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

REPORT ON FRANCE

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1. INTRODUCTION

At the Multidisciplinary Group on Organised Crime (MDG) meeting of 17 June 2008, the Group decided that the subject of the fifth round of mutual evaluations was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant in the field of countering financial crimes. 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 matter[1], seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG[2].

The importance of the evaluation was emphasised by the Czech Presidency while discussing the judicial reaction to the financial crisis[3]. The significance of the exercise was once again underlined by the Council while establishing the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA[4].

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 citizen.

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.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits[5]. The French Republic is the third Member State to be evaluated during this round.

1 10540/08 CRIMORG 89.
2 16710/08 CRIMORG 210.
3 9767/09 JAI 293 ECOFIN 360.
4 8301/2/09 REV 3 CRIMORG 54.
5 5046/1/09 REV 1 CRIMORG 1.

According to the procedure, the experts nominated by 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 Mrs Irina Stefania Talianu (National Office for the Prevention and Control of Money Laundering (*ONPCSB*), Romania), Mr Jean-Pascal Thoreau (Federal Magistrate, *Parquet Fédéral*, Belgium) and Mr Tommaso Solazzo (Lieutenant-Colonel G.d.F., Antimafia Investigation Department (DIA), Italy). Four observers were also present: Mr Mickaël Roudaut (DG JLS, European Commission), Mr Stefan de Moor (OLAF, European Commission), Ms Ilona Lévai (Eurojust, National Member for Hungary) and Mr Burkhard Mühl (Europol), together with Mr Peter Nath 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 5 and 9 October 2009, and France's detailed replies to the evaluation questionnaire.

2. NATIONAL SYSTEM AND CRIMINAL POLICY

2.1. Specialised units

2.1.1. Investigative authorities

In the French Republic several structures, under different ministries, share responsibility for investigating financial crime and conducting financial investigations. These are primarily the Directorate-General for Customs and Excise (*DGDDI*) within the Ministry of the Budget, Public Accounts, the civil Service and State Reform, the *Police Nationale* and the *Gendarmerie Nationale* within the Ministry of Interior and the Financial Intelligence Unit (FIU) *TRACFIN* within the Economic Affairs and Budget Ministries. During their visit to France, the expert team conducting the evaluation had the opportunity to meet with representatives of all the services referred to in this report.

2.1.1.1. Directorate-General for Customs and Excise (DGDDI)

The *DGDDI* is composed of central services, services with national competence and decentralised services.

At **national level** there are a number of services within the *DGDDI* with **functional competence** in fields relating to financial crime.

Within the *DGDDI* there are six services with national competency, two of which are dedicated to the fight against fraud and financial crime as well as financial investigations, namely

- the National Customs Intelligence and Investigation Directorate *(DNRED)*, and
- the National Customs Judicial Enquiries Department *(SNDJ)*.

Services under the National Customs Intelligence and Investigation Directorate (DNRED)

Directorate for Customs Investigations (*DED*)

The *DED* has exceptional powers to carry out administrative investigations in the fight against major fraud which may expose fraud or national or transnational fraud networks and break up criminal organisations.

It carries out investigations at the request of the *DGDDI* or of decentralised services, or on its own initiative, particularly with regard to taxation and financial transactions.

Its assignments complement the competences conferred on the regional investigation services.

The organisation of the *DED* is based on four investigation divisions, each responsible for criminal and administrative financial investigations in the areas falling within its competence:

– the first division: ‘industrial product’ fraud, ‘counter proliferation’ and specific assignments;
– the second division: "agri-food product" fraud;
– the third division: tax fraud (energy taxation, environmental taxation and internal taxation);
– the fourth division: financial fraud (in particular money laundering, infringements of capital declaration requirements and manual money changer provisions).

The Customs Intelligence Directorate (*DRD*)

The *DRD* manages and leads the intelligence network, centralises and processes information on customs fraud, and carries out the studies and analyses necessary to guide the action of the various services. The *DRD* is made up of five divisions, two of them being more particularly competent in the area of financial crime. These are the ‘organised crime’ division, in charge *inter alia* of ‘criminal network’ and ‘money laundering’ matters, and the ‘taxation and excise’ division.

The Customs Operations Directorate (*DOD*)

The *DOD* seeks and gathers operational intelligence and is in charge of controlling and executing large-scale operations requiring the mobilisation of a considerable number of staff or demanding particular experience of *in flagrante delicto* intervention methods.

It also provides support for the other Directorates of the National Directorate for Customs Intelligence and Investigations (*DNRED*) in the fight against financial crime, in particular in the framework of the system to control the physical cross-border movement of capital.

The National Customs Judicial Enquiries Department (*SNDJ*)

Officers of the National Customs Judicial Enquiries Department (*SNDJ*) are entitled to carry out judicial investigations on instruction from the public prosecutor or by letter rogatory from an investigating judge in areas restrictively listed by the law, which include money laundering, offences relating to the protection of the financial interests of the European Union and offences involving VAT fraud.

At regional level the Customs has the following services with **territorial competence**:

Regional investigation services (*SREs*)

Located in the 39 regional directorates, *SRE*s have been given general competence to carry out any type of customs investigation, and in particular financial investigations, in the geographical area of the directorate to which they are attached.

SRE investigators undertake investigations, backed up by an Intelligence and Control Direction Unit (*CROC*), in response to national instructions or Community requests, as well as joint investigations with other regional directorates or the *DED*.

Officers working in the *SRE*s are civil servants of categories A or B[1].

[1] Civil servants of the French State are divided into corps (administration), which may themselves be divided into ranks (grades) (called classes in certain corps). Corps are grouped in 3 categories named A to C, in decreasing order of educational knowledge theoretically required, A meaning "college graduate".

Intelligence and control direction Units (*CROCs*)

*CROC*s, which exist in each directorate, play a guiding and coordinating role in intelligence at regional level and are competent to deal with financial crime. Officers working in the *CROC*s are civil servants of categories A or B.

2.1.1.2. Police Nationale and Gendarmerie Nationale.

With regard to the Ministry of the Interior, there are several departments or units specialised in financial investigations or with exclusive responsibility in this area. These offices are deployed specifically within the *Police Nationale* and the *Gendarmerie Nationale*.

The Police Nationale

Within the Directorate-General of the *Police Nationale* (*DGPN*), the Central Directorate for Criminal Investigations (*DCPJ*) has a Central Office for Combating Serious Financial Crimes (*OCRGDF*) which is an inter-ministerial service with nationwide competence. The *OCRGDF* has four areas of competence: money laundering; swindling; Community fraud; identification and seizure of criminal assets. Set up on 9 May 1990 in order to identify the people behind such money-laundering operations, the *OCRGDF*, like the other central offices of the Criminal Police, centralises and analyses information provided to it by the *Police Nationale*, the *Gendarmerie Nationale* and the Customs, and coordinates those services' action in this area. This information is transformed into operational data that can be used for judicial investigations conducted at both national and international level. In addition, it is used in the prevention and training action that the *OCRGDF* organises on behalf of investigators and other partners. In accordance with its range of tasks, the Office has three operational sections, namely the anti-money laundering section, the section to combat swindling and Community fraud, and the Platform for the Identification of Criminal Assets (*PIAC*). In addition, the Office has specialised operational research resources, including a unit dealing with intelligence analysis and international relations.

Platform for the Identification of Criminal Assets (*PIAC*)

The Platform for the Identification of Criminal Assets (*PIAC*), set up in September 2005, has been fully operational since[1] May 2007. The *PIAC* is a service with nationwide powers, attached to the Central Office for Combating Serious Financial Crime (*OCRGDF)* of the Central Directorate for Criminal Investigations (*DCPJ*) of the Directorate-General of the *Police Nationale* (*DGPN*). Currently the PIAC's personnel is made up of police officers and gendarmes, in equal proportion. At the time of the evaluation visit the *PIAC* had ten investigators. It is presently headed by a police officer (a police commander at functional level) and the deputy head is an officer of the *Gendarmerie Nationale* (a captain). The unit has an investigation group (6 staff) and an operational documentation group (2 staff). Staff are either posted or assigned to the *PIAC*. They are therefore permanent staff.

A representative of the Revenue Service is seconded to the Central Directorate for Criminal Investigations *(DCPJ)* and has privileged links with the *PIAC*. He is a tax inspector assigned to the National Unit for Economic Enquiries, which is directly attached to the Sub-directorate for Combating Organised Crime and Financial Crime of the *DCPJ*.

The *PIAC*'s tasks include:
(1) centralising, cross-checking and re-constituting information on illegal assets, property or flows of capital, pooling investigation capabilities and coordinating searches;
(2) providing back-up for ordinary judicial investigations into local, national and international criminal networks;
(3) conducting judicial investigations on its own initiative into individuals or commercial activities which could be linked to terrorist organizations, in particular any which might be Islamist in origin.
There is no other similar body in France.

[1] By Circular NOR/INT/C/07/0065/C of 15 May 2007.

The *PIAC* is first and foremost an investigation service. Cases involving the identification of criminal assets or property investigations are therefore referred to it by the judicial authorities (an examining judge or prosecutor). In its role as reference unit for the tracing, identification and seizure of criminal assets, the *PIAC* also provides training for police officers, gendarmes and judges who may be called upon to carry out investigations in the area. In addition, when not directly involved in cases relating to the investigation of criminal assets, the *PIAC* may be called upon to give technical, legal or operational advice, whether to policemen and gendarmes or to judges and prosecutors. Its task of centralising and cross-checking information on criminal assets leads it to collect and compile statistics relating to criminal assets apprehended by all *Police Nationale* and *Gendarmerie Nationale* services throughout national territory.

The PIAC in its role as Asset Recovery Office (*ARO*)

The *PIAC* has been designated as the Asset Recovery Office (ARO) for France[1]. As such, the PIAC has access to a large number of databases which can be accessed depending on whether or not a judicial procedure has been opened.

First of all, the *PIAC* has permanent access to files of the *Police Nationale* and *Gendarmerie Nationale* (police records, vehicle registration, etc).

On the basis of a court order (in the course of a judicial investigation), the *PIAC* can obtain a large amount of information, not only on tax, but also on customs, property or private matters (i.e. from banks, insurance companies, commercial companies, etc.).

The French authorities stated in their answers to the questionnaire that the ARO only deals with cases that are related to criminal proceedings, unless one includes civil and fiscal matters arising from the criminal proceedings.

Once created, the PIAC immediately joined the CARIN network which was set up in 2004.

[1] Cf. decision of the Secretariat General for European Affairs (*SGAE*) of 8 April 2009, based on Article 8 of the Council Decision 2007/845/JAI of 6 December 2007.

Other units within the DGPN responsible for policing economic and financial crime

Still within the *DGPN*'s Central Criminal Police Directorate *(DCPJ)*, there exist,

– at the central services level, the National Financial Investigation Division (*DNIF*), that includes two departments:

- A section dealing with the criminal offences under company law, the misuse of corporate funds, misappropriation of public funds, offences regarding the stock-exchange, offences under the public contracts law
- The Central Brigade of Fight against Corruption (*BCLC*). This Brigade was created in 2004, to comply with a GRECO recommendation. It is in charge of the fight against corruption and all the offences related such as influence peddling and illegal taking of interest. The staff is made of people coming from the Police Nationale, the Gendarmerie Nationale and the ministry of economy which allow to gather the experience and technicity from all and an easy access to the databases from these different authorities. It is the only French law enforcement unit in charge of the fight against international corruption.

The National Financial Investigation Division is allowed to investigate on all the French territory either alone or with the local law enforcement unit.

– in the territorial services, that is to say every *DIPJ* (interregional directorate) and *DRPJ* (regional directorate), an economic and financial division, with a staff from 10 to 25 officials, responsible for policing economic and financial crime in its geographical area.

At the Paris Police Headquarters (*Préfecture de Police*), there are also services specialised in economic and financial matters: the Finance Squad (crimes under criminal business law), the "Smart-Crime" Squad (swindling and abuse of trust), the Means-of-Payment Fraud Squad (stolen cheques and bank card fraud), the Economic Crime Squad (public-works contracts and corruption), the Information Technology Fraud Investigation Squad (computer fraud) and the Financial Inquiry and Investigation Squad (counterfeiting and money laundering).

Overall, the *Police Nationale* (*DGPN*) employs some 1000 specialist investigators in economic and financial investigations, covering around 75 % of court cases in this area of competence.

The Gendarmerie Nationale

The system set up by the *Gendarmerie Nationale* is based, on the one hand, on trained staff and on the other, on dedicated structures.

With regard to its staff, the *Gendarmerie Nationale* has 400 investigators specialised in economic and financial matters (so-called *DEFI* investigators). They are employed in the Central Criminal Police Offices attached to the Directorate-General of the *Gendarmerie Nationale* (*DGGN*), i.e. the Central Office for Environment and Public Health (*OCLAESP*), the Central Office for Combating Illicit Labour (*OCLTI*) and the Central Office for Combating Itinerant Crime (*OCLDI*)[1], in the Technical Criminal Investigation Department (*STRJD*), which establishes judicial connections on behalf of the investigation units, and in the economic and financial divisions of the *Gendarmerie Nationale*'s 37 regional investigation services ("inquiry services" - *SR*).
Also, at departmental level, *DEFI* investigators are deployed to deal with economic and financial cases in the investigation squads (*BR*) most concerned.

It should be noted that, in addition to the *DEFI* specialist investigators, the *Gendarmerie Nationale* has investigators trained in the detection of illegal assets (the *DRPI*) numbering 285. These are deployed in the *SR*s (regional level) and *BR*s (*département* level) and are therefore able to assist the various investigation groups with their inquiries into the property aspect of proceedings initiated with regard to ordinary offences.
In addition, the National Gendarmerie has appointed PIAC correspondents in each region and has formed about 50 tracker dog teams specialized in the detection of bank notes.

The system in place is thus based on the criteria of subsidiarity and complementarity.
As for the first criterion, the system ensures the subsidiarity of action among units, in particular the autonomous territorial units (*BTA*s) and groups of units (*CDB*s), criminal investigation units (*BR*s) and criminal investigation sections (*SR*s). Moreover, any *Gendarmerie Nationale* unit must be able to conduct an investigation, according to the seriousness and complexity of the case. Hence, in the light of these criteria, a case will be allocated either to an autonomous territorial unit (*BTA*) or a group of units (*CDB*), or to a criminal investigation unit (*BR*) or to a criminal investigation section (*SR*), with the operational support of the judicial investigation and intelligence squads (*BDRIJ*s ; one in each department). Furthermore, in 5 *BDRIJ*s, investigators of the Treasury are about to be appointed at the end of 2009 in order to increase the operational capacities and the coordination in the fight against crime and especially the underground economy

[1] These 3 central offices include staff from other ministries or general directorates (like national police).

As regards the criterion of complementarity, the aim is for all units of the *Gendarmerie Nationale* to work together, coordinated by the investigation unit in charge of the enquiry.

During their visit, the experts noted during the *Gendarmerie Nationale* presentation that there was no consolidated centralised database for investigations conducted in different parts of the French territory; they therefore concluded that this could lead to an overlapping of investigations and/or make it impossible to link up cases that involved the same individuals acting in different geographic areas of the country. Furthermore, this conclusion could also be extended to the *Police Nationale*.

Ad hoc national investigation teams (*CNEs*)

In addition to these permanent structures, in particularly serious and complex cases the *Gendarmerie Nationale* sets up ad hoc national investigation teams (*CNEs*). Under this arrangement, which is peculiar to the *Gendarmerie Nationale*, investigators from different criminal investigation units are brought together to work on a particular inquiry for a period determined by their commanders and the judicial authority.

These ad hoc structures are funded centrally by the *Gendarmerie Nationale*'s Sub-Directorate for Criminal Investigations. The French authorities informed the evaluation team that by July 2009 17 *CNE*s had been established[1].

