



Council of the
European Union

089962/EU XXV. GP
Eingelangt am 14/01/16

Brussels, 14 January 2016
(OR. en)

8586/1/10
REV 1 DCL 1

CRIMORG 78

DECLASSIFICATION

of document:	ST 8586/1/10 REV 1 RESTREINT UE
dated:	10 May 2010
new status:	Public

Subject:	EVALUATION REPORT ON THE FIFTH ROUND OF MUTUAL EVALUATIONS "FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS" REPORT ON BULGARIA
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THE EUROPEAN UNION**

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

REPORT ON BULGARIA

DECLASSIFIED

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1. Introduction

At the Multidisciplinary Group on Organized Crime (MDG) meeting of 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 in the field of countering financial crime. However, it was also agreed that the evaluation should go beyond examining how relevant EU legislation had been incorporated into national law and take a wider look at the subject matter¹, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG².

The importance of the evaluation was emphasized by the Czech Presidency while discussing the judicial reaction to the financial crisis³. The significance of the exercise was once again underlined by the Council while establishing the EU's priorities for the fight against organized crime based on the OCTA 2009 and the ROCTA⁴.

Topics related 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 citizen⁵.

The most recent strategic document, "The Stockholm Programme – An open and secure Europe serving and protecting the citizens"⁶ also attaches great importance to economic crime and corruption as well as other related criminal phenomena and sets out objectives which to a large extent correspond to the scope and the aims of the evaluation.

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

¹ 10540/08 CRIMORG 89.

² 16710/08 CRIMORG 210.

³ 9767/09 JAI 293 ECOFIN 360.

⁴ 8301/3/09 REV 3 CRIMORG 54.

⁵ 11060/09 JAI 404.

⁶ 17024/09 CO EUR-PREP 3 JAI 896 POLGEN 229.

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At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits¹. Bulgaria is the sixth Member State to be evaluated during the round.

It is planned that the nominated experts from Member States should be accompanied each time by experts from the Commission (JLS and OLAF), Europol, Eurojust and the Council Secretariat.

The experts charged with undertaking this evaluation were Mr Ilias Skafidas (Deputy Director in the AML-CFT section, Bank of Greece, Greece), Mr Matevz Pezdirc (Head of the Criminal Law Unit, Ministry of Justice, Slovenia) and Mr Rafal Kierzynka (Judge, Circuit Court of Gorzow, Poland). Four observers were also present: Ms Joanna Beczala (JLS, Commission), Mr Christian de Beaufort (OLAF, Commission), Ms Annette von Sydow (Eurojust) and Mr Burkhard Muhl (Europol), together with Mr Steven Cras and Mr Michal Narojek of the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, on the basis of their findings during the evaluation visit, which took place between 7 and 11 December 2009, and Bulgaria's detailed replies to the evaluation questionnaire.

2. National system and criminal policy

2.1. Specialized units

2.1.1. Investigative authorities

The Ministry of the Interior (MoI) is the main law enforcement structure. It is governed by the law on the Ministry of the Interior. According to Art. 6. of the Law, the Ministry's basic tasks cover, inter alia: protection of national security, responding to crime and preservation of the public peace, protection of rights and freedoms of the citizens as well as of their life, health and property. Investigation of crimes is also a task of the Ministry.

The Ministry's Secretary General supervises seven Chief Directorates (CDs), including CD Countering Organised Crime, CD Criminal Police and CD Pre-trial Proceedings, as well as the International Operational Police Cooperation Directorate. The structure of the Ministry also includes 28 Regional Directorates and 184 Regional Departments.

¹ 5046/1/09 REV 1 CRIMORG 1.

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CD Countering Organised Crime has within its structure specialised units dealing with narcotics, trans-border organised crime, counterterrorism, corruption and money laundering, special operations and tactical analysis and international cooperation. According to Art. 51a (1) of the Law on the Ministry of the Interior, the Chief Directorate is a structure of the MoI responsible for prevention, interception and discovery of organized criminal activities of domestic and transnational criminal structures related to:

1. The Customs regime, monetary, tax and insuring systems;
2. Drug substances, their analogues and precursors;
3. Computer crimes or crimes committed in or through computer networks and systems;
4. Intellectual property;
5. Falsified/counterfeit currencies, payment tools and official documents;
6. Trafficking in human beings;
7. Trafficking in cultural valuables;
8. Firearms, explosives, chemical, biological and other hazardous materials and substances as well as arms, tools and technologies with a dual use;
9. Corruption within the State authorities;
10. Terrorist activities, the use of hazardous materials and substances, intimidation of the public, hostage taking; abduction of persons in order to acquire material benefits as well as undertaking violent actions;
11. Money laundering and gambling.

The Chief Directorate has territorial units. For example, in the city of Plovdiv there are 26 field officers divided into four thematic units:

1. Terrorism;
2. Narcotics;
3. Economy, forgeries and corruption;
4. Trafficking in human beings, trafficking in arms and proliferations as well as cultural and historic valuables.

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The Chief Directorate considers money laundering one of its main priorities. This is reflected in its structure as a specialised section for money laundering which has been recently established. The Chief Directorate deals with prevention and investigation of crimes related to money laundering committed by criminal organisations, analyses incoming information in order to understand new types and methods in the field, drafts instructions and provides methodological assistance to the experts from the Regional Directorates of the MoI. The Chief Directorate also produces general assessments of organised crime, analysing trends, modus operandi and sources of illicit incomes of groups involved in financial crimes.

The General Directorate cooperates closely with numerous domestic and foreign authorities (in this case via the International Operational Police Cooperation Directorate) and makes use of numerous operational and open sources.

The investigators of the Chief Directorate have developed a sound methodology of investigation. For example, personal financial profiles of an individual are drawn. They may show expenditures exceeding the individual's known income, which may indicate an illegal income or a hidden property.

CD Criminal Police is a specialized structure responsible for fighting criminal activities, including acts against persons and property and criminal activities in different areas of the economy and financial credit systems. This unit thus deals with VAT frauds, crimes related to EU funds, suspicious transactions, capital market crimes, financial crimes via the Internet, spreading of forged currencies and fraud with bankcards, except where committed by organised groups. The General Directorate cooperates closely with numerous domestic and foreign authorities.

CD Pre-trial Proceedings is composed of three Departments and employs, at the central level, 73 investigating officers. This structure reflects a specificity of the Bulgarian system, where opening of the pre-trial procedure means the end of the intelligence-gathering phase and requires supervision by an investigating officer, who has a different role from field police officers. The Department plays a vital role for future forfeiture of assets, as it is responsible for contacts with the Commission for the Establishing of Property Acquired through Criminal Activity (CEPACA). It informs the Commission about the opening of the pre-trial procedure, charges brought and data on the property gathered by law-enforcement agents.

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International Operational Police Cooperation Directorate organizes and coordinates the international exchange of police information, coordinates the exchange of information with liaison officers, coordinates international police operations, carries out Schengen-related preparation activities, executes extraditions, handovers and transfers of persons and manages information exchange with Europol, Interpol and SIS (Schengen Information System). Thus the Directorate is also responsible for communication with AWF SUSTRANS and AWF MTIC at Europol.

The Bulgarian authorities underlined that, as it has a single channel for international cooperation, it serves also for a general coordination of cases and detects overlaps.

In addition to that, Bulgarian experts underlined that investigative activities are coordinated nationwide on three basic levels. Covert operations against organized crime are undertaken by a centralized police force, thus it is unlikely there will be two or more overlapping investigations. As the procedure reaches the pre-trial phase, when evidence is gathered, a centralised case-management system is used in order to discover connections between different operations. Finally, the prosecution service also has its own case-management mechanism.

2.1.2. Prosecuting authorities

According to Art. 136 of the Law on the Judiciary, the Prosecution Authority in the Republic of Bulgaria consists of the Prosecutor General, appointed by the President of the Republic on a motion from the Supreme Judicial Council, the Supreme Prosecution Authority of Cassation, the Supreme Administrative Prosecution Authority, the National Investigation Service, appellate prosecution authorities, a military-appellate prosecution authority, district prosecution authorities, regional prosecution authorities with the regional investigating departments as part of their structure and military-regional prosecution authorities.

Investigators are organized into the National Investigation Service. The Service is led by the Prosecutor General in person or by the Director, who is the Deputy of the Prosecutor General on investigation matters. It is a centralized service. All prosecutors and investigators are subordinated to the Prosecutor General. Apart from the central authority, there are regional, district and appellate prosecutor's offices.

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According to Bulgarian legislation the investigating bodies are: the investigators (who are magistrates within the judiciary) and the officials of the Ministry of Interior who are appointed as “police investigators”. The investigation bodies act under the guidance and supervision of a prosecutor. (Art. 52 of the Penal Procedure Code). According to Art. 194, Paragraph 1 of the Penal Procedure Code the investigation must be conducted by investigators in cases of:

1. crimes of general nature under Art. 95 – 110, Art. 357 – 360 and Art. 407 – 419 of the Penal Code.
2. crimes perpetrated by persons enjoying immunity, members of the Council of Ministers, judges, public prosecutors and investigators or by state officials of the Ministry of Interior or of the State Agency for National Security;
3. crimes committed abroad.

In other cases, the investigation is conducted by police investigators (Art. 194, paragraph 2 of the Penal Procedure Code).

The prosecutors may carry out investigations in accordance with Art. 46, paragraph 2, p. 2, and Art. 194a of the Penal Procedure Code.

In accordance with Art. 194a of the Penal Procedure Code, investigations based on information received from the State Agency for National Security are carried out by a public prosecutor. In these cases the public prosecutor may assign the investigation or individual operations also to an investigator.

Within the National Investigation Service there are specialized departments for investigation of cases of particular factual and legal complexity, of cases concerning crimes committed abroad, of cases involving legal assistance, and other cases stipulated in law.

The central unit - the Supreme Prosecution Authority of Cassation (SPAC) - has specialised departments, such as Department I “Countering corruption, money laundering and other matters of substantial public interest”, Department VIII “Countering crimes against the EU financial system” or Department IX “Countering organized crime”.

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Within Department I of the SPAC special sections have been established dealing with corruption, money laundering and other crimes against substantial public interests.

Cases under special monitoring need to be mentioned, as they are of importance for cooperation between Bulgaria and the EU. Special monitoring, in the form of continuous and enhanced prosecutor supervision, is put in place at all levels by the supervising prosecutors and administrative managers in reference to files and cases initiated for crimes of considerable public interest.

Special control is applied in cases of major public interest, such as: extremely serious crimes related to organised crime, extremely serious murders, corruption crimes with a particular great dimension, money laundering, misuse of financial funds of the EU, crimes committed by public officials and other important cases.

The same category of cases has been under the monitoring of the European Commission in the frameworks of the Verification and Cooperation Mechanism¹ and the Supreme Judicial Council. Each month the Prosecution informs the European experts and the Supreme Judicial Council of the progress and the results of investigations, the persons brought to trial and sentences passed.

Cases relating to organised crime, corruption cases and fraud regarding the financial funds of the European Union are prosecuted by special units, set up by an order of the Prosecutor General, which are composed of prosecutors, experts and investigative authorities, including magistrates, temporarily placed in the National Investigation Service.

Special control is exercised in relation to 1377 pre-trial proceedings instituted in 2008 and in preceding years. 386 indicted persons have been brought to court, 136 persons have been sentenced and in 102 of these cases the sentence has come into effect. There were 3 acquittals.²

¹ When Bulgaria entered the EU on 1 January 2007, a Co-operation and Verification Mechanism was set up to help Bulgaria remedy certain shortcomings in the areas of judicial reform, the fight against corruption and organised crime and to monitor progress in these areas through periodic reports. Commission Decision 2006/929/EC of 13 December 2006 (OJ L 354, 14.12.2006, p. 58).

² "Report on law enforcement and the activities of the prosecution and the investigation authorities in 2008" (summary) provided by the Bulgarian authorities.

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Moreover, within the Supreme Prosecution Authority of Cassation there is a special unit dealing with internal control. The Inspectorate exercises extended intradepartmental control and carries out inspections within the Prosecution and in other bodies of the judicial system. Disciplinary proceedings have been initiated to address errors. There have been 26 cases against magistrates, of which 9 have been filed with a court and in 7 of which a sentence has been passed.

