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THE EUROPEAN UNION**

**Brussels, 16 December 2011**

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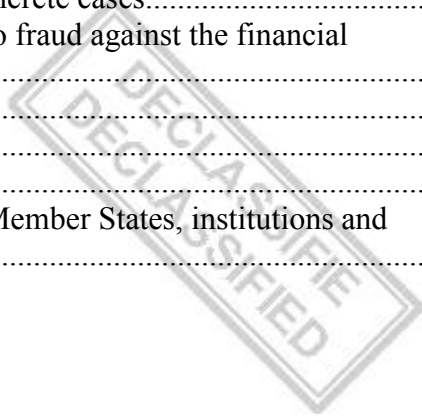
**EVALUATION REPORT ON THE**  
**FIFTH ROUND OF MUTUAL EVALUATIONS**  
**"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**

**REPORT ON GERMANY**

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## 1. INTRODUCTION

At the Multidisciplinary Group on Organised Crime (MDG) meeting of 17 June 2008, the Group decided that the subject of the fifth round of mutual evaluations was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant in the field of countering financial crimes. However, it was also agreed that the evaluation should go beyond examining how relevant EU legislation had been incorporated into national law and take a wider look at the subject matter<sup>1</sup>, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG.<sup>2</sup>

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

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

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

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits.<sup>5</sup> Germany is the eighteenth (18th) Member State to be evaluated during this round.

According to the procedure, the experts nominated by Member States should be accompanied each time by experts from the Commission (JLS and OLAF), Europol, Eurojust and the Council Secretariat.

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<sup>1</sup> 10540/08 CRIMORG 89.

<sup>2</sup> 16710/08 CRIMORG 210.

<sup>3</sup> 9767/09 JAI 293 ECOFIN 360.

<sup>4</sup> 8301/2/09 REV 3 CRIMORG 54.

<sup>5</sup> 5046/1/09 REV 1 CRIMORG 1.

The experts charged with undertaking this evaluation were Ms Michaela Mitiskova from the Czech Republic, Mr Andrej Lazar from the Slovak Republic and Mr Kaspars Valpeteris from Latvia. Four observers were also present: Mr Christian Tournié (DG JLS, European Commission), Mr Stefan de Moor (OLAF, European Commission), Ms Ritva Sahavirta (Eurojust, National Member for Finland) and Mr Carlo van Heuckelom (Europol), together with Ms Mari Hämäläinen and Mr Guy Stessens 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 16 and 20 May 2011, and Germany's detailed replies to the evaluation questionnaire.

On a general note, Germany has a federal structure and is made up of 16 *Länder* (federal states). Due to the structure, a dual approach has been adopted for the purposes of this report. Firstly, the system is generally described at the federal level, and secondly, when appropriate and when the relevant data is available, illustrations of the situation in the *Länder*, or the federal states, are given. It should be noted, however, that the latter should only be seen as examples since the situation in the different *Länder* can differ significantly. Due to the time and resource limitations, it was not possible to visit the various *Länder* in the context of the Fifth Round of Mutual Evaluations, and the available information and statistics are not sufficient to evaluate their specific situations in detail.

## 2. NATIONAL SYSTEM AND CRIMINAL POLICY

### 2.1. Specialised units

#### 2.1.1. Investigative authorities

Several authorities in Germany, under the auspices of different ministries and at both federal and *Länder* level, share responsibility for investigating financial crime and conducting financial investigations. These authorities are primarily the police, namely the Federal Criminal Police Office (*Bundeskriminalamt*, BKA), the Federal Police (*Bundespolizei*, BPOL) and the *Land* criminal police offices, and the customs, more specifically the Customs Investigation Service (*Zollfahndungsdienst*, ZFD) comprising the Customs Criminological Office (*Zollkriminalamt*, ZKA) and its subordinate customs investigation offices.

Furthermore, at the *Länder* level the Tax Investigation Units (*Steuerfahndung*) of the local tax authorities have the powers to investigate tax fraud cases.

In addition to investigating financial crime in their usual organisational set-up, police and customs cooperate to this end in permanent **Joint Financial Investigation Groups** (*Gemeinsame Finanzermittlungsgruppen*, GFG).

During their visit to Germany, the expert team conducting the evaluation had the opportunity to meet representatives of both police (BKA) and customs services (ZKA) as well as all the relevant Ministries (Interior, Justice and Finance).

Furthermore, due to the fact that the FIU in Germany is a purely police-based unit under the auspices of the BKA, its activities and set-up are described under the police heading (2.1.1.1.). Contrarily, since the ARO has a dual structure and has both a judicial and police/operational part, it is discussed separately under 2.1.5. The role of the FIU in financial investigations and in relation to the use of financial intelligence is explained under 3.2.6.1.

#### 2.1.1.1. Police

Specialist units responsible for combating money laundering, economic crime, asset recovery and financial investigations in connection with politically motivated crime have been established in the Federal Criminal Police Office (*Bundeskriminalamt*, BKA), the Federal Police (*Bundespolizei*, *BPOL*), the *Land* (federal state) criminal police offices and in some larger authorities (regional police headquarters, police headquarters, district police authorities).

As described above, on account of Germany's federal structure, in particular the autonomy of the *Länder* in police matters, information provided here regarding the composition, mission, powers and level of expertise in the specialist authorities at *Länder* level will be less detailed than the information provided on the federal level. Examples are used to illustrate the somewhat varying situations and approaches in the different *Länder*.

All in all there are:

- 654 staff across Germany working in the field of asset recovery (BKA, Federal Police, *Land* police forces [as at December 2010])
- 258 staff working in the field of money laundering (only BKA and *Land* criminal police offices [as at September 2010])<sup>1</sup>
- Ca. 700 staff working in the field of economic crime (only BKA and *Land* criminal police offices).

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<sup>1</sup> In the Joint Financial Investigation Groups between police/customs

The powers of the financial investigators/asset recovery officials in the police (at federal and *Länder* level) in respect of criminal and regulatory offences are based on the Code of Criminal Procedure, the Regulatory Offences Act (*Gesetz über Ordnungswidrigkeiten*, OWiG) and at *Länder* level on respective *Länder* police acts.

**Federal Criminal Police Office (Bundeskriminalamt, BKA)**

The BKA's Economic and Financial Crime Division (SO 3) has a staff of 176 in six units and is one of five groups in the Serious and Organised Crime (SO) Department. The SO 3 group comprises the following specialised units:

- Analysis of Economic Crime and Corruption (SO 31)
- Analysis of Money Laundering, Financial Intelligence Unit (FIU), Joint Financial Investigation Group Police/Customs Service (SO 32)
- Investigation Group Accounting/Commercial Experts (SO 33)
- Investigation Group 'Joint Financial Investigation Group Police/Customs Service' (SO 34)
- Asset Confiscation, Asset Recovery Office (ARO) (SO 35)
- Analysis of Pharmaceutical Products Crime, Environmental/Consumer Protection Crimes, Product/Trademark Piracy (SO 36)

In addition, the SO Division includes groups responsible for the fields of violent and serious crime, drug-related crime and property crime, forgery and crime involving ICTs (information and communication technologies).

The specialist units deal with the following fields of crime:

- SO 31:
  - Analyses in the fields of labour, competition and health crimes; VAT carousel fraud; asset, capital market and fiscal crimes; and corruption
  - Situation assessments
  - Committee work
- SO 32:
  - Central department for suspicious transaction reports (FIU); see also unit ST 45.
  - National and international correspondence and analyses leading to the conduct of investigations as part of its remit as Joint Financial Investigation Group BKA/Customs Service (clearing office).



- Situation assessments
- Committee work
- SO 33:
  - Investigations in the fields of economic crime, corruption, money laundering, offences against the Pharmaceutical Products Act (*Arzneimittelgesetz*)
  - Providing commercial/accounting support in investigation proceedings, primarily in the field of economic and financial crime, by analysing bank accounts, auditing accounting systems, corporate analyses, compiling audit reports and providing support in the event of executive measures.
- SO 34:
  - Investigations in the field of economic crime, corruption, money laundering, offences against the Pharmaceutical Products Act
- SO 35:
  - Carrying out financial investigations as part of ongoing proceedings to recover assets
  - Central functions in the field of asset recovery
  - Tasks associated with Germany's central Asset Recovery Office (ARO) on the basis of Council Decision 2007/845/JHA of 6 December 2007; CARIN Contact point; tasks assigned to the central authority according to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.
- SO 36:
  - Analysis in the field of crimes involving pharmaceutical products, environmental and consumer protection crimes and product/trademark piracy
  - Situation assessments
  - Committee work

- ST 45:
  - Carrying out financial investigations as part of ongoing proceedings to recover assets in cases involving politically motivated crime<sup>1</sup>
  - Investigating suspicious transaction reports according to the Money Laundering Act and the results of cash controls carried out by the customs authorities to establish their possible reference to the financing of terrorism
  - Financial investigations in the field of the financing of terrorism
  - Tasks assigned to the central agency in the field of the financing of terrorism
  - Tasks assigned to the permanent national agency for financial sanctions of the UN and the EU pursuant to Council Regulation (EC) No 2580/2001 and Council Regulation (EC) No 881/2002
  - Situation assessments and annual reports in the field of the financing of terrorism

*Financial Intelligence Unit (FIU)*

Unit SO 32 of the BKA has been assigned as the German Financial Intelligence Unit (FIU). The legal basis of the FIU is Section 10 of the Money Laundering Act stipulating the tasks of the FIU. These tasks range from the collection and analysis of Suspicious Transaction Reports (STRs) and cooperation with other FIUs to the collection, processing, use and cross-checking of data. The Money Laundering Act defines also the reporting entities and their duties (due diligence). Section 261 of the Criminal Code contains the provisions on money laundering, predicate offences (list), and relevant penalties.

The number of STRs that the FIU receives each year is, after a drop between 2006 and 2008, again on the increase. In 2008 it received over 7000 such reports (7.349), while the figure was over 9000

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<sup>1</sup> Certain crimes are generally considered to be politically motivated if they meet the definition of the so-called (plain) state security offences. They have to be categorised as politically motivated crimes even if in the individual case no political motivation can be ascertained. For example, the use of symbols of unconstitutional organisations (Sect. 86a of the Criminal Code), the formation of a terrorist organisation (Sect. 129a of the Criminal Code) and high treason (Sect. 81, 82 of the Criminal Code) fall under this category. Politically motivated crimes can also be committed in the field of common crime (such as homicide offences, bodily injury, damage to property) if in assessing the overall circumstances of the crime and/or the attitude of the offender there are indications that they are politically motivated.

in 2009 (9.046), and estimated at over 11 000 and 12 000, respectively, in 2010 and 2011. In 2009 in approximately 38 per cent of all the cases derived from STRs and processed by the *Länder* criminal police offices, the suspicion of money laundering was supported to the extent that the case was forwarded to the appropriate police agency, whilst only in 6 per cent the case was closed without residual suspicion. Furthermore, the majority of cases (63 per cent in 2009) related to the criminal offence defined as “fraud”. However, the growing proportion of fraud (compared to 40 per cent in 2008 and 43 per cent in 2007) is mainly due to the fact that computer fraud cases involving mainly so-called phishing cases are nowadays in many German *Länder* transferred directly to the appropriate units dealing with these crimes. The same applies to a significant decline in money laundering cases (down from 33 and 37 per cent in 2008 and 2007 respectively, to 5 per cent in 2009) which are transferred by the clearing offices to relevant units.

Germany applies a relatively broad notion of due diligence with reporting entities ranging from insurance companies and casinos to lawyers, legal advisers, notaries, tax consultants and real-estate brokers. However, the great majority of STRs are submitted by banks (almost 90 per cent) and financial services institutions (approx. 10 per cent). The challenge is to inform and commit also the remaining reporting entities, and to this end the FIU has established a platform to keep close and regular contact with obligated parties in order to establish and enforce an understanding of and commitment to the reporting system.

As regards international cooperation, 906 requests in total were addressed to the FIU Germany in 2009. This indicates an increase of about 17 per cent compared to the previous year. Out of the total number of requests, 732 were addressed to the FIU Germany by foreign FIUs and 174 requests were received from German units (96 in 2008) requesting information from foreign FIUs.

### **The Federal Police**

As part of their threat prevention and law enforcement tasks, the Federal Police are also responsible for preventing unlawful entry into Germany and fighting trafficking in human beings. In the resulting investigations, the Federal Police carry out the necessary financial investigations and asset recovery measures, as assigned by the public prosecutor’s offices. The same applies to property offences investigated by the Federal Police which are recorded most often in connection with its railway policing tasks.

The Federal Police Headquarters in Potsdam oversees the Federal Police, managing and coordinating their activities nation-wide and exercising expert and administrative supervision over the subordinate Federal Police authorities. The Federal Police Headquarters serves as a central office within the Federal Police for financial investigations/asset recovery. It processes basic matters and performs a coordinating role in financial investigations involving jurisdictions of multiple Federal Police regional offices.

In doing so, it maintains close contact with the central offices for asset recovery of the *Land* (federal state) criminal police offices (LKÄ), with the Federal Criminal Police Office (BKA), the Customs Criminological Office (ZKA), the chief public prosecutors and the police in Germany and abroad, and serves as a point of contact for them.

To ensure nation-wide coverage, the Federal Police have nine regional offices and 77 district offices. All 77 Federal Police district offices have designated officers to serve as contact persons for all tactical, legal and administrative questions raised by the officers assigned to conduct financial investigations. The designated officers also act as multipliers during advanced training for investigating officers.

### **Land Criminal Police Offices**

There are specialised departments dealing specifically with asset investigations and asset recovery in each of the 16 *Land* criminal police offices as well as in many larger authorities in the *Länder*. In the *Land* criminal police offices these departments fulfil operative tasks and act as a central office for the *Land*. The BKA is the national central office in this area.

As regards money laundering, specialised departments for financial investigations were established at the BKA and in the 16 *Land* criminal police offices on the basis of a joint police framework concept adopted in 1992. Customs authorities and police cooperate in these departments specialising in financial investigations in what are known as **Joint Financial Investigation Groups** (*Gemeinsame Finanzermittlungsgruppen*, GFGs). The aim of this cooperation is to guarantee more in-depth information gathering and to improve the quality of investigations and of reports of suspected money laundering on account of the different fields of responsibility and access to information. The 'clearing office' has a particularly important role to play in that it examines suspicious transaction reports (STRs) and other indications of money laundering or references to other offences to establish whether there is an initial suspicion of an offence and whether

investigation proceedings should be instituted. This 'clearing procedure' and the actual criminal investigation proceedings fall within the competence of the financial investigation offices in the *Land* criminal police offices.

Departments responsible for combating economic crime and corruption have been established in all *Land* criminal police offices, although their composition varies. Some of these specialised departments are also responsible for dealing with environmental crime, crime connected with information and communication technologies (ICTs), and fraud.

Financial investigations are often also relevant in the context of combating politically motivated crime. The State Security Division in the *Land* criminal police offices of some federal states has separate financial investigation offices/units. The other *Länder* draw on financial investigation departments in the Organised Crime (OC) Divisions when carrying out financial investigations in the field of politically motivated crime.

The police in **Baden-Württemberg** has specialised units dealing with financial investigations. The Baden-Württemberg *Land* Criminal Police Office has set up a Central Office for Financial Investigations. Many police headquarters and regional police headquarters have units or at least individual officers specialising in financial investigations. The public prosecution offices generally have a contact person who deals with matters relating to asset recovery. Where needed, they advise and support those heads of departments responsible for proceedings which raise specific questions regarding asset recovery. For the rest, financial investigations are the responsibility of the head of department responsible for the investigation proceedings in question. Provisional asset recovery in the context of investigation proceedings and responsibility for implementing final orders for forfeiture are transferred to specially appointed senior judicial officers (*Rechtspfleger*) for enforcement.

The **Lower Saxony** *Land* government launched a project to step up the fight against money laundering, organised crime, and other moderate and serious crime by recovering the proceeds of crime. The aim was to combat economic crime from the perspective of the proceeds of the crime. Assets deriving from criminal offences are first frozen and then either returned to the injured party or passed on to the judicial tax authorities. Special organisational structures were created to make this process more effective. The key pillars of this approach are close networking between the offices involved (including the public prosecution offices, the *Land* police, tax and customs investigating authorities, and the Federal Police) and the creation of specialised organisational units.

In **Bavaria** the police and customs officers of the Joint Financial Investigation Group Police/Customs Service, the asset recovery officers at the Bavarian *Land* Criminal Police Office and the asset recovery officers and financial investigators at the Bavarian Regional Police Headquarters are exclusively or predominantly responsible for dealing with financial investigations. In the wider sense, officers and commercial/accounting experts attached to the Bavarian *Land* Criminal Police Office are also involved in financial investigations and support the specialised departments in their investigations. The Bavarian *Land* Criminal Police Office has a separate investigation unit for financial investigations and asset recovery.

#### 2.1.1.2. Customs

##### **Customs Investigation Service**

The Customs Investigation Service (*Zollfahndungsdienst*, ZFD) comprising the Customs Criminological Office (*Zollkriminalamt*, ZKA) and its subordinate customs investigation offices is responsible, among other things, for investigating and prosecuting, under the supervision of the relevant Public Prosecution Office, offences in the field of financial crime.

Financial investigations carried out by customs are in particular conducted where organised crime involves:

- Tax offences and fiscal offences (in particular in connection with offences against customs and consumer tax acts),
- Violations against provisions under foreign trade law/proliferation,
- Offences against existing “prohibitions and limitations”, Weapons Act, Explosives Act, and Pharmaceutical Products Act,
- Money laundering, and
- Offences in the field of market regulations.

Financial investigations are generally conducted as part of criminal investigations by the units entrusted with investigating the original crime (specialised sections in the Customs Criminological Office, areas investigated by the customs investigations offices). In addition, separate Combating Money Laundering and Asset Recovery units have been established within the Customs Criminological Office and the customs investigation offices attached to Section III 5 Combating Organised Crime, Financial Investigations, Joint Financial Investigation Group [BKA/Customs Criminological Office] or to Subject Group 400 Combating Organised Crime.

Germany applies the principle of “coordination and cooperation” to the combating of money laundering. One important feature of this principle is that customs investigation and police cooperate closely both at federal (BKA and Customs Criminological Office) and at *Länder* level (*Land* criminal police offices and customs investigation offices). Institutionalised cooperation within Joint Financial Investigation Groups is one element of this cooperation. Those employed in these groups are specialists in the fields of banking and financial transactions and conduct investigations to counter money laundering.

The Joint Financial Investigation Groups also serve to pool intelligence gathered from measures referring to cross-border liquid funds/cash transactions, whenever there is an indication that cash or equivalent means of payment are in transit for the purposes of money laundering, in preparation for serious subversive acts of violence, or to finance a terrorist organisation, as defined in the relevant legislation.

