



Council of the
European Union

Brussels, 14 January 2016
(OR. en)

7711/10
DCL 1

CRIMORG 59

DECLASSIFICATION

of document: ST 7711/10 RESTREINT UE

dated: 19 March 2010

new status: Public

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

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

The text of this document is identical to the previous version.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 March 2010

7711/10

RESTREINT UE

CRIMORG 59

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

REPORT ON HUNGARY

RESTREINT UE

TABLE OF CONTENTS

1.	Introduction	3
2.	National system and criminal policy	4
2.1	Specialised units	4
2.1.1	Investigative authorities	4
2.1.2	Prosecuting authorities.....	16
2.2	Training	18
2.3	Criminal policy.....	19
2.4	Conclusions	21
3.	Investigation and prosecution.....	23
3.1	Available information and databases	23
3.2	Financial investigation and use of financial intelligence.....	32
3.3	Cooperation with Europol and Eurojust.....	35
3.3.1	Cooperation with Europol	35
3.3.2	Cooperation with Eurojust.....	37
3.4	Conclusions	39
4.	Freezing and confiscation.....	40
4.1	Freezing.....	40
4.1.1	At national level.....	40
4.1.2	Cooperation at European level - Implementation of Framework Decision 2003/577/JHA	45
4.2	Confiscation (including 2005/212/JHA and 2006/783/JHA).....	52
4.3	Conclusions	55
5.	Protection of the financial interests of the EU - available mechanisms, particularly cooperation with OLAF.....	57
6.	Recommendations	60
6.1	Recommendations to Hungary	60
6.2	Recommendations to the European Union, its Member States, institutions and agencies	62
ANNEXES:		
ANNEX A Programme for visit.....		64
ANNEX B List of persons interviewed		65
ANNEX C List of abbreviations/Glossary of terms		66

RESTREINT UE

1. Introduction

At the Multidisciplinary Group on Organized Crime (MDG) meeting of 17 June 2008, the Group decided that the subject of the fifth round was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant in the field of countering financial crime. However, it was also agreed that the evaluation should go beyond examining how relevant EU legislation had been incorporated into national law and take a wider look at the subject matter¹, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG².

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

Topics related to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen⁵.

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

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

¹ 10540/08 CRIMORG 89.

² 16710/08 CRIMORG 210.

³ 9767/09 JAI 293 ECOFIN 360.

⁴ 8301/3/09 REV 3 CRIMORG 54.

⁵ 11060/09 JAI 404.

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

RESTREINT UE

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

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

The experts charged with undertaking this evaluation were Ms Merete Vestergaard (Chief Prosecutor, Copenhagen Police, Denmark), Mr Uros Lavric (Criminal investigator, General Police, Slovenia) and Mr Tristram Hicks (International Police Adviser, National Policing Improvement Agency, the United Kingdom). Four observers were also present: Mr Christian Tournie (JLS, Commission), Ms Ute Stiegel (OLAF, Commission), Ms Ritva Sahavirta (Eurojust) and Mr Rafael Rondelez (Europol), together with Ms Anna Lipska and Mr Michal Narojek of the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, on the basis of their findings during the evaluation visit, which took place between 26 and 30 October 2009, and Hungary's detailed replies to the evaluation questionnaire.

2. National system and criminal policy

2.1. Specialised units

2.1.1. Investigative authorities

There are two main investigative agencies, namely the police and the Hungarian Customs and Finance Guard (HCFG).

The general investigating authority is the police. Financial investigations are carried out by the police service, apart from numerous exceptions, listed below, that lie within the competence of the HCFG. The latter is considered a leading authority in fighting financial and economic criminal offences which jeopardize the revenues of the Hungarian Republic. In recent years the number of crimes within the HCFG's remit has risen as it has taken over responsibility for financial crime and money laundering from the police. The process of transferring certain competences from the police to the HCFG seems not to be over yet.

¹ 5046/1/09 REV 1 CRIMORG 1.

2.1.1.1 The police

The police is a law-enforcement agency with general competence which is supervised by the Minister of Justice and Law Enforcement. There are about 42000 police officers in Hungary.

The country is divided into 19 counties and the capital, Budapest. In every county and in Budapest there is a police headquarters where Economic Crime Departments have been created, except in two counties. In Tolna county a sub-department has been established, and in Komárom-Esztergom county the economic/financial investigators are situated within the Criminal Department. Within Budapest there are 23 districts, where district police headquarters operate. Within these headquarters economic/financial investigations are carried out by sub-departments.

Altogether, there are 1160 persons working within the Hungarian police in the field of economic crime. The great majority are police officers, the others are civil servants (the auditors have this status; there is approximately one auditor working in each headquarters).

A National Bureau of Investigation (NBI) has been established in the National Police Headquarters, within the framework of the General Criminal Directorate. The NBI employs highly-qualified experts, many of them holding a degree in law. Sound knowledge of foreign languages is also required.

The officers of the Bureau enjoy the general investigative powers given to the police.

The structure is composed of numerous units dealing with general and organised crime. There is also the Economic Crime Division, which is a central police organ and has national competence throughout Hungary.

The division is composed of the following:

- the Economic Crime Department;
- the Anti-corruption Department;
- the Environmental Crime Department;
- the Department against Financial Misuses.

RESTREINT UE

Within the latter, employing 28 experts, three sub-departments have been created: the International Economic Crimes Sub-department, the Financial Crimes Sub-department and the Hungarian Asset Recovery Office. The ARO was established in July 2009. The Department is responsible for:

- a) financial and economic investigations in connection with organised and cross-border crime;
- b) fighting crimes against the Hungarian banking system;
- c) fighting cartel-related offences;
- d) asset recovery, pursuant to EU Council Decision 2007/845/JHA.

The ARO is composed of 8 experts. Tasks given to the unit mirror those laid down in the relevant Decision, namely the international exchange of relevant data. So far the Hungarian Asset Recovery Office has received 5 requests from abroad and sent requests in 15 cases in order to recover illegal assets.

In some cases the Office may assist other Hungarian units in asset recovery. It has also created and runs an Intranet police website. Its main objective is to provide information about asset recovery and available legal tools.

The Office is aware and makes use of available European funding. In the framework of the project „Development of investigation methods and techniques in the field of asset recovery” a total of 7 conferences and workshops are to be organised. Of these, 4 are international conferences including foreign counterparts and the other 3 have been organised for a total of 135 local police headquarters.

The Office has initiated a pilot project where two officers in a county unit are dedicated solely to asset recovery. If the outcome of the project turns out to be successful establishment of regional AROs may be proposed.

Moreover, the Office drafts proposals aiming at improvement of asset tracing, for example through quicker access to relevant banking data.

RESTREINT UE

The police uses an IT tool called ROBOCOP for case management. All data concerning ongoing and closed investigations are stored there and are accessible to the police and the prosecution. The system is linked to other databases such as those containing addresses or data on vehicles. It makes it possible to discover connections between persons under investigation, or who are otherwise involved. It is however important to underline that ROBOCOP refers only to the so-called "open" phase of the investigation, thus certain intelligence gathered in the "covert" phase is not available there. A separate system, to which access is much more restricted, has been established for the latter phase of investigation.

A system similar to ROBOCOP (an upgraded version of it, as far as the evaluators understand) is used by the Hungarian Customs and Finance Guard. However, the systems are not fully connected and only limited cross-checking, based on a hit-no hit mechanism, is possible. Hungarian authorities underline that the full linkage between the databases is not possible due to differing tasks of the two services as well as legal provisions on data protection.

Within the police, the Centre for International Cooperation in Criminal Matters (NEBEK) has been established. It is worth describing briefly, as it is a focal point for the bulk of international cooperation. Its activities are regulated in Act LIV (1999) on cooperation and the exchange of information carried out within the framework of the European Union law enforcement information system and the International Criminal Police Organisation and Act LIV (2002) on international cooperation between law enforcement agencies. The first of these acts says that requests for information submitted directly by OLAF or through the OLAF Coordination Bureau, and requests for information initiated with the aim of fulfilling obligations to report to the OLAF Coordination Bureau, must be fulfilled by NEBEK. The Centre is authorized to handle, receive and forward personal and law enforcement data - including data and information related to the collection of secret information - which fall within the scope of organisations established for cooperation in international law enforcement and their national units, and/or within the scope of international agreements, separate legislation or European Union legislation on international cooperation between law enforcement agencies, particularly if the data is in connection with organised crime, terrorism, drug-related crime, offences relating to nuclear and radioactive material, human smuggling, human trafficking, motor vehicles or the euro, or with protecting the borders of the European Union and combating illegal immigration.

RESTREINT UE

Moreover, NEBEK is authorized - including via direct access - to retrieve personal and law enforcement data from the bodies of data managed by the cooperating agencies, provided there is provision under law or European Union legislation for the data to be received and/or forwarded abroad in specific cases defined by law.

On the basis of a request for data it is obligatory for the requested data-handler to forward the data immediately and by the fastest means. The transfer of data must be documentarily recorded by both the requesting and the requested parties.

NEBEK is authorised and obliged, when carrying out an international request for data, to forward the data it has obtained - including data and information related to the collection of secret information - in observance of the security provisions stipulated in international agreements, separate legislation or European Union legislation, using the appropriate data transfer network or via the foreign-based liaison body, to the requesting international organisation.

However, according to the relevant EU legislation, certain data may be exchanged directly, bypassing NEBEK. For example, the ARO is able to communicate directly with its foreign counterparts.

2.1.1.2 Hungarian Customs and Finance Guard (HCFG)

This is an armed law enforcement agency that has nationwide jurisdiction. It is supervised by the minister in charge of tax policy (Minister of Finance).

The service has the following objectives:

- a) to secure the European Union's own resources;
- b) to secure the budget of the Republic of Hungary;
- c) to protect consumers and markets.

RESTREINT UE

The Hungarian Customs and Finance Guard conducts investigations into the following criminal offences:

- a) violation of international economic restrictions, misuse of military products and services and of dual-use products, foreign trade activity without a license, misuse of excise duty, receiving of goods subject to excise duty, promoting the misuse of excise duty, smuggling;
- b) false marking of goods, usurpation, violation of copyright or associated rights, evasion of technical measures guaranteeing copyright or associated rights, forgery of data relating to copyright or associated rights and violation of rights protected by industrial patent law, if such offences are detected by or if the complaint is filed with the service;
- c) unlawful acquisition of economic advantage, violation of accounting regulations, criminal bankruptcy, tax fraud, employment-related tax fraud, violation of the financial interest of the European Communities, fraud, if such involves taxes, contributions or budget subsidies, receiving of stolen goods, if such is committed with smuggled non-community goods, money laundering and failure to comply with reporting obligations related to money laundering;
- d) forgery of public deeds, forgery of private deeds, forgery of a unique identification mark and forgery of stamps, if committed in connection with the criminal offences specified in items a) to c) above;
- e) misuse of narcotic drugs, misuse of materials used for making narcotic drugs if committed by importing, exporting or transferring narcotic substances to, from, or through the territory of the Hungarian Republic and if such offences are detected by or if the complaint is filed with the service.

In crimes not mentioned above, investigations are carried out by the police.

RESTREINT UE

As indicated above, the scope of the service's remit is growing steadily. In 2006 it was allowed to investigate intellectual property rights infringements, if detected by or reported to the HCFG. The same year 8 financial criminal offences affecting budgetary revenues were added to the list. In 2008 money laundering related criminal offences fell under the competence of the service. The process is not over yet. In 2010 the service will be made responsible for fighting theft or receiving of stolen goods if committed in connection with non-ferrous and metallic waste.

The service is composed of the following:

- a) the Excise Directorate
- b) the Customs Directorate
- c) the Directorate for Enforcement
- d) the Directorate for Supervision and Detection
- e) the Criminal Directorate.

