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"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**

REPORT ON POLAND

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

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1. INTRODUCTION

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

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

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

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

¹ Since 1 July 2010 responsibility for this process has been transferred to the Working Party on General Matters including Evaluation (GENVAL).

² 6546/08 CRIMORG 34.

³ 10540/08 CRIMORG 89.

⁴ 16710/08 CRIMORG 210.

⁵ 9767/09 JAI 293 ECOFIN 360.

⁶ 8301/2/09 REV 3 CRIMORG 54.

⁷ 11060/09 JAI 404.

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

The experts charged with undertaking this evaluation were Mr Ernie Shippin (Deputy Head, National Casework Division, Crown Office, Edinburgh/United Kingdom), Mr Igoris Krzeckovskis (Advisor, Ministry of the Interior, Financial Crime Investigation Service, Vilnius/Lithuania) and Ms Baiba Jugane (Senior expert from the Ministry of Justice, Judicial Cooperation Division, Riga/Latvia). Three observers were also present: Mr Christian de Beaufort (*OLAF*, European Commission), Ms Ilona Lévai (National Member for Hungary, Eurojust) and Mr Carlo van Heuckelom (Europol), together with Ms Anna Lipska and Mr Peter Nath from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, based on the findings of the evaluation visit that took place between 18 and 22 October 2010, and on Poland's detailed replies to the evaluation questionnaire.

⁸ 5046/1/09 REV 1 CRIMORG 1.

2. NATIONAL SYSTEM AND CRIMINAL POLICY

2.1. Specialized units

2.1.1. Investigative authorities

2.1.1.1. Police

The Polish police forces come under the Ministry of the Interior.

All the powers of police officers are based on the police statutory duties which are laid down in the Act of 6 April 1990 on the Police.

Within the scope of their duties, Polish police forces are entrusted with powers to carry out the following activities in order to identify, prevent and detect crime and petty offences:

- preliminary investigations,
- criminal investigations,
- administration,
- maintaining public order-.

Police officers performing these activities have the right to request the necessary assistance from State institutions, central and local government authorities and enterprises under public ownership. These entities are obliged to provide assistance within their scope of activity, in accordance with the provisions of the applicable law. Furthermore, police officers can request the necessary assistance from other people or agencies in cases of emergency under the relevant legislation.

General structure

The **Polish police forces** are under the single command of a **commander-in-chief**.

Out of a total of approximately 100 000 police officers in Poland, 32 500 are serving within the Criminal Investigation Departments/Units and from the latter 3 160 work in the Economic Crime Departments.

Of the 1 800 officers in the Central Bureau of Investigation of the National Police Headquarters, 500 are directly involved in combating economic crime.

The **Voivodeship Chief Police Inspectors** supervise the work of the municipal, regional and district Chief Police Inspectors. They in turn are responsible for their subordinate officers at local police stations. Each of the above structures has an organisational unit or a number of police officers engaged in combating economic crime. The structure of such units follows the general organisational police unit structure and lies within the competence of the relevant Chief Police Inspectors.

The **Central Bureau of Investigation** (CBI) operates within National Police Headquarters; it is a specialised investigative body with nationwide competence and powers, dedicated to combating organised crime.

The Director of the Bureau is subordinate to the Deputy Commander-in-Chief.

The structure comprises 14 local offices and two departments outside the headquarters located in the Voivodeship capitals throughout the country.

Specialised structures to combat economic and financial crime

Within the Polish police structures, there are **several specialised police and organisational units** responsible for **combating economic and financial crime**. These are in particular:

Departments or sections dealing with combating economic crime at the level of the Voivodeship Police Headquarters (*KWP*), the Metropolitan Police Headquarters (*KSP*), the District Police Headquarters (*KRP*), the Municipal Police Headquarters (*KMP*) and the Regional Police Headquarters (*KPP*), and Departments combating organised economic crime within the Central Bureau of Investigation of the National Police Headquarters.

The Departments to combat organised economic crime of the local offices of the Central Bureau of Investigation of National Police Headquarters (*CBS KGP*) are supervised and coordinated by its Department to Combat Organised Economic Crime (*Wd/zZPE CBS KGP*).

The departments and teams to combat economic crime within the Voivodeship (*KWP*) and Metropolitan Police Headquarters (*KMP*) are under content-related supervision of the Department to Combat Economic Crime of the Criminal Investigation Bureau of National Police Headquarters (*Wd/zPG BK KGP*).

The **general tasks of the economic crime departments** within the Polish Police can be summarised as follows:

- detection and disclosure of perpetrators of economic crime,
- identification of practical problems and development and implementation of solutions to them,
- development of strategies to increase efficiency in preventing and combating economic crime,
- economic crime risk assessment, identifying the sources of threats and developing effective preventive and investigative activities,
- coordination, supervision and evaluation of the implementation of preliminary investigations in line with police strategy as well as activities under operational programmes implemented in the organisational units to combat economic crime,
- cooperation with other police departments, law enforcement, administration and control with regard to the prevention and suppression of economic crime,
- cooperation on preparing training programmes and organising seminars on selected topics for police officers.

At the **level of the Voivodeship Police Headquarters and Metropolitan Police Headquarters**, there are units or individual officers responsible for tracing and identifying crime-related assets.

Their **tasks** include:

- conducting operational and investigative activities leading to the identification and seizure of crime-related assets,
- coordination and supervision of activities from subordinate police units in relation to asset recovery,
- development and implementation of training programmes on tracing, identification, seizure and forfeiture of crime-related assets,
- cooperation with State administration authorities, fiscal control authorities, prosecutor's offices and other authorities in the field of tracing and identifying crime-related assets.

The following are the **main activities performed by the economic departments of the Central Bureau of Investigation (CBS KGP)**:

- combating organised crime, including customs and tax fraud in connection with trade in goods covered by excise and VAT fraud,

- combating organised crime groups involved in illicit fuel trafficking,
- combating illegal activities relating to the misuse and distribution of European Union funds,
- identification and prevention of money laundering,
- combating fraud on the economic and financial markets to the detriment of banks, insurance companies, stock exchanges, leasing companies, investment funds and other financial institutions,
- combating corruption, inter alia in the State administration, local government and customs, judicial and supervisory institutions.

Furthermore, within the structure of the Central Bureau of Investigation, **crime-related asset identification and recovery coordinators** have been selected (although, as the experts were informed, there was no provision for this in the budget). These are police officers with specialist knowledge of criminal, civil and administrative law. Their tasks include:

- supervision of the asset recovery activities of the Central Bureau of Investigations with respect to cases handled by them,
- direct involvement in planning, preparing and conducting Bureau activities with regard to seizure and forfeiture of crime-related assets,
- analysis of data that have been obtained from such activities,
- providing training on asset recovery for police officers,
- promoting new tactical and technical solutions concerning access to intelligence and information, including monitoring their implementation.

2.1.1.2. General Inspectorate of Financial Information (GIFI) - the Polish Financial Intelligence Unit (FIU)

The General Inspectorate of Financial Information (GIFI), acting under the Department of Financial Information and reporting to the Undersecretary of State in the Ministry of Finance, is the authority responsible for counteracting money laundering and the financing of terrorism and is the Polish Financial Intelligence Unit (FIU). It functions on the basis of the Law of 16 November 2000 on counteracting money laundering and terrorist financing (last amended in 2009).

At the time of the visit, the GIFI had 49 staff.

In exercising its duties, the GIFI has the power to

- suspend transactions and block accounts,
- obtain information on financial transactions,
- request additional information and documents from the obligated institutions (i.e. reporting entities) and cooperative bodies,
- control obligated institutions (with regard to compliance with legal regulations on counteracting money laundering and terrorist financing).

The GIFI cooperates and exchanges information with law enforcement agencies in a number of ways, inter alia

- by receiving information from law enforcement agencies whenever criminal proceedings in relation to money laundering or terrorist financing are initiated,
- by receiving crime information from law enforcement authorities,
- by replying to requests from law enforcement authorities and other public administration units concerning information on transactions⁹,
- by forwarding reports on suspicious transactions to the public prosecutor's office¹⁰;

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

The Asset Recovery Office (ARO) in Poland is located within the National Police Headquarters and is the sole body of that nature in the Polish law enforcement system.

On 5 December 2008 an Asset Recovery Department (*WOM BK KGP*) was established within the Criminal Investigation Bureau of the National Police Headquarters. It carries out the tasks specified in Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime¹¹.

⁹ According to the information provided by the GIFI during the visit, replies to 505 (580) requests were processed in 2008 (2009).

¹⁰ According to the information provided by the GIFI during the visit, 246 (180) notifications were made to the public prosecutor's office in 2008 (2009) and the amount involved in the suspicious transactions described in them was PLN 1.03 (3.04) billion.

¹¹ OJ L 332, 18.12.2007, pp. 103-105.

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The mandate and the powers of the Polish ARO derive from the Act on Police as the Asset Recovery Department is located within the Police structure.

The **Asset Recovery Department's tasks are specified in the National Police Headquarters statute** and its main ones are as follows:

- to ensure international information regarding tracing, identifying, freezing and recovery of crime-related proceeds is exchanged among law enforcement units, other authorised national units and competent authorities of other EU Member States;
- to manage cooperation between those units subordinate to or supervised by the Minister for the Interior and Administration, the Minister for Finance and the Minister for Justice responsible for identification, disclosure, freezing and recovery of assets;
- to implement best practice in relation to identification and recovery of proceeds of crime;
- to initiate legislative changes relating to asset identification and recovery;
- to conduct international cooperation¹², especially within the scope of the activities of the CARIN (the Camden Asset Recovery Inter-Agency Network) activities in relation to identification, disclosure, freezing and recovery of assets.

The Polish ARO does not cover cases other than those relating to criminal proceedings (civil matters, taxation).

At the time of the evaluation, the ARO had the following staff: one head of department, seven police officers, three civil servants and a secretary. The ARO has only permanent staff members (police officers and civil servants) and has no seconded experts from other competent authorities.

The ARO does not maintain a database of its own. It has only a register of requests sent to and received from AROs in other Member States.

¹² The Polish authorities informed after the visit that International cooperation conducted by the Department was not only taking place within the framework of CARIN but also covers co-operation with or within other organisations and projects, including those supported by the EU, like CEART and EUDEFI.

With regard to Council Decision 2007/845/JHA and the requirement to implement Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union¹³. The Ministers for Finance, Justice, of the Interior and Administration and the General Prosecutor signed a **declaration of partnership on 18 December 2008**, committing themselves to cooperating in the effective identification and disclosure of illegal assets. On **15 September 2009** an **agreement** was signed by the three ministers in order to fulfil the provisions of the partnership declaration. The parties agreed to cooperate in order to determine and identify the proceeds of crime or other crime-related assets within the scope of national ARO tasks. To facilitate access to the databases administered by the institutions subordinate to or supervised by the parties to the agreement, **contact points** were created. Furthermore, a **steering group** was established to coordinate cooperation, and analyse and evaluate implementation of the agreement.

2.1.1.4. Customs Service

The Polish Customs Service operates under the authority of the Ministry of Finance and is headed by an undersecretary of State. At national level, four departments within the Ministry of Finance deal with customs matters: the customs service department, the customs policy department, the department of customs and excise control and control of gaming, and the department of excise and ecological tax.

At regional level, customs is organised on a hierarchical basis with 16 customs chambers - one in each region of Poland - comprising 46 customs offices and 159 customs branch offices.

The principal tasks of the Customs Service include:

- exercising customs control,
- assessing and collecting customs duties and taxes at the State border (VAT, excise),
- combating smuggling and counteracting customs fraud;

¹³ OJ L 386, 29.12.2006, pp. 89-100.

The Customs Service has separate investigation units at customs office level as well as criminal and fiscal units at customs chamber level; these units deal primarily with financial crime and investigation of financial cases (criminal and fiscal cases).

Customs investigation units

Customs is represented by a customs chamber in each of the country's provinces. Each of the 46 (local) customs offices working under the customs chambers has a customs investigation unit. In total, there are 405 officials serving in 46 investigation units.

The basic task of these units is to conduct preparatory proceedings in cases of fiscal crime and fiscal offences falling within the competence of the Customs Service, bringing indictments before court and supporting indictments before court as public prosecutor,

The investigation units are empowered to conduct preparatory proceedings in cases of fiscal crime and offences against legal provisions in the following areas:

- excise duties,
- VAT imposed on imports of goods,
- customs duties and rules on turnover of foreign goods and services,
- regulations on trade in foreign currencies,
- gambling and betting regulations.

Criminal and fiscal units

The criminal and fiscal units are located within the 16 regional customs chambers throughout the provinces. Overall, there are 69 officials allocated to the 16 units.

Their primary task is to supervise the preparatory proceedings conducted by customs offices in cases of fiscal crime and offences that are within the competence of the Customs Service.

The criminal and fiscal units are empowered mainly to recognise appeals against customs offices' decisions, and issue instructions (orders) relating to the conduct of preparatory proceedings.

No definite criteria have been set for the level of expertise of staff working in customs investigation units and criminal and fiscal units, but most customs officers working in these units have legal training.

2.1.1.5. Tax Administration

The Polish tax administration comes within the responsibility of the Ministry of Finance and, apart from its primary objective of levying taxes, it also has certain tasks with regard to fighting financial crime.