The specially trained employees of the Customs Investigation Service working in the field of asset recovery are assigned the task of tracing proceeds from illegal acts and preparing and carrying out asset recovery measures (on behalf of the public prosecution office, for example searching apartments/companies, seizing moveable assets, questioning and interrogating people), if there is reason to assume that the conditions for forfeiture/confiscation of the assets are fulfilled or this is necessary to secure tax demands.

When the customs investigation offices carry out investigations, they and their civil servants have the same rights and duties as the police authorities and civil servants according to the provisions of the Code of Criminal Procedure. The customs investigation officials are investigative personnel of the public prosecution office (Section 26 (1) of the Customs Investigation Service Act [*Zollfahndungsdienstgesetz, ZFdG*]). Furthermore, the Customs Criminological Office and its officials have the same powers as customs investigation officers; its officials are investigative personnel of the public prosecution office (Section 16 of the Customs Investigation Service Act).

**Monitoring Authority for Illegal Employment (*Finanzkontrolle Schwarzarbeit, FKS*)**

Each of the 40 main customs offices across Germany which has a Department E (Examination and Investigation of illegal employment) has two employees who are exclusively in charge of financial investigations and asset recovery in connection with the fight against illegal employment. These officers are directly subordinate to the respective head of the Department.

There are currently 107 employees working in the Monitoring Authority who are in charge of financial investigations/asset recovery as regards the fight against illegal employment. Once they have completed their training (see 2.2. below), financial investigators/asset recovery officials are entrusted with a variety of tasks ranging from preparing and carrying out recovery measures to investigating fraudulent asset transfers to third parties.

The powers of the financial investigators/asset recovery officials in the Monitoring Authority in respect of criminal and regulatory offences in the area of the fight against illegal employment are based on the Code of Criminal Procedure and the Regulatory Offences Act (*Gesetz über Ordnungswidrigkeiten*, OWiG). Thus, the powers of the financial investigators/asset recovery officials are identical to police powers.

### 2.1.2. Prosecuting authorities

In all *Länder* jurisdictions tasks and powers of prosecution authorities responsible for seeking the confiscation of profits are based on the Code of Criminal Procedure and the Criminal Code. In general, prosecution authorities are responsible for and lead investigations, even though in practice these are carried out by the relevant investigating authority/authorities under the supervision of the prosecution authorities. During its visit the expert team was informed about a central database of prosecutions (*Staatsanwaltliches Verfahrensregister*, Section 492 of the Code of Criminal Procedure), in which all the prosecuting authorities of all *Länder* enter their on-going prosecutions. This tool helps coordinating and allocating investigations to specific public prosecution offices and contributes to avoiding overlaps and competing prosecutions.

In **Bavaria** it is primarily the public prosecution offices specialising in economic crimes that deal with financial investigations. There are a total of eight such specialist public prosecution offices in Bavaria which have special departments dealing with economic crimes. They are responsible for criminal investigations in cases in which in-depth knowledge of economic issues is necessary. Economic crimes departments are headed by directors of public prosecution; the criminal investigations are led and conducted by public prosecutors, who are supported by economic/accounting specialists during the financial investigations.

Within the prosecution authorities specialised public prosecution units have an above-average number of team leader positions which are exclusively assigned to experienced public prosecutors.



When hiring staff for these departments and posts, candidates are chosen who have additional qualifications or special know-how. In major cases where economic crimes departments need back-up, suitable staffing measures have been and are regularly implemented. On account of this specialisation, contact with the specialised police units is also intensive.

In Bavaria financial investigations into financial flows and, for instance, asset recovery fall within the scope of activity of most public prosecutors. Investigations in the field of narcotics crimes are one such example. Furthermore, each regional court, local court with a president (*Präsidiialamtsgericht*) and each public prosecution office has at least one contact at the level of judge/public prosecutor who deals specifically with issues concerning the confiscation of profits. In addition, each chief public prosecution office and public prosecution office has another senior judicial officer (*Rechtspfleger*) responsible for issues concerning the confiscation of profits.

Bavaria has for years used economic specialists to support those public prosecutors involved in economic crimes proceedings. The main task of these specialists in economics is to draw up expert reports for the public prosecution office and to represent these at trials. These economic specialists support and advise the public prosecutors and their investigating officers during searches and other investigating activities in economic crimes proceedings.

The economic specialists have had a career in administration and finance and have generally qualified for the tax administration service. They are thus usually recruited from amongst active tax officials. These economic specialists are supported by qualified accounting staff in the analysis and preparation of files. These are generally trained assistant tax accountants.

In **Hessen** a specialist public prosecution office for economic crimes was established at Frankfurt am Main Public Prosecution Office, being largely responsible for this field for the whole of Hessen, and subsequently the number of commercial/accounting experts was increased. Since 2009 the public prosecution office has had a special economic desk officer who is specifically responsible for financial investigations in the field of combating corruption.

The Central Office for Combating Organised Crime (ZOK) is affiliated to the Chief Public Prosecution Office. The heads of department are also responsible for dealing with issues concerning asset recovery, recovery assistance and money laundering. The Chief Public Prosecution Office also acts as a clearing office for reports of suspected money laundering, and is thus equivalent to a unit in the Hessen *Land* Criminal Police Office.

In **Lower Saxony** special departments for the confiscation of profits were set up in the 11 public prosecution offices. The Hanover Public Prosecution Office has held a prominent position and has always had a separate department dealing with the confiscation of profits. The number of staff had to be increased since this constituted a task which was supplementary to classic criminal prosecution aimed at punishing the individual.

In the course of the *Land* government's setting of criminal policy priorities, as of 2009 the confiscation of profits was restructured within the public prosecution office and additional staff were hired to carry out various functions. In addition, the departments dealing with the confiscation of profits in five of the 11 public prosecution offices in Lower Saxony were enlarged to become specialised departments. In two other, smaller public prosecution offices the departments responsible for the confiscation of profits were amalgamated with the departments for combating corruption, organised crime and money laundering and new departments created. The goal of increasing staffing levels and reorganising the public prosecution offices in the field of the confiscation of profits was to establish centres of excellence. These centres can support the public prosecution offices' basic criminal investigations in the field of the confiscation of profits in everyday situations as well as carry out ad hoc financial investigations in major cases.

The basic units dealing with the confiscation of profits in all 11 public prosecution offices in Lower Saxony are departments headed by a public prosecutor. Each department dealing with the confiscation of profits has a number of senior judicial officers. Among other things, they provide support during precautionary measures, especially when these are based on civil-law provisions. In addition, they are also responsible for the enforcement of confiscation orders and orders for forfeiture.

Every public prosecution office is supported by the Central Office for Organised Crime and Corruption, which is responsible for the whole of Lower Saxony. In addition to its general support functions it has, together with Lower Saxony *Land* Criminal Police Office, installed an electronic monitoring system for proceedings to confiscate profits.

### *2.1.3. Judges involved in the pre-trial phase*

In Germany, judges are involved in the investigation proceedings when investigation measures are subject to a judicial decision. That generally covers coercive measures, such as searching a person's home.

According to Section 162 of the Code of Criminal Procedure, which contains general rules governing the subject matter and local jurisdiction for judge-approved searches during investigation proceedings, the relevant local court has subject-matter jurisdiction. The presiding judge will assess which judge will be assigned this function.

#### 2.1.4. Other relevant authorities

##### 2.1.4.1. The Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin*)<sup>1</sup>

One division (GW 4) in the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin*) is responsible for automated procedures for the retrieval of account details. The unit does not specialise in financial crime or financial investigations, but investigates basic bank account data on behalf of those units by retrieving account details. The possibility of retrieving account details is not limited to cases involving financial crime, nor is BaFin informed about the specific matter on which a request for information is based. The Division is part of BaFin's Prevention of Money Laundering Group. Its tasks and powers include carrying out automated searches of account information in files which banks are required to maintain and then passing this information on to the relevant investigating authority. In addition, it monitors compliance with duties under Section 24c of the Banking Act and ensures compliance, for instance by means of written complaints or instituting administrative fines proceedings.

##### 2.1.4.2. The Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*)

The Federal Office for the Protection of the Constitution also has a specialised office which is primarily tasked with financial investigations to prevent/combat politically motivated crime. The *Land* offices for the protection of the constitution are also authorised to conduct financial investigations.

#### 2.1.5. Asset Recovery Office (ARO)

On a general note and in accordance with the provisions of Article 1(1) and (2) of Council Decision 2007/845/JHA, the German ARO has a dual structure: firstly, Division III 1 of the Federal Office of

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<sup>1</sup> More information on BaFin's activities is provided under 3.1.1.1. and 3.1.2. below.

Justice<sup>1</sup> acts as the national judicial ARO fulfilling a mainly advisory and training role and as the central point for national and international requests, and, secondly, Unit SO 35 in the BKA acts as the police-based operational part of the ARO with responsibility for practical cooperation between law enforcement authorities. During its visit, the evaluation team was informed that both parts of the ARO, the judicial and the operational/police one, are in regular contact with each other and that this rather unique dual approach is generally considered efficient and functional and the relevant tasks and responsibilities clear.

In its capacity as **judicial ARO**, Division III 1 in the Federal Office of Justice cooperates closely with Unit SO 35 in the BKA, namely the police or operational ARO, as well as with the ministries of justice of the 16 *Länder*. The Federal Office of Justice provides training as regards transnational cooperation within the European Union in the field of asset recovery to the public prosecution offices, the police authorities in the *Länder* and customs authorities.

Further, the Federal Office of Justice represents judicial matters at European level, for instance at informal meetings of the AROs organised by the European Commission. As regards Framework Decisions 2003/577/JHA and 2006/783/JHA, to speed up processes the Federation has transferred its powers of authorisation to the competent authorities in the *Länder*. The Federal Office of Justice thus has no competence when it comes to practical cooperation with the competent authorities in the Member States of the European Union.

The majority of tasks assigned to Division III 1 at the Federal Office of Justice are carried out by permanent staff. Some experts are also seconded from the judicial authorities of the *Länder*. It has no asset recovery database of its own and it does not have access to national and international databases in the field of asset recovery, due to the fact that it is not responsible for operative tasks that have been mainly allocated to the *Länder*. Division III 1 is a national contact at federal level and as such has access within the European Judicial Network in Criminal Matters (EJN).

The **operational/police ARO** tasks pursuant to Council Decision 2007/845/JHA are carried out by the Federal Criminal Police Office (BKA). The BKA is the central office for police information and

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<sup>1</sup> The Federal Office of Justice is a higher federal authority within the portfolio of the Federal Ministry of Justice and the central contact point for international legal relations, among other things. Division III 1 currently has 14 members of staff working in the fields of extradition, enforcement and mutual legal assistance in criminal matters.

intelligence for the criminal police and at the same time it is Interpol's national central office and Europol National Unit in Germany. It constitutes the BKA's specialised department for asset recovery (Unit SO 35) and is part of the Economic and Financial Crime Group within the Serious and Organised Crime Department. The BKA's specialised department for asset recovery deals with both national and international matters. The department has a total of 14 members of staff.

Operatively speaking, the department specialising in asset recovery supports all those investigation proceedings in respect of serious and organised crime which are initiated within the BKA and are directed by the competent public prosecution office. Furthermore, the department shares information on an ongoing basis with the Joint Financial Investigation Group Police/Customs (SO 34), which is also part of the Economic and Financial Crime Division of the BKA.

In relation to the relevant mandate and powers, the Federal Office of Justice supports the operative activities of the BKA's Unit SO 35, which is responsible for information sharing in accordance with the provisions of Council Decision 2007/845/JHA, by forwarding incoming requests from AROs in another Member State or another office responsible for such matters and requesting further action.

In addition, SO 35 forwards police requests in the field of asset recovery to the competent specialised departments in the police and judiciary in Germany and in other countries. SO 35 also deals with tasks associated with a central authority pursuant to Article 23 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (No 141).

As the police/operational ARO, the BKA's SO 35 collates intelligence from across Germany concerning new legal and tactical developments in regard to measures for locating and recovering assets and then analyses this intelligence. It subsequently makes this intelligence available to the specialised departments in the *Länder* police forces.

The BKA is responsible for maintaining and updating the national annual statistics regarding provisional measures to secure objects by seizure with the specialised police departments at federal and *Länder* level as well as with the customs investigations offices.

The Serious and Organised Crime Division maintains a database of judgments containing those judgments issued by German courts which are indirectly or directly connected with provisional measures to secure assets and the final confiscation of assets, and a foreign database pertaining to information regarding the legal and tactical conditions, competent police and judicial authorities, and means of searching for assets abroad.

The police/operational part of the German ARO has access to all the national databases referred to in 3.1. under the specified conditions. In addition, it has access to various other databases or systems including INPOL, a national police information system, the Europol Information System, Europol's Financial Crime Information Centre (FCIC), the Commercial Register (accessible electronically across Germany), the electronic *Land* register search procedure (in 15 out of the 16 *Länder*), the automated real estate register search procedure (in one *Land*), the Electronic Trade and Industry Register in one *Land*, and certain private national and international economic databases. They can also request tax data from the tax authorities in specific serious cases in line with the relevant legislation.

The ARO does not provide support in civil-law proceedings. The tax investigation units of the local tax authorities are responsible for criminal proceedings involving fiscal offences according to the Fiscal Code.

Germany does not have specifically designated Asset Management Offices (AMOs). The management of assets provisionally or finally restrained, seized, forfeited, confiscated or otherwise kept in custody for similar purposes would generally fall under the responsibility of the authority that has initiated such measures, or is otherwise in charge of the proceedings.

Within the scope of criminal proceedings, this will typically be the respective Public Prosecution Office, either being generally in charge of investigations and prosecution in pending cases, or as the authority specifically responsible for the enforcement of final decisions (*Strafvollstreckungsbehörde*).

As far as the police can initiate the pertinent measures within their own authority, the respective police force manages the assets.

The Prosecution Offices can task the police or other law enforcement services with the implementation of procedural measures. With a view to the availability of the resources needed, in practice the Public Prosecution Offices would generally hand over most assets to be administered by the police.

Due to the fact that justice and police matters generally fall within the domain of the *Länder*, asset management too would in most cases accordingly be carried out at the *Länder* level.

## 2.2. Training

### 2.2.1. Police

Germany adopted a national criminal police training concept in 2009. To that end, modular training standards and courses for various criminal police areas of operation and activity were developed in order to ensure that assistant desk officers were qualified in accordance with their specific requirements and tasks. The training and advanced training courses are graded according to level and specialist area into:

- Basic modules (introductory course)
- Advanced modules (refresher course)
- Special modules (further development training course).

The training and further training courses for general investigators involved in the investigation proceedings into the original offence also teach basic information (legal and tactical) and methods applied to financial investigation as part of ongoing proceedings or in separate proceedings.

The specialised units of the **BKA** primarily employ police officers who have trained at the Federal University of Applied Administrative Sciences – Criminal Police Department. Several consecutive special training courses teach the expertise required in the field of financial investigations. The advanced training programme includes the following courses:

- Financial Investigations (General and Advanced Modules)
- Separate Financial Investigations (Money Laundering)
- Basic and Specialised Course on Economic Crime
- Asset Recovery (Basic Course and Specialised Module)

The BKA's Serious and Organised Crime departments employ a number of commercial/accounting experts (known as the '*Wirtschaftsprüfungsdienst*') who have trained in various fields (business administration, tax consultancy, economics, accounting, and accounting clerks).

The Academy of the **Federal Police** located in Lübeck provides basic courses in financial investigations and asset recovery for police officers. The basic course lasts one week and is followed by an advanced module lasting seven weeks.

2.2.2. *Customs*

Training in the upper grade **customs administration** lasts three years, in the middle grade customs administration two years. After successfully completing their training in administrative law, new staff members pass through several stages in which their specialist qualification is tested.

In general, those working in the departments in the Customs Criminological Office and the customs investigation offices responsible for investigations will be civil servants who have several years of experience in customs administration. They take part in special training courses to prepare for their tasks in the Customs Investigation Service. Those who require specialist know-how to carry out their tasks (for example in the field of combating money laundering or asset recovery) take part in additional courses.

Currently, more than 250 Customs Investigation Service staff have participated in training measures in the field of asset recovery. The up to 64 staff working in the field of asset recovery who are exclusively entrusted with carrying out asset recovery measures take part in a five-week special training course.

The training for the **Monitoring Authority for Illegal Employment** in charge of financial investigations/asset recovery regarding the fight against illegal employment comprises a one-week training course (Basic Course in Asset Recovery Measures for Financial Control). The course teaches the substantive and formal legal bases for asset recovery in Germany. This course is followed by a five-week special training course entitled 'Asset Recovery Measures for Full-Time Asset Recovery Officials', in which know-how from the basic course is broadened and practical aspects of provisional asset recovery added (for example, law of contracts, contesting and invalidity of contracts, fictitious/fiduciary/agency transactions, property law, chattel mortgage, reservation of title, expectant right, ownership and assignment of claims, law of damages, right of enrichment, right of challenge, securities law, law of cheques and bills of exchange, company law, execution of court decisions, and service).



### 2.2.3. Prosecuting authorities

All members of staff have undergone training specifically in the field of confiscation and forfeiture in addition to their professional qualification.

Advanced training and qualification regarding EU platforms and instruments in general and specifically as regards the fight against financial crime is provided by German judicial training facilities, for example by the German Academy of Judicial Training (*Deutsche Richterakademie*)<sup>1</sup>.

### 2.2.4. Judges involved in the pre-trial phase

The German Academy of Judicial Training is run jointly by the Federation and *Länder* and organises training courses for judges and public prosecutors across Germany. It holds several conferences and advanced training courses each year on aspects of criminal law relating to economic crime. These generally also deal with issues concerning the confiscation of profits under criminal law, which include the legal conditions as well as tactical and legal approaches to asset recovery.

A comprehensive range of courses is available both at the federal and *Länder* level. In **Bavaria**, in order to ensure that instruction in these matters is as efficient and as targeted as possible, general legal training focuses less on questions relating to financial investigation and asset recovery, since these issues are sometimes very specific. Instead, they become an integral part of individual advanced training for judges and public prosecutors, and financial investigation issues are an important integral part of advanced training at *Land* level. For example, a separate, four-day event is held every year and deals exclusively with the problems associated with asset recovery.

In order to provide integrated training and further training in the field of economic crime, conferences are also held in Bavaria on basic and advanced aspects of accounting and balance sheet accounting (alternately every other year). These are primarily aimed at judges and public prosecutors.

To enable a smooth introduction to the specialist subject matter of economic crime, Bavaria has since 2010 also organised a special advanced training course for junior public prosecutors active in the field of criminal law relating to economic crime. The topic of asset recovery, particularly in the context of the prosecution of corruption, is included in a targeted manner.

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<sup>1</sup> The German Academy of Judicial Training offers courses to both judges and prosecutors.

