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NOTE

From:	Presidency
To:	Delegations
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Subject:	Draft Council Conclusions and Action Plan on the way forward with regard to financial investigation

Delegations can find in the annex the draft Council Conclusions and Action Plan on the way forward with regard to financial investigation.

Draft Council Conclusions on the way forward with regard to financial investigation

THE COUNCIL OF THE EUROPEAN UNION,

TAKING INTO ACCOUNT the Council Conclusions on the renewed European Union Internal Security Strategy 2015-2020 of 4 December 2014¹ and of 16 June 2015 and the Commission' European Agenda on Security (COM (2015)185);

RECALLING the recommendations of the Final Report on the fifth round of mutual evaluations - "Financial crime and Financial investigations" (3 October 2012, 12657/2/12);

NOTING the Manual of Best Practices in the fight against financial crime:" A collection of good examples of well-developed systems in the Member States to fight financial crime"², which was developed in 2013 following the adoption of the above-mentioned final report;

TAKING INTO ACCOUNT the report on a needs assessment on tools and methods of financial investigation in the European Union, conducted at the request of the Netherlands Ministry of Security and Justice (Ecorys 2015);

REFERRING TO the outcomes of the conference "Follow the Money" - tools for financial investigations" organised by the Netherlands Presidency on 10 and 11 February 2016 in Amsterdam;

TAKING INTO ACCOUNT the Council Conclusions on Counter-Terrorism of 20 November 2015³ and the conclusions of the European Council of 17 and 18 December 2015;

REFERRING TO the Communication of the European Commission of February 2016 for an Action Plan on the Financing of Terrorism;

¹ 9798/15, 15670/14

² 9741/13

³ 14406/15 + COR 1

TAKING INTO ACCOUNT the Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017⁴, which call on Member States to give special attention to disrupting Organised Crime Groups involved in money laundering and asset recovery when drafting the Multi Annual Strategic Plans (MASPs) and Operational Action Plans (OAPs) for the different EU crime priorities;

NOTING THAT more attention should be given to fully exploiting financial investigation avenues within the framework of the OAPs;

STRESSING the Conclusions of the European Council of 17 and 18 March 2016 stating that the European Council is extremely vigilant as regards possible new routes for irregular migrants and calls for taking any measures that may become necessary in that respect. In this context, the fight against smugglers everywhere and by all appropriate means remains key;

EMPHASIZING the Council conclusions on migrant smuggling of 10 and 11 March 2016, which highlight the need for tackling migrant smugglers in the current migration crisis;

TAKING INTO ACCOUNT the conclusions of the second Europol and Interpol operational forum on countering migrant smuggling networks of 22 and 23 February 2016;

RECALLING the Conclusions of the Council of the European Union on combating organised crime infiltration in the legal economy through financial flow traceability and monitoring, in particular regarding public procurement;

NOTING that financial investigation is an effective investigative method in identifying, analysing and interpreting financial and non financial information for the purpose of combating serious and organized crime including migrant smuggling and terrorism;

NOTING that financial investigation is considered a necessary method instrument for law enforcement as it facilitates gathering evidence, mapping criminal organizations and identifying the proceeds of crime;

⁴ 12095/13

RECOGNIZING that the potential of financial investigation goes beyond the financial and economic crime and asset recovery;

STRESSING the need for increasing (operational) cooperation with EU agencies such as Europol, Cepol, Eurojust as well as OLAF networks such as CARIN, the Egmont Group, ALEFA and between FIU's;

EMPHASIZING that financial investigation is a cross-cutting instrument that needs to be addressed in a multidisciplinary way and brings added value to the investigation of almost all types of crime;

STRESSING that financial investigations should be an integral part of national police models for fighting crime;

STRESSING that Prosecution Services play an important role in initiating and effective application of financial investigations;

THE COUNCIL OF THE EUROPEAN UNION AND THE MEMBER STATES MEETING
WITHIN THE COUNCIL,

UNDERLINE the need to take into account the following principles with regard to applying financial investigations:

1. Using the FATF definition of financial investigation in applying financial investigations
2. Using financial investigation as a standard when dealing with organised crime and terrorism
3. Using financial investigation from the very start of a criminal investigation
4. Using multidisciplinary cooperation in applying financial investigations
5. Considering a pro-active approach with regard to financial investigations

CONSIDER it necessary to endorse the annexed operative action plan for the way forward with regard to financial investigation and implement it in active, versatile and flexible ways and STRESS the importance of monitoring its implementation in the framework of the Law Enforcement Working Party and inform COSI where appropriate.

INVITES the Law Enforcement Working Party to ensure the regular monitoring of the implementation of the Action Plan in close cooperation with Member States and prepare a mid term progress report in 2017 and inform COSI about the results.

