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NOTE

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| from : | Presidency |
| to : | Working Party on General Matters including Evaluations |
| Subject : | Final report on the fifth round of mutual evaluations - "Financial crime and financial investigations" |

On 7 June 2008, in line with Joint Action 97/827/JHA of 5 December 1997¹, the Multidisciplinary Group on Organised Crime (MDG)² decided that the subject of the fifth round of mutual evaluations was to be "financial crime and financial investigations".

Delegations will find enclosed the final report on the fifth round of mutual evaluations on "financial crime and financial investigations". This document reflects the conclusions and recommendations contained in the previously prepared country specific reports, with emphasis put on general conclusions and recommendations.

The report was discussed in the 5 September GENVAL meeting. It has been amended following comments during the meeting and ensuing written contributions. The report will be discussed in the 3 October GENVAL meeting with a view to agreeing on it.

¹ Joint Action 97/827/JHA of December 1997 adopted by the Council on the basis of article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime (O.J. L 344, 15.12.1997).

² Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Matters including Evaluations (GENVAL).

A new point 7 has been added in the Executive Summary, therefore changing the subsequent numbering.

The numbering in the English version of document 12657/12 GENVAL 51 as regards the recommendations was incorrect. In this version, the error has been corrected. Some minor substantive issues have been amended.

**Final report on the 5th round of mutual evaluations on
financial crime and financial investigations**

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1. EXECUTIVE SUMMARY

1. This document reflects the conclusions and recommendations contained in the previously prepared country specific reports. Due to the long-lasting character of the evaluation, and the complexity of the issue at hand, emphasis is put on general conclusions and recommendations, which will give inspiration to the Union and the Member States to take this whole issue forward with a view to depriving criminals of their ill-gotten gains.
2. Transnational organised crime is one of the major challenges jeopardising the creation of an area of freedom, security and justice. Of particular concern is fighting the penetration of the licit economy by serious and organised crime (including terrorism financing). Countering this threat requires swift and wide-ranging action from all law enforcement and judicial authorities throughout the European Union (EU).
3. Many criminal schemes are becoming increasingly complex. This is also the case in the field of financial crime. Many forms of transnational crime are increasingly interrelated, and financial crimes are more often than not embraced by organised criminal groups as well as skilled individuals.
4. The current financial crisis adds to the strain. Resources have become more scarce, including staff reductions and pay cuts, whilst the need to improve cooperation in the field of financial crime, for instance through closer collaboration between Financial Intelligence Units (FIUs), Asset Recovery Offices (AROs), police, tax and customs authorities, is apparent, both at the national and the international level.
5. A few key challenges can be identified: 1) Case management (including time and resource management) and cooperation between competent authorities, nationally as well as internationally, 2) Complicated and different legal rules and traditions, nationally and at the EU level, coupled with a sometimes weak implementation, 3) Evidence and the issue of electronic data, and 4) Time. Financial investigations often takes a long time, and it costs a large amount of resources, in terms of time, manpower and financial means.
6. In general, there is a need for enhancing a common approach to the fight against financial crime and to financial investigations; to promote cooperation between all relevant actors, including non-law enforcement agencies, and - fundamentally - to make all relevant agencies and bodies talk to one another.

7. The FATF revised standards, adopted in February 2012, now recognise financial investigations as one of the core elements of the FATF's operational and law enforcement recommendations. It also provides a definition of financial investigations in the interpretative note to recommendation 30. This definition is now the global standard against which actions of all Member States will be assessed, either within the FATF or within MONEYVAL.
8. As regards financial investigations and the fight against financial crime the expert teams involved in the 27 evaluations have been able to review the national systems of the Member States. Overall, the working principles and legal framework of the systems appeared to be robust and functional and the various actors know their roles and responsibilities. Nevertheless, apart from specific country recommendations, certain general recommendations can still be made, to contribute to the further development of the relevant systems. The report contains a number of recommendations to the Member States, the EU, its institutions and agencies, including the following key recommendations:
- Financial investigation should be carried out in all serious and organised crime cases (which include terrorism) beyond the sole economic and financial crime offences. An overarching, financial crime and financial investigations policy should therefore be drawn up, covering all relevant authorities, including prosecution, aimed at speeding up complex and lengthy investigations in the field of financial crime. It should reflect relevant priorities agreed at the EU level and set the basis for proactive investigations. More attention should be paid to potential profits from international cooperation, especially at EU level.
 - The financial crime and financial investigations policy should be reflected in a long-term national strategy. Whenever possible, a concept of financial intelligence-led policing should be included in the strategy, to allow pro-active enforcement measures on the basis of analysis products. The strategy needs to be combined with a regular review and an evaluation methodology as well as a sound reporting mechanism for the entities involved. In setting up such a strategy, some basic criteria, rules or guidelines should be considered to clarify the allocation of tasks between different authorities with selective competencies, as well as the inclusion of key priorities including ~~prioritisation~~ of serious international crime cases. The strategy should thus be supported by sound management within the police, in order to promote a proactive, intelligence-led approach.

