attached to the investigation file as evidence.

They may be returned only on the basis of

- an official order for release from the EM, in accordance with Article 67(1) CICR, at any stage of the judicial investigation,

RESTREINT UE

- an order by the council chamber (court hearing the case) of the district court allowing the return of seized documents or the release of seized account assets, pursuant to Article 68 CICR, or annulling the EM's search order on the basis of Article 126 CICR.

3.1.2.4. *Competent authorities*

Seizure is ordered and enforced by the EM on the basis of the content of the investigation file, with no prior authorisation necessary. The search and seizure order is, at the CIC's wish, enforced by the examining magistrate.

If the EM is unable to enforce his order, he issues letters rogatory to law enforcement officers for them to enforce the investigation measure under Article 52(1) CICR.

3.1.2.5. *Notification of persons affected by the measure*

The seized third party (bank) is notified of the search/seizure order of on the understanding that notification and enforcement of the order by the EM take place at the same time. In complex cases, however, the seized third party may be given a time frame for the searches to be carried out, in which case seizure of banking information is postponed and will be the subject of a report separate from the notification. The seizure of account assets is always, however, executed at the time notification of the order is given.

The person affected by the measure (e.g. the account holder) may lodge an action for annulment against the EM's order (see Article 126 CICR) or for release of seized account assets.

3.1.2.6. *Secrecy obligations or privileges impeding or affecting the measure*

Professional secrecy is to be examined differently depending on its part in enforcement of the measures ordered.

- The examining magistrate conducting a search and subsequent seizure of documents (or assets) belonging to financial sector professionals is not subject to banking secrecy.
- The professional secrecy binding the lawyer and the person concerned, where appropriate, by the investigation, requires additional measures in the event of a search of the lawyer's office.

RESTREINT UE

Article 35(3) of the amended **Law of 10 August 1991 on the legal profession** lays down the inviolability of the lawyer's workplace and the secrecy of communications.

A criminal investigation measure may only be implemented in the presence of the Chairman of the Bar Association or his representative, or after they have been duly invited to be present. They may send the authorities which ordered the measures any comments on compliance with professional secrecy. The search report must mention the presence of the Chairman of the Bar Association or his representative, or that they had been duly invited to be present, and any comments they made, otherwise it is declared null and void.

(It is worth specifying that in practice EMs always go in person to perform a search of a lawyer's office.)

- The professional secrecy binding a company auditor (or auditor's office) (accredited or otherwise) and his client is laid down in Article 22 of the **Law of 18 December 2009 on the auditing profession**, but the secrecy requirement is lifted when the disclosure of a piece of information is authorised or required by or under a legislative provision, even one pre-dating the law.

Similarly, a criminal investigation measure may be implemented in an auditor's office only in the presence of the Chairman of the Institute of Company Auditors (*IRE*) or his representative, or after they have been duly invited to be present. They may send the authorities which ordered the measures any comments on compliance with professional secrecy. The search report must mention the presence of the Chairman of the *IRE* or his representative, or that they had been duly invited to be present, and any comments they made, otherwise it is declared null and void. The procedure and its consequences are identically with those applicable to lawyers.

3.1.3. Cooperation at European level

3.1.3.1. Legal Framework

As already referred to in paragraph 3.1.2.1 earlier in this report, at the time of the visit the Protocol to the Convention of 29 May 2000 on mutual legal assistance was being transposed by draft law No 6017 approving the Convention of 29 May 2000 on mutual legal assistance and the relevant Protocol.

RESTREINT UE

3.1.3.2. *Identification of bank accounts and holders*

The Luxembourg authorities indicated that information relating to the identification of a bank account, the identification of the owner of a bank account and identification of operations from and to a specified bank account in a specified period in the past cannot be provided to a law enforcement authority in another Member State through ‘police cooperation’; instead, under Luxembourg law these measures remain a matter for mutual legal assistance as Luxembourg has not yet implemented Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union³³.

3.1.3.3. *Information requests via the ARO*

As already explained, the Luxembourg ARO is attached to the prosecution service at the Luxembourg district court and the prosecutors serving therein can request letters rogatory or a search and seizure warrant from the investigating court when Luxembourg is the requesting state.

3.1.3.4. *Competent authorities in the issuing State and in the receiving State*

Letters rogatory for search/seizure are transmitted by the investigating court (requesting authority) to the requested authority.

The transmission of letters rogatory to the Luxembourg authorities is governed by the international conventions applicable (specifically the Convention of 20 April 1959 and the Schengen Convention) (international conventions prevail and have direct effect) and by those provisions of the **Law of 8 August 2000 on international mutual assistance in criminal matters** which do not conflict with the international conventions applicable.

Article 2 of the **Law of 8 August 2000 on international mutual assistance in criminal matters** thus governs the situation in which seizure is requested in Luxembourg (requested State).

³³ OJ L 386, 29.12.2006 p. 89ff.

RESTREINT UE

"Article 2(1) Subject to the special provisions laid down in the Conventions providing for direct transmission, requests for mutual assistance shall be sent by the competent authorities of the requesting State to the Luxembourg Chief Public Prosecutor.

(2) Following execution, they shall be returned either by the official channel or directly.

(3) If the requesting State sends the request directly to the judicial authorities or to the Luxembourg Minister for Justice, they must forward it as soon as possible to the Chief Public Prosecutor.

(4) Having examined the aspects of the request for assistance which are within its competence, the Chief Public Prosecutor shall forward it to the judicial authorities for execution if it finds no reason to oppose it.

(5) If, however, the case underlying the request is serious and there is urgency owing to the danger of loss of validity of evidence, the competent judicial authority seised may proceed to carry out the investigation requested."

The request for mutual assistance is executed in the same way as a seizure ordered at national level, i.e. either by the examining magistrate or by the criminal investigation officers to whom the matter is delegated by the examining magistrate.

3.1.3.5. Problems encountered

In their answers to the questionnaire, the Luxembourg authorities noted the following problems that they had encountered with regard to international collaboration:

- International letters rogatory addressed to Luxembourg account for a third of all the dossiers handled each year by the investigation office of the Luxembourg district court and 5 % of those handled by the Diekirch investigation office.
- The fact that Article 7 of the Law on mutual assistance requires letters rogatory to be given priority obviously has repercussions for the handling of some national cases. The workload of the various criminal police sections may well be further increased by new duties devolving on the authorities under international instruments (e.g. joint investigation teams).

RESTREINT UE

The competent authorities have stated in their answers to the questionnaire that currently interministerial consultations were taking place to resolve the organisational difficulties which might arise.

3.2. Financial investigations and use of financial intelligence

3.2.1. Legal framework

Financial investigations may be carried out as part of criminal investigations but can also be carried out at preventive level in response to suspicious transaction reports from bodies or individuals under the AML/CFT law.

Article 5 of the AML/CFT law requires professional bodies and their managers and employees to cooperate fully with the Luxembourg authorities responsible for countering money laundering and the financing of terrorism, and in particular to report suspicious transactions promptly without reference to any threshold and regardless of whether the transaction has actually taken place or has simply been attempted.