Its primary responsibilities in relation to law enforcement are to carry out preparatory proceedings and investigations in criminal and fiscal cases and petty criminal cases under the Head of the Tax Office in order to bring a case to court and act as public prosecutor in such cases. Furthermore, it must enforce debt recovery decisions as set out in the Executive Criminal Code and the Penal and Fiscal Code.

At basic level, the tax administration consists of 401 tax offices, subordinate to the 16 tax chambers, one in each province in Poland. Every tax chamber has a criminal and fiscal unit.

The primary task of these units is to supervise the preparatory proceedings conducted by tax offices in cases of fiscal crime and offences that fall within the competence of the tax administration. In terms of supervision, criminal and fiscal units are empowered mainly to recognize appeals against tax offices' decisions, and issue instructions (orders) relating to the conduct of preparatory proceedings.

There are no specified qualifications for staff who work in these units although most have a legal qualification and training in prosecution

2.1.1.6. Fiscal Control

Fiscal Control Offices

Fiscal Control is handled by the 16 Fiscal Control Offices, one in each province in Poland.

The service is made up of 116 Fiscal Control inspectors and they are the financial authority for preparatory proceedings.

There are separate investigation units at the Fiscal Control Offices and the Criminal and Fiscal Unit at the Ministry of Finance subordinate to the General Inspector of Fiscal Control, mainly concerned with financial crime and investigation of financial cases (i.e. criminal and fiscal cases).

The primary task of Fiscal Control inspectors in these units is to conduct preparatory proceedings in cases of fiscal crime and fiscal offences that are within the competence of Fiscal Control, bringing indictments before court as well as supporting indictments before court as Public Prosecutor,

According to the replies to the questionnaire, staff working with this service have university education in law or economics (as well as other degrees deemed useful for fiscal control) and have passed the fiscal control inspector's examination.

General Inspector of Fiscal Control – Criminal and Fiscal Unit

The authority supervising fiscal control inspectors is the General Inspector of Fiscal Control; this post is held by an undersecretary of State in the Ministry of Finance.

Subordinate to the General Inspector is the Criminal and Fiscal Unit, currently consisting of 6 officials. The unit exercises legal and administrative supervision. Its primary task is to supervise preparatory proceedings conducted by Fiscal Control inspectors in cases of fiscal crime and offences that fall within the competence of Fiscal Control, including examination of appeals against Fiscal Control Inspectors' settlements and verification of provisions on discontinuance or suspension of preparatory proceedings.

Staff employed in this unit have an academic background in law or economics (including other types of education useful for fiscal control) and have passed a fiscal control inspector's examination.

Treasury Intelligence

Treasury Intelligence is a specialised structure within the framework of Fiscal Control. It reports directly to the General Inspector of Fiscal Control. Its activities are overseen by the Minister for Finance.

Treasury Intelligence is centrally managed from its headquarters in Warsaw. It covers the whole of Poland via a network of 16 regional offices and employs a team of specialists recruited under a specific procedure.

The mission of Treasury Intelligence is to enforce the financial interests of the State, to ensure adequate and precise collection of State revenue, to disclose undeclared sources of income, to fight

illegal shipments of goods, to safeguard the proper management of the State's property and assets and to prevent and counteract corruption among the personnel of the Ministry of Finance and its subordinate units.

The competencies of Treasury Intelligence are listed in the Act on Fiscal Control. They are to a large extent similar to those of Polish law enforcement agencies, but are tailored to the specific character of Treasury Intelligence as an analytical control-oriented service structure within the Ministry of Finance. Treasury Intelligence does not possess any investigative powers. Its activities focus on gathering data that enable Fiscal Control inspectors to initiate and effectively conduct fiscal control or to initiate fiscal crime or fiscal offence proceedings. Treasury Intelligence is entitled to gather and process information on the income, turnover and assets of individuals, companies and other entities who are subject to treasury control. Treasury Intelligence is also authorised and technically equipped to apply surveillance techniques.

The Polish authorities have maintained that through a process of continuous training of staff and by employing specialized equipment Treasury Intelligence was able to achieve results that have had a noticeable impact on the amount of State revenue.

2.1.2. Judicial authorities

2.1.2.1. Prosecution services

In October 2009, the Polish Parliament revised the Act of 20 June 1985 on Public Prosecution and separated the functions of the Minister for Justice and the Prosecutor General and the legal act implementing this change has entered into force on 31 March 2010. These two offices, generally considered crucial for the administration of justice, had been combined since 1989, and the functions of the Prosecutor General were performed by the Minister for Justice. In 2010 a new Prosecutor General, who now exercises his powers independently from the executive, was elected by the National Judiciary Council (selection of two candidates from among those who applied) and the President of the Republic (who appoints one of the two Prosecutor General candidates).

The Polish public prosecution system is centralised. The Prosecutor General is the highest prosecuting authority to whom all other prosecutors and prosecution units are subordinate. The

Prosecutor General directs the activities of the whole prosecution service personally or through his deputy, by issuing regulations, orders or guidelines. Although in some minor customs/financial offence cases, which are defined by law, customs and tax offices are also allowed to act as public prosecutors, their prosecuting activities are supervised by prosecutors from the prosecution service at the relevant level. Proceedings or investigations conducted by other law enforcement agencies (i.e. customs, tax offices, police, etc.) are always supervised by a public prosecutor who may decide to take them over at any time.

The Polish system is based on the legality (mandatory prosecution) principle.

The hierarchy is as follows:

- Organised Crime and Corruption Directorate at the Office of the Prosecutor General, having national competence;
- Organised Crime and Corruption Divisions in 11 appellate public prosecution offices under the direction of appellate public prosecutors;
- 48 regional public prosecution offices (investigative and financial crime units) managed by regional public prosecutors;
- 349 district public prosecution offices managed by district public prosecutors.

The Office of the Prosecutor General, having national competence, has the capacity to ensure nationwide coordination between the various prosecutors' offices and other State agencies dealing with financial crime. It also monitors the trends and dynamics of financial crime and has responsibility for international judicial cooperation in situations where there are no direct contacts.

Apart from their second instance (appellate) and supervisory function with regard to investigations conducted by the police, customs, tax and other authorities, the 11 appellate prosecutors' offices also conduct investigations of their own, especially in serious and complex cases. Prosecutors have the right to use expert assistance, e.g. from business consultants, accounting experts etc., which is important for the necessary multidisciplinary approach to combating financial offences.

According to the information received, there are no special qualifications for prosecutors dealing with economic and financial crime cases. Prosecutors working in these units were said to be experienced in conducting investigations.

2.1.2.2. Judges

No specific information on judges dealing with aspects of financial crime and financial investigations was received from the Polish authorities.

2.1.3. Polish Financial Supervisory Authority (PFSA)

The Polish Financial Supervision Authority (PFSA)¹⁴ commenced its activity on 19 September 2006, when the Act of 21 July 2006 on the supervision of the financial market entered into force. The PFSA combines the tasks of the Insurance and Pension Fund Supervisory Commission and of the Securities and Exchange Commission, both of which have been abolished. The activities of the PFSA are supervised by the President of the Council of Ministers. In the second phase of the merger of financial supervision in Poland, the PFSA took over the powers of the Commission for Banking Supervision and its Office – the General Inspectorate of Banking Supervision - on 1 January 2008.

The tasks of the Polish Financial Supervision Authority cover banking supervision, capital market supervision, insurance supervision, pension scheme supervision and supervision of electronic money institutions.

Moreover, according to the information received, the tasks of the PFSA include the following:

- undertaking measures to ensure regular operation of financial markets;
- undertaking measures to develop financial markets;
- undertaking educational and information measures relating to financial market operation;
- participating in the drafting of legal acts relating to financial market supervision;

¹⁴ Cf.: <http://www.knf.gov.pl>

- creating opportunities for amicable and conciliatory settlement of disputes which may arise between financial market actors, in particular disputes resulting from contractual relations between entities covered by PFSA supervision and recipients of services provided by those entities;
- carrying out other activities provided for in legislation.

The aim of financial market supervision is to ensure regular operation of this market, its stability, security and transparency, maintain confidence in the financial market, and ensure that the interests of market actors are protected.

2.1.4. Other entities

There are further entities involved in the widest sense in financial investigations and fighting financial crime, namely the Border Guard, the Internal Security Agency (special service), the Central Anticorruption Bureau (special service) and the Military Police. Their tasks do not include the creation of specialized units to recover assets used in criminal activities.

2.1.5. Training

2.1.5.1. The police

The Polish authorities state that - depending on their individual assignment - police officers and civilians employed in the economic and financial crime departments and units of the Polish police have followed various specialised training courses enabling them to extend their competences, mainly in the following areas:

- (a) methods of combating economic crime, e.g.:
 - economic fraud,
 - crime against insurance companies,
 - banking offences,
 - offences relating to the use of payment cards (skimming),
 - capital market crime,
 - money laundering,
 - offences relating to grants and target funds

- crime affecting the EU's financial interests,
 - tax and customs crime,
 - public procurement crime,
 - corruption;
- (b) other training courses on combating economic crime,
- (c) training courses and workshops on asset recovery (e.g. those conducted by the Asset Recovery Department within the Criminal Investigation Bureau).

During the visit, the expert team was informed that training courses on asset recovery were held at the Polish Police Academy and that awareness raising was one of the major objectives of such training.

Moreover, the Polish authorities stated that police officers participate or had participated in activities either organised or financed by the European Union.

One such course was conducted within a project entitled "European Union - the Common Market for offenders, assets seizure and evidence gathering in criminal proceedings" which was cofinanced by the European Commission. The main objective of this project was training about asset recovery for the teams created at Voivodeship police headquarters level and at Metropolitan Police Headquarters level to coordinate activities relating to the recovery of assets;

Another training activity took place within the project on "Improving the efficiency of crime-related assets recovery" as part of the Operational Programme on Human Capital.

The Polish authorities emphasised that officers' professional experience was one of the main criteria in the selection process for participation in specialised training; it was not, however, made clear whether the prerequisite for selection was a certain level of experience or rather a lack of experience.

2.1.5.2. Training within the Polish Financial Intelligence Unit (FIU)

The majority of staff employed within the Polish FIU have a university degree in economics, law or management. Employees of the FIU also receive internal and external training, take part in e-learning and have a manual prepared by the FIU, giving them a level of expertise that - according

to the information received from the Polish authorities - was also confirmed by the last AML/CTF evaluation by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

2.1.5.3. Training of the judiciary and public prosecutors

The Polish National School of Judiciary and Public Prosecution has only recently conducted a number of seminars and training events on various aspects of economic and financial crime, including EU legislation, and related areas.

2.1.5.4. Training within the Customs and Tax Administration

While the Polish authorities maintain that staff employed in the various entities dealing with the subject under review in this evaluation have academic training, mostly in law, no information regarding specific or specialised training on financial and economic crime matters was received from the customs and tax administrations.

2.2. Criminal policy

The evaluation team has received no information concerning a wider, policy-based approach to the subject under review, either on specific policy papers or any committee at parliamentary or governmental level.

The Polish Police claim to have produced a comprehensive action plan for the development and implementation of a coherent and consistent criminal policy. The document was, however, available only in Polish so the evaluation team was unable to assess it.

2.2.1. Prioritisation of tracing, seizure and confiscation of assets

The Polish authorities stated in their answers to the questionnaire that in criminal investigations the tracing, seizure and confiscation of assets was not a separate goal and therefore did not warrant the deployment of extra resources.

Although the experts were unable to identify an explicit "proceeds-oriented" policy, it was affirmed on several occasions during the visit that recovering criminal assets was one of the inherent goals of any criminal investigation. In line with this argument, and as all competent authorities are authorised to conduct investigations under the supervision of a prosecutor, the presentations during the discussions revealed that the representatives of the Polish law enforcement services adhere to the view that their criminal investigation system is proceeds-oriented.

Throughout the evaluation it was repeatedly asserted that the Polish authorities did not regard financial investigations as a separate part of the criminal procedure. Furthermore, the concept of financial investigations is not addressed in any legal acts, and all activities regarding the tracing, seizure and confiscation of assets derived from criminal activity are governed by the following legislative acts:

- The Penal Code (Act of 6 June 1997).
- The Fiscal Penal Code (Act of 10 September 1999).
- The Code of Criminal Procedure (Act of 6 June 1997).
- The Executive Criminal Code (Act of 6 June 1997).

During the visit to the Board of the CBI in Krakow, experts were, however, informed by the practitioners that financial investigations were actually conducted and that at the time of the visit the Board was conducting 55 investigations, in 48 of which crime-related assets were seized as a result of the financial investigation being carried out in parallel with the normal investigation. Furthermore, the amount of assets seized in the Board's jurisdiction had risen considerably between 2009 and the first half of 2010.

2.3. Conclusions

2.3.1. Investigative authorities

- The Polish law enforcement system is well developed and many law enforcement agencies under different Ministries, as well as the Prosecutor's Office, are involved in the various types of economic crime investigation.

