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

**REPORT ON DENMARK**

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## 1. INTRODUCTION

At the meeting of the Multidisciplinary Group on Organised Crime (MDG)<sup>1</sup> on 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluations<sup>2</sup>, 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 matter<sup>3</sup>, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG<sup>4</sup>.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed<sup>5</sup>. 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 ROCTA<sup>6</sup>.

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 citizen<sup>7</sup>.

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

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

<sup>2</sup> 6546/08 CRIMORG 34.

<sup>3</sup> 10540/08 CRIMORG 89.

<sup>4</sup> 16710/08 CRIMORG 210.

<sup>5</sup> 9767/09 JAI 293 ECOFIN 360.

<sup>6</sup> 8301/2/09 REV 3 CRIMORG 54.

<sup>7</sup> 11060/09 JAI 404.

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At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation<sup>1</sup> visits. Denmark was the twenty-third EU Member State to be evaluated during this round of evaluations.

The experts charged with undertaking this evaluation were Cynthia Panayiotou (Cyprus), Maureen McGrath (Ireland) and Rafał Woźniak (Poland). One observer was also present: Carlo van Heuckelom (Europol), together with Anne Cecilie Adserballe and Peter Bröms 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 in Copenhagen between 26 and 29 September 2011, and on Denmark's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.

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<sup>1</sup> 5046/1/09 REV 1 CRIMORG 1.

## 2. NATIONAL SYSTEM AND CRIMINAL POLICY

In Denmark, prosecution, police and courts are all placed under the Ministry of Justice, where you thus will find, directly under the Ministry of Justice, both the National Commissioner of the Police and the Director of Public Prosecution. A key to understanding Danish law enforcement is the fact that prosecutors and police work closely together, throughout Denmark.

The Danish police and prosecution answer to the Minister for Justice who in turn reports to the Danish National Parliament. Under the minister is the National Commissioner of Police and the Director of Public Prosecution with responsibility at national level for police and prosecution matters. At local level the responsibility for both police and prosecution falls under the District Police Commissioner. Denmark is currently divided into 12 such police districts.

With regard to the competent authorities, Denmark has declared that the judicial authorities in Denmark include the courts and the Prosecution Service which, according to the Danish Administration of Justice Act, includes the Ministry of Justice, the Director of Public Prosecutions, the State prosecutors, the Commissioner for the Copenhagen Police and the Commissioners who head up the 12 police districts. The central authority in Denmark is the Ministry of Justice.

### 2.1. Specialized units

#### 2.1.1. *Investigative authorities*

##### 2.1.1.1. The Danish police

There is one police force in Denmark, the Danish Police who have responsibility for all policing in Denmark, The Faeroe Islands and Greenland and with the 12 police districts that cover the country. The force consists of 11,000 police officers and serves a population of approximately 5.5 million people. Altogether, there are approximately 14,000 employees in the police service where important functions are carried out by attorneys, administrative personnel and a series of other occupational groups.

On 1 January 2007, a reform of the Danish police was initiated. It meant that 54 police districts were transformed into the present 12 districts. The objective was to achieve a more modern police service with sustainable police districts that on their own are able to carry out major investigations and provide large-scale emergency and support services.<sup>1</sup> Satisfaction was expressed by the hosts with the reform which has, inter alia, resulted in better cooperation between State Prosecutor for Serious Economic Crime and the police districts. The heads of the divisions in the 12 local police districts, who are dealing with economic crime, the State Prosecutor for Serious Economic Crime and the Director of Public Prosecutions meet regularly in a National Forum on Economic Crime. This has provided the opportunity to develop expertise by sharing experiences. The evaluation team was informed that during the work with the police reform in 2007 there were discussions about splitting the police from the prosecutors. The decision was to keep the current setup, which arguably was both flexible and cheaper. According to the Commissioner of the North Zealand Police, this is a huge advantage. However, it requires high legal and ethical standards, otherwise it cannot work. Thus, the police and the prosecutors do not need to control one another. According to the Commissioner of the North Zealand Police, there is a high level of trust between the police and the prosecutors.

At the headquarters of the Danish National Police in Copenhagen, the chief executive officer of the police service, the National Commissioner, and a number of different departments carry out the administrative tasks that are part of operating the organisation. The National Police is divided into five areas that are staffed with attorneys, police officers and others. The National Police also includes areas known as operative departments engaged in investigation into IT crime, forensic technical investigations, road traffic tasks, and the surveillance of environments involving drugs, bikers, gangs and prostitution as well as international cooperation with the police in other countries. It is also from the National Police that individual police districts can request assistance for various investigations and special duties.<sup>2</sup> Furthermore, the evaluation team was told that the National Police is also responsible for crime prevention, also about financial crime.

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<sup>1</sup> [http://www.politi.dk/NR/ronlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549\\_Politi\\_UK\\_web\\_72.pdf](http://www.politi.dk/NR/ronlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549_Politi_UK_web_72.pdf).

<sup>2</sup> [http://www.politi.dk/NR/ronlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549\\_Politi\\_UK\\_web\\_72.pdf](http://www.politi.dk/NR/ronlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549_Politi_UK_web_72.pdf).



The National Police draws up the general framework for the entire police service. The National Commissioner meets regularly with the 12 Commissioners, who are the chief executive officers of the 12 police districts in the country, together with the Director of Public Prosecutions. The structure of the 12 police districts in Denmark is practically identical. The Commissioner heads the organisation of the police district, followed by the Deputy Commissioner, a Senior Chief Prosecutor and an Assistant Commissioner. Below the Assistant Commissioner, three line managers, Chief Superintendents, are in charge of tactical support, the local police and specialised investigation.<sup>1</sup> Regional divisions dedicated solely to the prosecution of economic crime have been established in each of the 12 local police districts. These divisions are staffed with specialized prosecutors who – in close cooperation with the investigators – are dealing with economic criminal cases on a daily basis.

The 12 police districts, the National Police and the prosecution service employ approximately 550 attorneys: Chief Police Prosecutors, Deputy Chief Police Prosecutors or Assistant Police Prosecutors. In the police districts, their head is naturally the Commissioner. In their daily work, however, their immediate head is the Senior Chief Prosecutor who ranks below the Commissioner. The attorneys work closely together with the police officers that investigate criminal offences. In the last resort, it is the attorneys who will have to assess whether a case is likely to stand up in court. If that is so, the attorneys are to appear in a District Court. The Director of Public Prosecutions heads the prosecution service, and when a case is to be conducted before the High Court, which is the tier above the District Court, it is the Regional State Prosecutors who will conduct the case. It is the Director of Public Prosecutions who conducts proceedings in criminal cases before the Supreme Court, which is the highest tier of the Danish legal system.<sup>2</sup>

The 12 Commissioners heading the police districts are "double-hatted", locally being responsible for both police and prosecution.<sup>3</sup> They are temporarily employed on 6-year contracts.

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<sup>1</sup> [http://www.politi.dk/NR/ronlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549\\_Politi\\_UK\\_web\\_72.pdf](http://www.politi.dk/NR/ronlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549_Politi_UK_web_72.pdf).

<sup>2</sup> [http://www.politi.dk/NR/ronlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549\\_Politi\\_UK\\_web\\_72.pdf](http://www.politi.dk/NR/ronlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549_Politi_UK_web_72.pdf).

<sup>3</sup> In Denmark both Police and Prosecution falls under the auspices of the Minister of Justice. Under the minister is the National Commissioner of Police and the Director of Public Prosecution being responsible for respectively police and prosecution matters. Locally, the responsibility for both Police and Prosecution falls under the district Police Commissioner.

The Commissioner also has to follow an annual contract stating goals to be met. In a transparent fashion, the contracts can be found on the internet. There are set goals about how many cases should be run and completed. The Commissioner of the North Zealand police, for instance, has to increase the number of charges and convictions and reduce the number of reportings. This is stipulated in his contract. He believes they could do more with more resources.

#### 2.1.1.2. Task Force East

To enhance their efforts in tackling organised crime gangs, i.e. drug gangs, motorcycle gangs etc. the Danish authorities have set up Task Force East a specialised intelligence led unit to concentrate on economic crimes committed by the criminal groups targeting the assets and finances of the various individuals. Task Force East is a special task force covering 5 police districts including the Zealand Police District, it is a unit targeting bikers and gangs by proactive forward looking investigations and optimising national and local intelligence. Task Force East is a fairly new unit, and small in the overall system. It is not a key component in the legal system. However, because of its novel approach, it merits a longer description.

As stated during the evaluation visit, multi-criminality cases, for instance drugs and money, have been an Achilles heel for many years. Task Force East is there to address such problems. Task Force East focuses especially on gangs and biker crime. Their criminality includes economic crime, for instance fraud and money laundering. Task Force East was set up as a result of problems from 2008-2009 linked to shootings in the streets of Copenhagen between outlaw motorcycle gangs and street gangs. Task Force East works with proactive, forward looking investigations into the gangs of Copenhagen and the wider Zealand region. There are some 13-14 street gangs together with Hells Angels and other outlaw motorcycle gangs. The work started with a focus on violence, but soon the economic dimension was added. Task Force East is about serious organised crime with particular focus on the financial aspect of organised crime.

Partners in the task force include, *inter alia*, the Danish Tax and Customs Administration, the State Prosecutor for Serious Economic Crime, the police and prosecutors. There are 85 employees, roughly half of which work in the investigations.

The evaluation team was informed that Task Force East can target companies involved in criminal activities, such as small companies owned by members of the gangs, for instance cleaning services or personnel hiring companies. They have very good cooperation with the banks and can monitor accounts in real time. Information from the banks is channelled via the money laundering secretariat at the State Prosecutor for Serious Economic Crime to Task Force East. Task Force East can put surveillance on suspects, looking at the chain between the mules and the higher level criminals.

Task Force East is experienced in provisional seizure of property and they strive to achieve this from the beginning, trying to recover all the assets.

Task Force East has a focus on Zealand, so there is yet no cooperation with AWF Monitor. Unfortunately, this means they do not take advantage of their opportunities, but also that they do not provide details of cases which could be useful to find relationships, *inter alia* regarding Hells Angels and its international operations. However, Task Force East is part of a JIT with Sweden and Germany; initially about cloned cars but now about drugs.

Task Force East tries to bring out intelligence from the investigations to be used by others. They have a lot of intelligence, and claim to know much about what is going on both nationally and internationally. The intelligence is handed over to the National Investigation Centre.<sup>1</sup> Considering the proactive approach of Task Force East, it is not clear how this is done when an investigation is ongoing.

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<sup>1</sup> On 23 February 2012, Denmark provided additional information on this issue. According to this, the role of the National Investigation Centre is to coordinate the united effort of the Danish police force in the field of organized crime in collaboration with national and international affiliates. The task of the National Investigation Centre is to observe, collect, validate, systematize and analyze information as well as it is to communicate relevant information to the local police districts in order to assist them in preventing and investigating organized crime and organized criminals. Intelligence gathered by Task Force East during investigations is registered by Task Force East in a database which contains information on the contents of a case and specific investigation measures undertaken. Furthermore, this intelligence is handed over to the National Investigation Centre for monitoring and analyzing in order to form a national overview of the gang and motorcycle club environments.

The evaluation team was told that Task Force East is deemed as being a very useful approach.<sup>1</sup> They currently run 55 ongoing cases, and 206 gang-related persons are remanded in custody as a result of work in 2010 and 2011.<sup>2</sup> This unit would appear to be successful to date in its endeavours judging by statistics provided for 2010 / 2011.

Task Force East has a common investigation database. However, there is no direct access to the cooperating agencies' databases.

2.1.1.3. The State Prosecutor for Serious Economic Crime (*Statsadvokaten for Særlig Økonomisk Kriminalitet*)

The State Prosecutor for Serious Economic Crime has the power to investigate and prosecute at national level (throughout the country) the most serious and complicated cases of financial crime. This includes embezzlement, fraud, computer fraud, criminal breach of trust, extortion, usury, fraudulent preference, violation of a particularly aggravated nature of the legislation concerned with taxes, customs, excise duty or public subsidies, including subsidies from the European Union's institutions, or violation of commercial and financial laws. The State Prosecutor for Serious Economic Crime also covers (market) securities issues, intellectual property rights infringements and Missing Trader Intra-Community (MTIC) fraud. They are members of AWF Copy. Both the Danish FIU and the Danish ARO are part of the State Prosecutor for Serious Economic Crime.

The regulatory framework for the creation of the serious economic crime unit in Denmark describes the tasks as “dealing with cases of economic crime, where there are reasons to believe, that the crime in question is of a particularly substantive extent, is part of organised crime, is committed by use of specific ways of making business or in other ways is of a particularly qualified nature”.

If there is doubt whether a case falls within the competences and responsibilities of the State Prosecutor for Serious Economic Crime or one of the 12 police districts, the Director of Public Prosecution decides which authority to handle the case. In practice, the Danish authorities claim that this is never a problem and often cases are handled in cooperation with the police districts.

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<sup>1</sup> So successful that a Task Force West is under establishment.

<sup>2</sup> Please note that these numbers which were presented during the evaluation visit reflect the period from December 2009 to the end of September 2011 and not the final results of the years 2010 and 2011.

The State Prosecutor for Serious Economic Crime is in total staffed with 105 employees (25 prosecutors, 55 police Officers and 25 other employees) and is headed by a State Prosecutor. The category “other employees” includes office staff and employees with special knowledge in e.g. financial and accounting matters. Furthermore, a number of tax auditors are stationed at the state prosecutor’s office and are supporting the investigations. External competencies such as services provided by private accountants are in-sourced when necessary.

The main characteristic that differentiates the State Prosecutor for Serious Economic Crime from the other police and prosecuting authorities in Denmark is the intimate co-operation between the legal staff (prosecutors) and the police officers during the investigation stage, whereas the prosecutors in less complicated cases are not involved in the investigations to the same extent.

Due to the fact that financial crime in recent years has become increasingly complex and international, thus requiring more resources and higher standards for the quality and management of investigations, the State Prosecutor for Serious Economic Crime has developed a model for investigation ("Investigation Model 2005"). (See 3.4. below)

Divisions dedicated solely to the prosecution of economic crime have been established in each of the 12 local police districts. These divisions are staffed with specialized prosecutors who – in close cooperation with the investigators (police officers) – are dealing with economic criminal cases on a daily basis. The heads of the local divisions dealing with economic crime, the State Prosecutor for Serious Economic Crime and the Director of Public Prosecutions meet regularly in a National Forum on Economic Crime in order to exchange views and experiences and in order to coordinate the fight against financial crime. The meetings in the National Forum on Economic Crime often involve experts from other collaborators, e.g. the tax authorities.<sup>1</sup>

The evaluation team was told that the State Prosecutor for Serious Economic Crime commenced its operations in 1973, working with a few large cases.