## 2.3. Criminal policy

### 2.3.1. General

For some time now Germany's criminal policy has adopted an approach which regards effective criminal prosecution as comprising both the perpetrator's conviction and the confiscation of the incriminating assets. In terms of legislation, this is expressed in the fact that provisions on forfeiture and confiscation have been included in substantive law (Criminal Code).

The German legislature has addressed the needs of victim protection by ensuring that the provisions concerning forfeiture do not apply where injured parties can assert claims thereto. These regulations are supplemented by legal provisions on criminal procedure which permit the provisional securing of objects by seizure during the criminal-law investigation proceedings in favour of civil-law claims of injured parties (recovery assistance).

All investigation units in the police, customs and tax investigation authorities, the public prosecution offices and the courts are involved in implementing the range of legal provisions available.

The **police strategy** in the field of asset recovery is based on national surveys conducted as part of a 'critical stocktaking' every two years. The review focuses on structural and procedural issues in the departments specialising in asset recovery, training and further training issues, cooperation between the police and judicial offices, the discussion of the need for legislative action and measures to optimise asset recovery in cross-border proceedings. This 'critical stocktaking' is initiated and monitored by specialised committees within the German police.

As an example, the following laws provide an indication of Germany's criminal **prosecution policy** regarding the tracing and confiscation of the proceeds of crime:

- Act on the Detection of Proceeds from Serious Crimes of 29 May 1992 (*Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten, GewAufspG*)
  - The objective of the Act is to combat organised crime by preventing activities by means of which the proceeds of crime enter the legal financial cycle. The law focuses on legal provisions to punish money laundering and those which obligate banks and other business people to identify their customers and to retain information identifying them.

- Act combating Illegal Drug Trafficking and other forms of Organised Crime of 15 July 1992 (*Gesetz zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der organisierten Kriminalität, OrgKG*)
  - One of the objectives of the Act is to combat organised crime by expanding the options available for confiscating incriminating assets. This was achieved by introducing the principle of extended forfeiture (Section 73d of the Criminal Code) into substantive law. This provision provides the option, in cases of crimes committed on a gang basis or a commercial basis, of ordering (extended) forfeiture against the perpetrator's assets which, in the court's conviction, only derives from illegal sources.
- Act to Strengthen Recovery Assistance and Asset Recovery of 24 October 2006 (*Gesetz zur Stärkung der Rückgewinnungshilfe und der Vermögensabschöpfung, RückgVermabschStG*)
  - The Act aims to improve recovery assistance and asset recovery with minimum input in everyday practice in the interests of victim protection and effective administration of criminal justice primarily by means of amendments or additions to the applicable law on criminal procedure.

The core of this Act is formed by provisions which prohibit frozen assets from being returned to the perpetrator in those cases in which injured parties have not realised their claims by means of access to assets recovered by the State.

Furthermore, the principle of mandatory prosecution applies in Germany, which means that the criminal prosecution authorities are obliged to prosecute criminal offences when they learn of matters which give rise to an initial suspicion of an offence. In Germany, every criminal offence must thus be prosecuted as a matter of principle.

In line with this principle, criminal prosecution authorities at federal and *Länder* level set priorities when it comes to prosecuting certain offences depending on the situation and relevant current criminal policy and strategic requirements. Thus, a criminal prosecution authority may, on a case-by-case basis, also give priority to the prosecution of offences against property/patrimony; there is, however, no a priori prioritisation of offences against property/patrimony.

As the provisions of substantive criminal law provide for the obligatory confiscation of that which is obtained by means of a criminal offence, the tracing, seizing and confiscation of assets is, by operation of law, a mandatory objective of the criminal proceedings to which the criminal prosecution authorities are bound.

### 2.3.2. *Three pillars of asset recovery*

The field of asset recovery was integrated into police organisational structures in Germany in the 1990s. The strategies at federal and *Länder* level are generally based on the three-pillar model which was the outcome of a project investigating the use of asset recovery measures in criminal proceedings in Baden-Württemberg. The first pillar describes the need for police officers who will in future be working in the field of financial/asset investigations to undergo specific training and further training. The second pillar comprises the call to release police financial/asset investigators from other duties. The third pillar provides for the setting up of specialised units for financial/asset investigations in order to pool available know-how and build capacities.

In **Hessen** emphasis is placed on the prosecution of financial crime. The tracing, seizure and confiscation of assets is the second pillar of investigation proceedings, alongside criminal investigations. To achieve this objective, the competent public prosecution offices task the departments specialising in asset recovery with carrying out the relevant investigations as part of separate investigation proceedings. Since, as already mentioned, the objective is to confiscate perpetrators' incriminated assets, and quite considerable success has already been achieved in doing so, the targeted use of additional trained manpower, resources and the necessary investigation time is justified.

According to the Hessian authorities, asset recovery is one of the most effective means of combating organised crime. The prerequisites for successfully dealing with organised crime and economic proceedings are the availability of the necessary technical means and the relevant qualification and specialisation in both the judiciary and the police. The required experience can only be guaranteed in both areas by ensuring staff continuity. In the past this has been achieved in Hessen by appointing contacts within the public prosecution offices both for public prosecutors and for senior judicial officers on the basis of joint guidelines on asset recovery. Correspondingly, financial investigation groups have been set up in the relevant police headquarters. Special attention is paid to stepping up training both within the judiciary and the police in order to deepen basic knowledge and create specialisations so that the specific demands of asset recovery can be met.

The criminal prosecution authorities receive a percentage of the income derived at *Land* level from recovered assets above a fixed basic amount. The administration of income derived from asset recovery measures thus justifies the additional manpower used, if this leads to considerable surplus budgetary revenue.

#### 2.4. Conclusions

- As a federal state Germany has a rather complex structure that significantly varies from other Member States that have been the subject of this evaluation round. The sheer size of the country and the fact that police and justice are competences that primarily remain with the *Länder* complicates matters since this means that structures, strategy and policies can differ significantly from one *Land* to another. In addition, the federal structures have only limited ability to impose harmonisation and can only advise or consult on most of these matters.
- The experts were informed of a well concerted and strategy-driven action plan to counter financial crime at the federal level. Clear setting of objectives and performance measurement are considered paramount. These are mainly competences pertaining to the *Land* level, and the *Länder* obviously differ from one another. For example, some *Länder* have established detailed centralised electronic case flow systems which can give clear indications of the correlation between the actual recovery of seized and confiscated criminal assets, whilst in other *Länder* cases are managed on paper files by the different authorities involved.
- The federal administration is clearly making an effort to collect and disseminate good practices to all *Länder*. Some statistics such as on amounts confiscated within the scope of the investigative proceedings are available. The Federal Criminal Police Office reports these statistics annually<sup>1</sup>, and some federal *Länder*, such as Baden-Württemberg and Lower Saxony, also compile data regarding the amounts confiscated at the judicial level. However, the lack of statistics is a general and rather cross-cutting issue that prevents the analysis of real overall effectiveness and practical results.
- At the federal level, mainly the ZKA and BKA play the most significant role with regard to financial investigation and financial crime. The ZKA deals with the criminal investigation of crime phenomena that fall within its competence. It has several regional branches that cover the entire territory. The BKA provides a solid structure for the coordination of criminal investigations, operational and strategic analysis, and conducts a number of investigations autonomously under the supervision of the competent prosecuting authorities.

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<sup>1</sup> The Federal Ministry of the Interior has primary competence in this area

- Strategies comprising several comprehensive measures to enhance the combating of financial crime are apparently available at the *Länder* level. This seems appropriate, especially considering the size of the individual states and the differences in the appearance of financial crimes. The federal structures for law enforcement and judiciary play an important role in collecting and coordinating good practices and policies.
- Article 208 of the Fiscal Code entrusts the Tax Investigation Units with enquiries as regards tax offences and breaches of tax regulations, including asset tracing, thus defining the Tax Authority as an investigative authority relevant for this evaluations round. Possibly due to the fact that the expert team did not meet the representatives of the Federal Central Tax Office (*Bundeszentralamt für Steuern*), the role of the Tax Investigation Units (*Steuerfahndung*) in financial investigations and especially their cooperation or participation in Joint Investigation Groups between police and customs is somewhat unclear. Additionally, these law enforcement entities depend on an entirely different Ministry, and there is no information available regarding the existence of a coordination system at federal level between the different Ministries.
- The way criminal asset recovery is addressed at federal level appears exemplary and deserves to be mentioned as a good or even best practice. The German operational/police ARO, embedded in the BKA, plays a lead role in the EU ARO network, which uses the products and services provided by relevant EU agencies and institutions and other international organisations (e.g. Interpol) with discernment. This is done very professionally, for instance by promoting the use of SIENA<sup>1</sup> instead of cooperating through the bilateral liaison offices. The German ARO maintains a well functioning network with its peers at *Länder* level and contributes significantly to training programmes. Cooperation with the competent judicial and prosecution authorities also seems very good. Overall, the ARO office is a very active and cooperative partner on the international forum and was instrumental in the creation and development of bodies such as CARIN and the EU ARO network.
- The fact that the ARO is divided into two parts, the judicial and the police/operational part, could cause problems in relation to information flow and an integrated approach to asset recovery. However, based on the visit of the expert team it seems that cooperation between the two separate parts functions well and that the division of roles and responsibilities is clear and without significant overlaps or gaps.

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<sup>1</sup> The Europol Secure Information Exchange Network (SIENA)

## RESTREINT UE/EU RESTRICTED

- Even though the police/operational part of the ARO is placed under the auspices of the BKA, it is currently totally separated from the FIU.
- The German ARO is currently not fully able to support its foreign counterparts in asset tracing and recovery as regards civil proceedings.
- A civil seizure or confiscation is theoretically possible in line with German legislation. However, a practical case proceeding is still required in order to define how the relevant courts will act upon a foreign non-conviction-based seizure, forfeiture or confiscation.
- The German public prosecution offices and the judiciary are structured and function on the basis of the same principles as most of the EU civil law systems. Regardless of the fact that prosecution offices fall under the remit of the *Länder*, adequate federal coordination structures seem to be in place so that hardly any or only minor competence conflicts occur. The German Criminal Code and Code on Criminal Procedure provide modern and equitable solutions to deal with criminality such as transactional deeds and a moderate form of so-called plea-bargaining<sup>1</sup>, or “agreements” as referred to by the German authorities.
- It is clearly defined in the criminal justice system that the public prosecution office leads the investigation, although in cooperation with the investigating authority. Thus the prosecution offices and the judiciary should be aware of and actively using the products and services of the EU law enforcement agencies in cases with a cross-border dimension. However, for example Europol’s Analysis Work Files (AWF) seemed in general relatively unknown. Even though the investigating authorities can advise the public prosecution office on the use of EU systems and tools and even recommend it, the public prosecutor in the end takes the decision on possible information sharing through and by using designated EU instruments. Without sufficient knowledge and awareness of its added value, information sharing will not become a priority.

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<sup>1</sup> This concept is not synonymous with the common law definitions of plea-bargaining. The German authorities referred to “agreements” instead of plea-bargaining. “Agreements” are supposed to be reached before the court renders a judgment, the agreement being the basis for the judgment and not vice versa. In its judgment the court takes a decision on all relevant points, including sentencing (unlike in some common law systems, German law does not provide for a “conviction phase” and a separate “sentencing phase”). Hence, an “agreement” can only take place before and not after a judgment. As a general rule, a confession of the defendant has to be part of the “agreement”. However, in its subsequent judgment the court may not simply rely on the admission of guilt made by the defendant in his confession, but has to be satisfied that the defendant actually committed the offence.

- The German Police has a high standard of training that comprises comprehensive financial investigation training modules as part of the curriculum. Ad hoc training courses and seminars are available, and the BKA plays an important role in different areas to support the Federal States in their training efforts. However, there does not seem to be a formal accreditation process in place for financial investigators.
- Specific training on financial investigation and financial crimes seems sufficient in relation to prosecutors and trial court judges. However, the level of training and specialisation of investigation judges seems somewhat insufficient. As with police, there seems to be no process or procedure that would confirm or substantiate the required expertise or specialisation for magistrates involved in the financial investigation or sentencing process.

### 3. INVESTIGATION AND PROSECUTION

#### 3.1. Available information and databases

##### 3.1.1. *Databases and registers*

###### 3.1.1.1. Banks

Information regarding bank accounts can be collated nationwide by means of an automated procedure for the retrieval of account details pursuant to Section 24c of the Banking Act. According to the Banking Act, every bank with a registered office in Germany must have a database in which it stores master data in respect of all bank accounts held by the bank. The Federal Financial Supervisory Authority (BaFin) can access each database via an automated procedure.

The information supplied includes what are known as master data comprising information on the name of the bank, the account number, the date on which the account was opened and closed, the name of the account holder, the name of a person having the right of disposal, in the case of natural persons also their date of birth and, in certain cases defined by the Money Laundering Act, the name and, if the bank stores this, the address of a beneficial owner.

These data kept according to the Banking Act are deleted from the databases three years after the account is closed. The databases contain entries on a total of just below 600 million accounts.



The BaFin supplies information upon request concerning master data to:

- Supervisory authorities pursuant to Section 9(1), fourth sentence, number 2, of the Banking Act<sup>1</sup>, where this is necessary in the fulfilment of its supervisory tasks;
- Authorities or courts responsible for providing international mutual legal assistance in criminal matters and, for the rest, for prosecuting and punishing criminal offences, where this is necessary in the fulfilment of its statutory duties;
- The BKA's Financial Intelligence Unit (FIU) pursuant to Section 10(3) of the Money Laundering Act;
- The national authority responsible for the limitation of capital and monetary transactions according to the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*), where this is necessary in the fulfilment of tasks resulting from this act or legal acts of the European Communities in connection with the limitation of economic and financial relations.

The provision of such information for the purposes of criminal prosecution is permissible as soon as criminal investigation proceedings have been instituted. No further conditions are required. Furthermore, the financial and administrative authorities may access such information via the Federal Central Tax Office (*Bundeszentralamt für Steuern*) under the conditions set out in the Fiscal Code (*Abgabenordnung, AO*).

#### 3.1.1.2. Real estate

Germany does not have a national central **land register**. Information concerning real estate can be found in the relevant land register folio, which is kept by the relevant Land Registry at the local courts or, in the case of Baden-Württemberg, in the notary's offices.

In those cases where the land registers are automated, 15 out of the 16 *Länder* now have the option of an electronic land register search. In principle, any person who demonstrates a legitimate interest may inspect the land register. Persons authorised by German public authorities are, however, authorised to inspect the land register without having to demonstrate a legitimate interest. The same applies to notaries and publicly appointed land surveyors.

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<sup>1</sup> Offices entrusted by operation of law or by public authorities with the oversight of institutions, investment companies, financial companies, insurance companies, the financial markets or monetary transactions and by persons authorised by them to do so.

Most of the *Länder* have also established a procedure which enables the land register data to be made available online. In such cases there will be no prior case-by-case examination. The *Land* judicial administrations are responsible for decisions regarding authorisation to search the land register. Offices and persons who are exempt from demonstrating a legitimate interest may be given such authorisation. However, other persons and offices may also be given such authorisation, particularly if they regularly have to access large numbers of land register entries. This group includes, in particular, lawyers, banks, and insurance and utilities companies. Concerning access to law enforcement personnel, the public prosecution office and the police are given information from the land register upon written request. Copies of notary acts may also be obtained. The police and public prosecution office may also apply for authorisation to access the land register by electronic means.

Each *Land* maintains a **real estate register** (*Liegenschaftskataster*). The real estate register is a public register kept by the surveying and register authorities. It substantiates and describes real assets (parcels of land and buildings) in the respective *Land*. It is an official register of real property required for proof of ownership in the land register. The *Länder* also have a digital Automated Registral Inventory (*Automatisiertes Liegenschaftsbuch*, ALB).

In the majority of the *Länder* it is possible to carry out a *Land*-wide search regarding a specific person's ownership. In the other *Länder* it is not possible to access all local surveying offices via a *Land*-wide search, or rather a search is only possible in the district of the respective surveying office.

Concerning access to law enforcement personnel, the police and public prosecution offices may submit requests for information in writing.

#### 3.1.1.3. Vehicles

The Federal Motor Transport Authority (*Kraftfahrt-Bundesamt*, KBA) is responsible for the Central Traffic Information System (*Zentrale Verkehrsinformationssystem*, ZEVIS). The ZEVIS provides information such as vehicle owner and vehicle data, and restrictions on driving licences and driving licence data. The information stored in the ZEVIS is drawn from the Central Traffic Register (*Verkehrszentralregister*, VZR), the Central Vehicle Register (*Zentrales Fahrzeugregister*, ZFZR) and the Central Register of Driving Licences (*Zentrales Fahrerlaubnisregister*, ZFER).

Police assistant desk officers may access information from their desks electronically or via the police information system (INPOL).

#### 3.1.1.4. Ships and boats

Germany does not have a central register for ships and boats. Instead, specific local courts have inland vessel, maritime vessel and shipbuilders' registers in accordance with the Code of the Register of Ships (*Schiffsregisterordnung*, SchRegO).

The inland vessel and the maritime vessel registers are public registers. Anyone wishing to inspect the shipbuilders' register must demonstrate a legitimate interest. Concerning access to law enforcement personnel, the police and the public prosecution offices may obtain information on written request.

In addition to the inland vessel and the maritime vessel registers, there is a shipbuilders' register and an international maritime register. Pleasure craft must bear an official or officially recognised registration number on all German internal waterways on which the Traffic Regulations for Inland Waterways applies. In addition, there is a Central Inland Vessel Inventory (*Zentrale Binnenschiffsbestandsdatei*, ZBBD), which is managed at federal level. It contains data on ships serving commercial purposes, i.e. dry cargo/cargo ships, tankers, passenger ships, tugboats or push boats.

Concerning access to law enforcement personnel, information is supplied upon written request to the public prosecution office and the BKA, in its capacity as criminal prosecution authority, where the conditions set out in the Act on the Tasks of the Federation in the Field of Internal Waterways Vessels (*Binnenschiffahrtsgesetz*, BinSchAufgG) are met.

#### 3.1.1.5. Aircraft

The national Aircraft Register is kept by the Federal Aviation Office (*Luftfahrtbundesamt*). The aircraft registers contain inter alia data on aircraft type and cabin works number, the aircraft's nationality and registration mark, folio number in aircraft register, where necessary, the designation of the folio in the register of lien on aircraft, and the owner's name and address.

The Federal Aviation Office is also responsible for maintaining the aviator file and aviator suitability file.

## 3.1.1.6. Companies

The **Commercial Register** (*Handelsregister*) is a public register which contains entries on registered business people in the district in which the competent register court has its seat. It also supplies information on documents deposited there. It provides information regarding business people's and companies' economic situation and can be inspected by any person for information purposes.

Incorporated companies are entered in Section B; all other companies (esp. sole traders and commercial partnerships) are entered in Section A. The latter Section of the Commercial Register provides information regarding the company, legal form, owner and personally liable partners in a commercial partnership, change of ownership and partners, location of branch offices, amount of the partners' contribution, filing of bankruptcy, and winding up of a company.