- The Member States should implement all EU legislation relating to mutual recognition and judicial cooperation in criminal matters. Moreover, a review of the implementation of the relevant Framework Decisions and application of mutual legal assistance mechanisms should be undertaken by the Member States and relevant EU agencies. Through this, the Member States should identify and tackle obstacles to efficient proactive data exchange with foreign law enforcement authorities, EU agencies and other relevant actors. Spontaneous exchange of information in line with Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime¹, should be further enhanced and the use of 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 EU² should be promoted.

¹ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime; OJ L 332, 17.12.2007, pp. 103-105.

² 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 Union; OJ L 386, 29.12.2006, pp. 89-100.

2. INTRODUCTION

Pursuant to Article 8(5)¹ of the Joint Action of 5 December 1997², establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, this report endeavours to draw conclusions relating to the fifth round of mutual evaluations conducted under the auspices of the Working Party on General Matters including Evaluations (GENVAL), with a view to enabling the Council to take decisions incumbent upon it.

At the meeting of the Multidisciplinary Group on Organised Crime (MDG)³ on 7 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 European Union (EU) legislation and take a wider look at the subject matter⁴, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG⁵.

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. On each mission, three national experts took part in the evaluation. Other experts were also present, from the Commission, OLAF, Eurojust and Europol. The General Secretariat of the Council also took part in the missions with two staff for each evaluation, prepared the process and assisted the experts.

¹ Article 8(5): "At the end of an evaluation exercise, the Council shall take appropriate measures".

² Joint Action 97/827/JHA of December 1997 adopted by the Council on the basis of article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, O.J. L 344, 15.12.1997, pp. 7-9. P. 0007-0009.

³ Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Matters including Evaluations (GENVAL).

⁴ 10540/08 CRIMORG 89.

⁵ 16710/08 CRIMORG 210.

The first evaluation mission was conducted in Romania between 7 and 10 July 2009. The final evaluation mission took place in the Czech Republic between 5 and 9 December 2011. All 27 evaluation missions have resulted in detailed reports on the individual Member States.

The evaluation reports have subsequently been discussed in the Working Party on General Matters, including Evaluations (GENVAL), adopted and de-classified.¹

This document reflects the conclusions and recommendations contained in the previously prepared country specific reports.² Further details can be found in the addendum to the text (for ease of use supplied with a table of contents) and the individual country reports. It has to be noted that, due to the long-lasting character of the evaluation (four years), and the complexity of the issue at hand, the emphasis is put on the general conclusions and recommendations, and this explains why differences between some of the country reports and the current state of play exist.³ Moreover, many initiatives have been taken during the evaluation process which will have an effect on the fight against financial crime and support the effectiveness of financial investigations. At the EU level, such initiatives include the proposal for a European Investigation Order, the Commission communication on corruption, the work being done under the auspices of the Committee on Internal Security (COSI) to expand the use of the administrative approach, and the recent Commission proposal on confiscation.

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

² The country reports were produced in conjunction with the time of visit to the Member States. Much has happened after that, inter alia organisational and legal changes, which is not reflected in the country reports.

³ For instance, as the first country to be evaluated, Romania have sent in updated information following the recommendations in the fifth round as outlined in doc. 9012/12.

GENVAL invites COREPER to forward this report to the Council to take note of its conclusions and recommendations and, in accordance with Article 8(3) of the Joint Action, take such action as it considers appropriate. It should be recalled that the procedure laid down in Article 8(3) envisages that the Council may, if it sees fit, address any recommendations to the Member State concerned, and may invite it to report back to the Council on the progress it has made by a deadline to be set by the Council.

GENVAL further proposes that this report, when taken note of by the Council, should be forwarded to the European Parliament for information.

3. KEY FINDINGS AND GENERAL CONCLUSIONS

3.1. Key findings

The key findings from the report can be summarised as follows:

1. All Member States have built **professional systems** for dealing with financial crime and financial investigations. Often, organisational structures in the Member States of law enforcement and judicial authorities is clear, thus limiting possible conflicts of competences and overlaps. However, in some Member States the competency to fight financial crime appears to be quite fragmented without clear direction. This may lead to overlaps and waste of resources.
2. Many Member States evaluated have undertaken **substantial reforms** aimed at improving their capabilities to conduct financial investigations and fight financial crime. Yet, these reforms often remain limited to the confiscation of proceeds of crime hampering the potential of financial investigations without taking an overall picture of investigation and prosecution.¹
3. Almost all (25 out of 27) ~~A majority of the~~ Member States have **established an Asset Recovery Office (ARO)**. There are, however, major differences between the Member States in terms of organisational setup, resources and planned or actual activities.
4. The **Financial Intelligence Units (FIUs)** in the Member States also **vary considerably in their organisational setup, functions and resources**. Many Member States have established administrative FIUs placed under their judicial authorities or even directly under the Ministries.

¹ The revised FATF standards (The FATF Recommendations - International standards on combatting money laundering and the financing of terrorism & proliferation), adopted in February 2012 provides a definition of financial investigations in the interpretative note to recommendation 30. This definition sets the framework in which financial investigation is to be developed. It shows that financial investigations are not to be limited to asset recovery investigations, a subset of financial investigations. The definition states that a financial investigation means "an enquiry into the financial affairs related to a criminal activity, with a view to a) identifying the extent of criminal networks and/or the scale of criminality; b) identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and c) developing evidence which can be used in criminal proceedings."