It was stated in the course of the preparatory work on the laws of 11 August 1998 and 12 November 2004 that "*the professional does not have to seek to establish whether the evidence of laundering is sufficiently conclusive to justify an inquiry or indeed a prosecution or to determine what predicate offence may underlie a putative money laundering operation or whether it meets the conditions for prosecution. That is the responsibility of the authority handling the information received.*" Thus, "*the role of the professional is not to carry out a detailed analysis of behaviour which appears suspect or to determine the criminal classification of such behaviour; that is a matter for the judicial authorities*".

A standard form has been prepared and circulated to professionals who use it to submit suspicious transaction reports (STRs) to the FIU. It can be downloaded from the Luxembourg Justice website³⁴. STRs received by the FIU are stored on a database accessible only to FIU staff.

When the FIU analysis is conclusive, a basic information report is drafted, containing a description of the facts, the outcome of the checks made and a purely financial analysis.

³⁴ Cf.: <http://www.justice.public.lu/fr/formulaires/blanchiment-terrorisme/declaration22-10-fr.pdf>

RESTREINT UE

If the suspicions are confirmed, the FIU magistrate, in his capacity as a member of the prosecution service, will open a preliminary investigation into the offences arising, classify them and make a report indicating the action he considers should be taken (closed case/open judicial investigation). That report is thus the basis for criminal proceedings.

3.2.2. *Special legal powers and tools for investigating the financial aspects of criminal activities*

3.2.2.1. *Inter-departmental cooperation*

Article 16 of the **Law of 19 December 2009 on inter-departmental and judicial cooperation and strengthening the powers of the Inland Revenue, the Land Registry and Estates Department and the Customs and Excise Office** creates the legal framework, inter alia, for structured cooperation between the Inland Revenue and the judicial authorities.

Article 16 of that law derogates from § 22 Luxembourg General Customs Law (LGI) insofar as it expressly authorises disclosure to the judicial authorities of information normally covered by tax secrecy and incorporates two major obligations:

Firstly, an obligation to respond to requests from the judicial authorities:

Article 16(1) of the above Law of 19 December 2008 provides that: "*the Inland Revenue and the Land Registry and Estates Department shall forward to the courts, at their request, information which may be useful in criminal proceedings*".

It is on this legal basis, inter alia, that the FIU requests from the Inland Revenue information that it considers necessary and essential for the inquiries it conducts. According to the information received by the experts, cooperation was described as regular and efficient.

Secondly, the obligation to report offences to the State Prosecutor:

Article 16(2) of the above Law of 19 December 2008 provides that "*where it comes to the knowledge of the Inland Revenue or the Land Registry and Estates Department, in the course of their duties, that an offence has been committed, they shall be required to inform the State Prosecutor immediately and to forward to him all the information, reports and acts related to that offence*".

RESTREINT UE

Until that provision was introduced, the Inland Revenue was only required to report to the State Prosecutor tax fraud and swindling offences as defined in Article 396(1) and (2) of the old tax law (AO). There was also an obligation to report all crimes and other serious acts of general relevance to public order, particularly all activities and evidence discovered in the tax procedure which related to money laundering, corruption or the financing of terrorism.

Under the new text, the various Inland Revenue departments are also obliged to report all other offences and common crimes detected in the course of the taxation and recovery procedure (e.g. fraud, swindling, falsification, offences against the trade law, absence of authorisation and other offences against the laws on establishment, particularly the amended law of 28 December 1988 governing access to the occupations of craftsman, trader and industrialist and to certain professions (including accountancy), the law of 19 June 1999 organising the profession of accountant, etc.).

Likewise, Inland Revenue departments are obliged to submit an application to the State prosecution service to wind up companies which they find are in serious breach of the legislation on commercial companies (registered office offence, failure to publish social accounts, balance sheet irregularities, etc.).

All such instances are generally detected and reported by the departments in the course of carrying out their various duties, not just the audit service (via a detailed report giving the figures) but also each tax office, either in the course of the normal taxation procedure, or during on-the-spot checks (relating to book-keeping by taxpayers earning business profits, whether from agriculture or from a professional activity).

On the basis of paragraph 189 of the General Tax Code, the judicial authorities regularly pass on information and other data on tax fraud offences to the Inland Revenue authorities for purposes of taxation and tax recovery.

RESTREINT UE

In principle, the Land Registration and Estates Department restricts itself to a targeted search to establish the turnover of the company suspected of fraudulent operations. As the Department has no police powers, it cannot conduct actual financial investigations. The Department restricts itself to the role of initiator by gathering the necessary evidence for a possible subsequent investigation.³⁵

3.2.2.2. Financial Intelligence Unit

Nearly all financial cases are seen by the FIU because of the possible link with money-laundering offences.

As a cell within the prosecution service comprising prosecution magistrates, the FIU has the prosecuting powers described in the Code of Criminal Procedure (CICR).

In addition, Article 5(1)(b) of the AML/CFT law enables the FIU to obtain from the reporting bodies any additional information it requires to carry out its functions correctly.³⁶

That obligation is backed up by the obligation laid down in Article 4 of the AML/CFT law relating to appropriate internal organisation allowing a swift and full response to be given to all requests from the Luxembourg authorities responsible for countering money laundering and the financing of terrorism for information intended to determine whether professional bodies have, or have had over the previous five years, a business relationship with a specified legal or natural person and the nature of that relationship.

The FIU is thus authorised to obtain "*the information necessary*"³⁷ for the exercise of its functions

³⁵ Cf. also Article 29 of the **Law of 28 January 1948**, which was designed to ensure fair and correct collection of registration tax and death duties, which states:
"*Without prejudice to fiscal penalties, anyone fraudulently avoiding or attempting to fraudulently avoid payment, in full or in part, of taxes, fees or duties the collection of which is the responsibility of the Land Registration and Estates Department, shall, at the request of the Registration Administration, be liable to a fine the maximum amount of which shall be four times the amount of the taxes evaded. (...)*"

³⁶ The evaluation team was informed after the visit that article 5 of the Law against money laundering and the financing of terrorism was amended by Law of 27 October 2010 by having introduced an obligation of professional bodies to cooperate with the Luxembourg authorities that are responsible in fighting money laundering and terrorist financing.

³⁷ With the changes that have been introduced by Law of 27 October 2010, the amended article 5(1) of the AML/TF Law now stipulates that the FIU has to receive the information it has requested 'without delay'. This obligation particularly includes the transmission of all documents on which the information is based.

RESTREINT UE

not only from the reporting bodies but in practice also from all professional bodies subject to the AML/CFT provisions.

The response to all requests for information must be prompt, and failure to cooperate with the FIU is subject to criminal liability under Article 9 of the AML/CFT law which provides that "*those who knowingly contravene the provisions of Articles 3 to 8 of this law shall be liable to a fine of EUR 1 250 to 125 000*".³⁸

The FIU also has the power to freeze transactions which are suspect or relate to a money laundering or terrorism financing suspect³⁹.

3.2.2.3. Land Registration and Estates Department

The Grand Ducal Regulation of 21 December 2004 on the organisation and areas of responsibility of the Anti-Fraud Service of the Land Registration and Estates Department, amending the amended Grand Ducal Regulation of 25 November 1977 establishing the organisation of the enforcement services of the Land Registration and Estates Department, lays down the broad operating principles of the Anti-Fraud Service.