The latter is composed of the following departments:

- a) the Department for Supervision of Investigations, responsible for:
 - professional control and guidance of the investigating activities of the HCFG;
 - constant monitoring of the relevant legislative developments and judicial practice;
 - professional assistance in specific criminal investigations.
- b) the Department for Crime Analysis and Evaluation, responsible for:
 - organisation and control of criminal records and registries on a national level;
 - drafting of strategies and analysis regarding the area of criminality.
- c) The Department for International Criminal Cooperation, responsible for:
 - coordination of international cooperation with foreign law enforcement authorities and relevant international or regional organisations (EUROPOL, INTERPOL, OLAF, SECI).

The Central Criminal Investigations Bureau (CCIB) is also located within the Directorate.

The criminal offences within the competence of the HCFG are basically investigated by the CCIB in serious cases (high value, organized commission) or the Regional Criminal Investigation Offices (there are 7 of them).

RESTREINT UE

Within the CCIB there are two special units called Department I and II for Serious Financial and Economic Crime, with responsibility for conducting investigations in complex cases. Departments for Financial and Economic Crime have also been established within the majority of the Regional Investigating Offices. Otherwise there are teams established within the General Inspection Departments fulfilling this task.

The CCIB has powers to investigate, within its nationwide jurisdiction:

- a) criminal offences involving sums in excess of HUF 500 million (approx. EUR 1.886.792) committed as part of a business operation or criminal conspiracy;
- b) certain gross cases of criminal use of narcotic drugs;
- c) criminal offences decided upon by the Commissioner or the head of unit in charge of professional supervision of investigations, or the Commander of CCIB, based on the perpetrator or on the exceptional degree of danger to society the crime represents.

The Bureau currently employs 124 investigating officers.

The evaluators were shown the methodology used by the service, especially the main directions of an investigation, which are as follows:

- a) the actual movement of goods;
- b) the movement of the goods according to the invoices;
- c) movement of money;
- d) personal implications;
- e) examination of the financial background.

The Hungarian FIU is a part of the Central Criminal Investigations Bureau.

The financial and non-financial service providers falling under the AML/CFT Act are required to report all data, facts and circumstances indicative of money laundering or terrorist financing. Reports submitted by service providers must contain data obtained during customer due diligence and the detailed description of the data, fact or circumstance indicative of money laundering or terrorist financing. Service providers themselves take the decision as to whether they have grounds for suspicion as stipulated in the AML/CFT Act and whether to submit reports. As of 15 December 2008, service providers may only submit reports in the form of protected electronic messages.

RESTREINT UE

Suspicious Transaction Reports (STRs) basically contain data on the service provider that has filed an STR with the FIU, as well as the data and information this service provider has recorded when applying customer due diligence measures and a brief description of the information, fact or circumstance indicating money laundering or terrorist financing.

It should also be mentioned that failure to comply with reporting obligations is punishable under Hungarian law.

The Criminal Code (Section 303/B) lays down the criminal offence of "failure to comply with a reporting obligation related to money laundering". It states that any person who fails to comply with reporting obligations prescribed by the Act on the Prevention and Combating of Money Laundering is guilty of a misdemeanour punishable by imprisonment of up to two years.

This is a deliberate criminal offence. The negligent form of this offence was abolished a few years ago. As far as the *mens rea* is concerned, the offence can only be committed with intention, the negligent form is not an offence.

The evaluators are of the opinion that this legal solution, valuable as such, may give rise to numerous legal challenges as it refers to a subjective assessment of what is a suspicious transaction. Production of proof in such cases may be a challenging task.

The FIU stores the received STRs in its secure database and analyses them, checking and linking the information obtained. It cross-checks the STRs against other directly available databases. The data with criminal relevance are forwarded to the relevant law-enforcement bodies.

It should be noted that the above-mentioned information must remain confidential, and must only be used for the limited number of purposes listed by law.

RESTREINT UE

Subsection (1) of Section 26 of the Hungarian AML/CFT Act says that the authority operating as the financial intelligence unit is authorized to use the information obtained under the Act only for the purposes of prevention and combating money laundering and terrorist financing, and for the purposes of the investigation of acts of terrorism, unauthorized financial activities, money laundering, failure to comply with reporting obligations related to money laundering, tax fraud, embezzlement, fraud and misappropriation of funds, and to disseminate such information to other investigating authorities, the public prosecutor, the national security service or an authority operating as a foreign financial intelligence unit. It is important to underline that the list of potential addressees of STRs is limited by law to national investigative authorities, the prosecution, the national security service and foreign FIUs.

Thus, according to the rules, the FIU cannot forward STRs to Europol and its AWF Sustrans. The evaluators are of the opinion that this detracts from Hungary's full compliance with the provisions of Framework Decision 2006/960/JHA and substantially limits Europol's ability to collect, store, process, analyse and exchange information and intelligence.

The FIU is entitled to request further information from service providers or other domestic authorities (including tax authorities). It may also contact a foreign FIU via the protected electronic channel operated by the Egmont Group. It was underlined that information sent by foreign FIUs can only be disseminated with their prior consent.

Between 1 January 2009 and 30 September 2009 the FIU received 3 873 STRs, over 82% of them from banks. Exchange offices provided the FIU with more than 8% and investment services with about 3,5% of the STRs. Statistics presented during the mission do not show any reports from lawyers and real estate agents, although they are among those required to report.

During the period under discussion over 850 STRs were forwarded by the FIU in order to initiate or support open or covert criminal investigations.

RESTREINT UE

The FIU provides the reporting service providers with general feedback on the use of the reported information by means of an Annual Report and a Bi-annual Report including accounts on the “Efficiency of the reports and proposals for improving efficiency”. In addition to this general feedback, the FIU notifies the reporting service provider concerning the utilization of the information unless this would violate or threaten the outcome of the proceedings.

In its Bi-annual Information Report covering the first 6 months of the year 2009 the FIU discovered a dramatic change in the volume of reports, that is supposed to be a consequence of a variety of factors, including legal changes and the introduction of a new, secure electronic channel of reporting. The outcome of this reduction is assessed as positive as concerns the analysis and evaluation work performed by the FIU. The reduction in the number of reports, the noticeable improvement in their quality and the implementation of the electronic reporting system have jointly contributed to the rationalization of the report controlling process and more up-to-date processing of the information received.

2.1.1.3 Coordination Centre on Organised Crime

The Coordination Centre on Organised Crime was established in order to coordinate law enforcement activities. There is no specific catalogue of crimes falling within its responsibility. Certain authorities listed below are obliged to report any type of offence if related to organized crime.

The following authorities are obliged to report to the Centre:

- a) the National Police Headquarters;
- b) the Ministry of Justice and Law Enforcement: Protective Service of Law Enforcement Agencies;
- c) the Customs and Finance Guard;
- d) the National Security Office;
- e) the Information Office;
- f) the National Security Special Service;
- g) the Military Security Office;
- h) the Military Intelligence Office;
- i) the General Prosecutor's Office (based on a separate cooperation agreement).

RESTREINT UE

Taking into consideration data received from the authorities, the Centre provides them with the following products and assistance:

- a) information reports on connections or relationships between investigations and persons;
- b) cross-checking in databases;
- c) monitoring of actions;
- d) tactical analysis supporting investigation;
- e) strategic situation assessment;
- f) operative and strategic plans and concepts.

The Centre carries out cross-checking for the cooperating authorities, and discovers possible overlaps and parallel operations. In such cases it notifies the authorities concerned. The decision as to which service takes over the case lies with the prosecution. The Centre provides tactical analysis in specific cases, on request, as well as support for decision-making and strategic assessments on combating organised crime and terrorism. The division of tasks related to strategic and tactical assessment is reflected in the Centre's structure.

The service runs its own database where incoming data are gathered. The evaluators were informed that a pilot connection between the Centre and the police database is to be established.

The evaluators were also informed that the service is not exchanging any information with foreign partners as it is not considered to be within the scope of the relevant legal frameworks such as Framework Decision 2006/960/JHA. Thus it serves purely for national coordination. However, the Centre makes use of and contributes to European threat assessments such as the Organised Crime Threat Assessment (OCTA).

The Centre is currently developing, in close cooperation with a university, an analytical IT tool for more sophisticated data examination in support of financial investigations.

2.1.2. Prosecuting authorities

In Hungary the prosecution service is an independent authority. The chief prosecutor is elected for a 6-year term by the Parliament at the proposal of the President of the Republic and is only responsible to the Assembly. Thus the Ministry cannot give any instructions or guidelines to the prosecution. However, it underlines that there is fruitful cooperation based on frequent contacts and good communication.

The duties and powers of the prosecution service in the course of the criminal procedure include:

- a) bringing public prosecutions;
- b) ordering or carrying out investigations into crimes laid down in the Act on the criminal procedure, in order to establish the facts necessary in order to bring charges;
- c) supervision to ensure that investigations are carried out as provided by law (legality supervision).

The prosecution is a hierarchical authority and its structure reflects the hierarchy of the judicial system. Thus the functions of the prosecutor are performed by:

- a) the Prosecutor General's Office when the case is brought before the Supreme Court;
- b) a regional appellate prosecution office when the case is brought before a tribunal;
- c) a county prosecutor general's office when the case is brought before a county court;
- d) a local prosecutor's office when the case is brought before a local court.

The jurisdiction and competence of prosecution offices with regard to financial crimes depend on the competence and jurisdiction of the court where they operate.

The jurisdiction of the county courts, concerning economic and financial crimes, covers: money laundering, criminal offences against computer systems and data causing great or particularly great damage, tax fraud resulting in great or particularly great loss of revenue, employment-related tax fraud, misuse of excise duty, receiving products subject to excise duty and of high or particularly high value, trafficking in and receiving of stolen dutiable goods of high or particularly high value, misuse of cash substitutes causing great or particularly great damage.

RESTREINT UE

As indicated above, these crimes are dealt with by the county (capital) prosecution offices and indictment also falls within their competence. During trial at first instance it is also they who bring charges.

The prosecution service does not have any unit dealing exclusively with investigation of financial crimes or specialised in dealing with cases of this type. This lack of specialisation is also mirrored in the judicial system, where no specialised panels exist. From the legal point of view there are no special professional prerequisites for judges and prosecutors dealing with financial crime. However, in practice, besides their regular training, they may participate in specialised legal courses at universities. This additional training is taken into account by superiors when distributing cases.

The lack of specialised units dealing with financial crime is, to some extent, offset by the existence of departments for priority cases. The Chief Department for Priority Cases at the Prosecutor General's Office is the central unit of this kind.

The Chief Department for Priority Cases is composed of two sub-departments:

- the Department for Economic Crime;
- the Department for Organised Crime and Corruption Cases.

Departments for priority cases can also be established in county (capital) prosecution offices.

In addition, there is also the Central Investigative Chief Prosecution Office, which has its own investigative powers similar to those of the law-enforcement agencies. It has nation-wide competence.

The jurisdiction of the Office covers investigations into economic and financial criminal offences if they are committed, among others, by:

- a) a person enjoying immunity due to holding a public office listed previously and by a person enjoying international immunity;
- b) an investigator of a prosecutor's office;
- c) by sworn members of the police, the authority for the execution of penalties and the civil national security services unless the offence is subject to military law, and any criminal offence committed by sworn members of the Hungarian Customs and Finance Guard.

2.2 Training

The curriculum of the Police College of Hungary covers specialised modules such as criminal investigation (criminal cooperation, criminal service studies, special criminal studies, specialised professional practice, etc.), economic crime investigation (tax law, company law and financial and economic studies, financial law and accountancy studies, specialised professional practice, etc.) and financial investigation (excise duty law, trade and customs tariff and description of goods, financial law studies, regulations, customs law and customs procedure, specialised professional practice, etc.). It is important to mention that the College is a training facility for both the police and the Customs and Finance Guard. The College has been training customs investigators since 1987. As of September 2006 training for financial investigators was also introduced, covering financial and economic criminal offences such as fraud (and other tax-related crimes), tax evasion and violation of the financial interests of the European Communities, etc.