In *CNE*s working on organised crime cases, at least one specialised investigator (*DEFI* or *DRPI*) is seconded to deal with financial and economic investigations if there is a likelihood of major seizures.

Regional task forces (*GIRs*)

Lastly, at inter-ministerial level, Regional Task Forces (*GIR*s) dedicated to combating the underground economy were set up in every administrative region of France in 2002[2]. Formed of personnel from the *Gendarmerie Nationale* and *Police Nationale*, Customs and Revenue Services, the GIRs are headed by an officer from either the *Gendarmerie Nationale* or the *Police Nationale*. A total of 34 *GIR*s (plus 1 expected at the beginning of the year 2010) have been set up since 2002, 21 headed by police officers or commissioners and 13 by *Gendarmerie Nationale* officers.

[1] In February 2009 a CNE was extended through the setting-up of a Franco-Bulgarian joint investigation team (JIT) under the aegis of Eurojust and with participation of Europol.

[2] (21 *GIR*s + for the *Ile de France*, one *GIR* for each *département* and one *GIR* for each of the overseas territories).

Nationally, these *GIR*s are coordinated alternately (every two years) by the *Police Nationale* or *Gendarmerie Nationale*.

2.1.1.3. Financial Intelligence Unit - TRACFIN

TRACFIN is the French Financial Intelligence Unit (FIU). It is the main body within the Economic Affairs and Budget Ministries which is tasked with combating money laundering and terrorist financing. It is an administrative type FIU.

TRACFIN has three complementary tasks: to gather information on concealed financial networks and transactions which could involve laundering illegal funds or terrorist financing, processing that information through analysis and enhancement, and lastly, disseminating the information thus analysed and enhanced. *TRACFIN* is to inform the judicial authority about cases where possible money laundering operations have been identified. Also, *TRACFIN* is allowed, where necessary, to inform the competent authorities (fiscal administration, customs, and special services) about cases that could be relevant to their area of competence.

TRACFIN has a nationwide remit; it is structured around two departments: the Investigation Department and the Institutional Department. Administrative and logistical support is provided by the General Affairs Unit.

As of 31 December 2008, *TRACFIN* had 67 staff, 46 of them working in the Investigation Department. Seven staff are in the Institutional Department, which is tasked, amongst other things, with awareness-raising. By the time of the visit TRACFIN's overall staff numbers had risen to 73.

TRACFIN had 44 category A staff, 16 category B staff and 7 category C staff. More than 60 % of the staff had been in *TRACFIN* for more than two years, and nearly 30 % had been there for more than 5 years. Lastly, of those working at *TRACFIN*, approximately 40% have a university degree in law, approx. 20% a degree in economics/business administration, approx. 10% 7 in political science and about 20% came from the humanities, while 10% had done secretarial studies.

A number of liaison officers from different services (*Gendarmerie Nationale*, *Police Nationale*, and prosecution services) have been posted to *TRACFIN*.

According to the 2008 *TRACFIN* Report, only 12% of the STRs received were submitted in electronic form (1.771 STRs out of a total of 14.565 STRs). The experts were told that *TRACFIN* is aware this method of transmitting the reports is still insufficiently exploited by the reporting entities in spite of its advantages in terms of data security and time saving. In this matter, the evaluating team consider that any training sessions organized by the FIU could potentially increase reporting entities' awareness of the option of sending reports electronically.

Of total STRs received in 2008, more than a third were analysed by FIU specialised staff, resulting in 500 files being sent to the competent authorities. Of that number, 359 were sent to judicial authorities.

The distinction between STRs that are investigated by financial analysts (a third) and those of less relevance (two thirds) is made using a strategic (proactive) analysis based on detected trends. However, during the evaluation visit, the criteria that determine this distinction were not very clearly explained. Also, a system designed to mitigate the possibility that relevant STRs might be left out was not mentioned.

The FIU showed special interest in strategic analysis. In addition to the above, comparing financial flows and information exchange between FIUs in certain EU Member States could be relevant in determining and predicting different money laundering risks.

The experts were informed that as per the end of 2008, 31 MoUs with foreign FIUs had been concluded by *TRACFIN*[1]. It was however also emphasised that *TRACFIN* can also exchange information without having concluded a MoU.

During the evaluation mission the experts noticed that all the other institutions involved in fighting financial crime had pointed out the central and major role of the FIU and therefore concluded that *TRACFIN* is the most important administrative focal point in combating money laundering and other financially related crimes.

[1] Cf. also the list in *TRACFIN*'s activity report for 2008, p. 37.

2.1.2. Judicial authorities

The French judicial system deals with economic and financial crime at a number of levels of competence:

- non-specialised courts of first instance (*pôles de l'instruction* for investigating the most important cases) hear cases which are not defined as either highly complex[1] or very highly complex;
- specialised economic and financial courts[2] (one to two *tribunaux de grande instance* per court of appeal) with jurisdiction in highly complex cases[3];
- specialised inter-regional courts (*JIRS*)[4], eight in number, for cases of very great complexity;

These specialised courts, whether regional or interregional, exercise their jurisdiction concurrently with the ordinary courts: cases are therefore referred to them by the prosecutor's office as and when the complexity of the subject matter so warrants.

These courts have specialised assistants, whose job is to support the judges, who are themselves specialised in the subject, with technical knowledge drawn from certain fields: the Bank of France, the Financial Markets Authority (*AMF*), the Directorate-General for Competition, Consumer Protection and Fraud, the Revenue Service, etc.

2.1.3. Training

2.1.3.1. Investigative authorities

Directorate-General for Customs and Excise (*DGDDI*)

At the Directorate-General for Customs and Excise, all operational units deal in the general course of their duties with operations which have a direct link to financial crime (offences relating to capital declaration requirements, the protection of the European Union's financial interests, or tax offences).

1 Act No 203-2004 of 9 March 2004 adapting the law to criminal developments defines very great complexity by the following criteria: □
- a large number of perpetrators, accomplices or victims;
- the geographical extent of the area covered by the case.

2 Of these specialised courts, four economic and financial centres have been set up in Bastia, Lyon, Marseille and Paris

3 As defined in the Code of Criminal Procedure, Article 704, first paragraph.

4 Act No 203-2004 adapting the law to criminal developments.

Staff allocated to these units have followed a compulsory customs training course tailored to their specific grades and duties, including information on the customs administration's financial remit. According to the information supplied, this initial training is supplemented by continuing training programmes in various areas, including crime and financial inquiries.

Police Nationale and Gendarmerie Nationale

At the Directorate-General of the *Police Nationale*, basic vocational training in economics and finance is provided in the Central Directorate for Criminal Investigation, ending in an examination commonly known as the *BREVET SEF (Section économique et financière)*. It is accessible to all CID staff, including those who do not belong to specialist units. This general training is designed to provide investigators with the basic working methods in economic and financial matters. It is supplemented by more specific training in each area of investigation: breaches of the duty of integrity (corruption, influence peddling, extortion or dishonest receipt of money by a public official, illegal taking of interest, misappropriation of public funds, misuse of corporate funds); criminal offences under company law, money laundering, cyber crime, counterfeiting, and industrial and artistic counterfeiting. In addition to this training, the *Police Nationale* offer structural added value in the form of their long-serving investigators, especially at senior level: police officers and commissioners who may spend their whole career in the specialisation. These officers are thus highly competent in all economic and financial fields and provide high quality ongoing continuing training to their junior colleagues, who assist them in carrying out investigations in specialised units.

The training of the *Gendarmerie Nationale* is organised at three levels:
The first level consists of training in the detection of illegal assets (*DRPI* training). This lasts two weeks and is provided at the National CID Training Centre (*CNFPJ*); it is a multidisciplinary training course designed to raise awareness and to give investigators the know-how essential to detect criminal assets.

The second level is a master I degree (*vocational*) in "financial investigation" taught at Strasbourg University. The 430-hour training covers all aspects of financial crime.
The third level of training is a type-II master's degree course in "Combating the economic and financial aspects of organised crime", taught at the same University in 400 hours.
The trained staff of these two levels has theoretically access to the CEPOL seminars (for instance money laundering, fraud and assets seizure, fraud against UE, financial crime...).

As regards training in forensic financial analysis (*AFC*) it should be noted that between 2002 and 2006 the *Gendarmerie Nationale* developed, with financial support from the European Commission, a forensic analysis project geared to economic and financial data called *AFC*, designed for investigators in the EU Member States. Specifically, the AFC is designed to bring together two fields of expertise: forensic analysis (developed by the *Gendarmerie Nationale* in 1994; 430 staff have undergone this specialised training so far) and "economic and financial" specialisation. The project gave rise to the publication of a GUIDE TO METHODOLOGY AND GOOD PRACTICE IN FORENSIC FINANCIAL ANALYSIS (AFC) in 2005, and a European seminar on an "AFC exercise in simulated joint investigation teams" for training Bulgarian police in May 2007.

Lastly, it should be noted that a GUIDE TO PROPERTY INVESTIGATION has been initially prepared by the Directorate-General of the *Gendarmerie Nationale* (*DGGN*) for *Gendarmerie Nationale* units, as well as the Police National, Customs services and judges working in criminal and civil law. It has been validated by the ministries, directorates-general and directorates concerned and is about to be printed and published at the end of 2009. It is financed by the Inter-Ministerial Mission for the Fight against Drugs and Drug Addiction (*MILDT*), which is attached to the Prime Minister's Office and will subsequently be circulated to *Gendarmerie Nationale* units, *Police Nationale* units, Customs services, Public Prosecutors' Offices and courts.

TRACFIN

There are various training opportunities at *TRACFIN*. TRACFIN staff has access to the Ministry of Finance's training centre, the *IGPDE*. Apart from language courses, which were taken by more than 20 % of staff in 2008, the *IGPDE* frequently organises training on different topics. Thus, a number of *TRACFIN* staff took a training course in Islamic financing at the beginning of July 2009. Similarly, a number of staff has followed IT training courses.

Moreover, *TRACFIN* can access training programmes given by the Financial Market Authority (*AMF*) on an ad hoc basis.

Furthermore, *TRACFIN* staff has taken part in training courses given by the Egmont Group, an international forum bringing together financial intelligence units from across the world. Last year the theme was the fight against terrorist financing. This year, new developments arising from the FATF were tackled.

Lastly, in the course of 2009 *TRACFIN* will be organising an in-house training course for its staff. According to its 2008 Report, *TRACFIN* was also involved in training sessions provided to reporting entities during that year.

2.1.3.2. Judicial authorities

The French judicial authorities informed the evaluation team that initial and continuing training courses in economics and finance are provided by the *ENM* (*Ecole Nationale de la Magistrature*) for all judges and prosecutors (*magistrats*), regardless of whether they are serving in specialised courts.

2.2. Criminal policy

In their answers to the questionnaire, the French authorities reiterated that national policy on tracking down the proceeds of crime was reflected in the legislative process; it had been implemented by setting up an institutional framework aimed at combating criminal gain as effectively as possible.

Criminal investigations are therefore driven by a "proceeds-oriented" policy through legislative measures, and financial investigations in France have become increasingly oriented towards property seizures in order to facilitate the seizure of criminal assets and increase the number of confiscations.

Despite the explanations given, none of the services visited during the evaluation has, however, made reference to an integrated national strategic approach (an inter-ministerial programme or plan) to financial investigations that would encompass and co-ordinate the multitude of efforts undertaken by the French government, legislature and authorities to date. The experts were convinced that an integrated programme covering all authorities and agencies involved in fighting financial crime would potentially yield synergetic results.

The introduction of various instruments has been backed up, at judicial level, by disseminating circulars on implementation for prosecutors and judges working in the field.

At the time of the visit, the main instruments put in place to pursue a proceeds-oriented policy can be summarized as follows:

- the broader potential for criminal confiscation introduced in recent years: not only do certain serious offences now attract a penalty of confiscation of all or some of the offender's assets, but also all assets which the offender cannot prove to be of legal origin may be subject to confiscation where the offence is punishable by more than 5 years in prison and the perpetrator has profited directly or indirectly from it;
- a wider scope for the offence of non-justification of resources, introduced by the Act of 23 January 2006, punishing "*the fact of not being able to justify resources which correspond to one's lifestyle, or not being able to justify the origin of property one possesses, while being in a habitual relationship with one or several persons who have committed felonies or misdemeanours punished by at least five years in prison, which have provided them with direct or indirect profit, or who are the victims of such crimes*";
- the introduction in 1998 of specialist assistants, who are assigned to courts specialised in economic and financial crime, especially *JIRS*s. They come from the private sector (accountancy experts, etc.) or the public sector (tax inspectors, customs officers, officials from the Bank of France, etc.) and assist the judges in their day-to-day work. Amongst other things, they play a considerable role in the seizure of criminal assets by helping judges to draw up the necessary documentation;
- the establishment, on 1 October 2004, of specialised inter-regional courts (*JIRS*) with jurisdiction for the investigation, prosecution, preliminary inquiry and judgment of the most complex cases of economic and financial crime and organised crime;
- the setting up on 1 September 2005 of the Platform for the Identification of Criminal Assets (*PIAC*);
- the enactment of circulars and a number of practical guides, in particular the circulation to investigators in 2009 of a GUIDE TO PROPERTY INVESTIGATION initiated by the *Gendarmerie Nationale* and drawn up with the support of all the competent ministries, general directorates and entities;;
- the enactment of the circular of 27 July 2009, chiefly designed to urge prosecutors to initiate more prosecutions on laundering charges, emphasising the range of possibilities available under the law and the case law of the *Cour de Cassation*.

The experts were informed that at the time of the evaluation, in addition, a number of projects were under way designed to boost the French authorities' ability to conduct financial investigations and tackle criminal assets:

– a bill (*the Loi Warsmann*) designed to facilitate seizure and confiscation in criminal matters: it was adopted by the National Assembly at first reading, on 4 June 2009; its aim is what the French authorities have termed “a radical overhaul” of the law on seizure. Amongst other things, it will provide increased possibilities for the seizure of property during an inquiry in order to allow the seizure of all goods whose confiscation is provided for by law, and it creates specific seizure procedures for complex assets (property, securities, funds in a bank account, businesses, etc.);
– the establishment of the Agency for the Management and Recovery of Seized and Confiscated Assets: this provision is designed to facilitate seizure and confiscation in criminal matters, in response to the need to improve the management of seized and confiscated assets, in particular where they require genuine administration (companies, vessels, immovable property, etc.). The aim is to increase the number of seizures and hence the number of confiscations.

2.3. Conclusions

- From an institutional point of view, the experts concluded that France has at its disposal a number of services, under different ministries, with generally sufficient resources to deal with financial crime and conduct financial investigations at both functional and territorial levels.

- The experts were convinced that co-locating the two major police forces in France in one ministry has the potential to produce synergetic effects that could be beneficial for the effectiveness of law enforcement in the field of crime under review; however, given the situation following the recent restructuring, police services would benefit particularly from an effort to coordinate the fight against financial crime;

- Although during the visit the authorities reiterated their determination to coordinate efforts, a determination underlined, in institutional terms, by the existing inter-ministerial bodies, the expert team was not in a position to establish definitively whether the different actors, with their distinct competencies, were currently coordinated as well as they could be, as required to tackle this particularly complex field of crime. The experts were of the opinion that a national strategic programme (or a plan) involving all the agencies and authorities that have a role in fighting financial crime would be a valuable asset in this respect.