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<sup>1</sup> The National Forum on Economic Crime which was established in 2007 by the Director of Public Prosecutions, consists of the heads of the divisions in the 12 local police districts who are dealing with economic crime, the State Prosecutor for Serious Economic Crime and the Director of Public Prosecutions. The overall objective of the National Forum on Economic Crime is to ensure a coordinated effort in the fight against economic crime.

The work load has grown, now some 100 cases are dealt with per year, and the State Prosecutor must work with them in a more rational and efficient manner. The State Prosecutor for Serious Economic Crime is getting more responsibilities, for instance how to cut cases. Large, cross border cases will normally be handled at the State Prosecutor for Serious Economic Crime, not within the police. If they can not handle it, it is transferred here. Police must report on the individual crimes that are within the interest of the State Prosecutor for Serious Economic Crime.

The State Prosecutor for Serious Economic Crime is like the police districts responsible for the execution of foreign requests (rogatory letters). The State Prosecutor for Serious Economic Crime handled 90 requests in 2011. All have been executed, none rejected.

There is ongoing cooperation between the police and prosecutors at national level during the investigation stage of serious economic crime investigations. However the same level of cooperation does not appear to exist at district level. In 2007, the Director of Public Prosecutions established the National Forum on Economic Crime which consists of the heads of the divisions in the local police districts who are dealing with economic crime, the State Prosecutor for Serious Economic Crime, and the Director of Public Prosecutions. The forum meets on a regular basis and the meetings of the forum offer an opportunity to discuss questions of current interest and to exchange views and experiences related to both specific cases and issues of a more general matter.

The State Prosecutor for Serious Economic Crime is mainly reactive in its work, and there is no practice of gathering information for reports that could be used in the future. The evaluation team was under the impression that this information is either lost or forgotten, or, in the best case, difficult to reach.

#### 2.1.1.4. FIU

Denmark implemented the first EU Money Laundering Directive in 1993 and set up the Money Laundering Secretariat the same year as a unit under the State Prosecutor for Serious Economic Crime. The Secretariat is the Danish Financial Intelligence Unit (FIU). The Money Laundering Secretariat is an operationally independent unit within the office of the State Prosecutor for Serious Economic Crime.

This is a hybrid FIU, both police and prosecutorial. It is not administrative as many others. The unit is currently staffed with 3 prosecutors, 7 police officers and 4 administrative staff. Three revenue officers are stationed at the FIU on a part-time basis, working under the instructions of the FIU. The unit is responsible for the receipt, analysis and dissemination of reports of possible money laundering and terrorist financing.

The unit works closely with the ARO, the Danish tax authorities and the supervisory agencies. On assessment suspicious transaction reports (STRs) are disseminated to the police (one of the 12 police districts) for investigation. They are also distributed to the Tax authorities and the Financial Services Authority. The Danish FIU sees the limited resources on the local police level as a challenge with regard to ensuring that information is acted upon. Or, as one of the FIU representatives put it, the challenge is to sell the FIU product to the police.

The revenue officers stationed in the FIU as described above have access to STRs, but they can not transfer this information to their home authority. They check the STR data in their own database, and if the results are interesting, they request a prosecutor in the FIU permission to disseminate the information to the Danish Tax and Customs Administration. The dissemination report will not reveal the original STR as the source.

The number of STRs is comparatively low looking at the absolute numbers and if one compares it to the number of STRs received by other EU Member States of a comparable size and population. In 2010, 359 STRs were referred to prosecutorial bodies out of a total number of 2316 STRs.<sup>1</sup> However, according to the State Prosecutor for Serious Economic Crime, numbers do not tell the whole story. They perceive their STRs as good ones. Some 16% are transferred to other government agencies. However, in some areas the numbers are low, and inexplicably so. For instance, more information arrives from lawyers than accountants. Similarly to the rest of Europe, the State Prosecutor for Serious Economic Crime faces difficulties when it comes to real estate brokers. Unfortunately, the compliance of mandatory reporting bodies with AML regulations is not monitored, let alone enforced. The low amount of STRs by some categories of professions such as accountants, tax consultants and real estate brokers therefore remain a question mark.

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<sup>1</sup> The statistics from the State Prosecutor for Serious Economic Crime for 2010, 2011 and Q1 2012 show a significant increase in the number of STRs. According to the statistics, 1132 STRs were received in the first quarter of 2012, including 573 from banks and 484 from money remitters.

The evaluation team learnt that the State Prosecutor for Serious Economic Crime administers the central intelligence database.<sup>1</sup> It is mostly used by the FIU, and it is not used proactively as in Task Force East. Denmark has extended the obligation to declare extra-communitarian cash transfers to intra-communitarian transfers. In 2011/2012 the FIU introduced and implemented a fully integrated case management system (Go AML). It is expected to be extended with an external web interface for reporting during 2012.

According to the State Prosecutor for Serious Economic Crime, the Danish FIU can share information with other FIUs for intelligence purposes. If a court order is necessary, then an MLA request would be necessary.<sup>2</sup> However, the Danish FIU does not appear proactive in their approach to sharing of financial intelligence. The evaluation team did not see a strategy driven and financial intelligence-led approach. The FIU may postpone a transaction by way of seizure of the account in question. The seizure is subject to subsequent court review if not done on the basis of a court order.

Information sharing between the ARO and the FIU works well. They are physically close, literally door to door.

#### 2.1.1.5. Asset Recovery Office (ARO), and implementation of Council Decision 2007/845/JHA

Asset recovery is a national priority. In 2007 the State Prosecutor for Serious Economic Crime set up the Danish Asset Recovery Office (ARO), which shall trace proceeds from crime with the aim of seizure and confiscation of proceeds. The Asset Recovery Office (ARO) is situated within the State Prosecutor for Serious Economic Crime.

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<sup>1</sup> More precisely, the Money Laundering Secretariat within the SØK administers the financial intelligence (FIU) database containing the information received by the FIU mainly from STRs. The database is accessible only to staff assigned to the FIU.

<sup>2</sup> On 23 February 2012, Denmark provided additional information on this issue. According to this, as the Danish FIU is a hybrid FIU (police/prosecutorial), embedded in the State Prosecutor for Serious Economic Crime, this means that information may be shared or disseminated through different channels according to the nature or origin of the information. The FIU may share information for intelligence purposes with other FIUs within the scope of anti money laundering and counter terrorist financing activities, including information from the FIU database. The FIU does not require the existence of a Memorandum of Understanding with the country in question. In addition, the State Prosecutor for Serious Economic Crime may in general give information (and render other assistance) in accordance with the rules and practice of mutual legal assistance.



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The ARO is assisted by the Financial Intelligence Directorate (FIU) and the State Prosecutor for Serious Economic Crime as well the 12 police districts. They in turn provide assistance from an asset tracing and seizure prospective to the police districts during their investigations. Intelligence is exchanged freely between the ARO, FIU and Tax Authorities in the context of criminal investigations.

The evaluation team heard that difficulties exists with regard to the storage and related costs of seized property. They seize all types of property except animals. There is no specialised unit to deal with the sale or disposal of seized property (the proceeds of crime). This is done through the prosecutor's office who are not trained or resourced in this regard. The consequence is that property seized may continue to remain in storage indefinitely thus depreciating in value.

The Asset Recovery Group investigates the money flow in cases concerning complicated economic crime and assists in the financial investigation in cases handled by the police districts concerning e.g. trafficking in women, illicit labour, procuring, smuggling of people, smuggling of weapons and drug crimes. The ARO does not cover cases other than those related to criminal proceedings.

As mentioned, the Asset Recovery Group assists the State Prosecutor for Serious Economic Crime as well as the police districts in tracing the proceeds of crime. This may relate both to pending cases, where assets are secured until a later judgment has determined the economic claims in the case, and to cases where the sentence involves confiscation but no previous information has been provided nor sufficient assets found to cover the claims in the case, e.g. because the person convicted has hidden the assets. Reports on money laundering have also proven to be of value in this context and contribute to the Asset Recovery Group's work by ensuring to the greatest extent possible that profitable crime 'does not pay'.

The ARO is a multidisciplinary unit with 5 permanent staff members including 1 prosecutor, 3 police officers and 1 asset manager.<sup>1</sup> In addition, the ARO has 1 contact at the tax authorities. The ARO leads 30 cases per year. With limited resources, they have to choose between cases.

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<sup>1</sup> The composition of the staff has changed since the evaluation visit. The ARO is now staffed with 1 prosecutor and 4 police officers.

The ARO has direct access to the databases regarding real estate, companies, vehicles and boats. This information can be shared with another ARO. Normally, the Danish ARO responds within 48 hours to a request.

The Asset Recovery Group has access to SIENA. It cooperates with other AROs in the Member States, and the CARIN (Camden Asset Recovery Inter-Agency Network) contact point is placed within the unit. In relation to international letters of request (and problems), it is advised in the investigation model (see further 3.4 below) to contact the Danish liaison officers in Eurojust, Europol and EJM (apart from Interpol and the State Prosecutor). In other words, the use of informal contacts is promoted.

The ARO supports the case work at regional level "all the time". The ARO carries out activities for local police units in about 50 cases a year as they do not have resources to do more. According to the North Zealand Police, they need and have a very close relationship with the Danish Tax and Customs Administration and the Regional State Prosecutors and the ARO, and also the national computer centre. During the visit to Denmark, the evaluation team learnt that, normally, the ARO takes part in the initial house search to go for the assets.

The question is still unresolved whether the ARO should also have the tasks of an asset management office (AMO). Whichever answer is reached, it is advisable, even within a unified entity, to clearly separate the two tasks. The ARO cannot sell assets before a conviction as there must be a court decision. Assets may be sold with the consent from the suspect. With such a permission, the ARO would organise auctions and sell the assets. This does not happen frequently. In fact, it has only happened once in the last four years. In such cases, the money is transmitted to a special low-interest account at the Danish National Police. The ARO cannot use enforced property for social purposes or to purchase equipment for law enforcement.

#### 2.1.1.6. The Danish Tax and Customs Administration's Anti-Fraud Unit (*ØKOKRIM*)

The Danish tax authorities (the Danish Tax and Customs Administration) have a national Anti-Fraud Unit (called *ØKOKRIM*) which is organised across five regions and has a total of 200 full-time equivalents.

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Communication and information exchange (good and bad practices) is facilitated via intranet (SharePoint). ØKOKRIM has no judicial authority but cooperates very closely with the police on cases involving financial crime. General cooperation is on a case-by-case basis, but ØKOKRIM and the police also have joint task forces for areas like gang-based crime and human trafficking. ØKOKRIM has stationed a number of full-time equivalents with the police to work on these tasks, and ØKOKRIM also assists the Money Laundering Secretariat, in the work on special, joint tasks related to money laundering.

When working on a case together with the police they can freely share intelligence under the Task Force Model. The Task Force Model provides for the sharing of information obtained by the police in interview with the tax authorities who can then proceed with a tax investigation against the same individual or other individuals connected with him.

The Tax authorities receive on an annual basis a list of persons who deposited money in bank accounts for that year, this information can also be shared with the police in the course of a financial investigation. This system allows for staff at ØKOKRIM to see money transfers into Danish bank accounts.

Thus, in the task force model, ØKOKRIM can still (audit and) tax people. Personnel from the Danish Tax and Customs Administration seconded to the police do not keep their tax powers whilst being there. A task force is not an organisational unit but a cooperation model. If information is collected in an interview in a criminal case within the task force model, ØKOKRIM can use the information for taxation. The information has to be delivered from the police via a prosecutor. There is a delicate balance between enforcement (taxation) and investigations (evidence). This, however, has never been a problem for the courts.

ØKOKRIM has national jurisdiction. The task force model used within the police in large cases is also used by the anti-fraud unit together with the police. When international partners are involved, police regulations rule, so information sharing is done through MLA. ØKOKRIM always tell their international partners if they collect administrative information for judicial purposes (if this is the case). Before they know there is a criminal case, requiring police presence, they can use administrative routes for information collection. When they "know" there is a case, the police takes over.

A central board within the Danish Tax and Customs Administration holds meetings on a regular basis to decide which cases to pursue. The choices are based on, for instance, tax gap, legal possibilities and resource considerations.

### *2.1.2. Prosecuting authorities*

#### 2.1.2.1. The Director of Public Prosecution

On the website of the Danish Prosecution Service, its tasks and organisation are described, in line with Part 10 (sections 95-107) of the Danish Administration of Justice Act.<sup>1</sup>

It is the task of the Prosecution Service in cooperation with the police to prosecute crimes in pursuance of the rules of the Danish Administration of Justice Act. The overall objectives of this task are described in Section 96(2) of the Danish Administration of Justice Act. This provision states that the Prosecution Service shall proceed with every case at the speed permitted by the nature of the case. In this connection the Prosecution Service shall ensure that those liable to punishment are prosecuted and the innocent are not prosecuted (“the principle of objectivity”).

The Prosecution Service is governed by the Minister of Justice who supervises the public prosecutors. The Prosecution Service is composed of the Director of Public Prosecutions, the Regional State Prosecutors, the Police Commissioners, the State Prosecutor for Serious Economic Crime and the State Prosecutor for Special International Crimes.

The Director of Public Prosecutions (Prosecutor General) issues general guidelines etc. to the Prosecution Service, conducts criminal cases before the Supreme Court and, in addition, takes part in hearing cases put before the Criminal Cases Review Commission. The Director of Public Prosecutions is superior to the other prosecutors and supervises their work and the Director of Public Prosecutions processes complaints of decisions made by the prosecutors in the 1st instance.

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<sup>1</sup> <http://www.rigsadvokaten.dk/?id=74>

Six Regional State Prosecutors conduct criminal cases – appeal cases and jury cases – before the high courts and supervise the local Commissioners' handling of criminal cases. Furthermore, the Regional State Prosecutors process complaints against decisions made by the local Commissioners regarding prosecution. Finally, the Regional State Prosecutors deal with cases of compensation with regard to criminal prosecution.<sup>1</sup>

As discussed above, the Public Prosecutor for Serious Economic Crime is – nationwide – responsible for prosecuting major financial crime. The Chief Prosecutor for Serious International Crime is – nationwide – responsible for prosecuting international criminal cases committed abroad including cases concerning genocide, crimes against humanity and war crimes. The local Commissioners act as prosecutors before the city courts (1st instance) and thus – in addition to the management of the police – are responsible for the inquiries and investigations conducted by the police district as well as the operation of the local Prosecution Service.

### *2.1.3. Other authorities involved*

#### *2.1.3.1. Danish FSA (Finanstilsynet)*

The Danish Financial Services Authority (FSA, *Finanstilsynet*) and the Commerce and Companies Agency (CCA) are supervisory bodies, and they control, *inter alia*, banks, money exchange offices, remittance services, etc., together with their own supervisory bodies. The FSA monitors the trading in financial instruments listed on the regulated markets and includes all types of market abuse, insider trading and price manipulation.