This department is principally responsible for:

- 1) checks regarding value-added tax and insurance tax and regarding registration tax and death duties;
- 2) investigating and detection of all offences relating to value-added tax and insurance tax, registration tax and death duties;
- 3) analysis and follow-up of the results of the abovementioned checks;
- 4) processing requests for assistance received by the Anti-Fraud Service on the basis of Community provisions and international conventions;
- 5) participation in activities laid down by national, Community and international action programmes;
- 6) development and maintenance of computerised control programmes.

³⁸ The evaluation team was informed after the visit that the maximum fine had been raised to 1 250 000 EUR.

³⁹ Cf. Article 5(3) of the AML/CFT law.

3.2.3. *Use and effectiveness of financial investigations in specific crimes*

Financial investigations conducted by the FIU in the context of countering money laundering and the financing of terrorism help detect and counter not just money laundering but also the underlying crime. In their answers to the questionnaire, the Luxembourg authorities have emphasised that since the FIU was at the heart of the prosecution authority, the speciality rule cannot be invoked.

Financial investigations conducted by the FIU and formalised in a transmission report can thus serve as the basis for prosecution of offences other than money laundering or the financing of terrorism.

3.2.4. *Continuation of an investigation into the financial aspects of crime after closure of a case*

A person who has received a criminal conviction for a financial offence can be prosecuted again for other offences and especially for money laundering; likewise, other persons (e.g. participators or accomplices) can be charged with the same offences.

The proceeds of the crime may then be confiscated after a conviction if the ruling included confiscation of equivalent assets. Moreover, the crime victim may also attempt to seek civil seizure of the proceeds of the crime even after the criminal conviction.

3.2.5. *Involvement of private experts in the investigations*

According to the information received, private experts can be called upon in the context of a judicial investigation (Article 87 CICR) or a *flagrante delicto* investigation (Article 36 CICR). To that end the Ministry of Justice has a coordinated list of sworn experts, translators and interpreters.⁴⁰ In the context of a pre-trial investigation, the examining magistrate has the option of involving experts in accordance with Article 87 CICR.

⁴⁰ In the context of a *flagrante delicto* investigation, Article 36 CICR provides that " if there is a need for findings which may not be deferred, the law enforcement officer shall have recourse to any qualified persons. Except where they appear on the list of sworn experts drawn up by the Minister for Justice, persons thus called upon shall take an oath in writing to give their assistance in the cause of justice on their honour and conscience".

In principle, however, an investigation into the financial proceeds/aspects of criminal activities is carried out in the majority of cases by officers of the criminal police service specialising in those matters.

3.2.6. *Financial intelligence*

For the financial sector, the *CSSF*, a public body having legal personality and financial autonomy, carries out prudential surveillance of credit institutions and other professional bodies in the financial sector.

Where in the course of its surveillance of the financial sector the *CSSF* encounters a situation which may amount to a breach of a legislative or regulatory provision, it either conducts an investigation into the professional body concerned or requests information (especially in cases where illegal exercise of a financial sector activity may be taking place) from the person who is the subject of the investigation. Following the investigation, the *CSSF* will where appropriate decide what steps to take, depending on the provision which may have been breached. It may thus make use of one of the measures among the powers and sanctions available to it. Where the offence detected is criminal in nature, the *CSSF* reports it to the prosecution service of the district court on the basis of Article 23(2) or 23(3) of Luxembourg's Code of Criminal Procedure.⁴¹

3.2.6.1. *Financial investigations in the intelligence phase- cooperation with other authorities*

The cooperation with other authorities in the intelligence phase relies on the legal powers of the prosecution services and on special legal provisions as the **Law of 19 December 2009 on inter-departmental and judicial cooperation** as laid down in paragraph 3.2.2.1.

3.2.6.2. *Financial intelligence information as a starter for criminal and financial investigations*

The financial intelligence analysed may be used as an indicator for initiating a criminal and financial investigation; it is in full compliance with legal restrictions and the present legal framework.

⁴¹ It is noted that the new Article 9-1 of the AML/CFT law, as introduced by the Law of 27 October 2010, stipulates that the competent supervisory authorities for combating money laundering and terrorist financing and the Financial Intelligence Unit cooperate closely and are authorised to exchange the information required for performing their respective tasks.

RESTREINT UE

In the context of combating money laundering and financing of terrorism, the result of the analysis of suspected criminal conduct in this field is the subject of a report, if relevant, by the magistrate in charge and forms the basis for the criminal investigation. Since the State Prosecutor's Office has the same powers as a law enforcement officer, his reports are of equivalent status⁴². In 2008, 108 criminal files were opened on the basis of financial intelligence, and the trend is for their numbers to increase.

3.2.6.3. Cooperation with and collection of financial intelligence from other authorities in the intelligence phase

As regards the FIU, cooperation with professionals and counterparts in other countries is established practice that has been described under paragraph 2.1.2.4 of this report.

3.3. Cooperation with Europol and Eurojust

3.3.1. Cooperation with Europol

3.3.1.1. Past experiences

The Luxembourg authorities reported that in the past Europol has provided support mainly by facilitating the exchange of information through its liaison officers. No joint investigation team has been set up so far. In the light of recent developments, it is likely that all partners will seek better cooperation in the medium term.

3.3.1.2. Expectations regarding Europol support for financial investigations

In their answers to the questionnaire, the Luxembourg authorities stated that Europol could provide assistance with cross-border crime analysis. Increased sharing of information on the proceeds of crime and its use by Europol would allow organised networks to be identified through cross-border links.

In its capacity as a centre of competence and training, Europol could also put networks in place for exchanging best practices in investigation methods used in financial inquiries relating to the proceeds of crime.

⁴² Cf. Article 24(3) CICR

3.3.2. *Cooperation with Eurojust*

3.3.2.1. *Past experiences of Eurojust support in financial investigations*

The Luxembourg judicial authorities have used Eurojust assistance on several occasions in the past to alert foreign judicial authorities in the context of international letters rogatory or to identify the magistrate in charge of the dossier. The national member of Eurojust for Luxembourg regularly visits the judicial authorities in Luxembourg. It has to be noted that in absolute figures Luxembourg is ranking 13 among the EU MS with 51 cases.

3.3.2.2. *Expectations regarding Eurojust support for financial investigations*

In their answers to the questionnaire the Luxembourg authorities have stated that collaboration with Eurojust depended on the quality and quantity of the contacts between the national member and his own national authorities. Experience has shown that the quality of collaboration varies insofar as the willingness of the national members in The Hague is not always matched by the requested State when the dossier is passed to it. It is therefore important that Eurojust members receive effective back-up in their own countries.

Since the evaluation visit Luxembourg has had two important cases in the field of organised crime where in both cases six Member States and Europol were involved and in which the assistance that had been requested was denied (among them the formation of a JIT).

