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**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 10 February 2010**

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REV 1**

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

**REPORT ON ROMANIA**

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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 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 solely the transposition of relevant EU legislation 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<sup>5</sup>.

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>6</sup>. Romania is the first Member State to be evaluated during the round. The final visit to Slovenia will take place at the end of the year 2011.

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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> 11060/09 JAI 404.

<sup>6</sup> 5046/1/09 REV 1 CRIMORG 1.

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

The experts charged with undertaking this evaluation were Mr Ole Kahlen (Detective Superintendent, State Prosecutor for Serious Economic Crime (SFO), Denmark), Mr Vladimir Turan (Prosecutor, General Prosecution Office, Slovak Republic) and Mr Guillermo Fernandez Lopez (Detective Inspector, Complejo Policial de Canillas Brigada de Delincuencia Economico Financiera, Spain). Four observers were also present: Mr Christian Tournie (JLS, Commission), Mr Stefan de Moor (OLAF, Commission), Mr Ladislav Hamran (Eurojust) and Mr Carlo van Heuckelom (Europol), together with Mrs Anna Lipska and Mr Michal Narojek of the General Secretariat of the Council.

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

## 2. National system and criminal policy

### 2.1. Specialised units

#### 2.1.1. Investigative authorities

##### 2.1.1.1. The General Inspectorate of Romanian Police

The General Inspectorate of Romanian Police is the central unit of the police, with legal personality and general territorial competence, that leads, guides and controls the activities of subordinate police units, carries out investigations of serious offences related to organised crime or economic and financial or bank-related crime, and of other offences subject to penal sanctions under the supervision of the Prosecutor's Office attached to the High Court of Justice.

The General Inspectorate of Romanian Police is headed by a General Inspector designated by the Prime Minister, upon a proposal of the Minister for the Interior, after consultation with the National Police Body. The General Inspectorate of Romanian Police consists of general directorates, directorates, units and offices set up by an order of the Minister for the Interior.

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## 2.1.1.1.1. The Directorate for Combating Terrorism and Money Laundering (DCTML)

The Directorate for Combating Terrorism and Money Laundering is a unit within the General Directorate for Combating Organised Crime of the General Inspectorate of Romanian Police. The Directorate performs specific activities in the field of combating crimes related to terrorism financing, trafficking in strategic, nuclear, radioactive, biologic and chemical substances, laundering of money derived from crimes related to organised crime, money forgery and crimes specific to financial markets.

The Directorate is responsible in cases of crimes committed by persons belonging to organised criminal groups or certain associations or groups established for the purpose of committing crimes, under one of the following circumstances:

- a) if their activity may jeopardise Romania's national security;
- b) if the criminal activity has arisen or produced results in areas that are the responsibility of several regional brigades;
- c) if damage greater than the equivalent of EUR 1.000.000 has been caused;
- d) if there is a danger of causing an important disturbance of social relations in a certain community or such disturbance has already been caused.

The service is divided into the following units:

- a) the Unit for the Investigation of Terrorism and Nuclear Biological Chemical Non-proliferation;
- b) the Unit for Combating Money Laundering and Related Crimes in the field of Organised Crime;
- c) the Central National Office for Combating Forgery of Money and Traveller's Cheques;
- d) the Unit for Combating Major Crime on the Financial Market.

## 2.1.1.1.2. The Fraud Investigation Directorate (FID)

The Fraud Investigation Directorate is the unit of the General Inspectorate of Romanian Police specialised in the prevention of and fight against economic and financial crime. It consists of over 1400 officers, mainly in territorial units. A central unit of about 50 officers coordinates and supports local components.

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FID manages, coordinates, supports, gives guidance and monitors specific activities carried out by regional police structures in their area of competence.

FID informs the management of the General Inspectorate of Romanian Police, the management of the Ministry of Administration and the Interior and other decision-making bodies within the Romanian Government on trends and developments in economic and financial crimes and on the results of the evaluations carried out.

In order to fight illegal acts against public and private property, as well as to protect the lawful interests of citizens, on the basis of the reports and data received from regional structures and other documents drafted by specialised institutions, the Directorate analyses and observes the evolution of the operational situation and trends in its area of competence.

The service conducts activities under the supervision of a responsible prosecutor, in order to prevent and fight economic and financial crime. It also evaluates causes, conditions and factors which lead to, encourage or foster criminal activities. On the basis of the conclusions of these evaluations it establishes lines of action and proposes measures to be taken at central and regional level.

FID organises and coordinates both preventive actions and operations for combating economic and financial crime at regional or national level.

FID provides specialised structures of the National Anticorruption Directorate (NAD), as well as other units of the Prosecutor's Office, with data and information on corruption and fraud.

The Fraud Investigation Directorate's tasks refer to the following areas:

- a) natural resources, industry and infrastructure;
- b) budgetary institutions and combating corruption;
- c) intellectual property and customs fraud;
- d) commercial companies and gambling;
- e) financial crime;
- f) criminal investigations and judicial delegation;
- g) money laundering;
- h) frauds against the interests of the EU;



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- i) fiscal frauds;
- j) credit verification.

## 2.1.1.1.3. Asset Recovery Office (ARO)

According to Council Decision 2007/845/JHA, each Member State shall set up or designate a national Asset Recovery Office, in order to facilitate the tracing and identification of proceeds of crime and other crime-related property. Member States were obliged to ensure that they would be able to cooperate fully in accordance with the provisions of the Decision by 18 December 2008.

Romania had not yet established a national Asset Recovery Office.

At the time of drafting of this report at the level of the General Inspectorate of Romanian Police, a Government Decision has been drafted and is currently being discussed by relevant institutions. The draft proposes establishing a national Asset Recovery Office within the General Inspectorate of Romanian Police, and tasking it with the tracing and identification of proceeds from, or other property related to, crime, pursuant to Council Decision 2007/845/JHA.

## 2.1.1.2. The National Office for Prevention and Control of Money Laundering (NOPCML)

The National Office for Prevention and Control of Money Laundering functions in accordance with Law No. 656/2002 on the prevention and sanctioning of money laundering, as well as on setting up certain measures for the prevention and combating of terrorism-financing acts, as subsequently amended and supplemented. It is a specialised body and a legal entity subordinate to the Government of Romania. It is supervised by the Prime Minister. This position in the structure of public authorities was presented as guaranteeing the office a high degree of independence.

The NOPCML is a Financial Intelligence Unit of an administrative character.

The internal organizational structure of the Office was established in accordance with Government Decision 1599/2008 on the Regulations for the Organisation and Functioning of the National Office for Prevention and Control of Money Laundering. The Office has its seat in Bucharest.

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The Office is managed by the President, who is appointed by the Government. The Office's Board is the deliberative and decision-making structure composed of one representative of each of the following institutions: the Ministry of Public Finances, the Ministry of Justice, the Ministry of Administration and the Interior, the Public Prosecutor's Office attached to the High Court of Cassation and Justice, the National Bank of Romania, the Court of Accounts of Romania and the Romanian Banks Association, all appointed by the Government for a five-year period. Members of the Board must have a university degree and at least 10-years' experience in an economy-related or legal position, and they also must have a high professional and intact moral reputation. It is forbidden for the members of the Board to belong to political parties or to carry out public activities of a political character. For the period when they hold this post, the members of the Office's Board shall be seconded; their relation with their original employer shall be suspended and after cessation of the mandate, they shall return to the position they occupied previously. The members of the Office's Board ensure and coordinate the cooperation with the institutions they represent.

The NOPCML personnel performing financial analysis (financial analysts) must have a university degree in law or economics, and also must have at least 2 years' specialised experience.

The structure of the Office comprises units responsible for:

- a) analysis and processing of information;
- b) information technology and statistics;
- c) inter-institutional cooperation and international relations ;
- d) economic/financial and administrative issues;
- e) supervision and control;
- f) legal issues and methodology;
- g) public internal auditing;
- h) human resources.

The main objective of the Office is to participate, within the national system for the protection of public order and national security, in prevention and combating of money laundering and terrorism financing.

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The NOPCML is considered a filter between the market (represented by the reporting entities and the supervision and control authorities) and law-enforcement authorities, namely the Public Prosecutor's Office attached to the High Court of Cassation and Justice or other competent prosecution units and, when appropriate, the Romanian Intelligence Service for terrorism financing acts.

The activities of the Office are based on three types of reports it receives:

- a) Suspicious transaction reports (STR);
- b) Cash transaction reports concerning sums exceeding EUR 15.000 (CTR);
- c) Cross-border transaction reports concerning sums exceeding EUR 15.000 (CBR).

At this point it should be mentioned that the Office laments low public awareness concerning financial crimes as well as the fact that cash transactions still prevail in the Romanian economy. On the other hand cooperation with professions that are obliged to report, such as notaries, has been praised. However, the information exchange with notaries and other entities obliged to report does not take place fully electronically. Numerous steps, including use of Phare projects and twinning programs are being made in order to establish secured electronic transfer of data.

The FIU has the following databases:

- "Persons" containing names and identification elements of natural or legal persons that have been analysed by the FIU. This database also contains information on findings from previous cases;
- "Cash" containing information regarding cash transactions exceeding the limit (EUR 15.000);
- "External transactions" with data about external transfers over the limit of EUR 15.000. (parties involved, account numbers, banks, details of the operation, sum, etc.).

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The Office undertakes, inter alia, the following actions:

- a) receives data and information from natural and legal persons provided for by Law No. 656/2002 on the prevention and sanctioning of money laundering (financial and credit institutions, private pension fund administrators, casinos, representatives of liberal professions such as auditors, notaries, expert accountants, lawyers - persons providing services for companies or other entities, persons with functions in the privatisation process, real-estate agents, associations and foundations, etc.) relating to transactions carried out in lei and/or foreign currency. It should also be mentioned that numerous institutions are obliged by law to provide the Office with regular reports (for example the National Customs Authority produces monthly reports concerning all declarations by natural persons regarding cash in foreign or national currency which exceed the threshold of EUR 10.000). National Customs Authority shall transmit to the Office immediately, but no later than 24 hours, all the information related to suspicions on money laundering or terrorism financing which is identified during its specific activity.
- b) analyses and processes data and information received in accordance with the law, in order to identify the existence of solid grounds for suspecting money laundering or terrorist- financing acts;
- c) requests any public authority and institution, as well as any natural and legal person, for data and information they hold which is necessary for accomplishing the Office's objectives. The information shall be provided within 30 days.
- d) conducts information exchange, based on reciprocity<sup>1</sup>, with foreign institutions that have similar functions and which have the obligation to ensure confidentiality in similar conditions, if such communications are made with the purpose of preventing and combating money laundering and terrorist-financing acts;
- e) issues, in accordance with the law, decisions suspending certain transactions that are suspected to be linked to money laundering and/or financing of terrorism acts;
- f) notifies, immediately, in the cases stipulated by the law, the Public Prosecutor's Office attached to the High Court of Cassation and Justice.

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<sup>1</sup> The requirement of reciprocity is based on Article 5(4) of Law No. 656/2002 but is not considered by the Romanian side to pose a practical obstacle to EU-wide cooperation or to contradict EU legal provisions.

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- g) notifies, immediately, the Romanian Intelligence Service concerning operations that are suspected to be related to terrorist financing, if subsequent to the analyses and processing of information solid grounds exist for suspecting the financing of such acts.
- h) notifies, immediately, the competent body in cases in which solid grounds of committing other offences than that of money laundering or terrorist financing acts were found;
- i) cooperates with the public authorities and institutions, as well as with natural and legal persons that can provide useful data, in order to accomplish its object of activity;
- j) acts ex officio, whenever it finds out, in any way, about a suspicious transaction, in accordance with the law;
- k) verifies and controls the enforcement of the provisions of the law, by the natural or legal persons provided for by art. 8 of the law and which do not have, in accordance with the law, a public prudential supervision authority;
- l) makes proposals to the Romanian Government and bodies of central public administration for adoption of measures for prevention and combating money laundering and terrorism financing, endorses the projects of normative acts which are connected with its activity area;
- m) organizes and performs specialized trainings of its own personnel and can participate at special training programs of other institutions;
- n) establishes form and content of reports and also the working methodology;
- o) elaborates its own working procedures, through its specialized directorates and concludes the annual activity report which will be presented and submitted for approval by the Office's Board;
- p) elaborates, negotiates and concludes conventions, protocols, agreements with national institutions with attributions in this area and with similar foreign institutions, according to the provisions of the law; it can be member of international specialized organizations and can participate at their activities.

The Office also attaches great importance to verifying financial operations involving politically exposed persons, both national and foreign. In this respect European laws, especially Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing are being applied.