- It was apparent that major efforts have been undertaken to train staff employed in fighting economic and financial crime. The specialised training for financial crime appears to be of a very advanced standard, particularly the training certified by a university degree. As for the latter, the experts found it important to share experience and best practice among services (law enforcement, customs, judiciary and FIU) and possibly to look into a more integrated training effort;

- There are some services/agencies that would benefit from reinforcements, such as the Platform for the Identification of Criminal Asset (*PIAC*) and the specialised staff for the *JIRS*. It was underlined that there were plans to substantially reinforce the *PIAC*: however, during the evaluation mission, the experts were not given any timeframe and it is therefore suggested that it would be a good idea to look into timely strengthening of the unit.

- The option of sending STRs electronically is still insufficiently exploited by reporting entities, despite the advantages in terms of data security and saving valuable time.

- The *Warsmann* bill, aimed mainly at further strengthening the fight against the proceeds of crime, can be understood as a legislative example of how to increase the effectiveness of law enforcement by targeting criminal assets, while at the same time removing obstacles that hinder the services fighting these forms of crime;

- From their visit to the *Pôle financier* in Paris the experts concluded that there was a lack of awareness of existing EU instruments and cooperation mechanisms (such as EJN, Eurojust) and that a preference for using older non-EU instruments prevailed in cross-border cases.

3. INVESTIGATION AND PROSECUTION

3.1. Available information and databases

3.1.1. Databases and registers

In their answers to the questionnaire, the French authorities informed the experts that there are different data bases which may be consulted for the purposes of identifying the property of natural or legal persons.

3.1.1.1. The National Bank Account Database (FICOBA)

France has a national bank account database (*FICOBA*), created in 2003. The database, administered by the Directorate-General for Public Finances, lists all accounts opened in France. It covers accounts of all types (bank accounts, post office accounts and savings accounts, as well as share portfolios, etc.) held either by natural or legal persons. *TRACFIN* has direct access to *FICOBA*[1]. Apart from customs officials that have access to FICOBA the judicial authorities can acquire information via the instruments provided by the penal procedural code.

However, *FICOBA* does not list safe deposit boxes held by persons, or non-banking financial products such as life insurance, nor does it contain any record of past transactions on an account. To obtain this information, the judge or investigator must apply directly to the bank or post office. *FICOBA* contains information from compulsory tax declarations by the bodies which manage the accounts (banking and financial institutions, giro cheque centres, companies on the Stock Exchange, etc.).

For legal persons, the name, legal form, *SIRET*[2] number and address are recorded. *FICOBA* data are kept for three full years after closure of the account in the case of accounts held by natural persons and ten full years after closure of the account in the case of accounts held by legal persons.

[1] In addition, under Article L561-26 of the Monetary and Financial Code, TRACFIN can use its right of discovery in order to reconstitute all the transactions carried out in connection with an operation by a natural or legal person.

[2] In France, the *SIRET* number (*Système d'Identification du Répertoire des ETablissements*) serves as an identifying code, geographically identifying a place or an enterprise.

The experts considered the three-year timeframe for record keeping in the case of a natural person did not comply with Article 32 of Directive 2005/60/EC, that stipulates a five-year timeframe for both natural and legal persons. FATF Recommendation 10 stipulates the same timeframe.

3.1.1.2. The National Property Database (BNDP)

France has a National Property Database (*BNDP*). This is a database of the Directorate-General for Public Finances. This file contains essential information on property assets held by persons known to the tax authorities through their various declarations, particularly acts of transfer both for valuable consideration (sale of real estate and land) and without valuable consideration (donation and inheritance), together with the identification details and addresses of the persons and property concerned.

The 34 Regional task forces (*GIRs*) and the national unit for economic enquiries have direct access to this information.

3.1.1.3. Further databases

- The solidarity tax on wealth database, containing details of the movable and immovable assets of natural persons where the sum involved exceeds EUR 760.000.
- In addition, useful information such as a person's known addresses may be obtained from the "Taxation procedures simplification (SPI)" file.
- The land file concerning buildings and land identifies the owner of premises or land and his or her address, if located elsewhere. Similarly, the housing taxes file identifies the occupier of premises (tenant or non-rent-paying occupant), and states whether it is a principal or secondary residence.

3.1.1.4. PIAC database

Given its centralisation task, the *PIAC* administers the national database of seizures carried out by the *Police Nationale* and *Gendarmerie Nationale*. This contains statistical feedback from all police services in France. It covers the types of goods seized and the amounts involved, as well as the inquiry in the course of which the seizures were made and the originating service. The *PIAC* also has a legal, technical and operational documentation base (technical files, useful contacts and practical information).

The experts noted that it might be beneficial to include seizures made by Customs in the database maintained by the PIAC.

Furthermore, the idea of setting up a database on confiscations at a centralised level was raised, as a means to simplify statistics and measure effectiveness.

3.1.1.5. Motor Vehicles

The French national registers of motorized vehicles are maintained by the ministry of Interior. Investigators from National Gendarmerie, National Police and Customs have direct access.

3.1.1.6. Naval vessels

France has a management application for French commercial vessels, *NAVPRO*. It contains data on vessels that could be relevant when investigating financial crime or conducting financial investigations. According to the information given in the answers to the questionnaire, the Directorate-General of the *Gendarmerie Nationale* is the only police service to receive extracts of data from *NAVPRO*, but only on submission of a judicial request.

3.1.1.7. Aircraft

The French register of aircraft is maintained by the general directorate of civil aviation (DGAC) and is publicly accessible via the Internet. It can therefore be used by any law enforcement or judicial official.

3.1.1.8. Race horses

The experts were informed after the visit that the ministry of agriculture has been maintaining a national register of horses, including race horses, since 1974. The register is installed at Arnac Pompadour (Corrèze).

3.1.2. Cooperation at European level

3.1.2.1. Legal framework

The Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union and its protocol of 16 October 2001 entered into force as two Acts on 30 March 2005[1]

[1] No 2005-287 and No 2005-288, cf. French Official Journal No 6 of 7 January 2006, pp. 298 and 306.

The Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union has not yet been transposed into French law.

Additional instruments on confiscation and freezing are dealt with in chapter 4 of this report.

3.1.2.2. Identification of bank accounts and account holders

With regard to measures aimed at identifying bank accounts and account holders, the French authorities submitted the following information in their answers to the questionnaire:

Information on the identification of an unknown bank account belonging to a specified person is obtained by a judicial request to the tax authorities. Without a request for judicial cooperation such information is therefore, by definition, impossible to obtain. On the other hand, police cooperation may take place for investigations already under way in France, through Interpol, Europol or Schengen channels (this would be an investigation for which coercive measures had already begun). For the identification of an unknown owner of a specified bank account the same restrictions apply.

Once a bank account has been identified, the appropriate authorities can proceed as follows:

– during the preliminary judicial investigation, the public prosecutor must give prior authorisation to enable the officer of the criminal police to issue requests related to the measures sought regarding a bank account;
– during the investigation any measure (blocking of an account etc.) may be carried out simply on the basis of a request issued by the magistrate or, more usually, by an officer of the criminal police acting under the magistrate's authority. In practice, the request is simply faxed to the bank or financial institution concerned.

A magistrate, or an officer of the criminal police acting under a magistrate's authority, may also put a bank account under surveillance on request, receiving the banking information from the bank or financial institution at regular intervals.

Besides these regular transmissions (daily, weekly etc.), such a request may include particular action to be taken under certain conditions (for example: (a) if a transfer is made on the credit side, the establishment may be ordered to block the sum; (b) if the person concerned makes a cash deposit, the establishment may be instructed to inform the originator of the request at once; (c) if a payment using a credit card is made outside a particular geographical area, the establishment may be instructed to inform the originator of the request at once).

These investigatory steps may be ordered whatever the offence; the duration of the monitoring of a bank account is limited only by the duration of the investigation.
In order not to impede investigations, the account holder is not informed of the measure, to ensure that the investigation runs smoothly.

No professional or banking secrecy can be invoked in relation to magistrates or officers of the criminal police. Refusing to respond to such a request is a criminal offence.

Finally, for the identification of operations from and to a specified bank account during a specified period in the past, information is obtained from the banking establishment managing the account in question. Even more than previously, where such requests for information are addressed to establishments in the private sector, they require the formal character of a judicial request as described above and are subject to the same restrictions.

3.1.2.3. Information requests via the ARO

Besides the role of providing advice on the drafting of requests for judicial cooperation, the asset recovery office (ARO) may also receive requests for information, which may take two forms. Regarding information which cannot be obtained except by judicial requests requiring there to be a judicial framework for the investigation, reference has to be made to the considerations set out above, evoking the need for a "traditional" request for judicial cooperation.

For administrative or police information, or information from open files (internal working files, national police files, etc.), the asset recovery office, in accordance with Council Decision 2007/845/JHA, is authorised to communicate directly with AROs in the Member States of the EU in the context of any requests for information received.

3.1.2.4. Competent authorities in the issuing state

Only the public prosecutor and the examining judge, in the issuing State, are authorised to ask for the issue or to issue requests for judicial assistance. Pursuant to Article 694 of the Code of Criminal Procedure and in the absence of any international convention stipulating otherwise, requests for judicial assistance issued by the French judicial authorities and addressed to foreign judicial authorities are transmitted via the Ministry of Justice. Documents on execution of the request are returned to the authorities of the requesting State through the same channel.

In urgent cases, requests for mutual assistance made by the French or foreign authorities may be transmitted directly to the authorities in the requested State which are competent to execute those requests. Documents regarding execution of requests are returned to the competent authorities of the requesting State in the same way.

Within the European Union, Article 6 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union sets out the principle of direct transmission of requests for judicial assistance from one judicial authority to another.

3.1.2.5. Competent authorities in the receiving state

Under Article 694-2 of the French Code of Criminal Procedure, requests for mutual assistance issued by foreign judicial authorities are received and executed by the public prosecutor or by the officers or agents of the criminal police instructed to do so by the prosecutor.

They are executed by the examining magistrate or by officers of the criminal police acting on the letter rogatory of that magistrate, if they require certain procedural acts which can only be ordered or executed during a preparatory investigation. However, the examining magistrate may receive requests for mutual assistance directly, by virtue of Article 6 of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union.

According to the French authorities the central administration is not aware of any legal or practical problems encountered in implementing these provisions.

3.2. Financial investigations and use of financial intelligence

3.2.1. Legal framework

A specific framework was established for financial investigations by Act No 203-2004 adapting the law to developments in this particular form of crime. It created specialised inter-regional courts (*JIRS*) which were set up on 1 October 2004. The *JIRS* are competent for the investigation, prosecution, examination and judgment of offences and crimes falling within their area of competence as defined by the Act.

In economic and financial matters, the offences which may be dealt with by the specialised courts are listed in the Code of Criminal Procedure[1]. Two levels of specialised competence exist in this area, depending on whether the case is of great or very great complexity[2].

The circular of 2 September 2004[3] on the specialised inter-regional courts (*JIRS*) in economic and financial matters supplements the Act, and refers to the following criteria[4]:

- the scale of the damage caused by the offence;
- the size and international extent of the structures which enabled the offence to be carried out;
- the need to have recourse to international cooperation, or closely related acts abroad;
- the use of multiple bank accounts;
- a structured group operating in several locations;
- the technical nature of the issues involved;
- the multidisciplinary nature of the cases.

Finally, the circular recommends that the *JIRS*' competence should be called on for the following offences in particular:

- fraud affecting the financial interests of the EU;
- public procurement contracts.

1 Article 704, paragraphs 2 to 16.
2 Cf. definition of 'great complexity' in the chapter dealing with *TRACFIN*.
3 CRIM 04-11/G3 02.09.04.
4 Supplementary to the definition in the Act of 9 March 2004 'very great complexity' is most often characterised by the presence of several of these criteria.

To ensure that there is genuine specialisation, the judges and prosecutors assigned to the specialised courts are nominated by the presidents and chief public prosecutors of the inter-regional courts, who are best able to assess the abilities of candidates in terms of their professional experience and/or the training the candidates have undertaken.

3.2.2. Special legal powers and tools to investigate the financial aspects of criminal activities

The most commonly used legal instruments in investigating financial aspects of crime in France are as follows:

- requisitions issued by the judges or investigators (to the banks, insurance companies, administrations, etc.);
- lifting of banking secrecy and all types of professional secrecy that do not apply to the judicial authorities. Refusal by the banking establishment or any other professional to communicate the information requested may give rise to the instigation of criminal proceedings;
- searches in all locations, between 06.00 and 21.00, with or without the consent of the owner or occupier of the premises;
- consultation of the appropriate databases, such as, for instance, *FICOBA*.

Moreover, since 2004 the legislator has made available to investigators certain special investigative techniques in the field of organised crime (night searches outside residential premises ordered by a judge, night searches of residential premises subject to the agreement of the investigating judge, and under particularly strict conditions linked to the existence of an emergency situation), the use of which is permitted by law for the offences referred to in Articles 706-73 and 706-74 of the Code of Criminal Procedure[1].

Those techniques may also be used in order to combat corruption.

[1] These offences are: murder committed by an organised gang, trafficking in human beings, procuring, drug trafficking, torture and acts of barbarity committed by an organised gang, kidnapping and false imprisonment committed by an organised gang, theft committed by an organised gang, extortion, destroying, defacing or damaging property committed by an organised gang, counterfeiting, terrorism, misdemeanours relating to weapons and explosives committed by an organised gang, illegal immigrant smuggling committed by an organised gang, money laundering and the handling of stolen goods, criminal association and the non-justification of resources in connection with any one of those offences.

3.2.3. Use and effectiveness of financial investigations in specific crimes

In answering the questionnaire the French authorities did not clearly indicate whether financial investigations facilitate the effectiveness of the investigations in specific crimes (e.g. trafficking in human beings, cyber crime etc.).

While the investigation services of the different investigative authorities assumed that there was a hypothetical added value in unveiling offences involving e.g. money laundering, the funding of terrorism, receiving stolen goods, non-justification of assets and, more generally, a search for the proceeds, instrument or object of the crime, this added value could not be quantified.
Furthermore, the services concerned did not touch upon the issue of whether financial investigations were an integral part of investigations into specific forms of crime prone to produce large profits.
TRACFIN reported that since March 2006 it had received information explicitly mentioning trafficking in human beings on five occasions, three times from its international counterparts and twice from national taxpayers. One case has been referred to the courts concerning two of the pieces of information received. This case was the subject of an international letter rogatory and is still being dealt with by the courts.

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

The French authorities stated that “in principle” it was not possible to continue an investigation into the proceeds of crime after a criminal investigation had been closed or a conviction had been achieved, since there is no "civil recovery" under French law as there is in the legislation of some other national jurisdictions.

However, other solutions have been considered as ways of getting hold of assets which a criminal is believed to have transferred to his relatives:

- confiscations imposed as a complementary sentence on the offender may concern property owned by other people, either because that property was used to commit the crime (the offender having free use of it and the owner not actually owning it in good faith), or because the property was acquired through the proceeds of the crime[1].
- it is possible to prosecute relatives of the offender and to order confiscation from them, on grounds of:

  - **complicity**: if the relatives have knowingly aided or assisted the offender so as to facilitate the preparation or commission of the misdemeanour or felony, or have given instructions that it should be committed;
  - **receiving stolen goods**: concealing, holding or passing on an item, or acting as an intermediary in passing it on, knowing that that item is the product of a felony or misdemeanour;
  - **money laundering**: by virtue of Article 324-1 of the Penal Code, the act of "*facilitating by any means the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanour which has brought him a direct or indirect benefit"* or *"assistance in investing, concealing or converting the direct or indirect products of a felony or misdemeanour*", is punishable. These provisions, under which the punishment is five years' imprisonment and a EUR 375.000 fine for simple money laundering, may involve confiscation of all the assets of the person convicted, are particularly effective in the prosecution and conviction of relatives of offenders who have helped them conceal or convert assets obtained by crime.