Moreover, while discussing the structure of the prosecution, it needs to be mentioned that, in accordance with the requirements of Council Decision 2007/845/JHA, Bulgaria has designated the Supreme Prosecution Authority of Cassation as a national Asset Recovery Office (ARO). It is one of two Bulgarian AROs. The Commission for the Establishing of Property Acquired from Criminal Activity (CEPACA) is the other.

2.1.3. Other Authorities

2.1.3.1. State Agency for National Security (SANS)

The State Agency for National Security, in accordance with Art. 4 of the Law on the State Agency for National Security, is responsible for the surveillance, uncovering, combating and prevention of planned, prepared or enacted violations of national security.

According to the law the Agency counteracts, inter alia, the participation of persons occupying high governmental positions in corruption and relations with organized crime, threats to the economic and financial security of the country and cross-border organized crime when it gives rise to threats to national security.

The Agency is entitled to undertake operational activities aimed at the disclosure, countering and prevention of crimes and other violations related to national security, establishment of the identity of persons preparing, performing or having performed criminal activity constituting a threat to national security, acquisition of information on actions or lack of actions which create threats to national security, preparation and storage of material evidence and its forwarding to the appropriate bodies of the judiciary.

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In the structure of the State Agency for National Security there are two directorates working in the field of financial crime prevention, namely the Financial Intelligence Directorate and the Financial Security Directorate. The Financial Intelligence Directorate (FID) is a Bulgarian FIU¹ of an administrative type. It employs 40 officials.

However, it needs to be underlined that the FIU has no investigative powers under the Penal Procedural Code and is limited to the gathering and analysis of data. Its intelligence cannot be used as evidence in a court, but may trigger a criminal proceeding.

2.1.3.2. Anti-fraud Coordination Structure (AFCOS) Council

The Anti-fraud Coordination Structure (AFCOS) Council was established by Council of Ministers Decree No. 18/4 in February 2003. Its actions are based on the updated strategy against fraud affecting the financial interests of the EU and the Annual Action Plans implementing the strategy.

The Council is a coordination body combining efforts of all competent authorities, including independent bodies of the judiciary. It acts at Deputy Ministers level and covers all institutions managing or controlling any EU funds. The Deputy Prime Minister and Minister of Interior chairs its meetings. The Council's main objective is to monitor and coordinate the activities of State bodies involved in the prevention and fight against infringements such as fraud, misuse, inefficient management or use of resources and properties belonging to the EU or granted to Bulgaria from funds and under programmes of the EU, including related national co-financing.

It proposes to the Council of Ministers draft legal acts, strategies for combating infringements affecting the financial interests of the EU and action plans for their implementation. It provides the Council of Ministers with annual reports. At the proposal of members, the AFCOS Council discusses issues relating to the fight against irregularities and fraud affecting the financial interests of the EU and adopts decisions which are binding for all Council members.

The Council interacts with judicial authorities through the Minister of Justice.

¹ The FIU was established in 1998 as a unit within the Ministry of Finance, and subsequently became an independent administrative entity responsible to the Minister of Finance. In 2008 it became the Financial Intelligence Directorate of the SANS.

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The Council is supported by the AFCOS Directorate, which has three basic functions: coordination, organizational support and cooperation with other entities. The Directorate assists the Council and facilitates the exchange of information between Council members. It also carries out obligatory coordination of operational cooperation between OLAF and the Council members in conducting investigations in Bulgaria. It is also entitled to receive and register notifications of irregularities affecting the financial interests of the EU and it forwards them for investigation.

Organisational support covers monitoring of the implementation of relevant strategies and action plans approved by the Council of Ministers, maintenance of an electronic database with information on irregularities and fraud with EU resources received from the Council members or other sources.

Moreover, the Department is a national contact point for OLAF and foreign organisations responsible for protection of the EU's financial interests.

The Directorate's experts elaborate drafts of legal acts and other documents, which are submitted for discussion and adoption by the AFCOS Council; they also analyze information collected on irregularities and fraud.

Since 1 October 2009 the Department has had new functions, including supervision.

It may carry out administrative checks of the application of management procedures relating to EU funds. It may also give methodological guidance with regard to irregularities concerning EU financial instruments.

Members of the Council are obliged to report to the Directorate all irregularities discovered, so that the service can establish a full picture of such activities at the national level.

The AFCOS Directorate is also the national contact point for the central exclusion database in accordance with EC Regulation No. 1302/2008 of 17 December 2008.

Certain functions of AFCOS are described in the subchapter on financial interests of the EU.

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2.1.3.3. The Commission for the Establishing of Property Acquired through Criminal Activity (CEPACA)

The Commission for the Establishing of Property Acquired through Criminal Activity is an independent, collective body, comprising five members.

Its actions are based on the Law of Divestment in Favour of the State of Property Acquired From Criminal Activity (CEPACA Law).

The name CEPACA is also used for the whole administrative structure (central and regional) supporting the Commission. CEPACA is a separate and independent entity. Its central unit is seated in Sofia. It also has 11 regional divisions around the country. It is a specialized public institution for carrying out checks on the property of persons who fall within the scope of Art. 3 of the law that lists crimes that can lead to the civil confiscation procedure.

The Commission's chairman is appointed by the Prime Minister, the deputy chairman and two of the members are elected by the National Assembly, and one of the members is appointed by the President. Eligibility for membership of the Commission is limited to legally capable Bulgarian citizens, who have not been convicted of a premeditated offence, have graduated in Law or Economics, and have at last five years' experience in the relevant field. The Chairperson of the Commission has to be a person who has graduated in Law.

The competences of the commission involve decisions on: identifying property acquired through criminal activity, initiating procedures, submitting to courts motivated requests for imposing security measures; submitting to courts motivated requests for the forfeiture of property acquired through criminal activity; appointing the directors of the territorial directorates and, at their proposal, nominating the inspectors in the directorates. Each year the Commission prepares a report on its operations, which it submits before the end of March of the following year to the National Assembly, the President of the Republic and the Council of Ministers.

The tasks of the Commission are supported by its Chief Secretary and an administration composed of functional and territorial directorates, an internal audit unit, financial inspectors and independent sections. The supporting personnel numbers about 300 persons.

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The directors of territorial directorates and the inspectors are the authorities representing the Commission in criminal assets identification proceedings. Eligibility for the office of director of a territorial directorate is limited to persons who have graduated in Economics or Law. They conduct examinations and collect evidence for the identification of the source and location of assets regarding which there is information indicating that they have been derived, whether directly or indirectly, from criminal activity. They also have the right to request assistance and to seek information from all State and municipal authorities. Provision of the information sought may not be refused or limited by invocation of official or commercial secrecy.

The specific investigative powers of the agency are described in the subchapter devoted to financial investigations.

2.2. Training

The National Institute of Justice (NIJ) is an independent legal entity but has a functional relationship with the Supreme Judicial Council and the Ministry of Justice, both of which are represented on the NIJ Management Board.

The National Institute of Justice is in charge of maintaining and developing the skills of judicial personnel, such as judges, prosecutors and investigators, as well as other experts supporting the judicial system, including court clerks and employees of the Ministry of Justice.

The NIJ is responsible for compulsory, initial 6-month training for junior magistrates. It also organises vocational training courses for judges, prosecutors and investigators on national and European law. Bulgarian authorities underline that legal amendments that relate to Bulgaria's membership to the European Union are regarded as a priority.

In order to carry out its tasks in the area of continuing training, the National Institute of Justice has developed a sustainable training programme in European law. The sustainable training programme encompasses a basic course on "Fundamentals of European law" and specialized training programmes covering specific aspects of European law. The training is organized at two levels – participation in the basic course is a prerequisite for attending the specialized courses.

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The basic course on European law provides a thorough overview of the constitutional and institutional framework of the European Union. The specialized training courses on European law cover the most recent developments in specific areas of EU law. The NIJ offers the following specialized training programmes: the case law of the European Court of Justice, the preliminary ruling procedure, judicial cooperation in civil matters, judicial cooperation in criminal matters, the European Arrest Warrant and protection of intellectual property rights in the European Union.

The protection of financial interests of the EC has been developed as a separate training module on Judicial Cooperation in Criminal Matters, which, since 2003, has been held annually. In 2009 five training courses on the issue were held, attended by 139 magistrates.

Besides these regular training courses, two seminars, specifically targeted at protection of financial interests of the EC, were organized in 2009 in the framework of the implementation of various international projects and partnerships.

Along with the Technical Assistance Information Exchange Unit (TAIEX) of the European Commission and OLAF, the NIJ organized a special training course on the protection of financial interests of the EU for judges and prosecutors in March 2009. This training course was also attended by 10 investigating officers from the Ministry of the Interior.

A training course on the Community's financial interests has been also carried out in cooperation with the German Foundation on International Legal Cooperation.

The Academy of the Ministry of the Interior and at its specialized centres conduct training courses for law-enforcement agents. Financial investigations are said to be an important part of the educational programme of the Academy.

Apart from basic training, particular aspects of financial crimes and their investigation are taught in the following courses: "Criminal law", "Criminology", "Forensics", "Operational-investigative actions for countering economic crime" and "Combating organized crime". The subjects include investigation of money laundering, storage of excise goods without label, organizing and conducting gambling without a permit, crimes committed in order to avoid tax payments, and currency-related crimes.

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There are also specific "training files" such as "Prevention and Detection of Financial Crimes" combined with a 5-day course, or "Investigation of Financial Crimes for Training of Investigative Police Officers", which takes 2 days. Additional training courses on money laundering investigation were organised in 2009. As many as fifty prosecutors, investigating officers and judges participated in a training project supported by the "Hans Zeidel" foundation, in which German and Bulgarian lecturers took part.

A handbook on investigation of money laundering has also been elaborated by practitioners.

The EU legal framework is also of vital importance for the Academy. There is also a separate 45-hour training course devoted to the EU legal framework. It is a part of the general training programme within the framework of courses called "Action against Crime and Protection of Public Order" and "National Security Protection".

The subject is also studied within the framework of training courses for acquiring an academic degree of Bachelor of Arts or Master of Arts, such as: "Action against Crime and Protection of Public Order", "Public Administration" and "Strategic Leadership and Management of Safety and the Protection of Public Order".

Additional training sessions are in most cases devoted to Schengen-related issues, but they also cover general questions of Europe-wide police cooperation.

Bulgarian authorities are aware of courses on "Financial Crimes and Investigations" organized by CEPOL. Three senior police officers from the Ministry of the Interior participated in these training courses in 2009.

Bulgarian authorities also underline the great importance of language training, as it has been identified internally as one of the weaknesses which may hamper international cooperation. For example, for the 2009 – 2010 academic year, English lessons are obligatory for all cadets of the MoI Academy wishing to obtain a Bachelor of Arts degree.

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SANS has its own training scheme. First of all numerous language training courses, mainly in English, are organised. Following the principle of rotation, its officials (minimum 2 representatives) participate in seminars and courses on money laundering and financing of terrorism, organized by the Academy of the Ministry of the Interior and the Supreme Prosecution Authority of Cassation, as well as seminars organized by Europol, the CIA (Central Intelligence Agency) of the USA and other foreign partner services and organizations.

FID organizes and coordinates the participation of its officers and also representatives of other law enforcement authorities with functions in the area of countering money laundering in projects supported by the Embassy of the United Kingdom. It includes a project aimed at providing follow-up training and continuing training of persons belonging to the law enforcement authorities with obligations under the Law on Measures against Money Laundering. The MATRA programme of the Government of the Kingdom of the Netherlands needs to be mentioned too.

2.3. Criminal policy

In November 2009 an Integrated Governmental Strategy to Prevent and Counter Corruption and Organised Crime was adopted. An Action Plan implementing the Strategy is now being developed. The document is of importance, as it lists the leading criminal problems that Bulgaria is facing. It is very much focused on corruption.

It states that all forms of corruption, particularly the abuse of power for personal or corporate gain, harm the normal operation of the State, damage the efficiency of the redistribution functions of the State, worsen the quality of public services, violate the principles of social justice and curtail the rights of citizens.

The Strategy underlines the political and financial strength of organized crime. It says that organized crime structures increasingly coordinate their efforts to amass capital and exercise influence by diverse corruption practices. Activities related to economic crimes, production of and trafficking in narcotic drugs, trafficking in and exploitation of human beings, counterfeiting and distribution of counterfeit banknotes and documents, cyber crimes, money laundering and terrorism are among the major threats to the security of citizens and to the democratic foundation of the society.