ACTION PLAN FOR THE WAY FORWARD WITH REGARD TO FINANCIAL INVESTIGATIONS

1. Increasing awareness and knowledge

Reference:	1
Objective:	Increase awareness and knowledge on financial investigation by organizing training both at national and European level in accordance with the recommendations of the Final Report of the fifth round of mutual evaluations with a focus on: <ul style="list-style-type: none">• New technologies• Multidisciplinary cooperation• Legal issues
Rationale:	<p>Awareness and understanding of the financial culture of organised crime is needed to fight crime effectively, with the aim that it becomes common practice to fight crime also from a financial angle. This may require a changed mind set within law enforcement agencies. Therefore, basic knowledge and the application of financial investigations should be integrated into the basic police training ('the first responders'). Thus, the aim is to ensure that financial investigation is applied at all policing levels, that is from basic policing level (collecting financial intelligence on 'unexplainable wealth') up to investigating complex financial constructions by forensic accountants.</p> <p>At European level, financial investigations should be strengthened as an integral element in law enforcement (i.e. financial investigators around Europe should 'speak' the same language) and so should multidisciplinary cooperation.</p>
Outcome:	Increased awareness and knowledge of financial investigations resulting in better application of the investigative method and cooperation in this field.
Activities and responsible actors:	<p>A. Member States are invited to strengthening first responders competence/basic knowledge on financial investigation.</p> <p>B. Cefpol is invited to:</p> <ol style="list-style-type: none">1. strengthen multidisciplinary cooperation with regard to financial investigations by providing training, including training in a multidisciplinary formation.2. develop cooperation with the European Judicial Training Network.3. provide training on new technologies as well as topics such as dark web and virtual currencies.4. provide training on legal issues encountered by law enforcement in (cross-border) financial investigations.5. continue providing exchange programmes for financial investigators6. provide online programmes (e-learning, web applications) on (multidisciplinary) financial investigation for training and awareness
Coordinator(s):	Cefpol
Planning:	Activities A, B2 and -5 are continuous. Activities B1,-3,-4 and -6 start first half of 2017 until end 2019.

2. ‘Increasing expertise on financial investigations in order to support operational cooperation’

Reference:	2
Objective:	Increase expertise on financial investigations in accordance with the recommendations of the Final Report of the fifth round of mutual evaluations.
Rationale:	<p>Financial investigation is still considered as an area for specialized experts, rather than a integrated method to be used within the police. Moreover, at the EU level, expertise and best practices on financial investigation issues are not sufficiently widespread. The increase of experience and the sharing of best practices at both national and EU level will form a key factor for success for the further development of the instrument. Increasing the knowledge and expertise on financial investigations can be achieved by making better use of the existing expert networks.</p> <p>Existing expert foras, groups and channels should be exploited more effectively. The needs of Financial investigations should be recognised extensively.</p> <p>A variety of expert fora already exist, like the ARO Platform, the FIU Platform, CARIN, AMON and ALEFA and a number of existing initiatives are engaging with the private sector like in payment cards crime, in working groups on the use of virtual currencies or in the initiative of the European Financial Coalition against Commercial Exploitation of Children online. With the aim to achieve state-of-the-art expertise on financial investigation, engagement with other relevant private stakeholders should be explored and existing fora and initiatives could be better interlinked.</p> <p>Europol and Eurojust could be, within their mandate, further developed as an expertise hub on financial investigations to facilitate financial investigations.</p>
Outcome:	
Activities and responsible actors:	<ul style="list-style-type: none">A. Member States are encouraged to build up financial expertise at the national desks at Europol and Eurojust, if not already present.B. Member States are invited to:<ul style="list-style-type: none">1. share best practices through Europol.2. promote the expertise function of Europol and the relevant networks amongst financial investigators.C. Europol is invited to:<ul style="list-style-type: none">1. continue developing and where appropriate to strengthen its financial intelligence structures in order to provide effective operational and strategic support to the Member States.2. update together with Member States and the European Commission the EU Manual on financial investigations (2011) where needed.3. better interlink existing expert fora and relevant initiatives related to financial investigations.4. continue to engage with relevant private sector parties who can contribute to building up specific expertise on financial or technical issues.D. Cepol is invited to raise awareness of the expertise function of Europol and Eurojust in training activities.

Coordinator(s): **Europol**

Planning: Activities A, B, C 1, and -4 and D are continuous. Activity C 2 should be finished in Q4 2017 and activity C 3 should be finished in Q2 2017.