The Training School of the Hungarian Customs and Finance Guard also provides training for customs investigators. The Criminal Directorate prepares up-to-date professional training materials (detailed overall assessments, investigating methodologies) with regard to financial and economic criminal offences within the remit of the Hungarian Customs and Finance Guard. The criminal investigations of the Hungarian Customs and Finance Guard are constantly being improved by international (primarily EU-related) programmes. Among these it is worth mentioning an Austrian-Hungarian Twinning Light project called the “Reinforcement and training of the criminal service of the Hungarian customs administration in the fight against fraud – especially carousel VAT fraud on the single market – threatening the economy and violating the financial interests of the European Union”, which was financed by the European Union.

The prosecution service also has its education and post-graduate training programmes. Though no special course has been organised on financial crimes and investigations, such offences are usually dealt with in training covering almost every field of the criminal law.

Prosecutors often take part in programmes organized by other institutions, such as the police or judiciary.

Experts who wish to develop their skills may enter into a study contract. According to data from 2008 the prosecution service has 152 prosecutors with a professional post-graduate degree in economic criminal law in addition to their law degrees. At present 30 prosecutors are taking part in post-graduate training in economic criminal law. Thanks to this training, every prosecutor's office is said to have the proper number of prosecutors with a professional post-graduate degree in economic law.

Participation in numerous international training programmes is common.

The Hungarian prosecution service attaches great importance to foreign languages, which are of outstanding importance for international cooperation.

At the end of 2008 53.7 % of the prosecutors (1930 persons, including would-be prosecutors) knew foreign languages. It was underlined that 610 persons have state certificates in English, 434 in German and 67 persons have French state certificates either at intermediate or advanced level. The office subsidizes foreign language learning for prosecutors and would-be prosecutors as well as their participation in judicial language courses.

2.3 Criminal policy

The Hungarian authorities admit that criminal investigations are not driven by a "proceeds-oriented" policy. There is no official investigation and prosecution policy focused on tracing of crime proceeds. It is seen as a part of a general obligation on law enforcement authorities to investigate. There is also a general rule that proceeds resulting from criminal activities are confiscated. The evaluators found the statistics showed that there were large amounts of property being seized, but these were, in fact, instrumentalities, contraband or counterfeit goods, rather than the proceeds of crime.

In criminal investigations, especially in the investigations conducted by the Hungarian Customs and Finance Guard, besides bringing the perpetrator to justice, detecting, securing and recovering the proceeds of crimes, especially financial and economic criminal offences (focusing on repairing the impact of the damage caused by the criminal activity) is the major priority. This policy is closely related to the specificity and the main task of the service, namely securing and collecting state budgetary revenues.

The evaluators were told that there is no up-to-date overarching law-enforcement strategy in place. The Strategy on Organised Crime was adopted many years ago and there are no plans to update this document. There are some thematic strategies, like one on trafficking in human beings of 2008 or the drugs strategy, but no separate strategy for financial crime. Asset recovery is not reflected in the above-mentioned documents either.

The strict separation and independence of the prosecution, which is enshrined in the Constitution, is an important feature of the Hungarian legal system. It prevents the Ministry from giving it certain guidelines that are applicable to other services. On the other hand, the prosecution service is consulted when major strategic documents are drafted.

The only specific nation-wide financial investigation policy is the Hungarian Chief Police Commissioner's Action Plan (27-1462/2007). Its aim is to improve figures for asset recovery and draw officers' attention to available tools in this regard. Every police authority has to make a report on the figures for asset recovery every half year and send it to the Criminal Division of the Hungarian Police Headquarters. Some police units (local ones, NBI) developed their own action plans. However, the police asset recovery Action Plan, intended to improve operation of this particular sanction, had no counterpart in the prosecution service.

The prosecution service supervises all open cases for the two investigating authorities and authorises intrusive powers in covert enquiries which precede open cases. Despite the primacy of this service there did not seem to be a strategy that drove their work. Prosecutors seemed to be reacting to what was put before them by investigators. The lack of knowledge about statistics would seem to indicate that results were not driving performance within the prosecution service.

More detailed statistics concerning application of confiscation-type measures are presented in another part of the report, but they may also serve as an indicator of general Hungarian policy in this regard. A crude comparison of convictions against forfeitures gives an apparently low 1.5% of convictions accompanied by forfeiture. The assumption here is that the seizure and confiscation of instrumentalities does not require financial investigation, whereas the seizure and forfeiture of the proceeds of crime does require skilled investigation and the use of powers encouraged by the EU Framework Decisions.

RESTREINT UE

The structure of law enforcement also deserves some attention as it is an indicator of national policy against crime.

The police and the Customs and Finance Guard (HCFG) are the main investigative authorities. Their respective competencies are set out in law and it was quickly apparent that the HCFG were encroaching on police territory, having acquired the competency for numerous kinds of crime from the police. Each agency's casework is on a Case Management database, called ROBOCOP, which seemed to work well for investigators and managers, but the two databases do not communicate with each other very well. The direct risk of danger to officers from duplication of work seems to be managed effectively through a Co-ordination Centre. This Centre also provides useful strategic analytical support in individual cases and high-level typology analysis, including a money laundering report in the previous year.

2.4 Conclusions

The structures and division of tasks between the Hungarian law-enforcement agencies seem to be clear. The prosecution service and the above-mentioned Coordination Centre on Organised Crime prevent the agencies involved from overlapping and provide the necessary operational coordination. A certain level of strategic analysis is also available.

Although training, including on financial crime and relevant topics, seems to be of importance for judges and prosecutors, their specialisation is not formalized in any way. No specialised panels have been set up, so there may be an imbalance between highly specialised law-enforcement units and the prosecutors who are supposed to lead them, or judges handling very complex cases, where specific knowledge is of the essence.

The services visited basically have all the necessary legal and technical tools to achieve the objectives set them by law. Certain mechanisms, however, need to be strengthened. Further development of the ARO, including the possible establishment of regional AROs, continuation of ongoing pilot projects and awareness-raising campaigns may bring numerous benefits.

RESTREINT UE

The FIU, that seems to be an effective element of the law-enforcement machinery, could improve its efficiency by encouraging certain professions to contribute and cooperate more closely. The unit's management is well aware of the potential use of financial intelligence and gathers good quality statistics, which may be useful for strategic assessments and development of the system.

The policies of the services in question, including the separation of databases and their future development (for example an IT project with a university in which the customs service does not participate), different objectives and internal regulations (like the Action Plan specific to the police) show there is no strategic coordination of law enforcement. Police and Customs rivalries are not uncommon in the EU and some jurisdictions assume that this healthy competition can improve productivity. Strategic management of this rivalry in Hungary however, through, for example, a multi-agency committee did not appear to be present.

The lack of an overarching strategy successfully influencing the behaviour of stakeholders either nationally or locally is the main weakness of the national system. Thematic strategies are rarely up-to-date and they do not contain any provisions concerning asset recovery. They do not seem to influence the daily work of the services. In addition, it is doubtful how Hungary implements JHA Council conclusions on setting the EU's priorities for the fight against organised crime, based on Europol's 2009 OCTA and the ROCTA.

In particular, the prosecution service seems to be a reactive body with no clear prioritization of financial crime and financial investigations, whereas the police has an Action Plan indicating the importance of these crimes. This is related to the very imperfect statistical mechanism, which may allow certain criminal trends to remain hidden. The available data show very limited use of confiscation and similar measures.

The only specific financial investigation policy was the above-mentioned Police Commissioner's Action Plan, that, although valuable, seems to cover only a small part of the law-enforcement machinery. It should undoubtedly have a counterpoint in other services and policies of that kind should be interlinked and based on comparable methodology.

3. Investigation and prosecution

3.1. Available information and databases

3.1.1 Databases

3.1.1.1 Bank Accounts

In Hungary there is no central bank accounts database. If certain information is needed in a criminal investigation, an official request for information has to be submitted to the financial service provider handling the account.

During the evaluation visit the head of the Asset Recovery Unit mentioned the lack of a central bank account database as a serious challenge. Identification of the perpetrator's savings and loans is a substantial element of the asset recovery procedure, which is not simple since the system is decentralized and numerous institutions need to be asked for information. It is a difficult administrative task to map all bank accounts held by a particular person in different financial institutions. There are 208 credit institutions in Hungary, of which 38 are banks. The procedure is lengthy and may impede various legal measures such as seizure. The experts involved stressed that it greatly decreased the efficiency of asset recovery activities. Thus they are of the opinion that this difficulty could be removed by a centralised database, which would contain numbers of bank accounts and names of the holders. It would help to identify accounts more quickly, allowing more detailed requests to the financial institution involved.

Such a database would contain data protected by bank secrecy rules, but certain investigative authorities are already legally allowed to ask financial institutions for these data, so this should not be considered a legal obstacle. The law says that the obligation to keep bank secrets does not apply in respect of investigating authorities and the public prosecutor's office, acting in a pending criminal procedure and seeking additional evidence, and courts acting in criminal proceedings, civil proceedings, bankruptcy proceedings, liquidation proceedings, and local-government debt settlement procedures.

The legal provisions on bank secrecy were analyzed by the ARO and certain proposals were forwarded to the Legal Division of the National Police Headquarters for further scrutiny. The Ministry of Justice and Law Enforcement contacted the Ministry of Finance and the Commissioner of Data Protection asking them for their opinion on the possible establishment of the database.

Provisions referring to bank secrecy and access of the agencies involved to certain bank-related data are described in detail in chapter 3.1.2 (Access to information).

3.1.1.2 Real Estate

If certain information concerning real estate is needed in a criminal investigation, an official request for information has to be submitted to the competent Land Registry Office. However, in order to carry out its tasks more efficiently, the CCIB has authorization to access electronically the central database of the Land Registry Office, called TakarNet, which is the information system of the Land Registry Office and constitutes the national computerised registry network. It provides on-line access for those with proper authorisation and contains certified data on all real estate registered in the Hungarian Republic. Law enforcement agencies are able to make queries concerning individuals and legal persons. The database contains the name, the maiden name, year of birth and address of owners and other authorized persons and numerous other features specific to a given piece of real estate (such as its size and legal charges on it).

3.1.1.3 Companies

As far as companies are concerned there is an on-line internet based company register accessible directly by investigating services. However the data/information retrieved from this database could only be used as a starting point in an investigation. It does not qualify as evidence, so a copy of a company's registration should always be requested from the competent Company Court (registry court). Any legal entity, if required by the law, may be registered in the Company Register under the conditions prescribed by the relevant Act. Company Registers are held and maintained by Company Courts which are organized within County Courts and the Metropolitan Court. Registration is not only of a declarative, but also of a constitutive nature i.e., the company comes into being not by the simple deed of foundation, but by the decision of the Court ordering its incorporation. Individuals and legal persons may be checked there according to their names and company identification numbers. The database contains names, identification numbers, seats, time of registration, capital, main activities and numbers of bank accounts of a given company. In addition it includes the names, year of birth, maiden names and addresses of managers and members. Ministries, government institutions and law enforcement authorities may have direct access to this database without the need for any additional permission.

3.1.1.4 Vehicles

A registry of vehicles is managed by the Central Office for Administrative and Electronic Public Services. All law enforcement authorities have direct access to it. The database contains basic information on vehicles and owners (registered license number; data contained in the automobile registration: registration number of the chassis, colour, cylinder capacity, etc; owner (including previous owners); insurance details: contractor, insurance company, etc; any other notes by competent authorities: existence of a bank loan for purchase of the vehicle, etc.). The law enforcement authorities may have direct access to this database without requiring any permission.

3.1.1.5 Vessels

There is no generally accessible vessels database. If certain information is needed in a criminal investigation, an official request for information has to be submitted to the competent authority, which is the National Transport Authority (NTA). Within the NTA there is a Department for Shipping Proceedings, which is responsible for all authorisation tasks regarding shipping proceedings including the registration of all floating facilities (ship registration number).