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The Government admits in the Strategy that there are weaknesses in the law-enforcement system and gaps in the legislation, which has not been promptly harmonized with the new social relations and has not been consistently and efficiently enforced, allowing certain individuals and groups to take advantage and illicitly accumulate wealth.

The Strategy also points out certain general objectives and possible lines of action. The aim of the Government is to make Bulgarian citizens trust in the rule of law. European partners and foreign investors need to be made confident in Bulgaria through determined, systemic, consistent, decisive and professional actions.

The objectives are as follows:

- To prevent high-level and local corrupt practices and to break links between organized crime, political parties and authorities;
- To achieve tangible results in the fight against widespread corruption practices that harm citizens, impede businesses and undermine statehood;
- To curb organized crime, to prosecute effectively and to forfeit criminal assets;
- To make Bulgaria a reliable partner in the implementation of the policies of freedom, security and justice and a partner that contributes to the protection of the European Union's financial interests;
- To overcome the moral and behavioural crisis in the country, to build confidence and advance values like integrity, morality and solidarity and to foster a sustainable system of values in society and zero tolerance of corruption and crime.

It has been underlined that the achievement of the objectives requires coordination between the institutions of the Legislature, the Executive and the Judiciary.

Also the above-quoted annual Report on law enforcement and the activities of prosecution and investigation authorities gives an interesting insight into Bulgaria's fight against crime. The report for 2008 states that there was a 14% reduction in registered crime and its detection rate by the authorities of the Ministry of the Interior. A steady trend of reduction in the rate of crime detection (failure to find the perpetrator of the criminal act) by the authorities of the Ministry of the Interior is evident in the number of pre-trial proceedings. Indeed, according to the report, the crime solution rate fell from 60% in 2005 to 48% in 2008.

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The pattern of criminal offences registered has remained consistent in recent years. Highest is the share of crimes against property followed by generally dangerous crimes and crimes against persons.

The report also describes the penal policy and the imposition of sentences (for all kinds of crime, not only those covered by the subject matter of the evaluation).

A total of 38061 effective judicial acts have been received by the Prosecution for execution.

The following measures of punishment have been applied:

- 12 offences - life imprisonment (0,03%).
- 10291 offences - imprisonment (27%),
- 19 744 offences - probation (51,8%),
- 11 247 offences - deprivation of rights (29,5%),
- 1951 acts - public reprimand (5,1%).

The Prosecutors issued guidelines on execution to the competent authorities for 37,248 (97,8%) of the final decisions received from the courts.

Although the above-mentioned statistics presented in the report basically follow the catalogue of punishments provided for by Bulgarian law (Art. 37 of the Penal Code), the evaluators discovered that they omit two important forms of punishment, namely confiscation of available property and fines. Moreover, there are no statistics concerning forfeiture in favour of the state (Art. 53 of the Penal Code)¹, which is not a punishment as such but may be used against organised crime. This may indicate that these three options are not considered priorities by the prosecution and are not widely used or regarded as key indicators for the assessment of the prosecution's effectiveness.

Statistics concerning "criminal forfeiture" were presented separately to the evaluators. For example in 2008 1360 individuals were deprived of proceeds of crime or subject to forfeiture.

¹ The statistics in question were presented to the evaluators after the mission. Moreover, the Bulgarian authorities underlined, that a statistical methodology is being developed in order to monitor the most substantial indicators related to criminal proceedings.

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As far as civil confiscation is concerned, since the adoption of the CEPACA law in 2005, 477 proceedings for asset recovery have been launched. Four final judgments have been pronounced so far.

Statistics also show that in 2008 the courts initiated 43,736 criminal cases. 51,562 persons were sentenced or sanctioned and 2,147 were acquitted. Visiting the Prosecution Service of Plovdiv, the experts discovered a very low number of acquittals. In some cases there were none, where certain types of crime are concerned.

The findings of the Annual Report indicate the priorities of the Prosecution Service. They cover, inter alia:

- a) Increasing effectiveness in the prevention of all crimes, with an emphasis on those connected with organised crime, corruption at the highest level and the financial interests of the European Union;
- b) Expanding and improving cooperation and interaction with the investigating authorities and all other national and international authorities engaged in the fight against crime;
- c) Improving the quality and timeliness of investigation and enhancing the effectiveness of prosecutors' activities:
 - Increasing the number of people brought before the court, particularly for serious crimes.
 - Reducing acquittals and cases returned by the courts.
 - Further capacity-building of prosecutors and investigating authorities.

The general objectives of Bulgarian crime policy can be also deduced from the existing legal framework. One of its basic features is civil confiscation, broadly described below, which is a relatively new concept based on foreign (in this case mainly Irish) experiences.

The question of money laundering should also be raised, as Bulgarian legal provisions provide the prosecution service with a broad, and thus flexible, definition. Under Art. 253 of the Penal Code (PC), a person who carries out a financial operation or a transaction with a property, or hides the origin, location, movement of or actual rights on a property about which he knows or suspects that they have been acquired through a crime or another socially dangerous act, is liable for punishment for money laundering. The use of the term "socially dangerous acts" allows prosecutors to address many criminal phenomena. Moreover, there is no need for a conviction for the predicate offence in order to press charges of money laundering.

Although many legal tools for combating organised crime are in place, the experts interviewed lamented that certain weaknesses of the system lead to extended procedures and lengthy trials.

2.4. Conclusions

Bulgaria seems to have all necessary law enforcement and prosecuting structures in place. A certain level of specialization, including establishment of dedicated units, has been reached. The growing importance of the fight against corruption and organised crime is reflected in structural developments of the Prosecution and other relevant services.

The national system is strengthened by a separate agency dealing with civil confiscation: CEPACA, which in the opinion of the experts constitutes a very promising component which, subject to certain enhancements of its powers, may present even more substantial added value. Its establishment and activities are important indicators of the importance the Bulgarian authorities attach to the fight against organised crime. The reversed burden of proof, which can be applied in the procedure, is also regarded a vital element that enhances general effectiveness of the legal system.

Moreover, the development of CEPACA should be seen in the EU as a unique combination of the continental legal model with a common-law concept of civil confiscation. Its achievements and lessons learned may, in a medium-term perspective, be inspiring for other jurisdictions willing to implement civil confiscation.

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As far as professional development is concerned, officers and prosecutors have opportunities to enhance their skills, train and learn foreign languages. In this regard foreign and international (including EU-based) training programmes are available.

The evaluators are, however, not convinced whether the training authorities devote enough attention to international cooperation, which are of vital importance for types of crime that have a transnational dimension, such as VAT carousel fraud or smuggling. There are also doubts concerning the real level of language skills, as communication problems are frequent.

Linguistic problems may, for example, explain why Bulgarian judicial authorities make limited use of the European Judicial Network.

Moreover, some findings of the evaluation team indicate that there are certain gaps in the training system. The evaluators discovered, for example, that judges and prosecutors do not always have full knowledge of the provisions concerning money laundering, especially that there is no need for a conviction for a predicate offence to initiate an investigation and successfully prosecute money laundering. Explanations of relevant legal provisions and jurisprudence need to be brought to the attention of practitioners. The application of civil confiscation by courts, as described below, is another example of a field where training efforts need to be enhanced.

The decreasing crime solution rate needs to be mentioned. Although the Bulgarian authorities take the view that the decline could be explained by a change of statistical methodology, it may also indicate an inability on the part of law enforcement agencies to react properly to the development of crime. As the evaluators understand it, the Integrated Governmental Strategy to Prevent and Counter Corruption and Organised Crime is supposed to be the answer to the trend, addressing Bulgaria's most important criminal challenges.

Assessment of the strategy is difficult, as it has only recently been adopted (in November 2009). It correctly underlines the economic dimension and power of organised crime. Forfeiture of criminal assets is rightly mentioned as one of the objectives.

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As a very general document of a political character, it needs to be complemented with a detailed action plan. Concrete, measurable goals have to be set up and combined with a timetable and a review mechanism. Moreover, it should reflect the objectives of the Council conclusions setting the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA¹, where financial investigations are of major importance².

The above listed priorities of the Prosecution Service, should continue to be monitored and evaluated and more clearly combined with financial investigations and finance-related means of punishment.

This, in combination with the Strategy, indicates that, although the financial strength of organised crime is considered as a problem, it is not properly reflected in proposed counter-measures, such as an extensive use of financial investigations, wide use of seizure and extended application of confiscation and similar types of punishment. Moreover, measures to address criminal assets during an investigation, prosecution and civil confiscation procedure seem not to be used, in practice, in a coherent way and are not interlinked at the policy level.

Finally, although there is a framework for operational cooperation³, the evaluators were not made familiar with any high-level management mechanism that would foster efficient strategic cooperation and dialogue between the authorities involved. The creation of such a mechanism could, in the opinion of the evaluators, constitute an element in a comprehensive implementation of the Strategy.

3. Investigation and prosecution

3.1. Available databases

Bulgarian investigative authorities have access to numerous databases.

The Motor Vehicles Database is an automated information system of the Traffic Police of the MoI.

¹ 8301/3/09 REV 3.

² The Bulgarian authorities informed the evaluators that an action plan on the fight against organised crime, based on the strategy, was approved on 17 March 2010

³ Instruction № 1 of 25.09.2006 on the interaction between the authorities for establishing of property acquired through criminal activity

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All registered motor vehicles in the country are included in this database. The police authorities and SANS have access to the database on a national level. The access to the database is direct and the information on the database is protected pursuant to the Law on Protection of Classified Information as "restricted".

The MoI runs two main databases concerning persons, namely the Foreign Nationals Database and the Bulgarian Citizens Database. The Ministry also has a database on wanted persons and coercive measures imposed as well as a border control database.

The Vessels Database is managed by the Ministry of Transportation, Information Technologies and Communications.

The Real Estate Database is managed by the Bulgarian Registry Agency. It is centralized but contains data on property acquired after 1998. Therefore investigators need to address numerous regional branches of the Agency in order to establish what properties belong to one person.

Tax information on natural persons and legal entities is gathered in a database of the National Revenue Agency.

The lack of a central bank accounts database, or a mechanism having similar functions, is a significant weakness of the Bulgarian system. It means that investigators, in order to establish if a given person has a bank account, need to send multiple requests to numerous banks, which, although obliged to reply, have no deadline to provide law enforcement with their response. The same request may be sent via the Bulgarian National Bank (BNB). Whether a person owns a bank account is not covered by bank secrecy, however; further details can be made available to law enforcement according to the procedure described below.

The legal grounds for the identification of an unknown bank account belonging to a specified person and the identification of operations from and to a specified bank account in a specified period in the past are regulated by the Law on Markets and Financial Instruments (Art. 35(6)). It provides that a court can order the disclosure of the relevant information following a request by a prosecutor, where there is information that a crime has been committed, as well as following a request by other state institutions, listed exhaustively, including CEPACA and the Chief Directorate for Pre-trial Proceedings of the Ministry of the Interior.

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Where data exist on organized criminal activity or money laundering, the Prosecutor General or a Deputy authorized by him may directly, without additional permissions from a court, request banks to provide the relevant data.

In its capacity as supervisory body with regard to the activities of the banks, the Bulgarian National Bank has some powers established in the Law on Credit Institutions and the Law on the Bulgarian National Bank. On this basis, the BNB has the right to require the banks to present information concerning bank accounts, owners of accounts and operations performed by them. An Agreement for cooperation was signed between BNB and the Prosecutor's Office of Bulgaria with a view to assisting the work of the law-enforcement institutions.

This Agreement provides for a coordination mechanism between the two institutions, improves the quality of the data collected and its analysis. Exercising the powers provided for in Art. 4(1) of the Law on the National Bulgarian Bank and Art. 80 of the Law on Credit Institutions, the BNB can apply numerous measures concerning the collection of bank-account-related information. The BNB may request the above-mentioned measures be taken on its own initiative or following a request by a law-enforcement body, a court or the prosecutor's office. It does not need prior authorization to take the measures. There are no restrictions on the data collected in this way being presented to the competent authorities unless the information constitutes a bank or professional secret. The conditions for disclosure in relation to bank secrecy are provided for in Art. 62 of the Law on Credit Institutions, and in relation to professional secrecy in Art. 64.

The types of crimes, maximum duration of the measure and the conditions for its extension are determined by the competent authority which requested the BNB to take the specific measure.