3.4. **Conclusions**

- Access to databases that are most commonly used when investigating financial aspects of crime appears to be facilitated without any unnecessary hindrance as most of them are available online and easily accessible to the investigative authorities;
- Although the Luxembourg authorities have assured the evaluation team that the mechanisms in place within the country to obtain information on bank accounts are sufficient and functioning, the experts were nevertheless of the opinion that, taking into account the importance of Luxembourg as a banking centre, a centralised register of bank accounts could speed up the initial investigation into financial aspects of crime or financial investigations;

RESTREINT UE

another option for achieving this goal would be to facilitate access to bank account information for law enforcement purposes on a hit/no-hit-basis;⁴³

3.4.1. *Financial investigation and use of financial intelligence*

- Luxembourg has a judicial FIU. The judicial nature does not seem to impede the effectiveness of their AML arrangement, though one might doubt whether the resources of the FIU are proportionate, given the size of the financial services industry in Luxembourg. This is especially the case when comparing the FIU situation with the staff and resources available to the regulatory authorities.
- The number of SARs is increasing steadily, which highlights the poor staffing situation even more. In addition, the Luxembourg Prosecution Office is designated as the LU ARO, with only two prosecutors working part-time on ARO matters.
- A definite drawback of the Luxembourg AML set-up is that there is the absence of software for analysing base indicators, both within the FIU and the Police. In addition, neither displays any proactive attitude for sharing financial intelligence and the reason for that is probably the extreme workload of the police. They simply do not seem to be getting round to conceiving and implementing a strategy-driven and financial intelligence-led approach. This unequivocally calls for structural solutions, which transcend the remit of law enforcement and judiciary alone.

3.4.2. *Cooperation with Europol*

- As the Europol country report on Luxembourg clearly indicates, cooperation through Europol and the use made of products and services offered by Europol to the Member States is far below average. Despite the importance of Luxembourg as a major financial centre, the emphasis lies on non-financial crime areas, and the contribution to financial crime-related Analytical Work Files (AWF) and projects is very poor.

⁴³ The Luxembourg authorities found it fit to note that the procedure available through Article 66-2 of the Code of Criminal Procedure (CICR), introduced by the Law of 27 October 2010, constituted an alternative to a centralised register of bank accounts, making it possible to obtain the information at the source as opposed to an administrative data base that could never be kept sufficiently up-to-date.

RESTREINT UE

3.4.3. *Cooperation with Eurojust*

Although the Luxembourg authorities reported that they had used the Eurojust channel in the course of investigations, they pointed out that the quality of collaboration with other Member States varied and depended on the personal input of the appropriate national member.

DECLASSIFIED

4. FREEZING AND CONFISCATION

4.1. Freezing

4.1.1. *At national level*

4.1.1.1. *Asset-freezing in matters of money laundering and financing of terrorism*

The State Prosecutor has the power to freeze assets in matters of money laundering and financing of terrorism in accordance with Article 5(3) of the amended **Law of 12 November 2004 on combating money laundering and the financing of terrorism**⁴⁴, transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 and amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, which stipulates that:

"Professionals are required to refrain from carrying out transactions which they know or suspect are linked to money laundering or financing of terrorism before informing the State Prosecutor in accordance with paragraph (1). The State Prosecutor⁴⁵ may issue an instruction not to carry out operation(s) in connection with the transaction or with the client.

(...)

An instruction from the State Prosecutor not to carry out operations pursuant to the first subparagraph shall be valid for a maximum of 3 months from the issue of the instruction to the professional. A verbal instruction must be followed up within three days by written confirmation. In the absence of written confirmation the instruction shall cease to have effect at midnight on the third day. The professional may cite this instruction to his client to justify the non-execution of a transaction."

4.1.1.2. *Freezing (precautionary seizure)*

Since the freezing of assets constitutes an act of precautionary seizure in Luxembourg law, it follows the legal framework that has been described in paragraph 3.1.2. earlier in this report.

⁴⁴ The expert team was informed after the visit that by Law of 27 October 2010, the text of inter alia Article 5(3) of the AML/TF Law was amended.

⁴⁵ Following the amendment of the AML/TF Law it is now the FIU that has the powers that were previously confined to the prosecutor in Article 5(3) of the AML/TF Law.

RESTREINT UE

The seizure of movable property and assets is governed in particular by Article 66 CICR, while the seizure of immovable property is governed by Article 66-1 CICR.

4.1.1.3. Management of seized assets

The precautionary management of property while frozen is governed by Article 67(2) CICR:

"Where the seizure concerns property the conservation of which in the same state is not necessary for the establishment of the truth or the protection of the rights of the parties, the examining magistrate may order that it be deposited with the Consignment Office in the case of property for which deposit accounts are normally opened such as sums of money in domestic or foreign currency, securities or precious metals."

The State's Consignment Office (*Caisse de Consignation*)⁴⁶ is responsible for the precautionary management of property and assets seized.

4.1.2. Cooperation at European level - Implementation of Framework Decision 2003/577/JHA

The Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence⁴⁷ will be transposed by a draft text which is in the course of being finalised. At the time of the visit to Luxembourg the draft text had not yet been put before Parliament.

The current regime for requesting and receiving judicial cooperation requests aimed at the freezing of property or evidence is currently as follows:

Requests for freezing, i.e. for precautionary seizure, are at present implemented by invoking mutual judicial assistance in criminal matters. Mutual assistance in relation to freezing, i.e. the seizure of property or evidence, is governed by the international conventions in force, including in particular the Convention of 20 April 1959, the Schengen Convention or the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS 141), the provisions of which are binding on Luxembourg under the principle of primacy and the direct effect

⁴⁶ http://www.te.public.lu/caisse_consignation/index_html

⁴⁷ OJ L 196, 2.8.2003, p. 45ff.

RESTREINT UE

of international conventions. The provisions of the law of 8 August 2000 on mutual judicial assistance in criminal matters apply only where they are not in conflict with the applicable international conventions.

Article 2 of the **Law of 8 August 2000 on mutual judicial assistance in criminal matters** governs in particular the situation in which a search/seizure is requested in Luxembourg (requested State). That has already been described in paragraph 3.1.3.4 earlier in this report.

If the freezing order/certificate contains the information required to carry out a search/seizure, the request will be treated as international an letter rogatory with a view to search/seizure, and implemented as such.

4.1.3. *Mutual assistance in the area of freezing*

The table below shows the trend in the number of International Letters Rogatory (*CRI*) from other countries processed during the last five judicial years at the Luxembourg district court (**receiving state**). Additional requests for mutual assistance relating to the same *CRI*s are not included in these figures.

There is no statistical method for providing data concerning requests for mutual assistance sent by the office of the examining magistrate (**issuing state**) to other countries. For purposes of comparison, the number of national investigation files for the same period is given below.

Reference judicial year	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>
National files	1050	1121	1188	1189	1031
International letters rogatory	389	296	342	334	362

4.1.3.1. *Experience when acting as an issuing State*

As matters stand, requests for mutual assistance with a view to search/seizure are directly transmitted by the examining magistrate (requesting authority) to the requested authority.

RESTREINT UE

International letters rogatory are normally sent directly to the judicial authority of the requested State or, depending on the requested State concerned, to the central authority. It can also happen that *CRIs* are sent by means of the SIS or via the EJN contact point, or by the national Eurojust member. Neither Interpol nor Europol is used to transmit *CRIs*.