3.1.2 Access to information

Law enforcement agencies have the necessary legal tools concerning access to information. There are legal measures for identification of an unknown bank account belonging to a specified person, identification of the unknown owner of a specified bank account or operations from and to a specified bank account in a specified period in the past. Authorities can obtain details of all transactions on a given bank account, and on the basis of this information the investigators may send additional requests to the other banks concerned.

However, Hungarian legislation does not have any special measure concerning monitoring of operations to and from a specified bank account in the future.

RESTREINT UE

According to Section 200 (1) c) of the Criminal Proceedings Act, in order to establish the identity, locate or arrest an offender or to gather evidence, from the time the investigation is ordered until the records thereof are presented, subject to a judicial permit, the prosecutor and the investigating authority may, without informing the person concerned, access and use data transmitted and stored by way of a computer system.

A court, a prosecutor and an investigating authority may contact central and local government agencies, authorities, public bodies, business organisations, foundations, public endowments and public organisations to request the supply or transmission of information, data or documents, and may prescribe a time limit for fulfilling such request ranging between a minimum of eight and maximum of thirty days. The organisation contacted must provide the data– including data processing, recording the data in writing or electronically and data transfer – free of charge. Unless stipulated otherwise by law, the organisation contacted must fulfill the request within the prescribed deadline or state the reason for non-compliance therewith.

Requests concerning the provision of personal data must only extend to the amount and type of data indispensable for the achievement of the objective of the request. The request must state precisely the purpose for which the data is to be supplied and the scope of the data required.

If personal data which comes to the notice of the requesting party as a result of the request are not relevant for the achievement of the objective of the request, the data must be deleted.

If the organisation contacted fails to fulfill the request within the prescribed deadline or unlawfully refuses to fulfill the request, a disciplinary penalty may be imposed. In the event of unlawful refusal to comply with the request, the coercive measures stipulated herein may also be ordered in addition to the disciplinary penalty, provided that the conditions set forth by law are met.

RESTREINT UE

After the commencement of the criminal proceedings, the investigating authority may collect data in order to establish the existence and location of evidence; in the course of this activity, it may use the law enforcement databases of the law enforcement organisations specified in a separate legal regulation; it may request documents, data and information from any third party, and further, it may request an investigation and the determination of damages by the head of the complaining or victim government or local government body, public body, business organisation, foundation, public foundation or civil organisation or the agency entitled to investigate, may inspect the scene of the criminal offence, may employ an advisor, and check the data obtained. In the course of collecting data, the investigating authority may select a person or object by presenting a photograph or a picture recorded on another data medium and request information regarding the person or object.

In the course of collecting data, the investigating authority may – with the permission of the prosecutor – use an undercover member of the investigating authority (covert investigator), and may also perform other secret data collection – according to the law governing its operation – not subject to judicial permit.

After ordering the investigation, if deemed necessary owing to the nature of the case, the prosecutor or the investigating authority (with the consent of the prosecutor) may request data – according to the rules for official requests – on the suspect (the person against whom the complaint was filed, or the potential suspect) from the tax authority as well as from organisations managing data classified as commercially secret, in order to uncover the facts of the case.

The investigating authority may request data from an organisation managing data which are subject to banking, securities, or fund secrecy laws without obtaining the consent of the prosecutor. The data may not be refused.

The measures can be used for all types of crime. The data received may only be used in the ongoing proceedings and only if the prosecutor presses charges against the person on whom data was collected. If the prosecutor does not press charges, the data received must be deleted.

The prosecutor and the investigating authority are competent to request these measures.

RESTREINT UE

The prosecutor's consent is required for the investigating authority to request data from the tax authority as well as from organisations managing data classified as "business secret".

The person affected by the measure is not informed in advance. This person is informed after the conclusion of the investigation, in the course of inspection of the documents of the investigation.

After the conclusion of the investigation, the prosecutor or the investigating authority must hand over the documents of the investigation to the suspect and the defence lawyer. The suspect and the counsel for the defence must be allowed to inspect all documents – with the exception of those treated confidentially – that may serve as the basis for pressing charges.

Requests concerning the provision of personal data must only extend to the amount and type of data indispensable for the achievement of the objective of the request. The request must state precisely the purpose for which the data is to be supplied and the scope of the data required.

Covert data gathering that is subject to a judicial permit has its own specific rules. According to Section 200 (1), in order to find evidence, from the time the investigation is ordered until the records thereof are presented, subject to a judicial permit, the prosecutor and the investigating authority may, without informing the person concerned, conduct covert data gathering.

Covert data gathering may be applied to types of crime specified by law:

- a) a criminal offence that has been committed intentionally and is punishable by up to five years' or more severe imprisonment,
- b) a criminal offence that has been committed as part of a business operation or conspiracy and is punishable by up to three years' imprisonment,
- c) crimes such as trafficking in human beings, misuse of prohibited pornographic records, soliciting, smuggling of illegal aliens,
- d) breach of official secrecy,
- e) an attempt to commit any of the criminal offences listed in paragraphs a)-d), further – if preparation is an offence – preparation of the above.

If the investigation is conducted by the prosecutor, covert data gathering may also be performed in some violence-related cases apart from the criminal offences listed above.

RESTREINT UE

Data may only be gathered covertly if obtaining evidence by other means appears unlikely to succeed or would involve unreasonable difficulties, and there is cause to believe that evidence can be obtained by covert means.

Covert data gathering may be permitted for a maximum period of ninety days; upon a repeat request, this period may be extended once only, for a further maximum period of ninety days.

If the procedure for seeking permission would cause a delay likely to jeopardize the success of the covert data gathering, the prosecutor may, for a maximum period of seventy-two hours, order covert data gathering. In such cases, the request for the permit must be submitted at the same time as the order is given.

Section 202 (1) says that the subject of covert data gathering may primarily be the suspect, or the person who may be suspected of having committed a criminal offence based on the data available to the investigation.

Other persons may be subject to covert data gathering if data indicate that they have culpable communications with the person specified above or there is reasonable ground to suspect the same. The fact that an outsider is unavoidably affected is not an obstacle to covert data gathering.

The prosecutor is competent to request the measure. The court permits covert data gathering at the request of the prosecutor.

A special feature of the Hungarian system is that there is a special authority competent to enforce the measures in question. It is called a National Security Special Service. It provides technical support, including specific investigative techniques, to other investigating authorities.

After the conclusion of the covert data gathering, the person affected by the judicial permit must be informed of the fact that covert data gathering has been performed, unless criminal proceedings have been instituted against such person and unless such notification would jeopardize the success of the criminal proceedings. In this case the person concerned need only be informed of the fact that covert data gathering has taken place.

RESTREINT UE

If the prosecutor intends to use the results of covert data gathering as evidence in the criminal proceedings, the request for the permit for covert data gathering, the court decision and the report on the performance of the covert data gathering must be attached to the files of the investigation.

The suspect and the defence counsel are informed after the conclusion of the investigation, during the inspection of the documents of the investigation. If the report concerning the performance of covert data gathering is attached after disclosure of the files of the investigation, the suspect and the defence counsel shall be notified thereof and be allowed to examine the attached documents.

The ability to obtain information on bank accounts and financial transactions is governed by Act CXII of 1996 on Credit Institutions and Financial Enterprises.

It states (Section 52) that financial institutions must comply with written requests by investigating authorities, the national security service and the public prosecutor's office without delay in respect of any customer's bank account and the transactions on such account, if it is alleged that the bank account or the transaction is associated with:

- a) illegal possession of narcotic drugs;
- b) an act of terrorism;
- c) illegal possession of explosives and destructive devices;
- d) illegal possession of firearms or ammunition;
- e) money laundering;
- f) any felony committed in criminal conspiracy or in a criminal organisation;
- g) insider dealing; or
- h) market manipulation.

Section 51 (7) of the Act says that the requirement of confidentiality concerning banking secrets does not apply when the Hungarian law enforcement agency or the authority that functions as a financial intelligence unit makes a written request for information - that is considered subject to banking secrecy - from a financial institution, acting within its powers conferred under the AML/CFT or in order to comply with written requests made by a foreign financial intelligence unit, or a foreign law enforcement agency pursuant to an international agreement - if the request contains a confidentiality clause signed by the foreign financial intelligence unit.

RESTREINT UE

It is also important to stress that the Hungarian authorities, contrary to some other Member States, declare that they are ready to exchange information related to identification of a bank account, the owner of a bank account and identification of operations from and to a specified bank account in a specified period in the past through "police cooperation", including 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.

The evaluators consider this to some extent inconsistent with the fact that the FIU is, for legal reasons, not able to provide Europol with STRs.

Hungarian law enforcement authorities are allowed to forward to the law enforcement authorities of a Member State of the European Union any personal data which the Hungarian authority is processing or has received from other competent authorities in the course of its criminal tasks. Such information exchange is only possible for the prevention and detection of relevant offences, unless governed by criminal procedure (where the rules of mutual judicial legal assistance prevail).

According to Section 50/C of Act CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union, the Hungarian Asset Recovery Office may provide direct information on request to an administrative, law enforcement or a judicial authority of another Member State in order to facilitate tracing and identification of proceeds from crime, or other property related to crime.

If upon the data or the fact coming to the notice of the Hungarian Asset Recovery Office there is reasonable ground to believe that this data or fact is necessary for the authority of another Member State to fulfill its responsibilities in the field of tracing and identification of proceeds from crime, or other property related to crime, the Hungarian Asset Recovery Office may provide information without a request.

RESTREINT UE

The Hungarian authorities stress that the mutual legal assistance mechanism works smoothly as far as the above-mentioned information is concerned. In this case, for Hungary as both issuing or receiving state, judges and prosecutors play the leading role. Again, foreign requests regarding covert information gathering are executed by the National Security Special Service.

3.2. Financial investigation and use of financial intelligence

In Hungary there is no specific legal framework for financial investigations, since they are carried out in the context of normal criminal investigations. If data indicates that there are proceeds which seem to be illicit, it is a general goal of covert intelligence gathering to trace the proceeds and to discover their origin.

However, as indicated before, there are crimes, especially criminal offences committed against state budgetary revenues, in which investigations are not carried out by the general investigating authority, namely the police. It is the Hungarian Customs and Finance Guard which is the authority authorized to conduct investigations into financial and economic crimes and crimes against property.

The analysis of financial intelligence sometimes provides grounds to initiate a criminal/financial investigation. This has been already explained when describing the FIU, including the number of analyzed STRs used to initiate or support investigations. However, the list of crimes where STRs may be used is limited.

Cooperating with, and collecting financial intelligence from, other authorities in the intelligence phase is legally defined and is said to work in a well-defined and organised manner. It mainly concerns tax authorities, local government, ministries, government supervisory offices, the economic competition authority and the state audit office. Some of the authorities have signed memoranda of understanding and strategic agreements with the Hungarian police and HCFCG; in other cases they cooperate on a case-by-case basis according to the provisions of Hungarian law.

RESTREINT UE

There are also numerous options for restarting an investigation which has been closed. However, the reasons for such a decision, listed below, do not refer directly to the financial aspects of the case. In other words, there is no special option of continuing an investigation into the proceeds of crime or more generally its financial aspects, after the proper criminal investigation has been closed/after the conviction.

Act XIX of 1998 on Criminal Proceedings sets out rules on the resumption of an investigation generally, not on resumption of an investigation into the proceeds of crime or its financial aspects. According to Section 75 (1) evidence must cover the facts which are relevant to the application of criminal statutes and legal regulations on criminal proceedings.

The proceeds resulting from criminal activities must always be confiscated. In order to apply confiscation or forfeiture the investigating authority must trace the origin and the location of the proceeds (the financial situation) in the course of the ordinary investigation. The investigation can be terminated if the facts of the case – including the financial situation – have been investigated.