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The NOPCML is empowered to exchange information, on a reciprocal basis or spontaneously, with any foreign institution having similar functions and a similar secrecy policy and provisions. The NOPCML has intensified and improved the exchange of information with other FIUs, and on this regard, there is a specialized unit dealing with priority requests from the other FIUs. The analysis of the requests for information and answers concluded following the verifications performed within the institution's databases is based on a methodology on exchange of information included within the Working Procedures on the activity developed by the Directorate of Inter-institutional Cooperation and International Relations from the level of NOPCML, procedures which during 2008 were amended and completed.

The NOPCML has been a member of the Egmont Group since May 2000 and is connected to the Egmont Secure Web. When exchanging information with its foreign counterparts (foreign FIUs), the NOPCML follows the Egmont Principles for Information Exchange between Financial Intelligence Units for money laundering cases.

The Office is also a member of FIU.NET and it has an on-line connection for exchanging information via this network, being also a partner of the EU financed Project "FIU.NET Action 2007-2009".

The Office has signed 47 Memoranda of Understanding with foreign counterparts. Moreover, numerous cooperation protocols with national authorities have been signed in order to regulate technical aspects of information exchange provided for by Romanian law.

Political independence and highly qualified personnel were mentioned as the Office's main advantages. The NOPCML has its own budget approved in frames of Law of the state budget. A low level of public awareness combined with limited human, financial and technical resources, seem to be a challenge.

### 2.1.1.3. The Fight Against Fraud Department (DLAF)

The Fight Against Fraud Department (DLAF) is an administrative structure within the Prime Ministers' Chancellery, under the authority of a Deputy Prime-Minister. DLAF ensures Romania's compliance with Article 280 of the EC Treaty and secondary legislation concerning protection of financial interests. Its actions are based on the following legal provisions:

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- Government Emergency Ordinance No. 49/2005 establishing reorganisation measures within central public administration, published in Official Journal No. 517 of 17 June 2005.
- Government Emergency Ordinance No. 3/2009 amending and supplementing certain acts relating to the organisation and functioning of structures within the working apparatus of the Government, published in Official Journal No. 84 of 11 February 2009.

It has to be mentioned however that the abovementioned Law No. 3/2009 recently raised significant questions concerning its conformity with the Constitution. Shortly after the visit, it was declared partially null and void by the Romanian Constitutional Court, so the legal position of the service remains to some extent unclear.<sup>1</sup>

The service is OLAF's contact point in Romania and ensures, supports or coordinates, as appropriate, compliance with Romania's responsibilities concerning protection of European Community financial interests.

The law imposes strict obligations on competent authorities to provide DLAF with information concerning irregularities and fraud. It also makes it possible for DLAF to carry out administrative investigations, in addition to its responsibility for facilitating cooperation with OLAF.

DLAF's structure and functioning mirrors that of OLAF. The evaluation team noticed that practitioners may mistakenly identify DLAF with OLAF.

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<sup>1</sup> After the mission Romanian authorities have informed the evaluators that the Fight against Fraud Department (DLAF) is no longer part of the Prime Minister's Chancellery, which does not exist anymore. It functions in the Working Apparatus of the Government, under the coordination of the Deputy Prime-Minister, on the basis of functional and decisional autonomy (Article 7 of GEO 94/2009).  
Following Decision no 1039/2009 of the Romanian Constitutional Court, published in August 2009, by which the Court declared the whole text of Government Emergency Ordinance no. 3/2009 unconstitutional, the Romanian Government passed Emergency Ordinance no. 94/2009 on ensuring the continuity of the activity of certain structures from the Working Apparatus of the Government (Official Journal no 602 of 31<sup>st</sup> of August 2009), which is the current legal basis for the functioning of DLAF (the legal texts are almost identical, as the grounds for which GEO 3/2009 was declared unconstitutional did not relate to the organization and competences of DLAF, the only difference with the text of GEO 3/2009 relates to the elimination of the Prime-Minister's trust as a criterion for starting/ending employment contracts of DLAF staff).

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Under the National Anti-Fraud Strategy adopted in 2005 (which is no longer in force), DLAF has developed a system which enables a flow of information between relevant authorities and coordination of irregularity-reporting activities. In order to improve the exchange of information between institutions with responsibilities in combating fraud affecting Community funds, DLAF has concluded Cooperation Protocols with the following institutions: the General Inspectorate of Romanian Police, the Financial Guard, the National Agency for Fiscal Administration, the Ministry of Finance - Central Unit for Harmonisation of Public Internal Auditing (UCAAPI), the Audit Authority attached to the Romanian Court of Accounts and the National Inspectorate for Constructions.

The Department has the following powers:

- a) on-the-spot checks;
- b) taking statements and requesting necessary information and documents;
- c) unconditional access to premises, land, means of transport or other premises used for business purposes;
- d) requesting operational support from all Police, Gendarmerie, Financial Guard and other agents of the public administration.

The Department is divided into three units responsible for:

- a) legislation, policy and training;
- b) control;
- c) intelligence.

DLAF's reports may trigger an investigation carried out by NAD and are also recognised by courts as evidence. However, it should be mentioned that physical persons are not obliged by law to cooperate with the Department and if they do so their statements need to be repeated in the presence of a prosecutor if the case reaches the judicial stage.

Unlike the judicial police, who can receive binding orders from the public prosecutors, in case of DLAF the only authority who decides on the initiation, conduct and follow-up of investigations is the Head of DLAF.



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Thus, the operational relationship between DLAF and other authorities, whether law enforcement (Police) or judicial (NAD), is based on cooperation, on mutual assistance regulated by law as well as by secondary norms (cooperation protocols) concluded on the basis of the legal provisions:

- a Cooperation Protocol for the Protection of EU financial interests was concluded in 2005 with the National Anticorruption Prosecutor's Office, currently the National Anticorruption Directorate – NAD, is still in force,
- a Cooperation Protocol for the Protection of EU financial interests between DLAF and the General Inspectorate of the Romanian Police concluded in 2005 is still in force.

The Department plays a role as far as training activities are concerned. This is considered a vital element of its preventive role. Numerous such activities are arranged in close cooperation with the European Commission, including OLAF and TAIEX.

### 2.1.1.4. The National Agency for Tax Administration (NATA)

One of the general objectives of the National Agency for Tax Administration is "preventing and combating tax evasion and tax fraud". This objective is provided for in Article 4 (1) of Governmental Decision No. 109/2009 regarding the organisation and the functioning of the Agency.

NATA conducts operative and unannounced controls in order to prevent, discover and combat any actions and facts in the economic, financial and customs field that may result in fiscal/tax evasion. NATA operates in order to anticipate ways, methods and means used by fraudulent taxpayers who intend to avoid payment of tax amounts, as well as to prevent, discover and combat fiscal evasion. Thus, within NATA there is a Department for Financial and Fiscal Control performing general and regular tax audits, based on auditing plans and on the result of prior risk analysis, the Customs Authority and the Financial Guard.

Without this being an exhaustive list, the main facts that can be found out during the exercise of legal functions and may be considered to be crimes/infractions are provided by the following legislation:

- a) acts defined as infractions and sanctioned accordingly by Law No. 86/2006 regarding the Customs Code of Romania, as subsequently amended and supplemented;
- b) acts defined as infractions and sanctioned accordingly by Law No. 571/2003 regarding the Fiscal Code, as subsequently amended and supplemented;

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- c) acts defined as infractions and sanctioned accordingly by Law No. 241/2005 regarding the prevention and combating of fiscal evasion, as subsequently amended and supplemented;
- d) acts defined as infractions and sanctioned accordingly by Law No. 12/1990 regarding the protection of population against illicit trade acts, as subsequently amended and supplemented;
- e) acts defined as infractions and sanctioned accordingly by Law No. 656/2002 regarding the prevention and sanctioning of money laundering, as well as for the introduction of measures for preventing and combating the financing of terrorist acts, as subsequently amended and supplemented.

## 2.1.1.4.1. The Customs Authority

The Customs Authority is a body of an administrative nature that is organised and operates on the basis of Government Decision No. 110/2009. It does not have any competencies for investigations or criminal pursuit. Thus the customs bodies are obliged to inform criminal investigation agencies in cases where they make findings indicating a crime.

In flagrant cases, the customs staff is obliged immediately to present the person involved to the prosecution, together with the relevant documentation and proofs.

As regards findings about facts that may be considered crimes/infractions, within the terms of criminal law, the control body tables a control document/report that is immediately forwarded to the relevant criminal agencies in order to initiate an investigation.

This procedure is provided for by NATA Presidential Order No 7521/2006 regarding the Methodological Rules for surveillance and subsequent customs control.

NAC has at national level an IT database containing all information regarding customs operations carried by authorised economic operators. This database contains all data included in customs declarations submitted to the service.

On the basis of protocols for inter-institutional collaboration concluded by NAC with the General Inspectorate of the Romanian Police and the National Anticorruption Directorate, the two institutions have direct online access to the database.

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In order to establish an exchange of information or to organise specific actions against cross-border crime and customs fraud, collaboration protocols between the Ministry of Administration and the Interior and the Ministry of Public Finance were concluded in 2005.

In order to enhance international cooperation, specialised staff from NAC have been seconded to the Centre for International Police Cooperation (2 persons) and to the SECI Headquarters (1 person).

Common structures for information gathering and analysis, known as "TRIDENT", have been created to bring together customs experts, police and border police. They operate in certain cities and are supervised by a prosecutor.

## 2.1.1.4.2. The Financial Guard

The Financial Guard operates in accordance with the provisions of Emergency Governmental Ordinance (EGO) No. 91/2003, as subsequently amended and supplemented, and with the provisions of Governmental Decision (GD) No. 533/2007, as subsequently amended and supplemented. Legislation relating to the Financial Guard was most recently supplemented by EGO No. 46/2009.

According to the above-mentioned legal provisions, the Financial Guard:

- conducts operative and unannounced controls meant to prevent, discover and combat fraud and tax evasion, as well as other acts which by law fall within its competence;
- may, upon request of the prosecutor's office, carry out fact finding in order to assess certain suspicious acts, draw conclusions and draft documents that may be used as a proof before a court.

The staff of the Financial Guard conduct numerous controls. For the purpose of carrying out their tasks, agents of the Financial Guard are entitled/empowered:

- to investigate acts and facts that have generated tax fraud and tax evasion in order to determine their fiscal implications.
- to rule/decide, in accordance with the provisions of the Fiscal Procedure Code, on preventive measures every time there is a possibility that a debtor may circumvent the investigation, hide its assets or dispose of them. In such cases the relevant judicial bodies are to be informed;

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- to identify and to confirm the identity of administrators of the operations controlled as well as of other persons involved and to ask for written explanations;
- to withhold documents, in accordance with the provisions of the Fiscal Procedure Code, to ask for certified copies of the originals, to take samples and specimens and to ask for technical expertise with a view to completion of the final control act.

The Financial Guard focuses on combating large-scale tax evasion. Its actions are based, inter alia, on permanent monitoring of intercommunity acquisitions, on monitoring of tax warehouses, especially those engaged in production of mineral oils, on permanent collaboration with the customs representatives and on controls of end-users of oil products regarding observance of the final destination of energy products which are not subject to excise. Numerous factors are taken into account while planning control activities. Special attention is given to situations where a large number of newly established companies (having a minimum share capital imposed by law) are involved, as well as to leasing contracts that may serve as a cover for fictitious transactions.

Moreover, the Guard attaches great importance to imposing/maintaining financial and accounting discipline, with priority given to the retail sector.

The Guard also supports actions carried out by other fiscal bodies to recover arrears. This arises in connection with the tendency of certain economic operators to invoke illicit reasons in order to circumvent or to delay the payment of tax obligations to the State budget.

There are a significant number of complex actions carried out upon request and in some cases under the direct supervision of the Public Ministry, especially the National Anticorruption Directorate and the Directorate for the Investigation of Organised Crime and Terrorism.

The Guard permanently collaborates with the General Inspectorate of the Romanian Police, exchanging information and undertaking joint actions or controls upon request.

In this connection it is important to mention that agents of the Guard are not entitled to use any special investigative techniques, such as wire tapping or controlled delivery. Every time there is a need for such action the police or other authorised services have to be involved.

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## 2.1.2. Prosecuting authorities

The Public Prosecutor's Office attached to the High Court of Cassation and Justice has two specialised services taking action against financial crimes: the National Anticorruption Directorate, and the Directorate for the Investigation of Organised Crime and Terrorism.

The term "Public Ministry" refers to all prosecutor's offices that are attached to courts.

### 2.1.2.1 The National Anticorruption Directorate (NAD)

The NAD was created pursuant to Government Emergency Ordinance No. 43/2003 as a structure with a legal personality within the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The service is specialised in combating high and medium level corruption crimes.