[1] (Article 131-21 of the Penal Code, second paragraph: "confiscation affects all movable and immovable property of whatever nature, whether severally or jointly owned, which was used or intended for the commission of the offence, of which the convicted person is the owner or, subject to the rights of the owner in good faith, of which he has free use" and third paragraph: "confiscation also affects all property which was the object or the direct or indirect product of the offence, with the exception of property subject to restitution to the victim".

The offence of non-justification of resources, introduced by the Act of 23 January 2006, punishes "*the fact of not being able to justify resources which correspond to one's lifestyle, or not being able to justify the origin of property one possesses, while being in a habitual relationship with one or several persons who have committed felonies or misdemeanours punished by at least five years in prison, which have provided them with direct or indirect profit, or who are the victims of such crimes*".

This misdemeanour is punishable by three to seven years' imprisonment; the provisions allow general confiscation of the assets of the person convicted and are primarily intended for the prosecution of relatives of offenders.

If a person has a habitual relationship with an offender who has committed misdemeanours or felonies punishable by more than five years' imprisonment, and is unable to justify the difference between their lifestyle and official income, this misdemeanour is presumed to have occurred and to have been intentional.

3.2.5. Involvement of private experts in the investigations

During the judicial investigation, pursuant to Articles 157 et seq. of the Code of Criminal Procedure, the investigating judge may appoint an expert, whose task he will set out in the decision ordering the expert opinion.

Similarly, during the investigation, the public prosecutor or, at his request, an officer of the criminal police may call upon any qualified person "*if any technical or scientific reports or examinations need to be carried out*"[1].

The courts specialising in economic and financial crime, the specialised inter-regional courts (*JIRS*), in particular, may make use of specialist assistants[2] whose task is to assist judges within such courts. They may also be called upon by judges and prosecutors at any stage in the investigation. The specialist assistants are either civil servants (tax inspectors, customs inspectors, Bank of France officials, Financial Market Authority investigators, etc.) or from the private sector (chartered accountants in particular).

1 Cf. Code of Criminal Procedure, Articles 60 and 77-1.
2 Cf. Code of Criminal Procedure, Article 706.

3.2.6. Financial intelligence

Depending on the tasks of the competent French investigative authorities assigned to them by law, they have different roles to fulfil.

3.2.6.1. Financial investigations in the intelligence phase

Directorate-General for Customs and Excise (*DGDDI*)

Within Customs the *DRD*, that specialises in managing and running the intelligence network, is responsible for carrying out financial investigations in the intelligence phase. It conducts the examinations and analyses necessary for guiding the action of the customs authorities.

In accordance with the protocol for the exchange of information between *TRACFIN*, the French Intelligence Service and the *DGDDI*, *DRD*'s Organised Crime Division receives information concerning matters including suspected failure to comply with capital declaration requirements and the laundering of money arising from trafficking in counterfeits, drugs and works of art. Such information is used to initiate an intelligence phase/investigation. The *DRD*'s Organised Crime Division, for instance, carries out financial investigations into money laundering and the financing of terrorism, in the latter case in conjunction with the *DRD*'s Operational Anti-Terrorism Group (*GOLT*).

The analysis and development of the financial intelligence information constitute the preliminary step for launching many financial investigations, in particular following evidence of an offence in relation to the obligation to declare capital.

TRACFIN

TRACFIN, as the French FIU according to the Monetary and Financial Code[1], "*gathers, analyses, develops and exploits any intelligence which may help to establish the origin or destination of the sums or the nature of the transactions in respect of which a declaration has been made*". "*Where its investigations reveal evidence of the laundering of the proceeds of an offence punishable by a term of imprisonment of more than one year or the financing of terrorism* (...), *the service* (...) *shall refer the matter to the public prosecutor by means of an information note*"[2].

[1] Ibid., Article L. 561-23
[2] Ibid.

According to *TRACFIN* financial information is the main tool in conducting their financial investigations as an FIU. The Investigations Department has an analysis, intelligence and documentation division which is responsible for filtering the STRs received by the service in order to determine how they are to be dealt with. According to the *TRACFIN's* 2008 Report more than a third of the STRs received have been investigated by specialised staff. The distinction is made using strategic (proactive) analysis based on recent detected trends.

The same division also carries out operational analyses on behalf of the service as a whole. Information supplied by its counterparts is regarded as equivalent to and treated in the same way as STRs. All information communicated by *TRACFIN*'s counterparts is incorporated into its database and may, where appropriate, be used for the financial analyses or investigations conducted by this agency.

TRACFIN does not launch criminal investigations as it is located upstream of the criminal investigation. It transforms the suspicions which are communicated to it into presumptions. A relationship of trust is established between *TRACFIN* and the reporting entities. Once an information note has been submitted to the public prosecutor, the latter decides whether there are grounds for initiating a criminal investigation.

3.2.6.2. Cooperation with other authorities in the intelligence phase

Directorate-General for Customs and Excise (*DGDDI*)

At national level, Customs cooperates with *TRACFIN* and the tax authorities in accordance with established practice. The cooperation of *DGDDI* with *TRACFIN* was reinforced in 2008 by the conclusion of a Cooperation Protocol that describes the technical conditions by which *TRACFIN* may inform the *DGDDI* (*SNDJ* and *DNRED*) on cases that might be relevant to its sphere of competence.

Such cooperation is strengthened, in particular as regards financial intelligence, within France's 34 Regional Task Forces (*GIR*s), which bring together police officers, gendarmes, customs officers and tax officials.

At international level, financial intelligence is exchanged between Customs administrations in accordance with established practice and regulated with both the EU Member States (Regulation No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters) and third countries (bilateral administrative assistance agreements).
Customs also forwards information to *OLAF* and Europol (SUSTRANS analysis file).

TRACFIN

At national level, *TRACFIN* cooperates with all relevant institutions in fighting financial crime.
Its cooperation with the *DGDDI* has already been referred to above.
During the evaluation visit cooperation with Ministry of Justice and judicial authorities was emphasized. This cooperation is reinforced by the fact that a magistrate is detached to the FIU, working as a legal counsellor for the Director of *TRACFIN*. In 2008 a common working group was established in cooperation with the Directorate for Criminal Affairs and Pardons (*DACG)*, in order to ensure the transposition of the third EU Anti Money Laundering Directive, and to promote judicial conduct in cases passed on by *TRACFIN*.

As for *Gendarmerie Nationale* and *Police Nationale*, since 2008 liaison officers have been appointed within the FIU. The task of such liaison officers is to optimise information sharing on financial crime between agencies and ministries.

In practice, the service also maintains regular, formal contacts at internal level with the other State intelligence services (e.g. the Central Directorate for Internal Intelligence). This long-standing practice enables it to gather intelligence on specific files.

3.3. Cooperation with Europol and Eurojust

3.3.1. Cooperation with Europol

The different services, with their specific competencies, cooperate with Europol in different ways.

3.3.1.1. Directorate-General for Customs and Excise

Europol supports the customs administration in the context of financial investigations through SUSTRANS, which is supplied with information on findings with regard to irregular cash flows by most of the customs services of the Member States of the EU with the principal aim of detecting cross-border links between suspect transfers of capital and the persons involved in order to identify networks and/or specific money-laundering activities at international level.

3.3.1.2. Ministry of the Interior

Europol has been able on numerous occasions to contribute[1] to financial investigations conducted by the French police forces, mainly through the following Analytical Work Files: SUSTRANS (suspect financial transactions), TERMINAL (skimming), MTIC (VAT fraud) and CYBORG (use of the internet and new technologies for committing financial crimes), SOYA (forged money) and COPY (counterfeiting).

Furthermore the French authorities pointed out that the establishment of a target group of COPY entitled GOMORRAH and piloted by the *Gendarmerie Nationale* yielded excellent results in June 2009, underlining the need to develop close synergies with Europol.

It was noted that Europol also lends its support in the sphere of financial crime, through the Europol Information System (EIS), which allows cross-checking of criminal information. Europol's expertise and assistance were described as being particularly helpful to investigators, through the latters' use of the EIS, which allows them, for example, to obtain precious information about the bank accounts of suspects as it emerges from procedures. In addition, the Financial Crime Information Centre (FCIC) database was also described as a way of accessing information about European countries' legislation and the good practice obtaining in other Member States.

[1] The French authorities have highlighted an example where this support has made it possible to issue a European Arrest Warrant in connection with the seizure on French soil of a sum of EUR 2m in cash which was intended to be laundered.

3.3.1.3. Joint investigation teams (JITs)

At the time of the visit, three joint investigation teams had been set up on financial matters, dealing with cases of active and passive corruption of national and international civil servants, money laundering and fraud by organised gangs (skimming). Europol had been involved only with the last of these JITs, run by the *Gendarmerie Nationale* (Rennes CID) under the aegis of Eurojust, but it had played a vital role by lending its expertise and support in the area of criminal analysis through the use of the TERMINAL work file. It should be noted that in November 2008, prior to the official establishment of this JIT, the investigation carried out by the Rennes CID involved the implementation of a series of criminal police operations which it was already possible to carry out with the backup of Europol analysts deployed in Bulgaria with their "Mobile Office".[1]

3.3.1.4. Expectations regarding Europol support for financial investigations

In their answers to the questionnaire, the French authorities gave voice to their expectation that the transformation of Europol into an EU agency on 1 January 2010 would make it possible to boost the added value of the European Police Office in matters of financial crime, not only due to the increased possibilities for deploying national experts on secondment but also as a result of possible financial support for carrying out certain operations. It was particularly highlighted that the "Europol Decision" would allow that agency to receive and exchange information with private legal or natural persons, which the French authorities deemed to be particularly useful for investigations. Finally, the transformation, initiated by the "Danish Protocol", signed in 2003, that entered into force in 2005 and was confirmed by the new Decision of the Council of the EU, was expected to allow units on the ground to access the EIS (on a "Hit/No hit" basis).

[1] Once the JIT had been set up, French investigators made regular visits to Bulgaria. It is expected that further suspects will be detained for questioning there thanks to the support and information obtained from the Europol TERMINAL file. As regards financial investigations, this JIT was described by the French authorities as ‘exemplary’, as it had revealed that 5 200 bank cards had been counterfeited, involving losses of EUR 2.1m.

3.3.2. Cooperation with Eurojust

In their answers to the questionnaire the French authorities stated that Eurojust had been able to provide support in a number of cases, two of which are outlined below, by way of example:

- in a complex corruption dossier involving numerous countries, including EU Member States, Eurojust organised a co-ordination meeting comprising prosecutors, examining judges and investigation authorities from the countries concerned. The meeting made it possible to cross-check and organise simultaneous coercive measures; Eurojust also supported the organisation of a bipartite meeting to continue the work begun during the first meeting.

- in a major international money-laundering dossier, Eurojust, at the request of a French examining judge, organised a meeting of the magistrates and prosecutors concerned from five other EU Member States. The meeting facilitated mutual information on the objectives and progress of enquiries and subsequently led to the issue of better targeted and more effective international rogatory letters.

3.3.2.1. French expectations regarding Eurojust support for financial investigations

With regard to their expectations vis-à-vis Eurojust, the French authorities stated that Eurojust could be useful when coordinating judicial proceedings conducted simultaneously in different countries and dealing with connected criminal activities.

3.4. Conclusions

- Of all the databases used by investigative services, the French national database on bank accounts (*FICOBA*) was the one most intensively used and the one that was rated as very useful for facilitating their work. According to the practitioners met during the visit, cooperation among the appropriate services within the European Union would benefit from similar databases in other Member States.

- The experts were however, surprised to learn that in relation to natural persons, records are kept for only three years after the closure of an account. This period is too short if compared with the provisions contained in Article 32 of Directive 2005/60/EC and FATF Recommendation 10.

- Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union has not yet been transposed into French law. The legislative process to incorporate it into national law has not taken place at the pace that was expected.

- The expert team concluded that some of the initiatives that have been started clearly display the willingness of the appropriate French authorities to cooperate with other European actors in this particular field of law enforcement work. They are perceived as positive, with potential for development in the future. French investigation services have, for instance, tested the instrument of joint investigation teams (JITs), also with the support of Eurojust; such encouraging initiatives should be continued and further developed, and the lessons learned should be exchanged with other Member States for the benefit of all.

- The French services conducting investigations into financial crime are apparently making use of Europol and are expecting to draw further added value after Europol's transformation into an EU agency. However, as noted during the visit and already concluded in Chapter 2 of this report, some parts of the judicial authorities apparently lack awareness of existing EU instruments and cling instead to traditional instruments of international judicial cooperation.

- At a national level, the French experience reveals a high level of cooperation between different agencies involved in combating financial crime (and belonging to different ministries) using liaison officers and concluding Cooperation Protocols (while taking into account existing legal restrictions).

4. FREEZING AND CONFISCATION

4.1. Freezing

4.1.1. At national level

4.1.1.1. Freezing order

Legal basis

The system with a certificate for the freezing of property, based on the principle of mutual recognition and put in place by Framework Decision 2003/577/JHA of 22 July 2003, has been incorporated into French law[1].

[1] Act No. 2005 750 of 4 July 2005 which inserted Articles 695-9-1 et seq. into the Code of Criminal Procedure.

Assets may be seized during the preliminary or *flagrante delicto* enquiry (under the responsibility of the public prosecutor) or during the judicial investigation (under the responsibility of the investigating judge).

The Code of Criminal Procedure provides for the possibility of seizing the instruments and products of a crime (Article 54, second paragraph, and Articles 56 and 76 of the Code of Criminal Procedure for the preliminary enquiries and Article 81 for the investigation).

Strictly speaking, this is not an attachment, but rather an act that may be of use in order to establish the truth.

Furthermore, as regards organised crime, Article 706-103 of the Code of Criminal Procedure allows the magistrate for custody and release, at the request of the public prosecutor and within the framework of a judicial investigation, to take protective measures over the assets, movable or immovable, whether severally or jointly owned, of the person under judicial examination. This takes place in accordance with the rules concerning execution in civil proceedings (mortgaging, attachment, etc.). These civil execution methods are mechanisms that allow assets to be seized in order to ensure the enforcement or payment of a claim. Conviction validates the attachment and enables the securities to be registered definitively.

The aim of this system is to provide for the attachment of assets which, by definition, cannot physically be seized - in particular immovable assets, but also movable assets which would be difficult to seize for practical reasons (e.g. boats). It also facilitates the implementation of confiscation decisions ordered by the criminal courts.

It should further be noted that possibilities for the administrative freezing of assets are laid down in connection with measures to combat the financing of terrorism and the financial penalties provided for in Articles 562-1 et seq. of the Monetary and Financial Code.

Types of crime for which a freezing order can be obtained

All offences are covered, with specific provisions concerning those relating to organised crime and terrorism (Article 706-103 of the Code of Criminal Procedure). In general, no specific duration is laid down, but seized assets may be returned according to certain rules.

On the other hand, the civil execution measures implemented on the basis of Article 706-103 of the Code of Criminal Procedure may be of limited duration. For example, a provisional mortgage registration is valid for three years. The measure must therefore be renewed.

The only assets which may be seized are the object, the instruments and the products of the crime, except in the case of organised crime, in which case all the assets of the person under examination may be attached pursuant to Article 706-103 of the Code of Criminal Procedure.

Competent authority to take/request a freezing order

The authority competent to take the measure depends on the framework within which it intervenes. Hence, during a judicial investigation, it is the investigating judge who is competent.

On the other hand, during a preliminary or *flagrante delicto* enquiry, it is the public prosecutor who is competent, on application. Finally, in the case of organised crime, it is the magistrate for custody and release who is competent.

The officer of the criminal police who seizes the assets acts with the authorisation of the judge responsible for the investigation (public prosecutor or investigating judge if a judicial investigation has been launched).