According to Section 198 (2) of CP if a complaint was lodged by the victim of an offence and rejected by the prosecutor, the victim may appeal against the decision rejecting the complaint and request an order for investigation. According to Section 199 (1) a) of CP if the appeal is found to be grounded, the prosecutor must annul the decision rejecting the complaint, and order an investigation.

According to Section 191 (1) of CP the termination of the investigation does not prevent subsequent resumption of proceedings in the same case.

According to Section 198 (1) of CP if the prosecutor terminates an investigation, the victim may lodge an appeal in order to have the proceedings resumed. If the protest is found to be grounded, the prosecutor must annul the decision terminating the investigation, and decide to resume the investigation or to press charges.

RESTREINT UE

There is also a special procedure related to confiscation, forfeiture of property or disposal of items seized which is a special procedure in cases where there is no conviction. According to Section 569 of CP if no criminal proceedings have been instituted against anyone or criminal proceedings have been terminated, or suspended because the defendant's whereabouts are unknown or because he is suffering from mental disease, the court may, upon application by the prosecutor, decide on confiscation, forfeiture of property or the transfer of any items seized to the ownership of the state.

The procedure must be conducted by a court with jurisdiction to adjudicate on the criminal offence, or, if such a court cannot be designated, the court at which the prosecutor has filed an application to this effect. The court must take a decision on the application of the prosecutor based on the documents.

The court decision is not subject to appeal, however, within eight days the prosecutor and those affected by the dispositions in the decision may request that a trial be held. In this case a trial must be held.

In order to enhance the effectiveness of law enforcement activities, a working group established by the Hungarian law enforcement authorities has formulated procedural recommendations, which serve as a basis for the Hungarian investigating authorities in their procedure, focusing on assessing the degree of enrichment of either suspected individual perpetrators or possible criminal groups. Financial profiles of the persons in question are developed by the criminal service of the Hungarian Customs and Finance Guard.

The financial profiles provide comprehensive information on/a picture of the natural or the legal person affected by the investigation. On one hand, drawing up these profiles assists the law enforcement authorities in the fight against crime and in securing the state's economic state interest in applying protective measures (seizure; sequestration and precautionary measures) quickly and professionally, on the other hand it can also serve as a starting point for the pre-investigative (intelligence) stage. The financial profile therefore seems to constitute an extremely useful tool for the investigating authorities to apply both in the pre-investigative stage and in the criminal procedure as well.

RESTREINT UE

The investigating authorities of the Hungarian Customs Administration are responsible for analysing, in specific criminal investigations, whether or not unpaid revenues (taxes, customs duties, etc.) can be collected in a customs or in a tax administrative procedure. If their analysis results in a finding which clearly confirms that the suspected perpetrator has assets which are out of proportion to his/her income (this aspect is also analysed) the relevant law enforcement authority of the Hungarian Customs and Finance Guard immediately gets in contact with the territorially competent authorities of the Hungarian Tax and Financial Control Administration (APEH) in order to provide the tax authority with valuable data/information on legal entities or natural persons with a clear connection to companies inspected by the criminal service.

Private experts (accountants, financial experts) may be employed by the court, the prosecutor and the investigating authorities in order to investigate the proceeds/financial investigations of criminal activities.

According to Section 102 (1) of the Criminal Procedure the court, the prosecutor and the investigating authority may assign a forensic expert listed in the register of experts, a business association authorised to give an expert opinion, an expert institution, or a state body, institution or organisation defined in a separate legal regulation. If this is not feasible, a person or institution possessing adequate knowledge may be nominated an ad hoc expert.

3.3. Cooperation with Europol and Eurojust

3.3.1. Cooperation with Europol

The Hungarian Customs and Financial Guard and the National Bureau of Investigations are the two main law enforcement bodies cooperating with Europol. Hungary is currently a member of 15 Europol analytical work files.

Current cooperation with Europol is highly valued by the Hungarian authorities. The Agency has supported Hungarian authorities many times using its analytical tools, like AWFs, and coordinating relevant undertakings with other Member States.

RESTREINT UE

During Operation Beijing, Europol supported Hungarian investigators by deploying a „mobile office” in the territory of the Hungarian Republic, thus creating the opportunity to check, cross-check and verify the necessary information by directly accessing databases during the operation.

Participation in AWF is regarded as effective and brings numerous operational benefits.

In many cases, Europol’s support facilitates international cooperation, thus there is no need for more time consuming and complicated international contacts based on mutual legal assistance.

Cooperation with Europol seems to be well organised and running smoothly. However, from Europol’s perspective, there are several issues which could undermine the existing quality of cooperation. The first issue is the absence of a clear strategy on how to combat financial crime and in addition on how to organise international cooperation in this field. Although strategies exist on drugs and trafficking in human beings, there seems to be no dedicated strategy on how to combat financial crime.

Another area of concern is the classification mechanism applied in so-called ‘secret investigations’ and its impact on the exchange of information with Europol (analytical work files) as well as other Member States.

Investigative actions by the Hungarian authorities are, generally speaking, divided into two phases; the first one (intelligence gathering) is of a covert nature. Thus any data gathered at this stage enjoy a very high level of classification which considerably limits possible international exchange.

It was explained that as from March 2009, due to a change in the legislation, it is possible to apply a less restricted classification level to the ‘secret’ information obtained, which will make it easier to share information with other partners.

Moreover, as mentioned before, the FIU, due to its legal framework, cannot provide Europol and its AWFs with relevant data.

The evaluation showed that the Asset Recovery Office experts have managed to set up good cooperation with Europol due to the previous experience they gained during traineeships within the ‘Crimes against property and financial crime unit’ (SC4).

3.3.2. Cooperation with Eurojust

In the past 2 and a half years Eurojust has provided its Hungarian counterparts with support in more than 50 financial crime cases. Out of these 55 cases 30 were closed at Eurojust, i.e. in these cases the parties involved were provided with the requested support. In the remaining cases Eurojust is still assisting the Hungarian authorities. The cases mostly cover crimes related to fraud causing damage to financial institutions, tax evasion and VAT fraud, money laundering and smuggling. The ongoing cases are mainly complex cases where Eurojust has facilitated several requests for mutual legal assistance, organised coordination meetings and enhanced information exchange.

During Operation Beijing, which is a project running under Europol's AWF MTIC, Eurojust has played a valuable role in coordinating the criminal investigations of the Member States concerned. In this specific case, a criminal group of Chinese origin has been importing/shipping goods (mainly consignments of clothing) from Asia into the territory of the EU since 2006 without paying the import VAT after customs clearance procedures. The goods are then released into free circulation in Hungary. Falsified or forged documents such as invoices were frequently used in the commission of the fraud, thus depriving Hungary of HUF 4.8 billion of tax revenue over 3 years.

The bulk of the cases referred to Eurojust so far by the competent Hungarian authorities has been related to financial and/or economic crime, especially to VAT and excise fraud. The support provided by Eurojust has been very varied, from level 3 coordination meetings held in The Hague to different types of facilitation of the execution of MLA requests.

RESTREINT UE

Statistics concerning cooperation with Eurojust provided by the Hungarian authorities:

	<i>Open cases</i>				<i>Closed cases</i>			
	<i>2009</i>	<i>2008</i>	<i>2007</i>	<i>Total</i>	<i>2009</i>	<i>2008</i>	<i>2007</i>	<i>Total</i>
<i>Fraud (concerning financial institutions)</i>	6	4	3	13	5	9	0	14
<i>Tax fraud</i>	0	3	0	3	0	3	0	3
<i>VAT fraud</i>	5	0	0	5	1	2	1	4
<i>Smuggling (excise fraud)</i>	2	1	0	3	2	0	0	2
<i>Money laundering</i>	0	0	1	1	1	5	1	7
<i>Total</i>	13	8	4	25	9	19	2	30

Total of open and closed cases from 2007 = 25 + 30 = 55

From Eurojust's perspective, according to the statistics provided by Hungary, the agency is not regularly used by the Hungarian authorities. This might be due to the fact that Hungary has international connections with most of the neighbouring countries and thus cooperation is carried out on a bilateral basis. However, a case presented in Győr showed that there is a limited awareness of the assistance that Eurojust could provide in complex international cases. Eurojust would be the right agency to assist Hungarian authorities when a judicial authority has difficulties in having freezing orders carried out in other Member States, as described in the case discussed.

3.4. Conclusions

Hungarian authorities have at their disposal a well-established and effective legal framework for investigation and prosecution, including data gathering and covert operations that are undertaken by a separate specialised service. They also have access to numerous databases. On the other hand there is no separate organisational or tactical framework for financial investigations and financial issues are, generally speaking, not considered an important element/priority for action by investigating authorities. The Hungarian Customs and Finance Guard, due to its specific role, seems to be more focused on financial aspects, including during the intelligence phase of its action, when financial profiles are drawn up on individuals or legal persons under investigation. Financial intelligence is analysed and commonly used in order to trigger or support ongoing investigations.

One weakness of the investigative system which has been identified is access to bank-related data. The decentralized character of the system and lengthy procedures may seriously impede law-enforcement action, especially as far as financial investigations are concerned.

The authorities could not advise if a subject enquiry to the local Credit Reference Agencies would provide investigators with the necessary data.

All proposals aiming at improvement of the situation in this regard should be seriously considered and supported.

Investigative action by the Hungarian authorities is, generally speaking, divided into two phases; the first one (intelligence gathering) is of a covert nature. Thus any data gathered at this stage enjoy a very high level of classification which considerably limits possible international exchange. This, in opinion of the evaluators, constitutes a serious obstacle for international cooperation between Member States and relevant EU bodies.

Although there are successful cases of cooperation with Europol and Eurojust, the practitioners met were not always aware of all the advantages and tools made available by the two agencies. Moreover, Europol sees certain risks in the fact that there is no strategic approach towards financial investigations.

RESTREINT UE

4. Freezing and confiscation

4.1. Freezing

4.1.1. At national level

Hungarian law allows the following methods for freezing assets before conviction:

- a) seizure,
- b) sequestration,
- c) precautionary measures.

4.1.1.1 Seizure

According to Section 151 (1)-(2) of Act XIX of 1998 on Criminal Proceedings (CP) seizure means taking property into custody or ensuring its safe-keeping in some other way by the court, the prosecutor or the investigating authority in order to obtain evidence or ensure confiscation or forfeiture of the property.

The court, the prosecutor or the investigating authority orders the seizure of the property – if it:

- a) constitutes a means of evidence,
- b) may be subject to confiscation or forfeiture by law.

Seizure is not limited to specific types of crime.

According to Section 155 (1) of CP seizure must be terminated by the court, the prosecutor or the investigating authority if it does not serve the interests of the procedure any longer. It must also be terminated if the investigation has been terminated or if the maximum period has expired.

According to Section 176 (2) of CP if the investigation is conducted against a specific person, it may not last longer than two years following the questioning of the suspect, unless the Prosecutor General has extended the deadline of the investigation by no more than ninety days. After this deadline the prosecutor must press charges or terminate the investigation.

RESTREINT UE

As mentioned above it is the court, the prosecutor or the investigating authority which may order seizure. There are some special cases (concerning notaries, law companies or health institutions) with more strict rules where the measure may be applied by a court only.

The prosecutor or the investigating authority must execute the seizure but if the seizure is ordered by the court or the prosecutor, they may request the assistance of the investigating authority for the execution of the order.

The person affected has certain legal means to protest against the measure. For example, according to Section 195 (1) of CP if the prosecutor or the investigating authority has ordered the seizure, the person concerned may challenge the decision within eight days following notification.

According to Section 154 (1) any property seized must be placed on deposit; if it is unsuitable for deposit, or for other important reasons, its safe-keeping must be arranged in another manner. In the latter case, a document or photograph reflecting the unique features of the property seized, as related to the criminal offence, must be attached to the case-file.

The court is to order the sale of the property seized if it is:

- a) liable to deteriorate quickly,
- b) unsuitable for long-term storage.