The FSA receives reports on suspicious transactions from private investors, listed companies and other supervisory authorities. They report cases where criminality is identified or something illegal is suspected to the police. The team was informed that these reports to the police were increasing year on year and that the supervisory authority cooperate with the police and prosecutors office in criminal matters.

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<sup>1</sup> Until 31 December 2011, they also dealt with complaints against the police. However, as of 1 January 2012, an independent authority which deals with complaints against the police has been established. The authority is independent from both the police and the prosecution service.

As of 1 January 2011 the FSA reorganised its AML/CTF supervisory activities by centralising all AML/CTF supervision of financial institutions under the responsibility of the FSA's Legal Department. AML/CTF supervision is now carried out by AML/CTF experts and the scope of supervision has been enhanced to include all aspects and elements of AML/CTF regulation with a risk-based top-down approach, focussing firstly on risk management, including risk assessment, internal controls, and management reporting, and then on procedures and staff training programmes. All on-site inspections include testing of sample customer files for know-your-customer purposes and sample transactions for monitoring of customers transaction purposes.

The evaluators were informed that four people were dedicated to AML/CFT issues (further resources are allocated to the team on an ad hoc basis) which appear to be very under-resourced based upon the FATF report which states that there are a large number of financial institutions in Denmark.

With regard to AML/CTF compliance the team was informed that regular audits by the FSA are carried out but no statistics were provided to the evaluation team during the visit. The FSA has no power to impose sanctions/fines against money remittance bodies but they have the authority to revoke the licence. However, they have no cases of this. One explanation might be that when a suspect becomes aware that he/she is under investigation he/she steps down and the business continues on. This could possibly explain the low number of STRs. The FSA does not have the ability to impose administrative penalties for AML-related violations.

The FSA has prepared a National Threat Assessment Report (NTAR) inspired by guidance papers from the FATF. The objective of the NTAR was to provide the foundation for a risk-based approach to the supervision of financial institutions in Denmark. Based on the NTAR the FSA has carried out a comprehensive ML/TF rating of each of the financial institutions under supervision. This ML/TF rating has formed the basis of the FSA's AML/CTF supervision programme for 2012. The current 2012 AML/CTF risk-based inspection programme includes 20 on-site inspections of financial institutions, including some of the largest financial institutions in Denmark, and comprehensive self assessment schemes covering all regulated investment firms (non-banks) and life and pension insurance companies. Further inspections may be decided based on specific information, for instance from the Danish FIU (the State Prosecutor for Serious Economic Crime) regarding a low level of suspicious transactions reports from specific institutions.

Although the team was provided with statistics concerning cases of criminality referred to the police no statistics were provided in relation to numbers of prosecution and conviction concerning these cases.

The FSA issue investment company and banking licenses. If these companies and banks are involved in criminality, then FSA can revoke their licenses, both companies and legal persons. Normally, the company or the bank disposes of the culprits themselves. A legal change was introduced some years ago, which helps speeding up the process of getting rid of culprits. Instead of arguing the case that they could never work in a position such as CEO ever again, the FSA today says they cannot be the CEO of a particular company.

Articles 70-71 in the financial business act states how companies should conduct. The latest version is from December 2010, and here can be found company guidelines. In the worst case, they can be prosecuted for breaches against it and be jailed for up to several months. According to the FSA non-compliance with these provisions is probably difficult to sanction, and based on its experience the FSA will consider whether to make the wording more rigorous. The FSA has issued executive orders regarding articles 70-71 which are binding. The fact that the FSA can issue binding executive orders is a positive aspect worth highlighting.

Section 347 in financial business act allows the FSA to go to a bank and order information without a court order. This also applies if the company has outsourced services. Its agreements must allow this (e.g. a company in India). If the outsource partner does not allow this insight, then the outsourcing must be stopped by the Danish company. On the question whether the information can be used for judicial purposes (without an MLA), the FSA refers to the State Prosecutor for Serious Economic Crime. The FSA can only ask for such information for the (supervisory) duties of the FSA. They will not ask for information if it is only for passing on to the police; for criminal purposes. It is outside the remit of the FSA.

According to the Danish FSA, sometimes, they will refrain from collecting information if it would disturb a criminal investigation.<sup>1</sup>

#### *2.1.4. Court involvement in the pre-trial phase*

The Courts of Denmark are vested with judicial powers and administrative functions attached thereto, including probate matters, bankruptcy, bailiff's court, land registration and general administration. The Danish Courts are composed of the Supreme Court, the two high courts, the Maritime and Commercial Court, the Land Registration Court, 24 district courts, the courts of the Faroe Islands and Greenland, the Appeals Permission Board, the Special Court of Indictment and Revision and the Danish Judicial Appointments Council.

The courts are administered by the Danish Court Administration. The Danish Court Administration was established as a new independent institution on 1 July 1999. It ensures proper and adequate administration of the courts' and the Appeals Permission Board's funds, staff, buildings etc. The Danish Court Administration is headed by a board of governors and a director. The Danish Court Administration is under the auspices of the Ministry of Justice, but the Minister of Justice has no instructive power and cannot change decisions made by the Danish Court Administration.

As regards possible involvement in the pre-trial phase, the courts are only involved if the police want to use investigative measures which require a court decision, for example a telephone tap or search, or if a suspect is detained in custody.

## **2.2. Training**

In order to ensure that Danish police has the required knowledge and qualifications to conduct investigation of financial crime, including cross-border financial crime, this is an integrated part of the basic training programme for Danish police officers at the Police College.

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<sup>1</sup> According to the Money Laundering Act, the FSA has only powers to issue administrative orders (injunctions), but no enforcement powers to carry out criminal investigations. Hence, provided criminal investigations have been initiated by enforcement authorities against a financial institution for possible violation of the AML/CTF requirements the FSA will be more reluctant in carrying out its own inspections targeting the same issues.



In the three-year basic police training programme, all students currently have 112 criminal law classes of which financial crime constitute a significant part. In addition to the basic police training programme, the police conduct a number of special courses specifically aimed at financial crime investigation.

Following the website of the Danish police, the Police College offers in-house training in practically all subjects of relevance to police officers. The police service is making increasing use of the educational system of civil society, where police managers and employees can attend, for example, project management, IT, and HR educational programmes.<sup>1</sup>

The State Prosecutor for Serious Economic Crime gives training (2 week programme) to prosecutors and police in the 12 districts; however, not on a systematic basis. All employees at the State Prosecutor for Serious Economic Crime receive special training and they give training in investigating cases about financial crimes to prosecutors and police officers in the police districts and to other government employees, e.g. tax officers.

As stated during the evaluation visit, the State Prosecutor for Serious Economic Crime prefers recruiting experienced personnel, persons with training beyond basic police training. They want to be, as it were, the last link in the chain, getting the most experienced staff. No special requirements have been established. They have no formal accreditation procedure.

Everyone at the anti-fraud unit (ØKOKRIM) is a tax auditor before starting to work there. They want everyone to go through most of the training blocks which are available to personnel at the Danish Tax and Customs Administration. However, although training is promoted, it is not obligatory. Training provided by the tax authorities is continually upgraded, they have produced a training manual and road shows are planned for the future.

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<sup>1</sup> [http://www.politi.dk/NR/rdonlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549\\_Politi\\_UK\\_web\\_72.pdf](http://www.politi.dk/NR/rdonlyres/AD8222F3-4FE6-40F2-8FBC-E42AD9C1D285/0/260549_Politi_UK_web_72.pdf).

On 23 February 2012, the expert team was informed that the Danish Court Administration (DCA) is responsible for the training of all the court staff in Denmark – also the training of judges. DCA administers approximately 200 courses per year and approximately 120 of these are specifically oriented towards judges. Besides these courses, DCA also promotes various international courses and seminars in EU law arranged by EJTN, ERA and EIPA.

With regard to financial crime and financial investigations, there is no specific training as of yet, but DCA has in earlier years arranged a seminar concerning criminal tax law. Moreover, DCA arranges annual criminal law seminars where cases of financial crime will be discussed whenever cases arise. DCA is also considering launching a training session concerning the topic in 2013.

### **2.3.Criminal policy**

The evaluation team was told that Denmark has no national security strategy in place. Instead, police work is governed through the policing strategy.

By Action Plan 2007-2010 of the Danish Police and Prosecution, the Danish Parliament stated that an asset recovery group should be established for the purposes of facilitating the asset tracing and the identification of the proceeds of crime.

On that basis, the State Prosecutor for Serious Economic Crime in 2007 set up an interdisciplinary unit which shall trace proceeds from crime with the aim of confiscation of proceeds. The Asset Recovery Group is a specialized unit solely dedicated to the tracing and identification of the proceeds of crime, both during the investigation and after the final judgment. There is an independent objective in place to uncover criminal proceeds or, if relevant, other objects of confiscation (asset confiscation).

Thus, the tracing of crime proceeds is an important element of criminal investigation which is given high priority.

Moreover, in the spring of 2009, the Ministry of Justice presented an overall plan for the work to prevent and combat crimes committed by gangs and outlaw motorcycle clubs. This plan calls for increased use of what they call the 'Al Capone' method to "go for the money" with a view to weakening the influx of capital to the gang and outlaw motorcycle club environments. The police and the Danish Tax and Customs Administration have thus been cooperating for a number of years on targeting members of gangs and outlaw motorcycle clubs in terms of their financial proceeds obtained through illegal activities.

Using the Al Capone method, the police identify persons with ties to gangs and outlaw motorcycle clubs and then the Danish Tax and Customs Administration systematically reviews their financial and tax affairs, including any enterprises involved. In addition, the Danish Tax and Customs Administration carries out controls of the trading partners of the identified persons in order to target the influx of capital to gangs and outlaw motorcycle clubs. This cooperation also includes forfeiture of assets to cover public-law claims.

As a part of this cooperation, the Danish Tax and Customs Administration has posted an employee with the National Police and two employees with the Zealand police districts' special task force on crime committed by gangs and outlaw motorcycle clubs, Task Force East.

As part of the implementation of the Danish Budget, which constitutes the economic basis for the national police effort, the police and the prosecution service make a strategy. The current strategy concerns the period 2011-2015 and is an agreement made between the National Commissioner of the Police and the Director of Public Prosecutions. The strategy provides some goals for the parties to work towards, as well as it increases which areas that should be given a certain priority in order to reach the goals. The current strategy states three priority areas: prevention, control of crimes that are close to the citizens and control of difficult and organised crime.

## 2.4. Conclusions

- In Denmark, prosecution, police and courts are all placed under the Ministry of Justice, where you thus will find, directly under the Ministry of Justice, both the National Commissioner of the Police and the Director of Public Prosecution. A key to understanding Danish law enforcement is the fact that prosecutors and police work closely together, throughout Denmark. This helps avoiding problems that may occur in other countries.
- There is only one police force in Denmark. This helps to avoid unproductive conflicts of competence and competition between services and it improves coordination of activities. At the same time the command and control system is much simpler, both when it comes to performing daily activities and the implementation of national policies.
- The heads of the local divisions dealing with economic crime, the State Prosecutor for Serious Economic Crime and the Director of Public Prosecutions meet regularly in a National Forum on Economic Crime in order to exchange views and experiences and to coordinate the fight against financial crime. The meetings in the National Forum on Economic Crime often involve experts from other collaborators, e.g. the tax authorities.
- There is no structured system for measuring performance at the State Prosecutor for Serious Economic Crime, but the State Prosecutor for Serious Economic Crime states that they are working on it. Such a system does however exist within the police ("Police result evaluation system for the police"). The figures that were communicated by the North Zealand police commissioner were primarily crime statistics and did not allow any conclusions on police performance nor on the impact of their policy.
- Denmark has implemented Council Decision 2007/845/JHA and has set up the national Asset Recovery Office. The ARO has access to all necessary databases and information and it seems to be working effectively. However, the evaluation team learnt that the Danish ARO are unable to process as many cases as they would wish, due to lack of personnel.

- The evaluation team was informed that assets although in the possession of suspected criminals cannot be touched unless they have been charged or convicted. Often, gang leaders will not be directly involved in the criminal act, thus distancing their ill-gotten gains from criminal conduct. This creates a difficulty for the police and ARO with regard to proving the link between the individuals wealth and criminal activity.. Furthermore, should the criminal gang become aware that a police investigation is underway they will avail of the opportunity to dispose of their criminal assets before arrest or conviction.
- The evaluators heard, during a presentation, of the many challenges being encountered by the ARO, for example management and storage of assets seized. Furthermore, there is no forensic accountant attached to the unit but they can be hired on a case by case basis, This entails that a business case (cost benefit analysis) has to be put forward before consideration is given to acquiring them. Understaffing is possibly the greatest challenge with only a total of five staff covering the whole of the country.
- ØKOKRIM handles large cases relating to organised crime. They only have administrative powers. The efficiency of the Danish fiscal service in terms of organisation and function is impressive. They have a long-term programme of action, a precisely defined strategy and a case management system. They also pay a lot of attention to training. They actively participate in multidisciplinary groups, together with prosecutors and the police. They claim this significantly improves the effectiveness of their actions.
- The possibility that the Danish Tax and Customs Administration has access to information on all bank account numbers opened in Denmark over the past year is of particular interest. They also may receive information directly from the bank on a bank account, and this is possible without a court order. They are also informed about the amount of monthly earnings and tax-related issues of all persons employed legally in Denmark. Question marks may be raised, however, when it comes to the exchange of this information with the police and prosecutors.

- The Danish FSA is the supervisory authority of banks and of undertakings and persons that commercially carry out money remittance. The Danish Commerce and Companies Agency is the supervisory authority of undertakings and persons that commercially carry out currency exchange activities. The FSA falls under the Ministry of Business and Growth. They carry out regular audits. However, they have no means to enforce compliance of banks and cannot impose sanctions in case of non-compliance.
- As noted above, a legal change was introduced some years ago, which helps speeding up the process of dealing with offenders. According to this, the FSA says they cannot be the CEO of a particular company, rather than arguing that they could never work in a position such as CEO ever again. Without a doubt, this change enabled a quicker case flow for the FSA. However, there is a risk that the system does not rid the system of culprits but rather only shuffles them around between various CEO positions. The effect of this would be rather limited.
- The Danish police do not have dedicated and well structured training modules on financial investigation, nor is it foreseen in the general curriculum at the in-stream into a police career. There are short term and ad hoc courses which however seem too short to fulfil their purpose. Denmark does not have a formal accreditation system for financial investigators. A formalised accreditation system for financial investigators would allow better monitoring of continued professional improvement efforts throughout the careers of the officials and would enhance the quality of financial investigations in Denmark.
- Specific training trajectories on financial and economic crime for the judiciary was reported not to exist. Apparently one relies primarily on the principle of "on the job training". This is judged as a weakness by the evaluation team.
- In general, training was raised as a challenge, and the question is, according to the State Prosecutor for Serious Economic Crime during the wrap-up session, whether they are specialised enough, or need more specialised training. They suggested that they maybe should

be more specialised, also venting the idea of a computer police academy. The State Prosecutor for Serious Economic Crime does not see the risk that well trained staff leave. Instead, similar to other jurisdictions the Danish authorities have difficulty in recruiting the right people with necessary competences to investigate economic/financial crime as it is perceived by the police to be complex and unattractive work.