A regional court may give authorization for the disclosure of data subject to bank secrecy at the request of:

- the prosecutor;
- the Minister of Finance;
- the director of a regional directorate of the National Revenue Agency;
- CEPACA;
- the director of the Agency for State Financial Inspection;
- the director of the Customs Agency;

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- the director of the General Directorate 'Pre-trial Proceedings' of the Ministry of the Interior;
- the president of the State Agency for National Security.

The regional court rules on the request with a reasoned decision in a closed meeting no later than 24 hours after its submission and the court determines the period to which the information refers. The court decision is not a subject to appeal.

3.2. Financial investigation and the use of financial intelligence

3.2.1. Financial investigation within the framework of the criminal law

The Law on the Ministry of the Interior in its Art. 138. explains that operational and investigative activities are undertaken for protection of national security and public peace in the Republic of Bulgaria, and for the protection from criminal violation of the life, health, rights, freedoms and property of citizens. These activities may be carried out by open and by covert means.

The law underlines that the actions in question must be undertaken in compliance with the Constitution and the laws and must respect the rights and the freedoms of the citizens and their dignity.

Art. 139 lists the aims of the operational and investigative activities, which are as follows:

1. detection, prevention, and neutralising of crimes and other violations relating to national security and public peace;
2. establishing the identity of persons contemplating, committing or who have committed crimes;
3. investigation of persons hiding from investigation of criminal liability or who have evaded service of punishment in cases of a general nature, and searching for missing persons;
4. obtaining information about activities creating threats to national security and public peace;
5. finding and keeping material evidence and submitting it to the relevant bodies of the judiciary authority.

Thus it is clear that, although not excluded by the law, financial investigations do not constitute a separate investigative category. Moreover, investigations seem to be focused on identifying perpetrators and not on targeting illegal assets.

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This leads to the conclusion that there are no special procedures or legal framework for financial investigations either within the framework of the penal procedure or during the information-gathering phase. The investigation of financial aspects of criminal behaviour is carried out under the general rules applicable to all investigations.

Bulgarian investigating authorities may, if necessary, invite external experts to support their activities.

Such experts with specific knowledge are appointed in the course of the pre-trial proceedings and the court trial under the provisions of the Penal Procedure Code.

For example, on the basis of an Agreement for joint actions between the Bulgarian National Bank and the Prosecutor's Office, experts from BNB provide assistance, if requested by a prosecutor, in establishing the nature and details of the execution of bank transactions connected with financial fraud.

3.2.2. Financial investigation within the framework of civil law

It is a specificity of the Bulgarian legal system that investigations into the proceeds of crime or financial aspects are conducted after the criminal investigation proper has been closed/after the conviction. CEPACA undertakes activities to determine the proceeds acquired from criminal activities. After the conclusion of the check and if such proceeds have been discovered, the Commission submits a claim to the competent court for forfeiture of the property.

However, it only investigates cases where the value of the assets in question exceeds BGN 60 000 (about EUR 30 000).

However, there are no clear legal guidelines as to the method which should be used to value the assets. Interpretations of the law vary significantly. Experts interviewed reported cases of abuse or obstruction where the value was assessed on the basis of a contract value clearly and markedly lower than the market value of the item.

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Moreover the rights of the State under the CEPACA Law lapse after a 25-year period of prescription, which means that the investigation may consider assets acquired up to 25 years ago. In the opinion of the practitioners met, this constitutes a serious challenge.

Art. 3 of the Law says that proceedings are to be conducted where it has been established that a specific person has acquired assets of substantial value which can reasonably be assumed to have been derived from criminal activity, and criminal prosecution has been undertaken against such a person in connection with a criminal offence. According to the law criminal prosecution is "in progress" from the moment of presentation of the charges to the defendant (as far as preliminary proceedings are concerned) or from the moment of questioning of the person incriminated or after coercive measures, physical examination, search or seizure have been taken in respect of the person (as far as police investigation is concerned). This is the point at which CEPACA is notified.

The bodies involved in the pre-trial procedures must immediately notify the Commission of each case of penal prosecution of crimes listed in the CEPACA law as soon as it has begun. There are 33 kinds of crimes, such as financing of terrorism, forming, leading or belonging to an organized criminal group, theft of a motor vehicle and money laundering. The notification must specify the person against whom penal prosecution has started, the crime and the period of criminal activity as well as all available information about the property of the person. However, since the data on property are gathered in the framework of the ordinary criminal investigation, which has different aims and applies different methods, they do not always meet the Commission's needs.

The directors of territorial directorates and the inspectors at the territorial directorates are the authorities representing the Commission in criminal assets identification proceedings. They have the right to require a natural person respondent to submit within 14 days a declaration in writing regarding:

- a. real estate and vehicles, cash deposits, securities, works of art, items of archaeological value, participating interests in commercial corporations, and certain other rights owned by the said respondent and his family members;
- b. a list of the bank accounts held by the respondent and by his family members in Bulgaria and abroad;

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- c. the sources of income and resources used for the acquisition of the assets and for maintenance of the family;
- d. any transactions in real estate, movable goods, shares and interests in commercial corporations and other property effected during the period under examination by the relevant respondent and family members, as well as the sources of income used for those transactions;
- e. any debts to third parties, where such debts have been indicated in the annual tax returns.

This kind of declaration may be also required from certain third parties related to the respondent.

In respect of respondents who are legal persons, the declaration is required from persons who represent, manage or control the entity, as well as from all persons who represented, managed or controlled the legal person during the period under examination.

The standard form of the declaration has been drafted by the Commission and promulgated in the State Gazette.

It must be added that the declaration has substantial legal consequences. Should the respondent fail to submit a declaration or submit an incomplete declaration, or refuse to submit a declaration, assets declared are presumed to have been derived from criminal activity until proven otherwise.

The Commission is entitled to examine:

- a) the assets, the legal basis of their acquisition and their value;
- b) the transformation of the assets;
- c) the income of the respondent;
- d) the debts under public law to the State and the municipalities paid by the respondent;
- e) the ordinary and extraordinary expenditures incurred by the respondent;
- f) the tax returns of the respondent;
- g) any other circumstances relevant to clarification of the source of the assets and the manner of their acquisition by the respondent, his family and third parties.

In conducting the examination, officials are entitled to require explanations from the respondent, appoint expert witnesses, collect written evidence, and require information and documents from all persons, State and municipal bodies, as well as requiring the performance of specific acts in connection with identification of the source and value of the assets and requiring documents regarding the source of income, the manner of acquisition and disposal of its property.

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They may gather and examine other evidence relevant to the clarification of the origin of the assets and, importantly, perform search and seizure according to the procedure provided for in the Criminal Procedure Code concerning relevant assets, objects, papers or computer information systems containing information and data.

The Commission may ask banks for relevant data, but it faces problems as described before: namely, the banks are not bound by any deadline and, as no central database is available, multiple requests have to be sent to all banks. Taking into consideration the specific tasks of the agency, this poses a significant obstacle.

Numerous bodies and agencies, such as the FIU, the Public Internal Financial Control Agency, the National Audit Office, the Privatisation Agency, the Post-privatization Control Agency, the National Customs Agency, the National Revenue Agency, the district courts which keep commercial registers, and the competent services of the municipal and regional administration have to provide the criminal assets identification authorities with necessary information on a priority basis.

Any official who, within the remit of his official duties, becomes aware of circumstances regarding the acquisition of assets derived, directly or indirectly, from criminal activity, is obliged by law to notify the authorities and to provide them with information.

Article 33 of the CEPACA law underlines that the Commission will exchange information for the purposes of this Act with the competent authorities of other States and with international organizations on the basis of international instruments and international treaties which are in force for the Republic of Bulgaria. This is one of the reasons why one of the two Bulgarian Asset Recovery Offices is placed within the Commission.

As far as CEPACA's activities are concerned, it is important to mention that it cannot use intelligence gathered by law-enforcement agencies before the pre-trial phase in a court. This means that numerous activities need to be repeated in order to produce legally valid evidence.

3.2.3. Financial Intelligence

Financial intelligence is handled mainly by the Financial Intelligence Directorate (FID) of SANS, which is a Bulgarian FIU of an administrative type.

The FID exchanges information with law enforcement authorities and foreign partners and exercises control over the reporting entities in regard to their AML/CFT duties.

Its officers are entitled to carry out on-site and off-site inspections. The inspections may be carried out independently or jointly with other authorities.

The FID performs financial intelligence analysis based on available data. FID may request additional information from state and municipal authorities, which cannot be refused. The information requested must be provided by the deadline set by the Directorate. Banking or professional secrecy cannot be invoked in order to refuse the required information.

If there is a suspicion that a crime has been committed, FID sends notification to the responsible investigative authorities.

When reporting authorities listed in the Law on Measures against Money Laundering establish data about suspected money laundering they must immediately notify FID.

The FID can receive data on money laundering from the subjects mentioned above, as well as from state bodies or through international exchange.

Thus, the activities of the service are largely based on reports that could be classified as suspicious transaction reports (STRs) and cash transaction reports (CTRs) provided by parties obliged to report. The statistics provided by the Bulgarian side indicate that in 2008 the service received 591 STRs. About 87% of them were sent by banks, about 4,5% by tax authorities and about 5,5% by customs authorities. It is thus clear that the inflow of data is mainly limited to banks and state authorities. The very small numbers of reports from other entities (such as notaries, leasing companies, privatization authorities) seems to indicate a serious gap in the system.

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If a reporting authority does not fulfil its obligations, the Minister of Finance is able to oblige it to take the concrete measures necessary to removing the breaches or even to deprive it of certain permissions. These decisions can be appealed against before the Supreme Administrative Court. Financial fines for failure to comply with the reporting obligation are also provided for.

Moreover, Art. 253b of the PC states that an official who violates or does not fulfil the provisions of the Law on measures against money laundering, if the act does not represent a more serious offence, is punished in serious cases by imprisonment for up to three years and a fine of BGN 1000 to 3000.

Although certain professions do not fully comply with their reporting obligations, the number of STRs is rising: between January and October 2009 alone there were 646.

Six preliminary (pre-trial) investigations were initiated after 1 April 2008 on the basis of information provided by SANS, and five joint operations were carried out to intercept and terminate illegal activities associated with money laundering. Assets were traced and frozen to the overall value of around EUR 30 000 000.

Reporting authorities are also obliged immediately to report ongoing suspicious transactions or operations to the FID before their implementation, delaying it within the term admissible according to the regulations governing the type of activity concerned.

In certain cases the Minister of Finance, at the proposal of the chairperson of the Agency, can stop by means of a written order certain operations or transactions for three working days from the day following the day of issuance of the order.

The FID is obliged immediately to inform the prosecution as to the stopping of the operation or transaction, by presenting the necessary information, while preserving the anonymity of the person who made the notification.

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The FID of SANS maintains its own database of information on money laundering and financing of terrorism: it contains information relating to 2 786 reports on suspicious operations (generally the reports contain information on more than one person and a large number of transactions) reported in the period between 2003 and 2008. In addition to this data, there are more than 600 saved entries for the same period in the framework of international exchange (Art. 18 of the Law on Measures against Money Laundering).

A separate database on payments in cash exceeding BGN 30 000 for the period between 2004 and 2008 contains entries on 1 153 521 transactions.

FID on its own initiative and upon request exchanges with the relevant international structures, EU bodies and authorities of other States information on cases involving suspected money laundering. The exchange is based on international and bilateral agreements and on the principle of reciprocity.

The experts interviewed emphasized that in its daily work the Directorate faces challenges with access to databases, as described above. The lack of centralized databases, of, for example, bank accounts and real estate, seriously slows down intelligence gathering.

It was underlined that intelligence data gathered by FID are not considered valid evidence before a court, but may trigger a criminal proceeding.

3.3. Cooperation with Europol and Eurojust

3.3.1. Cooperation with Europol

The Bulgarian law enforcement authorities regularly exchange information with other Member States via the Europol channel. The information mainly relates to means of payment, drugs, forgery of money, money laundering, fraud and swindling.

Cooperation with Europol is mainly effected via the Analytical Workfiles (AWFs) SUSTRANS (Money Laundering), TERMINAL (Skimming), MTIC (Vat Fraud), Phoenix (Trafficking in Human Beings), SMOKE (Illicit production and Trafficking of Cigarettes), HEROIN (Trafficking and Production), CYBORG (Cyber Crime) and SOYA (Forgery of Money).