Section B of the Commercial Register provides information regarding the company, legal form, location of branch office, managing directors, share capital or registered capital, general commercial power of representation (*Prokura*), type of business, liquidation, filing of bankruptcy, and winding up of a company. It is also possible to inspect the published annual accounts of corporations and other company-related information, for instance voting rights announcements, in the **Company Register** (*Unternehmensregister*). A total of 1,486,654 companies were registered in the Commercial Register at the end of 2009. There is no information available on whether beneficial ownership is provided for in the Company Register.

The **Register of Partnerships** (*Partnerschaftsregister*) is also kept by the competent register court. A partnership is a legal form specifically for members of the liberal professions. The Register of Partnerships contains information such as the name and head office of the partnership, date of birth, the profession and address of each partner in the partnership, the type of partnership and the partners' power of representation. A total of 8,471 partnerships were registered in the Register of Partnerships at the end of 2009.

The **Register of Cooperatives** (*Genossenschaftsregister*) contains information about the company, its head office and activity, the board, rules governing representation, possibly a liability obligation of the members of the cooperative, general commercial power of representation, institution,

termination or discontinuation of insolvency proceedings, dissolution of the cooperative and discontinuation of the cooperative. A total of 9,614 cooperatives were registered in the Register of Cooperatives at the end of 2009.

*3.1.2. Cooperation at national level*

The criminal prosecution authorities have various options for obtaining information concerning bank accounts, their holders and financial transactions in the course of financial investigations. Requests for information from the public prosecution office according to Section 161(1), first sentence, of the Code of Criminal Procedure need not be restricted to specific offences but are permissible in regard to all criminal offences. There is no temporal restriction on these requests for information from the public prosecution office. However, the principle of proportionality will probably preclude requests for information and monitoring of an account, security deposit accounts or financial transactions over an unlimited period. The public prosecution office may have the supplied information analysed by the police.

As well as information which arises in the course of a standard search of the accused's premises and which can lead to the release of account documentation by the accused's main bank, the criminal prosecution authorities have sources at their disposal based on the BaFin's supervision of the capital market in the wider sense.

The majority of information on financial transactions gathered in respect of persons and companies involved in capital flows can be made available to the public prosecution office.<sup>1</sup> The public prosecution office can request information from every authority for the purposes of fulfilling its remit in line with the relevant legislation.<sup>2</sup>

The public prosecution office may also request information from other offices or persons, in particular private banks and financial institutions, concerning bank accounts held, their holder and persons having the right of disposal or financial transactions. This constitutes an informal hearing of witnesses. If the institution refuses to supply the information, the formal hearing of a witness from

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<sup>1</sup> Section 161(1) of the Code of Criminal Procedure

<sup>2</sup> Section 160(1) to (3) of the Code of Criminal Procedure. This refers to an unknown bank account belonging to a specific person; the unknown holder of a specific bank account; transactions from and to a specific bank account within a specific period in the past; and transactions to and from a specific bank account in the future.

these banks and financial institutions can be enforced, the release of documents may possibly also be enforced, or the search and seizure of business premises can be ordered.<sup>1</sup>

Sources of information which can be accessed on the basis of the relevant legislation include the BaFin's supervision of credit and financial services institutions according to the Banking Act, supervision of insurance companies according to the Act on the Supervision of Insurance Companies (*Versicherungsaufsichtsgesetz, VAG*) and of persons authorised to participate in stock market trading according to the Stock Exchange Act (*Börsengesetz, BörsenG*).

According to the **Banking Act**, the BaFin may, for the purposes of supervising obligated companies, request comprehensive information or may have this presented. The BaFin's information rights are wide ranging, since the powers refer to all the institutions' business dealings, i.e. to all data connected with day-to-day business of interest to a supervisory authority, including data concerning individual financial dealings with customers.

The Banking Act permits the BaFin to automatically retrieve those account details which banks must store and make available in electronic form to that end.<sup>2</sup> The BaFin will, upon request, provide the prosecution authorities with information from these stored data for the purposes of the prosecution and punishment of criminal offences. To that end the BaFin will access the data stored in an automated procedure and will pass it on to the requesting body.

This is, however, only the first step: if the search in the database produces a “hit”, transaction data must be requested from the specific bank.

The possibilities available to the prosecution authorities for using information collated in accordance with the Act on the Supervision of Insurance Companies and the Stock Exchange Act for the purposes of financial investigation are comparable to those means of obtaining information on the basis of the Banking Act.

Furthermore, information available on the basis of Section 161(1) of the Code of Criminal

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<sup>1</sup> Sections 51, 95 and 161a of the Code of Criminal Procedure. Furthermore, Section 161(1), first sentence, second alternative, of the Code of Criminal Procedure constitutes the legal basis for requests for information from the public prosecution office geared to internal data matching by private bodies, for instance banks or credit card firms.

<sup>2</sup> For further information, see 3.1.1.1.

Procedure includes data collated in administrative proceedings by financial authorities, if tax secrecy has been lifted. The **Fiscal Code** permits tax data to be revealed to the public prosecution office for the purposes of combating illegal work. Furthermore, according to the Fiscal Code, the tax authorities may pass on information if there is a compelling public interest; such a compelling public interest is assumed to exist if crimes or certain offences (for example, economic crimes which in view of the method of their perpetration or the extent of the damage caused by them are likely to substantially disrupt the economic order) are being or are to be prosecuted.

Along with cases in which the public prosecution office already has an initial suspicion and is obtaining additional or supplementary information concerning the suspect's financial situation by making a request, particularly to the BaFin, there are further statutory duties of information which are of importance for the financial investigations due to their relevance to financial matters.

According to the **Income Tax Act** (*Einkommenssteuergesetz*, EStG), the financial authorities are obliged to provide the public prosecution office with facts which substantiate the suspicion of the granting of a benefit or offering of a bribe to a public official, or the offering of a bribe in business transactions. In addition, pursuant to the Fiscal Code, they must disclose to the public prosecution office any suspicion of money laundering.

According to the **Securities Trading Act** (*Wertpapierhandelsgesetz*, WpHG), the BaFin may request information, the presentation of documents and the surrender of copies from any person and summon and hear persons, if this is necessary on account of there being indications which require the monitoring of compliance with a prohibition or requirement set out in this Act. It may, in particular, request information regarding inventory changes of financial instruments and information concerning the identity of other persons, in particular clients and persons authorised or obligated in regard to business transactions.

Where this information or other means lead to a suspicion of insider dealing which is punishable under the Securities Trading Act, the BaFin must notify the public prosecution office of this fact and disclose the facts establishing a suspicion.

According to the **Money Laundering Act**, it is not only financial institutions or insurance companies but also members of the consulting professions, such as lawyers, accountants and tax advisors, who must be able to identify their customers including contracting partners and beneficial

owners and to record this information. The data thus collated is available to the public prosecution office on the basis of Section 161(1) of the Code of Criminal Procedure. The Money Laundering Act further stipulates that a suspicious transaction must (also) be reported to the competent criminal prosecution authority in case there are indications of money laundering transactions.

There is no provision which requires special notification in the case of requests for information according to Section 161(1) of the Code of Criminal Procedure. If the request is sent directly to the accused, he/she will then find out about the request having been made. If the request is not sent directly to the accused but to the bank or financial institution holding the account or security deposit account, the accused or his/her defence counsel may be notified, unless the right to inspect the files or the provision of information speaks against the purpose of the investigation.

### *3.1.3. Cooperation at European level*

#### *3.1.3.1. Protocol to the Convention on Mutual Assistance in Criminal Matters between Member States*

Germany has ratified the Protocol to the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States. Article 1(1) of the Protocol of 16 October 2001 to the Convention obliges Member States to create regulations which enable them to establish whether a natural person or legal entity against whom/which investigation proceedings are ongoing in another Member State holds a bank account in the territory of the requested Member State. Furthermore, upon request information concerning those accounts must be provided for which the accused has power of attorney. This obligation was already implemented in Germany when the automated procedure regarding the retrieval of account details pursuant to the Banking Act was introduced.

Article 2 concerns requests for information regarding a specific bank account which is already known to the investigating authorities. Such requests for mutual assistance have been standard practice for some time on the basis of the Convention on Mutual Assistance in Criminal Matters between Member States. However, Article 2 now for the first time refers explicitly to such requests. Paragraph 1 contains a provision regarding the extent of the right to information. This in particular comprises information concerning account movements and the identity of the remittee or of the remitter. This information is covered by German criminal procedural law, in particular by Sections 94 et seq. of the Code of Criminal Procedure.



Article 3(1) contains an obligation to monitor banking operations. Account movements during a specific period of time in the future must be monitored. According to the German law of criminal procedure, periodical requests for information are possible to the extent that retroactive inquiries regarding accounts are conducted by the prosecution authorities at specific intervals. It is permissible to repeat requests for information on the basis of the same request for mutual assistance.

The aim of the provisions set out in Article 4 is to ensure that the bank does not inform the account holder or a third party against whom a measure according to Article 1 to 3 is directed, so that the success of the investigations is not thwarted. In Germany, confidentiality in regard to these measures is guaranteed by means of the substantive criminal law provisions in the Criminal Code. For example, where an employee of a financial institution informs a customer about a monitoring measure, in line with the Criminal Code this can constitute a benefit, the obstruction of punishment or money laundering.

Article 5 aims to improve cooperation between investigating authorities and provides for the competent authority in the requested Member State, where there are indications, to encourage the requesting authority to submit a further request for mutual assistance. Article 5 is closely linked to Article 7 of the Convention on Mutual Assistance in Criminal Matters between Member States. Where it is necessary to pass on personal details to another Member State without a request for mutual assistance having been made, the limitations of Section 92 of the Act on International Legal Assistance in Criminal Matters must be observed.

Article 7 precludes the objection of banking secrecy being raised as a reason for refusing mutual legal assistance. According to the German law on criminal procedure, banking secrecy does not pose an obstacle to the issuing of orders for searches and seizure and other investigative measures.

Under Article 8 of the Protocol and according to German law, mutual assistance cannot solely be refused because the request is based on an act which qualifies as a punishable fiscal offence in the requested Member State.

#### 3.1.3.2. Identification of bank accounts and holders

In the context of international mutual assistance in criminal matters, information from the aforementioned measures (identification of a bank account or an account holder) may also be made available to a criminal prosecution authority in another Member State via a German prosecution authority or the Federal Office of Justice.

Furthermore, the evaluation team was informed during its visit that basic information (excluding data on transactions) on German bank accounts can be requested by the competent law enforcement authorities of another Member State. The only prerequisites are that these requests concern ongoing criminal investigations. The requesting authority addresses the request to the BKA which can in turn query the BaFin, and subsequently relay the reply back, through appropriate channels, to the competent authority in another Member State.

#### 3.1.3.3. The role of the ARO

The Federal Ministry of Justice has transferred to local public prosecution offices the competence to authorise incoming requests for assistance and to carry out the requested acts. The judicial ARO in the Federal Office of Justice is available as a contact when it comes to factual and legal questions from the domestic and foreign authorities involved. Requests can be sent to the ARO at the Federal Office of Justice if a foreign authority is unsure which public prosecution office is competent in Germany. Where several domestic authorities are competent as regards factual and legal issues, the ARO may take on a coordinating function.

#### 3.1.3.4. Competent authorities for handling information requests

##### a) Acting as issuing State

The investigating public prosecution office in a *Land*, or the Federal Public Prosecution Office if it is conducting the investigations, will ask for the request to be issued. In dealings with Member States the application is made by the investigating public prosecution office or by the Federal Public Prosecution Office, if it is conducting the investigations.

##### b) Acting as receiving State

In dealings with Member States the request must be sent to the local public prosecution office. Requests received by authorities, who do not have subject-matter or local jurisdiction, are immediately passed on. The locally competent public prosecution office is responsible for executing the requested acts.

#### 3.1.3.5. Problems encountered

In general cooperation at the European level is considered good by the *Länder*. Difficulties have arisen mainly due to language barriers concerning requests for mutual assistance, time delays, and

legal incompatibilities. It can be the case, for example, that the national legislation of the receiving State of a request of mutual assistance in regard to recovery assistance does not recognise the institution of recovery. Furthermore, concerning the use of police intelligence deriving from preliminary investigations, certain problems may arise: if the instrument of mutual assistance is not applied, the use of the obtained intelligence may become challenged.

As a general rule, Germany requires requests and all other documents to be sent in German in order to be used in German proceedings. As for other conceivable modalities of MLA requests, this is subject to a number of bilateral and multilateral treaties which may provide for exceptions. To expedite requests, the German authorities may accept requests in other languages, in particular English, on a case-by-case basis. As regards outgoing requests, bilateral or multilateral treaties normally require translations into an official or working language of the requested State. Accordingly, and if need be, Germany sends out requests in other languages, along with German language originals.

### **3.2. Financial investigation and use of financial intelligence**

#### *3.2.1. Legal framework*

In Germany, financial investigations are carried out in the context of criminal investigations. Sections 160 and 161 of the Code of Criminal Procedure provide the legal basis therefore. Sections 111b et seq. of the Code of Criminal Procedure are decisive as regards the provisional securing of objects.

The investigative activities of the criminal prosecution authorities go beyond the successful investigation of criminal offences and include the tracing of illegally acquired assets. Criminal prosecution with the aim of recovering assets is pursued in one of two ways: either there is a suspicion at the start of the investigations that a criminal offence has been committed, or assets are detected and they are presumed to have been illegally acquired and thus indicate that a criminal offence has been committed. These different approaches are described as “financial investigations as part of ongoing proceedings” and “separate financial investigations”.

**Financial investigations as part of ongoing proceedings** are integrated into investigation proceedings based on the suspicion of a criminal offence which refers to part of the legal

consequences under the Criminal Code (Sections 73 et seq. of the Criminal Code). In some *Länder*, these investigations in regard to the suspect's financial situation are not carried out by the public prosecutor in charge of the case (“integrated model”), but by special public prosecutors who have undergone special training in asset recovery and who are not involved in investigating the facts of the case (“principle of separation”).

**Separate financial investigations**, by contrast, are not part of the investigation proceedings and generally begin after a conspicuous financial transaction or a suspicious statement of assets and liabilities indicates that assets have been acquired illegally. The starting point is often a suspicious transaction report according to the Money Laundering Act.

The main objective of this work is to uncover so-called illegal flows of money, namely channels into which illegally acquired assets are diverted. Uncovering these illegal flows of money serves to counter money laundering, which is a punishable offence according to Section 261 of the Criminal Code. If this leads to a sufficient suspicion of a predicate offence to money laundering, the investigation of financial circumstances, which justify a suspicion, then turns into financial investigations as part of ongoing proceedings by the competent prosecution authority.

Financial investigations based on cash controls by the customs authorities are a special case. Where controls by the customs authority provide indications that cash or comparable means of payment are in transit for the purposes of money laundering, the preparation of a serious subversive act of violence (Section 89a(1), (2), number 4, of the Criminal Code) or the financing of a terrorist association (Section 129a, also read in conjunction with Section 129b of the Criminal Code), the Customs Investigation Service (ZFD) will be notified of the matter by the responsible officers.

Means of payment carried may be secured in the administrative proceedings and impounded by customs in order to investigate the facts. There need be no initial suspicion within the meaning of the Code of Criminal Procedure. The freezing of the means of payment may not initially exceed three working days after they are detected. In the event that the Customs Investigation Service cannot invalidate the indications within the three-day time limit, freezing and impounding may also be extended by judicial order for up to one month.<sup>1</sup> If the indications of money laundering/

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<sup>1</sup> Section 12a(4) of the Customs Administration Act

financing of terrorism cannot be invalidated within one month, or if there is an initial suspicion of a criminal offence which goes beyond these initial indications, the competent public prosecution office takes a decision on further criminal procedural measures, which can include applying for a judicial order for seizure.

3.2.2. *The use and effectiveness of financial investigations in specific crimes*

Financial investigations in proceedings concerning specific criminal offences can in individual cases lead to the confiscation of incriminated assets, as well as to the successful investigation of relevant matters under criminal law and to the identification of perpetrators' organisational structures. In addition, in certain circumstances new modi operandi (e.g. new electronic payment systems) can be identified.

The benefit described by the police at federal and *Länder* level, and the explanations regarding the effectiveness of financial investigations, apply in equal measure to financial investigations carried out by the Customs Investigation Service. As well as having a general preventive effect, in the case of violations of the tax law, financial investigations in particular can allow the acquired assets to be confiscated from the tax offender and the state's tax claims to be satisfied. Furthermore, the above aspects apply analogously if the financial investigations are conducted in respect of means acquired illegally using funding from the budget of the European Union.

According to the authorities in **Baden-Württemberg**, when it comes to offences against property and economic crimes, including receiving stolen goods and money laundering and other offences linked directly to flows of money, financial investigations are often essential in order to prove that an offence has been committed. However, financial investigations often provide valuable lines of inquiry in the case of non-property crimes because, for example, conclusions can be drawn from flows of money, declarations regarding the purpose of use of individual payments, the account holder's personal data and account authorisations regarding the motive and distribution of ownership.

Generally speaking, in **Bavaria** financial investigations are in particular used to investigate criminal offences which promise large proceeds. Their added value is the groundwork done in respect of the confiscation of profits and recovery assistance. Consistently implementing regulations on the confiscation of profits ensures that as well as the offender risking a tough penalty, the high commercial risk involved makes criminal acts less attractive.

For some time now, particularly in prosecuting corruption cases at international level, criminal justice in Bavaria has been focusing on the possibility of imposing a fine against legal persons and associations of persons according to Section 30 of the Regulatory Offences Act. This could be seen as an alternative mechanism for the criminal liability of legal persons. This increases the financial risk for firms which attempt to obtain contracts by means of bribes or consciously abstain from introducing compliance programmes.

As well as investigating motives and supporting case processing, in **Hamburg** the goal of financial investigations is primarily to deprive the perpetrator of the pecuniary advantages derived from the offence. In order to achieve this, it is the task of financial investigations to find the perpetrator's assets during the ongoing police investigations and to provisionally secure these.

From the fiscal authorities' perspective, asset recovery measures are (often) the only means of at least partially realising additional tax demands, as without the timely securing of assets the additional taxes will be lost. From the public prosecution offices' point of view, investigation proceedings instituted on the basis of reports of suspected money laundering above all benefit the early detection of larger-scale fraud cases and turnover tax evasion.

In **Hessen** in relation to cybercrime investigations (offences committed using or against modern ICTs, namely the Internet), a key problem the criminal prosecution authorities face is that the perpetrators often manage to hide their true identity on the Internet. However, such technical possibilities reach their limits as soon as the perpetrators attempt to realise the proceeds of their criminal activities, or are forced to carry out financial transactions in order to commit the offence.