- Denmark appears to have adequate legal instruments embedded in their Penal Code and Administration of Justice Act to efficiently cope with financial crime. It should be mentioned that Denmark has a modern legislation which includes extended confiscation and even an *Actio Pauliana in Penalibus* which allows to recover criminal assets with third parties.
- The evaluation team was told that Denmark has no national security strategy in place. Although a nationwide strategic security or policing plan as such does not exist, policy objectives are embedded in managerial contracts with senior police managers for the duration of their mandates. Police work is governed through the policing strategy. The policing strategy allows room of manoeuvre following current trends in crime. The police has to be able to change their orientation, and according to the Ministry of Justice, it is important that the changed orientation comes from the police agencies and not the political level.
- The policing strategy is linked to the political level via a political agreement where general priorities are set, such as a focus on organised crime or trafficking in human beings. Priorities are based on a national threat assessment together with the Nordic OCTA. These priorities are sent to the Ministry of Justice for implementation. The priorities are then broken down step by step in contracts for various levels of the police organisation. There is no separate financial crime strategy in Denmark.
- Overall the Danish authorities have adopted good policies and strategies in the area of policing and appear to continue to enhance their efforts with regard to tackling organised criminal gangs using the powers and resources of the national and regional economic crime units and the tax authorities. There appears to be good cooperation between the State Prosecutor for Serious Economic Crime and the 12 District Units.

- However, it would seem that this is a relatively new diversion and that the main focus is still on prosecutions and convictions for other types of crime and not as much focus given to tackling gangs involved in economic crime and especially financial investigations targeting and seizing the assets of these gangs. For instance, operations targeting organised gangs involved in credit card fraud i.e. card skimming/cloning or phishing attacks.
- As part of the government's strategy in the fight against economic crime the evaluators heard from the Police Commissioner of the North Zealand Police District, who is hired on a six-year contract, that 20% of his investigations must include economic crime investigations. This suggests that economic crime was not satisfactorily targeted before. Although this in itself is a positive step there is the risk that complex economic crimes will go untouched in order for targets to be achieved. However, this also demonstrates the effort by the Danish government in tackling economic crime.
- There is a need for more focus at all levels on the importance of effectively using the available tools on seizure and confiscation to ensure that crime does not pay. The tracing of criminal assets at the initiation of an investigation is of key importance. However, there is an increased awareness within the police and the financial sector to financial crimes, among other things, due to a number of "spectacular" cases with big amounts involved - and where the state only succeeded in finding/recuperating a small amount;
- The legal framework has been improved (in particular from 2007 onwards) through amendments in the Danish Criminal Code (*Straffeloven*) and the Administration of Justice Act (*Retsplejeloven*). The Criminal Code and the Administration of Justice Act were further amended on 1 January 2011 with the aim to, *inter alia*, improve police capability to detect hidden assets. For example, the bill introduces the possibility that the police even after a decision is given in a criminal case can perform searches etc. for seizure of funds to cover confiscation claims, fines, court costs and damages. In addition, the bill entails an explicit authority to conduct secret seizures in conjunction with secret searches.



### 3. INVESTIGATION AND PROSECUTION

#### 3.1. Available information and databases

There are databases for ships (*Skibsregistret* - the Ship Register), companies (*Det Centrale Virksomhedsregister* - the Central Business Register) and real property (*Bygnings- og Boligregistret* - the Buildings and Dwellings Register) managed by agencies under the Ministry of Economic and Business Affairs.

In addition, there is a database for vehicles (*Det Centrale Motorkøretøjsregister* - the Central Register of Vehicles) which is managed by the Danish Tax and Customs Administration.

Ownership rights to real property and motor vehicles are registered in the Land Registry (*Tingbogen*) and the Motor Vehicles Securities Register (*Bilbogen*) which are managed by the Land Registration Court, a part of the Law Courts of Denmark.

There are no databases or registers of bank accounts. Information about an identified person's bank accounts can be obtained via the tax authorities, as all banks are required at each year-end to notify the tax authorities about deposits. The banks do not continually inform the tax authorities, and it is therefore not possible to obtain data regarding accounts opened in the current calendar year.

Information on transactions etc. must be obtained according to court order. There are however informal contacts between the police and the banks. During such informal contacts, it is established if a court order is the route forward.

According to the State Prosecutor for Serious Economic Crime, although no central bank registry exists in Denmark, it has, however, been an expressed wish for years. Now, all requests go via the Bankers Association. They do not have a central database either, but ask all banks within the association. This takes longer time, but the State Prosecutor for Serious Economic Crime still gets

the information. It takes a maximum of two weeks to check, via the courts, the bank account of a unknown person. International requests are dealt with in the same system where a general court order is issued to the Bankers Association, which then gathers the required information from the bank in question. It takes about 3 weeks to obtain information about the owner of the bank account.

A court order takes less than 24 hours. Technically, a search order could be used to ensure compliance from a bank, but it has never been necessary.

The evaluation team was told that ØKOKRIM can get hold of bank information about transfers to other jurisdictions, for instance the Cayman Islands. The banks are obliged to report, and this is governed by special tax laws. This is not limited to individuals, and in a way, this can be seen as a legal "fishing expedition". ØKOKRIM has asked banks about transactions to 50 jurisdictions.

### *3.1.1. Vessels (the Danish Maritime Authority)*

The Ship Register contains all rights and registration information for vessels that have sailed under the Danish flag since 1985. This means that the register contains information which goes back even further than 1985 for vessels that have been active under the Danish flag after 1985. This pertains to a total of approximately 25,000 vessels of which approximately 12,100 are currently active under the Danish flag.

The Ship Register contains information about ownership, charges and other rights, purchase and sales prices, registration, ship register and buyers and sellers of the vessels. The Ship Register roughly corresponds to the Land Registry and the Buildings and Dwellings Register for buildings on land.

No authorities other than the Danish Maritime Authority have access to the Ship Register itself, but the Maritime Authority publishes a copy of the Ship Register on its website and this is updated once daily and searchable by anyone.

*3.1.2. Companies (the Danish Commerce and Companies Agency)*

The Danish Central Business Register (CVR) contains approximately 620,000 active enterprises and approximately 680,000 places of business (production entities). In addition, the register contains information about the fully liable partners and basic data of the enterprises. Basic data include business registration number (CVR no.), production entity number (a unique identification number for each of the enterprise's places of business), name, address, credit information, business sector, number of employees and telecom data.

Statistics Denmark, the Danish Working Environment Authority, the Danish Tax and Customs Administration and the Danish Commerce and Companies Agency all have access to the database and work as suppliers of data to CVR. These authorities thus register basic data about enterprises and supply basic data to the CVR database. CVR supplies data to a number of other public authorities which use the data in their exercise of official authority, including a number of central-government authorities and all regional and local authorities. Like other public authorities, the police and prosecution service can access CVR data. The National Police receive daily updates for all enterprises, places of business and fully liable partners as well as a monthly file with a total extract of all enterprises in CVR.

There is direct access to the database, and all data suppliers have access. In addition, there are two types of indirect access to the CVR database. One on them involves CVR sending data directly to the databases of some of the data suppliers mentioned above. The other type involves CVR supplying files with CVR data and access to a web service obtaining data from CVR.

*3.1.3. Real property*

*3.1.3.1. The Buildings and Dwellings Register (BBR)*

The Buildings and Dwellings Register (BBR) (the Danish Enterprise and Construction Authority) contains national basic data on buildings and dwellings as well as technical installations, etc. It contains an unambiguous registration of all buildings, dwelling and business units as well as technical installations and units, etc.

BBR records information on:

- Identification, year of construction, location, size, technical conditions, layout, installations, energy supply and use for each building.
- Identification, year of construction, size, layout, installations, energy supply and use for each dwelling or business unit.

Data is made available at a national level to public authorities, concessionary companies, persons and enterprises. Information on safety-classified properties, buildings and technical installations, etc. is protected against public availability, however.

The Danish Enterprise and Construction Authority, the local authorities and the Danish Defence Buildings Service (*Forsvarets Bygningstjeneste*) are authorised to have direct access to the entire register. In addition, the concessionary company KOMBIT A/S and the data supplier KMD A/S also have direct access to the register.

### 3.1.3.2. The Land Registry (the Land Registration Court)

Real property rights can be registered in the Land Registry. The Land Registry registers property rights, creditor rights in the form of a charge, execution and easements, etc., and bankruptcies, administration of the estates of deceased persons as well as other public-law recordings in relation to the right of ownership of real property are also recorded.

Anyone can order a copy of the Land Registry records on a specific property (Land Registry Certificate). The Land Registry Certificate shows who owns the property and which easements and mortgages have been registered on the property. It is also possible to order a copy of a registered document (deed, easement or mortgage).

#### 3.1.4. *Motor vehicles*

##### 3.1.4.1. The vehicles database

The vehicles database (called CMR3) (the Danish Tax and Customs Administration) contains data about the vehicle (technical data), its registration in Denmark, the registered owner(s) and user(s) of the vehicle, data needed for the call for periodical vehicle inspection, data about insurance, and data about charged and settled running vehicle duties. The vehicle database contains information about 4,139,948 active vehicles and 2,655,312 de-listed vehicles.

The Courts of Denmark, the Danish Transport Authority, the Danish Veterinary and Food Administration, the Police and the Municipalities have access to the vehicle database.

Access to CRM3 can be done either by direct access in the form of terminal access or indirect access through a File Transfer Protocol (FTP) delivery. In both cases, it requires a contract with the Danish Tax and Customs Administration, who manages the CRM3. Terminal access is via secure IP-addresses, where each user is assigned a personal code.

##### 3.1.4.2. The Motor Vehicles Register (The Land Registration Court)

The Motor Vehicles Securities Register is a national, central register in which creditors can register their rights (retention of title, charge, execution and the death or bankruptcy of the owner) to motor vehicles (cars, motorcycles, caravans, etc.).

Anyone can order a copy of the Motor Vehicles Securities Register records of a specific motor vehicle (Motor Vehicles Securities Register Certificate). The Motor Vehicles Securities Register Certificate shows which rights have been registered on the motor vehicle.

### 3.2. Cooperation at national level

Denmark is a relatively small country which enables informal contacts. According to the Ministry of Justice, "we are very informal here in Denmark, so network building is a main part of our capacity. We do not miss anything in that regard". This comment captures an important aspect of the Danish system: its informality which in itself supports a well-oiled machinery.

The State Prosecutor for Serious Economic Crime has informal meetings with designated entities in compliance and feedback meetings. Some eight banks and two money exchange businesses are the best reporters. There are well over 200 banks in Denmark. Some five of them are major banks, according to the State Prosecutor for Serious Economic Crime. The Danish Bankers Association (*Finansrådet*) covers the banks.

The evaluation team was informed that the State Prosecutor for Serious Economic Crime works a great deal with awareness raising. If they find out something should have been reported, then they start a criminal case. They are currently in the process of indicting a bank.

As stated during the evaluation visit, the Danish Tax and Customs Authority is one of the most important counterparts to the State Prosecutor for Serious Economic Crime. There are no limitations in exchanging data between the two. According to the State Prosecutor for Serious Economic Crime, a few Chinese walls are still in place when it comes to information from STRs, but otherwise it works well. The evaluation team was told that, according to ØKOKRIM, they cannot share intelligence outside meetings with their counterparts, and they cannot work with for instance police data.

The evaluation team learnt that the relationship between the FSA and the banks works well. This goes for all banks, big as well as small. Bigger banks are, according to the FSA, more professional.

Identification of an unknown bank account belonging to a specified person and the identification of the unknown owner of a specified bank account is done via a court decision about disclosure that can be obtained regarding all kind of financial crimes. The court decision obliges the Danish Bankers Association (*Finansrådet*), which is a private organisation, to reveal which of their members who have knowledge about the person or bank account in question. The Danish Bankers Association then forwards the court decision to their members, and the bank concerned replies the Danish Bankers Association that reports back to the investigation authority (Police or State Prosecutor).

The investigating authority then obtains a new court decision concerning the bank in question that is committed to disclose the information mentioned in the court decision. The information covered by the court decision comprises all relevant information, e.g. identification of operations from and to bank accounts in a specified period in the past or in the future and is handed directly from the bank to the investigative authority.

Disclosure orders are governed by the Danish Administration of Justice Act.

According to section 804 of the Administration of Justice Act, a person who is not a suspect may be ordered to show or hand over objects (disclosure) in connection with the investigation of an offence that is subject to public prosecution if there is reason to assume that an object of which that person has the disposal may serve as evidence, should be confiscated or by the offence has been procured from someone who is entitled to claim it back.

If an object is handed over to the police as a consequence of a disclosure order, section 804(2) and section 807D(1) of the Administration of Justice Act stipulate that the dispossession will lapse when the case is concluded by judgment or when prosecution is withdrawn or charges are dropped unless the seized object is confiscated.

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Section 805(1) of the Administration of Justice Act stipulates that disclosure orders may not be issued if the measure is disproportionate to the importance of the case and the loss or drawback which the measure is expected to cause. Moreover, section 805(2) of the Act stipulates that if the purpose of the measure can be achieved with less intrusive measures, including provision of security, it is possible to conclude a written agreement about this with the person at whom the measure is directed.

According to section 806(1) of the Administration of Justice Act, decisions to order disclosure are made upon request by the police. According to section 806(2) of the Act, decisions to order disclosure are made by order of the court. The court order must state the specific circumstances in the case upon the basis of which the court finds the conditions for the measure fulfilled. The court order may be reversed at any time.

If the purpose of the measure would be thwarted in case a court order were to be awaited, the police may make the decision about disclosure under section 806(3) of the Administration of Justice Act. If it is requested by the individual at whom the measure is directed, the police must as soon as possible, and within 24 hours at the latest, submit the case to the court which must decide by an order if the measure may be approved.

According to section 807(2) of the Administration of Justice Act, the police are responsible for ensuring that a request for disclosure is complied with by contacting the person at whom the measure is directed, and the individual must be shown the court order upon request.

The person affected by the court decision must be given the opportunity to make a statement before the court makes a decision about disclosure if the consideration to the solving of the case does not require otherwise.

According to section 804(4) of the Administration of Justice Act, an order for disclosure may not be issued if it would produce information about matters which the individual would be excluded or exempted from testifying about as a witness pursuant to sections 169-172 of the Act.