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In particular, cooperation with Sustrans was highlighted as being very fruitful, and this is also reflected by the fact that 35 % of cases initiated by Bulgaria via Europol are related to money laundering. The SANS Financial Intelligence Directorate, an administrative type of FIU, receives and analyses STRs and cooperates actively with Sustrans. SANS applied to become a member of the AWF in July 2009.

In 2009, the amount of exchanged information concerning suspicious transactions allegedly connected with money laundering and VAT frauds increased.

Cooperation within the framework of SOYA was also described as very successful. The Europol Mobile Office was deployed in one case to Sofia and as a result of this intervention it was possible to identify a printer which was used for the production of forged money. At the regional prosecutor's office in Plovdiv, cooperation with Europol in a Joint Investigation Team (JIT) was presented. This JIT, between Bulgaria, Spain, Germany, Europol and Eurojust, led in June 2009 to the dismantling of a print workshop and the arrest of 17 suspects.

CEPACA has a longstanding cooperation with the Europol Criminal Assets Bureau in the framework of the EU Asset Recovery Offices Platform and also as a Member of the CARIN Steering Group. The Ministry of the Interior supports Europol's initiative to use the SIENA information system also for exchange of information between Asset Recovery Offices.

In September 2008, the Bulgarian Customs Agency took part in the joint international customs operation ATHENA, involving cooperation between 19 EU Member States as well as Croatia, Norway, Morocco, Algeria, Tunisia, Europol, Interpol and the World Customs Organisation. The aim of the operation was to trace and seize proceeds of crime illegally transferred in cash across borders and to initiate investigations against the criminals for money laundering. The information gathered was provided to the Europol AWF Sustrans for further analysis, and the results have been provided to all the members of the operations.

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In May 2009, Bulgarian authorities, with the support of TAIEX and Europol, organized a regional conference on “Countering VAT fraud in the EU”. The objective of the conference was to train the participants in more efficient countering of VAT fraud and to enhance international cooperation in investigating such crimes and other connected crimes such as money laundering. Participants in the conference included representatives from Romania, the UK, Moldova, Ukraine, Croatia, Bosnia and Herzegovina and Europol (experts dealing with AWF MTIC), as well as Bulgarian customs officers, police officers from the central and regional police departments and prosecutors.

Bulgarian authorities expressed many expectations regarding Europol's new legal framework. The enhancement of the operational possibilities of Europol by the extension of its mandate will support Member States' investigations of financial crime, because the requirement that it be carried out by organised groups no longer exists. Enhanced exchange of information is also expected, including in relation to development of the SIENA system. The strengthening of Europol's role as the Central Office for combating euro counterfeiting, in accordance with Council Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting, is also of vital importance.

3.3.2. Cooperation with Eurojust

Cooperation between Bulgarian judicial authorities and Eurojust presents, in the opinion of both, a substantial added value.

Practical experience with regard to concrete cases of cooperation concerning financial investigations shows very good results. Cooperation takes place on an ad hoc basis and concerns the execution of specific requests for legal assistance (in the context of international legal cooperation) within the framework of financial investigations.

Cooperation with Eurojust is carried out by the Bulgarian National Member for Eurojust, who is a prosecutor. She has been working on some complex international cases in which Bulgaria has been involved. Some of these cases have been very fruitful, and Joint Investigation Teams have been set up with the assistance of Eurojust.

On the other hand, the evaluators consider that the level of knowledge among practitioners regarding the potential assistance that Eurojust can provide in concrete cases still needs to be raised.

3.4. Conclusions

The agencies in question, generally speaking, have the necessary legal tools to investigate and prosecute crimes. However, a limited inflow of intelligence, such as STRs from certain professions, or procedural obstacles concerning the admissibility of intelligence as evidence, can hamper their activities.

Access to certain data, especially when speed is of the essence, seems to be a weak point of the law-enforcement system. The lack of centralized databases of bank accounts and real estate poses a significant problem for investigators.

The FID of SANS seems to be increasing its capacity and to be handling STRs in the right way. However, the evaluators feel that financial intelligence is understood narrowly and regarded merely as a domain of the FIU, limited to suspicious transactions, whereas it should be an important element of investigations undertaken by all services in question. This point is closely related to the fact that in the framework of the penal procedure, financial investigations do not constitute a separate investigative category, and investigations are focused on identifying perpetrators and not on targeting illegal assets.

CEPACA has numerous powers and is undoubtedly a vital tool in the fight against organised and serious crime. Its potential could be significantly enhanced if certain procedural restraints could be removed. First of all, the evaluators wonder whether the threshold of BGN 60 000 below which it is unable to act is not too high. If the Commission is to be regarded as a tool of general prevention it needs to be able to deal with crimes involving lower values. Moreover, the absence of proper application of confiscation-related measures in the framework of criminal law may result in numerous cases where criminals keep illegally acquired goods.

Secondly, its effectiveness is also impaired by the fact that it starts its operations only when charges are pressed or coercive measures are undertaken. This, in the opinion of the evaluators, is an unfortunate provision which leads to a situation in which the Commission starts its activities at a very late stage. It may in some cases allow suspects to hide or move their assets, so that they are not available to the Commission. The evaluators are of the opinion that criminal assets should be identified and secured at the earliest possible stage, so CEPACA officials should be notified as soon as criminal activities are suspected and intelligence is being gathered. Otherwise, actions aimed at identification and securing of assets may be ineffective.

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Thirdly, CEPACA apparently faces problems concerning the use of intelligence gathered as legally valid evidence. As it applies civil-law procedure, where, as the evaluators understand, the standard of proof differs from the restrictive criminal law, a more flexible approach would be advisable.

Cases successfully solved in cooperation with Europol and Eurojust, the increasing amount of data exchanged internationally and accession to AWFs should be regarded as very positive developments. However, the awareness of potential assistance from and the practical added value of European authorities still needs to be raised.

Although the overall assessment of cooperation with Europol is positive, there are still challenges in information exchange with the Bulgarian authorities. Any information transmission to Europol has to be authorised by several officials, so feedback is sometimes received with significant delays.

4. Freezing and confiscation

4.1. Freezing

4.1.1. At national level

According to Art. 72(1) of the Penal Procedure Code (PPC), at the request of the prosecutor, the corresponding court of first instance, in closed session before a single judge, takes measures to secure fines, forfeiture and expropriation of assets in favour of the state under the provisions of the Civil Procedure Code (CPC).

According to Art. 395 of the CPC, in a motion for application of a security measure, the value of the claim has to be stated. The motion is decided in a closed session on the day of its submission. If the motion is recognised, the court will issue a distraint order.

Art. 397 of the CPC provides for the following ways of securing assets:

1. by placing an interdict on real estate;
2. by distraint on movable objects and receivables of the debtor;
3. by other appropriate measures, determined by the court, including prohibiting movement of a vehicle or suspension of execution.

The court may admit several types of security.

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According to Art. 402 of the CPC, revocation of the security can be pronounced at the request of the party concerned. The court can revoke the measure, in closed session, provided that it is convinced that the reason for which the security was admitted no longer exists.

Security measures can be obtained for all types of crime, for which the penalty of confiscation, a fine, or a measure under Art. 53 may be applied.

The lifting of the distraint, the withdrawal of the interdict, and the cancellation of the other security measures is carried out on the basis of a court ruling.

The CEPACA Law contains a separate procedure for securing measures.

Its Art. 21 states that the bodies conducting the pre-trial procedures must immediately notify the directors of the relevant territorial directorates about each case of penal prosecution for crimes within the scope of the Commission's responsibility. The notification must specify the person against whom the penal prosecution has started, the crime and the period of criminal activity as well as comprehensive information on the property of the person.

The notified officials prepare a report for the Commission. On the basis of the report it makes a motivated request, supported by evidence, for the imposition of securing measures before the regional court at the permanent address of the person, or at the address of the headquarters of the corporate body if applicable, and, in cases where the property includes real estate property, at the location of that property.

The court imposes securing measures under the terms of the Civil Procedure Code (CPC). If there is a danger of scattering, destroying, hiding or disposal of the property acquired from criminal activity, the court may, in order to preserve the properties, order the sealing of premises, equipment and vehicles.

The court pronounces its decision on the day it receives the request. A decision ordering security measures is subject to immediate execution.

The decision of the court may be subject to appellate and cassation review.

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Art. 24 of the Law states that if it is established that a property on which a securing measure has been imposed is lawfully owned, the court will repeal the securing measure at the request of the affected person or at the initiative of the body concerned. A third person who claims independent rights in a property with regard to which securing measures have been imposed may require such measures to be withdrawn. Explanations as to the sources of the assets and the necessary evidence must be attached to such a request.

The CEPACA Law also relates to requests from other countries for securing measures. They are imposed in accordance with the procedure on any criminal assets, where those assets are located within the territory of the Republic of Bulgaria and the competent authorities of another State have so requested, where so provided for in an international treaty to which the Republic of Bulgaria is a party.

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

The Bulgarian authorities are of the opinion that Framework Decision 2003/577/JHA undoubtedly presents added value compared to the previous regime, because it provides an easier and faster way of rendering legal assistance and contributes to the deepening of cooperation between the competent authorities of the Member States.

The Framework Decision has been implemented by the law on recognizing, executing and making orders for freezing property or evidence. Its provisions largely reflect the Framework Decision.

The law contains legal definitions. "Property" includes tangible and intangible, movable and immovable property, as well as legal instruments and documents evidencing title to such property, where the competent authority in the issuing State considers that it:

- a) is the proceeds of one of certain crimes listed by the law, or is equivalent to either the full value or part of the value of such proceeds, or
- b) constitutes the instrument or object of such a crime.

"Evidence" means objects, documents or data that can be produced as evidence in criminal proceedings concerning one of the listed crimes.

RESTREINT UE

This law sets out the conditions and procedures for the recognition and execution of freezing orders made for the purpose of freezing property or evidence issued by another Member State of the European Union, as well as establishing the conditions and procedure for issuing freezing orders, on the part of Bulgarian authorities, for the purpose of freezing property or evidence subject to execution in another Member State.

Orders for freezing property or evidence are freezing orders issued by competent authorities in another Member State of the European Union or by a Bulgarian competent authority, made in criminal proceedings and either aimed at preventing the destruction, transformation, relocation, delivery or transfer of property that might constitute the subject of seizure, or at providing evidence.

The freezing orders are accompanied by a certificate of a standard form issued by the competent authority of the issuing Member State. The certificate is accompanied by a translation into the Bulgarian language.

When acting as issuing authority, Sofia City Court or the Supreme Prosecution Authority of Cassation will issue a certificate with a translation into the official language or one of the official languages of the executing State, or into another official language that the said State has specified in a declaration deposited with the General Secretariat of the Council of the European Union.

Art. 4 states that the certificates must be accompanied by a request:

1. for seizure of the frozen property for the purpose of enforcement of the confiscation or seizure order, or seizure for the purpose of the subsequent enforcement of such an order;
2. for the evidence to be transferred to the issuing State.

The certificate may indicate that the property is to remain in the executing state pending a request. In that case the issuing State will also indicate the date for the submission of the request.

The law contains specific procedures on recognition of foreign orders.

Freezing orders for freezing property or evidence are recognized and executed if they were issued in criminal proceedings for acts which constitute crimes under the law of the Republic of Bulgaria, whatever the constituent elements under the national law of the issuing State.

RESTREINT UE

The law lists 32 types of crime which, if they are punishable in the national law of the issuing State by imprisonment of at least three years or another more severe sentence, are not subject to verification of the double criminality of the act. The list reflects the catalogue of crimes of the relevant Framework Decision.

The order for freezing property or evidence is recognized by Sofia City Court. The freezing order for freezing property or evidence, the certificate and the request must be transmitted by mail, by electronic mail or by fax. Sofia City Court is entitled to require that the originals of the documents, as well as the certification of their authenticity, be received by express mail. The Court hears the case in a closed session in a panel of one judge. The Court is entitled to seek additional information from the issuing State, specifying the deadline for receiving it, and is also entitled to obtain information submitted by the issuing State.

The Court immediately renders its ruling, which:

1. recognizes the freezing order for freezing property or evidence and sends it within 24 hours to the relevant competent authority for execution;
2. refuses to recognize or execute the freezing order for freezing property or evidence and terminates the proceedings;
3. recognizes the freezing order and postpones its execution.