It is managed by the General Public Prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice (POAHCCJ) through the NAD's chief prosecutor. The General Public Prosecutor of the POAHCCJ settles conflicts of competence between the NAD and the other structures or units within the Public Ministry. In practice the competence of the NAD is assumed each time an element of corruption is discovered as described below.

The service has a central structure in Bucharest and 15 territorial services. It exercises its powers throughout the country through specialised prosecutors. The NAD structure at the central level comprises 4 sections, namely the section for combating corruption, the section for combating crimes assimilated to corruption crimes, the section for combating corruption crimes committed by the military and the criminal judicial section, 6 services directly subordinate to the NAD's chief prosecutor, and other departments. The territorial services are headed by chief prosecutors and operate in localities where appeal courts are situated.

## RESTREINT UE

In compliance with the law regulating its organisation, the NAD is a complex structure in the sense that the Directorate's prosecutors are supported in their criminal investigation activity both by judicial police officers and by highly qualified specialists in the economic, financial, banking, customs, and information fields as well as other fields. Following the prosecutor's order, the specialists prepare technical and scientific reports serving as evidence. According to Government Emergency Ordinance No. 43/2002, the NAD has the following personnel structure: 145 prosecutors, 170 officers and judicial police agents, 55 specialists and 196 auxiliary and specialised personnel as well as economic and administrative staff.

The special status of the police agents working within the NAD has to be underlined, as they are seconded to the service and cooperate closely with the Directorate's prosecutors. Their salaries (which are higher in comparison with those of other services) and the fact that they are paid by the NAD distinguish them from other services and create a direct relationship between the law-enforcement officers and the prosecuting service. It is also common for an officer to constantly cooperate with one prosecutor, so that strong personal and professional links are established between the two. The maximum duration of the secondment of judicial police officers and agents is 6 years but can be extended subject to their agreement. This solution is unique to the NAD.

In compliance with the provisions of Article 13 of Government Emergency Ordinance No. 43/2002, as subsequently amended and supplemented, the NAD carries out criminal investigations in cases concerning financial offences involving corruption, as well as in cases concerning crimes against the financial interests of the European Communities.

The NAD prosecutors are appointed by order of the Directorate's chief prosecutor, with the assent of the Superior Council of the Magistracy. To be appointed, prosecutors must have good professional training, a record of impeccable moral conduct and at least 6-years' experience as a prosecutor or a judge, and must pass a rigorous interview before a specially appointed commission.

# RESTREINT UE

By order of the chief prosecutor, based on the assent of the competent ministries, highly qualified specialists in the economic, financial, banking, customs, and IT fields as well as other fields can be appointed to clarify certain technical aspects of criminal investigations. These specialists have the status of public servants and, as in the case of the judicial police officers, carry out their activity under the direct management, supervision, and control of the NAD's prosecutors. Following a written order by the prosecutor, they prepare technical and scientific reports serving as evidence in accordance with the law.

The following crimes are within the competence of the NAD:

- corruption crimes if, irrespective of the quality of the persons who have committed them, the value of the amount or the asset forming the object of the corruption crime exceeds the LEI equivalent of EUR 10.000;
- crimes assimilated and directly related to corruption crimes if, irrespective of the quality of the persons who have committed them, they have caused material damage exceeding the LEI equivalent of EUR 200.000 or a very serious disruption of the activity of a public authority, public institution or any other legal person;
- crimes assimilated and related to corruption if, irrespective of the value of the material damage or the seriousness of the disruption caused to a public authority, public institution or any other legal person or to the value of the amount or the asset forming the object of the corruption crime, they are committed by certain categories of persons, such as members of parliament, members of government, State secretaries or undersecretaries and assimilated persons, magistrates, army officers, police officers, leaders and deputy leaders of county councils, municipal mayors and vice-mayors, county councillors, prefects and sub-prefects, managers of central authorities and public institutions, persons holding management positions from director level downwards, within independent administrations of national interest, national companies, etc.;
- crimes against the financial interests of the European Communities, irrespective of the value of the damage;
- economic and financial macro-crimes, if the material damage caused exceeds the LEI equivalent of EUR 1.000.000, in cases expressly and imitatively provided for by Government Emergency Ordinance No. 43/2002, namely scams, various forms of misuse of office, certain crimes provided for by the Customs Law as well as tax evasion offences.

# RESTREINT UE

According to GEO No. 43/2002, the NAD has the power to:

- carry out prosecution for the crimes provided for by Law No. 78/2000 in order to prevent, discover, and sanction corruption acts falling within the competence of the NAD;
- conduct, supervise, and control the criminal investigation activities carried out, by order of the prosecutor, by the judicial police officers under the exclusive authority of the NAD's chief prosecutor;
- conduct, supervise, and control the technical activities required by the prosecution and carried out by the specialists in the economic, financial, banking, customs and information fields as well as other fields, who are appointed in the NAD;
- notify courts to take the legal measures and to try the cases concerning crimes within the competence of the;
- participate in trial sessions, in compliance with the legal provisions;
- lodge appeals against judgments, in compliance with the legal provisions;
- analyse the causes of corruption and the conditions which foster it, work out and present proposals to eliminate them and to improve criminal legislation;
- draft yearly reports on the activity of the NAD and present them to the Superior Council of the Magistracy and to the Minister for Justice;
- create, maintain and update a database of corruption acts;
- carry out other responsibilities provided for by law.

## 2.1.2.2. The Directorate for the Investigation of Organised Crime and Terrorism (DIOCT)

The Directorate for the Investigation of Organised Crime and Terrorism was set up as a structure with a legal personality that is specialised in combating organised crime and terrorism within the Prosecutor's Office attached to the High Court of Cassation and Justice. The DIOCT is headed by a chief prosecutor, the position being similar to that of a first deputy to the General Public Prosecutor. The General Public Prosecutor resolves any competence conflicts between the DIOCT and other structures or units within the Public Ministry.

The structure and tasks of the service are described in Law No. 508 of 17 November 2004 on the creation, organisation and operation of the Directorate for Investigating Organised Crime and Terrorism, within the Public Ministry.



# RESTREINT UE

The DIOCT has a central unit and territorial structures.

By order of the DIOCT's chief prosecutor, territorial services managed by chief prosecutors are created within the territorial districts of prosecutor's offices attached to courts of appeal (15). There are also territorial offices (27).

By order of the DIOCT's chief prosecutor, territorial offices can be created or dissolved within the territorial districts of prosecutor's offices attached to courts. The offices are managed by chief prosecutors. If territorial offices are dissolved, their personnel are taken over by the hierarchically superior territorial services or by the other territorial offices subordinate to the same territorial service.

The DIOCT employs prosecutors, specialists in the fields of information processing, economics, finance, banking, customs, IT and other fields, as well as specialised auxiliary personnel and economic and administrative personnel, depending on the number of positions provided for by law.

The DIOCT's central structure comprises the following 5 specialised services: the service for combating organised crime, the service for combating drug trafficking, the service for combating economic and financial macro-crime, the service for combating cybercrime and the service for combating terrorism. Representation during the trial sessions is provided by the judicial office, while collaboration with institutions abroad is provided by the international legal assistance office. Also, pursuant to Law No 508/2004, as updated and amended, a human resources, studies and professional training bureau and an economic and financial department have been created at the central level.

The DIOCT's prosecutors are obliged to have at least 6-years' experience, and high professional and moral competence. Currently there are 195 prosecutors working within the service.

By order of the chief prosecutor, based on the assent of the competent ministers, highly qualified specialists in the information processing, economic, financial, banking, customs and IT fields as well as other fields are appointed within the DIOCT. These specialists are public servants and perform their activity under the direct management of the DIOCT's prosecutors.

# RESTREINT UE

The DIOCT, as the only unit within the Public Ministry specialised in combating organised crime, approaches organised crime as a complex phenomenon, acting in order to dismantle organised crime groups.

The DIOCT has the power to:

- a) carry out prosecution for the crimes provided for by Law No 508/2004 and other special laws;
- b) conduct, supervise, and control the criminal investigation activities carried out, as ordered by a prosecutor, by judicial police officers and agents;
- c) notify the courts to take the legal measures and to try the cases concerning crimes within the competence of the DIOCT;
- d) conduct, supervise, and control the technical activities required by the prosecution and carried out by the specialists in the economic, financial, banking, customs, IT and other fields, who are appointed within the DIOCT;
- e) analyse the causes of organised crimes, drug trafficking, cybercrime, and terrorism, and the conditions fostering such crimes, and work out proposals to eliminate them and to improve the relevant criminal legislation;
- f) create and update the database of crimes falling within the competence of the DIOCT;
- g) carry out other responsibilities provided for by the Code of Criminal Procedure and the special laws.

Special investigative methods available to the DIOCT are described in the law establishing the service.

In particular, when there are solid indications that one of the crimes which fall within the competence of the DIOCT has been committed, the following measures could be taken, in line with the provisions of the Code of Criminal Procedure or the special laws, with a view to collecting evidence or identifying the perpetrator:

- a) control the bank accounts and the accounts assimilated to these;
- b) supervise, intercept and record communications;
- c) access the computer systems.

The DIOCT's prosecutors can request, in original or in copy, any data, information, documents, banking, financial or bookkeeping documents, from any person who has them or who generates them.

# RESTREINT UE

For non-compliance with the obligation stipulated above, legal liability will be imposed.

The DIOCT's prosecutors can adopt the measures for a period of up to 30 days. The abovementioned measures can be extended, for justified reasons, by means of a reasoned order. Each extension cannot exceed 30 days. The maximum duration of the measures ordered is 120 days.

## 2.1.3 Training

The Romanian training programmes for magistrates cover relevant EU instruments. However, owing to financial restraints only a limited number of practitioners are actually able to participate. The Romanian National Institute of Magistracy, established in 1992, plays a major role in this respect. It was created in order to train magistrates and to improve the overall performance of the judiciary. The Institute is a public, autonomous institution, with legal personality, responsible for the recruitment and entry-level training of future judges and prosecutors, continuous education for active judges and prosecutors, and training of trainers. Its headquarters are in Bucharest; there are also regional centres in Timisoara and Sovata.

Continuous training is both a duty and a right of magistrates. In Romania, magistrates are entitled to up to 10 days a year of paid leave in order to participate in training sessions. However, training in EU law is not mandatory.

Law-enforcement services have their own training systems, which include certain elements of EU law and present mechanisms available at the European level. However, the reach of such training and general understanding of international mechanisms and available international tools seems to be limited.

## 2.2. Criminal policy

There is no specific national policy or overarching strategy for financial crimes and financial investigations. The authorities' actions are based on and limited to existing legal provisions that seem to treat financial aspects as secondary elements of an investigation/prosecution. Moreover, the legal framework consists of many legal acts and is said to be changed very often.

The National Anti-fraud Strategy for the protection of the European Union's financial interests, described below, is the only document of a general nature referring to a certain type of financial crime known to the evaluators.

## RESTREINT UE

Moreover, owing to specific aspects of Romania's history, which are also reflected in its Constitution (Article 44(8)), presumption of lawful acquisition of property is strongly safeguarded. In the case of ill-gotten wealth it is the authorities' duty to provide a court with proofs. Thus any "reverse burden of proof" forcing a defendant to present and explain the lawful origins of her/his assets, as exists in certain European jurisdictions, would be clearly against the spirit of Romanian law. Owing to the mandatory personal financial disclosure, high ranking State officials who are obliged once a year to table declarations concerning their wealth are treated to some extent differently. This mechanism is described in details in the chapter devoted to confiscation.

It should also be mentioned that Romanian law allows for criminal sanctions against legal persons. Article 53<sup>1</sup> of the Criminal Code includes a fine of LEI 2.500 to 2.000.000 (approx. EUR 600 to EUR 500.000) as the principal punishment. There are also the following complementary penalties: dissolving a legal person, suspending the activity of a legal person for a period of from 3 months to 1 year or suspending one of the activities related to commission of the crime for a period of from 3 months to 3 years, closing of certain working points of a legal person for a period of from 3 months to 3 years, banning participation in public procurement procedures for a period of from 1 to 3 years and publishing the final conviction decision.

In analysis of the overall policy, it has to be underlined that the Romanian authorities seem to attach great importance to the maintenance and development of certain institutions relevant for the fight against financial crime, especially corruption, equipping them as far as possible with the necessary legal and technical tools. Emphasis is being put on corruption as a leading criminal factor undermining the legal order. The necessity for international cooperation and active participation in EU efforts is clearly understood by senior management of those services.