### 3.3. Cooperation at European level

Denmark has ratified the Protocol to the Convention on Mutual Legal Assistance between EU Member States of the EU established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union which entered into force for Denmark on 5 October 2005. The ratification did not necessitate any changes in Danish law.

Investigative measures carried out in Denmark on the basis of a foreign request are carried out by applying by analogy the relevant provisions set out in the Administration of Justice Act. A foreign request for investigation, including for a disclosure order, can thus be granted if the investigative measure in question would be allowable in connection with a similar national criminal investigation. This entails, for example, that requests from foreign authorities for the implementation of investigative measures requiring the cooperation of the court will only be granted if the act on which the foreign request for assistance is based is punishable under Danish law (the double criminality requirement).

The ARO has no designated role in the execution of a request for information issued by a law enforcement authority in another EU Member State.

In connection with the ratification of Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, Denmark has declared that the judicial authorities in Denmark include the courts and the Prosecution Service which, according to the Danish Administration of Justice Act, includes the Ministry of Justice, the Director of Public Prosecutions, the state prosecutors, the Commissioner for the Copenhagen Police and the commissioners and that the central authority in Denmark is the Ministry of Justice.

Denmark states in the answers to the questionnaire that they have no information about legal and practical problem encountered in practice.

### 3.4. Financial investigation and use of financial intelligence

In Denmark, investigations concerning financial crimes are carried out in the context of normal criminal investigations. Thus, there is no specific legal framework for financial investigations.

In relation to cases pertaining to organised crime, including for example drug-related crimes, the Danish police work closely with the Danish Tax and Customs Administration about the financial affairs of the suspects. This cooperation regularly means that it is possible to raise charges on violation of direct or indirect tax law in addition to the primary offence.

It is possible to continue an investigation into the proceeds of crime or more generally its financial aspects, after the proper criminal investigation has been closed/after the conviction. According to Section 1002 of the Administration of Justice Act, the police may continue an investigation into the proceeds of crime, even after the closure of the proper criminal investigation or the final conviction. Thus, it is possible to carry out a number of coercive measures, including disclosure and search, in a criminal case which has been closed in order to identify hidden assets that may be seized and confiscated.

There are no special legal powers/tools available to investigate the proceeds/financial aspects of criminal activities.

Financial investigations are carried out in the intelligence phase in selected cases only. The analysed financial intelligence information is used as an indicator to initiate a criminal investigation and financial investigation. Financial intelligence from, for example, the national FIU is used in the intelligence phase, primarily as an indicator to initiate an investigation.

The Danish police cooperate with and collect financial intelligence from other authorities in the intelligence phase. There is an established method of cooperation with the tax authorities. With other agencies cooperation is primarily carried out on a case by case basis.

The Danish Police including the State Prosecutor for Serious Economic Crime have employees with special knowledge in accounting matters. If assistance from accountants or other private experts is needed, for instance if accountancy is needed as evidence in court, the service is required on a case by case basis depending on the complexity and size of the case as this arrangement can prove to be very costly.

In general terms, the State Prosecutor for Serious Economic Crime chooses cases when they are international, or if more than two police districts are affected. A definition for the selection of cases is available, but the system is still flexible, to the extent that cases are accepted on a case by case basis, depending on available resources and time, no other criteria are employed. The State Prosecutor for Serious Economic Crime is understaffed. They would look at how far the investigation has gone before accepting the case. If a criminal case has run too long, they normally say no, since assets would usually disappear. If disagreement would arise, it is dealt with by the Director of Public Prosecution. This has never happened. Administrative crime cases cannot be passed on, for instance competition cases.

Financial crime and organised crime are very strong priorities in Denmark. Organised crime is managed outside the State Prosecutor for Serious Economic Crime. There is a common database for the police, the State Prosecutor for Serious Economic Crime and the Director of Public Prosecution. The police has its own databases, the State Prosecutor for Serious Economic Crime is not part of it, but stand alone access is possible. The State Prosecutor for Serious Economic Crime has access to the police case system and criminal records. They can access the police intelligence database at the hit and index level. They have access to the police case system, not their intelligence. Police officers working at the State Prosecutor for Serious Economic Crime have full access to the police databases.

#### *3.4.1. Investigation Model 2005*

The evaluators were informed of the development of an investigation model for the investigation of large cases which acts as a type of case management tool, aptly named "Investigation Model 2005". The 12 police districts are encouraged to use this model in their investigations and find the system

very beneficial. The model focuses on bringing together the various competencies required to conduct a complex and prolonged economic crime investigation at various stages of the investigation and sets out a strategic management system for the running of the investigation.

It serves as a guideline for the investigation of complex economic crimes and is built on experiences that members have acquired over a number of years. The State Prosecutor for Serious Economic Crime opens some 60-70 cases per year, all based on this model.

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

The investigation model prescribes that cases that are complex, voluminous and are expected to take a long time should be dealt with in project form (project-organized investigation) where it is possible to combine personnel competencies, test new working methods etc. The 12 police districts are encouraged to use "Investigation Model 2005" as well. They have also been asked to give their input to the 2005-model this year. The intention is to turn the model into an investigation guide.<sup>1</sup>

The evaluation team was informed that "Investigation Model 2005" only introduced a different approach. It did not necessitate legal changes, for instance when it comes to information sharing. In Denmark, the police and the prosecutors are part of the same organisation (and responsible to the same ministry), so there are no exchange difficulties between them.

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<sup>1</sup> After the evaluation visit, the investigation model has been evaluated and a new investigation guide has been developed and approved. The new investigation guide has been implemented by the State prosecutor for Serious Economic Crime and is available for the police districts.

### 3.5. Cooperation with Europol and Eurojust

#### 3.5.1. Cooperation with Europol

This area was not covered in depth during the evaluation mission apart from the fact that Denmark's experiences in dealing with Europol are positive and they participate in 18 of their 21 analytical data bases. Neither was it covered much in the questionnaire.

On 23 February 2012, Denmark provided additional information on this issue. According to this, the State Prosecutor for Serious Economic Crime participates in different working groups in Europol and provides Europol with both general and more specific information regarding financial crime. In this context, it is expected that Europol analyzes the information received from the Member States. Furthermore, Europol is expected to provide the Member States with general information and briefings regarding new modus operandi of financial crime. Finally, an exchange of information of a more specific nature relating to financial investigation is expected.

Though Denmark is generally very much Europol minded, the contributions and interaction with financial crime projects is slightly below average. There is a lack of pro-activity in systematically contributing to AWF Sustrans. To the extent that this results from a lack of awareness of the benefits which a pan-European repository database on STRs filtered by law enforcement agencies could generate, there is certainly room for improvement.

#### 3.5.2. Cooperation with Eurojust

Danish authorities make frequent use of Eurojust support in cases concerning financial crime. The CMS system at Eurojust shows that since 2005 more than 50 cases have been initiated by Denmark concerning money laundering, swindling and fraud and other crimes reasonably being considered as financial crime. Financial crime cases are thus some of the most typical cases handled by the Danish desk at Eurojust.

The assistance of Eurojust is generally considered to be highly relevant due to the fact that financial crime cases very often include cross border activities by the criminals involved. One Joint Investigation Team (JIT) has been set up between UK and Denmark concerning a corruption case. None of the other JITs with Danish participation have been directed towards financial crime. The number of JITs with Danish participation is growing, but the total number of concluded and ongoing JITs is still limited. Efforts are being made to raise awareness among Danish prosecutors and police officers about the possibilities and advantages of using JITs, inter alia by organising training sessions in local districts. Financial crime cases would be highly relevant for the use of JITs.

Expectations are that Eurojust can facilitate contacts to other EU Member States, organise coordination meetings, if necessary, and that Eurojust can be helpful when direct contacts to relevant authorities fail to work. Due to the present Danish focus on JITs, the role played by Eurojust concerning facilitation and funding of JITs should not be forgotten.

### **3.6. Conclusions**

- In Denmark, there are databases for ships, companies, vehicles, and real estate and according to the reply to the questionnaire, the Danish investigative authorities can freely access those databases.
- There is no centralized bank account registry but the police and/or FIU can obtain information regarding a person's bank account via the tax authorities (the Danish tax authorities, at each year end, receive banking information) or a court order. A bank account registry would significantly benefit financial crime investigations as currently the identification of an unknown bank account belonging to a specified person and the identification of the unknown owner of a specified bank account is done via a court order. The court order obliges the Danish Bankers Association (*Finansrådet*), which is a private organisation, to reveal which of their members have knowledge about the person or bank account in question. The Danish Bankers Association then forwards the court order to their members, and the bank concerned replies the Danish

Bankers Association who in turn reports back to the investigation authority (Police or State Prosecutor). The procedure is quite complex and time consuming. The time needed in order to identify whether a person holds a bank account in Denmark varies between 2, 3 and sometimes even 4 weeks. Furthermore, the Court Disclosure Order is addressed to the Danish Bankers Association, and it is therefore no direct Order against the bank.

- The question remains how the Danish authorities ensure compliance of the banks since there is no direct order against the bank. The answer that “it is too theoretical and has never happened” is not sufficient. It seems that there is a possibility of not being able to reach safe results as the investigative authorities have to rely on (a) the Danish Bankers Association will address the order to all banks, and (b) the banks will reply to the Association, even though there is no direct order against them.
- It is unclear whether the FIU can share this information with a foreign FIU, (for intelligence purposes only) within the police-to-police cooperation system, as contradictory statements were given during the evaluation visit. Since the information is held by another public authority and it is available to law enforcement authorities without the taking of coercive measures, according to the 2006/960/JHA, the evaluation team is of the opinion that they should be able to provide it.
- In Denmark, it seems that there is no sufficient mechanism in place for law enforcement authorities to identify the ultimate beneficial owner behind a company. According to information received, there is no obligation to report beneficial owners to the Commerce and Companies Agency.
- Financial intelligence gathering at the commencement of an investigation does not appear to be regular practice but rather on a case by case basis. The benefits of financial intelligence or indeed any intelligence available to an investigation team at the instigation of a criminal investigation are crucial to the success of the investigation itself especially with regard to asset tracing and seizure/confiscation.

- JITs are not used to any great extent possibly because of the lack of awareness with regard to the advantages of using JITs. However the evaluation team was told that efforts were currently underway to raise awareness through training sessions organised in local districts.
- There is no common system in place in Denmark with regard to proactive and reactive investigations. The districts do it their own way. Furthermore, there is no overall rule in place describing at what stage a financial investigation is started when a criminal case is started. However, for level 1 criminals (250 persons) it happens immediately.<sup>1</sup>
- The North Zealand Police stated that they do not see a difference between organised crime and economic crime. Violent crime is there to protect money. According to them, at the end of many economic cases you will find a criminal gang. However, you often do not find them as the trace often goes cold. This stance is interesting not only for theoretical purposes but also for its practical implications. If nothing else, it opens up for a discussion on the allocation of cases between units specialised in fighting organised crime and those with a focus on financial crime.
- Answering the question about what can be done with the top level criminals who will never get involved in the crimes themselves, the North Zealand Police refers to the Danish Tax and Customs Administration. No other way is feasible. The North Zealand Police can pass on information, and use personal and informal contacts. On the same note, the evaluation team was informed that the Danish Tax and Customs Administration can tax a person for undeclared sources of income ten years back in time. In the gang context, this is done on a regular basis. Some 50% of taxes can be introduced, sometimes more. The level could be as high as 68%, plus penalties on top of this. However, since the undeclared levels of income are usually based on an estimate, courts seldom want to have fines paid out.

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<sup>1</sup> In police terminology, “level 1 criminals” relates to criminals that are involved in organised crime through their association with internationally based organizations such as Hells Angels and Bandidos, that are believed to be actively involved with organized criminal activity. These individuals are subject to systematic monitoring by the Danish National Police in the fight against organised crime.



- The evaluation team was informed that there are few restrictions on the passing of information. As long as there is a good reason it is OK.<sup>1</sup> With international links in a case, the North Zealand Police would send the case to the ARO. Moreover, ØKOKRIM can pass on bank account information to the police. They have to if there are suspicions of a crime. The Danish Tax and Customs Administration gets account status from all banks once a year, also concerning bank accounts for non-residents. ØKOKRIM can ask about a specific account any time during the year without a court order, but no "fishing expedition" allowed. Theoretically, police could go around the need to address courts by asking ØKOKRIM. In reality, according to the anti-fraud unit, this does not happen. They reason that the police knows where the line is drawn, and thus it is their responsibility. The temptation for the police to bypass the courts at the intelligence stage should be rather large, considering the opportunities available to get hold of necessary and relevant information from ØKOKRIM beforehand. There is no way of establishing whether this happens in practice.
- Denmark does not have a database common for all services (police, prosecutors, FSA, Tax and Customs), nor a computer system allowing various services to coordinate their activities against the same persons or entities. Considering the close cooperation between the services, their individual centralised databases and their full digitalisation, such a solution would be possible.

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<sup>1</sup> On 23 February 2012, Denmark provided additional information on this issue. According to this, exchange of data between the State Prosecutor for Serious Economic Crime must comply with the provisions of the Danish Act on Processing of Personal Data (the act implementing Directive 95/46/EC into Danish law) and the Danish Public Administration Act. Processing, including exchange between administrative authorities, of information about individuals (personal data) is governed by the Act on Processing of Personal Data, whereas the exchange of other information between administrative authorities is governed by the Public Administration Act. In general terms, data must be processed in accordance with good practices for the processing of data. According to Section 6(1) of the Act on Processing of Personal Data, personal data may be processed if, inter alia, processing is necessary for the performance of a task carried out in the exercise of official authority vested in the third part to whom the information is disclosed. As a main rule, no processing may take place of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning health or sex life, cf. Section 7(1). Data about criminal offences and serious social problems may be processed on behalf of a public administration if such processing is necessary for the performance of the tasks of the administration, cf. Section 8(1). According to Section 28(2) of the Public Administration Act, information of a confidential nature that is not information about individuals may be disclosed to another public authority, inter alia, provided that it must be assumed that the information will be of material importance for the activity of the authority.

- At the same time, there is lack of a supervisory body which could have a general overview of what is happening in the country and decide who is to handle a particular case in the event of conflict of jurisdiction, or when more than one service is interested in the same natural or legal persons. However, during the evaluation mission, the good cooperation between different services was emphasised, as was the fact that such conflicts are rare in practice.
- The approach of the different services in Denmark is rather reactive, which may hinder them from identifying changing trends of crime and react to them on time. Moreover, a proactive approach would support a broader range of preventive measures. For instance, the State Prosecutor for Serious Economic Crime states that when ØKOKRIM, the Danish FSA, etc. provide them with information, then they start working with the cases. According to the State Prosecutor for Serious Economic Crime, this is one of the reasons why they are more reactive, following the more proactive input from the administrative agencies. Another example can be found in North Zealand, where the police is not proactively searching for new cases. In their view, as told to the evaluation team, the case load is too heavy already. They try to work with proactive investigations, but again, resources are limited. The police must investigate all reported crimes with very few exceptions. 419 fraud cases<sup>1</sup> can be shut down, as they are viewed as being too difficult to investigate.
- The North Zealand Police explained that they can pass cases on to the State Prosecutor for Serious Economic Crime if they are too big or too complicated. But *they* decide if they are taken on. Often, they say no. Not all police officers have the competence to run these complex cases. This is now being discussed at the strategic level.