In **Lower Saxony** financial investigations are considered imperative in relevant cases in order, firstly, to provide evidence that an offence has been committed and, secondly, to recover the incriminated proceeds. The benefit of financial investigations is the possibility to take away from perpetrators what they have acquired on account of committing the offence. It is often the financial investigations which reveal what the perpetrators used the proceeds of the crime for. At best, the proceeds of the crime can thus be traced and taken away from the perpetrators, sometimes to the benefit of the parties injured by the offences, sometimes to benefit the State.

According to the authorities in **North-Rhine Westphalia**, financial investigations always prove effective and efficient wherever the type of offence or the perpetrators' modus operandi leaves a

'paper trail' (for example, payment transactions via bank accounts, company documents, all forms of correspondence, electronic data such as emails, etc). Where there are no such lines of inquiry, or they are practically inaccessible to the investigating authorities, financial investigations generally come to nothing. For example, in the field of trafficking in human beings it has been shown that payment transactions are often made in the smuggled people's country of origin and only in the form of cash payments. In such cases there are most often no starting points on which to base financial investigations.

In general, the role of financial investigations in other areas of crime can be significant. In corruption proceedings, in proceedings dealing with price fixing and cartel agreements, or in the case of larger-scale criminal tax proceedings (VAT carousel fraud, organised turnover tax evasion in the building trade), the results of financial investigations often have an equally important role to play both for asset recovery and in supplying evidence. Specifically in the field of corruption crimes, financial investigations can also have general and specific preventive effects. It is possible to enforce wide-ranging recovery measures against the firms which benefited from corruption that can have a harder impact than possible arrests would.

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

Financial investigations into the proceeds of crime can also be carried out after the criminal investigations proper have been completed, in order to locate items or assets and to provisionally secure those for which the conditions for forfeiture or confiscation are met. After the accused's conviction, financial investigations are no longer possible since they serve to guarantee the possibility of enforcing an order for forfeiture and confiscation in the judgment. Once the accused is convicted, this is no longer relevant.

There is, however, a possibility of instituting subsequent proceedings pursuant to Sections 442 and 439 of the Code of Criminal Procedure. If forfeiture is ordered and injured parties submit subsequent claims after the decision becomes final, and demand satisfaction by presenting enforcement titles against the convicted person, this can be dealt with in subsequent proceedings within a period of two years after the criminal judgment becomes final.

In addition, the forfeiture or confiscation can be ordered in separate proceedings according to Section 76a of the Criminal Code if acts are dispensed with before charges are brought, or

individual acts are not dispensed with until after charges are brought. The same applies where criminal proceedings cannot be carried out against a perpetrator on factual or legal grounds. These provisions also apply where the confiscation or forfeiture is ordered against a third party and in cases of recovery assistance.<sup>1</sup>

Finally, according to Section 443 of the Code of Criminal Procedure, property seizure is also possible, meaning that an accused's entire domestic assets or individual items of property can be secured by seizure. The precondition for property seizure is that public charges have been brought or that an arrest warrant has been issued on the basis of an offence listed in Section 443 (1), number 1 to 4, of the Code of Criminal Procedure. According to the relevant legislation, the seizure also covers assets subsequently acquired by the accused, for example by way of an inheritance. As a general rule, property seizure is ordered by the judge. In the event of urgent circumstances, the public prosecution office can make a provisional order for seizure. However, it becomes ineffective if not confirmed by a judge within three days.<sup>2</sup>

The above applies analogously to the **Customs Investigation Service**. Where the pecuniary gains from tax offences cannot be secured (by confiscating the equivalent value), the financial investigation authorities responsible for the enforcement of claims for money will conduct further investigations, even if the criminal investigations have been completed and/or after the conviction. Intelligence regarding the proceeds of crime or financial aspects of offences is also used to advantage in that it may possibly lead to investigations on account of the suspicion of money laundering. This applies in particular if a third party not affected by the judicial proceedings is responsible for covering up proceeds from the offence for someone who has been convicted.

The financial authorities are bound by law to immediately inform the competent criminal prosecution authorities and to copy the BKA (FIU) if there are facts from which it can be concluded that a money laundering offence or the financing of terrorism has been committed or was or is attempted. Such notification must also be made to the criminal prosecution authorities after the criminal tax proceedings have been completed if such facts are only determined after the investigations are completed.

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<sup>1</sup> Section 111i(8) of the Code of Criminal Procedure

<sup>2</sup> Section 443(2), first and second sentence, of the Code of Criminal Procedure



### 3.2.4. *Special legal powers or tools available to investigate the financial aspects of crime*<sup>1</sup>

In addition to what has been described above, the provisions on forfeiture set out in Sections 73 et seq. of the Criminal Code and Section 29a of the Regulatory Offences Act provide the criminal law basis for financial investigations aimed at tracing the proceeds of criminal activities. Accordingly, *all assets which a perpetrator, an accomplice, or a third party derives for or from the activity are subject to forfeiture, unless the injured party has a claim thereto.*

Investigations are carried out in respect of the court's judgment both regarding the extent and whereabouts of assets derived from or for an act and the perpetrator's financial circumstances. In order to enable an order for forfeiture to be effectively implemented, or to give the injured party access to the perpetrator's assets, the Code of Criminal Procedure provides for the possibility of objects being provisionally secured.<sup>2</sup>

The provision set out in Section 111b (4) of the Code of Criminal Procedure can be regarded as a special power in this regard. This particular provision ensures that the stipulations set out in Sections 102 to 110 of the Code of Criminal Procedure regarding searches to locate evidence can also be applied to objects forfeited or confiscated, so that searches can be carried out of the suspect's and other person's premises for the purpose of locating and securing such objects and assets.

In **Bavaria** the public prosecution offices by default send an enquiry to the BaFin when investigating criminal offences with a financial background. Such enquiries can, for example, relate to how many accounts suspects hold with which banks in Germany. Since Germany does not apply the principle of banking secrecy, investigators can then approach the banks and request to be given account documentation covering the period in which it is assumed the offence occurred. According to the Act on the Detection of Proceeds from Serious Crimes, banks and financial service providers are, furthermore, obligated to report suspected money laundering activities.

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<sup>1</sup> For further information on investigatory powers, see 3.2.1. and 3.2.3.

<sup>2</sup> Section 111b et seq. of the Code of Criminal Procedure

The customs officers in Bavaria involved in monitoring cross-border money transactions may secure cash and impound it in order to establish its origin and purpose. State institutions render wide-ranging administrative assistance unless tax secrecy or social privacy is affected.

Nevertheless, even the principle of tax secrecy and social privacy does not prevent the public prosecution authorities from conducting investigations where there is a suspicion that an offence has been committed.

### 3.2.5. *Involvement of private experts in the investigations*

According to Sections 72 et seq. of the Code of Criminal Procedure, public prosecution offices may involve private experts if they lack the expertise required, for example, to analyse account documentation or other information concerning financial transactions.

Many departments specialising in financial investigations in the **police** force have experts who have undergone commercial/accounting training. These commercial/accounting experts are used in complex financial investigations in all fields of crime, but particularly when investigating economic crimes. They primarily do so by examining available accounting and balance sheets.

It is also possible for expert reports to be rendered and experts to be commissioned on behalf of the **public prosecution office** for financial investigations. The public prosecution office or the court is responsible for commissioning the expert. The judicial authorities cover the fees arising. The expert report is introduced into the criminal proceedings by hearing the expert as a witness.

It is in principle possible to include private experts in criminal (tax) investigation proceedings carried out by the **Customs Investigation Service**. The condition is that the expert is knowledgeable in a field in which the Customs Investigation Service has no expertise. In criminal tax proceedings experts must be referred to the provisions on maintaining tax secrecy. In practice, it is mainly experts from other authorities (the police, *Land* fiscal administration) or the customs authority's auditing service which render administrative assistance in this way.

### 3.2.6. *Financial intelligence*

#### 3.2.6.1. Financial investigations in the intelligence phase<sup>1</sup>

##### **Financial Intelligence Unit (FIU)**

As described in 2.1.1.1., due to the fact that policing and law enforcement are the responsibility of the *Länder*, in practical terms STRs are sent by the reporting entities to the relevant *Land* criminal police office, which forwards them to the public prosecution office. A copy of the STR is at the same time provided to the FIU which cross-checks, analyses and stores the information contained in it. Additionally, all STRs are sent to the tax authorities for information, as defined by the Money Laundering Act, and if the information indicates that the case is relevant to tax authorities, the case information is also provided.

During its visit to Germany, the expert team conducting the evaluation discussed the points raised in the FATF Evaluation<sup>2</sup> as regards the role of the FIU in the field of financial intelligence. As described above, the FIU, the national centre for receiving STRs, only receives a copy of the STR whilst the *Land* criminal police office and public prosecution office drive the case work. The structure of the reporting system is due to the fact that *Länder* are responsible for police work and law enforcement. The analysis of the STRs is split between the *Länder* criminal police offices and the FIU, the latter being, according to the FATF evaluators, responsible only for “limited case-analysis”. It should be noted, however, that Recommendation 26 concerning the FIU was upgraded in the FATF-Plenary in Abu Dhabi in February 2010 to “Largely Compliant” (LC).

The FIU cross-checks the STR information with its STR database and with all the other BKA databases, and can request and exchange information with foreign FIUs. Information from these searches can be submitted to the *Land* criminal police office that initially received the STR, but it is unclear to what extent the FIU proactively provides intelligence on the STRs to investigative bodies.<sup>3</sup>

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<sup>1</sup> For a general description, see also 3.2.1.

<sup>2</sup> Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, FATF, February 2010.

<sup>3</sup> Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, FATF, February 2010.

During the discussions the German authorities questioned the requirement of a single central agency being responsible for the STRs. According to them, the only objective should be to guarantee that information is located centrally; how the FIU itself is structured should not be relevant. Centralisation also makes sense in relation to international cooperation, and the FIU is the sole focal point for this purpose. If there are no gaps in information or international contacts, according to the German authorities the model fulfils the set requirements.

Furthermore, as regards the analysis done by the FIU, the information on the STRs is broken down, stored in a database, and used for cross-checks and trend analysis. The database is regularly updated by adding new data fields based on latest developments in modus operandi.

### **Customs Investigation Service**

As regards the Customs Investigation Service, within their area of competence the customs investigation offices must obtain, analyse and inform the Customs Criminological Office and other customs offices of intelligence affecting them. Performing this task can also mean that financial investigations are carried out already in the intelligence gathering phase. Financial investigations are chiefly carried out in the intelligence phase as regards clearing measures on the basis of cash controls, but they are also conducted in the intelligence gathering phase on account of requests/notifications from other, including foreign, authorities.

#### **3.2.6.2. Financial intelligence information as a starting point for criminal and financial investigation<sup>1</sup>**

Where this intelligence can be used for criminal police purposes, it can also be used to institute investigation proceedings.

In **Lower Saxony** financial transactions which have been detected can in principle provide the occasion to institute criminal investigations. After the concrete circumstances of each individual case have been examined, two possible options are the institution of investigation proceedings on account of the suspicion of money laundering, or proceedings on account of tax offences. The public prosecution offices cooperate closely within the structures established in Lower Saxony with the customs and fiscal administration and use their intelligence from offences against tax rules, insofar as this leads to an initial suspicion of an offence.

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<sup>1</sup> For a general description, please see also 3.2.1.

3.2.6.3. Cooperation with and collection of financial intelligence from other authorities in the intelligence phase<sup>1</sup>

The **Customs Investigation Service** authorities cooperate on a case-by-case basis with other, including foreign, (criminal prosecution) authorities even before criminal investigations are instituted, and thereby may also obtain financial information gathered during the intelligence phase. Generally speaking, cooperation is on a case-by-case basis. Where facts are established on account of cash controls, however, internal rules provide that the Customs Investigation Service must be involved by the relevant departments in the general customs administration. Cooperation between the police and the customs at both federal and *Länder* level during the intelligence phase is institutionalised within the context of the Joint Financial Investigation Groups.

**3.3. Cooperation with Europol and Eurojust**

*3.3.1. Cooperation with Europol*

3.3.1.1. Past experiences of Europol support

Europol is an important cooperation partner of police departments specialising in the field of financial investigations, when it comes to the compiling of analyses, situation reports and the carrying out of important sub-projects in relation to specific phenomena in the field of financial crime. Cooperation in particular also occurs on the basis of AWF SUSTRANS support. Furthermore, Europol has an important role to play in regard to the proper functioning of the informal network CARIN, since it acts as its Secretariat. Europol's initiative to introduce SIENA for information sharing among AROs is welcomed by Germany

In relation to the fight against the financing of terrorism, cooperation with Europol includes the compiling of the Annual Report on the Financing of Terrorism. All Member States are requested to send experience relating to investigations into the financing of terrorism to that end. In addition, the BKA takes part in Europol workshops on this topic.

In the context of the agreement between the European Union and the US on the preparation of payment transaction data (SWIFT data) and their transmission from the EU to the US for the purposes of the tracing of funding to finance terrorism (TFTP), one of Europol's Operational

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<sup>1</sup> For a general description, cf. 3.1 and 3.2.1 regarding the police and public prosecution.

Department Units was named as the competent agency. The BKA is involved in this context as Germany's central agency for police communication.

The topic of Germany's participation in Europol AWFs was also discussed during the visit of the expert team. Germany contributes very actively to the Europol Information System (EIS) but its participation in the AWFs in the area of financial crime is significantly lower. Furthermore, some general issues concerning proactive intelligence-sharing with Europol were emphasised by the experts. For example, it was concluded that in certain fraud cases a strict interpretation of data protection provisions and tax secrecy prevent intelligence from being shared with and via Europol.

#### 3.3.1.2. Expectations regarding Europol support for financial investigations

As regards the future use of the SIENA information system by the AROs, Europol should be incorporated into the information sharing practices of the involved national bodies. This will increase the quality of the data which are relevant for analysis purposes and increase the quality of the results of these analyses.

Europol should continue supporting the Member States in the collation, analysis and transmission of intelligence and new methods in the field of combating money laundering, asset recovery and the financing of terrorism; the coordination of transnational measures to trace/freeze assets; and the stepping up of the exchange of experience between national central agencies in the combating of the financing of terrorism (for example, meetings of experts at assistant desk officer level).

#### 3.3.2. *Cooperation with Eurojust*

##### 3.3.2.1. Past experiences of Eurojust support

In some investigation proceedings led by the BKA, Eurojust successfully held a coordination meeting involving the police and judicial authorities (public prosecution office) from six European States and the US to prepare and coordinate simultaneous operative measures. In other investigation proceedings in 2009, it was responsible for speeding up information sharing, the coordination of further investigation measures and the processing of requests for mutual assistance with another Member State.

No experience has been gained concerning the setting up of joint investigation teams in the field of financial investigations. In general the feedback from individual *Länder* concerning Eurojust support was positive. For example, in **Baden-Württemberg** experience with Eurojust has been

extremely positive in relation to its support for the setting up of Joint Investigation Teams (JIT) and mutual assistance measures.

### 3.3.2.2. Expectations regarding Eurojust support for financial investigations

As regards the carrying out of transnational asset recovery in complex proceedings with several target countries in the EU, the expectation is that Eurojust will coordinate and thus speed up the implementation of corresponding requests for mutual assistance. In addition, Eurojust could get involved by contributing assessments and experience to European and national legislation and legal practice (statements, annual reports).

The individual *Länder* would like Eurojust support to continue to be as target-oriented as it has thus far been. For example, the police in **Hessen** expect more JITs to be set up in the future in order thereby to strengthen information sharing in the field of financial investigations. So far JITs are regarded as a relatively unknown instrument.

There is a general expectation that Eurojust will simplify the tracing of assets abroad, will guarantee a smooth running of transnational measures to secure objects/attachment measures, and speed up and coordinate the concomitant procedures.

## 3.4. Conclusions

- In general financial investigations seem to be organised in an efficient manner. The public prosecution office advises and decides, while the police take care of the practical work. The police ARO traces assets in practice and the judicial ARO gives advice at the judicial level. Financial investigations are launched at the early stage of investigations and all mechanisms to make these activities efficient seem to be in place. However, there are approximately 600 organised crime investigations per year in Germany and only in fewer than 30 per cent of cases does both a financial investigation and a seizure of assets take place. In 65-70 per cent of these cases a financial investigation takes place without a seizure. Even though this might be a good result from an international perspective, there is room for further improvement. The bi-annual critical stocktaking and specific analysis on organised crime cases between 2006 and 2008 have provided a good basis for the measures that are currently being implemented. Nevertheless, other obstacles that prevent the seizing of assets as regards financial investigations should be identified on an on-going basis.

- The central database of prosecutions (*Staatsanwaltliches Verfahrensregister*, Section 492 of the Code of Criminal Procedure), in which all the prosecuting authorities enter their on-going prosecutions, provides an effective mechanism for avoiding competing prosecutions. If there are overlapping prosecutions in different geographical areas, one lead prosecutor is designated. Such a central database is obviously useful not only in the context of financial investigations, but in prosecutions for all kinds of offences. However, in the context of financial investigations this is likely to be especially useful since financial crime by its very nature is likely to be spread over various geographical regions and even cross borders.
- The BaFin is a very good tool and platform for both the public prosecution offices and law enforcement agencies to access bank data, so much so that it is regarded as a best practice that can serve as an example to other EU Member States and jurisdictions. There also seems to be a fairly large demand for this service as the experts were informed of over 100.000 requests directed to the BaFin annually. The fact that the databases are kept at the financial institutions ensures that these are continuously kept up-to-date. The real-time access allows the BaFin to check almost instantly whether a person has a bank account with a German financial institution, even if the backlog of demands made to the BaFin seems to imply that the execution of a request may take up to three weeks.
- Regarding the exchange of information with other Member States, the exchange through the BKA can again be cited as a good practice. The fact that the BKA, at the request of the law enforcement authority of another Member State, is able to make requests to the BaFin to find out whether a person has a bank account in Germany is an exemplary model of a smooth exchange of information within the EU. As the only condition which is apparently required is that there must be an ongoing criminal investigation in the requesting Member State, this type of cooperation obviously goes well beyond what is required under the Protocol of 8 October 2001 to the Mutual Assistance Convention of the European Union.
- As regards the FIU, in practice it receives a copy of the STRs that are sent from the reporting entities to the *Land* Criminal Police Offices and then forwarded to the prosecuting authorities for the criminal process. The federal FIU is not able to, for example, freeze assets on its own authority but the decision about freezing is made by the public prosecutor. However, as a



compensatory measure all suspicious transactions are not to be executed for two days<sup>1</sup>, which can provide the necessary time to obtain a preliminary decision of the public prosecutor.

- Furthermore, the FIU is perhaps not in an ideal position as regards the independence of its role<sup>2</sup> or the extent and scope of its activities<sup>3</sup>. Based on the information received during the evaluation mission, especially on the quality and scope of its statistical and analytical tasks and products, the FIU exploits the available data in the STRs as well as analyses trends in modus operandi and produces cross-analysis to identify data that is not yet provided by the reporting entities.