Others decided to set up operational or police FIUs, placed within their police structures. Yet another, fairly small group of Member States, created some sort of "hybrid" FIUs, mixing police and prosecutor competencies. This diversity may sometimes lead to obstacles in international cooperation.

5. The part of **customs and tax authorities** in the fight against financial crime is **in some Member States relatively small but specialised**. In most cases this is because customs or tax investigations are confined, in many national legal systems, to certain specific criminal offences or to offences which can be linked to, for example, tax fraud. This often reflects a fairly strict internal compartmentalisation as regards the exchange of information, potentially leading to a loss of valuable information.
6. Noticeable exceptions aside, where the police/law enforcement is in charge of the investigation until the case is brought to trial by a prosecutor, more often than not **a prosecutor or an investigative judge** - when such exist - **leads criminal investigations** including financial investigations. Often, prosecution authorities maintain a hierarchical relationship with law enforcement agencies.
7. **Training efforts are continuously developing** within the Member States in the field of financial crime. Many approaches have come to existence, responding to the needs of national priorities. With a few exceptions, several issues are open to improvement to most if not all of the Member States. Training would not only improve expertise in itself. The adherence to similar methods and techniques would also facilitate police and judicial cooperation, paving the way towards a better mutual recognition of evidence, an area where a lot remains to be done.
8. **A criminal policy in its widest sense is present in all Member States**. There is no unison model in place. A specific long-term policy towards financial crimes and financial investigations is at times lacking. Medium-term (annual) action plans of different operational services are in place, but their links to an overall policy plan many times are rather weak. Often, the general approach to financial crime is based on existing legal provisions and principles such as "crime must not pay" illustrating a limited awareness on the financial investigation potential.

9. Most law enforcement and prosecution authorities have appropriate access to relevant databases. In addition To date, six Member States (and Croatia) have **central bank account registries**; another five Member States are currently considering setting up such central bank account registries.
10. **Problems encountered** by the Member States related to financial crime investigations **include**, but are not limited to, a few main topics: 1) **Organisational hindrances** affecting the smooth cooperation between competent authorities, 2) **Limited resources**, 3) **Procedural issues**, including length of judicial proceedings, 4) **Issues related to prioritisation**, firstly, the lack of a clear focus on financial crime, secondly, the lack of focus on investigating them to the end.
11. All Member States have agencies which appear to be adequately resourced to cover their day-to-day workload. However, **units responsible for financial investigations are often understaffed**.
12. In some Member States, financial intelligence information is considered a vital indicator for the initiation of criminal investigations. However, **the term "financial intelligence" is defined in a wide range of different ways throughout the EU**. Sometimes, it solely refers to the use of Suspicious Transaction Reports (STRs), sometimes it refers to intelligence work in its broadest sense of the word. Sometimes, the term is not used at all.
13. With a few exceptions, the **cooperation between the agencies is often clearly regulated in national law or mutual agreements**. Often, formal requirements are complemented by informal arrangements. There are many examples of good cooperation across the board. Some Member States have developed national case management systems which helps them avoid overlaps and duplication. This good practice should be considered across the EU.
14. Positive examples aside, **there are still many difficulties involved in cooperation and the sharing of information**, principally between police and customs services. This is accentuated when adding the international dimension. Shortcomings mainly relate to three issues: 1) National obstacles to international cooperation, 2) Familiarity with and use of EU legislation, and 3) Familiarity with and use of EU agencies.

15. Freezing and confiscation are key components in the fight against financial crime. [---] This is reflected in national legislation of the Member States, EU legislation as well as in bilateral and multilateral international treaties. However, **the available EU tools related to freezing and confiscation are not frequently used.** In some instances, the necessary EU legislation has not been transposed into national law. Certainly the relatively slow process of implementation of the instruments in many Member States partially explains its lack of practical use, but primarily it appears that relevant judicial authorities simply prefer to use long-established mutual legal assistance instruments instead, at times because the new instruments are seen as complicated and not sufficiently comprehensive.
16. In general terms, **a mechanism for informing OLAF about outcomes of criminal cases related to fraud against the financial interests of the Communities,** especially those where OLAF was involved, **needs to be developed.** The role of OLAF staff should also be studied with a view to find a common approach between the Member States. In general, the function of OLAF in providing Commission support in all matters of fraud and corruption against the Communities' financial interests needs to be promoted and explained.

3.2. General conclusions

Transnational organised crime is one of the major challenges jeopardising the creation of an area of freedom, security and justice. Of particular concern is fighting the penetration of the licit economy by serious and organised crime (including terrorism financing). Countering this threat requires swift and wide-ranging action from all law enforcement authorities throughout the EU.

Financial crime covers a wide array of criminal activities such as counterfeiting, corruption and fraud (for instance credit card fraud, mortgage, medical, corporate securities frauds; bribery or embezzlement) money laundering, identity theft and tax evasion. Financial crimes may be carried out by individuals, companies or by organised crime groups. Victims may include individuals, corporations, governments, and entire economies.

The fight against financial crime is therefore a law enforcement objective in its own right. All Member States are affected, to a larger or lesser extent, by financial crime. In addition to that, financial investigation holds a proactive and preventive added value. It is an important tool to detect money laundering, terrorist financing and other serious crimes, as well as to enable the freezing, seizure and confiscation of proceeds of crime. In many cases, financial investigations are necessary to develop evidence against sophisticated, high-level criminals with a view to dismantling transnational and organised crime networks. Financial investigations can also contribute to a jurisdiction's national risk assessment as it provides knowledge on crime patterns, expose gaps in anti-money laundering/combating financing of terrorism compliance and uncover criminal liability of a financial institution or other professions.