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- The Polish police service has a straightforward uniform structure which seems to prevent unproductive competition between different police services. The Central Bureau of Investigations plays an important and central role. Nevertheless the regional offices seem to have a sufficient level of autonomy to serve regional prosecution offices under whose auspices investigations are conducted. These regional offices report to the central level thus contributing to a nationwide information and intelligence picture of the most threatening forms of crime, including for financial and economic crime.
- This organisational set-up appears to function rather well. The main problems arising are the apparent difficulty in maintaining the required level of specialisation at central level and establishing such a level at regional level. Also note-worthy is the lack of incentives for financial investigators. There are concerns that this will have an adverse impact on the quality and capacity of the work of investigative units.
- The tax authority has its own investigative bodies with far-reaching powers.
- The division of tasks between the police force and tax authorities with police powers remains somewhat unclear and raises some concerns as to efficiency and effectiveness in cases with overlapping jurisdiction among law enforcement agencies.
- Furthermore, the existence of the National Anti-Corruption Bureau and the classified nature of its competencies and activities do not contribute to the transparency of the overall system. It is not clear, for instance, to what extent investigations fall within the Bureau's remit. Clarification was not provided on the grounds that this information is classified.
- The statistics provided on the precise activities of the police services appear somewhat contradictory and confusing. e.g.:

With regard to Art. 299 PC (money laundering)

Year:	2007	2008	2009
Suspects	426	358	336
Accusations	477	406	414

as opposed to:

Data on all economic departments and CBI units

Year:	2007	2008	2009
Suspects (Art. 299 PC)	175	192	164
Accusations (Art. 299 PC)	191	213	200

- Furthermore, these statistics are not integrated with the judicial statistics on indictments and convictions and it therefore seems difficult to measure the overall performance of the police in this field effectively.
- For a jurisdiction of the size of Poland, the figures appear to be comparatively low, especially as regards seizures of criminal assets. Moreover, no figures on any confiscations were made available. The expert team therefore concluded that management information is not processed appropriately which hinders progress to an improved performance level.
- A positive tendency seems to have developed with the creation of the ARO, the recently designated national asset recovery office within the police. It contributes to the implementation of a carefully determined, strategy-driven process which is properly linked to developments at EU level. The Polish ARO appears to be a genuine catalyst to increase national capacity to recover assets. It is manned by highly motivated staff and contributes to the implementation of effective measures to disrupt and permanently dismantle organised crime groups engaging in serious crime. This initiative deserves to be mentioned as good (even exemplary) practice at national level. It is recommended, however, that the judiciary become an inherent part of these achievements in order to accomplish a fully integrated common process eventually.
- Apart from its investigative role, the Central Bureau of Investigation claims to design and elaborate the strategy on the forms of crime within its remit and to provide support for the decentralised police units operating at district level. The evaluation team explicitly requested an executive summary of the strategy adopted and the implementation plan but was only provided with a description in general terms and was therefore unable to assess it properly. Obviously this raises genuine concerns as a clear and concise formulation of the strategy with regard to financial crime and the financial aspects of serious and organised crime is crucial to enable any effective concerted action.

2.3.2. Prosecution authorities

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

- Prosecutors and judges do not have any specific training to deal with complex financial cases, nor do they receive any continuing professional training during their careers. They are considered to be generalists and work accordingly.
- Judicial statistics on the application of legal instruments for both national and regional level appeared to be very elementary or nonexistent.
- Prosecutors and judges focus on coping with day-to-day business and do not seem very familiar with the current sophisticated forms of cross-border financial crime. Examining magistrates from the prosecution office are largely unaware of the added value to be supplied by EU agencies such as Europol and Eurojust. Even at national level, they do not seem to have a thorough understanding of how to make use of these bodies for their own purposes. There seems to be a discrepancy between what is expected from Europol and Eurojust and what their tasks and functions are.

2.3.3. *Training*

- Polish police recruitment and training are centrally structured and generalist. No specific training trajectories and strategies have been developed for specialised functions, such as financial investigation. Specific ad hoc training courses are organised and set up for selected officers; however, there appears to be little structure, and in particular a lack of long- and short-term training programmes. The overall level of specialisation in conducting financial investigations seems to be rather low.
- In addition, the evaluation team was informed that a rather large number of specialised officers leave the service, which further diminishes the expertise-gathering capacity of the institutions.
- At least there have recently been seminars on economic and financial crime for prosecutors and judges at the Polish National School of Judiciary and Public Prosecution. From the information gathered, however, it also became apparent that prosecutors have to rely on their own initiative to get external training.

2.3.4. *Criminal policy*

- The police claim to have produced a comprehensive, solid action plan for the development and implementation of a coherent and consistent criminal policy. The regional offices contribute by providing intelligence in order to better shape the action plan and to properly identify priorities and new crime trends developing. This reportedly allows them to formulate concise aims and objectives and enables them to design appropriate indicators for measuring performance. Despite the evaluation team's request for an executive summary of this action plan in English, no substantial information allowing a proper assessment of the content was provided.
- Criminal asset recovery is the only area where tangible results have been achieved and where a concise and well thought-out strategy is being implemented. The good work being delivered by the Asset Recovery Office proves that a strategy-driven approach can work within the existing Polish law enforcement structure.
- The agreement signed by the Ministers for Finance, Justice and the Interior and Administration on 15 September 2009 with a view to complying with the provisions of the partnership declaration with regard to the Asset Recovery Office does not appear to cover the Anti-Corruption Bureau. This is a disadvantage as the participation of the Anti-Corruption Bureau could improve the overall results of corruption investigations.

3. INVESTIGATION AND PROSECUTION

3.1. Information and databases available

3.1.1. Databases and Registers

3.1.1.1. Access by police and ARO to national databases and registers

Police and ARO access to national databases may be either direct or indirect.

Direct access

Direct access to databases is possible through the Police Data Transmission Network (*PSTD*) for police officers and authorised civilians. Via the *PSTD* the following registers can be accessed:

- National Police Information System (*KSIP*), containing information on:
 1. crimes (e.g. legal qualification, crime description, information on suspects, etc.)
 2. people (wanted / missing persons, suspects, minors)
 3. events (e.g. crime-related events, traffic offences)
 4. items (vehicles, documents, crime-related objects, missing weapons)
 5. entities (companies, institutions, associations for which there is well-founded suspicion that they could be used to commit crime)
- National Court Register (*KRS*),
- Central Population Register (*PESEL*),
- National Official Register of Business Entities (*REGON*),
- Central Vehicle Register (*CEPiK*).

Indirect access

Indirect access is possible by direct request to the administrators of databases containing information on property, e.g. the following databases (some of which are described in more detail in this chapter of the report):

- Land and Building Record,
- Land and Mortgage Register,
- Economic Activity Records,
- Register of Housing Cooperatives,

- Records of Manufacturers, and Farm and Grant Payment Requests,
- Register of Identified Farm Animals,
- Horse Registry,
- Ship Registers (register of boats, yachts and vessels),
- Registers of Inland Navigation Vessels,
- Register of Fishing Boats,
- Register of Civil Aircraft,
- Register of Foreign Entrepreneurs' Representations,
- Register of Pledges,
- Central Register of Treasury Pledges,
- Register of Property, Stocks and Shares acquired or Subscribed by Foreigners,
- National Register of Forestry Reproductive Material,
- Register of Historic Monuments.

In addition, access to data in the registers kept by the General Inspectorate of Financial Information (Polish FIU) is possible on the basis of a justified written request of the Minister for the Interior or persons authorised by him, but only in cases of suspicious transactions. Such authorisation is granted for instance to the head of the Asset Recovery Department of Criminal Investigation Bureau (WOM BK KGP).

3.1.1.2. Register of bank accounts

Poland has no centralised register of bank accounts. Information relating to a specific bank account has to be obtained by the investigative authorities in accordance with the regulations laid down in the Polish Banking Act.

3.1.1.3. New Mortgage Register

The New Mortgage Register contains the following data:

- specification of real estate
- specification of real estate owners

The register is accessible to anyone in possession of the reference number of a property.
Information from the New Mortgage Register is provided on submission of a written request.

3.1.1.4. *National Court Register (KRS)*

This database is composed of three separate registers:

- the register of entrepreneurs,
- the register of associations, other types of voluntary and professional organisations, foundations and public social service institutions,
- the bankruptcy register (regarding insolvent debtors).

The following entries are subject to registration:

- establishment of a new entity,
- changes and modification of important details of an entity, in particular capital and partners (shareholders), persons authorised to represent an entity and members of organs, financial report of an entity.

The National Court Register may also contain other information concerning an entrepreneur:

- information about tax and customs arrears,
- information about social security arrears,
- creditors and amounts of unpaid liabilities.

The National Court Register is accessible to the public and anyone can access its registration files on entities (in the relevant District Court).

3.1.1.5. *National Official Register of Business Entities (REGON)*

The National Official Register of Business Entities provides information on business entities operating in Poland.

Data from the *REGON* register are available to the public and information is provided on submission of a written request.

3.1.1.6. *Central Vehicle Register (CEPiK)*

The Central Vehicle Register contains the following data:

- vehicle identification data,
- registration card numbers,
- data concerning vehicle owners.

All entities dealing with law enforcement and tax matters have access to the information and data in the Central Vehicle Register in their official capacity:

The team was informed that other entities such as insurance companies, banks, solicitors' offices and the National Social Insurance Institution also use the database.

Data from the Central Vehicle Register are provided upon application.

3.1.2. *Cooperation at national level*

3.1.2.1. *Identification of bank accounts*

The provision of bank information to law enforcement and fiscal authorities is regulated by the Polish Banking Act under which a request can be sent to the bank to identify an unknown bank account belonging to a specified person or the unknown owner of a specified bank account.

The Banking Act also authorises the identification of operations from and to a specified bank account in a specified period in the past.

The monitoring of bank accounts is possible only during a criminal investigation and is impossible after an investigation has been concluded; therefore transactions to and from a specified bank account can only be traced during the investigation.

In reply to the questionnaire, the Polish authorities reported one instance where a request was made and information was communicated by the bank to the investigative authorities on a regular basis. However, no further details of the procedure were given.

In the course of the proceedings conducted in cases of fiscal crime and offences, the units subordinate to the Minister for Finance (Fiscal Control, Customs Service, Tax Administration) can also request the bank to provide detailed information concerning a suspect, including the following:

- their bank accounts or savings accounts, account numbers, turnover and balance;
- their cash accounts or securities accounts, account numbers, turnover and balance;
- credit or loan agreements concluded as well as deposit agreements;
- Treasury Shares or Treasury Bonds purchased via banks as well as trading in these securities;
- turnover of deposit certificates issued by banks or other securities.

This also applies to other financial institutions, e.g. leading brokerage companies and cooperative savings and credit institutions.

Furthermore, on a written request from a competent authority, fund managers are required to prepare and submit information, at their own expense, on discontinued units of participation.

3.1.2.2. *Legal Framework*

The legal provisions on the identification of bank accounts and their owners and the disclosure of information to the law enforcement authorities are Articles 105¹⁵, 106¹⁶, 106 a¹⁷, 106 b¹⁸ and 106 c¹⁹ of the Polish Banking Act.

¹⁵ **Article 105 Banking Act** reads as follows:
“1. Banks shall be required to disclose information that is subject to the obligation of banking secrecy solely:
(...)
2) at the request of:
(...)
b) a court or public prosecutor in connection with legal proceedings under way in cases involving criminal or fiscal offences:
— against a natural person where such person is party to an agreement with the bank, with the scope of information being that related to that natural person,
— committed with respect to the activity of a juridical person or organisation not possessed of personality at law, with the scope of information being that related to that juridical person or organization,
c) a court or public prosecutor in connection with the performance of a request for legal assistance from a foreign country which, on the basis of a ratified international agreement binding on the Republic of Poland, has the right to request information that is subject to the obligation of banking secrecy,
d) a court in connection with legal proceedings under way in cases involving inheritance or the division of the joint property of husband and wife, and also legal proceedings under way against a natural person in cases involving maintenance or continuous financial provisions related to maintenance, where the said person is party to an agreement with the bank,

e) the director of a customs office in connection with:

— legal proceedings under way against a natural person in cases involving criminal or fiscal offences, where the said person is party to an agreement with the bank,

— legal proceedings under way in cases involving criminal or fiscal offences committed, against a juridical person or an organization not possessed of personality at law, where such are accountholders at the bank,

(...)

l) the police, where this is necessary for effective crime prevention or detection, or to establish the perpetrators of a crime and gather evidence, in accordance with the principles and procedure specified in Article 20 of the Police Act of 6 April 1990,

(...)

2. The scope of information provided by banks to tax authorities, the General Inspector of Financial Information, fiscal inspection agencies, as well as the trustee and their deputy, under the provisions of the Act on Mortgage Banks and Mortgage Bonds of August 29, 1997 (The Official Journal No. 140/1997, item 940, No. 107/1998, item 669, No. 6/2000, item 70, No. 60/2000, item 702, No. 15/2001, item 148, No. 39/2001, item 459, and No. 126/2002, item 1070) and the principles applicable to the provision of that information, shall be those laid down in separate legislation.

(...)

5. Banks shall be liable for any damages resulting from their disclosure of information that is subject to the obligation of banking secrecy and from the utilisation of such information for purposes other than those intended.

6. Banks shall not be liable for any damages resulting from the disclosure of information that is subject to the obligation of banking secrecy by the persons and institutions authorized under the present Act to require banks to provide such information.”

16

Article 106 Banking Act reads as follows:

“1. Banks shall be required to undertake measures to prevent the use of their activities for purposes associated with the criminal offence referred to in Article 299 of the Code of Criminal Procedure of 6 June 1997 (as published and amended in The Official Journal No. 88/1997, item 553), hereinafter referred to as the “Penal Code”, and to prevent terrorist acts.