# RESTREINT UE

## 2.3. Conclusions

There is no overall strategic approach to financial crime and related investigations that would entirely cover and guarantee the coherence of actions in the field of prevention, investigation, prosecution and asset recovery. Neither a comprehensive policy document nor an action plan relating to financial crimes is available. Apart from the lack of a strategic approach, no overarching coordination mechanism at national level has been presented. Although there are coordination and communication fora between competent services, like the NOPCML Board or "TRIDENT" groups, no such body at the central level has been identified. Thus certain trends and developments in criminal activities may remain undiscovered.

The overall impression of the expert team is that eagerness to address phenomena such as corruption and organised crime lead to an ad hoc approach which has resulted in a significant number of centralised specialised entities. It is noteworthy that the centre of gravity lies with the Prosecution Office attached to the Supreme Court. This may lead to a situation where police officers have very little investigative autonomy and are strictly directed by the prosecutor. Moreover, the leading prosecuting services responsible for financial crimes have their own police capacities (NAD, with its own seconded police force, and DIOCT, whose police officers work within the General Inspectorate of the Romanian Police), which complicates the overall picture and in practice may lead to overlapping investigations.

The division of tasks between different prosecuting services seems to be fairly clear. A simple mechanism to resolve conflicts of competence between key prosecuting services is in place as they are all supervised by one official. In practise however an investigation may be supervised by different prosecution services at its different stages, depending on the specific information discovered and confirmed. For example, suspicion of corruption which cannot be confirmed at a later stage of an investigation leads to a situation where a given service that earlier took over a case ceases to be competent to pursue it before the court. This may lead to delays in the procedure and a certain lack of continuity while a given dossier is handed over from one service to another. Moreover, there is no possibility for any of the authorities to actually verify whether any proceedings are being conducted against the same person by another service. The same applies to law-enforcement units in different territorial districts. In practice various services may not be aware of personal or factual links between their cases, something which is of outstanding relevance for financial investigations.

## RESTREINT UE

As far as establishment of an ARO is concerned Romania did not meet the deadline stipulated in Council Decision 2007/845/JHA and the process is still ongoing.

The composition and the interdisciplinary nature of the National Anticorruption Office should be mentioned as a good practice. Investigations carried out by this body are supported by specially selected judicial police officers, who have a special professional relationship with the service, and by highly qualified specialists in the economic, financial, banking, customs, information and other relevant fields. However, it is not clear whether the division between prosecuting services dealing separately with corruption and organised crime presents substantial added value as those two phenomena are very often linked.

The specialisation within the prosecuting service and the establishment of two services, namely the NAD and the DIOCT, are not reflected in courts of justice, where no specialised panels devoted to financial crimes exist. Juvenile crime and corruption are the only exceptions where special panels have been established within courts of law. This may be problematic taking into consideration the complexity of cases relating to financial crime and the specificity of proofs that may be used. On the other hand, cases involving money laundering fall within the competence of tribunals, i.e. courts that are higher than courts of first instance. This would suggest that such cases are judged by more experienced judges having full knowledge of the tools at their disposal.

It has been also discovered that it is a difficult task to replace prosecutors retiring/leaving the service. This leads to a rising number of vacancies and, as the evaluators discovered, heavy understaffing of certain units. The excessive burden of work with investigators having to process about 1000 files a year points to serious shortcomings in HR policy. In addition, minor and serious cases have to be given equal treatment from a procedural point of view. In the long term this has negative effects on the quality and efficiency of investigation and prosecution. The same applies to law-enforcement agencies, where specialised and experienced personnel may wish to leave the service, mainly for financial reasons. Moreover, the selection procedures appear to be individualised and not necessarily to reflect a comprehensive institutional policy of employment and experience sharing.

# RESTREINT UE

As far as the NOPCML is concerned, monitoring all three reporting systems concerning STR, CTR, ETR and using data analysis in all transaction reports is considered a good basis for in-depth analysis of suspicious transactions. Weekly meetings with representatives of the Public Prosecutor's Office on possible money laundering cases before notification to the relevant law-enforcement authority is considered a good solution.

Moreover, access to all information from financial institutions and similar access to all information on databases operated by Romanian authorities is crucial for the NOPCML. However, the 30-day limit for the financial institutions and others to forward information on request to the NOPCML seems to be too long.

The financial intelligence can be disclosed only to the prosecution offices, which may limit the potential for proactive and integrated analysis. On the other hand the composition of the FIU's Board seems to be a good solution fostering coordination, exchange of information and mutual feedback.

## 3. Investigation and prosecution

### 3.1. Available information and databases

There are established databases for the following categories: bank accounts/transactions, real estate, companies, vehicles, boats.

#### 3.1.1. Accounts and transactions

Banks are obliged to send information on opened or closed accounts twice a month to the Ministry of Public Finance, via the General Directorate of Information Technology within the National Agency for Tax Administration. Also, the banks send information on the debit-card accounts of natural persons, in order to enable fiscal bodies to conduct certain operations relating to net income tax resulting from annual regularisation.

The National Agency for Tax Administration (Ministry of Finance) has established a database that contains the following information: the bank-account holders who open or close accounts, the opening and closing date of the account, the name of the bank, the branch office and the fiscal code of the branch where the account was opened. The search criterion is the tax identification number for legal persons and for entities without legal personality and the personal identification number for natural persons. The NOPCML has direct access to the database.

## RESTREINT UE

Moreover, the Office also has its internal databases, one containing all cash transactions over EUR 15.000 (or equivalent in any currency) and the other for cross-border transfers over EUR 15.000 (or equivalent in any currency) which have been the subject of reporting in accordance with AML/CTF Law No. 656/2002, as subsequently amended and supplemented. The databases, depending on which kind of operation they refer to, cover numerous kinds of information, such as the sum and the date of the operation, its type (deposit/withdrawal), identification details of the account holder and persons empowered to operate in it (name, personal identification number, address, etc.) and justification of the operation.

It also needs to be mentioned that, according to Law No. 39/2003 on preventing and combating organised crime, banking secrecy cannot be invoked against a prosecutor's request in cases relating to organised crime.

However, information relating to identification of a bank account, identification of an owner of a bank account and identification of operations from and to a specified bank account in a specified period in the past cannot be provided to a law-enforcement authority in another Member State through police cooperation mechanisms, including Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law-enforcement authorities of the Member States of the European Union.

According to the explanations of the Romanian experts, law-enforcement agencies are not holders of such data. The data could, if needed, be acquired by a prosecutor from the institutions responsible. Thus, the data to be exchanged via the channel described in the Framework Decision do not meet the criteria in Article 1(2) thereof.

This kind of data may be exchanged only on the basis of a request for mutual legal assistance. Exchange of information on bank accounts is regulated in certain articles of Law No. 302/2004.



## RESTREINT UE

Article 187<sup>11</sup> states that, upon the request of the authorities of a Member State of the European Union, the Romanian authorities shall take steps with a view to identifying bank accounts, whatever their nature, which are controlled or held in a bank unit in Romania by a natural or legal person who is under criminal investigation, and shall provide those authorities with the numbers of the bank accounts, as well as any other details. The information shall also include data on the accounts for which the person under investigation has a mandate, to the extent that such information was expressly requested and may be provided within a reasonable period of time.

The provision of information is limited to the offences set out in Article 1 (3) of the 2001 Protocol to the 2000 MLA Convention.

Article 187<sup>12</sup> of Law No. 302/2004 states that, upon request, Romanian authorities shall provide details of bank accounts specified by the requesting foreign authorities, as well as of the bank transactions that passed, during a certain period, through one or more of the bank accounts specified in the request, including details of any person making payments into or receiving payments from the account. The execution of the request is subject to the following conditions:

- a) the requesting authority must indicate the extent to which the information is considered to make a substantial contribution to solving the case;
- b) the execution of the request must be compatible with Romanian legislation;
- c) the act that is under criminal investigation must be an offence according to Romanian law.

According to Article 187<sup>13</sup> of Law No. 302/2004, the Romanian authorities shall, at the request of the authorities of a Member State of the European Union, ensure the monitoring, for a determinate period, of bank transactions passing through one or more of the bank accounts specified by the requesting authorities. In this situation as well, it is necessary for the requesting State to stipulate in the request the reasons for which the requested pieces of information are considered to be of substantial value for investigation of the offence under discussion. The concrete way in which the request is to be executed shall be established in total agreement with the requesting State and in accordance with Romanian legislation.

In all the situations established by the law, the request shall be executed by the competent authority, in accordance with domestic legislation, taking into account the object of the request and the procedural stage (criminal investigation or trial).

# RESTREINT UE

As previously specified, these measures can be taken only on the basis of an international request for mutual legal assistance.

## 3.1.2 Real estate

The National Agency for Cadastre and Land Registration is a public institution subordinate to the Ministry of Administration and the Interior, set up in 2004 by reorganising the National Office of Cadastre, Geodesy and Cartography and by taking over the land registration activity from the Ministry of Justice.

The database contains information relating to movable goods and real estate that is the property of natural persons and corporate bodies, the date when such property was obtained, the date when such property was transferred, the existence of special mentions on goods (sequestration, mortgage) and the taxable value. The following institutions have been given indirect access to the registers: Ministry of Public Finance, Public Ministry, National Office for Prevention and Control of Money Laundering, Ministry of Justice and Citizens' Liberties.

At present, the database is functional only at local level, not being connected to the national level, while registers of property of natural persons or corporate bodies are kept by specialised offices operating at the level of the 41 counties. However, the evaluators were told that in practice, in order to discover all real estate belonging to one owner, about 230 local units have to be directly addressed. This presents a significant obstacle to investigations and asset tracing. The Agency is currently seeking to establish an efficient system of registering property at the level of the whole country, pursuant to European standards relating to real-estate registration and real-estate publicity.

A completely computerised central database is to be set up. It is supposed to be unitary from the point of view of the information on real-estate registration and real-estate publicity, easy to access, maintained with the direct support of an international consulting group and supported by programmes of the World Bank and the European Community.

# RESTREINT UE

To that end, partnerships have been created with the National Union of Romanian Notaries Public, the Romanian Association of Banks and the National Union of Real-Estate Agencies, so that in future these entities will be able to directly provide data regarding real-estate transactions whose purpose is the selling/ buying of real-estate on the territory of Romania.

Also the Trade Register offices may gather certain information on real estate, since it appears in certain business relations as an asset.

### 3.1.3 Companies

The records of trading companies are kept by the Trade Register under Law No. 26/1990 as republished and as subsequently amended and supplemented.

The Trade Register comprises 2 levels:

- a local level represented by the 42 territorial offices attached to each district court and subordinate to the National Office of the Trade Register.
- a national level represented by the National Office of the Trade Register that is subordinate to the Ministry of Justice and Citizens' Liberties.

The National Office of the Trade Register (NOTR) is a public institution with legal personality, subordinate to the Ministry of Justice and Citizens' Liberties. It was set up by Law No. 26/1990 on the Trade Register, as subsequently amended and supplemented. The territorial offices of the Trade Register are attached to each district court and are subordinate to the National Office of the Trade Register.

The central Trade Register and the territorial Trade Register offices are composed of the following electronic data registers:

1. the register of traders that are licensed natural persons, and individual and family enterprises.
2. the register of cooperative societies, which includes cooperative societies, farming cooperatives, credit unions and their parent companies, European cooperative societies that are registered in Romania, branches thereof or branches of foreign cooperative societies and credit unions.

# RESTREINT UE

3. the register of other legal persons that are traders or non-traders. This register includes trading companies, national companies, public corporations, European companies registered in Romania, economic interest groups, European economic interest groups registered in Romania, their branches, the branches of foreign trading companies and economic interest groups.

Direct access based on protocols/contracts concluded by the NOTR is granted (free of charge) to the following entities: DIOCT, NAD and FID. Paid access is available to any interested natural or legal person.

The Trade Register offices issue, upon application and at the expense of the applicant, certificates confirming certain data known to the office.

## 3.1.4 Vehicles/Driving licences

The Directorate for Driving Licences and Vehicle Registration was established on the basis of Emergency Government Ordinance No. 50/2004. It is the specialised institution of central public administration, endowed with legal personality and is subordinated to the Ministry of Administration and the Interior. It exercises competences attributed to it by law with regard to the organisation and coordination of the activity of registering and issuing driving licences and vehicle registration certificates. It is at the level of this unit that the National Register of Driving Licences and Registered Vehicles is managed, used and updated. Vehicles may also be identified by their owner, through the Directorate/Unit for Taxes and Local Taxes within town halls. This database contains information on the owner of the vehicle, whether a natural person or corporate body, type of vehicle, data identifying the vehicle, registration date, manufacture date, vehicle colour, series of the vehicle identity card, series of the engine and series of the chassis.