There is a degree of flexibility in determining a transmission option, with the proviso that the requesting Luxembourg authorities always opt for the fastest and most effective method.

When transmitting *CRIs*, the Luxembourg judicial authorities normally make use of the EJN atlas to locate an unknown recipient authority; or they attempt to locate the unknown recipient authority by contacting the judicial authority/central authority of the requested State. Use is also made of other IT tools available to the magistrates (national websites, judicial atlases on the European Union's website, etc.)

Luxembourg's authorities reported that in general terms they rated mutual judicial assistance in matters of search/seizure as satisfactory.

In cases where the requested authorities require additional information, the EM in Luxembourg transmits the supplementary information by post.

Where the *CRI* concerns two Member States, coordination and effectiveness of the procedure are ensured by bilateral liaison between the two States in question. Where more than two Member States are concerned, coordination is generally ensured by involving Eurojust.

4.1.3.2. *Experience when acting as an executing State*

The Luxembourg judicial authorities execute *CRIs* received by fax but not those received by e-mail⁴⁸. They accept them in three languages, French, English and German.

There is no control procedure to confirm that the order originated from a valid source. Where there is any doubt, the Luxembourg judicial authorities coordinate directly with requesting judicial authority.

⁴⁸ The Luxembourg authorities have clarified that with a view to execute a request they accepted scanned documents for a request that are transmitted by e-mail while awaiting the delivery of the originals.

RESTREINT UE

There are occasions when additional information/documentation is sought because the description of the facts was rather too concise.

If the *CRI* is incomplete, additional information is requested by the EM. There is no need for a formal procedure.

It is generally the EM who decides that additional information is to be requested. In some cases, he receives an indication from the public prosecutor's office without any formal procedure being implemented.

The execution of requests for mutual legal assistance for a confiscation (restraint) order is decided by the EM. The State Prosecutor issues an opinion pursuant to Article 2 of the Law of 8 August 2000. (cf. also paragraph 3.1.3.4 of this report).

It should be noted that the Luxembourg judicial authorities generally ask the requesting State which administrative language applies and then send a translated request for additional information to the requesting authorities or draft it directly in the language of that state.

It may happen that international letters rogatory for search/seizure are not executed because the requesting State omitted to provide the additional information requested⁴⁹.

The *CRIs* are executed after the requesting authority has provided the information requested.

CRIs for search/seizure may be refused because the requesting state did not respond to a request from the Luxembourg judicial authorities for additional information. Before refusing to execute, however, the Luxembourg authorities first check that the requesting authority has received and understood the request.

In most cases, the Luxembourg authorities translate the request for additional information directly into the administrative language of the requesting State.

⁴⁹ The Luxembourg authorities have clarified after the visit that omitting to provide the additional information would not result in a refusal but a suspension in executing the request.

RESTREINT UE

The Luxembourg judicial authorities regularly inform the requesting authorities in writing of the progress in proceedings. They always send the requesting authorities acknowledgement of receipt of the *CRIs* and keep them informed before and after execution of the *CRIs*, provided that those letters contain full details of the address of the requesting authority, which is not always the case; in such instances, the executing authority has to communicate with the requesting authority via the EJM, EUROJUST or the foreign central authority, or even, at worst, through diplomatic channels.

4.1.3.3. *Legal remedies*

With regard to mutual legal assistance, Article 8 of the Law of 8 August 2000⁵⁰ authorises the State Prosecutor, the person being investigated and any third party able to prove a legitimate personal interest to make an application for annulment of an act executing a request for mutual legal assistance. On pain of foreclosure, the application for annulment must be communicated within ten days of notification of the disputed act to the person against whom the measure ordered is to be executed.

4.2. **Confiscation (including FD 2005/212/JHA and FD 2006/783/JHA)**

4.2.1. ***Confiscation at national level***

4.2.1.1. *Legal basis*

Special confiscation in Luxembourg is governed by Article 31 et seq of the Penal Code (PC).

Article 31(1) PC provides that special confiscation applies to:

- "1) property including property of every kind, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments attesting title to or interest in such assets, property obtained or derived, directly or indirectly, from an offence or comprising a material benefit of any kind accruing from the offence, including the income from such property;*
- 2) property used or intended to be used to commit the offence, when owned by the person convicted;*
- 3) property substituted for the property referred to in subparagraph 1, including the income from substitute property;*

⁵⁰ The Luxembourg authorities have informed after the visit that the legal situation had changed since the visit had taken place and that Article 8 of the Law of 8 August 2000 was deleted by the Law of 27 October 2010 on international legal assistance. The action for annulment initially provided for in the Law was replaced by an ex officio examination of the lawfulness of the procedure by the pre-trial chamber (see Art. 9 of the Law of 27 October 2010).

RESTREINT UE

4) property owned by the person convicted whose monetary value corresponds to that of other property referred to in subparagraph 1, if that property cannot be located for confiscation."

Article 31(2) PC provides for the protection of bona fide third parties when confiscation takes place. It provides that "*where the property belongs to the victim of the offence, it shall be returned to him. The property confiscated shall likewise be assigned to him when the court has ordered confiscation on the grounds that it is property substituted for items belonging to the crime victim or where it represents the value thereof within the meaning of the first paragraph of this Article.*" Third parties other than those who are not victims of the crime may assert their rights before the court. In any event, "*the court which ordered the confiscation retains jurisdiction to rule on requests for return addressed to the prosecution service or to the court, either by a crime victim or by a third party claiming a right to the confiscated property*".

The bona fide third party is also protected by the law insofar as return may be requested on the basis of Article 68 CICR during the investigation proceedings and on the basis of Articles 194-1 et seq during the proceedings on the merits.

Article 32-1 PC specifically provides that in the case of money laundering, the offence covered by Article 506-1 to 506-7 PC, the general provisions on special confiscation provided for in Article 31 PC apply with the proviso "*confiscation of the property referred to in points 1 and 3 of Article 31-1 shall be ordered even in the event of acquittal, exemption from punishment, lapse or statute-barring of prosecution and even if the property is not owned by the offender*"⁵¹.

Article 8-2 of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction provides that "*in the cases provided for in Articles 7 to 10, the court shall also, without prejudice to Article 31 of the Penal Code, order confiscation of the convicted person's movable and immovable property, divided or undivided, obtained from the proceeds of the crime or of equivalent value to those proceeds.*

⁵¹ The evaluation team has been informed after the visit that the text has been changed through the Law of 27 October 2010.

RESTREINT UE

Income from the property seized and confiscated shall be treated in the same way as the property."

4.2.1.2. Types of crime for which confiscation is possible

Article 32 PC provides that "*special confiscation shall always be ordered for a crime*" and may be ordered for a lesser offence.

4.2.1.3. Authority competent to decide on the confiscation

Since confiscation can be ordered as a penalty only following criminal proceedings conducted before a criminal court having jurisdiction for criminal and/or lesser offences, it is the sentencing courts which rule on confiscation.

4.2.1.4. Authority competent to enforce the confiscation if different from the authority competent to decide on the confiscation

The General State Prosecutor, who has jurisdiction for the execution of sentences, ensures that the confiscation ordered by the sentencing court is carried out either by the Land Registration and Estates Department or the State Prosecutor.