Its benefits are obvious in assisting the criminal investigation into the predicate offences and beyond against all serious and organised criminals by:

- Identifying motives, associations and links to persons and places;
- Locating or identifying suspects, witnesses or victims;
- Providing information on a suspect's movements (proactive, covert use of financial information);

- Providing information to address the issue of prolific and priority offenders where no previous method has been successful;
- Tracing persons including missing ones.

Many criminal schemes are becoming increasingly complex. This is also the case in the field of financial crime. Many forms of transnational crime are increasingly interrelated, and financial crimes are often embraced by organised criminal groups as well as skilled individuals. Perpetrators often have sound legal and financial advice, and easily cooperate across borders. Criminal schemes have also become increasingly international, with a growing number of foreign jurisdictions involved. At other times, the schemes are relatively straightforward and easy to run. VAT fraud schemes, boiler room frauds, etc. can be very complex operations, but at the same time very easy to set up and operate. Here, the culprits depend more on the gullibility of the potential victims, but also on business of scale, replacing a few operations with a mass of smaller transactions. In either case, financial crimes are presenting all law enforcement authorities with monumental challenges.

The current financial crisis adds to the strain. Resources have become more scarce, including staff reductions and pay cuts, and motivation could decrease whilst the susceptibility to corruption might increase, and a need to guarantee family income might drive people into financial criminal plots.

It is clear that everyone is well aware of the changes in the fight against organised crime in general and specifically against financial crime. **The Member States attach great importance to fighting financial crime**, and the policy of tackling illegal proceeds, for instance, originates from an awareness that traditional law enforcement measures alone do not reduce the danger emanating from criminal organisations. Moreover, the principle of "crime should not pay" recognises that criminals will suffer from having their ill-gained assets taken from them, and for some of them it might even be a tougher sentence than having to spend a few years in jail.

The need to improve cooperation in the field of financial crime is apparent, for instance through closer collaboration between FIUs, AROs, police and customs authorities, both at the national and the international level. The Member States should study the possibility of permanent cooperation arrangements between all law enforcement authorities (police, customs, border guards, etc.) supporting their working together against financial crime. The Member States should further study the possibility of creating wider multi-disciplinary cooperation arrangements including non-law enforcement agencies such as tax authorities and enforcement agencies. Existing obstacles to such cooperation, such as use of each other's databases, should be removed. Due respect should be given to applicable data protection rules.

Steps should also be taken to further streamline authorities and policies in the Member States, to avoid cooperation impediments and communication errors for the simple reason that counterparts do not know with whom to talk (authorities), or how to address them (policies). Wide-ranging and complementing law enforcement policies towards financial crime and financial investigations are needed, covering all relevant authorities, including prosecution, reflecting relevant priorities agreed at the EU level. Such policies should be reflected in long-term national strategies, as well as at the EU level. To provide for pro-active enforcement measures, the inclusion of a concept of financial intelligence-led policing would be highly beneficial. Moreover, the Member States should implement and proactively use all EU legislation for mutual recognition and judicial cooperation in criminal matters. Conversely, the Commission should take into consideration the experiences of the Member States thus far once deliberating new or complementary legislation in this area. Without a doubt, many best practices exist across the EU, and such practices should form a sound basis for proposals in the future. Whilst Member States positively display a clear will to fight financial crime, in general the broad variety in approaches between the Member States is a matter of concern, providing heterogeneity instead of homogeneity, fragmentation rather than strength.

The multi-agency platforms developed in several Member States to coordinate cooperation between the authorities in the fight against crime **are good examples of how to “institutionalise” cooperation** and ensure that the planning of the work is jointly defined, prioritised and steered. Mixing people in a team with different specialist competences when investigating a complex crime, seems to provide a sound basis for an efficient fight against organised financial crime. The model can easily be extended to the common EU level. However, the joint fight against crime also means joint successes, and a need for joint measurement. In order to assess the success of an integrated approach, a move towards providing common statistical data in the cooperation areas would be important, inter alia ~~not only~~ for law enforcement use and management purposes [---].

When it comes to the fight against financial crime and financial investigations, a few key challenges can be identified. **The first challenge** has to do with case management (including time and resource management) and cooperation between competent authorities, nationally as well as internationally. Inter-agency cooperation and cooperation between administrative and judicial authorities should be enhanced. It is apparent that many important steps have been taken to address this issue across the Member States, but much remain to be done as witnessed in the evaluation of the 27 Member States.

The second challenge is what is viewed as complicated legal rules, both nationally and at the EU level. There is a continued need for improving legal provisions and procedures to enhance effectiveness of prosecutions and investigations. Further approximation of crime definitions (for instance swindling, fraud, VAT fraud, misappropriation, illegitimate obtaining of funds, and corruption) and penalties as well as of some procedural rules (for instance ~~status of witnesses~~, length of replies to letters of request) could also be considered. Work on the European Investigation Order (EIO) should be pursued vigorously as decided in the Stockholm Programme. Due to their specificities and complexity, certain types of crimes such as market manipulation, price inflation

and conflicts of interest would justify the adoption of specific legislative measures at the EU level. A Directive on market abuse and insider trading is currently being negotiated within the framework of a wider financial package to fight unsound market practices.