The Court notifies the competent authority of the issuing State of the ruling it has rendered. The Court notifies the competent authority if the order cannot be executed for factual reasons (because the property or evidence has been destroyed, or cannot be found in the place specified in the certificate etc.).

The freezing order for freezing property is executed by the relevant competent authority in accordance with the procedure set forth in the Civil Procedure Code.

The freezing order for freezing evidence is executed by way of collecting the evidence in accordance with the procedure set forth in the Criminal Procedure Code. Where the certification of the validity of evidence in the issuing state requires the observance of specific formalities or the application of procedures expressly indicated by its competent authorities, the said formalities or procedures must be observed unless contrary to the fundamental principles of Bulgarian law.

RESTREINT UE

The authority which executed the freezing order forthwith notifies Sofia City Court of the fact. Sofia City Court notifies the competent authority of the issuing State that the freezing order has been executed.

According to Art. 9, Sofia City Court is entitled to refuse to recognize or execute the freezing order in those cases where, inter alia, the certificate has not been produced or is incomplete or manifestly does not correspond to the freezing order. In that case Sofia City Court is entitled to specify a deadline for submitting the certificate or making any corrections to it, as well as for providing additional information, or to accept another equivalent document.

Execution of the freezing order will be also refused if the person against whom the criminal proceedings are conducted enjoys an immunity or privilege under Bulgarian law that makes it impossible to execute the freezing order against him, or if the act on which the freezing order is based does not constitute a crime under Bulgarian law, with the exception of the listed cases.

The Court is entitled to refuse to recognize or execute the freezing order if there is, for the same person, an uncompleted penal procedure, an effective sentence, a decree or a court ruling for discontinuation of the case in respect of the criminal proceedings in which the freezing order has been made (Art. 9 of the Law).

The evaluators are not sure if the uncompleted penal procedure as a reason for non-recognition is in full conformity with the provision of Art. 8 of the Framework Decision, where an ongoing criminal investigation is supposed to be a reason for a postponement and not for non-recognition.

Sofia City Court entitled to postpone the execution of the freezing order where:

1. the execution thereof might damage an ongoing criminal investigation regarding another crime – until such time as it deems reasonable;
2. the property or evidence concerned has already been subjected to another freezing order in criminal proceedings – until that freezing order is lifted;

3. in the case of an order for freezing property with a view to its subsequent seizure, that property has already been subjected to a freezing order made in the course of other proceedings before a Bulgarian court – until that order is lifted; this provision applies only in those cases where the freezing order issued by the Bulgarian court in the other proceedings would have priority over a subsequent freezing order made by a Bulgarian court in criminal proceedings.

As soon as the ground for postponement has ceased to exist, the relevant competent executing authority takes the necessary measures for the execution of the freezing order and informs the competent authority of the issuing State through Sofia City Court.

The law stipulates that any interested party, including bona fide third parties, is entitled to bring an action before the Court of Appeal against the ruling of Sofia City Court on the recognition and execution of the freezing order, in accordance with the procedure set out in the Civil Procedure Code, within 14 days of obtaining knowledge of its being ordered. The bringing of the action does not suspend the execution of the ruling. An action against the issuing of the freezing order may be brought before a court in the issuing State in accordance with its national law. The reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State.

A separate part of the law deals with the issuing of freezing orders by the Bulgarian authorities.

Art. 19 indicates that rulings for freezing property or evidence which are subject to recognition and execution in another Member State of the European Union must be issued by the first-instance court at the request of the Public Prosecutor – for taking measures for securing the confiscation or seizure of property in favour of the State or the Public Prosecutor, the defendant, the injured party, the private prosecutor or the civil claimant in those cases where it is feared that any piece of evidence might get lost or become difficult to collect.

A public prosecutor issues a decree on freezing the evidence in cases where the Criminal Procedure Code does not require the court's permission or approval for actions relating to the investigation in pre-trial proceedings.

RESTREINT UE

In cases where, for the purpose of freezing property or evidence, Bulgarian law provides that certain formalities should be observed or certain procedures should be applied, the Bulgarian competent authority notifies the executing State.

The ruling for the freezing of property or evidence, and the request, are sent for direct recognition and execution by the competent authority in the executing State as follows:

1. for the pre-trial stage of criminal proceedings – by the Public Prosecutor through the Supreme Prosecution Authority of Cassation;
2. for the trial stage of criminal proceedings – by the Court which rendered the ruling, through Sofia City Court.

However, the law says that in cases where difficulties arise in the issuing or execution of the freezing order, they must be resolved through direct contacts between the Bulgarian competent authority and the competent authority of the executing State.

The necessary documents may be sent by electronic mail or by fax. If a request is made for submission of the originals of the documents or certification of their authenticity, these may be sent by express mail.

Any interested party, including bona fide third parties, is entitled to bring an action before the relevant higher court against the ruling regarding the freezing of property or evidence, in accordance with the procedure set out in the Civil Procedure Code, within 14 days of obtaining knowledge of its being ordered. The bringing of the action does not suspend execution of the ruling on the freezing order. This also applies to a Public Prosecutor's decree regarding the freezing of property or evidence.

If an action has been brought before a court in the executing State against the execution of the freezing order, and the Bulgarian authority which made the order is informed of this and of the grounds for it, the Bulgarian authority is entitled to submit arguments and evidence.

RESTREINT UE

Bulgarian authorities did not come across any specific formal difficulties concerning execution of their orders by other Member States. They regret however the inefficiency of the mechanism, as three requests have so far been made by Bulgaria, one of which has been honoured, whereas in relation to the other two there has been no response by the executing state.

They also mentioned problems with the European Judicial Network, stating that not enough information is available for locating the competent judicial authority. The evaluators assume that this is linked to incomplete translation of the necessary data into Bulgarian.

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

4.2.1. Measures within the framework of the Penal Law

Art. 37 of the Bulgarian Penal Code recognizes, inter alia, the two following means of punishment: confiscation of available property and fine.

Art. 44 refers to confiscation in terms of a compulsory and *ex gratia* requisitioning of a property or a part of it, of definite property of the convict or parts of such properties in favour of the state.

Confiscation will not be ordered if the convict does not possess available property for confiscation. Belongings for personal or home use and necessary to the convicted person or his family, items necessary for the exercise of his profession, as contained in a list adopted by the Council of Ministers, and the resources necessary to support his family for a period of one year, are not subject to confiscation.

In cases of confiscation the state is liable up to the value of the confiscated property for recovery of the damages caused by the crime, and subsequently for the liabilities of the convicted person incurred before the indictment, where the remaining available property is not sufficient for recovery of damages and payment of liabilities.

The scale of application of this kind of punishment is related to the crime committed and may extend to the entire property.

RESTREINT UE

Art. 47 defines the fine, which is related to the property situation, family income and family liabilities of the perpetrator, and the provisions of Chapter Five apply in determining its size. It cannot be less than BGN 100.

The fine must be collected from the property left to the convicted person, even after his death, if the conviction is enacted before that. Property not subject to confiscation cannot be sold for compulsory collection of the fine.

Although it does not constitute a means of punishment, another provision of the Penal Code must be mentioned, namely Art. 53. According this Article, regardless of criminal liability, the following must be seized in favour of the state:

- a) property belonging to the perpetrator and used for committing deliberate crime;
- b) property belonging to the perpetrator and subjected to deliberate crime - in the cases explicitly stipulated by the special part of this Code.

The following must also be seized in favour of the state:

- a) property, objects or instruments of the crime, the possession of which is prohibited, and
- b) property acquired through the crime, if not subject to return or recovery. Where such acquisitions are missing or have been expropriated, their value is adjudicated.

There are also similar provisions concerning specific types of crime. For example, concerning money laundering (Art. 253 of the PC), the law states that property intended for money laundering will be confiscated in favour of the state, and if it is missing or alienated, its equivalent value is adjudged.

It should be mentioned that Bulgaria has not implemented Decision 2006/783/JHA on mutual recognition of confiscation orders. The evaluators were informed that this step is included in the legislative programme of the Council of Ministers¹.

¹ After the evaluation visit the evaluators were informed that the implementing legislation was adopted by the National Assembly on 11 February 2010 and entered into force on 25 February 2010.

RESTREINT UE

Although the Framework Decision has not been implemented, Bulgarian authorities are prepared to execute foreign confiscation orders in the framework of the mutual assistance mechanisms.

As to transposition of FD 2005/212/JHA into Bulgaria's legal system, Bulgaria has introduced appropriate provisions in the national legislation.

It has introduced measures permitting confiscation (wholly or in part) of instruments and proceeds of criminal offences (punishable by deprivation of liberty for more than one year), or property of the same value.

In accordance with Art. 2 (2) of the Framework Decision, Bulgaria uses procedures other than criminal to deprive perpetrators of tax offences of the proceeds of the offence.

The Bulgarian law provides for extended confiscation, and applies it without a requirement for the offence necessarily to be committed within the framework of a criminal organization. It also provides for legal remedies and safeguards.

4.2.2. Measures within the framework of the Civil Law

Civil confiscation is based on the CEPACA Law mentioned above. It has been underlined by the Bulgarian authorities that such action in favour of the State does not constitute a form of punishment. The law states that its purpose is to prevent and limit the possibilities of deriving benefits from criminal activity and to prevent the disposal of criminal assets.

The law regulates the terms and procedure for imposition of injunctions and forfeiture of any assets derived, whether directly or indirectly, from criminal activity.

Any assets derived, whether directly or indirectly, from criminal activity, which have not been restored to the aggrieved party or which have not been forfeited or confiscated under other laws, are forfeitable according to the procedure.

The law specifies that forfeitable assets as those acquired during the period under examination and when the acquisition can be reasonably assumed to be associated with the criminal activity of the said persons, so long as no legitimate source has been identified.

RESTREINT UE

Where the assets have been transferred onerously to a bona fide third party, with payment in full of the actual value of the acquisition, they cannot be confiscated.

However, any assets derived from criminal activity are likewise forfeited by the legal or testamentary heirs of the person who has derived any such assets up to the amount received by the said heirs. Moreover, any assets derived from criminal activity, which are incorporated into the estate of a legal person controlled by the respondent, whether independently or jointly with another natural or legal persons, are likewise forfeited. Any such assets are furthermore forfeited in cases of legal succession of the relevant legal person.

Any transactions involving assets derived from criminal activity are invalid and the profit obtained forfeitable, where the said transactions are gratuitous transactions with third parties, whether natural or legal persons or onerous transactions with third parties, if the said parties were aware that the assets have been derived from criminal activity, or where such third parties have acquired the assets for the purpose of concealing them or disguising the illicit origin thereof or the actual rights associated with such assets.

Any assets transferred during the period under examination to a spouse, to lineal relatives of any degree of consanguinity and to collateral relatives to the second degree of consanguinity or affinity inclusive, are likewise forfeitable under the terms and according to the procedure established by this Act, where the said persons were aware that the said assets have been derived from criminal activity. Awareness on the part of the spouse or the relatives is presumed until otherwise proven.

Until otherwise proven, any assets which the spouse and underage children of the respondent have acquired from third parties in their own name are presumed to have been acquired on behalf of the respondent, where the acquisition is of substantial value, exceeds the income of the said persons during the period under examination, and another source of income cannot be identified.

Any assets derived from criminal activity which constitute matrimonial community property are likewise forfeited where it is established that the other spouse did not contribute to the acquisition of the said assets.

RESTREINT UE

Proceedings under the law are conducted where it has been established that a specific person has acquired assets of substantial value which can be reasonably assumed to have been derived from criminal activity, and criminal prosecution has been undertaken against such a person in connection with a criminal offence of terrorism, its preparation or financing, and the formation, leading or membership of an organized criminal group which sets itself the object of committing criminal offences, as well as numerous other crimes listed by the law.

Proceedings under the CEPACA Law are furthermore conducted where there are sufficient data on assets of substantial value which can be reasonably assumed to have been derived from criminal activity but no criminal proceedings have been instituted, or such proceedings in progress have been discontinued due to the death of the perpetrator, or no criminal proceedings have been instituted, or such proceedings in progress have been discontinued due to the fact that after committing the offence the perpetrator has fallen into a sustained mental derangement which precludes sanity, or an amnesty has ensued or the criminal proceedings have been suspended due to reasons such as mental disorder or immunity.