The court may also order the sale of the property seized if:

- a) handling, storage and safekeeping of the property – taking into consideration, in particular, the value or the foreseeable length of the storage – would involve unreasonably high expense,
- b) the value of the property is likely to significantly diminish owing to the foreseeable length of the storage.

In the above-mentioned cases the property seized may only be sold if no lawful claim has been received for its return.

The amount realised on the sale of the property seized replaces the property seized.

RESTREINT UE

If possession of the property seized threatens public order or violates the law, the court – until the indictment is filed, on the application of the prosecutor – is to order confiscation, simultaneously with sample taking, if deemed necessary.

The Hungarian ARO has been assisting the Hungarian law enforcement authorities in order to freeze assets before conviction. There are some examples where other Hungarian police organs (including county police headquarters) have asked for the assistance of the Hungarian ARO concerning asset recovery.

In addition the Hungarian ARO, as a police organ, is able to execute the freezing of assets by way of request according to the Hungarian criminal procedure rules.

4.1.1.2 Sequestration

Pursuant to Section 159 (1) of Act XIX of 1998 on Criminal Proceedings sequestration means the suspension of the right of disposal over sequestered assets and property rights. Sequestration may be ordered by the court.

Sequestration is not limited to specific types of crime.

According to Section 159 (2) of CP if the proceedings concern a criminal offence where forfeiture of property may be applied, or if a civil claim is brought and there is reasonable ground to fear that its satisfaction will be frustrated, sequestration may be ordered on the entire property of the defendant, a designated part thereof or certain assets in order to ensure coverage for the above. Sequestration may be ordered in respect of the defendant's property, part of his property or an individual asset which may be subject to forfeiture but which is not in his possession.

There is no time limit for applying the measure.

The sequestration must be lifted if:

- a) the cause of the order has ceased to exist, if the investigation has been terminated or its maximum period has expired, unless the claimant of the sequestered asset or the right of disposal over property rights initiated civil proceedings to uphold his claim within sixty days thereafter,

RESTREINT UE

- b) sequestration was ordered to secure coverage for a specific sum of money, and this amount has been deposited,
- c) the proceedings have been concluded without applying forfeiture of property, or the civil claim has been dismissed,
- d) upon winning a civil claim, the private party failed to request distraint within thirty days following the expiry of the agreed date of performance,
- e) following referral of the civil claim to other legal channels, the prosecutor or the private party fails to prove their claim within sixty days.

Sequestration may be terminated by the prosecutor or a court.

The registration of the sequestration in the authentic records must be arranged without delay. Sequestration to secure a civil claim brought by a private party is subject to the request of the private party. In the course of the investigation, sequestration may also be effected at the request of the victim.

The decision on the sequestration order must be served on the person affected by the measure.

The registration of the sequestration in the authentic records must be arranged. After that the right of disposal over the property cannot be exercised.

4.1.1.3 Precautionary measures

According to Section 160 (1) precautionary measures are taken to effect sequestration, with the aim of temporarily preventing the defendant or other interested party from exercising their right of disposal over their movable or real property, securities representing property rights, funds managed by a financial institution under a contract or a due share or ownership interest in a business organisation.

RESTREINT UE

The prosecutor or the investigating authority may apply precautionary measures if there are reasons to believe that the conditions for sequestration obtain and the defendant attempts or there is reasonable cause to believe that the defendant has attempted to conceal the property or to transfer, sell or encumber the rights of disposal over it.

Precautionary measures are not limited to specific types of crime. If the specific conditions for precautionary measures set out in Section 160 (1)-(2) of CP are fulfilled, the measures may be applied.

Following a precautionary measure, an order for sequestration must be requested without delay. In the absence of a court order for sequestration, the precautionary measure must be annulled without delay. This is the only time limit on such measures.

Precautionary measures may primarily be implemented against a person whose right of disposal would be suspended by sequestration. However, they may also be implemented against other persons who maintain contact with the defendant, or persons whom it is reasonably believed would contact the defendant in order to conceal the property or to transfer or sell the rights of disposal over it.

As a precautionary measure, the investigating authority or the prosecutor seize the properties concerned, or request public administration authorities to take action under their powers. The authorities must take immediate action and notify the investigating authority or the prosecutor thereof without delay.

The investigating authority or the prosecutor may also contact agencies and business organisations other than public administration authorities in order to freeze the property of the defendant and to register the precautionary measure. The agencies contacted must forthwith register the request to effect the precautionary measure, arrange the freezing of the property and notify the requesting investigating authority or the prosecutor thereof.

The decision on the precautionary measure must be taken by the prosecutor or the investigating authority. The decision must be handed over to those present during the proceedings and also communicated verbally; in other cases it must be served on the parties concerned.

RESTREINT UE

According to Section 195 (1) of CP if the prosecutor or the investigating authority has ordered a precautionary measure, the person concerned may appeal against the decision within eight days following notification.

The precautionary measure must be registered. After registration of the precautionary measure, the subject of the measure must tolerate the temporary suspension of his right of disposal. The right of disposal over the property cannot be exercised.

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

Framework Decision 2003/577/JHA has been implemented. Hungarian authorities are generally of the opinion that the Framework Decision does accelerate and simplify the procedure for the execution of foreign freezing/seizure orders – at least in cases where the issuing authorities can provide exact and reliable data on the asset.

Since such requests are exceptionally rare, no specific statistics or assessment of the mechanism are available.

They underline that practical guidance, such as written guidelines or training, might be useful to raise awareness of the advantages of this specific mechanism among practitioners.

4.1.2.1. Experience when acting as an issuing State

According to Section 67/I (1) of Act CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union (CCM), if, in the course of a criminal prosecution, it becomes necessary to issue a freezing order, the judicial authority must issue a decision on a freezing order and complete the certificate concerned.

According to 67/I (4) of CCM if the investigating authority finds it necessary to issue a freezing order, it may apply to the Public Prosecutor to request that a decision on a freezing order be issued or that an application be filed with the court to that effect.

RESTREINT UE

The authority which must be contacted by the executing authorities, as mentioned in part (c) of the certificate, can be the judicial authority which issued the freezing order and/or the authority competent for the enforcement of the freezing order in the issuing State. Whether one or both of these two authorities need be contacted depends on the actual case.

As far as the content and format of the freezing order and the use and practical completion of the certificate is concerned certain provisions of Act XIX of 1998 on Criminal Proceedings are applicable.

According to Section 169 (2) of the Act the decision must contain the name and the personal data allowing identification of the person to whom the measure applies. The decision must indicate:

- a) the name of the issuing authority,
- b) the criminal offence underlying the proceedings,
- c) the measure stated in the decision and the underlying legal regulation,
- d) whether it is subject to legal remedy, as well as the deadline and the investigating authority, prosecutor's office or court at which it must be filed.

The decision must be briefly justified by stating the facts leading to the measure contained therein.

According to Section 67/I (3) of Act CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union, the operative part of the decision must also include the following:

- a) details of the Member State and judicial authority to be contacted by the Hungarian judicial authority for execution of the coercive measure, and, if required,
- b) a request for the surrender to the issuing Hungarian judicial authority of the physical evidence to be seized, or
- c) instructions to the effect that the physical evidence, item subject to seizure or asset subject to asset forfeiture affected by the coercive measure should remain in the executing Member State pending a request under point b) or a request for execution of the seizure or asset forfeiture.

No further materials, except the order and the certificate, are needed.

RESTREINT UE

The Framework Decision defines categories of offences for which an order can be issued and executed. These offences are specified in Annex 1 to Act CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union.

The categories of offences listed in the Framework Decision and specified in Annex 1 include offences in the Hungarian Criminal Code, therefore Annex 1 indicates which categories of offences listed in the Framework Decision are consistent with which offences specified in the Hungarian Criminal Code.

The decision of the issuing Hungarian judicial authority must contain directions on the subsequent treatment of the frozen property. The decision may contain a request for the surrender to the issuing Hungarian judicial authority of the physical evidence to be seized, or instructions to the effect that the physical evidence should remain in the executing Member State pending a request for surrender of the physical evidence or for execution of the seizure or asset forfeiture.

According to Section 67/J of Act CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union, the Hungarian judicial authority may request that the judicial authority of the executing Member State execute the order in accordance with the provisions of the law of the Republic of Hungary. In this case the applicable Hungarian law must be described in detail in the certificate.

If the judicial authority of the executing Member State cannot execute or can only execute in part the order issued by the Hungarian judicial authority on the basis of the data and conditions contained therein, the Hungarian judicial authority must take the necessary measures forthwith to meet the conditions specified by the judicial authority of the executing Member State.

The Hungarian judicial authority must send the decision on the freezing order and certificate directly to the judicial authority of the executing Member State with jurisdiction in the matter.

The decision and certificate must be sent to the judicial authority of the Member State with jurisdiction in the matter by mail, fax or IT system. An order transmitted via an IT system must bear a qualified electronic signature.

RESTREINT UE

Eurojust has never been used yet by the Hungarian competent authorities for transmission or facilitation of the execution of freezing orders.

According to the law, if the Hungarian issuing judicial authority cannot determine which judicial authority of the requested Member State has jurisdiction for the execution of the order, it must obtain the contact details via the contact points of the European Judiciary Network.

According to Section 67/I (2) of Act CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union, the decision on the freezing order and the certificate must be translated into the official language or one of the official languages of the Member State in the territory of which the physical evidence, the item subject to seizure or the asset subject to asset forfeiture is situated (executing Member State). For that the translated order and certificate must be sent to the judicial authority of the executing Member State.

Given the lack of case practice, no specific mechanisms to permit discussion of the nature of these requests with executing States have been determined as yet. In such cases, however, all the means of communication applicable to Member States in similar cases (EAW or MLA requests) would apply accordingly, that is, both direct communication with the executing state or through the Eurojust or the EJN.

In Győr County the evaluators were told of a case where a freezing order had been sent to four Member States, with mixed results. The order had been applied correctly by Austria, but had been problematic in the remaining Member States. In one case the authorities were unclear whose executive responsibility it was, in another the bank balance was nil at the time the order arrived, so the order was not executed. The fourth Member State asked for additional details of the indictment. This indicates that the Hungarian authorities are aware of the mechanism, but anyway the issuance of restraint across borders is an exceptional occurrence.

The fact that an order concerning one case led to different results in all four States shows that practice is still far from uniform.

RESTREINT UE

4.1.2.2. Experience when acting as an executing State

According to Section 67/A (1) of Act CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union, within the framework of cooperation in criminal matters with European Union Member States, the judicial authority of the Republic of Hungary may execute directly a freezing order issued for:

- a) detection, collection, securing or use of physical evidence, or
- b) seizure or asset forfeiture,

provided that the order is sent to the judicial authority of the Republic of Hungary accompanied by a completed standard certificate in the Hungarian language (there is no obligation to execute a request issued in another language), and the physical evidence, the item subject to seizure or the asset subject to asset forfeiture is located in the territory of the Republic of Hungary.

An order issued by the judicial authority of a Member State must be executed by the Hungarian judicial authority competent to issue such an order (order a coercive measure) and take action for the execution of such an order pursuant to the law of the Republic of Hungary. As specified by the Interpretative Note attached to the said Act, the term „judicial authorities” encompasses both courts and prosecutors’ offices.

The Hungarian judicial authority located at the place of the physical evidence, the item subject to seizure or the asset subject to asset forfeiture has jurisdiction to execute an order submitted by a foreign judicial authority.

If an ongoing criminal prosecution is being conducted in the territory of Hungary in respect of the criminal offence on which the order is based, the Hungarian judicial authority with competence to execute the order is the Hungarian judicial authority conducting the criminal prosecution in Hungary.

The Hungarian judicial authority accepts orders and certificates forwarded in writing, namely by mail, fax or IT system. Instead of a certificate, the Hungarian judicial authority may also accept an official document that duly includes the information required for execution of an order issued by a judicial authority of a Member State.