Seizure is carried out by the judge who authorised the measure or, most frequently, by an officer of the criminal police acting under his authority, except in the case of protective measures taken on the basis of Article 706-103 of the Code of Criminal Procedure, for which the judge has sole competence.

Information for persons affected by a freezing order and legal remedies

Apart from the provisions concerning publicity which apply when use is made of civil execution measures pursuant to Article 706-103 of the Code of Criminal Procedure, there is no general provision concerning the notification of seizure decisions. In practice, the persons affected by the seizure of an asset usually become aware of that fact either by being present at the time of the search during which the seizure is carried out or, in the case of the seizure of sums held in a bank account, as a result of the funds becoming unavailable.

The person concerned may apply for the restitution of the assets seized.

Hence, during the judicial investigation, Article 99 of the Code of Criminal Procedure provides that the investigating judge may order the restitution of assets seized, including at the request of "the person under judicial examination, the civil party or any other person claiming a right over the article". The investigating judge, who decides by making a reasoned order, may refuse such restitution if it is liable to hinder the discovery of the truth or the protection of the rights of the parties, where it creates a danger for persons or for property or where confiscation of the article is provided for by law.

Similarly, during the preliminary enquiry, Article 41-4 of the Code of Criminal Procedure specifies that the public prosecutor or prosecutor-general are competent to decide on requests for restitution. Such restitution may be refused if it is likely to cause danger for persons or property or where a specific provision provides for the destruction of articles placed in judicial safekeeping. The person concerned may challenge the decision not to return property within one month of being notified, through a petition filed with the magistrate's court or with the criminal appeals division.

Withdrawal of a freezing order

A freezing order can be withdrawn in cases where a restitution decision is issued by the competent authority:

– within the framework of a judicial investigation, Article 99 of the Code of Criminal Procedure provides that the investigating judge may decide, by making a reasoned order, either on his motion or at the request of the person under examination, the civil party or any other person claiming a right over the article, and after hearing the public prosecutor's opinion, on the restitution of articles placed under judicial authority.
– No restitution is made where it is liable to hinder the discovery of the truth or the protection of the rights of the parties, or where it creates a danger for persons or for property. It may be refused when the confiscation of the article is provided for by law.

– within the framework of the preliminary and *flagrante delicto* enquiries, two texts may be used as a legal basis for restitution:
  – Article 41-4 of the Code of Criminal Procedure: where no court has been seized (where proceeds are dropped or end in a discharge), or where the court involved has not decided on the matter of restitution, the public prosecutor or prosecutor-general is competent to decide, on their own motion or upon application, as to the restitution of property of which the ownership is not seriously disputed. No restitution takes place when the property is likely to cause danger for persons or property or where a specific provision provides for the destruction of articles placed in judicial safekeeping. The decision not to return property which has been taken on one of these grounds or for any other reason, even on its own motion, by the public prosecutor or the prosecutor-general, may be challenged within one month of being notified through a petition filed by the person concerned with the magistrate's court or with the criminal appeals division, which rule in chambers.
  – At the judgment stage, restitution may be ordered, either of its own motion or upon application, by the assizes court (Article 373), the magistrate's court (Article 478) or the police court (Article 543).

4.1.1.2. Management of frozen assets

In order to facilitate the management of assets placed in judicial safekeeping, the legislator has developed possibilities for selling and destroying assets during the investigation procedure.

Disposal of assets

- Case 1: where it proves impossible to carry out the restitution of movable assets seized which no longer need to be kept in order to establish the truth, either because the owner cannot be identified, or because the owner does not claim the item within two months from the time that the official notice was sent to his last known domicile, the judge (the magistrate for custody and release or the investigating judge, depending on the framework of the investigation) may, at the request of the public prosecutor and subject to the rights of third parties, authorise their transfer to the State Property Department with a view to their disposal[1];

[1] Code of Criminal Procedure, Article 41-5, first paragraph and Article 99-2, first paragraph.

- Case 2: the judge (the magistrate for custody and release or the investigating judge, depending on the framework of the investigation) may also order that ownership of movable assets seized which no longer need to be kept in order to establish the truth, and the confiscation of which is provided for by law, be surrendered to the State Property Department with a view to their disposal, where to continue the seizure would decrease the value of the assets. If the sale of the asset is then carried out, the proceeds of this are deposited. Where the proceedings are dropped, or end in a discharge or acquittal, or where confiscation is not ordered, these proceeds are given back to the owner of the items, if he so requests[1];

Formal requirements and conditions of appeal

The decisions taken pursuant to the above two paragraphs must be reasoned and communicated to the public prosecutor's office and, if their identity is known, to the owner as well as to the third parties which have rights over that property, who can transfer the matter to the investigating chamber by means of a declaration to the court registry within ten days from the date on which they are notified of the decision. This appeal has a suspensory effect. The owner and the third parties may be heard by the investigating chamber. However, the third parties cannot claim access to the proceedings (Article 41-5, third paragraph).

Destruction of assets

- Case 1: the public prosecutor or investigating judge may order the destruction of movable assets seized which no longer need to be kept in order to establish the truth, where the items concerned are qualified by law as dangerous or harmful, or where holding them is unlawful[2];

[1] Ibid., Article 41-5, second paragraph and Article 99-2, second paragraph.
[2] Ibid., Article 41-4, last paragraph and Article 99-2, third paragraph.

- Case 2: where it proves impossible to carry out the restitution of movable assets seized, which no longer need to be kept in order to establish the truth, either because the owner cannot be identified, or because the owner does not claim the item within two months from the time that the official notice was sent to his last known domicile, the judge (the magistrate for custody and release or the investigating judge, depending on the framework of the investigation) may, at the request of the public prosecutor and subject to the rights of third parties, authorise the destruction of those assets[1]. The same formal requirements and conditions of appeal apply as referred to above in the case of disposal.

It should be noted that, according to Article 706-30-1, where the provisions of the third paragraph of Article 99-2 are applied to drugs seized during the course of the proceedings, the investigating judge must keep a sample of these drugs so that they can be analysed if necessary. This sample is placed under seal. The investigating judge or an officer of the criminal police acting under letters rogatory must weigh the seized substances before they are destroyed. This weighing must be carried out in the presence of the person in whose possession they were found, or failing this, in the presence of two witnesses called upon by the investigating judge or the officer of the criminal police, and who must not be under their authority. The weighing may also be carried out, under the same conditions, during a *flagrante delicto* or preliminary enquiry, by an officer of the criminal police, or during a customs investigation by a category A or B customs officer. The official record of the weighing process is signed by the persons mentioned above. In case of refusal, this is noted in the official record.

Agency for the management and restitution of seized and confiscated assets

In view of the difficulties encountered in managing assets during seizure, a bill to "facilitate seizure and confiscation in criminal proceedings", adopted at first reading by the French National Assembly on 4 June 2009, provides in particular for the creation of an Agency for the management and restitution of seized and confiscated assets.

This will be a public administrative establishment supervised jointly by the Minister for Justice and the Minister with responsibility for the budget.

[1] Ibid., Article 41-5, first paragraph and Article 99-2, first paragraph.

This Agency, which will be chaired by a judicial magistrate, will be responsible for:

- managing all assets seized by the criminal courts which are entrusted to it, and selling or destroying the seized or confiscated assets (including in accordance with any request for mutual assistance or cooperation submitted by a foreign judicial authority);

- aiding and assisting the criminal courts, which may ask it for legal or practical assistance in carrying out the intended seizures or confiscations or managing the seized or confiscated assets until a final decision is reached;

- improving the lot of victims by ensuring that a priority payment of the compensation and interest owed to civil parties is made from the assets of the person liable where a final decision has been taken to confiscate those assets.

4.1.1.3. Involvement of the ARO during the freezing procedure:

The Platform for the Identification of Criminal Assets (*PIAC*), created on 1 September 2005 and designated French ARO since April 2009, is responsible for identifying offenders' criminal assets and property with a view to their seizure or confiscation, and for centralising information relating to the detection of illegal assets throughout national territory.

Its tasks include centralising, cross-checking and re-constituting information on illegal assets, property or flows of capital, pooling investigation capabilities and coordinating searches.

This information is centralised within a work file dedicated to the *PIAC* and linked to the documentation held by the Central Office for Combating Serious Fraud (*OCRGDF*). To that end, local correspondents have been appointed in the various departments.

The *PIAC* can act during proceedings to provide back-up asset-related information to judicial investigations on criminal networks.

Hence if the public prosecutor or investigating judge considers it necessary to expedite investigations into the assets of persons under judicial examination, he may refer the matter to the *OCRGDF* as well as to the locally competent investigation service. However, despite the *PIAC*'s operational nature, the public prosecutor or investigating judge cannot refer matters to it directly.

The ARO thus identifies criminal assets and helps officers of the criminal police to carry out seizures.

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

France has transposed the Framework Decision of the Council of the European Union of 22 July 2003 (2003/577/JHA) on the execution in the European Union of orders freezing property or evidence in compliance with the deadline and the necessary provisions have been incorporated into the Penal Code[1].

All previous national provisions remain applicable. The new provisions supplement those which already existed[2].

In compliance with the principles established in Framework Decision 2003/577/JHA, which requires the decentralised handling of the issue and receipt of orders to freeze property or evidence, the central administration no longer acts as an intermediary between the French courts and the competent foreign authorities; the French authorities informed the experts that as a result, no statistics can be drawn up.

4.1.2.1. Experience when acting as an issuing State

With regard to experience when acting as an issuing state, the French authorities submitted the following information on the subject in reply to the questionnaire:

1 By Act No 2005-750 of 4 July 2005, published in the Official Journal of the French Republic on 6 July 2005.

2 The explanatory circular sent to prosecutors states that: "This procedure for the freezing of property or evidence is intended - particularly in urgent cases - to supplement the procedures currently followed by the judicial authorities of the Member States of the European Union to seize evidence or secure property which could be subject to confiscation. However, unlike the European arrest warrant, which replaces extradition procedures within the Member States of the European Union, the introduction of this procedure for the freezing of property or evidence does not prevent the issue or enforcement of international letters rogatory."

Issuing a freezing order

The authorities competent to issue a freezing order referred to in Framework Decision 2003/577/JHA are the public prosecutor, the examining magistrate and the magistrate for custody and release; more rarely, the president of the chamber conducting the preparatory inquiry or one of the members of that chamber; and even, in exceptional cases, the magistrate in a trial court carrying out investigations and examinations at the request of the court.

The authority to be contacted by the executing authorities is the judicial authority which issued the freezing order. French legislation does not impose any obligation to provide any document other than the freezing order and the certificate. Offences must be categorised in accordance with French law, and listed with all the relevant details in section (i) of the certificate.

Guidance on the subsequent treatment of the frozen property[1] is set out in chapter 2.6 of the circular: The certificate must specify whether the "frozen" property is to be secured as evidence or for subsequent confiscation. This is obligatory, and determines the legal regime covering the frozen property. If it is evidence, its immediate transfer is possible. On the other hand, if the property is being frozen with a view to its subsequent confiscation, the property must remain in the executing State until the judgment has been delivered either ordering the confiscation or withdrawing the interim measure.

Moreover, the certificate relating to the order for the freezing of property or evidence must be supplemented by a request for the transfer of the evidence, or where appropriate by a confiscation decision. Failing that, it must give a date on which such requests are likely to be made.

In the case of evidence, transfer may be requested by means of an international letter rogatory referring to the international convention applicable to the circumstances, in particular the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.

This request may be sent either when the freezing order and relevant certificate are transmitted, or subsequently. In the latter case, the certificate must specify the date when the transfer of the evidence will be requested.

[1] Cf. Article 10 of Framework Decision 2003/577/JHA.

In the case of property frozen for the purposes of subsequent confiscation, a request to carry out the confiscation, once it has been ordered, may be sent to the EU Member State concerned, on the basis of Chapter III of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990.

In most cases, the confiscation decision can only be made at the judgment stage, and the request cannot be sent at the same time as the request to freeze property or evidence. It is therefore appropriate to ask for the frozen property to be kept in the executing State.

The French authorities stated that requests to ensure that evidence taken is valid in France are possible. They emphasised that Chapter 2.5 of the circular on the possible application of the rules of the French Code of Criminal Procedure in another EU Member State states that the certificate drawn up by the French judicial authorities may specify that the freezing request must be executed in the executing State in accordance with the rules in the French Code of Criminal Procedure. This territorial extension of French national procedural rules is provided for in the second paragraph of Article 695-9-7 of the Code of Criminal Procedure, which transposes the rules laid down in Article 5(1) of the Framework Decision.

Thus, for example, to comply with the rules laid down in Article 76 of the Code of Criminal Procedure, it is possible to specify, in the certificate on the freezing of property or evidence which accompanies the decision taken in the context of a preliminary investigation, that house or other searches for and seizures of that evidence must be carried out with the explicit consent of the person whose premises are being searched, and that such consent must be given in a handwritten declaration by the person concerned or, if the person is unable to write, that and the fact that consent has been given must be mentioned in the official report.

The central administration has no knowledge of how these provisions are implemented.

Circulation of a freezing order [1]

The transmission of the freezing order and certificate is determined by Articles 695-9-6 to 695-9-8 of the Code of Criminal Procedure, which transpose the Framework Decision faithfully. Chapter 2.4 of the circular on the application of the Framework Decision, on the transmission of the order to freeze property or evidence and of the certificate, clarifies the rules on transmission of the order to freeze property or evidence laid down in Articles 695-9-6 to 695-9-8 of the Code of Criminal Procedure. In application of those Articles, the freezing order and certificate must be transmitted directly to the competent authority by any means capable of producing a written record under conditions allowing the latter to verify their authenticity.

In their reply, the French authorities stated that the European Judicial Network (EJN) was a useful means to identify the competent authority, and that reference was made in the circular on the application of the Framework Decision to the address of the EJN; use of its atlas was encouraged.

The French authorities noted that the Framework Decision does not determine exactly what means may be used to verify the authenticity of any documents transmitted. Depending on the legislation, case-law and practices in force in the executing State, transmission may be by mail, fax or the emailing of digitised documents.

The courts have flexibility in the transmission of such documents.

Difficulties observed

The central administration was not aware of any cases of executing Member States questioning the appropriateness, the manner in which the certificate was completed, or the scope of a freezing order. Neither were they aware of any difficulties in providing the certificate in the languages required.

Given the budgetary constraints, the short deadlines for execution and the fact that the party benefiting from any request is chiefly the party making it, France considers that it is for the party issuing a request to provide for its translation and that of any further relevant documents.

[1] It should be recalled that Article 4(2) of Framework Decision 2003/577/JHA limits to the United Kingdom and Ireland the possibility of requiring that a freezing order must be sent via a Central Authority.

4.1.2.2. Experience when acting as an executing State

Receipt of a freezing order

As concerns the mechanisms of receipt, the French authorities stated that they accept the transmission of orders by any means leaving a written record under conditions allowing the recipient to verify authenticity.

Legal checks on the freezing order

Chapter 3 of the circular on checks by the examining magistrate or magistrate for custody and release states that checks carried out by the competent magistrate on the execution of a freezing order for property or evidence must, as regards evidence, resemble those carried out on receipt of a request for mutual assistance made on the basis of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and, as regards interim measures with a view to subsequent confiscation, must resemble those under the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990.

The examining magistrate does not check dual criminality for the seizure of a piece of evidence.

As with demands for seizure based on an international letter rogatory referring to the above European Convention, for which France has made no reservation or declaration limiting seizures and searches, requests must be executed whether or not the acts are unlawful under French law.

Article 695-9-17 paragraph 4 of the Code of Criminal Procedure states that the execution of a freezing order with a view to the subsequent confiscation of property must be refused if the acts justifying it are not an offence under French law allowing an interim measure to be ordered. However, this ground for refusal is not applicable where the freezing order concerns an offence which, according to the law of the issuing State, is in one of the categories of crime listed in the third to thirty-fourth indents of Article 695-23, and is punishable by a custodial sentence of three years or more.