Proceedings are also conducted where property of substantial value is identified as having been derived from criminal activity carried out abroad which falls under the criminal jurisdiction of Bulgaria.

On the basis of the evidence collected, the appropriate director of a territorial directorate prepares a reasoned conclusion stating the type and amount of the assets that can be reasonably assumed to have been derived from criminal activity and which are subject to forfeiture, as well as the evidence establishing the circumstances so stated.

In most cases the Commission will submit a reasoned motion for forfeiture after the entry into effect of a conviction in criminal proceedings.

RESTREINT UE

The Commission submits the reasoned motion for forfeiture of criminal assets to the district court exercising jurisdiction over the permanent address of the natural person or over the registered office of the legal person, as the case may be. Where the assets include movable and tangible immovable property, the motion is submitted to the district court exercising jurisdiction over the location of the tangible immovable property, and where the assets include multiple tangible immovable properties, the motion is submitted to the district court exercising jurisdiction over the location of the immovable property of the highest assessed value.

The district court institutes a case and causes publication of a notice in the State Gazette stating: the case number, particulars of the motion received, an inventory of the assets, an indication of the time limit within which the interested parties may present the claims to the assets, and the date for which the first hearing is scheduled, which may not be earlier than three months after the publication of the notice.

Any third party claiming independent rights to the assets may join the case by bringing the relevant action before the court of first instance.

The court sits in public session. A prosecutor's participation is mandatory.

The judgment may be appealed against according to the standard procedure.

Where the proceedings end without a judgment on forfeiture of the assets, the Commission may refer the case to the Executive Director of the National Revenue Agency, and the evidence collected in the proceedings under this Act retains its procedural value in the tax proceedings.

Since 2005, when the CEPACA law was adopted, 477 proceedings for asset recovery have been launched but only 4 final judgments have been pronounced. This low number is mainly due to a cumbersome judicial process. As an example, the first case introduced took 17 court sessions over 3.5 years to go through the first instance. The issue of organization of work within courts could also be one of the reasons.

RESTREINT UE

Different handling of cases submitted by CEPACA by different courts indicates that there is no uniform practice, which may be linked to inadequate training of judges on this specific legal framework.

4.2.3. Protection of injured parties

Under Bulgarian law, injured parties as well as legal persons who have suffered damages from the crime may file a civil claim for compensation of the damages and to establish themselves as civil claimants in the court procedure. This claim cannot be filed in the court procedure if it is filed under the procedure of the Civil Procedure Code (Art. 84 Penal Procedure Code). Precautionary measures can be taken: at the injured parties' request in the pre-trial procedure, the relevant court of first instance takes measures, in closed session before a single judge, for securing the claim in accordance with the provisions of the Civil Procedure Code (Art. 73 Penal Procedure Code). Only where the injured person is unable, because he/she is a minor or because of physical or psychological defects, to defend his/her rights and legitimate interests, may the prosecutor file a civil claim in his/her favour (Art. 51 Penal Procedure Code). Likewise, in such cases the above-mentioned precautionary measures are taken at the prosecutor's request. Goods acquired by means of the crime are forfeited to the state, unless they are subject to return or recovery.

CEPACA will not initiate proceedings based on the CEPACA Law where they could interfere with civil claims of injured parties. No legal ground was given for this.

If the sanction of (criminal) confiscation is imposed, the rights of injured parties are taken into account to the extent that in cases of confiscation the state is liable up to the value of the confiscated property for recovery of the damages caused by the crime, and subsequently for the liabilities of the convicted incurred before the indictment, where the remaining available property is not sufficient for the recovery of the damages and for payment of the liabilities (Art. 46 of the Penal Code).

The question arises whether the rights of injured parties should not be better protected, not only where assets are confiscated or the forfeiture of proceeds of crime takes place, but perhaps also by introducing as a (probationary) measure the compensation of damages caused by the crime.

4.3. Conclusions

The evaluators are of the opinion that the Bulgarian authorities have, generally speaking, all necessary tools to freeze and confiscate assets. It is however not clear, as indicated in the chapter on criminal policy, whether the two punitive measures provided for by the criminal law, namely confiscation and fines, are applied very often.

It seems that, while aware of the possible future application of the civil mechanism, prosecutors do not apply them, nor the measure of Art. 53, very often. The civil procedure should, in the opinion of the evaluators, supplement the mechanisms of the penal law and not substitute them.

The scale and frequency of application of freezing-related measures remains unknown. However, since they are supposed to secure final judicial decisions (confiscation, fine or the measure of Art. 53) which as such are rarely used, the experts assume the securing measures are not widely applied.

Establishment of the civil procedure to deprive criminals of their assets is regarded a major step forward.

The law does however have a major weakness: it is conviction-based. The evaluators feel that this limits the potential added value that civil procedure usually has in countries where it is applied. Its basic aim is to enable procedures *in rem*, without any necessity to have a final criminal conviction, and to apply lower standards of proof. The evaluators also learned that civil procedure is frequently abused by the parties concerned, which leads to significant delays and lengthy trials. The criteria for assessing the value of assets remain cumbersome, and the jurisprudence varies significantly.

Moreover, in Bulgaria there is no mechanism for management of frozen assets. This may lead to situations where perpetrators are entitled to use the assets, for example luxury cars, till the end of the trial. Thus, the authorities run the risk that assets which are supposed to be confiscated in the future will be destroyed or hidden by the perpetrators. A sound management mechanism, including conversion of the frozen assets into cash, needs to be developed.

RESTREINT UE

Nomination of a central authority for the exchange of freezing orders is against the spirit of the relevant Framework Decision, which is supposed to foster direct contacts between competent authorities. Only two Member States, namely the United Kingdom and Ireland, are entitled to declare the choice of central contact points.

5. Protection of the financial interests of the EU

In 2003 the Council for Coordination in the Fight against Infringements affecting the Financial Interest of the EC was established.

The Council gives guidelines, monitors and coordinates activities related to the prevention of and the fight against infringements of the law which affect EU funds. The Council is supported by the AFCOS Directorate, which was initially situated in the Ministry of the Interior. In 2008 it was moved to the Council of Ministers under the direct supervision of the Deputy Prime Minister. In 2009 it moved back again, after the change of government, to the Ministry of the Interior. The AFCOS Directorate is supposed to be the general operational contact point for OLAF.

Since 1 October 2009 the AFCOS Directorate has had some new functions:

It carries out checks on the application of procedures for the administration of irregularities by the bodies responsible for the management of EU funds and on the procedures laid down in the decree by which AFCOS was established.

It has nationwide responsibility for the notification of irregularities to the European Commission; this implies that AFCOS members have a duty to report such irregularities to the AFCOS Directorate.

It is liaison point as provided for in Article 7(2) of Commission Regulation (EC, Euratom) No 1302/2008 on the central exclusion database.

RESTREINT UE

Exchange of information between judicial authorities and paying agencies (for instance a pro-active approach in the area of Structural Funds) is of vital importance for the development of the Bulgarian system. The Bulgarian authorities are aware of the need to set up a mechanism for the exchange of information between the administrative authorities responsible for the administration of EU funding and the judicial authorities which initiate proceedings against those who commit offences which affect the EU budget.

In the area of frauds affecting the EU Budget, specialized teams have been set up, composed of prosecutors and investigators. Where there is a need, these teams cooperate with SANS officials – under the agreement made between the Ministry of the Interior, the prosecution service and SANS – or the National revenue agency.

Department VIII of the Supreme Prosecution Authority of Cassation was established in 2008 in order to deal with offences against the financial system of the European Union.

It has the following duties:

- special oversight of all cases regarding abuse of EU funds;
- appellate review of, and settling of conflicting claims of jurisdiction regarding cases and pre-trial investigations put under special supervision;
- issuing instructions on the manner in which such offences are to be investigated and sending electronic copies of relevant documentation to Division 7 of the Supreme Prosecution Authority of Cassation.

The Department has regular operational meetings with OLAF. At these meetings the Bulgarian authorities inform OLAF on developments in ongoing criminal cases which are related to OLAF files. OLAF is informed of the outcomes of the proceedings as well. Department VIII acts as an OLAF contact point for the entire prosecution service.

Its duties were changed by order of the Prosecutor General of 2 November 2009 and it received powers to exercise special supervision over all prosecution files and cases linked with the EU budget. This includes customs fraud.

RESTREINT UE

With a view to its cooperation with OLAF and in order to be in a position to have a full exchange of information in the area of customs, Department VIII of the SPAC should strengthen its profile there.

Apart from that, a network of prosecutors has been created which is responsible for EU funds-related fraud cases. This network covers all appellate and district prosecution offices in Bulgaria.

A part of the reform of the Bulgarian Criminal Procedure Code is the draft law submitted to the National Assembly in November 2009. The proposal includes two modifications of the Criminal Procedure Code. The amendment of Art. 159 will allow any pre-trial proceedings authority and the court to request OLAF to submit its reports and to include those reports in the criminal files. Article 127, which concerns written evidence, will be modified as well. Under this modified provision both OLAF reports and related documents (cf. Article 9 of Regulation (EC) nr. 1073/1999) are explicitly accepted as evidence in Bulgarian criminal cases. Both amendments will apply to ongoing cases (Art. 3 PPC). This change will facilitate the fight against EU fraud by way of criminal investigation and prosecution. In many cases there will no longer be a need to repeat OLAF's work by sending time-consuming requests for mutual assistance in criminal matters to the Member States or third countries concerned.

Art 3 of the Convention on the Protection of the Financial Interests of the European Communities (PIF Convention) has not been yet completely implemented, since under Bulgarian law no full criminal liability of heads of businesses exists, as provided for by this article. The separate offence of Art. 219 (2), which is supposed to implement Art 3, concerns only insufficient management of the administration of public property.

The Penal Code refers specifically to EU funds, where it defines an offence of aggravating circumstance: Art. 202 (2), misappropriation in public office, Art. 212 (3), documentary fraud, Art. 248a (2), submission of false data or concealment of data in order to receive EU funds, Art. 254b (1), use of EU funds for other purposes than those for which they were granted. Clearly, where possible any provision of the Penal Code can be applied to offences affecting the EU budget.

RESTREINT UE

Statistics show an increase in criminal cases related to EU fraud. In 2007 14 pre-trial proceedings were initiated, 62 in 2008 and 289 in 2009. In 2007, four individuals were brought to court, 13 in 2008 and 70 in 2009. And finally, where in 2007 only one individual was sentenced, in 2008 four persons and in 2009 14 persons were sentenced. It should be noted that these sentences include out-of-court settlements and decisions under article 78a of the Penal Code (release from criminal responsibility). These figures reflect the increased effort of Bulgaria in the fight against offences affecting the EU Budget, which is a positive sign. However, in the end the number of final convictions of serious fraudsters who have committed this type of crime will be decisive for success in this respect.

According to Art. 476 of the Criminal Procedure Code, the Supreme Prosecution Authority of Cassation will establish, together with other states, joint investigation teams – as provided for in Article 13 of the Convention on Mutual Assistance in Criminal Matters of 29 May 2000 - in which Bulgarian prosecutors and investigation authorities will participate. An agreement will be concluded with the competent authorities of the participating states on the activities, terms and composition of the joint investigation team. In the territory of the Republic of Bulgaria, joint investigation teams are obliged to observe the provisions of the international treaties, the terms of the agreement and the Bulgarian legislation. So far the Bulgarian authorities have set up four joint investigation teams. Staff of international bodies, such as Europol, Eurojust and OLAF, can participate in the activities of joint investigation teams, assisting the members who have investigative or prosecutorial powers. If persons other than national officers join the team, the relevant international bodies will sign the agreement as well.

Taking into account the observations made in chapter 4.2.3, the conclusion should be that the European Commission, on behalf of the EU, could file a civil claim during criminal proceedings. In direct expenditure cases in particular, there may be a need to do so.