However, according to the opinion of the expert team, the analysis capacity of the FIU could be further strengthened and its role in this activity made more proactive by providing analysis on its own initiative to the *Länder* concerning significant cases. It is unclear to the expert team to what extent the FIU performs this task.

- Apart from the number of STRs received by the FIU being comparatively low, the number of subsequent financial crime cases dealt within the BKA is also limited, even though for example the total amount of money laundering cases dealt by the public prosecutor is relatively high in international comparison. According to the expert team, the fact that the FIU only receives a copy of the STRs, while the majority of cases stemming from STRs or other sources are being pursued in the *Länder*, explains to a large extent this low number of cases dealt with by the BKA. However, this situation may lead to some confusion over the ownership and use of the data contained in the STRs.
- In relation to data exchange, the BKA is using the EGMONT secure web and the FIU.NET for additional information requests from other FIUs. Even though it may be the most expedient and effective channel to receive this type of information, according to the experts this is neither the most purposeful use of this intelligence channel nor in line with its main purpose. When necessary, mutual legal assistance requests should be used instead.

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<sup>1</sup> Section 11 (1) of the Money Laundering Act

<sup>2</sup> FIU in Germany is by definition a “police FIU” located at the federal level as part of the Serious and Organised Crime Department (SO) of the BKA.

<sup>3</sup> Cf. Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, FATF, February 2010.

- The FIU at the BKA has extensive access to customs databases. It allows the police to access intelligence and information available to the customs authorities. The FIU also has access in some cases to information held by the tax authorities, provided that the tax secrecy is lifted in accordance with Section 30 of the Fiscal Code.
- As regards tax and specifically VAT fraud, the competent investigative authorities are the Tax Investigation Units (*Steuerfahndung*) of the local tax authorities, under the auspices of the Ministries of Finance. The Federal Ministry of Finance adheres to a relatively strict interpretation of the tax secrecy (Section 30 of the Fiscal Code, *Steuergeheimnis*) provisions: whilst the Fiscal Code allows the tax authorities to pass on information covered by tax secrecy if there is a compelling public interest, for example in relation to substantially disrupting economic order, data exchange with or through Europol as regards VAT fraud has not been allowed due to tax secrecy.
- In general, a relatively strict interpretation of data protection and secrecy laws can be seen in some cases to hamper international data exchange and proactive intelligence sharing towards the EU platforms such as Europol AWFs. Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union could provide a sufficient legal base for intelligence exchange without the need to resort to mutual legal assistance, but Germany has not yet transposed the Framework Decision into national law. According to the Federal Ministry of the Interior, this is however expected by the end of 2011.
- The cooperation via Europol and the use made of products and services offered by Europol varies. Germany is a very active contributor to the Europol Information System (EIS) and is reasonably active in some AWFs. This, however, does not fully apply to AWFs on financial crime. Though a member of most of them, Germany should increase the level of pro-activeness, quality and content of its contributions.
- During the experts' visit, the prosecutors in one specific *Land* stated that they have excellent cooperation with Eurojust, and according to them they contact EJM contact points in bilateral and minor cases and Eurojust regarding multilateral cases. This may not, however, reflect the overall situation. Since it is not possible to evaluate the situation in all *Länder*, it is almost impossible to get a reliable picture of the procedures of mutual legal assistance in Germany. Furthermore, in the absence of statistics concerning mutual legal assistance procedures it is impossible to say how well the system works in practice. In any case, the German authorities

visited seem to be very satisfied with Eurojust and the EJN. They have a clear picture of the distribution of tasks between these two actors, which is quite unique.

- The practical effect and extent of “plea bargaining”, or making deals or agreements in criminal cases that have ended with a conviction, is not totally clear. The experts were informed during their visit to the General Prosecutor’s Office that deals or agreements are used relatively often in economic crime and even in organised crime cases, but due to lack of statistics and more specific information on the different types of deals that can be struck, it is difficult to know to what extent these are used in practice.
- The experts were surprised that the German authorities reported no problems regarding mutual legal assistance procedures, despite some discussion concerning delays in the execution of mutual legal assistance, which might make prosecutors reluctant to issue them. The prosecutors who were visited during the evaluation mission did not consider this an issue. In practice this is the most common problem concerning mutual legal assistance in the EU, and it is thus surprising that this would not be at all relevant to Germany.

#### 4. FREEZING AND CONFISCATION

##### 4.1. Seizing and freezing order

###### 4.1.1. *At national level*

###### 4.1.1.1. General

Under German law “*Verfall*” (forfeiture) is understood to be the recovery of that which the perpetrator acquired through a criminal offence or for its commission. “*Einziehung*” (confiscation), by contrast, refers to objects which were used or designed to be used by a criminal offence, or in its commission or preparation. In the following text, whenever there is a reference to 'confiscation', the text will address both forfeiture and confiscation.

According to the Criminal Code and supplementary criminal provisions, measures to secure objects by seizure can be enforced following all types of illegal acts or criminal offences in which there is a mere suspicion that the statutory conditions for the ordering of forfeiture or confiscation are met.

Only if the objects/assets acquired, the means with which the act was committed, the products of the act, objects related to the act or other assets of the perpetrator or debtor still exist at the point at which the judgment is handed down, can an order for confiscation or forfeiture in a judgment be given.<sup>1</sup>

The Code of Criminal Procedure provides at an early stage, namely during the investigation or preliminary proceedings, access to assets or other debtor's assets acquired by criminal means. The aim is thus to prevent the injured party's claims or an order for forfeiture or confiscation to be issued by the court from coming to nothing at a later stage, because access to the object or debtor's property is no longer possible.

#### 4.1.1.2. Legal basis<sup>2</sup>

Objects are as a matter of principle secured by means of seizure and attachment in rem. The measures to secure objects are carried out openly vis-à-vis the person concerned, as a result of which he/she will find out about them at the latest when the order or the enforcement of the seizure or the attachment in rem is made known. The procedural mechanism in respect of the securing of objects does, however, vary depending on the substantive basis for the claim. In addition to the means of legal redress listed below, the affected individual may file an immediate appeal (Sections 304 et seq. of the Code of Criminal Procedure) against the court's decision and can apply for a judicial decision against an order by a public prosecution office (Section 98(2) of the Code of Criminal Procedure for objects seized to be used as evidence, Section 111 e (2) Sentence 3 for objects seized to prepare final confiscation or forfeiture).

Measures to secure objects by seizure are revoked if and when the statutory conditions on which the order is based no longer apply, or if a court revokes these measures upon request or following an appeal from the person concerned. Provisional measures to secure objects by seizure are in principle without effect once the criminal judgment becomes final, unless the court orders in individual cases that their period of validity be extended.<sup>3</sup>

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<sup>1</sup> Sections 73 et seq. of the Criminal Code

<sup>2</sup> Sections 73 et seq. of the Criminal Code and 111b et seq. of the Code of Criminal Procedure

<sup>3</sup> For example to benefit the injured party according to Section 111i(3), first sentence, of the Code of Criminal Procedure.

4.1.1.3. Securing financial claims by means of seizure<sup>1</sup>

As regards a financial claim according to Sections 73(1) to (4), 73d(1) of the Criminal Code<sup>2</sup> and according to Sections 74 and 74a of the Criminal Code<sup>3</sup>, the assets are secured by means of seizure according to Sections 111b(1) and 111c of the Code of Criminal Procedure.

**Conditions and duration<sup>4</sup>**

Objects may be secured by seizure where there are grounds to assume that the conditions for their forfeiture (Section 73 et seq. of the Criminal Code) or confiscation (Section 74 et seq. of the Criminal Code) have been fulfilled. Securing by seizure constitutes a provisional enforcement title which permits access to the incriminated or tainted assets. No recourse to objects may be granted without an enforcement title.

A provisional enforcement title in the form of securing by seizure is already possible where there is a mere suspicion that the conditions for forfeiture or confiscation are fulfilled. Where there are no urgent reasons, the order must be revoked at the latest after six months.

Where certain facts substantiate the suspicion, and the six-month time limit is not sufficient on account of the particular difficulty or the particular extent of the investigations, or for another important reason, the measure may be extended if the grounds referred to justify the continuation. Where there are no urgent reasons, the measure may not continue beyond 12 months.

**Competence to order seizure<sup>5</sup>**

Only the (examining) judge, and in urgent circumstances the public prosecution office, is authorised

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<sup>1</sup> Section 111b(1) of the Code of Criminal Procedure

<sup>2</sup> Objects forfeited, including rights, claims, benefits and surrogates which the perpetrator, accomplice or third party acquired for or from illegal acts, namely incriminating assets.

<sup>3</sup> Objects confiscated, such as means used to commit the act, the products of an act and objects related to the act belonging or due to the perpetrator or which a third party has granted or has obtained by transfer in a culpable manner, namely tainted assets.

<sup>4</sup> Section 111b of the Code of Criminal Procedure

<sup>5</sup> Sections 111b and 111e of the Code of Criminal Procedure and Section 152 of the Courts Constitution Act

to order seizure. The investigative personnel of the public prosecution office, that is including the police, are also authorised to order seizure of moveable assets in urgent circumstances. The court's or the public prosecution office's or its investigative personnel's order for seizure of moveable assets represents the provisional enforcement title needed to be able to access the objects.

The decision or the order must list each specific object to be secured by seizure and must designate it in an identifiable manner. Where the public prosecution office has ordered the seizure, it will within one week apply for the judicial confirmation of the order. This does not apply in the case of the order for seizure of a moveable asset. The person concerned may apply for a judicial decision at any time.

### **Institution and implementation<sup>1</sup>**

The competence to institute and implement the enforcement measure provides for the following categories:

- Moveable property<sup>2</sup>
- Real property and rights equivalent to property<sup>3</sup>
- Claims and other property rights<sup>4</sup>
- Registered ships, ships under construction and aircraft<sup>5</sup>

### **Enforcement and effect of the enforced seizure<sup>6</sup>**

Enforcement of the provisional enforcement title for seizure varies depending on the type of object concerned. For example, as regards moveable property, enforcement is effected as soon as the property has been impounded, sealed or labelled in another manner. Enforcement in real property is effected by means of the entry of a notice of seizure in the *Land* register.

Following seizure, the accused may also no longer dispose of the object. He may not sell, give away or encumber by another means (pledge) the secured object or asset. Seized moveable property may be handed back to the person concerned against the immediate deposit of the value, or may be

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<sup>1</sup> Sections 111b(1), 111e(1) and 111f of the Code of Criminal Procedure

<sup>2</sup> Sections 111e(1) and 111f(1) of the Code of Criminal Procedure

<sup>3</sup> Section 111f(2) of the Code of Criminal Procedure

<sup>4</sup> Sections 111c(3) and 111f(1) of the Code of Criminal Procedure

<sup>5</sup> Section 111f(1) and (2) of the Code of Criminal Procedure

<sup>6</sup> Section 111c of the Code of Criminal Procedure

surrendered under the proviso of revocation at any time for provisional further use up until the proceedings have been concluded. The deposited amount takes the place of the object. The provisional surrender may be made dependent on the fact that the person concerned pays a security or fulfils certain conditions.

#### **Court order for forfeiture<sup>1</sup>**

Where an object is declared forfeit by final judgment, an order for securing by seizure becomes invalid because it is superseded by the final judgment. Ownership of the object transfers to the State by operation of law, without further enforcement acts.

Where the court refrains from ordering seizure in the judgment, it must revoke the measures to secure the object in its judgment. The measure to secure the object does not lose its effectiveness until the judgment becomes final, even if the revocation is not affected.

#### 4.1.1.4. Recovery assistance

##### **Area of application and effect<sup>2</sup>**

The relevant part of the Criminal Code applies in favour of the aggrieved party, insofar as forfeiture cannot be ordered on account of claims by aggrieved parties.<sup>3</sup> Recovery assistance is secured by means of seizure insofar as the object to which the aggrieved party has a direct claim is still with the perpetrator or accomplices or debtors individually or as surrogates.

The decision or order for seizure is affected to secure the claims of the parties aggrieved by the act. However, technically the creditor is not the aggrieved party, but the State. For example, when enforcing a decision for seizure in real property which has been transferred from the aggrieved party to the perpetrator by fraudulent means, the request for entry of a notice of seizure is entered with the *Land* Registry in favour of the *Land* or Federation, and not in favour of the aggrieved party.

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<sup>1</sup> Sections 73e and 74e of the Criminal Code

<sup>2</sup> Sections 111b and 111g of the Code of Criminal Procedure

<sup>3</sup> Section 73(1), second sentence, of the Criminal Code

**Aggrieved party**

The person who is known to be the aggrieved party must be notified without delay of the order for enforcement of seizure or attachment.<sup>1</sup> The enforced decision or order for seizure has no direct consequences for the aggrieved party since the measures for the securing of objects by seizure are only effective between the debtor (namely the person affected by the measure) and the State. Moveable property which has been seized accordingly is to be surrendered to the aggrieved party if his/her identity is known.<sup>2</sup>

For the rest, aggrieved parties must become active in order to be able to access the frozen assets. To that end, at least provisionally enforceable titles, for instance temporary injunctions or attachments in rem, must be affected against the debtor by the aggrieved party. These titles can then be used to gain access to the frozen assets by way of execution.

Where the aggrieved party affects execution in seized claims or other assets, the approval of that court which is competent for the seizure or attachment, is required. The aggrieved party must obtain a title granting access to the objects secured by the criminal prosecution authorities. However, this title often does not contain the information on whether the claim results from the act on account of which the seizure occurred.<sup>3</sup>

The admission procedure serves the purpose of ascertaining whether the enforcement creditor is a member of the privileged circle of persons who were aggrieved by the criminal offence. Where approval is given for execution by the injured party, the State, the priority lien creditor due to the seizure, comes to rank lower than the aggrieved party as regards lien.<sup>4</sup> However, the rank order of aggrieved parties is dictated exclusively by the points in time at which their execution liens arose.<sup>5</sup>

After the court has given its approval, the object is available to the aggrieved party for execution. The seizure by the State ceases to be effective vis-à-vis the aggrieved party.

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<sup>1</sup> Section 111e of the Code of Criminal Procedure

<sup>2</sup> Section 111k of the Code of Criminal Procedure

<sup>3</sup> Section 111g of the Code of Criminal Procedure

<sup>4</sup> Section 111g of the Code of Criminal Procedure

<sup>5</sup> Section 111g of the Code of Criminal Procedure and Section 804 (3) of the Code of Civil Procedure



If the court did not order forfeiture merely on account of the fact that claims of an aggrieved party (Section 73 (1), second sentence, of the Criminal Code) posed an obstacle thereto, the court may state this in its judgment. In such cases it must describe what has been acquired. At the same time, the court maintains the seizure of what has been acquired by order for three years.<sup>1</sup>

Where the judgment does not become final until three years later, the period ends when the judgment becomes final. If the aggrieved party has not accessed that which was acquired before the expiry of these periods, the State acquires the described assets in line with Section 73e (1) of the Criminal Code. The court determines by order whether and to what extent the State acquires rights.<sup>2</sup>

#### 4.1.1.5. Securing of material claims by means of attachment in rem<sup>3</sup>

The material claims under “forfeiture of equivalent value” (Sections 73 et seq. of the Code of Criminal Procedure) and “confiscation of equivalent value” (Section 74c of the Code of Criminal Procedure) are secured by means of attachment in rem. The legal provisions permit access to the other legal assets of the person affected by the order. When the judgment becomes final, the State is entitled to payment in money against the person concerned. The regulations on recovery assistance also apply to attachment in rem.

#### **Conditions and duration<sup>4</sup>**

Objects can be secured by means of attachment in rem during investigation and preliminary proceedings, if there are grounds to assume that the conditions have been fulfilled for forfeiture of an equivalent value or for confiscation of an equivalent value. Attachment in rem is the provisional enforcement title which grants access to other assets of the perpetrator. As in the case of seizure, a mere suspicion is sufficient to meet the conditions for forfeiture or confiscation of an equivalent value.

The attachment in rem, like seizure, must be revoked after six months if there are by then no urgent reasons to assume that the conditions for confiscation or forfeiture are fulfilled. The point in time at which the order was issued is decisive when calculating this period.

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<sup>1</sup> Section 111i of the Code of Criminal Procedure

<sup>2</sup> Section 111i of the Code of Criminal Procedure

<sup>3</sup> Section 111b(2) of the Code of Criminal Procedure

<sup>4</sup> Section 111b of the Code of Criminal Procedure

If this period is not sufficient on account of the particular difficulty, or the particular extent of the investigations, or for other important reasons, the court may extend the measure by six months upon application by the public prosecution office. The measure may not be maintained beyond 12 months if there are no urgent reasons.

**Competence to order attachment in rem<sup>1</sup>**

Only the (examining) judge is competent to order attachment in rem; in the event of urgent circumstances the public prosecution office is also authorised to order attachment in rem. The public prosecution office's investigative personnel are not competent in this respect. If the public prosecution office has ordered the attachment, it applies for confirmation of the order by a court within one week. The person concerned may apply for a court decision at any time.

The attachment in rem as well as confiscation or forfeiture of the equivalent value may also be ordered to secure a fine and the costs of the proceeding which will presumably arise. To that end the attachment in rem may only be ordered when the judgment is issued by the trial court.

**Required content of the attachment in rem<sup>2</sup>**

Each attachment in rem must contain a reason for the attachment, the amount and description of the claim (from the reason), and a right to discharge the debt.

One reason for an attachment can be the fear that without imposing attachment in rem, the enforcement at a later date of the judgment, in which the confiscation or forfeiture of an equivalent value is ordered, will be thwarted or made very difficult. The request for attachment must set out the basis for the material claim, the entitlement to attachment, and the amount of the claim.

Since attachment in rem by its very nature only serves to secure a later enforcement, it must also always contain the possibility of cancelling its enforcement. The order for attachment must determine an amount of money which, if deposited, will prevent the enforcement of the attachment, and the debtor will be entitled to apply for the enforced attachment to be revoked.

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<sup>1</sup> Sections 111d and 111e of the Code of Criminal Procedure

<sup>2</sup> Sections 111b and 111d of the Code of Criminal Procedure, and Sections 917, 920, 923, and 934 of the Code of Civil Procedure

### **Institution and implementation<sup>1</sup>**

The possibility to institute and carry out the enforcement measures on the basis of the provisional enforcement title applies for the following categories:

- Moveable property<sup>2</sup>
- Real property and rights equivalent to property<sup>3</sup>
- Claims, ships and ships under construction<sup>4</sup>

Competences vary slightly according to category. Under the latter two categories the public prosecutor or the court has competence to institute and carry out the enforcement measures, whilst under the first category this competence is allocated solely to the public prosecutor.

### **Enforcement<sup>5</sup>**

When it comes to the execution of attachment in rem, a distinction must also be drawn between the kinds of assets in which enforcement is affected. For example, as regards moveable property, the attachment must be affected according to the provisions on enforcement on account of monetary claims in the moveable assets. In relation to real property, enforcement is effected by means of the entry of a debt-securing mortgage in the real property register in question.