2. The procedure to be applied by banks in the event of the circumstances referred to in § (1) above shall be laid down in a separate Act. (...)”

17

Article 106a Banking Act reads as follows:

“1. Where there is a justified suspicion that the bank’s activity is used in order to conceal criminal activities or for purposes related to criminal activities other than the offence referred to in Article 299 of the Penal Code, or a terrorist act, the bank shall notify the prosecutor.

2. The prosecutor who has received the notification referred to in § 1 may request complementary information, also during activities undertaken pursuant to Article 307 of the Code of Criminal Procedure of June 6, 1997.”

18

Article 106b Banking Act reads as follows:

“1. Apart from cases specified in Articles 105 and 106a, the prosecutor who conducts criminal or fiscal offence proceedings may request the bank, the bank staff or other persons involved in the performance of banking operations to disclose information that is subject to the obligation of banking secrecy solely under a decision issued at their request by the competent district court.

(...)

3. Having reviewed the application the court shall, by decision, issue authorisation to disclose information, specifying its type and scope, the person or organization to which the information pertains, the entity obliged to disclose information, or the court shall refuse the authorization to disclose information.

4. The prosecutor applying for a decision referred to in § (3) shall have the right of complaint against the court’s decision.

5. The prosecutor authorized by the court shall notify the entity obliged to disclose information of the court’s decision, the person or organization to which the information pertains and the type and scope

Law enforcement authorities can therefore obtain the information they require to conduct an investigation from the bank upon request on the basis of this Act.

With regard to the competencies of the authorities under the auspices of the Ministry of Finance, the appropriate legal bases for obtaining information on bank accounts are as follows:

- Fiscal Control: Fiscal Control Act, dated 28 September 1991²⁰,
- Customs Service: Customs Service Act, dated 27 August 2009²¹,
- Tax Administration: Tax Ordinance Act, dated 29 August 1997²².

3.1.2.3. *Types of crimes covered*

The Polish Banking Act provisions referred to above are applicable to all types of crime. Those for the entities under the Ministry of Finance, however, apply only to fiscal crime and offences.

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

The maximum period for which a measure regarding a bank account can be exercised ends on the date on which a court issues its verdict on the case.

3.1.2.5. *Competent authorities*

The authorities listed in Articles 105 *et seq* of the Banking Act are competent to ask for the measure. In essence this means the prosecutor's office. In instances other than those mentioned in Articles 105 and 106a of the Banking Act, the prosecutor requires a court order to obtain the information requested.

of such information.”

¹⁹ **Article 106c Banking Act** reads as follows:

“The prosecutor conducting the proceedings may, in cases specified in Article 105 (1), sub§ 2, points b and c, under a decision issued at their request by a competent district court, demand information that is subject to the banking secrecy from entities to whom the bank disclosed information subject to the obligation of banking secrecy. Provisions of Art. 106 b (2)—(5) shall duly apply.”

²⁰ Polish Official Journal Nr 100, position 442 with further changes;

²¹ Polish Official Journal Nr 168, position 1323 with further changes;

²² Polish Official Journal of 2005 Nr 8, position 60 - with further changes;

3.1.2.6. *Informing persons affected by the measure*

Persons affected by a measure have the right to be informed and can inspect the material used in the proceedings after they have been concluded in accordance with the rules laid down in Article 321 CCP²³.

3.1.3. *Cooperation at European level*

3.1.3.1. *Legal Framework*

Poland has ratified the Protocol to the Convention on Mutual Legal Assistance between Member States of the EU²⁴. The legal provision adopted to implement that Protocol is Article 105(2)(b) of the Polish Banking Act²⁵ whereby banks are required to disclose information that is subject to the obligation of banking secrecy at the request of a court or public prosecutor in connection with legal proceedings under way in cases involving criminal or fiscal offences:

3.1.3.2. *Police information*

Information on bank accounts and holders cannot be provided to a law enforcement authority in another Member State by means of "police cooperation", not even on the basis of Framework Decision 2006/960/JHA or 2007/845/JHA, because it is protected by banking secrecy. However, there are exceptions:

Where the request relates to money laundering or terrorist financing, the Asset Recovery Department can send a request for information to the Polish FIU in accordance with Article 33 of the Act of 16 November 2000 on counteracting money laundering and terrorist financing. If the requested persons or companies appear in the register of suspicious transactions, the FIU can provide the information to the Head of the Police's Asset Recovery Department.

²³ Article 321 CCP: "§ 1. If there are grounds to conclude the investigation, upon request by the suspect or his defence counsel for final examination of the material used in the proceedings, the person conducting the proceedings notifies the suspect and the defence counsel of the date of final examination, advising them of their right to examine the files at an earlier date depending on the importance or complexity of the case, as set out by the agency conducting the trial. (...)"

²⁴ OJ C 326, 21.11.2001, pp. 1-8, Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

²⁵ Cf. footnote 16.

3.1.3.3. *Information requests via the ARO*

A request for information issued by a law enforcement authority in another Member State is directed to the Asset Recovery Department of the Criminal Investigation Bureau acting as the Polish ARO. After having registered the request, an ARO officer will run an inquiry across the directly accessible databases and, if necessary, will send further requests for information to the contact points in the Ministry of Finance and the Ministry of Justice and to other external institutions. The intelligence processed is then transformed into an answer and sent to the requesting Member State.

3.1.3.4. *Competent authorities*

When acting as issuing State

A request for mutual legal assistance (MLA) is issued either by the district prosecutor's office (*Prokuratura Okręgowa*) or by the appellate prosecutor's office (*Prokuratura Apelacyjna*). They issue the request either within the framework of their own investigation or upon request from the subordinate unit – the regional prosecutor's office, which has no competence to issue or send an MLA request abroad. Instead of sending the MLA request on their own, they may choose to submit it first to the Prosecutor General's Office which, in turn, will forward it to the executing authority. In relations with the Member States of the EU, the rule is, however, to issue and send the request directly to the executing judicial authority.

When acting as receiving State

As a rule, all incoming requests are submitted to the district prosecutor's offices which are locally competent to execute them and which are properly staffed with prosecutors specialising in MLA matters. However, they may also be received by the Prosecutor General's Office where they are processed by the international cooperation department and are subsequently forwarded to the local units at district level for execution.

Exceptionally, some requests may be forwarded to the regional prosecutor's offices which execute them under the guidance and supervision of the district prosecutor's offices. In practice, it can also

happen that these are the appellate prosecutor's offices which are involved in execution of the most complex and high-profile requests, especially when at the same time they are conducting their own investigation concerning a related offence. Some parts of the requests (especially those dealing with 'technical' aspects, such as searches of premises and locating witnesses) can also be dealt with by the police acting under the supervision of the prosecutor.

3.1.3.5. *Problems encountered*

In their answers to the questionnaire, the Polish authorities noted a number of problems that they have encountered: In the area of mutual legal assistance there appeared to be recurring problems with the execution of Polish requests by foreign counterparts; they were summarised as follows:

Difficulties observed as requesting State

- lengthy delays in execution of the request (in some cases they are reported to have exceeded 5 years);
- problems in executing requests dealing with banking secrecy and banking and corporate documents (refusals, resulting in a disproportionate amount of additional information searches);
- problems in recovering criminal assets;
- translation quality of MLA requests and supporting documents;
- lack of mutual understanding regarding national legal concepts and institutions and lack of flexibility in overcoming such difficulties;
- unreasonably short deadlines (e.g. a few days) for executing requests that require a multitude of actions to be taken;
- difficulties in maintaining communication with executing authorities (unavailability of officials responsible, language barrier);
- problems in obtaining copies of case files;
- problems in interviewing the suspects (some countries do not provide such assistance at all under any conditions).

Difficulties observed as receiving State

With regard to the execution of requests by Poland, the following problems were highlighted by the Polish authorities:

- communication problems (language barrier);
- requests that are contrary to Polish national legislation (e.g. requests for the criminal records of witnesses, requests for video-conferencing relating to the suspects).

Difficulties observed in ARO cooperation

The Polish authorities stated that a secure electronic information exchange network, directly accessible by the ARO, would facilitate fast communication with AROs in other EU Member States as well as providing a route for exchanging classified requests. The Polish authorities would strongly advocate considering the SIENA network as an instrument to be used in this respect.

3.2. Financial investigations and use of financial intelligence

3.2.1. Legal framework

Poland has no specific legal framework addressing financial investigations. As already explained with regard to criminal policy, asset recovery in the widest sense is carried out in the context of normal criminal investigations and is therefore covered by the legal instruments laid down in the Penal Code, the Code of Criminal Procedure and other legislative acts governing seizure, freezing and confiscation of assets.

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

Since the term “financial investigation” is not a specific concept in Polish law enforcement and, as was reiterated throughout the visit, recovery of assets is carried out in the context of normal

criminal investigations, the Polish police do not gather statistics on the effectiveness of financial investigation. Poland does, however, have statistics concerning the value of crime-related assets forfeited in cases, with a reference to the specific type of crime.

3.2.2.1. Inter-departmental cooperation

Both police and customs have the authority to carry out (criminal) investigations into criminal customs offences. Customs also have the authority to prosecute these cases. Customs have to notify each and every (criminal) case to the prosecution service which can then decide whether to take over the case from customs. In practice, the prosecution service (and the police) only takes over the more serious cases. At operational level ad hoc meetings are held between the competent services (police/customs) to prepare the decision on which service should be charged with the investigation. Once the police have taken over, the prosecution service can still ask customs to carry out specific investigative activities for the case. Though this method may work in practice, there is no clear demarcation line between the cases that customs deals with and cases which have to be investigated by the police (under the supervision of the prosecutor).

3.2.2.2. Financial Intelligence Unit

The Polish FIU's special legal powers and tools for investigating the financial aspects of criminal activities have already been referred to in point 2.1.1.2.

3.2.3. Use and effectiveness of financial investigations of specific crimes

Although it was emphasised throughout the answers to the questionnaire that no specialised financial investigations were conducted in the Polish law enforcement system, the information received during the individual visits showed that the situation is not quite so clear-cut.

As different representatives of the Polish law enforcement authorities demonstrated by presenting several case studies, the tracing, seizure and confiscation of assets was a vital element in the overall success of investigations into organised crime.

The experts conducting the evaluation were, however, unable to assess the effectiveness of the whole process, mostly because of the non-availability of statistics.

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

In their answers to the questionnaire, the Polish authorities stated that continuation of an investigation into the financial aspects of a crime after the criminal investigation proper had been closed, or after the conviction, was only possible as part of another/separate investigation (based on material excluded from the first investigation), concerning for example money laundering.

3.2.5. *Involvement of private experts in the investigations*

In accordance with the provisions laid down in Articles 193, 194, 195, 205 and 206 of the Polish Code of Criminal Procedure, an investigator can consult an expert or call upon the expertise of a specialist to participate in part of the inquiry.

3.2.6. *Financial intelligence*

3.2.6.1. *Financial investigations in the intelligence phase*

Polish police gather intelligence about persons and companies involved in a case and also about crime-related assets during both the pre-investigation and the investigation phase. It was, however, not explained in detail to what extent the Polish investigative authorities were authorised to collect such intelligence, what their working methods were and whether that intelligence was admissible later in court.

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

The Polish authorities confirmed that financial intelligence information is used as a starting point for criminal and financial investigations. On the basis of the provisions of Articles 31 to 33²⁶ of the **Act of 16 November 2000 on counteracting money laundering and terrorist financing**, the Polish FIU (GIFI) disseminates information to the law enforcement agencies which could be used as a basis for initiating criminal investigations.

²⁶

Article 31 reads as follows:

“1. If the suspicion of having committed any crime referred to in Article 165a and Article 299 of the Penal Code, results from the information in possession of the General Inspector, its processing or analysis, the General Inspector shall notify the public prosecutor on a suspicion of crime commitment and at the same time shall provide him with the evidence supporting this suspicion.”

Article 32 reads as follows:

“1. Any information collected in the manner and within the scope of the provisions of the Act is disclosed for the purposes of criminal proceedings to the courts and prosecutors - at their written request - by the General Inspector.

2. In order to verify data contained in the notification related to the suspicion of a crime commitment, referred to in Article 165a and Article 299 of the Penal Code, the prosecutor may request the General Inspector to provide information protected by law, including bank or insurance secrecy, also during the verifying proceeding conducted pursuant to Article 307 of the Code of Criminal Procedure.

3. If the General Inspector is not in possession of information enough to let the prosecutor issue the order in the subject matter of the initiation of preliminary proceedings relate to the case of a crime referred to in Article 165a and Article 299 of the Penal Code, the request referred to in paragraph 2 can be directed to the obligated institution.”

Article 33 reads as follows:

“1. The General Inspector shall submit, with reservation to paragraph 1a, the information in his possession on the written and reasoned request of:

- 1) the minister competent for internal affairs or persons authorised by him,
- 2) (120) the Heads: the Internal Security Agency, the Intelligence Agency, the Military Counter-Intelligence Service, the Military Intelligence Service and the Central Anti-Corruption Bureau or any persons authorised by them - in terms of their statutory powers.