6. Recommendations

6.1. Recommendations to Bulgaria

1. The recently adopted Governmental Strategy needs to be supplemented by a detailed Action Plan. The Action Plan should define measurable goals and a precise timetable and should be combined with a sound review mechanism. It should be consistent with the existing Action Plan on the implementation of benchmarks in the areas of judicial reform and the fight against corruption and organised crime and should reflect priorities agreed at the EU level, such as those based on OCTA and ROCTA. (See 2.3)
2. A high-level coordination mechanism should be established in order to regularly monitor the implementation of the Action Plan as well as to foster strategic cooperation between responsible authorities. Reporting mechanisms should be introduced in order to make specialised services accountable for their performance. (See 2.3)
3. Targeting of criminal assets should be regarded as a priority. More importance should be attached by law-enforcement bodies and, above all, by prosecuting services to asset tracing, seizure and confiscation. These should become more prominent elements of investigation and prosecution. Application of confiscation, fines and similar measures provided for by the criminal law should constitute a vital indicator of the judiciary's efficiency. Civil procedure applied by CEPACA should be considered a supplement to actions undertaken in the framework of the penal law. Rights of the parties suffering damages because of the crime should be taken into account. (See 2.4)
4. Asset tracing and seizure should be systematically integrated into the planning of any criminal investigation and their results should be a performance indicator for the responsible units and officials. Incentives could be introduced for those successful in asset tracing and seizure. (See 2.4)
5. Investigators need to be granted rapid access to necessary data. Centralization of certain databases, e.g. on bank accounts and real estate, should therefore be considered. (See 3.1)

6. The inflow of financial intelligence needs to be increased. Awareness of reporting obligations should be raised among certain professions and entities obliged to cooperate with the FIU. (See 3.2)
7. Raising the importance of financial investigations, seizure and confiscation needs to be reflected in the training of investigators, prosecutors and judges. Available legal tools, such as these concerning money laundering, must be explained and promoted. (See 2.2)
8. Awareness of existing EU legal tools, cooperation mechanisms and bodies, such as OLAF, Eurojust, the European Judicial Network and Europol, including its AWFs, needs to be increased among practitioners. This needs to be combined with even more intensive linguistic training. (See 2.2)
9. Recently undertaken legal changes improving cooperation with OLAF should be finalized. (See 5)
10. CEPACA's potential should be used to a larger extent. Therefore the following changes need to be considered:
 - lowering or removing of the threshold of BGN 60 000 below which it cannot act;
 - notification of its officials at the earliest possible stage of investigation;
 - more flexible use of intelligence as legally valid evidence;
 - introduction of non-conviction-based confiscation;
 - a standardized methodology of assessment of the value of assets. (See 4.2)
11. An effective mechanism for management of frozen assets, including their conversion into cash, should be established. (See 4.3)
12. Provisions of relevant legal acts, such as Framework Decisions and the Convention on the Protection of the Financial Interests of the European Communities and its protocols, need to be fully implemented. Direct exchange of freezing orders between relevant judicial authorities should be made possible, as stipulated in Framework Decision 2003/577/JHA.

RESTREINT UE

Bulgaria is requested to inform the Council Secretariat within 18 months of the adoption of the report of the action it has taken on these recommendations. The information will be submitted to, and if necessary discussed by, the MDG.

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

1. EU institutions and agencies are invited to support all actions taken by Bulgaria to implement the recommendations listed above.
2. Relevant institutions are encouraged to support Bulgaria's awareness-raising efforts and training concerning European cooperation mechanisms and tools.
3. The Commission is invited to consider financial support for Bulgarian projects within the framework of its existing funding programmes.
4. The development of CEPACA and lessons learned from the introduction of civil confiscation need to be regularly discussed by interested experts at the EU level.

DECLASSIFIED

PROGRAMME FOR VISIT

Tuesday 8 December 2009

- 8.45 Transfer from the hotel to the MoI building
- 9.00 Arrival at the MoI
- 9.15 Welcoming speech on behalf of the Commissioner General of the Ministry of Interior
Representatives of: MoI, MJ, SPOC, SCC, CEPACA, SANS, NRA, Bulgarian National Bank (BNB)
- 9.30 Working meeting with experts from the Bulgarian institutions to be evaluated
- Penal policy: a special focus on the tracing of benefits acquired through criminal activity with a view to their confiscation in favor of the State.
 - Presentation of the general legal framework: financial crimes and financial investigations; Implementation of the legislation; mechanism for coordination between the relevant institutions.
 - Law on recognizing, executing and making orders for freezing of property or evidence
 - Presentation of new legislative proposals regarding the recognition and execution of orders for freezing of property or evidence as well as confiscation.
 - Protection of the economic security.
 - Financial Intelligence activity.
 - The role of the bank supervision for the prevention of financial crimes
 - The role of the NRA for the prevention of financial crimes
- Representatives of: MoI, MJ, SPOC, SCC, CEPACA, SANS, NRA, BNB
- 10.30 Coffee break
- 10.45 Continuing of the discussion
- 12.30 Lunch
- 14.00 Transfer to the Chief Directorate Criminal Police (CDCP)
- 14.15 MoI - CDCP, Working meeting:
1. Prevention, cutting-off and solving of financial crimes;
 - 1.1. Presentation of the Anti-Money Laundering Unit at the Countering of the Organized and Serious Crime, CDCP, MoI.
 - 1.2. Countering of Common Crime Directorate, CDCP, MoI – activities in the fight against tax crimes, Euro counterfeiting, draining of bank cards.
 2. Investigating financial crimes – the roles of the investigating officers at the Chief Directorate Pre-trial Proceedings, MoI.
 3. Role and place of the specialized Unit at the SPOC for fight against crimes affecting the EU's financial system which is formed of representatives of the CDPP, CDCP, and prosecutors from the Sofia City Prosecutor's Office and the Sofia Regional Prosecutor's Office.
 4. Specialized training in investigating of financial crimes.
 5. Presentation of the Anti-Fraud Coordination Structure, headed by the Deputy Prime Minister and Minister of the Interior.
 6. A specialized unit at the MoI – for assisting AFCOS and serving as a Contact unit with OLAF.
 7. Cooperation with OLAF.
 8. Cooperation with Europol. Representatives of: MoI (Chief Directorate Pre-trial Proceedings - CDPP, CDCP, the *Coordination of the counteraction against fraud affecting the financial interests of the European Communities* Directorate – AFCOS, the International Operational Police Cooperation Directorate – IOPCD), SPOC

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- 15.30 Coffee break
15.45 Continuing the discussion, Representatives of: MoI (CDPP, CDCP, AFCOS, IOPCD), SPOC
17.30 Transfer to the hotel

Wednesday 9 December 2009

- 8.45 Transfer from the hotel to the SPOC building
9.00 Supreme Prosecutor's Office of Cassation and the Sofia City Court, Working meeting:
1. Investigation of financial crimes;
1.1. Presentation of the specialized unit for financial investigations of crimes related to EU funds.
1.2. Presentation of other specialized units:
- standing joint teams for financial investigations with the participation of prosecutors, investigators, representatives of MoI and NRA;
- specialized unit for financial investigations for money laundering.
1.3. Presentation of the standing specialized teams for investigation with the participation of representatives of MoI, SANS and the Prosecutor's Office assisting investigations for corruption, serious crime and EU funds fraud.
1.4. Specialized training in investigation of financial crimes.
1.5. The role of the SPOC as one of the national bodies in assets recovery acquired through criminal activity (Council Decision 2007/845/JHA).
1.6. Cooperation with Eurojust.
2. Role and place of the SCC as a competent body in implementing Framework Decision 577/2003.
3. Best court practices in the fight against financial crimes.
4. Confiscation – legal grounds and appliance field; mutual assistance in criminal matters. Representatives: MoI, SPOC, SCC
10.30 Coffee break
10.45 Continuing of the discussion
12.30 Lunch
14.00 CEPACA
14.15 Working meeting:
1. Presentation of CEPACA – legal framework, mission, functions, inter-institutional cooperation; territorial directorates.
2. Procedure under the Law of divestment in favor of the State of property acquired from criminal activity (LDSPACA).
3. The role of CEPACA as one of the national bodies in assets recovery acquired through criminal activity (Council Decision 2007/845/JHA).
Representatives of: MoI, CEPACA
15.30 Coffee break
15.45 Continuing of the discussion Representatives of: MoI, CEPACA
17.30 Transfer to the hotel
19.30 Official dinner on behalf of the Deputy Prime Minister and Minister of the Interior.

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Thursday 10 December 2009

- 9.00 Departure for the town of Plovdiv
- 10.30 District Prosecutor's Office – Plovdiv
Working meeting: The role of the Prosecutor's Office in the investigation of financial crimes. Interaction between the competent bodies. Best court practices in the fight against financial crimes.
Representative of: The District Prosecutor's Office – Plovdiv, the District Court – Plovdiv, the Regional Directorate of the MoI – Plovdiv, Territorial Directorate of the CEPACA – Plovdiv
- 12.30 Lunch
- 14.30 The Regional Directorate of the MoI – Plovdiv, Working meeting: Prevention, cutting-off and solving of financial crimes; Investigation of financial crimes.
- 16.00 CEPACA TD - Plovdiv
Working meeting: The role of the territorial units of CEPACA in the implementation of the LDSPACA; interaction with the MoI and the Prosecutor's Office.
- 17.00 Departure for Sofia

Friday 11 December 2009

- 9.00 MoI. De-briefing
Representatives of: MoI, MJ, SPOC, SCC, CEPACA, SANS, NRA, BNB
- 12.00 Lunch
Transfer to the Airport

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LIST OF PERSONS INTERVIEWED

Ministry of Interior

Mr. Kalin Georgiev

Supreme Prosecutor's Office of Cassation

Mr. Nikolay Georgiev

Mrs. Vania Nestorova

Mrs. Ivanka Kotorova

Mrs. Mariana Borisova

Mrs. Vania Nestorova

Mrs. Angelina Mitova

Ministry of Justice

Mrs. Julia Meranzova

Mrs. Elena Vicheva

Mrs. Mariela Kostova

The Commission for Establishing of Property Acquired from Criminal Activity

Prof. Stoyan Kushlev

Mr. Georgi Iliev

State Agency for National Security

Mr. Nikolay Aldimirov

Mr. Miroslav Marinov

Mr. Ivaylo Novakov

Chief Directorate Countering Organized Crime (MoI)

Mr. Stanimir Florov

Mr. Ivaylo Antonov

Mr. Petar Vladimirov

Chief Directorate Criminal Police (MoI)

Mr. Angel Antonov

Mrs. Darina Obretenova

Chief Directorate Pre-trial Proceedings (MoI)

Mr. Georgi Apostolov

Mr. Stoyno Tsvetkov

Mr. Vladimir Ovcharov

Directorate International Operational Police Cooperation (MoI)

Mr. Dimitar Georgiev

Mrs. Olya Mihailova

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Directorate Coordination for counteraction against fraud affecting the EU financial interests (AFCOS)

Mr. Boyko Kostov

Regional Directorate of the Ministry of Interior – Plovdiv

Mrs. Daniela Sabcheva

Mr. Ivan Stoynov

Prosecutor's Office – Plovdiv

Mr. Ivan Daskalov

Regional Court – Plovdiv

Mrs. Magdalina Ivanova

Mrs. Krassimira Kostova

Mrs. Slavka Dimitrova

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LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
AFCOS	Anti-fraud Coordination Structure
AML-CFT	Anti-Money Laundering/Counter Terrorism Financing
ARO	Asset Recovery Office
AWF	Analytical Work Files
AWF SUSTRANS	Analytical Work Files Money Laundering
BNB	Bulgarian National Bank
CD	Chief Directorates
CEPACA	Commission for the Establishing of Property Acquired through Criminal Activity
CEPOL	European Police College
CIA	Central Intelligence Agency
CPC	Civil Procedure Code
CTR	Cash Transaction Report
EC	European Community
EU	European Union
FID	Fraud Investigation Directorate
FIU	Financial Intelligence Unit
JHA	Justice and Home Affairs

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ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
JIT	Joint Investigation Team
JLS	Justice, Liberty and Security
MDG	Multidisciplinary Group on Organised Crime
MoI	Ministry of Interior
MTIC	Missing trades intra-community
NIJ	National Institute of Justice
OCTA	Organised Crime Threat Assessment
OJ	Official Journal
OLAF	European Anti-Fraud Office
PC	Penal Code
PPC	Penal Procedure Code
ROCTA	Russian Organised Crime Threat Assessment
SANS	State Agency for National Security
SIS	Schengen Information System
SPAC	Supreme Prosecution Authority of Cassation
STR	Suspicious Transaction Report
TAIEX	Technical Assistance Information Exchange Unit (European Commission)