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<sup>1</sup> 419 fraud, also called Nigerian 419 scams, is a type of advance fee fraud and one of the most common types of confidence frauds in which the victim is defrauded for money. The number "419" refers to the article of the Nigerian Criminal Code dealing with fraud.

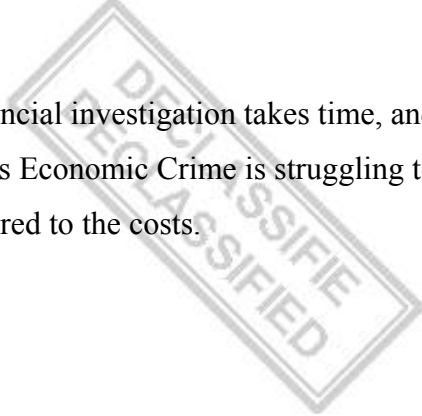
- The North Zealand Police and the other local police districts in Denmark work with what they call *milestone cases*, cases of a certain complexity and size.<sup>1</sup> Today, there are some 50-60 active cases in North Zealand: cases being investigated, at court or at the prosecutors. Here, the prosecutor is involved from the start. Milestone cases are only used for economic crimes, not financial aspects of, for instance, drugs crimes. The cases are followed up on a monthly basis.
- Questions remain about who takes decisions on direction and prioritisation, and on what are such decisions based? How are cases chosen? Are there clear criteria for case selection? How are cases divided between the central level and the districts, and between prosecutors and the police at the local level? When are cases transferred to the State Prosecutor for Serious Economic Crime? For instance, it is not clear why some of the larger cases are not run by the State Prosecutor for Serious Economic Crime and instead they are run at a the local level - even very large and complex cases involving all districts. The answer probably has to do with case load at the central level, but the question remains how cases are chosen and divided between various competent agencies.
- When it comes to financial investigations, the State Prosecutor for Serious Economic Crime identifies a few key challenges during the mission to Denmark. The first challenge has to do with case management (but also time and resources) and when an administrative authority should hand over a case to the police. This is important as it is the basis of the whole Danish enforcement model.
- The second challenge is complicated legal rules. This is why judicial authorities depend so much on the administrative authorities. It is their rules which govern. In part, this is a training issue. Police officers need training to work with economic cases. Today, they get a two week specialised course.

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<sup>1</sup> On 23 February 2012, Denmark provided additional information on this issue. According to this, the milestone model for case management has been developed in cooperation between the State Prosecutor for Serious Economic Crime and the local police districts. The model is intended for complex cases concerning economic crime, including cases concerning offences of a particularly aggravated nature of embezzlement, fraud, computer fraud, criminal breach of trust and fraudulent preference, cases concerning violation of a particularly aggravated nature of the legislation concerned with taxes, customs, excise duty or public subsidies, cases requiring assistance from other police districts, foreign authorities or other national authorities or partners and other cases where the use of case management tools is deemed necessary.

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- 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, 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. According to the State Prosecutor for Serious Economic Crime, "we have much to learn here".
- The fourth and final challenge addressed is time. A financial investigation takes time, and it costs a lot of resources. The State Prosecutor for Serious Economic Crime is struggling to strike the right balance between what they can achieve compared to the costs.



#### 4. FREEZING AND CONFISCATION

##### 4.1. Freezing

###### 4.1.1. *At national level*

Freezing of assets is governed by the Danish Administration of Justice Act. It should be noted that the Administration of Justice Act does not use the term "freeze" (*indefrysning*) but rather the term "seizure" (*beslaglæggelse*) which corresponds to the term "freeze".

Pursuant to section 801 of the Administration of Justice Act, it is possible to carry out seizure to secure evidence, to secure the claim of the state for case costs, confiscation and fines, to secure the victim's claim for restitution or compensation and when a defendant has evaded further prosecution. The Administration of Justice Act covers seizure from suspects (section 802) as well as seizure from non-suspects (section 803).

Under section 802(1) of the Administration of Justice Act, objects that are in the possession of a suspect may be seized if the person in question is reasonably suspected of an offence that is subject to public prosecution and there is reason to assume that the objects may serve as evidence, should be confiscated or have been removed, by the offence, from someone who is entitled to claim them back. Under section 802(2), objects owned by a suspect may be seized if the person in question is reasonably suspected of an offence that is subject to public prosecution and seizure is deemed necessary to secure the state's claim for case costs, confiscation under section 75(1), first sentence, second clause, and second sentence and subsection (3) and section 76A(5) of the Criminal Code, claims for a fine or the victim's claim for compensation in the case. Under section 802(3) of the Administration of Justice Act, seizure of the full extent of a suspects assets or a part thereof, including assets which the suspect might acquire at a later time, may be effected if charges have been raised for an offence which carries a penalty under the law of imprisonment for one year and six months or more and the defendant has evaded further prosecution in the case.

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According to section 803(1) of the Administration of Justice Act, objects that are in the possession of a non-suspect may be seized as part of the investigation of an offence that is subject to public prosecution in case there is reason to assume that the objects may serve as evidence, should be confiscated or have been removed, by an offence, from someone who is entitled to claim them back.

According to section 807D(1) of the Administration of Justice Act, dispossession as a consequence of seizure pursuant to sections 802(1) and 803(1) will lapse no later than when the case is closed by judgment or when prosecution is withdrawn or charges are dropped, unless the seized objects are confiscated. Until then, any person with an interest in it may make a request to the court for full or partial discontinuation of the seizure.

Section 805(1) of the Administration of Justice Act stipulates that disclosure may not be effected if the measure is disproportionate to the importance of the case and the loss or drawback which the measure is expected to cause. Moreover, section 805(2) of the Act stipulates that if the purpose of the measure can be achieved with less intrusive measures, including provision of security, it is possible to conclude a written agreement about this with the person at whom the measure is directed.

According to the Administration of Justice Act, decisions to order seizure are made upon request by the police and decisions to order seizure are made by order of the court. The court order must state the specific circumstances upon the basis of which the court finds the conditions for the measure fulfilled.

If the purpose of the measure would be thwarted in case a court order were to be awaited, the police may make the decision about seizure under section 806(3) of the Administration of Justice Act. If it is requested by the individual at whom the measure is directed, the police must as soon as possible, and within 24 hours at the latest, submit the case to the court, which must decide by an order if the measure may be approved. According to section 806(7) of the Act, the decision to order seizure is also made by the police if the person at whom the measure is directed grants a written consent to the measure.

The authority competent to enforce the measure is the police and the affected person must be presented upon request with the court order

If the seizure is carried out in accordance with the provision set out in section 806(3) of the Administration of Justice Act, i.e. without a prior court order, the police must inform the person concerned on his/her right to a court hearing. There is provision allowing this order to be appealed.

There is provision for the granting of compensation to an accused who has been the subject of a seizure as part of criminal prosecution if the prosecution is withdrawn or the person in question is acquitted. Compensation may also be granted if it is found reasonable in situations where measures have been instigated in the course of a criminal prosecution against a person who has not been charged. The rules on compensation in connection with criminal prosecution are set out in Part 93A of the Administration of Justice Act.

There is no legal basis for asset management, but once the asset has been seized, the police are responsible for the asset. Normally the asset will be marked and kept in a special room at the police station. Cars are normally kept in the garage of the police station. In Denmark there is no legal provision which provides for the sale of seized property before conviction. As described above the police are responsible for the seized assets, but the police are not entitled to dispose of the property. Only if the owner of the seized asset agrees, the goods can be sold.

According to section 806(2) of the Administration of Justice Act, an order for seizure may be reversed at any time.

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

Framework Decision 2003/577/JHA was implemented into Danish law by Act No. 1434 of 22 December 2004 on the Execution in the European Union of Certain Criminal Rulings. As is the case for the Danish Administration of Justice Act, this Act does not use the term "freeze" (*indefrysning*) but rather the term "seizure" (*beslaglæggelse*) which corresponds to the term "freeze".

The Act on Execution in the European Union of Certain Criminal Rulings, which is an implementation of the Framework Decision on the execution in the European Union of orders freezing property or evidence into Danish law, applies to criminal rulings concerning, for example, seizure which are issued in other EU Member States, see section 1 of the Act. The Act entails that a criminal ruling for seizure which is issued in another EU Member State in the EU may be executed in Denmark in accordance with the rules set out in the Act.

The regime set out in the Act is different from the previous procedures for execution of foreign rulings on seizure in that it is not possible in relation to certain offences to require that the offence would also be punishable under Danish law.

According to the Act, the main rule is that rulings on seizure issued in another EU Member State of the EU which are requested to be executed in Denmark must be considered in accordance with this Act. Thus, it is not required in each case to look into whether there might be other multilateral or bilateral agreements which would be more far-reaching than the rules consequential upon the Act and the Framework Decision on freezing orders. However, the Act does not prevent the application of other rules on the execution of criminal rulings in situations where the requirements for execution set out in the Act are not satisfied.

Specifically as regards criminal rulings on seizure issued in Finland or Sweden, section 1(3) of the Act stipulates that the Act on Cooperation with Finland, Iceland, Norway and Sweden on Enforcement of Sentences, etc. must be applied to the extent that the special provisions on enforcement of sentences, etc., including seizure, between the Nordic countries allows a more far-reaching access to execution than the rules set out in the Act on Execution in the European Union of Certain Criminal Rulings. The rules set out in the Act on Cooperation with Finland, Iceland, Norway and Sweden on Enforcement of Sentences, etc. are generally more far-reaching than the rules consequential upon the EU Framework Decision and the Act on Execution in the European Union of Certain Criminal Rulings as rulings covered by the Act are generally executed without trial.

Thus, the main rule will be that requests from Finland and Sweden for execution of rulings for seizure of an accused person's property as security for a fine, confiscation, compensation, allowances or case costs are generally treated according to the rules set out in the Act on Cooperation with Finland, Iceland, Norway and Sweden on Enforcement of Sentences, etc. Thus, it will only be relevant to consider application of the Act on Execution in the European Union of Certain Criminal Rulings in relation to Sweden and Finland in situations where the special Nordic system does not allow for execution of a seizure ruling.

The Danish authorities only have very limited experience with the application of the Framework Decision and therefore no statistical data is available about this type of request for legal cooperation.



#### 4.1.2.1. Experience when acting as an issuing State

The initiative to make a Danish request for execution of a seizure order in another EU Member State will have to come from the Prosecution Service. Issuing such a Danish request for seizure in another EU Member State would be subject to a seizure ruling in accordance with the general rules about this set out in the Administration of Justice Act. Seizure rulings are usually made by the court.

It will usually be relevant to state the Prosecution Service as the point of contact. Depending on what is required in the specific case, it will also be possible to state the court as a point of contact.

The Ministry of Justice has drawn up draft guidelines on the execution of seizure orders in EU Member States which have been submitted for consultation to the standing committee on international cases at the Office of the Director of Public Prosecutions.<sup>1</sup>

The guidelines are aimed at the judicial authorities in Denmark which are competent to consider requests for execution of seizure orders issued in accordance with the Framework Decision on freezing orders. The objective of the guidelines is to describe the procedures for consideration of requests for execution of seizure rulings which are received in Denmark or which are to be issued in Denmark for execution in another EU Member State. The guidelines thus review the requirements to be fulfilled in connection with the consideration of requests for execution of rulings received in Denmark and the information to be written in the individual boxes in the standard certificate which must be used in connection with a request for execution of a seizure order in another EU Member State.

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<sup>1</sup> On 23 February 2012, Denmark provided additional information on this issue. According to this, the guidelines have not yet been issued. As stated in the Danish answers to the questionnaire, the draft guidelines have been submitted for consultation to the standing committee on international cases at the Office of the Director of Public Prosecutions. The Ministry of Justice has recently received the remarks of the standing committee to the draft guidelines and the Ministry is currently reviewing these remarks in order to finalise the draft guidelines. Before issuing the guidelines, the draft guidelines will be submitted for consultation to a broader circle of stakeholders. This consultation may also result in changes to the draft guidelines. The guidelines have been drafted in Danish. There is currently no intention to translate the final version of the guidelines into English as the guidelines are aimed only at Danish authorities.

The Ministry of Justice's draft guidelines on execution of seizure orders in EU Member States detail how box h of the standard certificate on the subsequent treatment of the seized asset or piece of evidence should be filled in.

With regard to the transmission of freezing orders and the options used, i.e. Interpol, Eurojust etc., the Danish Authorities did not provide any information in connection with this.

Information about the authorities of the other EU Member States to which requests for seizure must be sent is included in the list dated 21 January 2011 from the Council on the EU Member States' implementation of the Framework Decision on freezing orders into Danish law which will be issued as an annex to the Ministry of Justice guidelines on execution of seizure orders in EU Member States. The information is also available at EU-ATLAS (<http://www.ejn-crimjust.europa.eu>). If the information cannot be found there, the Ministry of Justice will be able to help obtain information about which authorities are competent to receive requests for seizure.

The Danish authorities have not yet encountered problems related to experience of executing EU Member States questioning the appropriateness, the manner in which the certificate was completed, or the scope of a freezing order (for example in terms of the application of the double criminality regime). In addition, they have not yet encountered problems specifically with time-limits for the provision of language-compliant versions of the certificate.

Depending on the merits of each case, the Danish authorities will be willing to grant requirements such as providing for the translation of material such as additional information/documentation to assist in the execution/consideration of the freezing order.

Further information may be exchanged, on the nature of these requests with executing States so as to improve coordination and thereby efficiency of the process, by direct contact between the competent authorities or through Eurojust.

Concerning the frequency whereby the Danish authorities are kept abreast of the progress of the execution of a freezing order the competence to issue and submit Danish requests for seizure in another EU Member State lies with the Prosecution Service and the courts. Therefore, the Ministry of Justice will not usually be informed about the extent to which Danish requests for seizure are granted or rejected in the other EU Member States.

At this point in time, the Ministry of Justice does not find that there is a need for the Ministry to receive information about decisions made by foreign authorities in situations where seizure requests made by the Danish authorities are granted. In connection with the publication of the Ministry of Justice guidelines on execution of seizure orders in EU Member States, the Ministry will, however, ask the Prosecution Service (the police districts) to inform the International Division of the Ministry of Justice<sup>1</sup> of any rejections of execution of seizure orders based on the Framework Decision received by the Prosecution Service.