RESTREINT UE

If an order and a certificate are sent to a Hungarian judicial authority, this authority examines whether there are grounds for non-execution.

For the categories of offences defined in Annex 1 to the Act, an order issued by a judicial authority of a Member State must be executed without verification of the double criminality of the act.

If, under the law of the Member State of the judicial authority issuing the order, the upper limit of the sentence that can be imposed for the offence on which the request for execution is based is less than a custodial sentence or detention order of three years, an order issued by a judicial authority of a Member State can only be executed if the offence is one of the offences specified in the Annex.

For offences not listed in the Annex, an order issued by a judicial authority of a Member State can only be executed if the offence on which the request for execution is based constitutes an offence under the law of the Republic of Hungary.

Execution of an order issued by a judicial authority of a Member State may be refused only in the following cases:

- a) if, for certain cases, the act on which the order is based does not constitute an offence under the law of the Republic of Hungary;
- b) if criminal prosecution of the act on which the order is based, or the imposed penalty is statute-barred according to the law of the Republic of Hungary;
- c) if a ruling has been passed in the Republic of Hungary or a Member State against the accused person for the act on which the order is based, which prevents the institution of criminal prosecution, or if, based on that ruling, the seizure, asset forfeiture or appropriate penalty or measure has already been served or executed, is currently being served or executed, or may not be executed under the law of the Member State that passed the final judgment;
- d) if the accused person has already been finally sentenced for the same act in a third State, provided that the seizure, asset forfeiture or appropriate penalty or measure has already been served or executed, is currently being served or executed, or may not be executed under the law of the Member State that passed the final judgment, or if the accused person has been finally acquitted of the same act in a third State;

RESTREINT UE

- e) if the certificate sent by the judicial authority of the Member State manifestly does not correspond to the attached order specifying the action to be taken;
- f) if the time limit specified for the provision of additional information or amendments has expired without the additional information or amendments being received, or the execution of the order is still not possible, in spite of the additional information supplied and amendments made;
- g) if the order relates to physical evidence, items subject to seizure or assets subject to asset forfeiture in the possession of a person entitled to immunity granted to public officials or immunity under international law, and his or her privilege has not been suspended, the competent person has not given his or her prior consent or immunity under international law has not been waived;
- h) execution is excluded under Hungarian law.

If there is a ground for non-execution of an order issued by a judicial authority of a Member State, the Hungarian judicial authority must issue a decision refusing to execute the order, and send it to the issuing judicial authority of the Member State. The reasons for the decision must include the reason for refusal. This decision is not subject to appeal.

If there is no ground for refusal to execute the order, the Hungarian judicial authority issues a decision confirming that the conditions for execution of the order issued by the judicial authority of the Member State are met, and send it to the issuing judicial authority of the Member State. In its decision, the Hungarian judicial authority must set out the action to be taken in accordance with the laws of the Republic of Hungary, and arrange for the execution of such action accordingly, in such a way that it complies as far as possible with the action requested in the order issued by the judicial authority of the Member State.

An order issued by a judicial authority of a Member State must be executed in accordance with the rules expressly requested and indicated by that judicial authority, unless they are incompatible with the principles of the law of the Republic of Hungary.

The Hungarian judicial authority must notify the judicial authority of the Member State of the execution of its order in writing, namely by mail, fax or IT communication system.

Legal remedies are available to the interested parties regarding frozen property in accordance with the legislation of the Member State whose judicial authority has issued the freezing order.

If a Hungarian judicial authority refuses or postpones execution of an order issued by a judicial authority of a Member State, it must issue a decision on the refusal or postponement. These decisions are not subject to appeal.

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

Hungarian law has the following confiscation-type measures:

- a) confiscation,
- b) forfeiture of property,
- c) procedure related to confiscation, forfeiture of property or disposal of items seized (special procedure).

Hungarian law also has provisions implementing Framework Decision 2006/783/JHA. According to Section 74 (1) of Act CXXX of 2003 on Cooperation in Criminal Matters with the Member States of the European Union issuing of a confiscation order is the responsibility of the court.

The authority competent to execute a confiscation order is the court with territorial jurisdiction where the property covered by the confiscation order is located.

If the location of the property is unknown, it is the responsibility of the court of the area:

- a) where the defendant resides or, if this cannot be established, where he stays,
- b) if the confiscation order has been issued against a legal person, where it has its registered seat.

If the court with jurisdiction cannot be established or the property concerned by the sanction is in several locations, the Buda Central District Court has jurisdiction to execute the confiscation order.

RESTREINT UE

4.2.1 Confiscation

The courts are competent to decide on confiscation.

According to Section 77 (1)-(2) of Act IV of 1978 on the Criminal Code (CC) confiscation may be ordered in respect of an object :

- a) which was actually used or intended to be used as an instrument for the commission of a criminal act;
- b) the possession of which constitutes a danger to public safety or is illegal;
- c) which was created by a criminal act;
- d) for which a criminal act was committed, or that was used for the transportation of such object, in connection with the criminal act, after the fact.

Media products portraying a criminal act must be confiscated.

Confiscation is not limited to specific types of crime.

The decision on confiscation must be served on the person affected by the measure. Confiscation is enforced by the economic office of the county court (or the Metropolitan court).

It is possible to confiscate property owned by corporations. Any financial gain or advantage resulting from criminal activities must be confiscated irrespective of the owner of such gain or advantage. Confiscation must be ordered not only against the offender but against the owner of the illicit property, even if no criminal proceedings have been brought against the owner of the illicit property.

4.2.2 Forfeiture of property

The courts are competent to decide on the forfeiture of property.

According to Section 77/B (1) of Act CC the following are subject to forfeiture:

- a) any financial gain or advantage resulting from criminal activities obtained by the offender in the course of, or in connection with, a criminal act;

RESTREINT UE

- b) any financial gain or advantage obtained by an offender in connection with crimes committed in affiliation with organized crime;
- c) any financial gain or advantage used to replace financial gain or advantage obtained by the offender in the course of, or in connection with, a criminal act;
- d) any property supplied or intended to be used to finance the means used for the commission of a crime, to provide the conditions required for commission of a crime or to facilitate commission of a crime;
- e) any property embodying such financial gain.

Forfeiture of property is not limited to specific types of crime.

The decision ordering forfeiture must be served on the person affected by the measure. Forfeiture of property is enforced by the court executor.

Any financial gain or advantage resulting from criminal activities obtained by the offender in the course of, or in connection with, a criminal act, even if it served to enrich another person, must be seized subject to forfeiture. If such gain or advantage was obtained by an economic operator, it is subject to forfeiture.

In the event of death of the perpetrator or the person profiteering as specified in Subsection (2), or the economic operator has been transformed, the property transferred by succession must be seized from the successor.

It is important to stress that, according to Section 77/B of the Criminal Code, the burden of proof has been reversed and all assets obtained by an offender during his involvement in organized crime are subject to forfeiture until proven otherwise.

4.2.3 Procedure related to confiscation, forfeiture of property or disposal of items seized

Procedure related to confiscation, forfeiture of property or disposal of items seized is a special procedure.

RESTREINT UE

According to Section 569 (1) of Act XIX of 1998 on the Criminal Proceedings (CP) if no criminal proceedings have been instituted against anyone or criminal proceedings have been terminated, or suspended because the defendant's whereabouts are unknown or because he is suffering from mental disease, the court may, on application by the prosecutor, decide on confiscation, forfeiture of property or the transfer of any items seized to the ownership of the state.

The procedure must be conducted by a court with jurisdiction to adjudicate on the criminal offence, or, if such a court cannot be designated, the court at which the prosecutor has filed an application to this effect. The court must take a decision on the application of the prosecutor.

Confiscation is enforced by the economic office of the county court (or the Metropolitan court).

The court decision is not subject to appeal, however, within eight days of service of the ruling, the prosecutor and those affected by the dispositions in the decision may request that a trial be held. In this case a trial must be held.

4.3. Conclusions

The Hungarian legal framework for freezing and confiscation seems to be well established and comprehensive. The provisions of the relevant Framework Decisions seem to have been transposed appropriately. The legal system has a set of measures that can be used in order to secure assets and deprive criminals of their resources after a final judicial decision.

However, statistics provided by the Hungarian authorities¹ indicate very limited use of the most effective measures against criminal assets. In 2007, for example, there were 33 668 persons convicted for crimes against property and 4 444 for economic crimes. Confiscation was applied 3 111 times and forfeiture of assets - 598 times. Moreover, the evaluated authorities were not able to prove that the reversed burden of proof that is meant to be used against organized crime, is commonly applied.

¹ Report "Criminality and Criminal Justice" published by the Office of the Prosecutor General of the Republic of Hungary, 2008, that was handed over to the evaluators.

RESTREINT UE

This situation may have its source at an earlier stage of the procedure. The evaluators suspect that the Hungarian authorities in most cases limit themselves to seizing the immediate instrumentalities and illegal goods discovered during operations, but have no culture of investigating the proceeds of crime, which is reflected in final judicial decisions.

Data concerning "Value concerned/ secured" presented by the HCFG criminal directorate deserve special attention as they may indicate the overall approach in Hungarian law enforcement. The data showed that EUR 126.79m had been seized in 2007, 2008 and the first 3 quarters of 2009. Of this nearly half related to tax fraud and the remainder appeared to derive from various categories of illicit goods (smuggling, illegal trafficking of excise goods and false marking of goods). On reflection, this probably relates to goods seized upon intervention by arrest teams, as opposed to the proceeds of crime discovered and seized following financial investigation.

Thus, asset recovery appears to be confined to the seizure and recovery of illicit goods and instrumentalities. The proceeds of crime are seldom investigated, restrained or confiscated and there were very few new cases "in the pipeline" indicating that this would change in the future. Although there was recognition, particularly among police and Customs, that asset recovery was a way to tackle organised crime, as evidenced by the police's Action Plan and the existence of the FIU, ARO and local economic crime units, this was not reflected in the daily practice. Restraint of property (seizure, sequestration) appeared to be a rare occurrence and there were no available comprehensive statistics to examine.

The evaluators are also of the opinion that there was insufficient focus on cash; the interviewed officials agreed that cash was an important enabler of organised crime, but were quite unable to quantify how much cash was being recovered at a local or national level. They did state that it would be possible to do this by reference to police deposits of cash at the central bank. Analysis and collation of the categories of property seized and confiscated would enable the authorities to better understand organised crime.

The Hungarian system seems not to be based on the assumption that effective asset recovery of the proceeds of crime is almost entirely a product of the effective seizure of cash and tangible assets plus the early restraint of assets held by third parties. There is an awareness of what the problem is, but ineffective powers of early restraint and cash seizure to enable post-conviction confiscation/forfeiture.

5. Protection of the financial interests of the EU - available mechanisms, particularly cooperation with OLAF

Cooperation with OLAF in practical cases has been limited until now. However, the Act LXXXIII of 2009 modified the Act XIX of 1998 on the Criminal Proceedings (CP) and introduced a new provision concerning transmission of information to international organisations. The new provision entered into force on 13 August 2009. OLAF considers this new provision as a major step forward which facilitates information exchange between the Hungarian authorities and OLAF.

According to Section 71/B (2) of CP at the request of organisations created under international agreement promulgated by law or created under European Community legislation the court, the prosecutor or the investigating authority must provide information on criminal proceedings, permit inspection of the documents of criminal proceedings and receive authentic copies of the documents of criminal proceedings – in justified cases, including transmission of the personal data of the persons concerned – but only to the extent and for the duration necessary to fulfill their responsibilities under the international agreement or European Community legislation.