### **Forfeiture of the equivalent value in the judgment**

When the criminal judgment on account of forfeiture of the equivalent value becomes final, the State is entitled to payment of the determined amount from the debtor. This right must be enforced once the decision becomes final. This can be directed at the assets secured by means of the attachment in rem. If the criminal judgment does not include the order to forfeit the equivalent value, the attachment in rem does not end, unless revoked, until the judgment becomes final.

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<sup>1</sup> Sections 111b(2), 111e(1) and 111f of the Code of Criminal Procedure

<sup>2</sup> Section 111f of the Code of Criminal Procedure

<sup>3</sup> Sections 111d and 111f of the Code of Criminal Procedure

<sup>4</sup> Section 111f of the Code of Criminal Procedure

<sup>5</sup> Sections 111d and 111f of the Code of Criminal Procedure. See also Sections 804, 809, 829 - 830, 857, 928, and 930 - 932 of the Code of Civil Procedure, and Sections 135 and 136 of the Civil Code.

4.1.1.6. 'Administration' of the assets whilst they are frozen<sup>1</sup>

The administration of frozen assets is the responsibility of the public prosecution office. The public prosecution office must deposit frozen assets such as jewellery and other precious objects and cash with the office for court deposits at the local court. In addition, assets which were secured by seizure or which were attached may be sold before the judgment becomes final, if there is a risk of their deterioration, or a substantial reduction in their value, or if their preservation, care or maintenance would result in disproportionate costs or difficulties.

In the cases referred to in Section 111i(2) of the Code of Criminal Procedure, assets which were attached can be sold after the judgment becomes final, if this appears expedient. The proceeds are then substituted for the object.

During preparatory proceedings and after the judgment becomes final, an emergency sale will be ordered by the public prosecution office. This order is transferred to the senior judicial officer. The public prosecution office's investigative personnel are to be authorised for this, if there is a risk of the object's deterioration before the public prosecution office's decision can be taken. The accused, the owner and others with rights in the object are to be heard before the order is made. They are to be informed of the order and the time and place of the sale, if this is deemed feasible.

The emergency sale is carried out according to the provisions set out in the Code of Civil Procedure concerning the realisation of objects seized. In the case referred to in Section 111l(2) of the Code of Criminal Procedure, the public prosecution office takes the place of the enforcing court. The person concerned may apply for a court decision against orders by the public prosecution office or its investigative personnel. The court, or in urgent circumstances the presiding judge, may order suspension of the sale.

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<sup>1</sup> Sections 111d, 111i, and 111l of the Code of Criminal Procedure. See also specific provisions of the Courts Constitution Act, Court Deposit Regulations, and the Act on *Rechtspfleger*.

4.1.1.7. Involvement of the ARO in this procedure<sup>1</sup>

Depending on the stage of the proceedings (preliminary proceedings, interim proceedings, and trial) and the object seized, the 'administration' of the assets is the responsibility of either the public prosecution office (functionally, the senior judicial officer), the public prosecution office's investigative personnel or the court. The judicial ARO is not involved in this procedure.

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

The necessary legislative amendments were made in the *Act on International Legal Assistance in Criminal Matters* on the basis of the *Act to Implement Council Framework Decision of 22 July 2003 on the enforcement of decisions concerning the securing of assets or evidence in the European Union of 6 June 2008*<sup>2</sup>. Sections 94 to 98 of the Act on International Legal Assistance in Criminal Matters are of particular importance in this regard. They affect the actual implementation of Framework Decision 2003/577/JHA. It must be noted that these rules only apply to incoming requests.

It is intended that regulations be included for outgoing requests, in particular on channels and the form to be used, in the Guidelines on Relations with Foreign Countries in Criminal Law Matters, which are binding on the public prosecution offices.

Germany does not currently keep statistics on the extent of mutual assistance in this field, and this applies also to those *Länder* which have provided information on the use of mutual legal assistance. As a general evaluation, the added value of Framework Decision 2003/577/JHA is that the freezing order does not need to be translated. When considering the practical or legislative steps to further increase the practical efficiency of the Framework Decision, according to the German authorities it would be worth considering simplifying the certificate (Article 9). A standardised handout with practical information on filling out the certificate would also be beneficial. Furthermore, before further legislative steps are taken, a careful evaluation of the existing situation should be carried out.

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<sup>1</sup> Section 152 of the Courts Constitution Act and 111 of the Code of Criminal Procedure

<sup>2</sup> *Gesetz zur Umsetzung des Rahmenbeschlusses des Rates vom 22. Juli 2003 über die Vollstreckung von Entscheidungen über die Sicherstellung von Vermögensgegenständen oder Beweismitteln in der Europäischen Union*, 6 June 2008

4.1.2.1. Experience when acting as an issuing State

**Competent authorities**

Under German law, and also as regards Framework Decision 2003/577/JHA, the original competence for the authorisation of requests for mutual assistance received from abroad, and the filing of requests for mutual assistance to other States, lies with the Federal Ministry of Justice. It takes a decision in consultation with the Federal Foreign Office. The Federal Ministry of Justice has competence to transfer this competence to ministries in the individual *Länder* on the basis of a prorogation of jurisdiction; in turn, the ministries in the *Länder* have transferred this competence to the public prosecution offices and the courts.

**Formalities and procedures when taking evidence**

There are no general provisions concerning formalities and procedures. According to the authorities of **North Rhine-Westphalia**, as far as hearings are occasioned as part of the enforcement of decisions concerning the freezing of assets or evidence, the enforcing State is sent copies of the relevant statutory provisions along with translations in the enforcing State's language, together with the request that the persons to be heard be instructed accordingly. This is standard practice in the case of requests for hearings in mutual legal assistance. Thus far there have been no reported problems regarding compliance by the enforcing State.

**Circulation of a freezing order**

As regards the main transmission option used in respect of the circulation of a freezing order, the Federal Office of Justice, the judicial ARO, has not learned of any transmission via the EJN or Eurojust. This would be a theoretical possibility, when it comes to the choice of transmission channel (for example transmission via diplomatic channels), but it has not been used thus far.

**Unknown recipient authority**

In cases of unknown recipient, the *Länder* use the EJN Atlas to locate the recipient authority, or in some cases utilise *Ortsbücher* (directories of German towns and cities detailing the competent courts and public prosecution offices), Eurojust and liaison judges in France for this purpose. No significant problems have arisen.

**Treatment of the evidence or property which has been frozen in the executing State**

Only little experience has been gained thus far concerning possible difficulties regarding the subsequent treatment of the evidence or property which has been frozen in the executing State. In **North Rhine-Westphalia**, insofar as the public prosecution offices have noticed delays in individual cases, these are essentially due to the possible legal redress available to the person concerned by the measure in the executing State. Framework Decision 2006/783/JHA will thus only partially solve any difficulties, since account must also be taken of the procedural rights of the person concerned in the executing State.

4.1.2.2. Experience when acting as an executing State

**Mechanics of receipt**

Certificates will be recognised in all official languages from States which in turn recognise certificates issued in German by German judicial authorities. Germany has not introduced a procedure in respect of the certification/verification of incoming freezing orders. The *Länder* have not reported any special procedures in respect of certification and verification of incoming freezing orders.

**Competence to decide on execution and to enforce a freezing order**

Concerning the authorities competent to decide on execution and to enforce a freezing order and the role of the Central Authority,<sup>1</sup> the domestic procedure for dealing with incoming requests is based on Section 67 of the Act on International Legal Assistance in Criminal Matters.<sup>2</sup> The enforcement of a foreign freezing order thus generally requires a decision by an executing court, which can be contested by means of the legal remedies available under German procedural law. The Federal Office of Justice, the judicial ARO, is not involved in this procedure on account of the competences having been transferred to the *Länder*.

In Germany there is no formal process in place for checking whether a request for further and better information is needed. The decision regarding the need for additional information is taken on a case-by-case basis by the competent judicial authority.

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

<sup>2</sup> Section 67(3) of that Act and, as applicable, the regulations on German procedural law apply.

As regards the normal practice for liaising with issuing States to keep them informed of progress in proceedings, in **Baden-Württemberg** as soon as a measure for mutual assistance applied for has been implemented, the issuing State is informed thereof. Further information is dependent on the course of the mutual assistance procedure, which is why no generalisations can be made.

### **Legal remedies**

In relation to legal remedies available to interested parties regarding frozen property, where German authorities need to carry out a seizure or search on the basis of a foreign request, the local court takes the decision in its capacity as executing court. An appeal may be filed with the regional court against its decision.<sup>1</sup> The appeal is available to any person who is affected by a court decision or order. The parties to the proceedings, the last custodian and the non-possessing owner, if his/her right to demand return is compromised, are authorised to lodge an appeal.<sup>2</sup>

## **4.2. Confiscation and forfeiture (including Framework Decisions 2005/212/JHA and 2006/783/JHA)**

### *4.2.1. At national level*

#### 4.2.1.1. Confiscation of assets after conviction

#### **The types of crime for which confiscation is possible**

Confiscation is possible for all criminal offences without restrictions. Whatever has been acquired from an act may, however, not be declared forfeited, if the injured party's equivalent claims arising on account of the act are directed on the accomplice. As regards recovery assistance with which the State supports the injured party in realising any claims, please see above.

#### **The authority competent to decide on the confiscation<sup>3</sup> and to enforce it**

The court that convicted the perpetrator has the authority to decide on the confiscation. The decision concerning the ordering of forfeiture is the result of a trial against the accomplice or against a third party not accused of the act. If proceedings are instituted against an accused, a third party against which an order for forfeiture may possibly be directed will be involved in these proceedings. Otherwise, separate proceedings will be instituted against the third party alone. Forfeiture is one

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<sup>1</sup> Sections 67 and 77(1) of the Act on International Legal Assistance in Criminal Matters

<sup>2</sup> Section 304(2) of the Code of Criminal Procedure

<sup>3</sup> Section 442, Code of Criminal Procedure



possible legal consequence of the act. The conditions for forfeiture are determined using the same procedural means as apply to the punishment and measures. It is not necessary to determine from which of several indicted acts the acquired object stems, if it is clear that it derives from one of them.

The public prosecution office is competent as regards the enforcement of the confiscation/forfeiture. The order for forfeiture does not have an abstract effect, but changes the legal relations between the addressee of the order (namely the accused or party to the forfeiture) and the object of forfeiture. The right passes to the State by means of an order. The order is invalid if it is directed against a right to which the addressee of the order is not entitled at the time when the decision becomes final. The order must explicitly refer to the objects to be forfeited. Whether the conditions therefore are met must be determined during the trial, not in the enforcement proceedings. If it does not become clear until after the judgment has become final, that a person other than the addressee holds the right declared forfeited, it must be examined whether separate proceedings must be instituted against that other person.

Reference should be made to Section 73a of the Criminal Code (forfeiture of an equivalent value). Insofar as the order for forfeiture of a particular object is not possible, or the order for forfeiture of an equivalent value is not made, forfeiture must be ordered against the sum of money which corresponds to the value of that which was acquired. The aforementioned applies *mutatis mutandis* to the enforcement.

Additionally, as regards informing persons affected by the measure, the decision is issued together with the judgment. All legal remedies against the conviction apply; in some cases legal remedies against the separate decision are also possible. This procedure does not involve the Federal Office of Justice, the judicial ARO.

#### 4.2.1.2. Possibilities for confiscation referred to in Article 3(2) of Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property

Germany has fully implemented the Framework Decision. No implementing act was deemed necessary as German law already fulfilled the requirements set out in the Framework Decision.

Article 3(2) of the Framework Decision stipulates those conditions that must be linked to extended means of confiscation. Section 73d of the Criminal Code (extended confiscation) regulates extended means for confiscating profits. According to this, the court also orders the forfeiture of objects of the perpetrator or accomplice, if the circumstances justify the assumption that these objects were acquired as a result of the unlawful acts, or for the purpose of committing these. Extended forfeiture of an equivalent value is provided for if the forfeiture of a particular object after the act has become impossible in whole or in part. The provision on extended forfeiture applies in the case of unlawful acts if the relevant statutory definition of the crime refers to Section 73d of the Criminal Code. The condition for the ordering of extended forfeiture is that the circumstances justify the assumption that the object in question was acquired as a result of the unlawful act or for the purpose of committing it.

Where a perpetrator has been convicted on account of a criminal provision which refers to Section 73d of the Criminal Code, all those objects are thus subject to extended forfeiture which were acquired as a result of the unlawful act or for the purpose of committing it. It is thereby irrelevant whether the statutory definition of the relevant crime also refers to this point in law and whether this criminal offence is similar to the offence on account of which the perpetrator was convicted.

#### 4.2.1.3. Possibility to “pierce the corporate veil” and confiscate property owned by corporations

According to Section 73(3) of the Criminal Code, the order for forfeiture is directed against third parties (including legal entities), if the perpetrator or accomplice acted on their behalf and they acquired something. The order is directed against that person, and only that person, who derived an economic benefit from the act. According to the German authorities, that is how forfeiture can best serve its purpose, namely by taking away the advantages the perpetrator derives by the act. The person who actually derived a benefit participates in the proceedings as the party to the forfeiture (*Verfallsbeteiligter*), or separate proceedings are to be instituted against him/her, if he/she cannot also have an order for forfeiture made against him/her as accomplice. This also has a preventive purpose against the third parties: because they can expect to suffer a loss when having to hand over the additional assets without deduction of expenses derived on account of an offence, they will be encouraged to take precautions against such acts.

4.2.2. *Cooperation at European level - Implementation of Framework Decision 2006/783/JHA*

Germany has designated the public prosecution offices at the regional courts to be competent to handle incoming requests (with the exception of Berlin). In Berlin the Senate Department for Justice is responsible for incoming requests. Where Germany is the issuing State, the public prosecution offices are competent for transmitting the certificates.

As regards practical guidance on the issuing of a confiscation order and the use of the certificate, the planned Guidelines for International Judicial Assistance in Criminal Matters contain practical instructions which do not have legal force.

In **Bavaria** investigative measures according to Framework Decision 2006/783/JHA of 6 October 2006 are not yet especially relevant in everyday practice, and this is due to the fact that corresponding measures are only necessary in special case scenarios. Further, it must be noted that the Framework Decision has not yet been implemented to its full extent in all the Member States. Since Germany transposed the Framework Decision into national law in October 2009, the short time span makes it difficult to collect and evaluate practical experience in its implementation. Therefore at this point no conclusions can be drawn on positive or negative experience in the use of the new regime.

**4.3. Conclusions**

- The relevant German legislation, and especially Section 73d of the Criminal Code, deserves to be mentioned since it offers, in combination with the possibility for attachment in rem, within a civil law legal system, an equivalent to non-conviction based confiscation. The experts were informed that this is a fairly recent evolution in legislation, and it still remains to be seen how broadly courts will apply the relevant provisions. It is the understanding of the experts that courts and legislators remain rather reluctant towards the notion of extended confiscation, although important and innovative trial cases are still pending before higher courts.
- Germany has implemented and transposed the most relevant EU-level legal instruments in the area of freezing and confiscation of assets.<sup>1</sup> However, the practical implications of these tools

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<sup>1</sup> Framework Decisions 2005/212/JHA, 2006/783/JHA and 2003/577/JHA, and Council Decision 2007/845/JHA

are difficult to assess due to the limited experience and information from the *Länder*. It seems that the short time span since transposition both in Germany and in other Member States as well as lack of practical experience make it difficult to evaluate the added value.

- Seizure is used during the financial investigations if assets are traced. The experts were positively surprised to learn that there do not seem to be any problems with courts to obtain seizure/confiscation orders, whilst in many Member States there are recurring problems between law enforcement and judiciary to this effect.
- The expert team was informed during its mission, that an estimated 379 million euro was seized in 2010 in the whole of Germany, of which the ARO seized around 50 million euro. However, there are no statistics available giving an indication of the share that was subsequently confiscated. It seems that the police have a system for recording seizures and liaising with the customs to this effect, but there is no nation-wide “case management system” fed by the *Länder* which would store information on each case from start to finish, including possible confiscation of assets, even though at least one *Land* (Lower Saxony) seems to have established this type of a database<sup>1</sup>.

#### 5. PROTECTION OF THE FINANCIAL INTERESTS OF THE EU - AVAILABLE MECHANISMS, PARTICULARLY COOPERATION WITH OLAF

Cooperation between the **customs administrations** and the European Anti-Fraud Office (OLAF) in regard to the proper application of customs and agricultural regulations is comprehensively regulated in Council Regulation (EC) No 515/97. Cooperation according to Council Regulation (EC) No 515/97 and the exchange of information for which it provides (both upon request and unsolicited) serves administrative purposes.

The Naples II Convention regulates cooperation between Member States regarding customs matters for criminal prosecution purposes, and is thus supplementary to Council Regulation (EC) No 515/97.

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<sup>1</sup> The database allows both police and justice to input data. According to the German authorities, similar databases are in the process of being established also in other *Länder*.

**5.1. Proactive transmission of information and transmission of information on request to Olaf by customs authorities, police, prosecutors or other law enforcement authorities**

The Guidelines for International Judicial Assistance in Criminal Matters stipulate that judicial authorities may cooperate with the European Anti-Fraud Office (OLAF) by way of rendering administrative assistance. Number 127a of the Guidelines for International Judicial Assistance in Criminal Matters stipulates that OLAF does not have a legal right to receive information deriving from criminal investigation proceedings.

On the other hand, according to Regulation (EC) No 1073/1999<sup>1</sup> the Member States shall, in so far as national law allows, send OLAF any information that relates to a current internal investigation, or pertinent information that relates to the fight against fraud, corruption and any other illegal activity affecting the Communities' financial interests. According to the discussions during the evaluation mission, information pertaining to an administrative OLAF investigation has been shared by Germany, even when it originates in a judicial file, and if any problems have thus far occurred, the need for legal changes would be assessed by the German authorities.

The same legal bases apply to the proactive transmission of information and the transmission of information by the police upon request from OLAF as to cooperation with other institutions. Thus far there is no indication of any *Land* that has enacted separate regulations as regards cooperation and information sharing with OLAF.

**5.2. Transmission of information to Olaf on the outcome of criminal cases related to fraud against the financial interests of the Communities**

Internal regulations stipulate that the German **customs administration** transmit information to OLAF in the context and in accordance with the provisions of Council Regulation (EC) No 515/97. 'Results in criminal matters in connection with fraud to the detriment of the financial interests of the Communities' are not the subject of the provision of such information. Rather, information is transmitted on matters in which *administrative law may possibly have been incorrectly applied or may possibly be incorrectly applied*. The transmission of information thus goes beyond the notification of the results of criminal investigations.