As noted elsewhere, major challenges for criminal investigations and prosecutions in the fight against financial crime in general include the increasing complexity of investigations, the problem of disparities in the statute of limitations affecting cross-border cooperation, the lack of common definitions of crimes in this area, and different levels of sanctions, the difficulties arising in the use of evidence collected by means of administrative investigations, and difficulties linked to jurisdiction. In part, this is a training and awareness-raising issue. Police officers, prosecutors, judges and others need training to work with financial crime cases, especially cross-border cases, and understand the legal framework at hand. An urgent need exists to provide practitioners with appropriate training in order to increase the number of investigators specialised in this area. However, as noted above, it is also a substantial legal issue which should be addressed at the EU level. If parts of the legal framework are in fact too complicated, steps should be taken to review and amend them.

The third challenge is evidence and the issue of electronic data. The whole issue of computer data - how to analyse it, which methodology to employ, how to store and disseminate data, etc., is a large challenge. Evidence hidden behind thousands of megabyte is a big obstacle to success, and the question is how to find and analyse the data. This relates to availability of databases and analytical software, but also to training and knowledge about how to approach what sometimes may feel like mountains of impenetrable layers of information. It is also an issue about legal requirements and the possibility to obtain such data.

In this context, the role and function of relevant EU agencies should be highlighted, in particular Europol and Eurojust. Both Europol and Eurojust have sophisticated computer systems in place for the analysis of large volumes of financial crime data, and well-trained staff to perform the task. Europol in particular has built more than a decade of experience in analysing criminal intelligence provided by the Member States and disseminating high-quality criminal intelligence reports and expertise back to the Member States. The quality of such analyses depends on the data which is provided. The timely dissemination of relevant and quality data to Europol will promote better analysis results. The same argument should hold true for Eurojust as well.

The fourth challenge is time. Financial investigations often take a long time, and it costs a large amount of resources, in terms of time, manpower and financial means. Many are struggling to strike the right balance between what they can achieve compared to the costs. Sometimes, tough choices have to be made, leaving issues aside. However, with adequate resources available, and appreciation of the time needed, such choices should become less essential. Investigative authorities, including prosecution services, should embrace financial investigations even if they create a significant additional workload. They are likely to lead to new investigation avenues and possibly convictions ~~might not lead to convictions, but~~ and they may lead to assets being confiscated, which is a ~~punishment~~ sanction in itself.

Moreover, prevention is a vital tool in fighting financial crime. The issue seems to be generally overlooked, with policies and resources reactively focusing on the investigation of financial crime. This being said, there are good examples of well-developed financial crime prevention systems in place, including such aspects as alerts on public TV, in newspapers as well as other publications, partnerships with selected private companies – mostly in the university domain – conferences, and presentation material which is at the same time informative and easily accessible.

Prevention is not only a national issue. 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 a Member State. At a general level, the same argument could easily be transferred to the common EU level. Better access to financial data would support this important preventive function.

Broadly speaking, the challenges deal with three intertwined issues: rules, roles and resources. There need to be clear and unambiguous, easily understandable and usable rules, providing for the efficient fight against financial crime, comprising legal frameworks as well as policies, at national and international level. There also need to be clearly defined roles assigned to all relevant parties, nationally as well as internationally, coupled with efficient tools, management systems, coordination and cooperation systems, and purposeful organisational setups. Finally, resources, in terms of time, manpower, management, training, equipment, etc. need to be available to all.

At a more general level, this is about **the need for enhancing a common approach to the fight against financial crime and to financial investigations**; to promote cooperation between all relevant actors, including non-law enforcement agencies, and - fundamentally - to make all relevant agencies and bodies talk to one another. At the end of the day, it is a matter of transforming isolated silos into supporting cylinders of excellence.

These aspects are as relevant to handle at a national level as at the common EU level. The will is apparently there. Many steps have already been taken to enhance efficiency. However, further steps should be taken. Positively filling the rules, roles and resources with even more useful content would bring much needed added value to the fight against financial crime and financial investigations, and further reinforce the European area of freedom, security and justice.

4. RECOMMENDATIONS

As regards financial investigations and the fight against financial crime the expert teams involved in the 27 evaluations have been able to satisfactorily review the systems in the Member States.

Overall, the working principles and legal framework of the systems are robust and functional and the various actors know their roles and responsibilities.

Nevertheless, certain recommendations can still be made, to contribute to the further development of the systems in the Member States. Furthermore, based on the various good and, without doubt, even best practices of the Member States, related recommendations to the EU, its institutions and agencies are also put forward.