## 3.1.5 Vessels

The Romanian Naval Authority (RNA) is the specialised technical body, subordinate to the Ministry of Transport and Infrastructure, in the field of safety of navigation and vessel security with responsibility inter alia for the registration and recording of vessels.

# RESTREINT UE

The RNA and the harbour masters subordinate to it, carry out the registration and recording of vessels flying the Romanian flag, using registries referring to certain categories of vessels (maritime vessels, inland-waterway vessels etc.).

Indirect access to the registers is given to public authorities in order to fulfil their tasks established by law or to any person who has a justified interest.

A database for the administration of general, technical and juridical data relating to the vessels recorded in the above-mentioned registries is planned to be accomplished by the end of 2011 based on a European funded project.

## 3.2. Financial investigation and use of financial intelligence

There is no specific legal framework for financial investigations, as these are carried out within the framework of regular criminal investigations. Nor does the system allow for separation of the financial investigation from the investigation concerning the predicate offence.

According to Article 200 of the Code of Criminal Procedure, the purpose of a criminal investigation is to gather the necessary evidence concerning the existence of offences, the identification of the perpetrators and the determination of their responsibility, in order to find whether it is necessary or not to prosecute. According to Article 163(1) of the Code of Criminal Procedure, interim measures shall be taken during the criminal trial by a prosecutor or a court and may lead to the freezing of movable and immovable goods in order to repair the damage produced by the crime and to guarantee the execution of the fine. Thus the tracing, seizing and confiscation of assets is not considered a separate goal of criminal investigations and no additional resources are provided for that purpose.

It is however, under certain conditions, possible to continue or reopen an investigation into the proceeds of crime or its financial aspects, after the criminal investigation proper has been closed/after the conviction.

## RESTREINT UE

The continuation of an investigation into proceeds obtained from a crime after the prosecutor has decided not to send the perpetrators before the court is possible only after invalidation of the solution or reopening of the criminal investigation.

In the case of a final conviction, the continuation of an investigation into the crime-related proceeds can be accomplished only where the judicial decisions are reviewed, in accordance with the provisions of the Code of Criminal Procedure.

From experience gained during the visit it appeared that many opportunities for financial investigations, asset tracing and recovery were not being fully explored. In a particular criminal case presented to the team, a member of a criminal group operating in Romania and France was arrested coincidentally. The resulting search of his car revealed his involvement in skimmming fraud. A laptop, stolen credit cards, skimmming devices and other crime-related items were seized and confiscated at the end of the criminal proceedings as instruments of crime. Unfortunately, no further investigation was carried out in order to identify, seize and confiscate the proceeds of crime. Initiation of a financial investigation would have seemed to be an obvious decision in such a case, taking into account the number of credit cards seized, the seriousness of the crime and the main purpose of committing this type of criminal offence (financial gain). In this case however, law enforcement was limited to punishing the perpetrator on the basis of the clear proofs discovered initially.

The above example confirms that financial investigations are not applied very often. It also explains and illustrates another important trend, namely a significant discrepancy between the identified damages relating to certain crimes, amounting to hundreds of millions of euro, and the assets recovered.

For example, in 2007 the NAD sent to courts 167 indictments against 415 persons for committing 958 offences. The damages resulting from the offences committed was estimated at over EUR 360 million. In 2007, through 12 final court decisions (in other cases initiated earlier) on NAD indictments the confiscation of LEI 56.885, EUR 9.398, USD 23.242, DM 135.000 was ordered.

## RESTREINT UE

As far as financial intelligence is concerned numerous institutions, such as the NOPCML, DLAF or customs services, are entitled to gather financial data and produce analyses. They are thus the primary source of financial intelligence that is used to initiate and pursue criminal investigations carried out by prosecuting services. For example, the NOPCML performs the financial analysis based on the transaction reports received from reporting entities. In order to finalise the analysis, data and information are collected from relevant public or private institutions. These institutions have a legal obligation to respond to the NOPCML's requests within 30 days. The information exchange is carried out in accordance with the provisions of Law No. 656/2002 on the prevention and sanctioning of money laundering, as well as on setting up certain measures for the prevention and combat of terrorism-financing acts, and also in accordance with the cooperation protocols concluded. The information requests are executed on a case- by-case basis. Also, in its capacity as Egmont and FIU.NET member, the Romanian Financial Intelligence Unit is able to carry out information exchange on the basis of Memoranda of Understanding concluded with foreign institutions having similar responsibilities.

The office conducts no criminal investigations but presents the results of its analysis to the competent prosecuting services. In cases of suspected terrorism financing, the Romanian Intelligence Service will be notified. In accordance with the provisions of the article 6 paragraph (8) of the Law no. 656/2002, with subsequent modifications and completions, following the receipt of the suspicious transactions reports, if there are solid grounds for suspicion that other offences than that of money laundering or terrorism financing have been committed, the Office shall immediately notify the competent body. The office has an obligation to provide the Prosecutor's Office attached to the High Court of Cassation and Justice or other structures within the Public Ministry that are competent under the law, upon their request, with the data and information it has obtained. The competent prosecuting service which formulated the request, will communicate to the office on a quarterly basis the state of play concerning the notifications transmitted.

Prosecutors use the financial information irrespective of the means by which it was obtained, including that transmitted by FIU, both during the pre-trial phase and during the criminal investigation phase.

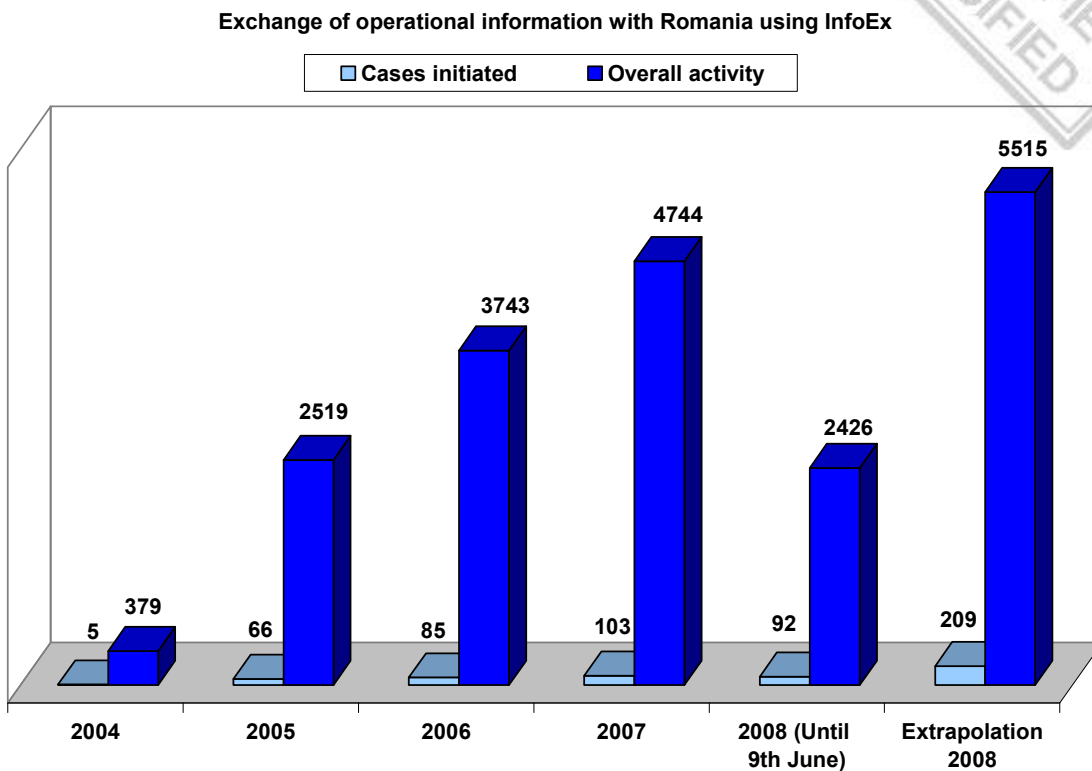
# RESTREINT UE

## 3.3. Cooperation with Europol and Eurojust

### 3.3.1. Cooperation with Europol

Following the agreement with the European Police Office signed on 25 November 2003, Romania became a member of Europol. This agreement was ratified by Law No. 197 of 25 May 2004.

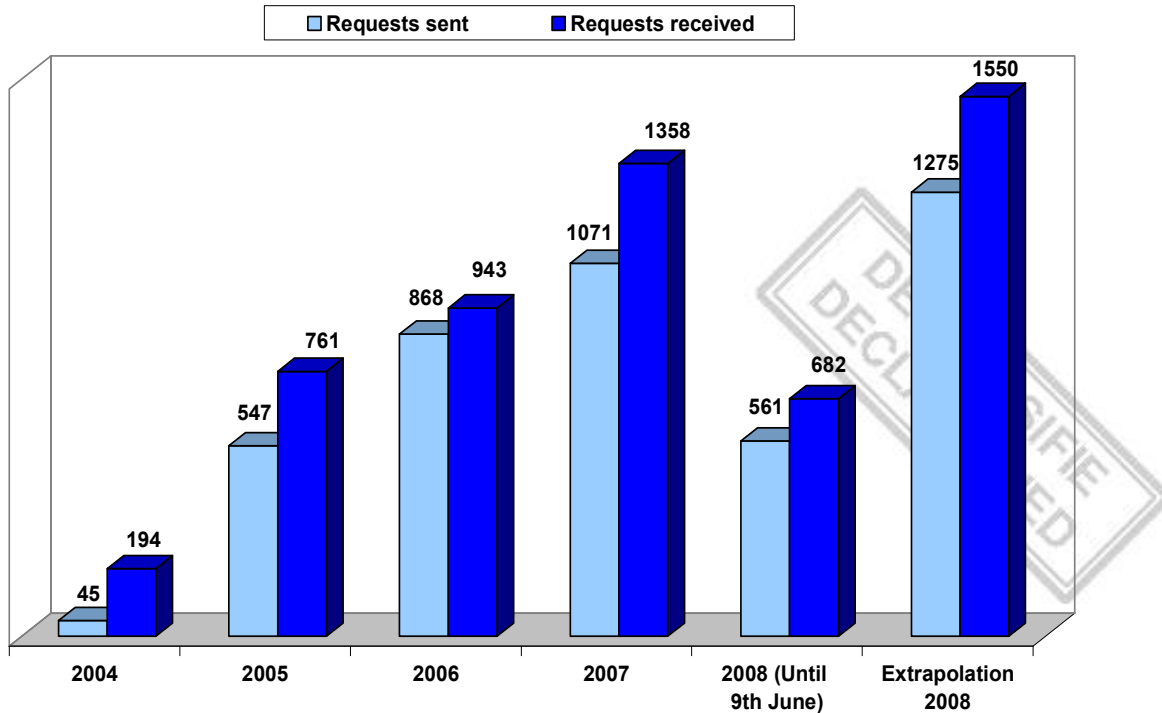
Romania has had a Europol Liaison Office at Europol since 2004. The following charts illustrate the ever increasing trend of using Europol as a channel for information exchange.





# RESTREINT UE

Requests sent and received at the Romanian Desk



Since 2004, both the number of requests sent and the number received have shown a progressive increase.

In 2008 Romania was mainly involved in the exchange of information related to:

- Other Means of Payment (28.48%)
- Trafficking in Human Beings (14.76%)
- Terrorism (10.10%)
- Drugs (9.73%)
- Fraud and Swindling (8.94%).

It can be inferred that the above categories of crime include only a limited number of financial crime phenomena.

Notwithstanding the steady increase in information exchanges, the Romanian ELO desk has only two staff members, which has implications for its capacity. It is to be expected that information exchanges will continue to increase over the coming years.

## RESTREINT UE

Moreover, the evaluation visit revealed that magistrates, prosecutors and law-enforcement personnel have very limited knowledge of the mechanisms and products provided by Europol and the support that may be provided to national law-enforcement services by the agency.

Since accession in 2007, Romania has joined 4 financial crime-related Analytical Work Files (AWFs): TERMINAL on non-cash payment fraud, SMOKE on counterfeit cigarette smuggling, MTIC on organized VAT fraud and COPY on commodity counterfeiting. Romania also participates in numerous related training initiatives.

According to Europol the quantity of information provided by Romania is in general average or above, whereas the quality of the information is considered average or below. With respect to MTIC and COPY, the utilisation of the AWF potential is limited to cross-check requests and hardly any request for in-depth analysis of data has been issued. However, the Romanian counterparts of Europol are very receptive towards action for improvement and future prospects look positive.