4.2.1.5. Information of persons affected by the measure

Since the person affected is involved in the criminal proceedings, either as the person charged or as the person required to appear as defendant, he is informed of the holding of the hearing called upon to rule on the measure through a summons to attend the hearing.

4.2.1.6. Legal remedies for a person affected

Since the person affected is involved in the criminal proceedings, either as the person charged or as the person required to appear as defendant, he is entitled to the common law remedies, i.e. to oppose (in the event of failure to appear) to appeal or to take the case to the final court of appeal, which is an exceptional review procedure.

The court which ordered the confiscation retains jurisdiction to rule on requests for return addressed to the prosecution service or to the court, either by a crime victim or by a third party claiming a

RESTREINT UE

right to the confiscated property. Such requests are admissible only within two years of the date on which the confiscation order was executed, on pain of foreclosure.

4.2.1.7. Involvement of the ARO during this procedure

The public prosecutors' office, of which the ARO is part, is the main party in the judicial proceedings leading to the confiscation order so that specialist magistrates can always be called upon if the need arises; otherwise, it is for each magistrate in charge of a particular set of proceedings to judge the legality and advisability of demanding confiscation.

4.2.1.8. Additional information related to possibilities for confiscation referred to in Article 3(2) of Framework Decision 2005/212/JHA of 24 February 2005

The Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property⁵² has not yet been transposed.

4.2.1.9. Confiscation of property owned by corporations

A distinction has to be made between the following cases:

- (a) where the corporation has not been prosecuted, but the court assumes the property is owned by beneficial owners who have been convicted
- (b) where the court assumes the property is owned by beneficial owners who have not been convicted:

Since Article 31 PC does not make it a condition for confiscation of the property involved in the crime or the proceeds of the crime (in its various forms) that it be owned by the person convicted, **it is possible to confiscate property of criminal origin transferred to the estate of a third party.** The determining factor is the relationship between the property and the offence. The Luxembourg courts' starting point is not the apparent ownership of the property by the economic beneficiary of a company; instead, they examine in the first instance the origin of the property and in the second instance the legitimacy of ownership (good faith). As far as possible a third party in bad faith is thus involved in the prosecution for money laundering or being in possession of stolen goods. Moreover,

⁵² OJ, L 68, 15.03.2005, p.49-51.

RESTREINT UE

under the **Law of 3 March 2010 on the criminal liability of legal persons**, a company holding property of criminal origin can itself be the subject of criminal proceedings resulting in a confiscation order.

With regard to the scenario referred to under point (a), the Luxembourg Court of Appeal replied in the affirmative in its judgment of 16 July 2008 No 363.V.

4.2.2. *Confiscation at European level*

Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders⁵³ has not yet been transposed into Luxembourg law. The experts were informed however, that a preliminary draft law was in preparation and will probably be put before Parliament in the course of 2010.

Therefore the current legal basis for cooperation in the execution of a confiscation order is the **Law of 14 June 2001 approving the Council of Europe Convention of 8 November 1990 and Articles 659 to 668 CICR**, as introduced by the **Law of 1 August 2007 on confiscation**.

Given the non-implementation of Framework Decision 2006/783/JHA in Luxembourg, a competent authority of a Member State where the Framework Decision has been implemented can issue a confiscation order together with a certificate that could be forwarded to Luxembourg for it to be treated as a request for judicial cooperation under the "normal" regime under the following assumption:

Since the certificate is a request structured on the basis of a form with boxes for all of the elements necessary for assessment, it can be accepted in formal terms, taken together with the copy of the confiscation order, it can be examined as to substance in the light of the conditions set by Luxembourg law and a decision can be made to proceed.

⁵³ OJ L 328, 24.11.2006, p. 59-78.

RESTREINT UE

4.3. Conclusions

- Although a number of EU instruments regarding freezing and confiscation have not yet been transposed by Luxembourg into national law, undoubtedly the mechanisms at present in place formally ensure the implementation of freezing and confiscation procedures, both at national and international level;
- With regard to freezing in cases of money laundering and terrorist financing, Luxembourg has transposed Directive 2001/97/EC on prevention of the use of the financial system for the purpose of money laundering. The freezing of assets in other cases constituting a precautionary seizure is governed by the Code of Criminal Procedure.
- Although Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence was still in the process of being transposed at the time of the visit, the practice of using the instrument of mutual legal assistance was reported to be working satisfactorily; it was, however, noteworthy that with respect to the national investigation files for a given year, Luxembourg was receiving a large proportion of international letters rogatory, a fact that is obviously taking up resources that cannot be employed nationally;
- Luxembourg has not yet transposed Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property;
- Luxembourg has not yet transposed Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders into national law. A preliminary draft law was announced to be in preparation and will probably be put before parliament in the course of 2010.
- Luxembourg has signed but not yet ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198);
- Luxembourg has signed and ratified the United Nations Convention against Transnational Organised Crime;

RESTREINT UE

5. PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

5.1. Available mechanisms, particularly cooperation with OLAF

5.1.1. Measures to ensure pro-active transmission of information to OLAF

In Luxembourg the criminal and judicial investigations are covered by the investigative secrecy enshrined in Article 8 of the CIC. OLAF, as an administrative service, therefore does not have access to such information unless this is formally authorised by the examining magistrate in charge of the case.

Collaboration with European Commission services, particularly OLAF, and the exchange of information with them are governed by the provisions of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

With regard to the transmission of information, the Luxembourg authorities have particularly emphasised Article 3 of that Regulation: "Where national authorities decide, in response to a request for administrative assistance or a communication based on this Regulation, to take action involving measures which may be implemented only with the authorisation or at the demand of a judicial authority:

- any information thus obtained concerning the application of customs and agricultural legislation, or at least
 - that part of the file required to put a stop to a fraudulent practice,
- shall be communicated as part of the administrative cooperation provided for by this Regulation".

It was explained however, that any such communication must have the prior authorisation of the judicial authority if the necessity of such authorisation derives from national law.

No special measures are taken to ensure that OLAF is informed on the outcome of a criminal case related to fraud against the financial interests of the Communities. It was, however, reported that in cases where OLAF was involved, the prosecutor in charge of the case had kept OLAF informed of the progress of the case and the procedural circumstances.

5.1.2. Possible role of the European Commission in a criminal investigation involving fraud against the financial interests of the Communities

The European Commission can intervene as plaintiff, victim or injured party and can be a civil party in criminal investigations involving the financial interests of the European Communities; in that capacity, it is kept informed of the development of the case and as a civil party it has access to the investigation file and may request inquiries.

In a case back in 1998, uncovered by UCLAF at the time, a Luxembourg lawyer applied to join proceedings as a civil party for the European Union.

5.1.3. Participation of OLAF officials in a criminal investigation

The Luxembourg law does not provide for OLAF to participate in investigations. There is, however, nothing to prevent the examining magistrate from requesting OLAF's assistance at a technical level. OLAF can thus be called on as an expert with the authorisation of the magistrate, benefiting from OLAF's institutional knowledge of the workings, procedures and internal operating rules of the European institutions. The limits inherent in such participation result from the fact that the expert belongs to a European Union agency that is the injured party, thus posing a problem of conflict of interest which is hard to reconcile with the requirement that the expert be independent.