The Danish authorities have not yet encountered difficulties regarding the subsequent treatment of the evidence or property which has been frozen in the executing State.

#### 4.1.2.2. Experience when acting as an executing State

In connection with the implementation of Framework Decision 2003/577/JHA on freezing orders, requests to Denmark may usefully be submitted to the prosecution divisions in the individual police districts and that information about the appropriate recipient may be obtained from the Ministry of Justice.

Submission may be effected by any means capable of producing written records under conditions allowing the executing EU Member State to establish its authenticity. Thus, it will be possible to submit request by fax.

Moreover, it will, until further notice, be a requirement for the execution of a seizure ruling in Denmark that certificates about seizure orders be filled out in Danish. If the certificate is not submitted in Danish, the general rule is that execution of the request must be rejected, see section 7(1)(i) of the Act. According to the Framework Decision however, it is not possible to require that the actual seizure ruling be translated into Danish.

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<sup>1</sup> The International Division of the Ministry of Justice handles cases concerning international judicial cooperation in criminal matters and police cooperation, i.e. cases concerning mutual legal assistance, transfer of sentenced persons and extradition, including cases concerning the European Arrest Warrant. Furthermore, the International Division is responsible for matters concerning the area of judicial and police cooperation within the Justice and Home Affairs Council of the EU.

It is possible to postpone the execution of a seizure order if the relevant certificate is inadequate and the Prosecution Service (the police districts) finds it appropriate to seek to rectify this by contacting the issuing authority. However, there is no obligation to seek to rectify an inadequate certificate, and it will be possible to reject execution of a seizure order pursuant to the provision set out in section 7(1)(i) of the Act without the Prosecution Service (the police districts) having sought to obtain the missing information in advance.

It is not yet possible for Denmark to state anything about questions that habitually require additional information/documentation to be sought.

The judicial authorities in Denmark which are competent to execute rulings under the Framework Decision on freezing orders are the courts and the Prosecution Service which includes the Ministry of Justice, the Director of Public Prosecutions, the state prosecutors and the prosecution divisions of the individual police districts.

According to section 49(1) of the Act, the decision to execute seizure orders covered by the Act are to be made by the court upon request from the Prosecution Service unless the Prosecution Service finds that execution should be rejected.

In the consideration of the case, the rules set out in the Administration of Justice Act on bringing a matter before the court prior to the instigation of certain investigative measures and on the hearing of the matter in court apply by analogy to the extent necessary, see section 50(2) of the Act. The reference to the rules set out in the Administration of Justice Act entails that the police (i.e. the Prosecution Service since only judicial authorities are competent to make decisions covered by the Framework Decision) may make a decision to carry out seizure if the purpose of the measure would be thwarted in case a court order were to be awaited. The police (the Prosecution Service) may also make a decision to order seizure if the person at whom the measure is directed grants a written consent to the measure.

If the Prosecution Service finds that a request for execution of a seizure order should be rejected, the case must, until further notice, be submitted to the Ministry of Justice which will then make the decision. Section 49(1), second sentence, of the Act stipulates that a decision to reject execution of seizure orders must be made by the Ministry of Justice.

The Ministry of Justice finds that centralisation of the competence to reject execution of seizure orders will help ensure a uniform treatment of the cases which is particularly appropriate in a period when no fixed practice exists yet. Therefore, the competence to reject execution of a seizure order is placed with the Ministry of Justice until further notice. However, the Ministry of Justice will regularly consider the question of delegating the competence to reject execution of a seizure order to the Prosecution Service (the police districts).

The requirements which can be made to the way the certificate is filled in are described in the Ministry of Justice draft guidelines on execution of seizure orders in EU Member States. It is for the Prosecution Service to assess whether it will be expedient to obtain further information from the issuing authority.<sup>1</sup>

There are no examples of cases where freezing has not been authorised, solely for reasons arising from the quality of the freezing order and/or the certificate being considered by Danish courts: e.g. translation errors, insufficiently detailed certificates (fact or law), issues surrounding authentication, missing documents or the like). Neither are there cases where the execution of a freezing order has not been authorised, solely because the issuing EU Member State has failed to respond to a request for additional information/documents.

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<sup>1</sup> On 23 February 2012, Denmark provided additional information on this issue. According to this, the guidelines have not yet been issued. As stated in the Danish answers to the questionnaire, the draft guidelines have been submitted for consultation to the standing committee on international cases at the Office of the Director of Public Prosecutions. The Ministry of Justice has recently received the remarks of the standing committee to the draft guidelines and the Ministry is currently reviewing these remarks in order to finalise the draft guidelines. Before issuing the guidelines, the draft guidelines will be submitted for consultation to a broader circle of stakeholders. This consultation may also result in changes to the draft guidelines. The guidelines have been drafted in Danish. There is currently no intention to translate the final version of the guidelines into English as the guidelines are aimed only at Danish authorities.

Sections 10 and 51 of the Act set out the situations in which it is required to notify the competent authority in the issuing state of progress in proceedings. Moreover, section 11 of the Act contains a provision about notification if Denmark intends to lift the seizure in accordance with the conditions laid down on the basis of this provision.

According to section 10 of the Act, notification must be given in writing and without undue delay. Notification may be made by letter, fax, e-mail or by any other means capable of producing written records. There are no further formal requirements to a notification.

Until further notice, decisions to reject execution of a seizure order are made by the Ministry of Justice. Therefore, notifications about rejections of execution of a seizure order, with reasons, are, until further notice, made by the Ministry of Justice with a copy to the police district.

Notification in situations other than the one mentioned are given by the Prosecution Service (the police district). This includes the following situations:

- Impracticable (section 10(ii))
- Postponement of the execution (section 10(iii))
- Cessation of the reason for postponement (section 10(iv))
- Limited execution (section 10(v))
- Execution completed (section 10(vi))
- Seizure to be lifted (section 11(2))
- Appeal against a ruling on seizure (section 51)

Section 50(3) of the Act stipulates that it is possible to assign a defence counsel if the general rules about this in the Administration of Justice Act would allow this.

An order for seizure may also be appealed against in accordance with the general rules about this set out in the Administration of Justice Act.

4.1.2.3. Overall evaluation of the added value of Framework Decision 2003/577/JHA

It is the view of the Ministry of Justice that the previous procedures relating to the execution of seizure orders were both complicated and time-consuming. Complicated procedures may involve a risk that the purpose of the seizure is thwarted and that the chances of securing a piece of evidence with a view to criminal prosecution or the proceeds of crime with a view to confiscation are impaired.

The Framework Decision, however, contributes to simplifying and optimising the procedures between the EU Member States so that execution can be effected speedily in the country where the piece of evidence or property is located. It is the view of the Ministry of Justice that simplified procedures may also help ensure that periods of custody remand can sometimes be shorter because it will be possible to seize evidence and suspected proceeds of crime faster and the need to remand a suspect in custody based on the assumption that the suspect will dispose of evidence will consequently last for a shorter period.

In the answers to the questionnaire, Denmark states that it is not yet possible to state anything about possible practical or legislative steps should be taken to further increase the practical efficiency of Framework Decision 2003/577/JHA.

In the answers to the questionnaire, Denmark states that it does not have experience of any practices that are specific to some EU Member States but which contradict the Danish understanding of how this instrument ought to function.

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

The confiscation of assets is governed by sections 75-77A of the Danish Criminal Code.

Moreover, Executive Order No. 1297 of 18 November 2010 on extrajudicial acceptance of confiscation stipulates that in cases concerning offences which are not deemed to carry a higher penalty than a fine and in which the accused pleads guilty of the offence, the accused may accept extrajudicial confiscation of a number of objects which the accused possesses or uses illegally.

Section 75(1) of the Criminal Code stipulates that the proceeds gained from a criminal offence, or a sum equivalent to such proceeds may be confiscated in whole or in part. Section 75(2) of the Criminal Code further stipulates that where it is considered to be necessary to prevent further crime or otherwise required due to special circumstances, objects may be confiscated if they have been used in a criminal act, produced by a criminal act or if a criminal offence has otherwise been committed in respect of the objects.

Under section 75(1) of the Criminal Code, proceeds may be confiscated from any person to whom the proceeds of a crime have passed directly, whereas objects and sums may be confiscated under section 75(2) of the Criminal Code from a person who is responsible for the offence and from someone on whose behalf he has acted, see section 76(1) and (2) of the Criminal Code.

According to section 76A(1) of the Criminal Code, confiscation of property belonging to a person who is found guilty of a criminal offence may take place when the offence committed is of a nature which may produce significant gains and, according to the law, the act committed is punishable with imprisonment for six years or is a violation of controlled drugs legislation.

According to section 76A(2) of the Criminal Code, property acquired by the spouse or cohabitant of the offender may be fully or partly confiscated under conditions such as those mentioned in subsection (1), unless the property was acquired more than five years prior to the criminal offence upon which the confiscation is based or the marriage or cohabitation had not been commenced at the time of the acquisition.



Moreover, according to section 76A(3) of the Criminal Code, property transferred to a legal person in which the offender has a controlling interest, alone or together with his closest relations, or if the offender in question receives a significant part of the revenues of the legal person, may be confiscated under the conditions mentioned in subsection (1).

Decisions concerning confiscation are made by the courts. Section 997(1) of the Administration of Justice Act stipulates that the police are responsible for enforcement of criminal sanctions in relation to both punishment and other elements of sentencing. However, confiscated amounts are collected by the authority in charge of collecting outstanding amounts, i.e. the Danish Tax and Customs Administration.

A confiscation ruling is made by the court in connection with the sentencing for the criminal offence on which the confiscation is based and the person in question is notified about the ruling in the same connection. A confiscation ruling may be appealed against pursuant to the general rules set out in the Administration of Justice Act on appeals against judgments in criminal cases.

The evaluation team learnt that Denmark does not have civil confiscation, only conviction-based confiscation. However, the Danish ARO does not have to establish a direct link between the actual offence and the confiscated goods. Extended confiscation is in place in Denmark, and in these circumstances there is reversed burden of proof. Here is made a presumption of guilt, linked to what the suspect owns at the time. It does not matter when he got the assets. This is all linked to crimes which generate profits and prison terms for more than 6 years.

According to the State Prosecutor for Serious Economic Crime, civil tax cases are used against such criminals who sit on top of the criminal ladder, as it were, without having to become involved in crimes themselves. This is part of the Task Force East model. It is not clear whether tax evasion can be used as predicate offence, namely tax fraud with the intent of money laundering. This is a question of when a civil tax case moves over to become a criminal tax fraud case.

4.2.1. *At European level*

Framework Decision 2006/783/JHA was implemented into Danish law by Act No. 1434 of 22 December 2004 on the Execution of Certain Criminal Rulings in the European Union.

Section 54 of the Act vests with the Minister of Justice the competence to make decisions concerning requests for execution of confiscation rulings covered by the Act.

The initiative to submit a Danish request for execution of a ruling to impose a fine or a confiscation ruling must come from the Prosecution Service. However, section 59(2) of the Act on Execution in the European Union of Certain Criminal Rulings stipulates that certificates submitted to another EU Member State in pursuance of the Act with a view to having confiscation rulings executed must be signed by the Minister of Justice.

The Ministry of Justice has drawn up draft guidelines on the execution of rulings imposing fines and confiscation orders in EU Member States which have been submitted for consultation to the standing committee on international cases at the Office of the Director of Public Prosecutions.<sup>1</sup>

The guidelines are aimed at the judicial authorities in Denmark which are competent to consider requests for execution of rulings imposing fines and confiscation orders. The objective of the guidelines is to describe the procedures for consideration of requests for execution of rulings imposing fines or confiscation rulings which are received in Denmark or which are to be issued in Denmark for execution in another EU Member State. The guidelines thus review the requirements to be fulfilled in connection with the consideration of requests for execution of rulings received in Denmark and the information to be written in the individual boxes of the standard certificate which must be used in connection with a request for execution of a confiscation order in another EU Member State.

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<sup>1</sup> The standing Committee on International Cases is a committee with members representing all local prosecution offices and also with representation from the prosecution authorities at the regional level. The Committee meets several times a year at the initiative of the Office of the Director of Public Prosecutions in order to discuss general matters regarding international cases, international criminal law and judicial cooperation.

According to the Act on the Execution of Certain Criminal Rulings in the European Union which implements Framework Decision 2006/783/JHA into Danish law, a foreign request for confiscation can be executed under the same conditions as laid down in Article 6 of the Framework Decision, i.e. if the offence is inter alia punishable in the issuing State by a custodial sentence of a maximum of at least three years. This means that also foreign request for confiscation of proceed derived from an offence punishable with exactly three years of imprisonment can be executed provided that all other conditions are met.

It has not been possible for the Danish Authorities to provide positive or negative experience in the use of the new regime.

In case a request from another EU Member State to execute a decision on confiscation does not comply with the requirements according to the Act on the Execution of Certain Criminal Rulings in the European Union (which is an implementation of the Framework Decision into Danish law) the Act on International Execution of Sentences, etc., will apply.

Pursuant to the Act on International Execution of Sentences, etc., decisions according to the European Convention on the International Validity of Criminal Judgements, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime can be executed in Denmark under certain circumstances.

#### **4.3. Conclusions**

- The Danish authorities only have very limited experience with the application of the Framework Decision and therefore no statistical data is available about this type of request for legal cooperation.

## RESTREINT UE/EU RESTRICTED

- The Danish authorities have not elaborated with regard to difficulties encountered in this area. Neither have the Danish authorities encountered any problems with regard to issues concerning executing EU Member States orders, questioning the appropriateness, the manner in which the certificate was completed, or the scope of a freezing order (for example in terms of the application of the double criminality regime).
- Due to the fact that the Danish authorities are unable to provide any information in connection with the transmission of freezing orders and the options used i.e. Interpol, Eurojust etc. it is presumed that either no or very limited experience exists in this field.
- In Denmark, freezing is made upon the issue of a Court Order. Emergency seizures can be made by the police, if things otherwise will disappear. However, when requested by the individual at whom the measure is directed, the police must, within 24 hours at the latest, submit the case to the court for approval. So, if the suspect objects, the authorities must go to court within 24 hours. Until a final decision is taken, the seized assets can be held by the police or other judicial authorities.
- The Danish FIU/police can request a bank not to execute a transaction or to postpone a transaction. However, the Danish legislation does not provide for seizures in the early stages of an investigation (i.e. only with reasonable suspicion). This inability may lead to the dissipation of assets.
- Law enforcement cannot administratively freeze money in a case, for instance if a bank account is found. They will first investigate the predicate case, then (possibly) go for the financial aspects.
- Article 76a allows the police to confiscate assets in connection with a criminal investigation if the suspect cannot show legal income; thus a reversed burden of proof is at play. There has to be a criminal conviction, and a balance between criminal offence and assets. All the money, including money from non-criminal activity, cannot be confiscated. Third person confiscation is limited to, *inter alia*, spouses and companies. It is not possible to go for non-related third parties as regards extended confiscation.