1a. (121) The information referred to in Article 8 paragraph 1 is submitted by the General Inspector to the minister competent for internal affairs and the Heads: the Internal Security Agency, the Intelligence Agency, the Military Counter-Intelligence Service, the Military Intelligence Service and the Central Anti-Corruption Bureau, at their written and reasoned request made with the consent of the Attorney General.”

(...)

3. In the events defined in paragraphs 1 and 2, the General Inspector may provide information on the transactions covered by the provisions of the Act, on his own initiative.”

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

The Polish authorities affirmed that in the intelligence phase there is cooperation with other authorities and that financial intelligence is collected from them. However, they did not specify how this is done.

3.3. Cooperation with Europol and Eurojust

3.3.1. Cooperation with Europol

3.3.1.1. Experiences in the past

In their answers to the questionnaire, the Polish authorities noted that cooperation with Europol was conducted especially within the framework of the following activities:

- use of analysis work files (AWF);
- participation in international activities and operations involving Europol e.g. joint police and customs operation "Mateusz" in excise-related crime;
- participation in non-operational initiatives coordinated by Europol;
- use of the Europol Information System;
- exchange of criminal intelligence, within the mandate of Europol, with Europol and law enforcement authorities in other EU Member States via the Poland's Europol National Unit (ENU) and Polish Liaison Officers,

Europol was used as a communication channel by the Polish ARO for submitting requests on the identification of assets when the requested Member State had not indicated the ARO or when the request (request response) was classified.

The police are currently taking steps to give the Polish ARO access to Europol's electronic information exchange network with direct access to Europol's databases and Europol's expert platforms. The next step will be to provide the ARO with access to the national component of SIENA. These steps are being coordinated by ENU Poland.

3.3.1.2. *Expectations regarding Europol support for financial investigations*

In view of the Polish authorities' expectations of Europol, the following issues *inter alia* have been highlighted:

- the promotion of the use of the FCIC website on good practice, methods and procedures for asset recovery in EU Member States;
- the further promotion of best practices and knowledge of asset recovery in the EU Member States as well as promotion of Europol's capacity to provide support in this respect e.g. in the framework of the Europol Knowledge Management Network;

3.3.2. *Cooperation with Eurojust*

3.3.2.1. *Overall cooperation with Eurojust*

The Polish authorities visited explained that so far they had had no experience of Eurojust support in financial investigations, not even in the context of joint investigation teams.

This lack of experience has raised doubts concerning the overall awareness of the potential assistance that Eurojust could offer Polish law enforcement authorities in their cooperation with their partners in the EU.

3.3.2.2. *Expectations regarding Eurojust support for financial investigations*

The Polish authorities noted that an active role by Eurojust in financial investigations could bring added value, especially with regard to operational information (reports). It was proposed that Eurojust should transmit these reports, containing information which might prove useful for ongoing investigations, without delay to the Member States concerned. It was suggested that the so-called 'Strategic Reports' dealing with crime trends, systemic problems in the area of mutual legal assistance or the functioning of certain institutions (e.g., joint investigation teams) could be disseminated periodically, on a yearly or quarterly basis.

3.4. Conclusions

3.4.1. *Financial investigation and use of financial intelligence*

- Although it has to be conceded that the Polish police have access to a large number of databases, the analytical work of the ARO in particular might benefit from access to information that is essential for their work on a hit-/no-hit basis while at the same time granting such access to police officers during the preliminary investigation. Such access would include access to information on financial funds as well as direct access to the land and mortgage register.
- The example of a case of fuel fraud, presented at the Krakow district court, more than once illustrated the importance of unhindered access by law enforcement agencies to the multitude of databases that are necessary in order to establish the assets of a suspect.
- Poland has no operational database on financial intelligence contained in SARs. This is primarily due to the fact that Poland opted for an FIU of an administrative nature, which provides only limited opportunities to share intelligence and to conduct integrated analysis in a proactive way. The information within the FIU is completely shielded from the outside and the FIU only communicates suspicious transactions to the competent public prosecutor's office when it has decided there is due suspicion of money-laundering activity, based upon an "analysis" conducted by its own department. It is therefore completely unclear which precise analysis processes are conducted and which analytical procedure is followed. There appears to be ample room for Polish law enforcement agencies to improve the processing of crime intelligence of a financial nature.
- In Poland the acquisition of the information necessary to conduct financial investigations is difficult because it is contained in a large number of databases scattered across different administrations, some of which do not have on-line access.
- A central register of bank accounts would certainly facilitate the task of law enforcement agencies when trying to establish the assets of a suspect in a criminal case. At present the identification of a bank account of a natural or legal person under suspicion or information about the movements of funds is available only on the basis of a permit issued by a judge or public prosecutor and very strict rules apply to executing such a request. In addition, foreign law enforcement entities can obtain such information from the Polish banks only via a mutual legal assistance request sent to the Polish prosecutor's office responsible.

- The information received from the Polish authorities reveals that the situation with respect to identification of bank accounts in the area of financial investigation is far from ideal. Firstly, the Banking Law of Poland and other legal acts regulating the disclosure of bank information render it almost impossible to identify the account number if the investigator (Polish or foreign) knows only the name of the suspect (natural or legal person) but not the name of the bank. Secondly, it is impossible to obtain details of an account opened in the name of a legal person (for example off-shore) represented by a natural person under suspicion. Such circumstances constitute an obstacle to effective financial investigations at local and international level.

3.4.2. *Cooperation with Europol*

- The Europol country report on Poland clearly indicates that the cooperation through Europol and the use made of products and services offered by Europol to the MS is far below average. As a matter of fact, Poland scores one of the lowest ratings amongst EU MS. To the extent that Poland does make use of Europol, there is no emphasis on financial crime. Poland has not joined any of the major financial AWFs and only participates in a reactive and indeed rather passive way. It is odd that a country with such a huge consumer market, and which is, for that reason extremely vulnerable to concerted attacks on its VAT system, should show no interest in participating in AWF MTIC. It is also difficult to understand why Polish authorities consistently refrains from sharing relevant intelligence derived from SARs with cross-border relevance. Although the Central Bureau of Investigation claims that its efforts focus on Organised Crime Groups and identification of their leaders and that its efforts include identification of money laundering as well, the absence of any contribution to Europol appears strange and leads the expert team to question whether they have properly considered the international dimensions of such crimes.
- Even in the few AWFs Poland has committed itself to, contributions are low in quantity and quality. This particular issue was mentioned and acknowledged by the relevant authorities during the evaluation visit. No real commitment was made to improve this situation. The discussion that took place subsequently revealed that there is a substantial misunderstanding between law enforcement agencies and the prosecutors on the exact conditions in which Polish crime intelligence can be proactively shared with international partners. This is a serious matter of concern.

3.4.3. *Cooperation with Eurojust*

- It seems that Polish judicial authorities, even at the highest level, have little or no knowledge of the exact tasks and functions of Eurojust. No experience of support provided by Eurojust in financial investigations was indicated, because the few cases that had been referred to Eurojust for such support had already faded away in proportion to the number of other cases that had been tackled. Actually, Eurojust's statistics show that Poland did receive considerable support in a few (three) very complex, multilateral financial crime cases between 2006 and 2010, although no joint investigation team was established in any of them. It is, however, assumed that these three cases may only be the tip of the iceberg.
- In general, Polish judicial authorities very rarely use the assistance Eurojust can offer to facilitate judicial cooperation and to coordinate investigations and prosecutions internationally. The expectations of Eurojust expressed in the answers to the questionnaire do not match its possibilities, since Eurojust's tasks and competence do not cover either operational intelligence-gathering or dissemination of periodic strategic reports.
- As Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime²⁷ has not yet been transposed into Polish domestic law, Eurojust is not entirely "legitimised" at national level in any relevant legislation or general instruction for prosecutors.
- The fact that Eurojust is used very rarely, if at all, especially for transmitting freezing orders which could be crucial to secure assets or evidence abroad swiftly, means that its potential is hardly used at all.

²⁷ OJ L138, 04.06.2009, pp.14-32.

4. FREEZING AND CONFISCATION

4.1. Freezing

4.1.1. *At national level*

4.1.1.1. *Legal basis*

The provisions for securing assets are laid down in Chapter 32 of the Polish Code of Criminal Procedure Articles 291 to 295 of which deal with ‘Security of Property’.

While Article 292(1) CCP stipulates that “security shall be obtained as provided for in the Code of Civil Procedure”, Article 292(2) explains that “the securing of the impending penalty of the forfeiture of material objects shall consist in the seizure of movables, liabilities and other property rights, and in the prohibition of selling and encumbering the real estate. This prohibition shall be disclosed in the land and mortgage register or, in its absence, in the set of documents filed. (...)”

For securing property with regard to offences falling within the remit of Fiscal Control, the Customs Service and Tax Administration, Article 131²⁸ of the Penal and Fiscal Code applies.

4.1.1.2. *Types of crime for which the measure can be obtained*

In accordance with Article 291(1) CCP, the assets of an accused can be secured “for any offence subject to a fine or forfeiture of material objects, or supplementary payment to the injured or pecuniary consideration for a public purpose, or to imposition of the obligation to redress damage or compensate for the injury sustained” *ex officio*. This also covers cases where an offence has been committed against property, or damage has been caused to property.²⁹

²⁸

Article 131 of the Penal and Fiscal Code reads as follows:

“(1) In the case of a fiscal offence or fiscal petty offence a penal measure of the forfeiture of things or collection of their monetary equivalent and payment of a legal and public due depleted?? by an illicit act can also be secured.

(2) Provision of § 1 shall apply respectively to secure threatening penal measure of forfeiture of financial benefit and collection of its monetary equivalent.

(3) Fine and penal measure of collection of monetary equivalent of the forfeiture of things can also be secured on the property of the entity held jointly liable

(4) To secure threatening penal measure of forfeiture of financial benefit and collection of its monetary equivalent and of the forfeiture of things and collection of their monetary equivalent, the provisions of Article. 292 (2) of the Code of Criminal Procedure shall apply respectively.”

4.1.1.3. Duration of the measure or, where applicable, conditions for a prolongation of the measure

Article 294(1) CCP stipulates that “the security shall be cancelled if no valid and final decision is issued imposing a fine, forfeiture, supplementary payment to the injured, pecuniary consideration for a public purpose or obligation to redress damage or to compensate for wrongdoing, or when the accused is not sentenced to pay the claims for reparation of damage, and where no suit for those claims has been filed within three months from the day on which the decision has become valid and final.”

4.1.1.4. Authority competent to take/request the measure

The police can execute a temporary seizure for up to seven days.

As laid down in Article 293(1) CCP, “the order securing claims shall be issued by the court or, in the course of preparatory proceedings, by the State prosecutor. Such an order shall determine the scope of the security and the manner of securing.”

4.1.1.5. Informing persons affected by the measure

Persons affected by the measure are informed by sending them a copy of the court order.

4.1.1.6. Legal remedies for the person concerned by the measure

In accordance with Art. 293(2) CCP “the order on security shall be subject to interlocutory appeal. The interlocutory appeal against an order from the State prosecutor is examined by the district court in whose area the proceedings are pending.”

²⁹ Cf. Article 291(2) CCP.

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

In cases of freezing in money-laundering cases the FIU can temporarily seize assets for up to 24 hours in accordance with Articles 18 and 19 of the FIU Act of 2000. A prosecutor may withhold the transaction for up to three months, on the basis of Article 291 CCP.

4.1.1.8. *Freezing (precautionary seizure)*

Article 295(1) CCP stipulates that “in the event that an offence described in Article 291 [of the CCP] is committed, the Police may conduct a provisional seizure of the chattels of the suspected person, if there are grounds for concern that they might be removed.” In such a case the provisions of Articles 217 to 235 (contained in Chapter 25 of the CCP: ‘Seizure of objects. Search’) must be applied accordingly³⁰.

However, in accordance with Article 295(3) CCP, provisional seizure cannot be applied to material objects not subject to execution, and in accordance with Art. 295(4), “a provisional seizure shall be cancelled if within seven days of the day on which it was conducted, an order on the securing of claims has not been issued.”

4.1.1.9. *Management of seized assets*

The Polish authorities stated in reply to the questionnaire that those rules which presently exist with regard to the management of seized assets are laid down in the Code of Criminal Procedure.

In accordance with Article 232(1) CCP, “material objects which are perishable or the storage of which would entail unreasonable expense or excessive hardship, or would significantly impair the value of the object, may be sold without an auction, by means of an appropriate trading unit, in compliance with the provisions applicable to sales resulting from the execution against chattels.”

Paragraph 2 of that Article further stipulates that “[t]he pecuniary proceeds of such a sale shall be deposited with the court” while paragraph 3 provides that “[a]ll persons concerned including the accused should be notified, if possible, of the time and circumstances of such a sale”.

Furthermore, Article 292(2) CCP stipulates that “if necessary, the court may provide for the administration of the real estate and/or of the firm owned by the accused.”

³⁰ Cf. Art. 295(2) CCP.

The ARO is not involved in any procedure regarding the management of assets nor is there a centralised body looking into the management of seized assets.

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

Poland has transposed Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence³¹ by inserting a number of provisions in its Code of Criminal Procedure of 1997 (Articles 589g – 589u).

Poland has introduced the provisions implementing this Framework Decision in the form of two separate chapters (62a and 62b) in the part of the Code of Criminal Procedure, dated 1997, that deals with international cooperation. These provisions form *lex specialis* in relation to any former provisions dealing with the area in question.