5.1.4. OLAF participation in a joint investigative team (JIT)

The **Law of 21 March 2006 on joint investigative teams** provides that "*1. The competent judicial authorities of the Grand Duchy of Luxembourg may conclude an agreement with the competent judicial authorities of one or more Member States of the European Union to set up a joint investigation team to carry out criminal investigations on the territory of one or more of the States setting up the team. A joint investigative team shall be set up for a specific purpose and a limited period which may be extended by mutual consent.*

2. A joint investigation team may, in particular, be set up where:

(a) an inquiry or preparatory investigation being conducted by the Grand Duchy of Luxembourg or another Member State of the European Union requires difficult and demanding investigations having links in the first instance with other Member States and in the second instance with the Grand Duchy of Luxembourg;

RESTREINT UE

(b) the Grand Duchy of Luxembourg and one or more Member States of the European Union are conducting inquiries or preparatory investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action on the territory of the Grand Duchy of Luxembourg or of one or more Member States.

3. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.

4. The team shall comprise representatives of the competent authorities of the Grand Duchy of Luxembourg (hereinafter referred to as "the Luxembourg members") and representatives of the competent authorities of the Member State or Member States party to the agreement referred to in Article 2 (hereinafter referred to as "the foreign members seconded to the team").

5. The team shall act in accordance with the law of the State on whose territory it is operating."

According to the information provided in response to the questionnaire, the Law of 21 March 2006 includes OLAF members (cf. parl. doc. 5412-4, judicial commission report, p. 4).

5.1.5. Experience with JITs dealing with fraud against the financial interests of the European Communities

To date there has been no experience with JITs dealing with fraud against the financial interests of the European Communities.

Furthermore, Luxembourg has no central coordinating body responsible for operational support to OLAF.

As concerns the judicial authorities, the Luxembourg authorities have highlighted that, given the size of the country and the permanent appointment of the magistrates concerned, direct links have developed between the OLAF personnel responsible for the cases involving Luxembourg and the magistrates dealing with those cases. Such links take the place of coordination in a country in which there are, in any case, only two judicial districts. It was stated that so far, this informal system has always served its purpose and Luxembourg has not felt any need to create a new ad hoc structure.

RESTREINT UE

With regard to the Customs and Excise Administration, the Disputes and Cooperation Division has been designated as the competent authority referred to in Article 4 of Council Regulation (EURATOM, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the European Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

Customs and Excise Administration staff may take part in on-the-spot checks and inspections into economic operators who may have been involved, directly or indirectly, in irregularities; such on-the-spot checks and inspections may be carried out jointly by the European Commission and the Luxembourg Administration.

For the Customs and Excise Administration, the on-the-spot checks and inspections are those carried out in the cases of irregularities referred to in Article 1 of Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests, that is to say cases involving reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure; for Customs and Excise, that means import and export duties (see Article 1-4 of the General Law on customs and excise).

5.1.6. Support expected from OLAF in cases related to fraud against the financial interests of the Communities

In their answers to the questionnaire, the Luxembourg authorities have stated that OLAF played an important role in the detection of indictable acts, given its substantial resources that can considerably facilitate ongoing investigations. Regular contacts between institutions allow for fruitful cooperation.

In particular, the Luxembourg authorities have summarized the following expectations regarding a possible support role for OLAF in cases related to fraud against the financial interests of the Communities.

RESTREINT UE

OLAF should in particular:

- Take better precautions in the prior administrative inquiry in order to safeguard the effectiveness of subsequent criminal investigations and take all necessary measures not to alert or inform the protagonists of the investigations to which they are or will be subject.
- Act as a conduit for passing on judicial authorities' requests for information to the Commission, where appropriate.
- Keep the flow of information active after proceedings have started.

5.2. Conclusions

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

6. RECOMMENDATIONS

6.1. Recommendations to Luxembourg

Given the present legal and organisational set-up, while taking into account the specificities of Luxembourg's governmental and administrative services that - owing to the size of the country - benefit from short communication channels, the evaluation team came to the conclusion that cooperation between the different players works well in general terms. All practitioners met seemed to be highly motivated and dedicated to their duties. Nevertheless, the evaluation team thought fit to make a number of suggestions for the attention of the Luxembourg authorities.

The experts would like to summarise their suggestions in the form of the following recommendations. The Luxembourg authorities should:

1. consider implementing a coherent and consistent crime-proceeds- oriented law enforcement policy to combat financial crime (see 2.3 and 2.3.5);

RESTREINT UE

2. study the possibility of setting up a centralised database of bank accounts (see 3.4)⁵⁴;
3. consider facilitating access to bank account information for law enforcement purposes on a hit/no hit basis (see 3.4);
4. consider the possibility of non-conviction based recovery of illicit proceeds (see 2.3.5);
5. reflect upon refining the policy on criminal asset recovery and - where appropriate - adopt the standards of neighbouring countries (see 2.3.2);
6. consider putting into place measures and structures which would improve the efficiency of the management of seized assets (like existing structures in e.g. BE, NL or UK) (see 2.3.2);
7. address the discrepancy between the importance of Luxembourg as a banking centre (as it has been addressed in the resources available to the *CSSF*) and the resources employed in combating financial and economic crime within the Grand Duchy Judiciary and the Police (see 2.3.3 and 2.3.4.1);
8. make the career paths for officials working in the field of financial and economic crime more attractive, for instance by creating incentives (see 2.3.1 and 2.3.4.1)
9. consider designing a formalized accreditation system for CID staff that would facilitate better monitoring of continued professional improvement throughout officials' careers and could lead to a more structured and continuous approach (see 2.3.4.1);

⁵⁴ Concerning the recommendation on the central file of bank accounts, the Luxembourg authorities noted that the Explanatory Report of the 2001 Protocol explicitly sets out on page 2, under Article 1: "The obligation referred to in paragraph 1 extends to being able to trace bank accounts throughout the territory of the requested Member State. Paragraph 1 does not oblige Member States to set up a centralised register of bank accounts but leaves each Member State to decide how to comply effectively with this provision". Therefore, they consider the recommendation to reflect upon a central register of bank accounts as being not relevant as, a priori, it was not required by the Protocol. Furthermore, Luxembourg noted that it had complied with the provisions of the Protocol following the introduction of Article 66-2, combined with Article 66-5, into the law of 27 October 2010.