3. 'Financial investigations applied in the fight against migrant smuggling'

Reference:	3
Objective:	Understanding the business model of migrant smugglers and, as consecutive steps, start operational actions and criminal investigations to tackle and disrupt migrant smugglers activities.
Rationale:	<p>Migrant smugglers play a key role in the current flow of migrants into Europe. Within the business model used by migrant smugglers migrants are tempted to use life risking transport routes as their gateway to Europe. At the same time this business model generates large profits for smugglers and criminal organizations involved.</p> <p>One approach to reduce the flow of migrants to Europe and, consequently, prevent migrants to be tempted to take dangerous routes offered by smugglers, is to disrupt the business model of the smugglers. Financial investigation can be an effective tool for further investigating this business model and identify opportunities to fight and disrupt the activities of migrant smugglers.</p>
Outcome:	
Activities and responsible actors:	<ul style="list-style-type: none">A. Setting up a project team with Member States together with Europol, the European Migrant Smuggling Centre in particular, and other relevant stakeholders to analyse the migrant smugglers business model by applying financial investigations.B. As a follow-up of the analysis on the business model, identify concrete cases to start operational actions and criminal investigations such as parallel investigations and Joint Investigation Teams.C. Invites Eurojust to include financial investigations in Joint Investigation Teams on migrant smuggling.
Coordinator(s):	Netherlands
Planning:	Activity B and C are continuous. Activity A start in second half 2016 and to be finished Q1 2017

4. ‘Embedding financial investigation in EU policies and frameworks’.

Reference:	4
Objective:	Embedment of the FATF definition and aforementioned principles for financial investigations in the EU Policy Cycle, EMPACT MASPs and OAPs.
Rationale:	<p>The FATF definition on financial investigation is as follows:</p> <p><i>Financial investigation is an enquiry into the financial affairs related to a criminal activity, with a view to: (i) Identifying the extent of criminal networks and/or the scale of criminality; (ii) Identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and (iii) Developing evidence which can be used in criminal proceedings.</i></p> <p>Given the aforementioned definition and principles and the need to apply financial investigations in a broader and more ‘automatic’ sense, it is clear that financial investigations should be fully taken on board in the application of existing European policies and frameworks, as well as embedded in future ones. This should provide more direction about the application of financial investigations at both national and European level.</p> <p>Important in this regard is the EU Policy Cycle to Tackle Organised and Serious International Crime and in particular the work carried out within the Multi Annual Strategic Plans and Operational Action Plans. Integrating the principles of financial investigation fully in this policy domain would ensure better application of financial investigations on EU priority areas in the fight against organised crime.</p> <p>The definition and the principles for financial investigation could also be applied within Joint Investigations Teams.</p>
Outcome:	
Activities and responsible actors:	<ul style="list-style-type: none">A. Europol is invited to assess the accuracy of the (mid term) SOCTA questionnaire with regard to questions on financial information and adjust it where necessary.B. Member States are encouraged to provide detailed information in particular to the question in the SOCTA questionnaire related to financial investigations.C. COSI is invited to give special attention to financial investigation as a possible horizontal theme when preparing the Council conclusions setting the new EU crime priorities 2018 - 2021 based on the SOCTA findings and when preparing the new MASPs and OAPs 2018-2021 in order to ensure that appropriate use is made of financial investigations in the Operation Action Plans 2017.D. Eurojust is invited to adjust the model agreement for the setting up of Joint Investigation Teams by including the abovementioned principles for the application of financial investigations.

Coordinator(s):	Presidency
Planning:	Activities A and B should take place during Q3 2016. Activity C should be finalized second half 2017 with regard to the setting of new priorities and Q4 2016 with regard to the OAP's. Activity D should be finalised in Q2 2017.

5. '1.Strategy on financial investigation'.

Reference: 5

Objective: Explore the means of developing national strategies and a European Strategy on financial investigation in accordance with the recommendations contained in the final report of the fifth round of mutual evaluations endorsed by the Council in 2012.

Rationale: Member States have built professional systems for dealing with financial crime and financial investigations, but in a fragmented manner. A criminal policy in its widest sense is present in all Member States. Yet, the link between criminal policy and applying financial investigations is not automatically made. A specific long-term policy towards financial crimes and financial investigations is at times lacking. Moreover, research has revealed that Member States do have national strategies on financial and economic crime, but not on financial investigations.

Thus, it is recommended that all Member States develop enhanced national strategies on financial investigation. In order to support the Member States in doing so, the Action Plan aims to develop building blocks and best practices which could be used.

Apart from the above, national strategies could include the necessary human resources, capacity, means and training, the prioritizing of financial investigations as well as the aforementioned definition and principles.

Outcome:

Activities and responsible actors: A. Exploit current expert foras or consider setting up a project group consisting of Member States, COM and other relevant stakeholders tasked to answer the above mentioned question by delivering:

1. A report describing the preliminary steps for developing a national strategy on financial investigations and, if available, relevant bench marks,
2. An advice to the LEWP on the need for a European Strategy on financial investigations.

Coordinator(s): Belgium

Planning: Activity 1 Q 2 2017 and activity 2 Q3 2017