4.1. Recommendations to the Member States

4.1.1. *Stepping up financial investigations*

1. Financial investigations should, as far as possible, be carried out in all serious and organised crime cases (which include terrorism) beyond the sole economic and financial crime offences.
2. An overarching, financial crime and financial investigations policy should be drawn up in all Member States, covering all relevant authorities, including prosecution, aimed at speeding up complex and lengthy investigations in the field of financial crime. It should reflect relevant priorities agreed at the EU level and set the basis for proactive investigations. More attention should be paid to the potential added value of international cooperation, especially at EU level.
3. The financial crime and financial investigations policy should be reflected in a long-term national strategy. Whenever possible, a concept of financial intelligence-led policing should be included in the strategy, to allow pro-active enforcement measures on the basis of analysis products. The strategy needs to be combined with a regular review and an evaluation methodology as well as a sound reporting mechanism for the entities involved. In setting up such a strategy, some basic criteria, rules or guidelines should be considered to clarify the allocation of tasks between different authorities with selective competencies, as well as the inclusion of key priorities including prioritisation of serious international crime cases. The strategy should thus be supported by sound management within the police, in order to promote a proactive, intelligence-led approach.

4. The Member States are encouraged to develop a clearly visible process throughout the criminal justice system in order to follow the process of recovery, freezing and confiscation of criminal assets right from the outset of the investigation and collect the appropriate statistics. Here, the Member States are also recommended to review their competencies and capacities to investigate financial crimes, with a view to avoid fragmentation and overlaps and to promote cooperation and synergies. Member States with several police forces are encouraged to create an integrated system allowing all police forces of the country to have access to different databases holding information relevant to financial investigations, at least on a "hit/no hit" basis.
5. As far as possible, asset tracing and seizure should be systematically integrated into the planning of any criminal investigation and their results should be a supplementary performance indicator for the responsible units and officials. Application of confiscation, fines and similar measures provided for by law is a vital indicator of the efficiency of both law enforcement and the judiciary.
6. In order to facilitate final judicial decisions, necessary steps such as financial profiling, search and seizure and confiscation need to be made at the earliest possible stage of the procedure, enabling the investigations to clearly establish the facts of the case. The possibility of a wider use of existing measures such as forfeiture or procedural provisions, for instance, and when applicable, the reduced burden of proof or "reversed burden of proof" regarding the illicit origin of proceeds, should be further examined used more often, while taking due account of fundamental rights and freedoms and fundamental principles of national laws, such as respecting the rights of the defence and the presumption of innocence.
7. The Member States should improve the collection and analysis of statistical data about the investigations carried out by law enforcement agencies and about the crimes, criminals, assets frozen or confiscated and assets actually recovered, and the application of EU legal instruments. In relation to forfeiture of assets this should include not only information about orders for forfeiture but also about the amounts collected as a result. Results achieved, weaknesses of the recovery system and countermeasures undertaken by criminals should be discussed regularly by all entities involved. This would provide an effective management and policy-setting tool.

4.1.2. *Strengthening national cooperation and coordination*

8. The Member States should set up permanent cooperation structures or mechanisms between all separate law enforcement authorities (police, customs, border guards, etc.), including also relevant non-law enforcement authorities, with a view to their acting jointly against financial crimes. Such a multi-agency structure or mechanism should be composed of members of different authorities, offering a multidisciplinary partnership approach in its investigations into the suspected proceeds of criminal conduct.
9. At a strategic level, a coordination mechanism, such as a high-level committee, should be established in order to foster strategic management, cooperation, dialogue and mutual understanding between the ministries, law enforcement and prosecuting authorities involved, identify shortcomings in legislation and practical obstacles relevant for financial investigations.
10. Operational cooperation between police, tax and customs services and units should be further enhanced via mutual access and interoperability of databases. Should it not be possible at national level, tailor-made agreements on data exchange should be promoted. Liaison officers between services should be appointed to facilitate operational cooperation. Temporary exchanges of staff for training purposes should be considered.
11. The Member States should consider introducing centralised databases on both investigations and prosecutions (national case management systems), in order to avoid the risk of overlapping criminal cases and failure to match cases that often have a large geographical and even international scope. Such a system should ideally cover all facets of the investigation/prosecution chain, including information on asset recovery, freezing and confiscation.
12. The inflow of financial intelligence to FIUs needs to be diversified and increased. Awareness of reporting obligations should be raised, inter alia, among non-financial sector professions and entities obliged to cooperate with the FIU.

13. The importance of financial investigations needs to be reflected in the training of investigators, prosecutors and judges. All Member States should establish training curricula with a clear accreditation process for financial crime investigators and analysts and enable and encourage colleagues from other fields to participate in training on financial investigations. As far as possible, training should be conducted jointly, by investigators, ~~not only with~~ prosecutors ~~but also with~~ and the administrative bodies that have a role to play in the relevant area. Training on financial investigations needs to be directed to a larger extent to senior management of the relevant authorities.

14. The Member States are encouraged to review and redevelop their personnel management policies, and to provide financial and other incentives (such as training), in order to strengthen existing units, foster inflow and promotion of individuals having particular experience or knowledge, and motivate investigators and prosecutors not only to stay in their positions but also acquire additional knowledge related to financial investigations.

4.1.3. *Introducing more solid legislation*

15. The Member States should implement all EU legislation for mutual recognition and judicial cooperation in criminal matters. Moreover, a review of the implementation of the relevant Framework Decisions and application of mutual legal assistance mechanisms should be undertaken by the Member States and relevant EU agencies. Through this, the Member States should identify and tackle obstacles to efficient proactive data exchange with foreign law enforcement authorities, EU agencies and other relevant actors. Spontaneous exchange of information in line with Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, should be further enhanced and the use of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the EU should be promoted.