The situation is totally different with respect to AWF SUSTRANS, dealing with Suspicious Transaction Reports and intelligence stemming from ongoing ML investigations. AWF SUSTRANS is a Pan-European platform for integrated analysis of financial crime intelligence and enables the linking of financial intelligence to other serious or organised crime phenomena. Romania is not a member of the AWF and Europol is not aware of any considerations concerning Romanian participation in the project.

DIOCT is a part of 3 Joint Investigation Teams, each of them having a financial component.

Romania expressed the following expectations regarding Europol: analytical, operational or strategic support, training sessions and the organisation of meetings within the framework of specific operational investigations.

# RESTREINT UE

## 3.3.2. Cooperation with Eurojust

Starting from 2006, Eurojust has been involved in approximately 3 letters of request per year, carried out in files in which financial investigations were conducted. The Romanian national desk at Eurojust registered 64 cases in 2008 in comparison to 53 cases in 2007. In 77 cases the assistance and support of Eurojust was provided to other national desks by Romania (53 cases in 2007). In the first half of 2009, Romania was the requested country in 56 cases and the requesting country in 26 cases.

Statistics clearly show the increasing tendency to use and utilize Eurojust powers and competences in the field of combating organized, cross-border crime. Cooperation with Eurojust and its added value is very much appreciated by Romanian prosecutors.

Romania looks forward to Eurojust providing more support and the necessary technical assistance in cases of international criminal investigations. Romania would expect enhanced involvement by Eurojust in joint investigation teams and the drafting of legislative and practical guidelines.

## 3.4. Conclusions

Finance-related tools seem to be of secondary importance during investigation and prosecution, as the gathering of necessary evidence and identification of the perpetrators are the main goal of the actions undertaken. Implications are twofold: possible criminal connections, also of an international nature, may remain undiscovered and, secondly, possibilities of asset recovery after a final conviction are limited. At the trial stage, certain aspects of a finance-related crime may also be overlooked, as there are no specialized judicial panels in courts that would be able to analyze complex cases. On the other hand, cases related to money laundering are judged by tribunals (second-level courts) which should mean they are addressed by senior and more experienced judges. External expertise, from the private sector for example, is available to courts. However, this option is restricted by the limited financial resources of the judicial system.

As far as databases are concerned, the lack of a central real estate register is the major challenge.

## RESTREINT UE

The evaluators got the impression that the structure and functionalities of the database being currently developed have not been thoroughly examined by interested institutions. Moreover, it is not certain whether national databases that are currently under construction are compatible and comparable with foreign databases of the same kind, which would facilitate future cooperation.

A significant challenge relates also to internal databases run by different services. There is very limited mutual access and limited interoperability of the databases. In practice, different services, while investigating, prosecuting or judging certain cases, may not be aware of other procedures concerning the same person, group, asset, etc.

Moreover, reluctance to consult foreign databases was clearly visible among law-enforcement services, even in obvious cases where foreign nationals were involved.

Relationships concerning data exchange with competent authorities of other Member States are based on numerous protocols and agreements. It was explained to the experts that the conclusion of these acts is not a prerequisite for cooperation and that they only establish the technical elements of cooperation. However, this way of structuring cooperation within the EU actually seems to go against the main principle of contacts being based directly on the relevant EU legislation.

As far as cooperation with Europol is concerned, it seems that there was only a very general knowledge about the competence and potential assistance which could be given by this institution to national authorities. In particular participation in AWFs should be strongly encouraged.

The increasing volume of information exchanged via Europol channels is undoubtedly a positive development. Romania also participates in certain mechanisms related to financial crimes. However, awareness needs to be raised regarding the products and eservices rendered by Europol in order to exploit them fully. These awareness-raising efforts should be directed not only towards law enforcement agencies, but also to prosecution offices, DIOCT and NAD in particular.

# RESTREINT UE

## 4. Freezing and confiscation

### 4.1. Freezing

#### 4.1.1. At national level

The following national legal basis can be used when freezing assets:

- art. 163-168 Criminal Procedure Code;
- Law no. 656/2002 on the prevention and sanctioning of money laundering and on the implementation of certain measures to prevent and combat the financing of terrorism;
- Law no. 39/2003 on preventing and combating organised crime;
- Law no. 678/2001 on preventing and combating trafficking in human beings;
- Law no. 143/2000 on preventing and combating illicit traffic and consumption of drugs;
- art. 22 of the GEO no. 43/2002 on the National Anti-corruption Directorate and art. 19 and 20 of the Law no. 78/2000 on the prevention, identification and sanctioning of corruption.

According to the provisions of art. 163 para. 1 of the Criminal Procedure Code, interim measures are taken during the criminal trial by the prosecutor or the court, consisting in freezing movable and immovable goods in order to repair the damage produced by the crime as well as to guarantee the execution of the fine.

The interim measures aimed at repairing the damage can refer to goods belonging to the accused or the defendant and to the person bearing the civil responsibility, up to the probable value of the damage.

The interim measures aimed at guaranteeing the execution of the fine are taken only against the assets of the accused or the defendant.

## RESTREINT UE

As general rule, when any type of crime is committed, interim measures can be established during the criminal trial either by a prosecutor or by a court, which consist in freezing, by establishing a sequester, movable and immovable assets, with a view to special confiscation, compensating the damages entailed through the perpetration of the crime, as well as guaranteeing the execution of the penalty with a fine. In case where crimes of corruption are committed, the adoption of provisional measures is obligatory. They are also mandatory in the situation of offenses directed against the financial interests of the European Communities (art. 20 of the Law no. 78/2000), in the case of money laundering offences and financing of terrorist acts (art. 24<sup>1</sup> of the Law no. 656/2002), in the case of tax evasion (art. 11 of the Law no. 241/2005).

Freezing is possible only within the framework of an ongoing investigation. The measure can be taken by a prosecutor during a criminal investigation phase and by a judge during a trial phase. It may last until its revocation by the prosecutor or by the court. It is enforced, during the criminal investigation, by judicial police, based on an order issued by the prosecutor. During a trial a judicial executor is competent to enforce the measure.

According to art. 166 par. 1 of the Criminal Procedure Code, the authority which enforces the seizure draws up a report about all the actions it accomplished, describing in detail the seized assets and indicating their value. A copy of the report is given to the person the seizure was applied to, and in his/her absence, to the persons he/she lives with, to the administrator, the concierge or the person who usually replaces him/her or a neighbour. This report mentions the objections of the parties or of other interested persons. For the immovable assets under seizure, the authority which ordered the initiation of the seizure asks the competent authority to take mortgage inscription over the seized assets, attaching copies of the act by which the seizure was ordered and a copy of the report concerning the seizure. (Art. 166 par. 3 of the Criminal Procedure Code).

The law foresees certain legal remedies for the person concerned. According to art. 168 of the Criminal Procedure Code, the defendant, the civilly liable party, as well as any other interested person can complain to the prosecutor or to the court against the provisional measure taken and against the means of accomplishing it, in any phase of the criminal trial. Therefore:

- during the criminal investigation phase, the interested party can challenge the provisional measure through a complaint addressed to the prosecutor hierarchically superior to the one who ordered the measure;

## RESTREINT UE

- during the trial phase, the interested person can complain to the court.

The decision of the court can be separately challenged through an appeal. The appeal does not suspend the execution.

After the definitive determination of the criminal trial, if no complaint was filed as regards the fulfilling of the provisional measures, a challenge can be made according to the civil law.

Stealing goods that have been seized constitutes a crime according to art. 244 of the Criminal Code and is punished with imprisonment from 1 month to 1 year or with a fine, and if the deed is perpetrated by the custodian the penalty shall be imprisonment from 3 months to 2 years or a fine.

The way the assets are managed is also defined by law. According to art. 165 of the Criminal Procedure Code, the authority which enforces the seizure is obliged to identify and evaluate the seized assets; if necessary, it can also resort to experts.

It is mandatory to seize perishable goods, objects made of precious metals or precious stones, foreign means of payment, domestic securities, art and museum objects, valuable collections, as well as money.

Perishable goods are sent to commercial units in which the state holds most of the shares, according to their profile of activity, which are bound to receive them and liquidate them at once.

Precious metals or stones or artefacts containing precious metals or stones, as well as foreign means of payment, must be deposited with the closest competent banking institution.

Items of artistic or historical value and precious collections are sent for preservation to specialized institutions.

The amounts of money resulting from the capitalization are recorded, as appropriate, in the name of the defendant, or of the person civilly liable, at the disposal of the authority who ordered the initiation of the seizure, to whom the receipt mentioning the amount is given, within a maximum of 3 days from the taking of the money or from the capitalization of the assets.

# RESTREINT UE

If there is danger of alienation, the other movable assets seized will be put under seal or taken, and a custodian can be appointed. The freezing order can be withdrawn if it is successfully challenged by legal means or a prosecutor or a court revokes ex officio the provisional measure considering that it is no longer necessary.

In practice, the freezing of certain movable goods such as vehicles may be problematic as authorities are not allowed to cash them before the final judgement. Those goods need to be stored and safeguarded, which is an additional burden for the authorities involved. They may also lose their value during trial.

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

Section 3 of Law 302/2004 on international legal cooperation in criminal matters, as amended and completed by Laws no. 244/2006 and no. 222/2008, includes provisions on cooperation with the Member States of the European Union with application of Framework Decision 2003/577/JHA on the execution in the European Union of orders concerning the freezing of assets or evidence.

Article 187<sup>20</sup> of the Law amending and supplementing Law No. 302/2004 on International Judicial Cooperation in Criminal Matters provides for the following definitions:

1. Freezing order shall mean any measure taken during criminal proceedings by a judicial authority of a Member State consisting of the provisional freezing of property, in order to avoid any operation of destruction, conversion, displacement, transfer or alienation of that property.
2. Property includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the competent judicial authority in the issuing State considers:
  - a) is the proceeds of an offence referred to in Article 187<sup>24</sup>, or equivalent to either the full value or part of the value of such proceeds, or
  - b) constitutes the instrumentalities or the objects of such an offence.
3. Evidence shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning certain offences referred to in another article (187<sup>24</sup>).



# RESTREINT UE

4. Issuing State shall mean the Member State in which a judicial authority has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings.
5. Executing State shall mean the Member State in whose territory the property or evidence is located.

Before transposing the Framework – Decision 2003/577/JHA, the domestic legal regime applicable to the legal institutions comprised in this framework-decision was mainly regulated through Law no. 302/2004 on international legal cooperation in criminal matters. The transposition of Framework-Decision 2003/577/JHA into national legislation is considered a completion and an improvement from the point of view of the efficiency in the freezing of assets and of the evidence.

However, a more specific assessment of the new system is not possible as no cases were registered and no statistical data is available.

The non-use of the instruments in question has been explained by the fact the law has been introduced recently and is not well known to practitioners. Moreover, similar tools are said to be already available within the framework of well-established and better known mutual legal assistance mechanisms. They seem to be preferred by the practitioners met. Another reason raised is the fact, that not all Member States implemented the Framework Decision.

#### 4.1.2.1. Experience when acting as an issuing State

According to the provisions of art. 187<sup>23</sup> of Law no. 302/2004 by which Framework Decision 2003/577/JHA is also transposed, the freezing order is issued by the prosecutor, during the criminal investigation phase, and by the judicial court, during the trial.

The freezing order together with a certificate drawn up according to provisions of law must be transmitted by the issuing Romanian judicial authority directly to the competent judicial authority from the executing state. As an exception, in the case of Member States which by means of declarations reserved their right to receive and transmit the freezing order together with the certificate through the central authorities assigned by them, the transmission will be carried out according to the declaration of the respective Member State.

## RESTREINT UE

A certificate issued by a Romanian judicial authority must be translated into the official language or into one of the official languages of the executing Member State or into another language that is accepted by that Member State. The transmission is carried out by any means which produces a written record and under conditions that should allow the executing judicial authority to establish the authenticity of the document and of the certificate.

The issuing judicial authority has also the possibility to indicate to the authority in the executing state any formalities or procedures that have to be observed so as to guarantee the validity of the evidence.

In cases in which the issuing Romanian judicial authority does not know the executing authority, it is obliged by law to seek assistance from Romania's contact points in the European Judicial Network, with a view to obtaining the necessary information.

As regards the national contact points, Romania assigned these points at the level of the Ministry of Justice and Citizens' Liberties (2 points) and of the Prosecutor's Office attached to the High Court of Cassation and Justice (4 contact points). The EJM Atlas is also said to be used by judges and prosecutors very often. Requesting assistance from the national member at Eurojust is not excluded.

As for the Project PHARE RO 05/1B/JH/03 "The strengthening of the institutional and legislative framework of the international legal cooperation in Romania" (institutional twinning project between Romania and Austria), finalized in the month of May 2008, the Manual on criminal legal cooperation for judges and prosecutors and the Manual of criminal legal cooperation for court clerks were drawn up and they include provisions on the enforcement of the Framework Decision 2003/577/JHA.