## RESTREINT UE/EU RESTRICTED

- The evaluation team was told that banks have to stop transfers if they do not know the customer. In effect, they can (and must) suspend transactions. The bank needs to feel safe about who the customer is. This applies to all banks.
- The evaluation team was informed that asset management is a major challenge for the Danish ARO. With seizure comes an obligation to maintain the goods. The ARO is trying to do its best on a case by case basis. In general, the ARO cannot sell assets before a conviction unless they receive the consent of the suspect. This is usually not the case. If the assets are sold, the money is deposited into a police bank account. A discussion is currently going on in Denmark about how to manage the disposal of confiscated goods.
- International cooperation is also highlighted as a major challenge with regard to cross-border criminal investigations. To overcome this, and to speed up the handling of a case, the Danish ARO promote the use of informal channels, work through the ARO and CARIN networks, employ SIENA for data exchange and Eurojust to find contact points if they are not already known.

**5. PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES**

With regards to measures taken in Denmark (legislation, internal rules, training, ...) to ensure proactive transmission of information and transmission of information on request to Olaf by customs authorities, police, prosecutors or other law enforcement authorities, the Director of Public Prosecutions has established a visitation scheme on cases related to EU-fraud. According to this scheme the State Prosecutor for Serious Economic Crime is designated as contact point, which means that the authorities must inform the State Prosecutor of cases involving EU-fraud.

The State Prosecutor informs OLAF of the outcome of criminal cases related to fraud against the financial interests of the communities.

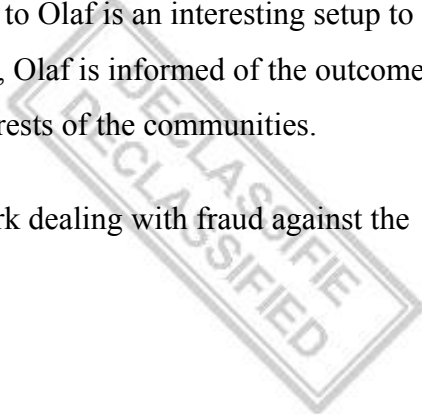
It is possible for the European Commission to make a referral and play a role as an expert or a witness regarding cases involving fraud against the financial interests of the communities. In practice OLAF facilitates contact to another EU-unit in order to give a witness statement in a court trial in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

As to the question whether it is possible under the Danish internal system for Olaf agents to take part in a joint investigative team, Denmark refers to the fact that joint investigative teams are established according to the Second additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters.

There has not been a JIT in Denmark dealing with fraud against the financial interests of the communities, but JITs have been used in other investigations. The reason that Denmark has not had a joint investigative team dealing with fraud against the financial interests of the communities is that the relevant cases have not been suitable for establishing a JIT.

**5.1. Conclusions**

- The visitation scheme on cases related to EU-fraud to ensure pro-active transmission of information and transmission of information on request to Olaf is an interesting setup to promote information sharing. According to this scheme, Olaf is informed of the outcome of criminal cases related to fraud against the financial interests of the communities.
- There has not been a joint investigative team in Denmark dealing with fraud against the financial interests of the communities.



## **6. RECOMMENDATIONS**

As regards financial investigations and the fight against financial crime the expert team was able to review the Danish system satisfactorily, expertly supported by the helpfulness of the Danish hosts. Overall, it is clear that the working principles and legal framework of the Danish system are robust and functional and the various actors are well aware of their roles and responsibilities.

Based on its findings, the expert team would like to make certain recommendations to Denmark to contribute to the further development of the system. Furthermore, based on the various good and, without doubt, even best practices of Denmark, the team would also like to make related recommendations to the EU Member States, the EU, its institutions and agencies.

Denmark should conduct a follow-up on the recommendations given in this report 18 months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL).

### **6.1. Recommendations to Denmark**

1. Additional resources could be considered for Task Force East based on the current statistics on its successes to date. Consideration should be given to establishing similar type units in other high crime areas.
2. Asset tracing and seizing demands a lot of resources and is time consuming due to the nature of the work involved. Therefore, consideration should be given to increasing the resources of the ARO and also to appointing one ARO officer to each of the economic crime units in the 12 Police districts.
3. More training and awareness of the potential value, in the fight against organised crime, of financial investigations (asset tracing and seizure) especially within the senior ranks of law enforcement and judicial authorities is recommended. The handbook on asset recovery which the ARO intends to produce could be used for such purposes.



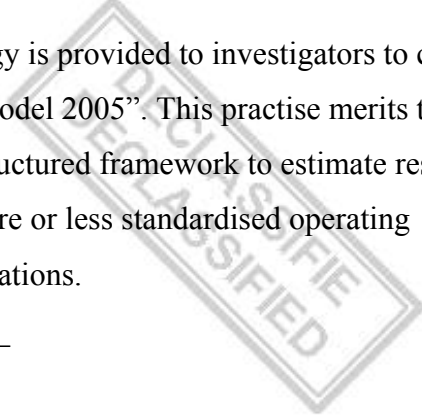
4. Due to the complex nature of financial investigations and associated legislation, specialised training is essential in this field. The efforts in the training area already started should be strengthened by setting up training programmes following set curricula, with recognisable diploma, and making them mandatory to everyone intending to work in the field. The Danish authorities are encouraged to consider this route, and also to make such training programmes multi-disciplinary in scope.
5. In their continuous work, the FSA is recommended to place even more emphasis, during audits of the financial sector, on the area of anti money laundering compliance. The number of STRs is comparatively low (but steadily increasing) which may be down to a lack of awareness within the financial sector or a lack of action by the supervisory authority when cases of non-compliance are identified. Consideration should be given to increasing the number of personnel assigned to the AML function.
6. The remit of the FSA should be broadened to enable them to sanction entities in cases of non-compliance and to make reports to the FIU where breaches of non-compliance with regard to anti money laundering/counter terrorist financing procedures (customer due diligence record keeping etc.) are identified.
7. There is no central bank account registry in Denmark. Although informal cooperation with the banking system seems to work well, thus safeguarding necessary access to relevant information, Denmark is nonetheless recommended to consider the option of setting up such a central registry.
8. In Denmark, a Court Disclosure Order is addressed to the Danish Bankers Association, and there is therefore no direct order against the bank. Denmark is recommended to amend this procedure to ensure compliance by making orders directly issued against the banks and to simplify the overall procedure in order to make it more expedient and efficient.

9. Denmark should consider a provision in legislation for the seizure of assets at the early stages of an investigation without requiring a direct link to a specific offence. Denmark should also consider a provision to allow for assets, suspected of being the proceeds of crime, to be confiscated and forfeited even where there is no conviction (non-conviction based confiscation).
10. Investigations in Denmark are mostly reactive, and financial intelligence is underused. Denmark should consider the enhanced use of financial intelligence to be able to better target key suspects involved in financial crimes.
11. Financial crime investigations are labour intensive and time consuming, often with cases involving large amounts of data. Denmark is recommended to consider the allocation of additional resources (both human and technical) and training especially in bottleneck areas such as mass data analysis.
12. Denmark is recommended to clarify the rules regarding case management, such as how to prioritise between cases and clarify when an administrative authority should hand over a case to the police. A clearer case management system would enable the faster handling of a case, thereby freeing valuable resources.
13. The management of confiscated assets and disposal of the same should be reviewed in order to avoid exorbitant storage costs and depreciation of the value of the asset. The Danish authorities are encouraged to provide the ARO (or another body) with the necessary tools to manage assets in an expedient manner. Legislation should allow for the liquidation/sale of assets before conviction to avoid storage costs and prevent depreciation of the assets. The appointment by the courts of an expert/receiver for the purpose of carrying out this function could be considered.
14. Denmark should consider allowing the ARO to use enforced property for social purposes or to purchase equipment for law enforcement.

**6.2. Recommendations to the European Union and certain third parties**

1. The issue of combating economic crime is one of the elements of the contract signed by the local Commissioners. This example should be promoted in other EU Member States during the creation of local strategies for police activities.
2. An example worth following is the creation of Task Force East. Its proactive approach, as well as its immediate response to emerging threats, are valuable aspects to promote. However, the model should be extended beyond a regional focus, to allow for the sharing of information on both a national and international level.
3. Another example of a well-functioning multidisciplinary structure to combat financial crime is the State Prosecutor for Serious Economic Crime, combining prosecutors, the police, the customs and tax authority, the FIU and the ARO. This can serve as an exemplary model of such a service to other EU Member States.
4. The close cooperation between the police and prosecutors, together with tax and customs authorities, is a best practise worth highlighting. This should be an approach explored by all EU Member States, especially with a view to strengthening cooperation between such authorities in other EU Member States.
5. The expedient data exchange between the ARO and the FIU is worth emphasising, as it is not common in the EU and is worth promoting as an example of efficient cooperation.
6. EU Member States are recommended to consolidate knowledge and better educate law enforcement officers about the use of the ARO network – to promote efficient cooperation and information sharing.

7. The use of SharePoint for the purposes of communication and information exchange at the anti-fraud unit of the Danish Tax and Customs Administration is a best practise worth highlighting. The EU Member States are recommended to study this setup and enable such expedient transfer of knowledge within but also between competent authorities.
  
  8. A project based case management structure methodology is provided to investigators to conduct large scale investigation, the so called “Investigation Model 2005”. This practise merits to be mentioned and duplicated elsewhere as it provides a structured framework to estimate resources and guide investigations. At the very least it gives a more or less standardised operating procedure to conduct complex and long lasting investigations.
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ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

**Monday 26 September 2011**

**15.00** Welcome at the Ministry of Justice

*Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K, meeting room II*

**15.15-16.30** Preparatory meeting with representatives of the institutions involved

*Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K, meeting room II*

**Tuesday 27 September 2011**

**09.10** Departure from the hotel

**09.30-12.00** The State Prosecutor for Serious Economic Crime (SØK)

*Bryggervangen 55, 3., 2100 Copenhagen Ø*

**12.30** Lunch

**14.30-16.30** Danish FSA (Finanstilsynet)

*Aarhusgade 110, 2100 Copenhagen Ø*

**19.00** Dinner

*Restaurant AOC, Dronningens Tværgade 2, 1302 Copenhagen K*

**Wednesday 28 September 2011**

**08.45** Departure from the hotel

**09.30-12.00** Visit to North Zealand Police

*Prøvestensvej 1, 3000 Helsingør*

**12.00** Lunch

**14.00-16.00** Visit to the Anti-Fraud Unit of the Danish Tax and Customs

Administration (ØKOKRIM)

*Helgeshøj Allé 49-55, 2630 Taastrup*

**16.30-18.00** Visit to Task Force East

*Stationsager 1, 2690 Karlslunde*

**Thursday 29 September 2011**

**09.30** Debriefing

*Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K, meeting room II*

**12.00** End of visit



**ANNEX B: LIST OF PERSONS INTERVIEWED/MET**

**Evaluation team**

**Council Secretariat**

Peter Bröms (leading the team)

Anne Cecilie Adserballe

**Experts**

Maureen McGrath (Ireland)

Cynthia Panayiotou (Cyprus)

Rafał Woźniak (Poland)



**Observer**

Carlo van Heuckelom (Europol)

**Denmark**

**Ministry of Justice**

Deputy Permanent Secretary, Jens-Christian Bülow

Head of Section, Lisbeth Gro Nielsen

**The Director of Public Prosecutions**

Assistant Deputy Director, Eva Rønne

Deputy Chief Prosecutor, Lars Lichtenstein

**The State Prosecutor for Serious Economic Crime (SØK)**

Deputy State Prosecutor for Serious Economic Crime, Hans Jakob Volker

Deputy Chief Prosecutor, Michael Ejlerskov

Deputy Chief Prosecutor, Anders Sejer Pedersen

Superintendent, Ole Kahlen

**North Zealand Police**

Commissioner, Thorkild Fogde

Senior Chief Prosecutor, Arne Stevns

Chief Prosecutor (acting), Kristine Scharling

Deputy Chief Superintendent, Flemming Poulsen

**Anti-Fraud Unit (ØKOKRIM)**

Head of Division, Preben Buchholtz

Chief Inspector, Peter Nørregaard

**Danish FSA (Finanstilsynet)**

Director of Securities Division, Hanne Råe Larsen

Director of Legal Division, Mark Andrew Rønnenfelt

International and Legal Adviser, Kirsten Mandrup





**RESTREINT UE/EU RESTRICTED**

**ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS**

<b>ACRONYM ABBREVIATION TERM</b>	<b>ACRONYM IN THE ORIGINAL LANGUAGE</b>	<b>ENGLISH TRANSLATION/EXPLANATION</b>
AML	-/-	Anti-Money Laundering
AML-CFT	-/-	Anti-Money Laundering /Counter-Terrorism Financing
AMO	-/-	Asset Management Office
ARO	-/-	Asset Recovery Office
AWF	-/-	Europol Analysis Work File
AWF Copy	-/-	Europol Analysis Work File - Intellectual Property Rights
AWF SUSTRANS	-/-	Europol Analysis Work File - Suspicious Financial Transactions
BBR	-/-	Buildings and dwellings Register
CARIN	-/-	Camden Asset Recovery Inter-Agency Network
CCA	-/-	Commerce and Companies Agency
CEO	-/-	Chief Executive Officer
CMR3	-/-	Vehicles database
CVR	-/-	Central Business Register
DCA	-/-	Danish Court Administration
EJN	-/-	European Judicial Network
EU	-/-	European Union
FIU	-/-	Financial Intelligence Unit
FSA	Finanstilsynet	Financial Services Authorities
FTP	-/-	File Transfer Protocol
GENVAL	-/-	Working Party on General Matters, including Evaluations

**RESTREINT UE/EU RESTRICTED**

<b>ACRONYM ABBREVIATION TERM</b>	<b>ACRONYM IN THE ORIGINAL LANGUAGE</b>	<b>ENGLISH TRANSLATION/EXPLANATION</b>
HR	-/-	Human Ressources
JHA	-/-	Justice and Home Affairs
JIT	-/-	Joint Investigation Teams
MDG	-/-	Multidisciplinary Group on Organised Crime
MLA	-/-	Mutual Legal Assistance
MTIC	-/-	Missing Trader intra Community Fraud
OCTA	-/-	Organised Crime Threat Assessment
ØKOKRIM	ØKOKRIM	The Danish Tax and Customs Administration's Anti-Fraud Unit
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
SIENA	-/-	Europol Secure Information Exchange Network Application
STR	-/-	Suspicious Transaction Report

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