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<sup>1</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)

**5.3. The role of the European Commission in a criminal investigation involving fraud against the financial interests of the Communities**

As regards **North Rhine-Westphalia**, the European Commission can take the role of 'injured party' within the meaning of Section 73(1), second sentence, of the Criminal Code, namely recovery assistance measures can be taken for its benefit if the extended conditions are met. The European Commission may also possibly take the role of plaintiff in adhesion proceedings within the meaning of Sections 403 et seq. of the Code of Criminal Procedure. There have to date been no cases to this effect. The European Commission (OLAF) has, however, in the past provided information on a criminal offence.

**5.4. Possibility for Olaf agents to take part in the criminal investigation**

OLAF agents can be involved in criminal investigations by being commissioned as experts. Thus, the involvement of OLAF agents is based on the same principles as apply to other experts or witnesses in investigation proceedings. In practice OLAF agents have in the past taken part in criminal investigations as expert witnesses.

OLAF agents may participate in investigations into customs and agricultural matters, possibly also those of a criminal nature. Depending on the case, this may be advantageous in order to promote complex investigations.

There are some examples of OLAF agents' participation in proceedings instituted by the public prosecution offices in the *Länder*. For example in North Rhine-Westphalia this has applied for instance to the enforcement of search warrants and the examination of exhibits secured on those occasions. Furthermore, in some cases the public prosecution offices have involved OLAF for coordination purposes.

**5.5. Possibility for Olaf agents to take part in a joint investigative team**

Judicial authorities can cooperate with OLAF by way of rendering administrative assistance, in line with the Guidelines for International Judicial Assistance in Criminal Matters.

OLAF can be permitted to take part in joint investigation teams but OLAF agents are not equal in status to the members of the joint investigation team and may not carry out any sovereign measures

on German territory. In the overwhelming majority of cases, however, from the police's perspective OLAF could be involved in written form and provide specific expertise to the procedure. In addition, there are comparable forms of cooperation in those cases in which the judicial authorities have not set up a joint investigation team.

In particularly important cases, OLAF invites investigating authorities to attend meetings on the basis of Council Regulation (EC) No 515/97. There may be a criminal law background in all or only a few Member States affected. Where the Member States also coordinate criminal investigations in this matter, these meetings can be regarded as 'joint investigation teams' according to Article 24 of the Naples II Convention.

#### **5.6. Coordinating body for contacts with Olaf in concrete cases**

The German police has no coordinating body specifically for contacts with OLAF. In individual cases, a few *Länder* have the possibility of contacts arising via certain departments in the *Land* criminal police offices. It is, however, not obligatory for these departments to be involved in sharing information with OLAF.

The Customs Criminological Office in Cologne is the German customs administration's central agency as regards cooperation with OLAF. This agency coordinates investigations between all authorities involved in Germany and is in principle OLAF's only contact in this field.

With regard to OLAF's on-the-spot checks based on Regulation 2185/1996, the German Ministry of Finance is OLAF's contact point in order to organise the controls.

The judicial authorities can cooperate directly with OLAF.

#### **5.7. Expectations for Olaf support in cases related to fraud against the financial interests of the Communities**

The **police** expect support from OLAF in cases which necessitate the taking of evidence concerning procedures and facts within the European Commission. Further, OLAF should be available to the investigating authorities in an advisory capacity regarding all questions concerning the European Community.

As regards **customs**, OLAF supports Member States in many ways, both to protect the financial interests of the Communities and in the fulfilling of tasks which are in the Member States' interests, such as for instance combating drug smuggling. For example, OLAF operates the customs information system for Member States, including the Customs File Identification Database (FIDE). Suggestions regarding how this cooperation could be further expanded are transmitted directly in the course of regular contacts.

The *Länder* consider it important that intelligence from OLAF would not only be directly transmitted to the customs or financial authorities, but, in suitable cases, also to the competent public prosecution office. Additionally, OLAF should coordinate investigations among the Member States and, possibly also by giving legal advice, provide key support.

### **5.8. Conclusions**

- According to the answers to the questionnaire and the information provided during the visit, Germany has currently no procedural solution to provide OLAF access to its judicial files for the purpose of administrative (internal or external) investigations. However, during its mission the expert team was informed that information pertaining to an administrative OLAF investigation has been shared by Germany in some cases, even when it originates in a judicial file. In any case, the need for legal and procedural changes should be assessed so that the sharing of information would be regulated in line with the spirit of cooperation indicated in the discussions.
- Germany does not seem to fully comply with the requirements of the so-called assimilation principle as regards bribery for licit deeds, since this conduct is punishable only if committed by a German national official. This may risk the attainment of an equivalent level of criminal-law protection against corruption cases affecting the European Union.



## 6. RECOMMENDATIONS

As regards financial investigations and the fight against financial crime the expert team was able to review the German system only partially, namely at the federal level. Since in the German federal system the powers in policing and law enforcement have been mainly allocated to the *Länder*, and there was not enough information available on the practice in the different *Länder*, the evaluation of the practical work in this field remains only partial. However, the working principles and legal framework of the overall German system are clearly robust and functional and the various actors at the federal level are well aware of their roles and responsibilities.

Based on its findings, the expert team would like to make certain recommendations to Germany to contribute to the further development of the system. Furthermore, based on the various good and, without doubt, even best practices of Germany, the team would also like to make related recommendations to the Member States, the EU, its institutions and agencies.

### 6.1. Recommendations to Germany

Germany is invited to:

1. Raise the awareness of prosecution offices throughout the country as the leaders of investigations about the existence and benefits of EU platforms and instruments in general and specifically as regards the fight against financial crime. For example, the Europol National Unit, BKA, should inform especially the prosecuting authorities, but also law enforcement, of the benefits of the products and services provided by Europol.
2. Identify and tackle obstacles preventing efficient proactive data exchange with foreign law enforcement authorities, other relevant actors and EU agencies. For example, tax secrecy should be lifted under the same conditions for foreign law enforcement authorities as is done in relation to federal/*Länder* law enforcement authorities. Moreover, the spontaneous exchange of information in line with Council Decision 2007/845/JHA as regards AROs should be further enhanced. Additionally, Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union should be transposed without delay.

3. Collect statistics on the value of frozen and confiscated assets, so as to be able to monitor and evaluate the policy with regard to assets-oriented investigations, as well as on judgments and convictions. Even in the absence of a legal basis which allows for *Länder* to be obliged to collect such data in a uniform manner and to transmit these data to the federal level, ways of encouraging *Länder* or trying to arrive at informal agreement about the collection of such statistics should be considered.
4. Endeavour to provide for an appropriate level of specialisation in the financial aspects of crime of investigation judges.
5. Strengthen the role of the FIU as regards its analytical capabilities and tasks so that it would be in a position to proactively notify the *Länder* of suspected money laundering or terrorist financing cases based on its analysis. Furthermore, the current practice whereby the FIU only receives a copy of the STRs should be reviewed in order to permit the FIU to play a central role as a filter of cases and to support the harmonised implementation of a uniform and integrated anti-money laundering approach throughout the country.
6. Assess the overall number of STRs received by the FIU in order to define whether the conditions imposed on the professions subject to the anti-money laundering reporting obligation should be amended in order to raise the number of STRs from key reporting entities other than banks.
7. Raise awareness and enforce compliance by non-financial reporting entities as regards anti-money laundering legislation and particularly reporting on STRs. In addition to the competent supervisory authorities in the *Länder*, the FIU could play a role in this respect as regards providing information and raising awareness.
8. Provide for a procedural solution to grant OLAF access to judicial files for the purpose of its administrative investigations when necessary.
9. Conduct a follow-up on the recommendations given in this report eighteen months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL).

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

Member States are invited to:

1. Establish and support multi-disciplinary and integrated approaches to the fight against financial crime, for example in line with established cooperation between the police and customs in the Joint Financial Investigation Groups (*Gemeinsame Finanzermittlungsgruppen, GFG*). In particular, the proactive monitoring of financial transactions linked with foreign trade is a working method which should be encouraged in the context of financial investigations. Additionally, the FIU at the BKA has extensive access to the German Customs Information and Intelligence (INZOLL) system. This very operational cooperation between police and customs is to be encouraged as a model for other Member States.
2. Create and update a central database of prosecutions in order to avoid overlaps in all criminal cases and especially in financial investigations that often have a large geographical and even international scope.
3. Establish a central bank register, for example in line with the online and real-time access of the BaFin to the databases of financial institutions as regards information on the bank accounts that exist as well as those that have been closed within the past three years.
4. Support a flexible exchange of information between law enforcement authorities as is the case with the BKA which, at the request of the law enforcement authority of another Member State, is able to make requests to the BaFin to find out whether a person has a bank account in Germany. This type of law enforcement cooperation in the EU enables much more effective mutual legal assistance in criminal investigations as the judicial authority will know what kind of information to request.
5. Increase the capacity of AROs and encourage the participation of asset recovery officers in investigations of financial crime. This should lead to a stronger orientation of the investigation process into asset recovery.

**Annex A: Programme for visit**

**Besuchsprogramm  
PROGRAMME FOR VISIT**

**Montag, 16. Mai 2011**

**Monday 16 May 2011:**

Anreise nach Berlin

Arrival to Berlin

**Dienstag, 17. Mai 2011**

**Tuesday 17 May 2011:**

09:00 Bundesministerium der Justiz  
Federal Ministry of Justice  
Begrüßung durch den Leiter der Abteilung II – Strafrecht - Herrn MD Thomas  
Dittmann  
Welcome by the Head of directorate-general for criminal law – Mr. Thomas  
Dittmann

09.00–10.30 Bundesministerium der Justiz  
Federal Ministry of Justice

10.30-12.00 Bundesamt für Justiz Federal Office of Justice

12.00–13.30 Lunch Break

13.30-17.00 Bundesministerium der Finanzen  
Federal Ministry of Finance

17:30 Besichtigung der Kuppel des Reichstagsgebäudes  
Visit to the glass dome of the Reichstag

19:00 Uhr Abendessen (Restaurant Brasserie, Taubenstraße )  
Dinner (Restaurant Brasserie)



**Mittwoch, 18. Mai 2011**

**Wednesday 18 May 2011:**

Vormittag      Anreise nach Wiesbaden  
Forenoon      Transfer to Wiesbaden

12:00-13:30    Lunch  
14:00-17:00    Bundeskriminalamt  
Federal Criminal Police Office  
(Vorstellung/Presentation of ARO)

ab 19:00        Abendveranstaltung im Schloss Johannisberg  
Castle Johannisberg (Dinner)



**Donnerstag, 19. Mai 2011**

**Thursday 19 May 2011:**

08:30-11:30    Bundeskriminalamt  
Federal Criminal Police Office  
(Vorstellung FIU, Presentation of FIU)

12:30-13:00    Lunch Break

13:00-16:00    Hessisches Ministerium der Justiz, für Integration und Europa  
Hessian Ministry of Justice, for Integration and Europe

18:13-22:05    Rückreise nach Berlin  
Transfer to Berlin

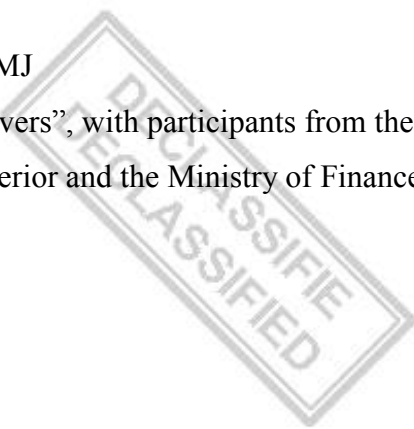
Abend zur freien Verfügung  
Free Evening

Freitag, 20. Mai 2011

Friday 20 May 2011:

09:00-12:00 Bundesministerium der Justiz  
Federal Ministry of Justice  
Abschlussbesprechung mit BMI, BMF, BMJ  
Final Round in order to discuss the “left-overs”, with participants from the  
Ministry of Justice, the Ministry of the Interior and the Ministry of Finance  
Verabschiedung des Evaluierungsteams/  
Farewell to the Delegation

12:00-13:00 Lunch (BMJ)  
Abreise  
Departure



**ANNEX B: LIST OF PERSONS INTERVIEWED/MET**

**Federal Ministry of Justice**

Thomas Dittman, (AL II), Head of directorate-general for criminal law

Matthias Korte, (UAL R B), Head of sub-directorate RB - judicial systems

Monika Becker, Deputy Head of division II A 4, economic crime, computer-crime, corruption-related crime and environmental crime

Ralf Riegel, Head of division II B 6, international criminal law; European and multilateral criminal law cooperation)

Jutta Kemper, Head of division IV B 2, general issues and legal questions relating to the EU, procedural law of the EU

Nora Kaiser, II A 4, division for economic crime, computer-crime, corruption-related crime and environmental crime

Ralf Busch, R B 3, Criminal procedure - investigation proceedings

Anne Katharina Zimmermann, R B 2, Criminal procedure - court proceedings

Jörg-C. Wachsmann, (division for economic crime, computer-crime, corruption-related crime and environmental crime, II A 4)

Christopher Yianni, Interpreter

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Till Gut, III 1, extradition requests, law enforcement-requests, mutual legal assistance, EJN

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Andreas Schneider, ÖS I 2, serious and organised crime, drug-related crime

**Federal Ministry of Finance**

Annette Mengerhausen, Head of division III A 2, customs investigations service

Maria Schmitt, E A 6, , Protection of Community financial interests;

EU financial control and fraud prevention

Wolfgang Hornig, III A 6, financial investigations of illegal work

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Frank Diener

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Peter Henzler, Head of directorate-general for serious and organised crime)

Jürgen Schmitt, (SO 35), Head of division for asset confiscation as part of investigations (VIVA),

German ARO

Jürgen Holderied, (SO 35)

Volker Müller, (SO 35)

Markus Koths, (SO 33), Head of division for investigations - economic and financial crime

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Michael Dewald, (SO 32), Head of division for analysis of money laundering, FIU, Joint Financial Investigation Group)

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**Attorney General Frankfurt on the Main**

Hans-Josef Blumensatt, Attorney General

Peter Rückert, Senior Prosecutor

Daniel Volp (GeneralStA Frankfurt/M.), Senior Prosecutor

Horst Streiff, Senior Prosecutor

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Dominique Credé (StA Frankfurt/M.), Senior Prosecutor

Michael Loer (StA Frankfurt/M.), Senior Prosecutor



# RESTREINT UE

## ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
AMOs	-/-	Asset Management Offices
AO	Abgabenordnung	Fiscal Code
ARO	-/-	Asset Recovery Office
AWF	-/-	Europol's Analysis Work Files
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht	Federal Financial Supervisory Authority
BinSchAufgG	Binnenschiff- fahrtsaufgabengesetz	Act on the Tasks of the Federation in the Field of Internal Waterways Vessels
BKA	Bundeskriminalamt	Federal Criminal Police Office
BPOL	Bundespolizei	Federal Police
CARIN	-/-	Camden Assets Recovery Inter- Agency Network
EIS	-/-	Europol Information System
EJN	Europäisches Justizielles Netzwerk	European Judicial Network
EstG	Einkommenssteuergesetz	Income Tax Act
EU	Europäische Union	European Union
FCIC	-/-	Europol's Financial Crime Information Centre
FIU	-/-	Financial Intelligence Unit
FKS	Finanzkontrolle Schwarzarbeit	Monitoring Authority for Illegal Employment
GewAufspG	Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten	Act on the Detection of Proceeds from Serious Crimes of 29 May 1992

## RESTREINT UE

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
GFG	Gemeinsame Finanzermittlungsgruppen	Joint Financial Investigation Groups
ICT's	-/-	Information and Communication Technologies
INPOL	Informationssystem der Polizei	National Police Information System
JITs	-/-	Joint Investigation Teams
JLS	-/-	Justice, Liberty, Security
KBA	Kraftfahrt-Bundesamt	Federal Motor Transport Authority
LKÄ	Landeskriminalämter	Criminal Police Offices
MDG	Multidisziplinäre Gruppe	Multidisciplinary Group on Organised Crime
MLA	-/-	Mutual Legal Assistance
OC	-/-	Organised crime
OCTA	-/-	Organised Crime Threat Assessment
OLAF	Office européen de lutte anti- fraude	European Anti-Fraud Office
<i>OrgKG</i>	Gesetz zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der organisierten Kriminalität	Act on Combating Organised Crime of 15 July 1992
OWiG	Gesetz über Ordnungswidrigkeiten	Regulatory Offences Act
ROCTA	-/-	Russian Organised Crime Threat Assessment
SchRegO	Schiffsregisterordnung	Code of the Register of Ships
SIENA	-/-	Europol Secure Information Exchange Network
SO	Abteilung Schwere und organisierte Kriminalität	Serious and Organised Crime

# RESTREINT UE

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
SO 3	Gruppe Wirtschafts- und Finanzkriminalität	BKA's (Federal Criminal Police Office) Economic and Financial Crime Division
SO 31	Auswertung Wirtschaftskriminalität, Korruption	Analysis of Economic Crime and Corruption
SO 32	Auswertung Geldwäsche, Financial Intelligence Unit (FIU), GFG	Analysis of Money Laundering, Financial Intelligence Unit (FIU), Joint Financial Investigation Group Police/Customs Service
SO 33	Ermittlungen Wirtschafts- und Finanzkriminalität	Investigation Group Accounting/Commercial Experts
SO 34	Ermittlungen Wirtschafts- und Finanzkriminalität	Investigation Group 'Joint Financial Investigation Group Police/Customs Service'
SO 35	Verfahrensintegrierte Vermögensabschöpfung	Asset Confiscation, Asset Recovery Office (ARO)
SO 36	Auswertung Arzneimittelkriminalität, Umwelt-/Verbraucherschutzdelikte, Produkt-/Markenpiraterie	Analysis of Pharmaceutical Products Crime, Environmental/Consumer Protection Crimes, Product/Trademark Piracy
STR	-/-	Suspicious Transaction Report
SWIFT	-/-	Society for Worldwide Interbank Financial Telecommunication
UN	-/-	United Nations
US	-/-	United States
VAG	Versicherungsaufsichtsgesetz	Act on the Supervision of Insurance Companies
VAT	-/-	Value Added Tax
VZR	Verkehrszentralregister	Central Traffic Register
WpHG	Wertpapierhandelsgesetz	Securities Trading Act

# RESTREINT UE

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
ZBBD	Zentrale Binnenschiffsbestandsdatei	Central Inland Vessel Inventory
ZEVIS	Zentrale Verkehrsinformationssystem	Central Traffic Information System
ZFD	Zollfahndungsdienst	Customs Investigation Service
ZFdG	Zollfahndungsdienstgesetz	Customs Investigation Service Act
ZFER	Zentrales Fahrerlaubnisregister	Central Register of Driving Licences
ZFZR	Zentrales Fahrzeugregister	Central Vehicle Register
ZKA	Zollkriminalamt	Customs Criminological Office
ZOK	Zentralstelle zur Bekämpfung der Organisierten Kriminalität (Hessen)	Central Office for Combatting Organised Crime (Hesse)

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