However, from OLAF's point of view some restrictions remain and need to be addressed in the future. The law does not provide a legal basis for any transfer of information on the initiative of the Hungarian authorities, which thus lack a legal basis for informing OLAF spontaneously of cases meriting its involvement. The law deals only with requests for information by OLAF. It also stipulates that the transmission of personal data is only allowed "for justified purposes" and in "to the extent and for the duration necessary", thus imposing additional restrictions. Further, as regards the so-called covert or secret investigation phase, which may be initiated in Hungary prior to the criminal investigation phase to gather intelligence, no transfer of information to OLAF is possible under the Hungarian legislation. The act on criminal proceedings does not apply to this phase of the investigative process.

RESTREINT UE

Therefore there are still constraints in the Hungarian law that can be an obstacle to more frequent cooperation with OLAF and the Hungarian authorities in cases affecting the financial interests of the European Community.

The Hungarian OLAF Coordination Bureau (AFCOS - Anti-Fraud Coordination Structure) is a department of the Customs and Finance Guard under the supervision of the Head of the Finance Guard. It has no own investigative powers but reports irregularities to OLAF and distributes OLAF requests to the competent authorities in Hungary, e.g. the NEBEK. In practice, OLAF contacts the Hungarian authorities through the AFCOS if no direct contact person is known.

In the framework of the relevant Hungarian legislation, the OLAF Coordination Bureau should be considered as the primary coordinating body between OLAF and the relevant Hungarian authorities. Of course NEBEK also plays a key role in the information exchange process in specific cases, as indicated above.

AFCOS may process personal criminal data for the purposes of OLAF requests or its own reporting requirements as laid down in the European Communities regulations concerning the facts of initiating, suspending or conclusion of a criminal procedure or until the discharge of disadvantageous consequences in relation to criminal records for the following criminal cases: bribery; bribery in international relations; breach of accounting regulations; credit fraud; illegal conduct by executive employees of business associations and cooperatives; impairment of registered capital or primary capital; failure to supply economic data; capital investment fraud; money laundering; counterfeiting of money; aiding in counterfeiting operations; tax fraud; excise violation; illegal trafficking of excise goods; conspiracy to commit excise violation; illegal importation and trafficking of goods; violation of the financial interests of the European Communities; embezzlement; fraud; misappropriation of funds; defalcation; receiving of stolen goods.

RESTREINT UE

The above mentioned Act defines the general method of information exchange when it states that in their co-operation with international law enforcement organisations Hungarian law enforcement agencies must forward data and information, initiate requests for data, information or inquiries through the International Criminal Co-operation Centre (NEBEK) established within the Hungarian Police. The law clarifies that requests for information either directly submitted by OLAF, or forwarded through the OLAF Coordination Bureau or requests for information issued in order to fulfill the reporting obligations of the OLAF Coordination Bureau are to be dealt with by NEBEK.

According to Section 314 of the Criminal Code violation of the financial interests of the European Communities is an offence. If criminal proceedings have been initiated for the violation of the financial interests of the European Communities, the person representing the European Communities can play a role in the proceedings as the victim or a civil party (the "civil party" is a victim bringing a civil claim in criminal proceedings).

According to Hungarian law, since OLAF does not have a general authorization to represent the European Union in criminal procedures conducted in the Hungarian Republic, including investigations in criminal offences within the investigative remit of the Hungarian Customs and Finance Guard affecting the financial interests of the Community, it cannot be described as a victim, and therefore OLAF cannot take the role of a victim in Hungarian criminal proceedings. (Where the Act on Criminal Proceedings allows the presence of a member of the authority of the foreign state in an investigatory action).

In conclusion, the Hungarian authorities underline that information obtained/collected by OLAF can be received as a complaint by the competent Hungarian authority authorized to initiate a criminal investigation. In such cases OLAF could take part as a complainant in a criminal procedure, which procedural role has limited rights; however, a complainant has the right to assert legal remedies in the course of the investigation. Representatives of OLAF can also be questioned as witnesses (persons who may have knowledge of the fact to be proven may be heard as witnesses).

RESTREINT UE

Concerning OLAF agents taking part in the criminal investigation, for example as experts, Section 102 (1) says that a court, a prosecutor and a investigating authority may assign as an expert a forensic specialist listed in the register of experts, a business association authorized to give an expert opinion, an expert institution, or a state body, institution or organisation defined in a separate legal regulation, or, if this is not feasible, a person or institution possessing adequate knowledge (ad hoc expert).

If the OLAF agent is a forensic expert listed in the Hungarian register of experts, he could be involved. If it is not possible to find a forensic expert who is listed in the register of experts, an OLAF agent could be involved as a private expert.

Moreover, there is no experience in practice with OLAF experts or witnesses in court proceedings or with the Commission as a civil party in court proceedings in OLAF cases even though these possibilities exist under Hungarian law.

Under Hungarian law it is not possible for OLAF agents to participate in a joint investigation team.

6. Recommendations

6.1. Recommendations to Hungary

1. A coherent, overarching policy towards financial crime and financial investigations, covering all relevant authorities, including the prosecution, should be drawn up. It could be reflected in a long-term national strategy and linked to updated thematic strategies. It should also reflect relevant priorities agreed at the EU level. The strategy needs to be combined with an evaluation and review mechanism and a sound statistical methodology. (See 2.4)
2. The policy should be supported by comprehensive training for relevant staff at all levels. (See 2.4)
3. The statistical methodology needs to be developed in close cooperation between the law enforcement agencies, especially the ARO and the FIU, the prosecution and the judiciary. It should provide decision-makers with the data necessary to assess the effectiveness of the fight against crime. Data should include the use of asset recovery and financial investigations as well as crime statistics. (See 2.4)

4. A coordination mechanism, such as a high-level committee, should be established in order to foster strategic management and cooperation between law-enforcement and prosecuting services involved, identify shortcomings in legislation and practical obstacles relevant for financial investigations. (See 2.4)
5. Financial investigation, as a criminal investigative methodology, should be used more generally at the commencement of criminal enquiries. In order to facilitate final judicial decisions, necessary steps like financial profiling, seizure and sequestration need to be made at the earliest possible stage of the procedure. Existing measures like forfeiture or procedural provisions, such as the "reversed burden of proof", need to be used more often. (See 4.3)
6. Efficiency in asset tracing and seizure should be regularly assessed and taken into account every time superiors assess the performance of units or individual officials. Incentives could be introduced for the most successful in asset tracing and seizure. (See 4.3)
7. The ARO should have more operational competences, including real time coordination of asset tracing investigations. Establishment of regional asset recovery offices should be considered. (See 2.4)
8. Quick access for investigators to relevant bank-related data needs to be facilitated. Establishment of a centralized database could be considered. (See 3.4)
9. Establishment of specialised units dealing with financial crime could formalize *de facto* specialization of prosecutors. (See 2.1.2)
10. International exchange of data should be fostered, especially by appropriate classification of intelligence gathered during a covert investigation. (See 3.3.1)
11. Relevant authorities should be allowed to provide OLAF with necessary data on their own initiative, and not only upon request. Participation of OLAF agents in JITs should be considered. (See 5)

12. The FIU should be allowed to provide Europol's AWFs with relevant data. (See 3.3.1)
13. More active role for the Coordination Centre on Organised Crime in the international exchange of information, especially within the scope of Framework Decision 2006/960/JHA, should be considered. (See 2.1.1.3)
14. Awareness of reporting duty needs to be raised among certain professions required to cooperate with the FIU. (See 2.1.1.2)
15. Awareness of the tools and possible added value that Europol, Eurojust and OLAF provide needs to be raised among law-enforcement officials and prosecutors. (See 3.4 and 5)

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

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

1. EU institutions and agencies are invited to support all actions undertaken by Hungary in order to implement the recommendations listed above and enhance financial investigations. In particular, relevant EU bodies should support Hungarian authorities in development of IT tools, fostering interoperability of existing data bases and criminal analysis used for financial investigations.
2. European authorities, namely OLAF, Eurojust and Europol, should, in close cooperation with Hungarian counterparts, promote and explain their potential added value for investigation and prosecution. Their analytical capabilities, information and intelligence exchange, available communication channels and means of practical assistance need to be communicated.

RESTREINT UE

3. European authorities should promote, via training and guidelines, uniform application of relevant legal tools agreed at the European level. This should also entail use of common terminology and universal statistical methodology.

DECLASSIFIED

PROGRAMME FOR VISIT

Tuesday 27 October

- 9:30 - 10:00 Arrival of the participants
- 10:00 - 10:15 Welcome note by Dr. Judit Fazekas, Secretary of State for EU Law Affairs
- 10:15 - 11:00 Preliminary meeting to discuss technical issues regarding the visit
- 11:00 - 11:30 Coffee Break
- 11:30 - 13:00 Presentation of the representative of the Hungarian Ministry of Justice and Law Enforcement on the concerned legal framework
- 13:00 – 14:30 Lunch
- 14:30 – 15:00 Presentation of the representative of the National Council of Justice of Hungary: “Hungarian courts in the criminal procedure”
- 15:00 - 16:00 Presentation of the representative of the Prosecution Office of the Republic of Hungary, “Financial crime and financial investigation from the aspect of the public Prosecution Office”
- 16:00 – 16:30 Questions and discussion

Wednesday 28 October

Hungarian Customs and Finance Guard (HCFG). Venue: HCFG Regional Training Centre

- 10:00 - 13:00 Presentations
- 13:00 – 14:30 Lunch
- 14:30 – 16:00 Questions and discussion

Thursday 29 October 2009

The National Bureau of Investigation, Budapest

- 08:30 - 11:00 Presentations, questions and discussion
- 11:00 – 12:30 Lunch

Visit to Győr, venue: Győr-Moson-Sopron Country Police Headquarters Győr, police, customs and judicial authorities

- 12:40 – 19:40 Evaluation visit to Győr

Friday 30 October

- 10:00 - 12:30 Final remarks and closing of the meeting in the Ministry of Justice and Law Enforcement
- 12:30- 14:00 Lunch

LIST OF PERSONS INTERVIEWED

Ministry of Justice and Law Enforcement

Dr. Péter Stauber, Deputy Head of Department of Cooperation in JHA and Migration

Dr. Balázs Elek PhD, judge, Debrecen High Court of Appeal

Dr Gergely Kunyák, public prosecutor

Customs and Finance Guard (HCFG)

1st Lieutenant Dr. Attila Sisák, head of team, Pres.Title: HCFG Law Enforcement competencies

1st Lieutenant Dr. Gábor Simonka, head of unit, Pres.Title: Hungarian FIU

Capt. Tamás Kiss, senior officer, Pres.Title: “Covert investigation in combating financial crime”

National Bureau of Investigation

Dr. Attila Rigó pol. Capt., head of the Hungarian Asset Recovery Office

Győr-Moson-Sopron Country Police Headquarters

László Samu p.lieutenant colonel, Head of Department of Protection of Economic Interests

Customs, Győr

Major Csaba Csiszár, commander, Pres.Title: HCFG Western-Transdanubian Regional Investigation Office

Judicial Authorities, Győr

Dr. Andrea Deák public prosecutor

Dr. András Körmendy public prosecutor

Dr. János Habony judge

RESTREINT UE

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
AFCOS	Anti-Fraud Coordination Structure
AML	Anti-Money Laundering
APEH	Hungarian Tax and Financial Control Administration
ARO	Asset Recovery Office
AWF	Analytical Work Files
CC	Criminal Code
CCIB	Central Criminal Investigatios Bureau
CCM	Cooperation in Criminal Matters
AML/CFT	Anti-money laundering- combating the financing of terrorism
CP	Criminal Proceedings
FIU	Financial Intelligence Unit
HCFG	Hungarian Customs and Financie Guard
MLA	Mutual Legal Assistance
MTIC	Missing Trader Intra-Community [Fraud]
NEBEK	Centre for International Cooperation in Criminal Matters
NTA	National Transport Authority

RESTREINT UE

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
OCTA	Organised Crime Threat Assessment
ROCTA	Russian Organised Crime Threat Assessment
STR	Suspicious Transaction Report

DECLASSIFIED