As a result of the combined application of these two provisions, the freezing of property with a view to its subsequent confiscation may be ordered by the magistrate for custody and release when the acts on which the freezing request is based constitute an offence which either comes within the scope of Articles 706-73 and 706-74 of the Code of Criminal Procedure, or comes within one of the categories of offence referred to in the third to thirty-fourth indents of Article 695-23 of that Code and is punishable by a custodial sentence of three years or more.

The length of the sentence is checked exclusively with reference to the law of the issuing State.

When the offences in question appear on the abovementioned list of 32 categories of offences the magistrate for custody and release checks that those offences are punishable by a custodial sentence or security measure of three years or more in the legislation of the issuing State.

Refusal of a freezing order

The grounds for refusal to execute an order to freeze property or evidence may be optional or mandatory, even though the FD states clearly that that all grounds are optional and left to the discretion of the competent authority (Article 7).

Article 695-9-16 of the Code of Criminal Procedure provides that execution of the order may be refused if it is not accompanied by a certificate, or if the certificate is incomplete or does not correspond to the freezing order. However, in such a case, the judicial authority of the issuing State may be allowed time to provide the necessary information.

The five mandatory grounds for refusal are laid down in Article 695-9-17 of the Code and are as follows:

1. if execution of the order to freeze property or evidence might jeopardise public order or the essential interests of the nation (an additional ground not listed in Article 7);

2. if an immunity bars the execution of the order, or if the evidence or property may not be seized according to French law (such as correspondence exchanged between a lawyer and the person under investigation, or secret documents relating to defence classified "*secret défense*");

3. if the person concerned has already been conclusively judged in France or in a State other than the issuing State for the offence justifying the freezing order and provided that, in the case of conviction, the sentence has been carried out or is being carried out or can no longer be carried out under the law of the State of conviction;

4. if it is established that the freezing order was taken with the purpose of prosecuting or convicting a person because of his or her gender, race, religion, ethnic origin, nationality, language, political opinions or sexual preferences (an additional ground not listed in Article 7);

5. if the purpose of the freezing order is the subsequent confiscation of property and, under French law, the acts justifying it do not constitute an offence allowing an interim measure to be ordered.

Authorities competent to decide on execution and enforcement of a freezing order[1]

As regards the Ministry for the Interior, Overseas Territories and Local and Regional Authorities, only magistrates in the private law courts are authorised to order the execution under domestic law of a freezing order from a third State. In the context of the execution of such freezing orders, the asset recovery office (ARO) is the principal delegated authority for the execution of freezing orders from another State.

For the Ministry of Justice, the authorities who may decide to execute a freezing order or to have such order executed are the examining magistrate and the magistrate for custody and release. A change in legislation is currently in preparation which will simplify the procedures for seizure and confiscation. The power to execute a freezing order or to have such order executed is due to be granted to the examining magistrate alone.

[1] It should be recalled that Article 4(2) of Framework Decision 2003/577/JHA limits to the United Kingdom and Ireland the possibility of requiring that a freezing order must be sent via a Central Authority.

Quality Control with regard to freezing orders

There is no formal procedure for determining whether additional and/or more precise information should be requested. Such a qualitative review is not mandatory. It is carried out by the magistrate dealing with the request, depending on that request.

The central administration was not aware of any cases where freezing had not been authorised solely for reasons arising from the quality of the freezing order and/or the certificate being considered by the French courts (e.g. translation errors, insufficiently detailed certificates (fact or law), issues surrounding authentication, missing documents or the like).

Furthermore the central administration stated that cases were known where the execution of a freezing order had not been authorised solely because the issuing Member State had failed to respond to a request from the French authorities for additional information/documents.

The French authorities declared that the competent authority was flexible in choosing its methods for liaising with issuing States to keep them informed of progress in proceedings as long as the method chosen left a written record.

Legal remedies to interested parties regarding frozen property

A distinction has to be made between freezing orders concerning a) evidence and those with a view to b) the confiscation of property.

If the freezing order concerns **evidence**, the person holding it or any other person who claims to have a right to it may appeal against the order, by making a request to the clerk of the chamber conducting the preparatory inquiry which has territorial jurisdiction, within 10 days of the decision to execute the order in question. The provisions of Article 173 of the Code of Criminal Procedure apply.

If the freezing order was with a view to the **confiscation of property**, the methods of appeal laid down for civil execution procedures are applicable.

In both cases, the appeal is not suspensory and cannot relate to the substantive grounds for the freezing order.

Rating of Framework Decision 2003/577/JHA as compared to the previous regime

The French Ministry of the Interior asserted that this certificate, intended as a simplified procedure for the freezing of property within the European Union, presented several advantages:

- it is an instrument for the specific purpose of seizing criminal assets, in a single form for all the Member States;
- it does away with the need to search for dual criminality by producing a list of offences;
- there is no detailed examination of the reasons justifying the seizure of property;
- it is meant to be executed rapidly (24-hour deadline);
- refusals of execution are only possible on a limited list of grounds;
- only the certificate needs to be translated into the language of the executing State.

For all these reasons, it presents undeniable advantages compared with the traditional instruments for mutual judicial assistance.

In the view of the Ministry of Justice, the main added value of Framework Decision 2003/577/JHA lies in the deadlines for execution, making it possible to have property frozen within a very short time. It also allows better provision of information.

On the other hand, it was felt that the Framework Decision was also imposing a heavier legal and administrative burden, both for the requesting and the executing State, the reasons for which were as follows:

– As regards issue, there is generally no "freezing decision" in France: officers in the criminal police have powers of search and seizure by delegation of the powers of the magistrate under whose authority they are carrying out the investigation (public prosecutor or examining magistrate). By comparison with the previous procedure, the magistrate has to take a "freezing decision" which did not exist before[1] and to draft a certificate (consisting of 6 pages to be filled in). He also has to make a separate request to obtain the return of the evidence (whereas in a traditional international letter rogatory it is possible to request the search, seizure and transfer of property in two pages).

– Upon receipt, the execution of a freezing order requires a more formal and more cumbersome procedure, subject to appeal (whereas the execution of an international letter rogatory offers no means of appeal). It introduces obligations to provide information which create a not inconsiderable burden (provision of information to the requestor when the freezing order is forwarded to another court, provision of information to the requestor when the freezing order is accepted or refused, provision of information to the requestor when the request is postponed, provision of information to the requestor when the order is executed, provision of information to the requestor when there is an appeal, etc.).

In the view of the Ministry of the Interior, however, there also remain practical and legal difficulties which partly explain the low level of use of this international instrument:

– in practice, and in many cases, a traditional international letter rogatory is required after all, which does away with the benefits of simplification sought by the freezing certificate. For example: to ask for the transfer of the frozen property to the issuing State; to provide for a search before the property is seized; to carry out the exact identification of the property for which seizure is being planned, where information is lacking; to request freezing in the context of a confiscation which is being carried out, etc.

[1] In France, there is generally no "freezing decision": officers in the criminal police have powers of search and seizure by delegation of the powers of the magistrate under whose authority they are carrying out the investigation (public prosecutor or examining magistrate). However, when property is seized for the purposes of confiscation by the magistrate for custody and release, the latter orders an interim measure, stating reasons (this is the only case where there is a "freezing decision").

Besides, the costs of executing the freezing are not taken into account by this instrument which, by default, leaves them to be paid by the executing State (mortgage charges, for example).

– Legally, interim measures established in France in the context of the fight against organised crime[1] do not come within the scope of this instrument. In fact the instrument only applies to property which on the one hand is the product of or was used to commit the offence, or which on the other hand is evidence (exhibits). Nothing is therefore laid down for property which might guarantee the provision of compensation to victims or the payment of fines.

The Ministry of Justice suggested that it would seem useful to have a website, easily accessible and regularly updated (similar to that of the Council of Europe's Treaty Office) containing the following information:

– the text of the Framework Decision;
– the model certificate in every language, to simplify the translation of the certificate (this would avoid re-translation of the headings and wording in the fields, and would thus allow quicker and cheaper translation);
– the state of transposition in the various Member States (in particular, a consolidated table showing the national provisions against each provision of the Framework Decision, or failing that, a consolidated table for each of the 27 Member States (one per State);
– a list of the competent authorities;
– the accepted languages, as declared to the Council and the Commission.

[1] Code of Criminal Procedure, Article 706-103.

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

4.2.1. Confiscation at national level

4.2.1.1. Legal basis

Under French law confiscation may take place as an additional (Article 131-21 of the Penal Code) or alternative penalty. It can therefore only be applied after a declaration of culpability.

As confiscation is a penalty, the decision on it is taken by the criminal court, i.e. the police court, in the case of minor offences, the magistrate's court in the case of misdemeanours and the jury court[1] in the case of felonies.

As with the other penalties, responsibility for enforcing confiscation decisions lies with the public prosecutor's department.

As regards information for the culprit, a distinction needs to be made between confiscation decisions concerning certain goods and those concerning all or part of a person's assets.
In the first case, if the owner of the confiscated item is the convicted person, he is informed of the confiscation by the usual means for publishing criminal conviction decisions. For example: if he attends the hearing, he will be informed when the decision is delivered. However, where the owner of the item is not the convicted person (e.g. in the case of confiscation of the proceeds of the offence where the owner is a third party), no specific publication arrangement is laid down.

According to Act No 47-520 of 21 March 1947[2] an additional specific publication measure in the case of decisions on the confiscation of all or part of a person's assets applies. In addition to publication there is a declaration mechanism similar in its operation to that for the statement of claims in collective proceedings. These provisions are concerned not only with protecting creditors who have rights over the goods but also with identifying the goods that make up the convicted person's assets, since the court may order the confiscation of all the convicted person's assets without listing them precisely, and balancing the rights of the State within reasonable periods of time.

[1] French: *Cour d'assises*.

[2] Article 19 et seq. of Act No 47-520 of 21 March 1947, concerning certain financial provisions states that "any judicial decision ordering the total or partial confiscation of a person's assets shall be published in the official journal and in a journal of legal notices of the department at the request of the public prosecutor's office".

The convicted person may appeal against the decision passed on him by the police court (under conditions – Article 546 of the Code of Criminal Procedure), the magistrate's court (Article 496 of the Code of Criminal Procedure) or the jury court (Article 380-1 of the Code of Criminal Procedure). However, where confiscation is not the only penalty imposed on him, the convicted person does not have the option of appealing against the confiscation penalty alone.

4.2.1.2. Types of crime for which confiscation may be applied

Confiscation as a complementary sentence

Confiscation of the instruments and proceeds of the offence as a complementary sentence is applied in the following cases:

(a) Instruments and proceeds of the offence:

Confiscation of such property is automatic for felonies and misdemeanours for which the penalty is imprisonment for a period of more than one year, except for misdemeanours involving the press; It is also applied in cases provided for by law or regulation.

(b) Property the origin of which cannot be justified by the convicted person:

Confiscation is laid down for any felony or misdemeanour punishable by at least five years' imprisonment which brought a direct or indirect benefit and moreover affects movable and immovable property of whatever nature, whether severally or jointly owned, belonging to the convicted person where the latter, when called upon to comment on the property it is proposed be confiscated, is unable to justify the origin thereof.

(c) Assets of the convicted person (wider confiscation):

Where the law punishing the felony or misdemeanour so provides, confiscation may also relate to all or part of the property belonging to the convicted person of whatever nature, whether movable or immovable, separately or jointly owned. Such confiscation relates to a number of offences that are punishable under the French Penal Code and that are listed in the annex to the report.

With regard to the possibilities for confiscation referred to in Article 3(2) of Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, confiscation is possible under the following national procedures:

- pursuant to the sixth paragraph of Article 131-21 of the Penal Code, which provides: "Where the law on the felony or misdemeanour so provides, confiscation may also cover all or part of a convicted person's goods of whatever nature (movable or immovable, whether severally or jointly owned)", such "extended" confiscations are possible in the following cases:
- counterfeiting and forgery of money (Article 442-16 of the Penal Code);
- money laundering (Article 324-7, 12° of the Penal Code);
- human trafficking (Article 225-25 of the Penal Code);
- direct or indirect assistance, facilitating the entry, movement or illegal stay of an alien in France, committed by an organised gang or with certain aggravating circumstances (exposure to risk of death or injuries involving mutilation; living conditions incompatible with human dignity; use of an authorisation or an identification card in a restricted area of an airfield or port) (Articles L.622-6 and L.622-9 of the Code on the entry and residence of aliens and the right of asylum);
- sexual exploitation of children and child pornography (Articles 225-25 and 227-33 of the Penal Code);
- drug trafficking (Article 222-49 of the Penal Code);
- terrorism (Article 422-6 of the Penal Code).

As regards foreign confiscations ordered under an extended power of confiscation, the future Article 713-1 of the Code of Criminal Procedure should enable extended confiscation to be recognised and executed. The Article is currently worded:

"Article 713-1. – The confiscation decisions that may give rise to transmission or execution in another Member State shall be those which confiscate goods, whether movable or immovable, tangible or intangible, and any legal act or document evidencing title to, or interest in, such property, on the grounds:

…/…

3° That they are liable to confiscation pursuant to any other provision of the legislation of the issuing State although they are not the instrument, object or proceeds of the offence."

The magistrate's court will be able to limit the execution of the confiscation pursuant to the eleventh paragraph of Article 713-20 and the fourth paragraph of Article 713-24:

Article 713-20, eleventh paragraph:
"*The execution of a confiscation decision shall also be refused, partially if appropriate, where the confiscation decision is based on the ground referred to in 3° of Article 713-1. In that case, the fifth paragraph of Article 713-24 shall be applied*."

Article 713-24, fourth paragraph:
"*Where the confiscation decision relates to goods which could not be confiscated in France in connection with the acts committed, the magistrate's court shall order it to be executed within the limits laid down by French law for similar acts*."

Confiscation as an alternative sentence

Confiscation as an alternative sentence may be applied in the case of misdemeanours (alternative to imprisonment) and for petty offences of the fifth class, except for press offences. However, only certain goods are concerned: vehicles, weapons, instruments used in the offence and the product of the offence (Articles 131-6 and 131-14 of the Penal Code).

4.2.1.3. Involvement of the ARO during this procedure

At the time of the evaluation visit, the Platform for the Identification of Criminal Assets (*PIAC*) did not have a formal role in the confiscation procedure. As already outlined in the chapters above, MPs *Jean-Luc Warsmann* and *Guy Geoffroy* have tabled a bill (No 1255) (‘*Loi Warsmann*’) that, once it has been adopted and its provisions have entered into force, should facilitate seizure and confiscation in criminal matters. Under that new law, it is planned to set up an agency with a monopoly over the way in which confiscated assets or items are managed until they are sold or assigned to a government agency.

4.2.1.4. Confiscation of property owned by corporations

With regard to confiscation, the French authorities stated that whether or not the beneficial owners have been convicted is irrelevant. The question of the confiscation of goods belonging to a corporation arises in the following terms:

- if the corporation itself has been the subject of criminal prosecution (under Article 121-2 of the Criminal Code, legal persons can be prosecuted whatever the offence), the confiscation of goods it owns may be ordered by the criminal court;
- if the corporation has not been the subject of criminal prosecution, the goods it owns may be confiscated in the following cases:
    1. if the item concerned is the instrument of the offence and if the perpetrator of the acts has free disposal of it;
    2. if the item is the object or the direct or indirect proceeds of the offence, whether or not the perpetrator of the office has free disposal of it.

4.2.2. Confiscation at European level

4.2.2.1. Implementation of Framework Decision 2006/783/JHA

At the time of the evaluation France was in the process of transposing the Framework Decision into national law. Therefore confiscation orders presented under Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders cannot be recognised and executed until the transposing act has been passed, published and put into effect.