No other instructions or guidelines have been drawn up yet on the filling in of the certificate or on the definition of its elements. It is considered an option, but only after the initial practical cases have been analysed.

# RESTREINT UE

## 4.1.2.2. Experience when acting as an executing State

The freezing order is enforced by the prosecutor's office attached to the tribunal, during the criminal investigation phase, and by the tribunal, during the trial, in the circumscription of which the asset for which the freezing order was issued is located. According to art. 187<sup>26</sup>, at any stage of the proceedings, the Romanian judicial authorities are obliged by law to recognise any freezing order without any further formality and to take forthwith the measures required for its immediate execution.

The Romanian authorities declare that in cases in which the freezing order refers to several assets located in the territorial circumscription of two or more Romanian judicial authorities, the competence to acknowledge and execute the freezing order lies, depending on the procedural stage, with the Prosecutor's Office attached to the Bucharest Tribunal or to the Bucharest Tribunal.

In cases of that kind, or when other difficulties appear, the Romanian authorities do not exclude the possibility of the Minister of Justice and Citizens' Liberties (the trial phase) or the Prosecutor's Office attached to the High Court of Cassation and Justice (the prosecution phase) being contacted. However, procedure and criteria determining when a foreign authority should turn to those central authorities were not presented.

The freezing order issued by another Member State is transmitted to the competent prosecution office or to the competent court, depending on the case. The transmission may be accomplished by fax also. The data on the competent judicial authorities were notified to the Council General Secretariat and have been entered in the EJN Atlas.

The certificate must be translated into Romanian.

Art. 187<sup>20</sup> stipulates that when a Romanian judicial authority receives a freezing order, it must, within 24 hours from the date of receipt, verify if the order is accompanied by the certificate or by any other equivalent document, as well as by its translation into Romanian. If the documents are not translated, the Romanian judicial authority asks the issuing judicial authority to submit a translation within 3 days at most. After receipt of the translation, the Romanian judicial authority must verify its competence within 24 hours at most from the date of receipt.

## RESTREINT UE

If the Romanian judicial authority considers it does not have the competence to acknowledge and take the measures necessary for the execution of the freezing order, it shall immediately send, ex officio, the freezing order to the Romanian judicial authority competent to execute it and inform the issuing state judicial authority about this. If the freezing order does not contain sufficient data to establish competence, the Romanian judicial authority may ask the issuing judicial authority to provide supplementary information, within a maximum period of 3 days.

According to art. 187<sup>28</sup>, during the criminal investigation phase, a prosecutor in charge issues an ordinance, within a maximum of 5 days from the expiration of certain terms stipulated by law.

As there are no practical cases to be analysed it is hard to assess whether the above mentioned 5-day period guarantees the "immediate execution" foreseen in art. 5 of the Framework Decision.

Any interested person, including good faith third-parties, may file a complaint against the ordinance by which the prosecutor ordered the acknowledgement of the freezing order, if it entailed damages to his/her legitimate interests. The complaint can be filed within 5 days from the communication of a copy of the ordinance.

The reasons for the issuance of the freezing order cannot be the subject of the complaint, and can be challenged only before a court from the issuing state.

A complaint against a decision taken by a prosecutor to execute a foreign freezing order is possible and can be addressed to a competent court of an appropriate territorial circumscription. The presence of the prosecutor is indispensable when judging the complaint.

The prosecutor's office will submit the file to the competent tribunal, within two days from receipt of the address by which it was solicited.

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The complaint is decided upon in public session, within 5 days, by definitive closure. The introduction of the complaint does not suspend the execution of the freezing order. The court, in determining the complaint, verifies the ordinance of the prosecutor, on the basis of the material in the case file and of any writings presented. The Court may either:

- a) reject the complaint as overdue or inadmissible, maintaining the ordinance that had been challenged; or
- b) accept the complaint, cancel the ordinance and order revocation of the freezing measure.

If the decision based on a freezing order is taken by a judge, it may be appealed against, within 5 days from its issue or its communication, as applicable, by any interested party, including good faith third-parties, if damages were made to his/her legitimate interests. The provisions of art. 187<sup>28</sup> apply accordingly.

The file is sent to the court of appeal within 24 hours from the declaration of the appeal. The appeal is determined within 5 days, by the competent court of appeal, on the basis of the material in the case file and any other documentation submitted. The appeal does not suspend the freezing order.

The freezing of the asset is maintained until the final determination of the request by the issuing authority. Nevertheless, the competent Romanian judicial authority may, after consultation with the issuing judicial authority, in accordance with the Romanian legislation and practice applicable in the matter and depending on the circumstances of the case, order the freezing of the asset for a shorter period.

If the competent Romanian judicial authority intends to revoke the freezing measure, it will inform the issuing judicial authority, offering it the possibility to formulate observations. Also, when the judicial authority of the issuing state informs the Romanian executing authority about the revocation of the freezing order, the latter has the obligation to revoke the measure as promptly as possible.

A thorough assessment of the functioning of the system in practice is not possible at this stage as there are no such cases to be analysed.

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

Confiscation is provided for by Article 118 of the Criminal Code and is available in cases concerning any type of crime.

The application of confiscation is mandatory in respect to the following categories of goods:

- a) Goods produced by committing a crime provided for by the criminal law;
- b) Goods that have been instrumental, in any way, in committing a crime, if they belong to the offender or if they belong to another person who was aware of the purpose for which they were used. This measure cannot be ordered in the case of crimes committed through the media;
- c) Goods produced, changed or adapted for the commission of a crime, if they were used in the commission of that crime and if they belong to the offender. If the goods belong to another person, confiscation is ordered if the production, change or adaptation was made by the owner or by the offender with the owner's knowledge;
- d) Goods given to bring about the commission of a deed or to reward the perpetrator;
- e) Goods acquired by committing a deed provided for under criminal law, if they are not returned to the damaged person and to the extent to which they are not used to compensate that person;
- f) Goods the possession of which is legally forbidden.

In addition to that, the provisions of the Criminal Procedure Code are also applicable to crimes committed by legal persons. Thus, the judge, during the prosecution and following a proposal by the prosecutor, or the court, during the trial, may order one or more of the following preventive measures, if there are well-grounded reasons justifying a reasonable suspicion that the legal person has committed a criminal act, and only for the purpose of ensuring proper progress of the criminal trial: suspend the dissolution or the liquidation of the legal person; suspend the merger, the split or the reduction of the registered share capital of the legal person; forbid certain specific patrimony operations likely to produce a significant decrease in the assets of the legal person or insolvency; forbid the conclusion of certain legal writs determined by the legal authority; forbid the carrying out of activities of the type currently ongoing or of the type carried out in the period during which the crime was committed.

## RESTREINT UE

Also, according to Article 479<sup>6</sup> of the Criminal Procedure Code, safeguarding measures can be taken against a legal person, in order to safeguard future confiscation, remediation of the damage produced by a crime, and to guarantee the enforcement of a fine.

Confiscation of goods is also applicable to serious offences and organized crime groups as stipulated in Law no. 39/2003 on preventing and combating organized crime, which contains additional procedural rules, for example related to cases where goods subject to confiscation are not found. In this case, their money equivalent or the goods acquired in exchange for them shall be confiscated. Also, the law provides that the income or other material benefits obtained from the goods shall be confiscated. If the goods subject to confiscation cannot be separated from the goods legally acquired, goods shall be confiscated up to the value of the goods subject to confiscation. To guarantee the enforcement of the confiscation, the interim measures provided by the Criminal Procedure Code can be taken.

According to Article 19 of Law No. 78/2000 on the prevention, discovery, and sanctioning of corruption acts, if any offence of a certain type has been committed, "the valuables or any other goods that have been given to determine the commission of the crime or to reward the perpetrator or those acquired by committing the crime, if not returned to the damaged person and to the extent they are not used to compensate that person, shall be confiscated and, if such goods are not found, the convict shall be obliged to pay their leu equivalent."

Consequently, the prosecutor (if he/she decides not to issue an indictment) or, as the case may be, the court (if notified through the indictment), must order, according to law, the confiscation of the products (goods) acquired due to the commission of the offence.

However, it is doubtful whether the Romanian law fully implements Framework Decision 2005/212/JHA, as the "extended confiscation" foreseen in its Art. 3(2) is not reflected in the provisions of the national law.

## RESTREINT UE

Law 302/2004 on international legal cooperation in criminal matters, as amended and supplemented through Laws no. 244/2006 and no. 222/2008, includes provisions on cooperation with the Member States of the European Union in the enforcement of Framework Decision 2006/783/JHA of 6 October 2006 on the enforcement of the mutual recognition principle with regard to confiscation orders.

According to Art. 187<sup>51</sup> of Law 302/2004, the Romanian authorities having the competence to issue a confiscation order are the courts.

In cases where a confiscation order is issued by a judicial authority from a Member State, the competence for execution corresponds to the tribunal in the circumscription of which the asset forming the object of the confiscation is located. Where the confiscation order refers to:

- a) several movable assets found in the circumscription of different tribunals, competence corresponds to the Bucharest Tribunal;
- b) several movable assets and one immovable asset, competence corresponds to the tribunal in the circumscription of which the immovable asset is located;
- c) several immovable assets, located in the circumscription of different tribunals, competence corresponds to the tribunal in the circumscription of which the immovable asset with the highest value is located.

In case of multiple confiscation orders, transmitted by several issuing Member States for the same assets, competence corresponds to the tribunal which was first notified.

The Romanian Ministry of Justice and Citizens' Liberties is the central authority as regards the enforcement of Art. 3 para. (2) of the Framework Decision, which assists courts, transmits and receives confiscation orders in cases where direct contact is not possible.

Taking into consideration a decentralised character of the mechanism establishment of a reporting method could be considered, so the responsible authorities may gather necessary statistical data and make systemic evaluation of the mechanism.



## RESTREINT UE

In cases in which the other Member State has not implemented Framework Decision 2006/783/JHA, cooperation is accomplished in accordance with international conventions in the matter or with the bilateral treaties, within the limits set therein, especially in accordance with the Conventions of the Council of Europe.

As mentioned before, Romanian law provides for a special mechanism for confiscation limited to certain high-ranking public officials and their illegally acquired wealth. In general, it seems to be a vital tool against criminal activities of high ranking public servants and decision-makers. Thus it deserves a detailed presentation.

Law no. 144/ 25 May 2007 on the establishment, organisation and functioning of the National Integrity Agency, a specialised agency entitled to oversee the activities of the all civil servants, establishes the obligation for some certain categories of public officials to make declarations of their wealth and interests.

It is very important to mention that the procedure for verifying the assets provided for by the Law is of an administrative nature.

The aforementioned categories of public officials are, for example: the President of Romania; presidential and state counsellors; deputies and senators; Government members, secretaries of state, under-secretaries of state, as well as other similar positions and the state counsellors within the Prime Minister's working apparatus; members of the Superior Council of the Magistracy, judges, prosecutors, assistant magistrates, and other similar positions, as well as judicial assistants; specialised auxiliary personnel from courts and prosecutors' offices; judges from the Constitutional Court; members of the Court of Accounts and its personnel etc. (Art. 41 of the Law).

These persons are obliged to submit declarations of assets and interests within 15 days of being nominated or elected to a public function or from the start of their activity. Such declarations must be submitted each year.

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They are analysed and verified. Data from different declarations are compared. If the person verified has acquired, during the period under analysis, assets other than those included in the declaration of assets, or if obvious non-conformities are detected, the inspector can request the person concerned to provide additional information and evidence.

If, after comparing the data from the declaration of assets, or after analysing the additional documents acquired, the inspector detects an obvious difference between the assets obtained during the exercise of the public function and the revenues obtained in the same period, he/she will:

- a) check whether the obvious difference is justified. If the inspector finds that the difference is not justified, he/she will notify the competent court in order to establish the part of the property or the particular asset that was acquired unjustifiably and will request the confiscation thereof;
- b) notify the fiscal authorities if a breach of the fiscal legislation is ascertained; and/or
- c) suspend the verification and notify the authorities competent for criminal investigation when there is evidence or solid grounds indicating that a criminal act has been committed.

For the purposes of this Law, an obvious difference means a difference between the acquired property and the income acquired of at least EUR 10.000 or the equivalent in the national currency.

The National Integrity Agency must draw up a report if evidence in the file shows that there are obvious differences between the property acquired during the exercise of office and the income acquired during the same period, and the acquisition of a share of the property or of particular assets is unjustified. The case is sent to the competent court, which may decide confiscation of a part of the property acquired or of a particular asset.