16. The Member States are invited to consider the setting up of central registers of bank accounts, or alternative efficient mechanisms. ~~A centralised register of bank accounts should be set up in all Member States,~~ in order to provide the relevant investigating authorities with access to necessary data, especially to allow speedy identification of bank accounts available to a person under investigation.

17. When available, and subject to national rules, civil procedures should also be considered in addition to a supplement actions undertaken in the framework of the penal law. In addition, the Member States should consider the possibility of non-conviction based confiscation of illicit proceeds resulting from criminal offences, and the recognition of foreign non-conviction based confiscation requests, noting that Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders¹ is limited to decisions of a criminal court.

¹ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders; OJ L 328, 24.11.2006, pp. 59-78.

4.1.4. *Strengthening international cooperation and coordination*

18. Member States are recommended to strengthen their efforts in the field of international judicial cooperation, in particular, for those that have not yet done so, by ratifying the 2000 MLA Convention and its protocol.
19. Awareness of existing EU legal tools, cooperation mechanisms and bodies, such as Europol, Eurojust, the European Judicial Network (EJN) and OLAF, needs to be increased among practitioners, and cooperation within the framework of Europol, Eurojust, the EJN and OLAF should be enhanced. Their capabilities and potential added value for investigations need to be promoted and explained to practitioners, especially law enforcement officers and prosecutors.
20. The Member States are recommended to make wider use of Joint Investigation Teams (JITs) for financial crime investigations and invite OLAF as well as Europol and Eurojust to participate in JITs for cases related to the financial interests of the EU.
21. Member States are recommended to consolidate knowledge and enhance training to law enforcement officers about the use of the ARO network – to promote efficient cooperation and information sharing. Enhanced training would make people more aware of and therefore more active users of this channel in the area of targeting proceeds of crime.
22. The Member States are further recommended to strengthen their efforts to inform about the ARO in general and, when possible, pro-actively and exclusively use this channel in the fight against financial crime as regards asset recovery. Furthermore, the Member States should increase the capacity of their respective financial investigation services, notably the AROs, and encourage the participation of asset recovery officers in investigations of financial crime. This should lead to a stronger orientation of the investigation process into asset recovery.
23. Sound management of seized goods, including their conversion into cash, needs to be promoted and applied more extensively. The setting up of dedicated Asset Management Offices should be considered.

4.2. Recommendations to the European Union, its institutions and agencies

4.2.1. Promoting international cooperation

1. To better fight organised crime at EU level, [---] the Member States should ensure compliance with the Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime¹. The Commission is invited to present its evaluation report as provided for in Article 10 of the Framework Decision and explore possibilities of improvements in this field.
- ~~2. The European Commission is invited to conduct an evaluation of the current instruments in this field, especially as regards the Framework Decision 2003/577/JHA in light of the current state of the negotiations on the draft Directive on the European investigation order as well as the Commission's proposal for a Directive on the freezing and confiscation of proceeds of crime in the EU.~~
3. The Union should [---] further consider various methods of confiscation, such as extended powers of confiscation, third-party confiscation and non-conviction based confiscation, and related appropriate safeguards, with a view to facilitating international cooperation between the Member States. In this perspective, priority should be given to the negotiation of the Commission's proposal for a Directive in the freezing and confiscation of proceeds of crime in the EU.
4. The Union should continue its efforts to explore ways to strengthen the mutual recognition of freezing and confiscation orders, whilst taking full account of fundamental rights. Based on identified shortcomings of current practice of mutual recognition of freezing and confiscation orders, the Union should finalise the on-going negotiations on the draft Directive on the European investigation order.

¹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 342, 11.11.2008, pp. 42-45.

5. European agencies and bodies, namely Europol, Eurojust, the European Judicial Network (EJN) and OLAF, should promote and explain their potential added value for investigation and prosecution, including the role of JITs. Their analytical capabilities, information and intelligence exchange, available communication channels and means of practical assistance need to be further communicated.
6. The Union should continue to support financially the setting up of JITs through Eurojust.
7. European authorities should promote, via training and guidelines, uniform application of relevant legal tools agreed at the European level, in particular efforts concerning the standardisation and interoperability of financial crime analysis and investigation. This should also involve the use of a common terminology and common indicators for collection of statistical data.

4.2.2. *Inspiring ~~best practices~~ examples to be considered*

8. Certain national solutions in the fight against organised crime and financial crime, which appear to be highly effective, deserve to be presented and discussed at the EU level as ~~good practices~~ inspiring examples of practices in some Member States, including:
 - the Belgian National Security Plan, providing a comprehensive foundation for the development and implementation of a coherent and consistent criminal policy;
 - the Dutch innovative administrative approach to the fight organised crime;
 - the twofold approach in several Member States of the police that combines specialist capacity on the one hand with mainstreaming financial investigations on the other;
 - the structured and well-resourced training programmes in financial investigations in several Member States such as Belgium, Cyprus, the Czech Republic, France, Germany and the United Kingdom;
 - the structure and functions of the Danish Task Force East, the Irish CAB, Lithuania's RAC, the Swedish NIC and similar multidisciplinary agencies;
 - central bank account registers such as the ones in France, Germany, Italy, Portugal, Romania and Slovenia;