The current regime requires that foreign confiscation orders presented under the Vienna and Strasbourg Conventions are executed in France if they meet the conditions laid down in the Acts of 1990 and/or 1996.

These Acts of 1990 and 1996 apply to all offences covered by the following two Conventions:

- the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Confiscations can now be recognised and executed under the following acts:

– Act No 90-1010 of 14 November 1990 adapting French legislation to the provisions of Article 5 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
– Act No 96-392 of 13 May 1996 on money laundering and drug trafficking and international cooperation on seizure and confiscation of the proceeds from crime.

The said bill No 1255 tabled by deputies Jean-Luc Warsmann and Guy Geoffroy to facilitate seizure and confiscation in criminal matters contains the necessary provisions for transposing Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

At the time of the visit, the evaluation team was informed that the bill had been passed by the National Assembly on 4 June 2009 and was due to be scrutinised by the Senate during the remainder of 2009.

Therefore, the future scenario is expected to be as follows:
the authority responsible for issuing a confiscation order will be the public prosecutor's office attached to the court which made the order (district prosecutors and prosecutors-general at the courts of appeal and their representatives). This is currently the authority responsible for executing the courts' decisions.

As the legislative process had not been finalised at the time of the evaluation visit, no circular concerning practical guidance on the issuing of a confiscation order and the use of the certificate has been adopted and published.

4.3. Conclusions

- France has transposed the EU (3rd Pillar) and Community (1st Pillar) instruments available for fighting financial crime and conducting financial investigations or is in the process of doing so.

- The system with a certificate for the freezing of property, based on the principle of mutual recognition and put in place by Framework Decision 2003/577/JHA of 22 July 2003, has been transposed into French law.

- The meetings with practitioners of the judiciary have, however, revealed that 'on the ground' the EU instruments are still not used to the extent they could be; in this particular case, for instance, the Convention of the Council of Europe on mutual legal assistance of 1959 was still more widely used than the Council Framework Decision of 2003 on the freezing of assets, and awareness of the Community instruments appeared to be quite low.

- The experts therefore saw fit to suggest that use of the channels mentioned in the Framework Decision of 2003 could be promoted through an appropriate circular.

- Although the expert team concluded that practise in the judicial services visited during the visit was to be attributed to a lack of awareness, the information received in the answers to the questionnaire showed that despite the advantages of applying Council Framework Decision 2003/577/JHA noted by practitioners, an additional administrative burden was perceived vis-à-vis the rogatory letters used formerly.

- In this context the expert team supports the suggestion made by the French Ministry of Justice to have all necessary information concerning the application of Council Framework Decision 2003/577/JHA easily accessible via a website.

- Through the Loi Warsmann bill, France has started the necessary steps to incorporate Framework Decision 2006/783/JHA into national law;

- From the information the experts have received, it appears that although confiscation is mandatory in cases of drugs trafficking, this is not always executed by judges; the experts therefore concluded that a circular raising awareness of this issue would help to remedy this situation.

5. PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

5.1. Available mechanisms, particularly cooperation with OLAF

The French authorities stated in their answers to the questionnaire that within the appropriate services the following measures have been taken with regard to legislation, internal rules, training, etc. to ensure pro-active transmission of information and transmission of information on request to *OLAF* by customs authorities, police, prosecutors or other law enforcement authorities:

*5.1.1. Directorate-General for Customs and Excise (*DGDDI*)*

As regards the Directorate-General for Customs and Excise (*DGDDI*), in the framework of the mutual assistance provided for in Regulation No 515/97 the customs authorities inform *OLAF* when major fraud cases detected in France may have Community-wide ramifications.
Likewise, when *OLAF* alerts France to a suspected fraud involving an operator established on French territory, the customs authorities systematically open an inquiry and *OLAF* is kept informed of the follow-up.

5.1.2. Ministry of Justice

According to the information received from the French Ministry of Justice the following provisions concerning the role of EUROJUST when transmitting information relating to investigations conducted by *OLAF* have been incorporated into the Code of Criminal Procedure:

Article 695-4 of the Code of Criminal Procedure provides *"(…) the organisation Eurojust, as the instrument of the European Union endowed with legal personality acting either collectively or through the intermediary of a national representative, is responsible for promoting and improving coordination and cooperation between the competent authorities of the Member States of the European Union in all inquiries and prosecutions which come under its jurisdiction".*

Article 695-9 of the Code of Criminal Procedure states that the national representative at EUROJUST *"is also competent to receive and send to the prosecutor-general any information relating to inquiries by the European Antifraud Office".*

Taking into account the provisions on the secrecy of the investigation contained in Article 11 of the Code of Criminal Procedure, the purpose of transmitting, on this basis, information which is intended to be used by *OLAF* in the course of the administrative procedures for which it is responsible, or which is intended to be transmitted to other Member States, is to ensure the legal certainty of the judicial proceedings.

In light of what has been agreed upon in Article 7 of the Second Protocol to the Convention for the Protection of the Financial interests of the European Community ("*The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against fraud, active and passive corruption and money laundering. The Commission and the competent national authorities shall take account, in each specific case, of the requirements of investigation secrecy and data protection. To that end, a Member State, when supplying information to the Commission, may set specific conditions covering the use of information, whether by the Commission or by another Member State to which that information may be passed*"), the position of France on this issue would require further clarification.

5.1.3. TRACFIN

In the answers to the questionnaire, the French authorities stated that under Article L. 561-31, *TRACFIN* may only exchange information (under certain conditions) with its counterpart financial intelligence units abroad and can therefore not exchange information with *OLAF*.

5.1.4. Information for OLAF

With regard to measures (legislation, internal rules, training, etc.) taken by France to ensure that *OLAF* receives information on the outcome of criminal cases related to fraud against the financial interests of the Communities, the experts were informed that:

OLAF is informed of any judicial follow-up in France pursuant to Article 40-2 of the Code of Criminal Procedure, under which the public prosecutor informs plaintiffs, victims and "constituted authorities" of the action that has been taken.

As the director of the Directorate for Criminal Matters and Pardons (*DACG*) at the Ministry of Justice has suggested to the director of *OLAF*, if a copy of the denunciations sent by *OLAF* to the territorially competent French judicial authorities were transmitted to the *DACG* this would improve the follow-up to such procedures (a letter to this effect was sent by the Keeper of the Seals, Minister for Justice, to the director of *OLAF* in 2005).

OLAF's obligations under Community law[1], are to forward information obtained in the course of external investigations directly to the competent national authorities/judicial authorities. The experts therefore concluded that it would be logical for these authorities to report back to *OLAF*.

5.1.5. Participation in investigations

As concerns the European Commission's ability to play a role in a criminal investigation involving fraud against the financial interests of the Communities (for example as plaintiff, injured party, civil party, etc.) the French authorities stated the following:

The Commission is always free to express an opinion on the advisability of any action to be taken at the inquiry or investigation stage, although the final decision rests with the judicial authority (the public prosecutor or the investigating judge if the matter has been referred to him).

The Commission should be allowed to bring a civil action before the French authorities if it fulfils the legal criteria for filing such an action, i.e. it can prove a personal and direct injury under the general provisions of Article 2 of the Code of Criminal Procedure.

The possibility of filing civil actions is also open to the French offices that are authorised to allocate European funds.

[1] Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), Article 10.

5.1.5.1. Participation of OLAF at the inquiry stage

With regard to participation by *OLAF* agents in criminal investigations, the French authorities stated that at the inquiry stage, *OLAF* assistance can take the following legal forms:

- expert-witness orders drawn up by the public prosecutor or on his instructions (Articles 60, 60-1 and 77-1 of the Code of Criminal Procedure);
- hearings of persons as witnesses (Articles 62, 78 and 101 of the Code of Criminal Procedure);
- orders by the investigating judge commissioning expert investigations (Article 156 of the Code of Criminal Procedure).

5.1.5.2. Participation of OLAF in a JIT

With regard to the possibility of *OLAF* agents taking part in a joint investigative team under the internal French system and the limits of such participation, the French authorities answered as follows:

Directorate-General for Customs and Excise

As regards the Directorate-General for Customs and Excise: in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996, which lays down the procedures for on-the-spot checks carried out by *OLAF* officials, the limits on such officials' participation in a JIT are as follows:

- the checks are prepared and conducted by the Commission in close cooperation with the Member State concerned, which must be informed in good time;
- the aim is solely to look for irregularities harmful to the financial interests of the Communities;
- Commission officials may have access to premises, sites, means of transport and other locations used for strictly professional purposes;
- national rules of procedure must be observed;

– after the check, the Commission officials draw up administrative reports which will simply have the value of prima facie evidence (on the same basis as any other document) before the judicial or administrative judges. When drawing up the reports, they must observe the rules of procedure that apply to administrative reports in the Member State concerned. This means that the Commission is unable draw up procedural documents such as customs reports or any other criminal-police document. According to Regulation N° 2185/1996 ("The reports thus prepared shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors.") *OLAF* reports should have the same evidential value as administrative customs reports. Such reports may be counter-signed by officials of the Member State;
– where the economic operators concerned object to a check by Commission officials, only nationals may take the necessary steps, in compliance with the applicable law; (according to Regulation N° 2185/1996: "Where the economic operators referred to in Article 5 resist an on-the-spot check or inspection, the Member State concerned, acting in accordance with national rules, shall give Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection. It shall be for the Member States to take any necessary measures, in conformity with national law").
- the Regulation applies without prejudice to any other Community texts that already lay down checking procedures for the benefit of Commission officials (e.g. the CAP). However, the Commission must take care to avoid a situation where two checking procedures, based on two Community texts, exist for the same operation.

Ministry of Justice

As regards the Ministry of Justice: when this question was referred to the French judicial authorities in May 2009, they took the view that Article 13(12) of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union did not authorise *OLAF* to participate in a joint investigation team within the meaning of Article 695-2 of the Code of Criminal Procedure.

5.1.5.3. Experience in France of OLAF participating in a JIT

As to its experience with JITs in France dealing with fraud against the financial interests of the Communities and possible involvement of *OLAF* in such teams the French authorities made the following report:

Directorate-General for Customs and Excise

No *OLAF*-Customs joint investigation team has been deployed recently in France.

Ministry of Justice

A joint investigation team involving France and Belgium is currently operational, on the initiative of France, in a case of fraud affecting the Community's financial interests.

For the reasons stated above, *OLAF* has not been directly integrated into the joint investigation team. However, the JIT Protocol allows it to participate in the team in an expert capacity at the joint request of the judicial authorities of the signatory countries.

5.1.5.4. Coordination of contacts with OLAF in concrete cases

Directorate-General for Customs and Excise

As regards the Directorate-General for Customs and Excise, France does not have a central coordinating authority responsible for relations with *OLAF* in the different areas of protection of the Community's financial interests (own resources, EAGF, structural funds). Each government department deals directly with *OLAF* within its own sphere of competence.

Ministry of the Interior

Police Nationale: the Central Office for Combating Serious Fraud (*OCRGDF*), which was described at the beginning of this report, has within it a central unit dealing with Community fraud, with specific responsibility for contacts with *OLAF* and in particular for assisting *OLAF* officials during operations in French territory. Being a police department, the *OCRGDF* has the usual judicial relationship with the public prosecutor's office.

Gendarmerie Nationale: the Criminal Affairs Office (*BAC*) of the Directorate-General of the national *Gendarmerie Nationale* (*DGGN*) acts as the intermediary between *OLAF* and the investigation units.

Ministry of Justice

As regards the Ministry of Justice: at the operational level, only the judicial authorities responsible for conducting investigations (public prosecutor or investigating judge) are able to be valid interlocutors in terms of coordinating the law-enforcement bodies.

However, as regards institutional issues, the Directorate for Criminal Matters and Pardons (*DACG*) can be an interlocutor for *OLAF* in the monitoring of criminal proceedings. The *DACG* is responsible for determining criminal policy at national level and monitoring action by the public authorities.

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

Directorate-General for Customs and Excise (DGDDI)

As regards the Directorate-General for Customs and Excise (DGDDI), French Customs stated that they would expect the following from *OLAF*:

– the centralisation of customs intelligence and the coordination of anti-fraud measures with the other national customs authorities;
– technical support, especially in the context of joint customs operations;
– the organisation of Community missions in third countries.

Ministry of the Interior

As regards the Ministry of the Interior: the support expected from *OLAF* in cases of fraud affecting the financial interests of the Communities is mainly technical but also operational, the aim being to ensure that any misappropriation of funds is investigated as effectively as possible. Among other things, the aim is to obtain information via *OLAF* concerning acts committed in other EU Member States so that cross-checks can be made as a contribution to the success of investigations conducted by the police and *Gendarmerie Nationale* units.

Ministry of Justice

The Ministry of Justice considers that *OLAF* involvement in national judicial investigations in accordance with the procedures described above is desirable in view of the technical complexity of the mechanisms whereby the European Union's resources are administered.

5.2. Conclusions

- The experts concluded that whereas a number of legal mechanisms existed providing for OLAF to be involved and informed in cases where the financial interests of the Community were concerned, they appeared to lack a wider perspective, particularly given the potential damage that can be inflicted by criminal action in this respect.

- At the time of the visit, cooperation and information sharing between *OLAF* and *TRACFIN* seemed to be non-existent. However, during their on-site visit the evaluation team acknowledged that *TRACFIN* can inform the competent authorities (e.g. fiscal administration, customs, special services) about cases that could be relevant to their areas of competence, and therefore saw a possibility (within the existing legal framework) to facilitate information sharing between the FIU and *OLAF* through a national competent authority.

- Although French law does not include any provision for OLAF to participate in a JIT, this participation is mentioned in the explanatory report to the EU Convention on Mutual Assistance in Criminal Matters of 29 May 2000.

- The experts saw fit to conclude that joint investigation teams should be allowed to use *OLAF*'s operational and technical assistance and that Art 7.1 of the 2nd Protocol to the Convention for the Protection of the Financial Interests of the European Community provided a sufficient legal basis to that end ("*The Member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money laundering. To that end, the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations*.").

6. RECOMMENDATIONS

The evaluation team thought fit to make a number of suggestions for the attention of the French authorities. This does not detract from the fact that France has a justly deserved reputation for adopting a stringent policy with regard to financial crime and financial investigations. It appeared to the evaluation team that - given the present set-up - cooperation between the different players works well in general terms and that all practitioners are highly motivated and dedicated to their duties.

The experts would like to summarise their suggestions in the form of the following recommendations:

6.1. Recommendations to France

1. Should consider grouping the competencies and duties of all agencies and authorities involved in fighting financial crime as well as the links between them under the umbrella of a national strategic programme or plan[1]; (see 2.3)

2. Should reflect on how the services responsible could mutually benefit from the elaborate and fairly advanced training on financial and judicial aspects of crime that has been developed by the law enforcement agencies and how this could be further developed; (see 2.3)

3. Should consider introducing for its police forces, including Customs, a centralised database on investigations conducted in different parts of the French territory in order to avoid the risk of overlapping investigations and failure to match cases involving the same individuals acting in different geographic areas of the country; (see 2.1.1.2)

4. Should consider - given that reporting entities make insufficient use of the option of transmitting declarations on STRs online - training sessions, to be organized by the FIU, that could increase awareness of the advantages of this method; (see 2.1.1.3 and 2.3)

5. Should raise awareness among judicial authorities of existing EU instruments where they have replaced older non-Community instruments (as, for instance, the Framework Decision of the Council of the European Union of 22 July 2003 (2003/577/JHA) on the execution in the European Union of orders freezing property or evidence), e.g. by providing dedicated training on the subject; (see 4.3)

[1] The French delegation to the MDG wished to include the following text alongside the recommendation: "Considering however that annual national guidelines are drafted at the Governmental level and are disseminated to the law enforcement agencies".