Furthermore, relevant provisions (§ 309-315) have also been inserted in the Regulation of the Minister for Justice on the internal operation of the civil units of the Prosecution Service (*Regulamin wewnętrznego urzędowania powszechnych jednostek organizacyjnych prokuratury*) dated 24 March 2010.

It should be noted that the new system does not replace the ‘old regime’ concerning the freezing of assets or evidence. It is left to the prosecutors to decide which mechanism they choose.

4.1.3. Mutual assistance in the area of freezing

4.1.3.1. Experience when acting as an issuing State

With regard to their experience as issuing state in the area of freezing the Polish authorities have informed that in accordance with Article 589g(1) of the Code of Criminal Procedure, the authority competent to issue a freezing order is the court having competence to try the case or the competent prosecutor.

³¹ OJ L 196, 2.8.2003, p. 45

Therefore, the authority mentioned in part (c) of the Certificate provided for in Article 9 of Council Framework Decision 2003/577/JHA that must be contacted by the executing authorities is the issuing authority specified in part (a) of the Certificate.

At the time of the on-site visit, no practical guidance on the content and format of the freezing order and on the use and practical completion of the Certificate had been issued. Neither had standard interpretations in respect of prescribed elements of the certificate been defined in national legislation. It was clarified however, that national legislation does not require the inclusion of any additional material above and beyond the freezing order and the Certificate.

4.1.3.2. *Preferred channels*

Freezing orders are usually transmitted directly between judicial authorities by post or by fax. Europol or Eurojust are not usually used for the transmission of freezing orders. For the transmission mode, there is however a high degree of flexibility since the order may be transmitted in any admissible and automatic way (cf. Article 589g(7) CCP). The Polish ARO is not involved in this procedure.

In order to identify the appropriate receiving authorities, the Polish authorities make use of the EJN Atlas, which is continuously updated and is widely used by practitioners. Another way of obtaining relevant information in this regard is to contact the central authorities in Member States and also to use EJN contact points as a source of information on contact details. Provided that the location of the evidence or object was known, the Polish authorities noted no problems in locating the appropriate locally competent executing authority.

Once such a contact is established, a direct dialogue between the issuing and executing authorities is favoured and seen as being in accordance with the content and spirit of the Framework Decision. However, as in the case of other MLA issues, the assistance of Eurojust or EJN may be sought.

According to the information received, the direct communication between judicial authorities - usually through exchange of letters (sent by post or fax) - made it relatively easy to keep abreast of the progress of the execution of a freezing order.

4.1.3.3. *Experience when acting as an executing State*

As stipulated in Article 589(l) CCP, incoming freezing orders should be sent to the locally competent court or the prosecutor. If the recipient is not competent, the freezing order is forwarded without delay (transmission by fax or e-mail will suffice) to the judicial units that have competence to execute it. However, in order to be eligible for execution, the documents sent must be translated into Polish.

The order and the accompanying certificate will only be checked formally (within the scope permitted by the Framework Decision). If there are any doubts as to the source of the documents, the executing court or prosecutor will directly contact the issuing authority in order to double-check the authenticity of the source.

The competent authority in the issuing State is informed of the progress of a freezing order in Poland in accordance with the regulations governing this process which are laid down conclusively in the following Articles of the Polish Code of Criminal Procedure:

- Article 589l (2) – information on forwarding the freezing order to the competent authority
- Article 589m (4) – communication relating to the issue of additional information pertaining especially to the location of the evidence or objects sought and also information on the impossibility of executing the order
- Article 589n (4) – information on the appeal lodged against the decision on the execution of the foreign freezing order and its result and appeal against the freezing order itself.
- Article 589p (1) and (3) – information concerning the final decision on the execution of the freezing order (or its suspension).
- Article 589s (2) – information on the intention to release evidence or objects from freezing

4.1.3.4. *Competent authorities and the role of ARO*

Article 589(l) of the Code of Criminal Procedure stipulates that it is the competent court or prosecutor who decides on the execution and enforcement of incoming freezing orders. Technically, they can order the police to implement their decision, i.e. conduct a search and seize the evidence or objects.

The central authority has no role whatsoever in this procedure.

Nor does ARO, as an element within the police structure, have any responsibility for this matter.

4.1.3.5. Additional information requests

The Polish authorities reported that all matters arising in practice were relatively easily remedied in direct contacts between the issuing and executing authorities. As long as the location of the objects or evidence as well as their description was correct, there was no need to request further information from the issuing authority.

4.1.3.6. Difficulties observed

According to the answers given in the questionnaire, the Polish authorities have reported no practical difficulties in relation to executing freezing orders. The validity of this assessment has to be weighed carefully as only a few Member States have so far transposed the Framework Decision and the overall number of freezing orders is low.

At the time of the visit, owing to the decentralised nature of this form of cooperation the Polish authorities at ministerial level were not in a position to provide information on known cases where freezing had not been authorised, because of the quality of the freezing order and/or the certificate was considered insufficient by the Polish courts.

4.1.3.7. Legal remedies

All the legal remedies which are available to interested parties have been taken into account in implementing the relevant provisions of the Framework Decision. They are included in Article 589n(3) CCP and comprise the following:

- appeal against the decision on the execution of the foreign freezing order,
- appeal against the measures taken by the law enforcement authorities in the process of executing the freezing order,
- appeal against the decision on the foreign freezing order.

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

4.2.1. Confiscation at national level

4.2.1.1. Legal basis

The general confiscation regime is based mainly on Articles 44 and 45 of the Polish Penal Code. The last substantive amendments to Articles 44 and 45 PC entered into force on 1 July 2003 and introduced extended powers of confiscation and obligatory forfeiture of benefit from an offence or its pecuniary equivalent.

While Article 44 PC³² covers objects and instrumentalities derived directly from an offence, Article 45 PC³³ covers property-related benefits. Indirect proceeds are capable of forfeiture in the

³²

Article 44 PC reads as follows:

“(1) The court shall decree the forfeiture of implements derived directly from the crime.

(2) The court can decree, and - in the cases indicated in the law – it shall decree the forfeiture of implements that served the crime or were used to commit the crime.

(...)

(4) In case the decision on forfeiture referred to in § (1) or (2) above is not possible, the court can decree the forfeiture of value equivalent to the value of the implements derived directly from the crime or the implements that served the crime or were used to commit the crime.

(5) A decision on the forfeiture of implements referred to in § (1) or (2) shall not be made if they can return to a wronged person or other authorised entity.

(6) The court may decide on, and – in cases provided for in the law – it decrees the forfeiture of the specified implements if a convict has been sentenced for the crime consisting in violating the interdiction to manufacture, possess, sell, send, carry or transport the implements.

(7) In case the implements referred to in § (2) or (6) do not constitute the property of the perpetrator, their forfeiture can be decreed only in the cases stipulated in the law; in case of joint ownership, the forfeiture can be decreed in the part possessed by the perpetrator or in the value equivalent to his share

(8) The implements covered by the forfeiture shall become property of the Treasury the moment the judgement becomes valid.”

³³

Article 45 PC reads as follows:

“(1) In case the perpetrator, even indirectly, acquired a property-related benefit from the crime, and the benefit is not subject to forfeiture of implements set out in Art. 44 (1) or (6), the court decrees the forfeiture of such benefit or its equivalent. The forfeiture shall not be decreed in part or in whole if the benefit or its equivalent should be returned to the wronged person or other entity.

(2) In case the perpetrator has been convicted for the crime as a result of which he acquired, even indirectly, a property-related benefit of considerable value, it is assumed that the property he has taken into possession or in relation to which he acquired any title of ownership during the time of crime or after the crime was committed shall constitute a benefit acquired by committing the crime till the moment a judgement – even an invalid judgement - has been pronounced, unless the perpetrator or other interested party shows evidence to the contrary.

(3) In case the circumstances are very likely to indicate that the perpetrator referred to in (2) has actually ceded, under any legal title, the property constituting the benefit acquired by committing the crime to a natural person, legal person or an entity without legal personality, it is assumed that the implements remaining an intrinsic possession of such a person or entity as well as their property rights

circumstances covered by Article 45 of the Penal Code. This provision encompasses reverse burdens where the property-related benefit is of considerable value.

Special confiscation of objects, instrumentalities and proceeds in a money laundering context is addressed in Article 299 (7) PC: In the event of a conviction for the offences specified in para. 1 or 2 of this Article “[...] the court decrees a forfeiture of implements derived directly or indirectly from the crime and a forfeiture of the benefits gained as a result of the crime or their equivalent, even if they do not belong to the perpetrator himself. Forfeiture shall not be decreed in part or in whole in case a given implement, benefit or its equivalent shall be returned to the wronged person or other entity”.

Under Article 412 of the Civil Code, courts can also require forfeiture of objects or their value where it can be shown that a person has committed an illegal act or an act of a “vicious nature”. For cases of fiscal crimes (e.g. tax fraud, customs fraud) forfeiture can also be imposed under Article 33 of the Penal and Fiscal Code.

It was noted that statistics are not kept of amounts collected after a court orders forfeiture.

4.2.1.2. *Types of crime for which confiscation is possible*

Confiscation under the Polish legal system is available for all types of crime.

belong to the perpetrator, unless the interested person or entity shows the evidence of their lawful acquisition.

(4) Provisions of § (2) and (3) shall apply, respectively, to the seizure conducted in accordance with the provisions of Art. 292 (2) CCP while securing the imminent forfeiture of benefits and during its execution. A person or entity the presumption established in § (3) refers to, can bring an action against the Treasury to reverse the presumption; the executive proceedings shall be suspended till the time a legally binding decision is made.

(5) In case of co-ownership, the forfeiture of the share belonging to the perpetrator or its equivalent shall be adjudicated.

(6) A property-related benefit covered by the forfeiture or its equivalent shall become the property of the Treasury the moment the judgement becomes valid, and in case referred to in § (4), second sentence, the moment the judgement dismissing the action against the Treasury becomes valid.”

4.2.1.3. *Authority competent to decide on the confiscation*

The authorities competent to decide on matters of confiscation are the courts. The powers to execute a confiscation order rest with the prosecutor.

4.2.1.4. *Informing persons affected by the measure*

Parties affected by a confiscation order are informed through the court verdict.

4.2.1.5. *Legal remedies for a person affected*

The party affected by a confiscation order can appeal through the normal judicial procedures.

4.2.1.6. *Involvement of the ARO during this procedure*

The Polish ARO plays no part in the confiscation procedure.

4.2.1.7. *Enhanced confiscation*

The possibilities of enhanced confiscation are regulated by Articles 45 and 299 (7) PC.

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

Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property³⁴ has been transposed. It was pointed out during the visit to the Krakow District Court that the individual provisions addressed in the Framework Decision had already been implemented in Polish national legislation before its entry into force³⁵.

³⁴ OJ L 68, 15.3.2005, pp.49-51.

³⁵ The acts of Polish legislation listed below have implemented the provisions of the following Articles of the Framework Decision:

Art. 2(1) FD 2005/212/JHA: Polish Penal Code 1997, Art. 44 § 1-8, Art. 45 § 1 and Polish Tax Penal Code 1999, Articles 29, 31 32 and 33 § 1.

Art. 2(2) FD 2005/212/JHA: Personal Income Tax Act 1991, Art. 30.1 § 7.

Art. 3(1), 3(2) FD 2005/212/JHA: Polish Penal Code, Art. 45 § 2-6 and Polish Tax Penal Code, Art. 33 § 2-7

The practitioners that the expert team met during the visit to the District Court in Krakow stated that the impact of FD 2005/212/JHA on the courts' practice in Poland was difficult to assess.

In the absence of official statistics, an unofficial survey across Poland had shown that up to the date of the evaluation visit Polish prosecutors had requested only five freezing orders from foreign counterparts while 39 such requests had been received by Polish prosecutors from abroad.

The Krakow district practitioners whom the team met nonetheless concluded that since 2007 the percentage of obligatory forfeiture of benefit from an offence or its pecuniary equivalent had constantly risen and that - given the relatively small absolute figures - it constituted a measurable impact of FD 2005/212/JHA of 24 February 2005 on this regional jurisdiction.

4.2.1.9. Confiscation of property owned by corporations

The Polish legal system allows property owned by corporations to be confiscated in cases where the corporation has not been prosecuted where the court assumes that the property is owned by beneficial owners who have been convicted. However, where the court assumes that the property is owned by beneficial owners who have not been convicted the instrument of confiscation cannot be applied.

4.2.2. Confiscation at European level

In accordance with the Polish Code of Criminal Procedure (Article 611 fn and Article 611 fu) only a court is competent to issue or execute a confiscation order.

Poland has transposed Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

Art. 3(3) FD 2005/212/JHA: Polish Penal Code, Art. 45 § 3-5 and Polish Tax Penal Code, Art. 33 § 3-5.

Art. 3(4) FD 2005/212/JHA: Polish Civil Code 1964, Art. 412.

It was interesting to note that, according to the information received at the Krakow District Court, no practical experience of the application of FD 2006/783/JHA in the region's courts had been reported yet. Nor were there any statistical data available concerning the application of FD 2006/783/JHA throughout Poland. It was presumed that the number of cases was probably very low which was attributed to the fact that the FD is a relatively new instrument.