- the "hybrid" functions of FIUs in several Member States, combining administrative and law enforcement functions;
 - the Czech central case management system ETR which enables also the collection of statistical data resulting from criminal investigations;
 - the efficient and strategy-driven work of certain AROs, inter alia those in Germany and Poland;
 - examples of investigative guidelines such as the Danish Investigation Model and the Finnish investigative plan;
 - the risk-based analysis and profiling applied by customs in countries such as Denmark, Estonia, Finland, the Netherlands and Slovenia;
 - the setup and functioning of the Enforcement Agency in Finland and Sweden;
 - non-conviction-based confiscation as employed in Bulgaria, Ireland and the United Kingdom.
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5. ANNEX: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

| ACRONYM ABBREVIATION TERM | ACRONYM IN THE ORIGINAL LANGUAGE | ENGLISH TRANSLATION/EXPLANATION |
|--|--|--|
| AMO | -/- | Asset Management Office |
| ACB | -/- | Anti-Corruption Bureau (ACB) |
| AMU | -/- | Asset Management Unit |
| ACPO | -/- | Association of Chief Police Officers |
| ARO | -/- | Asset Recovery Office |
| AWF | -/- | Europol's Analysis Work Files |
| AWF MTIC | -/- | Europol's Analysis Work Files (Missing Trader Intra Community Fraud) |
| AWF Sustrans | -/- | Europol's Analysis Work Files (Suspicious financial transactions) |
| BKA | Bundeskriminalamt | Federal Investigation Bureau |
| BOOM | Bureau Ontnemingswetgeving Openbaar Ministerie | The Public Prosecution Service's Criminal Assets Deprivation Bureau |
| CARIN | -/- | Camden Asset Recovery Inter- Agency Network |
| CICO | -/- | Intelligence Center Against Organised Crime |
| CC | -/- | Criminal Code |
| CAB | -/- | Criminal Assets Bureau |
| CID | -/- | |

| | | |
|--------|-------------------------------|--|
| CEPACA | -/- | Commission for the Establishing of Property Acquired through Criminal Activity |
| DCIAP | -/- | Central Department for Criminal Investigation and Prosecution |
| CAB | -/- | Criminal Assets Bureau |
| CEPOL | -/- | European Police College |
| CPB | -/- | Criminal Police Bureau |
| CTIF | -/- | Belgian Financial Intelligence Processing Unit |
| DJF | -/- | Economic and Financial Crime Directorate |
| DLAF | -/- | Fight against Fraud Department |
| DNA | Direzione Nazionale Antimafia | Anti-mafia Investigative Directorate |
| EBM | -/- | Economic Crimes Agency |
| ECIM | -/- | European Criminal Intelligence Model |
| ECTS | -/- | European Credit Transfer and Accumulation System |
| DGDDI | -/- | Directorate-General for Customs and Excise |
| COSI | -/- | Standing Committee on Operational coop. on Internal Security |
| ETR | -/- | Electronic Case Management System. |
| ETS | -/- | European Training Scheme |

| | | |
|--------|--|---|
| EU | -/- | European Union |
| FATF | -/- | Financial Action Task Force |
| FCIS | -/- | Financial Crime Investigation Service |
| FIOD | -/- | Fiscal information and Investigation Service-Economic |
| FIPO | -/- | Financial police |
| EPS | -/- | Economic Police Service |
| JITs | -/- | Joint Investigation Teams |
| HMRC | -/- | HM Revenue and Customs |
| FIU | -/- | Financial Intelligence Unit |
| GENVAL | -/- | Working Party on General Affairs, including Evaluations |
| MDG | -/- | Multidisciplinary Group on Organised Crime |
| LKA | <i>(Landeskriminalamt)</i> | Regional Investigation Bureau |
| MLA | -/- | Mutual Legal Assistance |
| NPIA | -/- | National Policing Improvement Agency |
| PCB | -/- | Police, Customs, Border Guard Co-operation |
| OCSC | -/- | Central Body for Seizure and Confiscation |
| OCRC | -/- | Central Anti-corruption Office |
| MOKAS | <u>Μονάδα Καταπολέμησης Αδικημάτων Συγκάλυψης (ΜΟ.Κ.Α.Σ)</u> | Unit for Combating Money Laundering |

| | | |
|-------|--|--|
| POCA | -/- | Proceeds of Crime Act 2002 |
| OCB | -/- | Organized Crime Bureau |
| OLAF | Office européen de lutte anti-fraude | European Anti-Fraud Office |
| RAC | -/- | Risk Analysis Centre |
| PATJA | -/- | Police Operative Data Management System |
| SIENA | -/- | Europol Secure Information Exchange Network |
| SAR | -/- | Suspicious Activity Report |
| SPJ | -/- | Duchy Police's CID |
| SOCA | -/- | Serious Organised Crime Agency |
| SDOE | <u>Σώμα Δίωξης Οικονομικού Εγκλήματος - Σ.Δ.Ο.Ε.</u> | Financial and Economic Crime Unit |
| SFO | -/- | Serious Fraud Office |
| SCDEA | -/- | Scottish Crime and Drug Enforcement Agency |
| UOKFK | -/- | Unit Combating Corruption and Financial Crimes |
| STR | -/- | Suspicious Transaction Report |
| VAT | -/- | Value Added Tax |