6. Should consider including seizures made by the Customs in the database maintained by the *PIAC*; (see 3.1.1.4)

7. Should consider setting up a central database on confiscations; such a database could also facilitate statistics and the measurement of effectiveness; (see 3.1.1.4)

8. Should consider timely issue of a circular to the appropriate authorities, once the *Loi Warsmann* has entered into force, on its implementation, with a view to raising awareness of the new legal framework on confiscation and the newly created asset management office; (see 4.3)

9. Should consider reinforcing the *PIAC* staff before or during the implementation stage of the *Loi Warsmann*; (see 4.3)

10. Should define a strategy aimed at speeding up complex and lengthy investigations in the field of economic and financial crime. The transnational dimension of these investigations and the boundaries of traditional mutual legal assistance in criminal matters should not be an excuse for delays, when instruments and facilitators on EU-level (EJN, EJN-atlas, Eurojust, freezing orders) are not used, or not even known. Especially in the fight against EU fraud and corruption, full use should be made of the technical and operational assistance provided by the Community investigation service OLAF; (see 4.3 and 5.2)

11. Should clarify how it has ensured that all forms of fraud against the financial interests of the European Communities, as defined in Article 1 of the relevant EU Convention are criminal offences. Moreover, France should explain how it complies with the obligation laid down in Art. 4.2 of the 1st Protocol to the Convention for the Protection of the Financial Interests of the European Communities. This provision requires Community officials to be considered equivalent to national officials as regards EU fraud. As a result, both should be treated equally under the criminal law. It is unclear whether this is warranted for forgery and misappropriation;

12. Should reflect on/modify as soon as possible the current provision for record keeping in case of a natural person in the *FICOBA* database, as it does not comply with Article 32 of the 2005/60/EC Directive and FATF Recommendation 10, that stipulate a five-year timeframe for both natural and legal persons; (see 3.1.1.1)

13. Should consider issuing a circular on mandatory confiscation in cases of drugs trafficking; (see 4.3)

14. Should - since it is not possible to exchange information between *TRACFIN* and *OLAF* - explore the possibility (within the existing legal framework) of information exchange between their FIU and *OLAF* through a national competent authority; (see 5.2)

15. Should make full use of the technical and operational assistance provided by the Community investigation service *OLAF*, also for the benefit of joint investigation teams; (see 5.2)

16. Should conduct a follow-up on the recommendations given in this report eighteen months after the evaluation and report on progress to the Multidisciplinary Group on Organised Crime (MDG).

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

6.2.1. To the Member States

1. The French national database of bank accounts, FICOBA, has proven to be an effective tool for the services engaged in fighting financial crime. Member States that do not yet have such a centralised database are encouraged to look into the possibilities of setting up such an instrument as a means to lend more efficiency to investigations in this field. (see 3.1.1.1 and 3.4)

2. FIUs of the Member States should consider adopting the TRACFIN strategic analysis approach, for example:
   - Study of discrepancies identified in financial flows vs. information exchange with other FIUs in a certain jurisdiction;
   - Timely identification of new trends in ML and other financial crimes, followed by immediate adjustment of financial analysis accordingly; (see 2.1.1.3 and 3.2.6.1).

3. Should ratify and implement the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States as well as the Protocol of 16 October 2001 to the Convention of 29 May 2000 as these instruments constitute valuable instruments in the fight against financial crime;

6.2.2. To the European Union

1. Should consider facilitating web-based information that is easily accessible for the Member States' law enforcement authorities and regularly updated in order to facilitate and stimulate the application of Council Framework Decision 2003/577/JHA. (see 4.3)

ANNEX A

TABLE OF OFFENCES SUBJECT TO WIDER CONFISCATION

Reference texts	Offences concerned
Article 222-49, second paragraph, of the Penal Code	**Infringements of the law on drugs** - Article 222-34 = The leading or organising of a group the objective of which is the production, manufacture, import, export, transport, retention, offer, sale, acquisition or unlawful use of drugs. - Article 222-35 = The unlawful production or manufacture of drugs; the unlawful production or manufacture of drugs by an organised gang. - Article 222- 36 = The unlawful import or export of drugs; the unlawful import or export of drugs by an organised gang. - Article 222-38 = The facilitation by any means of the false justification of the origin of the assets or income of the perpetrator of one of the offences specified in Articles 222-34 to 222-37 or providing assistance for the investment, concealment or conversion of the proceeds of one of those offences (so-called laundering of drugs money). - Article 222-39-1 = This text provided for the misdemeanour of failing to justify income having regard to drug trafficking. It was annulled by Act No 2006-64 of 23 January 2006 which established the generic misdemeanour of failure to justify resources.
Article 324-7, 12° of the Penal Code	**Laundering of money derived from a felony or misdemeanour:** - Article 324-1: simple laundering; - Article 324-2: aggravated laundering.
Article 422-6 of the Penal Code	**Acts of terrorism:** Article 422-6 states that "*Natural and legal persons convicted of acts of terrorism shall in addition incur the complementary sentence of confiscation of all or part of their property of whatever nature, whether movable or immovable, severally or jointly owned*". This therefore refers to all offences provided for in Chapter 1, "Acts of terrorism", of Title 2 of Book 4 of the Penal Code (Articles 421-1 to 421-6 of the Penal Code).
Article 225-25 of the Penal Code	**Offences relating to people smuggling** (offences provided for in Section 1bis of Chapter V of Title 2 of Book 2 of the Penal Code). **Offences of procuring and related offences** (offences provided for in Section 2 of Chapter V of Title 2 of Book 2 of the Penal Code, with the exception of the offence of public soliciting referred to in Article 225-10-1).
Article 450-5 of the	- Article 450-1, second paragraph: **criminal association with a view to**

Penal Code	**the preparation of an offence punishable by 10 years' imprisonment.**
Article 321-10-1, second paragraph, of the Penal Code	**Failure to justify income** For the offences of failure to justify income referred to in Articles 321-6 (simple offence) and 321-6-1 (aggravated offence), confiscation of all or part of the convicted person's assets shall be ordered where that penalty is imposed for the relevant offence.
Articles 213-1, 4° and 213-3, 2°	**Crimes against humanity:** - Article 213-1, 4°: covers natural persons - Article 213-3, 2°: covers legal persons. Covering all the crimes against humanity referred to in Subtitle 1, "Crimes against humanity", of Title 1 of Book 2 of the Penal Code.
Article 227-33 of the Penal Code	**Corruption of minors by an organised gang and distribution of pornographic images of minors by an organised gang:** - Article 227-22, third paragraph = corruption of minors by an organised gang. - Article 227-23, sixth paragraph = the following acts, committed by an organised gang: (a) taking, recording or transmitting a picture or a representation of a minor with a view to its distribution where that image or representation has a pornographic character; (b) offering or distributing such a picture or representation, importing or exporting it or causing it to be imported or exported; (c) habitually consulting an online public communications service to view such pictures or representations or possessing such pictures or representations.
Article 442-16 of the Penal Code	**Offences relating to counterfeiting of money** - Article 442-1: counterfeiting or forging of coins and banknotes; making use of equipment or material authorised for this purpose where this is done in breach of the rules. - Article 442-2: transporting, putting into circulation or holding with a view to putting into circulation any counterfeit or forged money or illegally produced money. - Article 442-3: counterfeiting or forging coins or banknotes which are no longer legal tender or are no longer authorised.

ANNEX B

PROGRAMME FOR VISIT

MARDI 6 OCTOBRE 2009

Ministère de l'Intérieur (après midi)

10 H 00	Réunion Interministérielle d'ouverture, Accueil SGAE, Paris
12 H 00	Déjeuner ministère de l'intérieur
14 H 45	Accueil DCPJ, Nanterre
15 H 00	DNIF / BCLC
16 H 20	DEF DRPJ VERSAILLES
17 H 40	OCRGDF PIAC

MERCREDI 7 OCTOBRE 2009

Ministère de la Justice

10 H 00	Accueil DACG, Paris
10 H 30	Présentation des investigations judiciaires en matière de criminalité financière
	Déjeuner ministère de la Justice
14 H 00	Pôle économique et financier du tribunal de grande instance de Paris

JEUDI 08 OCTOBRE 2009

MINEFI

09 H 00	Accueil DGDDI, Montreuil
	Bureau D3 Lutte contre la Fraude
	DNRED
	SNDJ
	Déjeuner Ministère de l'Economie et du budget
14 H 00	Accueil cellule TRACFIN, Montreuil
14h-14h30	Réunion avec l'équipe de direction
14 H 30	Présentation de Tracfin par le Département institutionnel
15 H 30 -17 H	Suivi d'un enquête : département des enquêtes

VENDREDI 09 OCTOBRE 2009

Ministère de l'Intérieur (Matin)

09 H 00	Accueil DGGN, Issy les Moulineaux
09 H 10	Présentation du système général de lutte contre la criminalité économique et financière
09 H 40	Présentation des Cellules Nationales d'Enquêtes (CNE)
10 H 40	Présentation avec la Section de Recherches (SR) de Paris
11 H 45	Déjeuner au Ministère de l'intérieur

ANNEX C

LIST OF PERSONS INTERVIEWED

Service du Premier ministre
Secrétariat Général des Affaires Européennes
M Emmanuel Barbe, Secrétaire général adjoint
M Benjamin Delachal, adjoint au chef du secteur Sécurité de l'espace européen
M Gilles Barbey, adjoint au chef du secteur Sécurité de l'espace européen

Ministère de l'Intérieur
Direction générale de la police nationale
M Didier Duval, sous directeur de la DCPJ
M Christian Mirabel, Chef de la Division Nationale des Investigations Financières
M Frédéric Meyniel, point de contact

Direction général de la gendarmerie nationale
M François Giere, chef du Bureau de la police judiciaire
M Yvan Carbonnelle, Chef de la Section Délinquance et Criminalité Organisée
M Nicolas Le Coz, point de contact

Ministère de la Justice
Direction des Affaires Criminelles et des Grâces
M. Jean-Marie HUET, Directeur des Affaires criminelles et des Grâces
M. Thierry POCQUET du HAUT-JUSSE, Directeur adjoint des Affaires criminelles et des Grâces
Mme Delphine DEWAILLY, Sous-directrice de la Justice pénale spécialisée
M. Jean-Marc CATHELIN, Chef du Bureau du droit économique et financier
M. Pierre BELLET, Chef du Bureau de l'entraide pénale internationale
M. Stephen ALMASEANU, point de contact

Ministère du Budget, des comptes publics, de la Fonction publique et de la réforme de l'Etat
Direction générale des douanes et droits indirects (Douanes)
Mme Gisèle CLEMENT, adjointe au chef du bureau D3 Lutte contre la Fraude en charge de la section lutte contre la fraude européenne, internationale et relations interministérielles
Mme Miriam FERRANTE, adjointe au chef du bureau D3 Lutte contre la fraude, en charge de la section pilotage de la lutte contre la fraude
M Denis Millet, directeur des enquêtes douanières (DNRED)
M Yvan CHAZALVIEL, représentant le SNDJ
Mme Claire Jeanne Troquet, point de contact

Ministère de l'Économie, des finances et de l'emploi et Ministère du Budget, des comptes publics et de la Fonction publique
Traitement du renseignement et action contre les circuits financiers clandestins (TRACFIN)
M Jean-Baptiste Carpentier, Directeur
Mme Charlotte Caubel, conseillère juridique
M Christina Muller, point de contact

ANNEX D

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	LONG TITLE IN THE ORIGINAL LANGUAGE (FRENCH)	ENGLISH EXPLANATION
AFC	Analyse Financière Criminelle	Forensic financial analysis
AMF	Autorité des Marchés Financiers	Financial Markets Authority
ARO	-/-	Asset Recovery Office
BAC	Bureau des Affaires Criminelles	Criminal Affairs Office
BCLC	Brigade Centrale de Lutte contre la Corruption	Central Brigade of Fight against Corruption
BDRIJ	Brigade départementale des rapprochements et d'investigations judiciaires	Judicial investigation and intelligence squad
BNDP	Base Nationale de Données Patrimoniales	The National Property Database
BR	Brigades de Recherches	Investigation squads
BRA	Bureau de Recouvrement des Avoirs	Asset Recovery Office
BTA	Brigades Territoriales Autonomes	Autonomous territorial units
CDB	Communautés de Brigades	Groups of units
CNE	Cellules Nationales d'Enquêtes	Ad hoc national investigation team
CNFPJ	Centre National de Formation de la Police Judiciaire	National CID Training Centre
CROC	Cellule du Renseignement et d'Orientation des Contrôles	Intelligence and control direction unit

ACRONYM ABBREVIATION TERM	LONG TITLE IN THE ORIGINAL LANGUAGE (FRENCH)	ENGLISH EXPLANATION
DACG	Direction des Affaires Criminelles et des Grâces	Directorate for Criminal Matters and Pardons
DCPJ	Direction Centrale de la Police Judiciaire	Central Directorate for Criminal Investigations
DED	Direction du Renseignement Douanier	Directorate for Customs Investigations
DGDDI	Direction Générale des Douanes et Droits Indirects	Directorate-General for Customs and Excise
DGGN	Direction Générale de la Gendarmerie Nationale	Directorate-General of the Gendarmerie Nationale
DGPN	Direction Générale de la Police Nationale	Directorate-General of the Police Nationale
DNRED	Direction Nationale du Renseignement et des Enquêtes Douanières	National Customs Intelligence and Investigation Directorate
DOD	Direction des Opérations Douanières	The Customs Operations Directorate
DRD	Direction du Renseignement Douanier	The Customs Intelligence Directorate
EIS	-/-	Europol Information System
ENM	Ecole Nationale de la Magistrature	French National School for the Judiciary
FICOBA	Fichier National des Comptes Bancaires	National Bank Account Database
FIU	-/-	Financial Intelligence Unit

ACRONYM ABBREVIATION TERM	LONG TITLE IN THE ORIGINAL LANGUAGE (FRENCH)	ENGLISH EXPLANATION
GRECO	Groupe d'Etats contre la Corruption du Conseil de l'Europe	Council of Europe's Group of States Against Corruption
GIR	Groupe D'intervention Régional	Regional task force
JIRS	Juridictions Inter-régionales Spécialisées	Specialised inter-regional courts
JIT	-/-	Joint investigation team
JLS	-/-	Justice, Liberty and Security
MDG	-/-	Multi Disciplinary Group on Organised Crime
OCLAESP	Office Central de Lutte contre les Atteintes à l'Environnement et à la Santé Publique	Central Office for Combating Offences against the Environment and Public Health
OCLDI	Office Central de Lutte contre la Délinquance Itinérante	Central Office for Combating Itinerant Crime
OCLTI	Office Central de Lutte contre le Travail Illégal	Central Office for Combating Illicit Labour
OCRGDF	l'office central pour la répression de la grande délinquance financière	Central Office for Combating Serious Financial Crimes
OCTA	-/-	Organised Crime Threat Assessment
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
PIAC	plateforme d'identification des avoirs criminels	Platform for the Identification of Criminal Assets

ACRONYM ABBREVIATION TERM	LONG TITLE IN THE ORIGINAL LANGUAGE (FRENCH)	ENGLISH EXPLANATION
ROCTA	-/-	Russian Organised Crime Threat Assessment
SNDJ	Service national de douane judiciaire	The National Customs Judicial Enquiries Department
SRE	Service Régional D'enquêtes	Regional investigation service
STRJD	Service Technique de Recherches Judiciaires	Technical Criminal Investigation Department
TRACFIN	Traitement du Renseignement et Action contre les Circuits Financiers clandestins	The French Financial Intelligence Unit