Furthermore, the expert team noted that the practitioners at the Krakow District Court considered that the inconsistency in the grounds for refusal between the 2005 FD on freezing orders and the 2006 FD on mutual recognition of confiscation orders (Article 8 of the 2006 FD having more grounds for refusal than the 2005 FD) hampered their application. They assumed that the possibility of situations where a freezing order was issued but it was not possible to confiscate further could lead to frustration for authorities in both the issuing and the executing country.

It was expected that Framework Decision 2006/783/JHA would contribute to improving the level of cooperation on executing confiscation orders, making the whole procedure less formal and more expeditious.

4.3. Conclusions

- Poland has transposed Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property and evidence.
- The fact that the 'old regime' of mutual legal assistance and the 2003 Framework Decision coexist and that practitioners are free to choose which instrument they want to employ has not necessarily helped to promote application of the FD.
- The Polish authorities stated that since cooperation with regard to mutual legal assistance is decentralised and no established procedure for the collection of statistical data is in place, no such data are available subsequently. It was estimated however, that the overall number of incoming and outgoing freezing requests is very low and allegedly lower than the number of traditional MLA requests for seizure.

- The Polish authorities stated that at present Framework Decision 2003/577/JHA has not proved to have significant added value and that the idea behind this instrument, i.e. to simplify, speed up and render the seizure procedure within the EU more effective, had yet to be realised. It was noted that at the moment practitioners were somewhat hesitant about using this instrument more often and that, instead of the mechanisms of the FD, traditional MLA requests marked as ‘urgent’ were used. It was pointed out that the national provisions dealing with freezing orders are relatively new and the practitioners are still more used to drafting traditional requests.
- However, it was also emphasised that this was regarded as being a problem throughout the EU as Poland did not receive many requests originating from other Member States.
- In their answers to the questionnaire the Polish authorities advocated promoting the new mechanism more actively in the Member States. In this respect, they highlighted the need to conduct the necessary training activities to familiarise practitioners with this new tool and its practical implications and recommended training sessions involving practitioners from various Member States in order to exchange experiences and best practice. Additionally they proposed to get support from electronic tools, especially in the area of identifying competent executing authorities and getting to know national modalities for the execution of freezing orders. Such a tool should, in the first place, be included in the European Judicial Network Atlas – a special database mirroring the one for the European Arrest Warrant.
- Poland has transposed Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property³⁶.
- Poland is among the few EU Member States that at the time of the evaluation had implemented Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.
- No official statistics were available on the application of the 2005 and 2006 Framework Decisions;
- Practitioners in the District Court in Krakow stated that inconsistencies in the grounds for refusal between the 2005 and 2006 Framework Decisions could potentially lead to adverse effects when a freezing order was issued but confiscation was not possible as the reasons for refusal under the 2006 Framework Decision were more diverse than those in the 2005 Framework Decision.

³⁶ OJ, L 68, 15.3.2005, pp.49-51.

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- The fact that practitioners presumed that the number of cases where the 2006 Framework Decision was applied was low, together with the reluctance of Member States to transpose the instrument, contrasts with the expectations voiced in Poland, namely that the 2006 Framework Decision would improve the level of cooperation with regard to confiscation.

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5. PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

5.1. Available mechanisms, particularly cooperation with OLAF

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

Cooperation with the Prosecution Service

In 2010 a complete separation between the Ministry of Justice and the Office of the Prosecutor-General was implemented. In his regulation of 24 March 2010, the Justice Minister has defined new rules for the organisation of the prosecution service. On a central level contacts between OLAF and the Prosecution Service are with the Department for the Fight against Organised Crime and Corruption for cases which are related to organised crime³⁷, for other cases the Department for Preparatory Proceedings is responsible³⁸. However, during investigations prosecutors in the various units for the fight against organised crime or financial crime in the appellate and regional offices cooperate with OLAF, and can be in direct contact with it (Article 316). Under article 317 of the Regulation those prosecutors can ask OLAF in EU fraud cases for information or request OLAF to give access to its findings or to take coordination measures. OLAF has to be given, by the prosecution service and within the limits laid down by the law, information or access to the collected evidence for the purpose of the performance of its duties. This last provision is in line with article 7 of Regulation (EC) n° 1073/1999³⁹. Additionally, one Polish prosecutor is an expert seconded to OLAF. These cooperation mechanisms ensure the transfer of information to OLAF on the outcome of relevant criminal proceedings.

Customs Service implements the stipulations of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and

³⁷ According to Article 17(4) the cooperation with the Polish representative in Eurojust in matters within the remit of the prosecution service and with representatives of other international and supranational organisations operating under international agreements ratified by Poland on combating organised crime and terrorism, corruption, money laundering, trafficking of human being, proliferation of weapons of mass destruction, production and traffic of narcotics and psychotropic substances are included in the core tasks of the Organised Crime and Corruption Department.

³⁸ According to article 16 (7) international cooperation is included in the core tasks of the Preparatory Proceedings Department.

³⁹ Regulation (EC) N° 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office.

cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters. The cooperation concerns accomplishment of requests for administrative assistance.

The Police have good cooperation with OLAF. This cooperation is implemented at several levels where the most important is operational coordination in cross border fraud cases – mainly tobacco related crime - through OLAF-organised and financed working meetings. For this purpose OLAF is requested to establish the necessary contacts with law enforcement bodies in other Member States (or third countries). Apart from that OLAF gives assistance with fraud analysis.

The second pillar of cooperation involves joint training organised by OLAF, e.g. (TASK GROUP CIGARETTES Conferences), training seminars co-financed by OLAF, OLAF experts participation and exchange of experience

The Central Bureau of Investigation of the National Police Headquarters does investigate EU fraud cases, but no regular exchange of information exists with those bodies in the administration, which deal with EU funding.

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

The European Commission may take the role of an injured party in a criminal investigation involving fraud against the financial interests of the Communities, the legal bases of which are laid down in Articles 49⁴⁰ and 51⁴¹ of the Code of Criminal Procedure.

⁴⁰ Article 49 CCP stipulates:

“§ 1. The injured person is a natural or legal person whose property or rights have been directly violated or threatened by an offence.

§ 2. A public, local government or community institution may also be treated as the injured person even though it does not have the status of a legal person.”

⁴¹ Article 51 CCP stipulates: “§ 1. Actions pertaining to the proceedings on behalf of an injured person who is not a natural person, shall be conducted by an agency authorised to act in this manner.”

Furthermore, the Polish legal system has the instrument of subsidiary prosecutor that is also laid down in Articles 53⁴² and 54⁴³ of the Code of Criminal Procedure.

5.1.3. *Participation of OLAF officials in a criminal investigation*

The Polish authorities informed that a participation of OLAF officials in a criminal investigation was possible with respect to general regulations. The appropriate provisions (Art. 193-195, Art. 205-206 Polish Criminal Procedure Code) have already been referred to earlier in the report. The Polish authorities deemed an OLAF participation in the criminal investigation potentially useful, especially for obtaining documents or helping in interrogations of EU officials (the case of which has reportedly occurred in the past). Furthermore OLAF opinions about complicated EU procedures were found to be enlightening in clarifying investigation findings. It was seen as major limitation that OLAF officials cannot conduct any activities independently (or under prosecutor supervision) during a Polish criminal investigation.

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

It was affirmed that OLAF agents could take part in joint investigation teams. In accordance with Article 589b § 4 of the Polish CCP a JIT may be composed of - among others - representatives of international bodies with the competence to investigate offences. It is accepted that OLAF meets this requirement.

As to the limits, due to para. 4 of the aforementioned provision, all the acts carried out within the framework of the JIT on Polish territory are subject to national law and can only be performed within its limits. Para. 5 (in conjunction with para. 8) provides for the possibility of 'external' team members to participate in all possible procedural activities. The only exception where such participation cannot be permitted is when there is a justified need to protect an important interest of the Republic of Poland or the rights of an individual.

⁴² Article 53 CCP stipulates: "In cases of indictable offences, the injured person may participate in the judicial proceedings as a party thereto, by assuming the role of subsidiary prosecutor, alongside the public prosecutor or instead of him."

⁴³ Article 54 CCP stipulates: "§ 1. If the public prosecutor has filed the indictment, the injured person may, before the commencement of the judicial examination in the main trial, file a statement in writing on his intention to act as subsidiary prosecutor.
§ 2. The public prosecutor's withdrawal of the indictment shall not deprive a subsidiary prosecutor of his rights."

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

There has been no experience with JITs dealing with fraud against the financial interests of the European Communities in Poland to date.

5.1.6. *Coordinating body for contacts with OLAF in concrete cases*

AFCOS (Anti Fraud Coordination Service)

An organisational unit of the Ministry of Finance, the Department for the Protection of the European Union's Financial Interests, is national contact point for OLAF and reports to the European Commission irregularities under the relevant rules governing Structural Funds (Cohesion Fund, European Fisheries Fund, European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development). This unit ensures the coordination between the activities of the various services, which are obliged to forward the relevant information to AFCOS. It facilitates the exchange of information between OLAF and those services. AFCOS has set up interdepartmental groups in order to tackle different issues related to the fight against fraud affecting the EU budget, for instance in the area of the Common Agricultural Policy or of Fisheries. Also at regional level the Polish authorities have created coordination structures.

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

The Polish authorities reported that all experiences of AFCOS show that the support of OLAF would be most helpful in those fraud cases, where subjects based in different Member States are involved. If AFCOS is approached with a request of competent national authorities for information concerning such a case, usually the OLAF's support will be sought after in order to get access to information or get in contact with competent national authorities in the respective Member State.

The Polish authorities have noted that they would appreciate assistance in obtaining documents and witness interrogations.

With regard to the character and peculiarity of tobacco related crimes, the designation of OLAF liaison officers in Eastern Europe countries such as Russia, Ukraine or Belarus was considered justified in order to facilitate information exchange and coordination of activities.

The evaluation team was informed that the Central Bureau of Investigation of the General Police Headquarters (CBS KGP) has gained financial support for the purchase of special equipment within the programme HERCULES II used to combat financial crime. By taking into account their experiences, the Polish authorities noted that simplifying the HERCULES II programme and reducing the contribution made by Member States for the purchase of special equipment within this programme would be useful and could further improve the cooperation with OLAF.

5.2. Conclusions

5.2.1. *Protection of the financial interests of the EU*

According to the additional information received from the Polish authorities after the visit, Poland has indicated that the EU Convention of 26 July 1995 on the protection of the financial interests of the European Communities (also known as the 'PIF' Convention)⁴⁴ has been ratified while its three protocols have not yet been ratified.

5.2.2. *Criminal proceedings ↔ Recovery*

- The evaluators have sought additional information after the visit on the existence of a mechanism between the various bodies in the Polish administration and the investigation and prosecution services in relation to, on the one hand, the recovery of lost EU funds (e.g. unduly paid grants or evaded duties) and the (parallel) investigation/prosecution of the relevant criminal offences, which affected the EU budget. According to the answer received from the General Prosecutor's office no experience in recovering lost EU funds had so far occurred. The Polish authorities have however, assured that in such a case the International Cooperation Department of the General Prosecutor's Office would organize coordination meetings with OLAF representatives and that the Preparatory Proceedings Department coordinating all criminal investigations concerning offences affecting the EU budget would be involved.

⁴⁴ OJ C 316 of 27.11.95, p. 48

5.2.3. *On the spot checks direct expenditure:*

- Under Regulation (Euratom, EC) N° 2185/96 on the spot checks have to be prepared and conducted in close cooperation with the competent authorities in the Member State concerned. The Commission inspectors have to comply with the rules of procedure laid down by the law of that Member State. They have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to the information and documentation on the operations concerned.
- However, in Poland for on the spot checks, which the Commission (OLAF) carries out in cases concerning the EU's direct expenditure no proper rules exist. For the time being, the Polish authorities seek ad hoc solutions for this matter, but it is recommended to lay down rules, which define not only the body which will be responsible for this type of assistance but also the powers, which this body will have, in order to carry out its assistance activities.

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6. RECOMMENDATIONS

6.1. Recommendations to Poland

Given the present legal and organisational set-up, while taking into account the specificities of Polish governmental and administrative services, the evaluation team came to the conclusion that cooperation between the various players in Poland works well in general terms. All the practitioners met seemed to be highly motivated and devoted to their duties. Nevertheless the evaluation team thought fit to make a number of suggestions for the attention of the Polish authorities.