RESTREINT UE

10. – while raising the awareness for the instrument of joint investigation teams (JITs) – adopt a more willing attitude to applying this instrument for the issues under review (see 5.1.5);
 11. transpose into national law the EU instruments that have been adopted with a view to fighting the financial aspects of crime at an EU level (see 4.3);
 12. conduct a follow-up of the recommendations given in this report eighteen months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL).
- 6.2. Recommendations to the European Union, its Member States, institutions and agencies**
13. EU institutions and agencies are invited to support all actions undertaken by Luxembourg in order to implement the recommendations listed above;

DECLASSIFIED

RESTREINT UE

ANNEX A: PROGRAMME FOR VISIT

Programme de la visite d'évaluation du GMD 6 au 9 juillet 2010

Mardi 6 juillet 2010

Lieu: maison de Cassal, rue Large

10.00-10.30 : Entrevue avec M. François BILTGEN, Ministre de la Justice

10.30-12.00 : Entrevue avec des représentants du

- Parquet Général
- Parquets de Luxembourg et de Diekirch
- Cabinet d'instruction
- Ministère de la Justice

12.00-14.00: Déjeuner en ville

Lieu: Ministère de la Justice, rue Erasme, Kirchberg

- 14.30-17.00: - Cellule de renseignements financiers (CRF)
- Bureau de recouvrement des avoirs (BRA)
- Cabinet d'instruction auprès du tribunal d'arrondissement de Luxembourg
- Parquet Général et Parquets

Mercredi 7 juillet 2010

Lieu: Ministère de la Justice, 13, rue Erasme

- 9.30-12.00 - Administration des Contributions
- Administration de l'Enregistrement et des Domaines
- Administration des Douanes et Accises

12.00-14.00: Déjeuner au Kirchberg

Lieu: Ministère de la Justice

- 14.30-17.00 - Commission de surveillance du secteur financier (CSSF),
- Ministère des Finances

Jeudi 8 juillet 2010

Lieu: SPJ, rue de Bitbourg

- 09h30-12.00 Entrevue avec le Directeur du SPJ et des représentants des sections :
-sociétés et associations
-entraide judiciaire internationale
-banques, assurances, bourses et fiscalité
-infractions économiques et financières courantes

12.00-14.00: Déjeuner au SPJ

Lieu: Ministère de la Justice

14h30-17.00: Réunion finale avec les principaux acteurs

RESTREINT UE

ANNEX B: LIST OF PERSONS INTERVIEWED

Ministry of Justice

Sophie Hoffmann
Claudine Konsbruck
Katja Kremer

Justice administration

Jean-François Boulot
Jean Bour
Jean-Paul Frising
Jeannot Nies
Ernest Nilles
Georges Oswald
Pascal Probst
Marc Schiltz
Martine Solovieff
Doris Woltz

Ministry of Finance

Jean-Luc Kamphaus

CSSF

Jean-François Hein

Inland Revenue

Monique Adams
Pascale Toussing

Customs and Excise Administration

Gaston Brachmond
Henri Nimax

Land Registration and Estates Department

Marilyne Grossklos

Criminal Intelligence Service (CIS) of the Luxembourg Police

Patrice Solagna
René Moes
Lucien Schiltz
Vincent de Bartolo
Eric Ludwig
Daniel Medernach
Pierre Wanderscheid
Steve Schmitz
Claude Scho

RESTREINT UE

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE (FRENCH)	ENGLISH EXPLANATION
ACD	Administration des Contributions	Inland revenue
ACT	Administration du cadastre et de la topographie	land registry and topography department
ARO	Bureau de recouvrement des avoirs	Asset Recovery Office
AED	Administration de l'enregistrement et des domaines	land registration and estates department
AO	<i>Abgabenordnung (German)</i>	Old Luxembourg Tax Law
ANBL	Section « Anti-blanchiment » du SPJ	Anti-money Laundering Section of the Luxembourg CIS
ASSEP	Association d'épargne-pension	pension savings associations
BABF	Section « Banques, Assurances, Bourses et Fiscalité » du SPJ	Banking, Insurance, Stock Exchange and Taxation Section of the Luxembourg CIS
BCL	Banque Centrale du Luxembourg	Central Bank of Luxembourg
BRA	Bureau de recouvrement des avoirs	Asset Recovery Office
CA2	Cellule d'analyse et d'appui	Analysis and Support Cell of the Luxembourg CIS
CAA	Commissariat aux Assurances	Insurance Inspectorate
CARIN	-/-	Camden Assets Recovery Inter-Agency Network
CIC/CICR	Code d'Instruction Criminelle	Code of Criminal Procedure
CIS	Service de police judiciaire	Criminal Investigation Service
CP	Code Pénal	Penal Code

RESTREINT UE

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE (FRENCH)	ENGLISH EXPLANATION
CRF	Cellule de renseignements financiers	Financial Intelligence Unit
CRI	Commission rogatoire internationale	International letter rogatory
CRR	Cellule de Riposte Rapide	Rapid Reaction Cell of the Luxembourg CIS
CSSF	Commission de Surveillance du Secteur Financier	Financial Sector Supervisory Commission
CTIE	Centre des technologies de l'information de l'Etat	Luxembourg Centre for Information technologies
DGPOL	Directeur General de la Police Grand-ducale	Director -General of the Police
EIPA	-/-	European Institute for Public Administration
EJN	Réseau judiciaire européen	European Judicial Network
EJIN	Section « Entraide Judiciaire Internationale » du SPJ	International Legal Assistance Section of the Luxembourg CIS
EM	Juge d'instruction	examining magistrate
ENA	École Nationale de l'Administration	
ENM	École Nationale de Magistrature	National School for the Judiciary
ERA	Europäische Rechtsakademie	Academy of European Law
FATF	Groupe d'Action financière (GAFI)	Financial Action Task Force
FIU	Cellule de renseignements financiers	Financial Intelligence Unit
GENVAL	Groupe des questions générales y compris l'évaluation	Working Party on General Affairs, including Evaluations

RESTREINT UE

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE (FRENCH)	ENGLISH EXPLANATION
IFBL	Institut de Formation Bancaire Luxembourg	Luxembourg Institute for Training in Banking
INAP	Institut National de l'Administration Publique	National Institute for Public Administration
IRE	Institut des Réviseurs d'Entreprises	Institute of Company Auditors
LCB/FT	loi du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme	Law of 12 November on the fight against money laundering and terrorist financing
LGI	loi générale sur des impôts	Luxembourg General Tax Code
LRCS	loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises	Law of 19 December 2002 on the Register of Commerce and Companies and the Bookkeeping and Annual Accounts of Companies
LSA	loi modifiée du 6 décembre 1991 sur le secteur des assurances	Law of 6 December 1991 on the insurance sector
MDG	Groupe multidisciplinaire sur la criminalité organisée	Multidisciplinary Group on Organised Crime
MLA	entraide judiciaire internationale	Mutual legal assistance
OCC	-/-	US Office of the Comptroller of the Currency
PF	Publicité Foncière	Land registry
PSF	autres professionnels du secteur financier	financial sector professionals
OCTA	-/-	Organised Crime Threat Assessment
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
RGD	règlement grand-ducal	Grand Ducal Decree

RESTREINT UE

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE (FRENCH)	ENGLISH EXPLANATION
ROCTA	-/-	Russian Organised Crime Threat Assessment
SAR	-/-	Suspicious Activity Report
SEPCAV	société d'épargne-pension à capital variable	pension savings companies with variable capital
SPJ	Service de police judiciaire Luxembourg	Luxembourg Police CIS
SOAS	Section « Sociétés et Associations» du SPJ	Companies and Associations Section of the Luxembourg CIS
STR	-/-	Suspicious Transaction Report
UCLAF	Unité de Coordination de La Lutte Anti-Fraude	Task Force for the Co- ordination of fraud prevention

DECLASSIFIED