The experts therefore recommend that Poland:

1. Make the judicial authorities an integral part of the efforts to recover criminally acquired assets (cf. 2.3.1);
2. Consider setting up a multi-agency, multidisciplinary body in the field of asset recovery (cf. 2.3.1);
3. Consider specific training programmes for financial investigators (cf. 2.3.3);
4. Consider a higher degree of specialisation and specific training for prosecutors working in the area of financial crime (cf. 2.3.3);
5. Improve the collection and analysis of statistical data about the investigations carried out by all Polish law enforcement agencies and about the crimes, criminals, assets seized and recovered and the application of EU legal instruments (cf. 2.3.1, 2.3.2, 3.2.2, 3.2.3, 4.1.2, 4.2.1.8, 4.2.2 and 4.3); In relation to forfeiture of assets this should include not only information about orders for forfeiture but also about the amounts collected as a result.
6. Implement Council Decision 2009/426/JHA in order to 'legitimize' Eurojust at national level (cf. 3.4.3);

7. Promote greater use of such bodies as Eurojust in instances where problems have been encountered in executing requests to foreign countries (cf. 3.1.3.5);
8. Raise awareness regarding the roles of, and potential assistance from, Eurojust and Europol (cf. 2.3.2, 3.3 and 3.4);
9. Look into the reasons for the low level of commitment regarding contributions to Europol AWFs, particularly those relating to financial and economic crime (cf. 3.4.2);
10. Facilitate direct access (instead of the written request procedure) to certain databases indispensable for conducting financial investigations (cf. 3.4.1);
11. Improve the processing of criminal intelligence of a financial nature within the law enforcement structures (cf. 3.4.1);
12. Proactively facilitate the sharing of criminal intelligence with international partners (cf. 3.4.3);
13. Consider the benefits that financial investigations could gain from a centralised register of bank accounts (cf. 3.4.1);
14. Review the precise conditions under which Polish criminal intelligence can be proactively shared with international partners (cf. 3.4.2);
15. Lay down proper rules for conducting on-the-spot checks with regard to the EU's direct expenditure (cf. 5.2.3);
16. Conduct a follow-up to the recommendations set out in this report eighteen months after the evaluation and report on progress to the Working Party on General Matters including Evaluation (GENVAL);

6.2. Recommendations to the European Union, its Member States, institutions and agencies

17. The European Union should strive to facilitate direct and swift communication between the asset recovery offices within the EU (cf. 3.1.3.5);
18. Member States should promote Framework Decision 2003/577/JHA as the preferred instrument for executing orders freezing property or evidence, e.g. by facilitating exchanges between practitioners in the Member States (cf. 4.3);
19. The European Union should consider including a tool in the Atlas of the European Judicial Network to support the application of Framework Decision 2003/577/JHA (cf. 4.3);
20. Member States should implement Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (cf. 4.3.);

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Annex A: Programme for visit

Day 1 (18.10.2010)

Arrival of the delegations

Day 2 (19.10.2010)

09.30 – 10.00	Transfer from the hotel to the headquarters of the Ministry of the Interior and Administration
10.00 – 12.00	Official welcome by Ms Agata Furgala, Deputy Director of the Department of Supervision and Analysis in the Ministry of the Interior and Administration, with participation of the representatives of all the entities involved in the mission. Introductory presentations.
12.00 – 12.45	Lunch
13.00-16.00 (poss. 17.00)	Visit to the National Headquarters of the Police

19.00 Official dinner hosted by the Ministry of the Interior and Administration

Day 3 (20.10.2010)

09.30 - 10.00	Transfer from the hotel to the headquarters of the Ministry of Finance
10.00 – 12.30	Visit to the Ministry of Finance
12.30 – 13.15	Lunch hosted by the Ministry of Finance
13.30 – 15.00	Visit to the General Prosecutor's Office
15.15 – 16.30	Visit to the Ministry of Justice
18.15 – 20.58	Travel to Cracow by train

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Day 4 (21.10.2010)

8.30 – 9.00	Transfer from the hotel to the headquarters of the Tax Chamber in Cracow
9.00-10.30	Visit to the Tax Chamber in Cracow
11.00 – 13.30	Visit to the District Public Prosecutor's Office and to the District Court in Cracow (to be confirmed)
13.30 – 14.30	Lunch
14.30 – 16.00	Visit to the Voivodeship Police Headquarters
18.35 - 21.19 or 19.14 – 21.46	Travel to Warsaw by train

Day 5 (22.10.2010)

09.30 – 10.00	Transfer from the hotel to the headquarters of the Ministry of the Interior and Administration.
10.00 – 12.00	Closing meeting in the Ministry of the Interior and Administration – summary of the visit with the participation of all entities cooperating in the mission.

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ANNEX B: LIST OF PERSONS INTERVIEWED/MET

SURNAME	FIRST NAME	ORGANISATION
Augustyniak	Miłosz	Department of International Cooperation, Ministry of Justice
Babiński	Rafał	Prosecutor in the V Unit dealing with Organised Crime and Corruption in Appellate Public Prosecution Office in Krakow
Banaszewska	Elżbieta	Tax Administration Department, Ministry of Finance
Bilewicz	Jacek	Prosecutor in the Department of Organised Crime and Corruption in the General Prosecutor's Office
Błędowska-Fidor	Agnieszka	Treasury Control Department, Ministry of Finance
Brodzisz	Zdzisław	Prosecutor in the Preparatory Proceedings Department in the General Prosecutor's Office
Czechelska	Dorota	Prosecutor in the District Public Prosecution Office in Krakow
Cholewa	Katarzyna	Tax Chamber in Krakow
Ciaranek	Stanisław	Deputy Head of the Economic Crime Unit in the Voivodeship Police Headquarters in Krakow
Czeczótka	Beata	Head of the EU Unit in the European Union and International Cooperation Department, Ministry of the Interior and Administration
Domasiewicz	Renata	Tax Administration Department, Ministry of Finance
Dudek	Anna	Tax Chamber in Krakow
Dyjasz	Marek	Director of the Criminal Bureau of the National Police Headquarters
Frączkowski	Dawid	Organised Economic Crime Unit, Central Bureau of Investigation of the General National Headquarters

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SURNAME	FIRST NAME	ORGANISATION
Furgała	Agata	Deputy Director of the Department of Supervision and Analysis, Ministry of the Interior and Administration
Górszczyk	Zbigniew	Deputy Director in the Department of Organised Crime and Corruption in the General Prosecutor's Office
Hlawacz	Beata	Acting Head of the International Cooperation Unit in the Department of International Cooperation, Ministry of Justice
Jakubowska-Kwiecińska	Elżbieta	Deputy Director of the Treasury Intelligence Department, Ministry of Finance
Jędryka	Aleksandra	General Headquarters of the Border Guard
Karczewska	Agnieszka	Tax Administration Department, Ministry of Finance
Kempys	Magdalena	Tax Administration Department, Ministry of Finance
Klamczyńska	Alicja	Department of International Cooperation, Ministry of Justice
Klamczyńska	Alicja	Department of International Cooperation, Ministry of Justice
Kołaczek	Artur	Deputy Director of the Financial Information Department, Ministry of Finance
Kowalewska	Beata	Deputy Director of the Department for the Protection of EU Financial Interests, Ministry of Finance
Krawczyk	Przemysław	Treasury Control Department, Ministry of Finance
Krzemień	Aleksander	Department for the Protection of EU Financial Interests, Ministry of Finance
Krzewski	Maciej	Deputy Director of the Treasury Control Department, Ministry of Finance
Kubicki	Eligiusz	Deputy Director of the Criminal Investigation Bureau of the National Police Headquarters
Ławecka-Łysakowska	Renata	Treasury Control Department, Ministry of Finance

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SURNAME	FIRST NAME	ORGANISATION
Lejman	Tomasz	Head of the IT Systems Unit in the Department of Work Organisation, Visits and IT Systems in the General Prosecutor's Office
Lenarcik	Maciej	European Union and International Cooperation Department, Ministry of the Interior and Administration
Makulski	Michał	Criminal Analysis Unit in the Criminal Intelligence Bureau of the National Police Headquarters
Malek	Violetta	Treasury Control Department, Ministry of Finance
Matuszewska-Ceglarek	Marta	Criminal Asset Recovery Unit in the Criminal Investigation Bureau of the National Police Headquarters
Mazur	Dariusz	Judge in the Regional Court in Krakow
Mazur	Mirosław	Prosecutor in the District Public Prosecution Office in Krakow
Michalczuk	Cezary	Prosecutor in the Department of International Cooperation in the General Prosecutor's Office
Młotkowski	Robert	General Headquarters of Border Guard
Olędzka	Urszula	Deputy Director of the Department for the Protection of EU Financial Interests, Ministry of Finance
Olender	Renata	Central Bureau of Investigation of the National Police Headquarters, Board in Krakow
Oleśniewicz	Jarosław	Treasury Control Department, Ministry of Finance
Olszowski	Józef	Head of the Economic Crime Unit in the Voivodeship Police Headquarters in Krakow
Openchowska	Dorota	Tax Administration Department, Ministry of Finance
Pacek-Jakubowska	Dorota	Central Bureau of Investigation of the National Police Headquarters, Board in Krakow
Pęciak-Dobrzela	Lidia	Judge in the District Court in Krakow
Piątkowski	Mariusz	Treasury Control Department, Ministry of Finance
Piątkowski	Mariusz	Internal Revenue Monitoring Office in Krakow

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SURNAME	FIRST NAME	ORGANISATION
Piera	Ireneusz	Head of the Central Bureau of Investigation of the National Police Headquarters, Board in Krakow
Pietruszka	Adam	Tax Chamber in Krakow
Piotrowska	Anna	Deputy Director of the Tax Administration Department, Ministry of Finance
Przemieniecki	Krzysztof	Department of Supervision and Analysis, Ministry of the Interior and Administration
Przybylski	Marek	Customs-Excise Control and Gambling Control Department, Ministry of Finance
Rapacki	Adam	Under-Secretary of State, Ministry of the Interior and Administration
Rogowski	Grzegorz	Economic Crime Unit in the Voivodeship Police Headquarters in Krakow
Ryżowski	Wojciech	Financial Information Department, Ministry of Finance
Sieńko	Wiesław	Deputy Director of Customs-Excise Control and Gambling Control Department, Ministry of Finance
Skonieczny	Jacek	Deputy Director of the Treasury Control Department, Ministry of Finance
Sołtysińska-Łaszczyca	Aleksandra	Judge in the Regional Court in Krakow
Sosnowski	Marek	Prosecutor in the V Unit dealing with Organised Crime and Corruption in the Appellate Public Prosecution Office in Krakow
Staniszewska	Marta	Interpreter, Ministry of the Interior and Administration
Stępień	Ewa	Tax Administration Department, Ministry of Finance
Stryjewska Gamrot	Anna	Treasury Intelligence Department, Ministry of Finance
Sulima-Kotarski	Miłosz	Treasury Intelligence Department, Ministry of Finance
Świderek	Mirosław	Customs-Excise Control and Gambling Control Department, Ministry of Finance

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SURNAME	FIRST NAME	ORGANISATION
Syrek	Piotr	Tax Chamber in Krakow
Sztandar	Jacek	Criminal Asset Recovery Unit in the Criminal Investigation Bureau of the National Police Headquarters
Szwajcowski	Kazimierz	First Deputy Commander-in-Chief of the Police
Szymeczko	Piotr	Central Bureau of Investigation of the National Police Headquarters, Board in Krakow
Trzcíński	Piotr	Organised Economic Crime Unit, Central Bureau of Investigation of National Police Headquarters
Walkowska	Barbara	Internal Revenue Office in Wieliczka
Wielądek	Monika	Tax Administration Department, Ministry of Finance
Woźniak	Rafał	Head of the Criminal Asset Recovery Unit in the Criminal Bureau of the General Police Headquarters
Wróbel-Wolińska	Elżbieta	Counsellor of International Operations Unit, Central Bureau of Investigation of the National Police Headquarters
Wyrzykowski	Artur	Tax Administration Department, Ministry of Finance
Zawiła-Niedźwiecka	Anna	European Union and International Cooperation Department, Ministry of the Interior and Administration

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ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE OR POLISH TRANSLATION	ENGLISH TRANSLATION/EXPLANATION
AFCOS		Anti Fraud Coordination Service
AML		Anti money laundering
ARD		Asset Recovery Department
ARO		Asset Recovery Office
CARIN	-/-	Camden Assets Recovery Inter-Agency Network
CBI		Central Bureau of Investigation
CBS KGP		Economic departments of the Central Bureau of Investigation
CC		Civil Code
CCP		Code of Criminal Procedure
CEPiK		Central Vehicle Register
CTF		Counter terrorist financing
EJN		European Judicial Network
FCIC		Financial Crisis Inquiry Commission
FD		Framework Decision
FIU		Financial Intelligence Unit
GENVAL	Groupe questions générales y compris l'évaluation	Working Party on General Matters including Evaluation
GIFI		General Inspector of Financial Information
JIT		Joint Investigation Team
KGP		National Police Headquarters

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ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE OR POLISH TRANSLATION	ENGLISH TRANSLATION/EXPLANATION
KMP		Municipal Police Headquarters
KPP		Regional Police Headquarters
KRP		District Police Headquarters
KRS		National Court Register
KSIP		National Police Information System
KSP		Metropolitan Police Headquarters
KWP		Voivodeship Police Headquarters
MDG		Multidisciplinary Group on Organised Crime
MLA		Mutual legal assistance
MONEYVAL		Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
OCTA	-/-	Organised Crime Threat Assessment
OLAF	L'Office européen de lutte antifraude	European Anti-Fraud Office
PC		Penal Code
PESEL		Electronic System of Population Records
PFSA		Polish Financial Supervision Authority
PLN	Złoty	Polish Zloty
REGON		National Official Register of Business Entities
ROCTA	-/-	Russian Organised Crime Threat Assessment
SAR	-/-	Suspicious Activity Report

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ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE OR POLISH TRANSLATION	ENGLISH TRANSLATION/EXPLANATION
SIENA		A future information exchange tool at Europol, successor to InfoEx
STR	-/-	Suspicious Transaction Report
SWAT		Special Weapons and Tactics
VAT		Value added tax
WOM BK KGP		Asset Recovery Department of the Criminal Investigation Bureau, National Police Headquarters

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