If it is confirmed that the obtaining of certain goods or of part of goods is not justified, the court of appeal will decide either the confiscation of the unjustified goods or parts, or the payment of an amount of money, equal to the value of the goods, established by the court on the basis of an expert's report. If the court establishes the obligation to pay the equivalent value of the goods, it will also establish the term of payment.

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If an offence has been committed in connection with the goods of unjustified origin, the court will send the file to the competent prosecutor's office, in order for it to analyse whether to initiate the criminal procedure.

If the court establishes that the origin of the goods is justified, it will close the case.

With respect to public officials, the investigator has to provide proof in court regarding the obvious difference between the incomes and wealth declared. For that reason, it is considered not to be in exception from Art. 44 para 8 of the Constitution, where presumption of legal acquisition of property is safeguarded.

## 4.3. Conclusions

Under Romanian law, the intention to obtain directly or indirectly a financial or other material benefit by committing one or more grave offences is a key feature of an organised criminal group. However, this approach is not always reflected in practical actions. Asset freezing, confiscation and asset recovery do not seem to be primary objectives of Romanian law enforcement. Those measures are generally undertaken to repair damages produced by a crime as well as to guarantee the enforcement of a fine. Although there are no serious legal obstacles, measures of this kind are apparently not considered as steps against organised crime taken in order to deprive criminals of their wealth and means. Thus, criminals may benefit from crime even if punished.

As imprisonment is seen as the main means of punishment, fines are not widely applied by courts. Moreover, the size of fines (approximately 25 up to 12.500 Euro) does not seem to reflect potential gains from criminal activities. In addition, the two forms of punishment cannot be combined<sup>1</sup>. This seriously limits the deterrent effect of criminal law in the case of financial crimes.

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<sup>1</sup> After the mission the Romanian authorities informed that changes to the penal law focused on pecuniary penalties were adopted in July 2009. They have not entered into force yet.

## RESTREINT UE

However, Romanian law offers certain options that may be useful in targeting organized crime. It allows the confiscation to items that have been instrumental, in any way, in committing a crime, if they belong to the offender or if they belong to another person who was aware of the purpose for which they were used. Use of this provision may be particularly productive in the case of real estate or means of transport used for criminal activities such as human trafficking or drugs production. Confiscation of those valuable goods may deal a significant blow to organised groups. On the other hand, it presents an extra challenge to the law-enforcement services, which need to gather additional proof indicating use of the means in question for criminal activities and, where necessary, proof showing that the owner was aware of the criminal purpose for which his property was used.

The available European tools related to freezing and confiscation are not frequently used as they have only recently been transposed into Romanian law. Knowledge of those mechanisms could be improved among practitioners.

### 5. Protection of the financial interests of the Communities

#### 5.1. Available mechanisms, particularly cooperation with OLAF

Law No. 78/2000 on preventing, discovering and sanctioning corruption acts is partially devoted to the protection of the financial interests of the European Communities.

Under Article 18, using or presenting false, inexact or incomplete documents or declarations, which has as result the illegitimate obtaining of funds from the general budget of the European Communities or from the budget administrated by them or in their name, is punished with imprisonment from 3 to 15 years and deprivation of certain rights.

Moreover, deliberate failure to provide the information required by law, for the purpose of obtaining funds from the general budget of the European Communities or from the budget administrated by them or in their name, shall be sanctioned with the same punishment.

If above-mentioned deeds generate particularly serious consequences, they are punished with imprisonment from 10 to 20 years and deprivation of certain rights.

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From the institutional point of view, the Romanian system for protection of the financial interests of the Communities is based on three key elements:

- anti-fraud administrative investigation unit – Fight Against Fraud Department (DLAF);
- anti-fraud prosecution service – National Anti-corruption Directorate (NAD) supported by the police;
- customs services responsible for protection of Communities' own resources.

DLAF acts upon notifications it receives from OLAF and other sources or acts ex officio regarding potential irregularities or fraud affecting the financial interests of the European Union, carries out appropriate administrative investigations and provides OLAF with Control Reports.

DLAF ensures and facilitates cooperation between national institutions involved in the protection of the EU's financial interests in Romania, as well as between these institutions and the European Anti-Fraud Office and Member States.

The customs and judicial authorities may send information to OLAF, at its request, either directly, based on the Community regulations, or through DLAF, as appropriate.

As regards the exchange of information with OLAF at judicial level, the National Anticorruption Directorate is its counterpart regarding cases of fraud involving Community funds. It acts based on specific requests submitted to OLAF's Director General, according to Article 2(7) of EC Decision No. 352 of 28 April 1999, which states that "The Office is in direct contact with the police and judicial authorities."

At national level the NAD and NOPCML have concluded a Cooperation Protocol with DLAF, given that the latter is OLAF's contact point in Romania.

As regards the communication of judicial results to OLAF, the National Anticorruption Directorate has not concluded any cooperation protocol with the Office. Thus, the exchange is based on the Romanian and European law, which, however, do not contain specific provisions fostering mutual cooperation and enabling the timely exchange of information on judicial decisions related to fraud or corruption affecting the financial interests of the Communities.

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As far as financial interest are concerned, the customs services should also be mentioned. Since the accession of Romania to the European Union the National Authority for Customs (NAC) has also had tasks related to the permanent monitoring of fraud and other irregularities. It refers to cases exceeding the threshold of 10,000 euro, as defined in EC Regulation No. 1150/2000 regarding traditional own resources (OWNRES).

Also, in the implementation of Article 6 paragraph (5) of EC Regulation 1150/2000, where Member States are obliged to report cases of fraud or irregularities related to traditional own resources exceeding 10,000 euro, the NAC has issued Order No. 10519/2006 which establishes the working procedures and the procedure for collecting, updating and transmitting data related to those cases, at local, regional and central level, to the European Commission and other competent structures.

Appropriate information on fraud cases discovered is also made available to DG BUDGET on a quarterly basis.

The Romanian Anti-fraud Strategy for the protection of the European Union's financial interests, although not in force anymore, needs to be mentioned.

The strategy was adopted by Government Decision no. 793/2005, published in Official Journal No. 743 of 16 August 2005 (updated by Government Decision No. 1211/2006 published in Official Journal No. 797 of 21 September 2006).

The need for the strategy was stated in the Cooperation Agreement concluded between the European Anti-Fraud Office and the Prime-Minister's Inspection Department (which subsequently became the Fight Against Fraud Department through Government Emergency Ordinance No. 49 of 1 June 2005 on the setting up of some reorganisation measures within the central public administration).

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The strategy did not concern the financial investigations affecting national financial interests; its scope was limited to preventing and combating irregularities and fraud against the EC financial interests. The two general targets of the strategy were the development of an integrated system for coordination of the anti-fraud efforts concerning the protection of the Communities' financial interests in Romania and the strengthening of the administrative capacity of institutions involved in preventing, identifying, sanctioning fraud and repairing the damage produced by the fraud.

The strategy was implemented between 2005 and 2007 as the legal and institutional framework had to be fully functional by the time of accession.

The Romanian authorities are currently analysing the possibility of drafting a new PFI antifraud strategy, considering other Community and national developments.

## 5.2. Conclusions

As far as the protection of the financial interests of the Communities is concerned, the main administrative and legal tools are in place.

DLAF appears to be a service with a high professional standard. The existence of a central service responsible for the protection of the financial interests of the EU against fraud certainly contributes to the efficiency of the system in general. In matters of direct expenses, it allows OLAF to identify easily the competent service to assist the office in on-the-spot checks carried out by Regulation (EC) No. 2185/1996.

Regarding the obligation to notify to OLAF information within the framework of Council Regulation (EC) 515/1997 (customs-agriculture) or Regulation (EC) 1164/1994 (Cohesion fund), it would be useful to adopt additional rules guaranteeing the timely flow of information to OLAF. The appropriate communication of judicial decisions could be improved if clearer rules were set out providing for the direct flow of information from NAD to OLAF.

It should also be borne in mind that OLAF is a Community office and its responsibilities cannot be identified or taken over by a national administrative service. Confusion between OLAF and the national body of a similar nature (DLAF), as discovered during the evaluations, should be avoided.

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It should be stressed that DLAF only has administrative powers, so if it lends its technical assistance to criminal investigations on fraud, it should be ensured that investigation measures are carried out in compliance with the standards of criminal procedure and under the control of the judicial authorities.

The strategy for the protection of the European Union's financial interests is not in force anymore. Another document of this kind covering a long-term period could be drawn up.

## 6. Recommendations

### 6.1. Recommendations to Romania:

1. A coherent, overarching policy on financial crime and financial investigations should be elaborated. It could be reflected in a long-term national strategy. Such a strategic document could also cover protection of financial interests of the EU, as the previous PFI strategy is no longer in force. Its execution should be regularly evaluated and reviewed. (See 2.3)
2. A coordination mechanism, such as a high-level committee, should be established in order to foster dialogue and cooperation between the ministries, law-enforcement agencies and prosecuting services involved, as well as identifying shortcomings in legislation and practical obstacles relevant for financial investigations. If necessary, legislative or organisational proposals should be drafted and presented to the ministers concerned. Reporting mechanisms should be introduced in order to make specialised services accountable for their actions. (See 2.3)
3. Fragmentation of law-enforcement and prosecution powers should be reduced. (See 2.3)
4. More importance should be attached by law-enforcement agencies and, above all, by prosecuting services to asset tracing, seizure and confiscation. These should become more prominent elements of investigations. (See 3.4)
5. In order to comply with Council Decision 2007/845/JHA, a national Asset Recovery Office should be established. Dedicated multidisciplinary asset-tracing teams should be created in order to support investigations into serious or organised crime. (See 2.3)



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6. The amount of assets traced and seized should be taken into account every time when the performance of units or individual officials is assessed by their superiors. Incentives could be provided for those successful in asset tracing and seizure. (See 2.3)
7. Existing legal possibilities of confiscation in cases of serious or organized crime should be applied extensively. The legal possibilities of "extended confiscation" need to be made more effective within the framework of Romanian criminal law. Wide application of confiscation of high-value goods that have been instrumental, in any way, in committing an offence should be encouraged in cases relating to organised crime. (See 4.3)
8. Pecuniary penalties should be made more available within the framework of criminal law, especially in cases where confiscation cannot be applied effectively. It should be made possible to impose them jointly with imprisonment. Their worth should be proportionate and dissuasive in order to address high-value crimes. (See 4.3)
9. Human-resources policy should be thoroughly reviewed and redeveloped in order to fill remaining vacancies, prevent experienced officers and prosecutors from leaving the service, and, if possible, provide the units involved with additional manpower. Stability and continuity of employment should be considered key factors of HR policy. (See 2.3)
10. In the legal framework of the DLAF, its role as a body assisting OLAF in its Community-law based on-the-spot checks should be taken into account.(See 2.1.1.3)
11. Knowledge of relevant EU legal frameworks, relevant European authorities, such as Europol, Eurojust and OLAF, and available tools, such as AWF, should be promoted among judges, prosecutors and high-ranking law-enforcement officers. These topics should be duly reflected in the curricula of relevant training institutions, such as the National Institute of Magistracy or the Police Academy. (See 2.1.3)
12. Mechanisms for management of seized goods should be made more flexible and allow for the items to be cashed. (See 4.1)

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13. A central real-estate register should be established, providing relevant law-enforcement and prosecuting authorities with easy access to necessary data. (See 3.4)
14. The NOPCML should enhance possibilities of data sharing in order to foster proactive, intelligence-led policing. The time limit of 30 days for responding to inquiries by the NOPCML should be shortened. Reporting authorities should be able to communicate electronically with the office. (See 2.1.1.2)
15. In light of the future practice procedural changes should be considered in order to guarantee that "immediate execution" of a foreign order provided for in Article 5 of Framework Decision 2003/577/JHA takes place. (See 4.1.2.2)
16. Specialised panels in medium and higher level courts should be established in order to reflect specialised prosecuting services (NAD and DIOCT). The judges involved should undergo specific training which covers financial issues. (See 2.3)
17. A national case-management system should be established in order to avoid overlaps and parallel investigations. (See 2.3)
18. The national desk at Europol should be strengthened. Participation in AWF SUSTRANS should be considered. (See 3.3.1)

Romania is requested to inform the Council Secretariat, within 18 months after adoption of the report, about the actions it has taken to fulfil the recommendations. That information will be presented to and, if necessary, discussed by the MDG.

## 6.2 Recommendations to the European Union and certain third parties:

1. EU institutions and agencies are invited to support all actions taken by Romania in order to implement the recommendations listed above.

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2. Relevant institutions are encouraged to support Romanian awareness-raising efforts and training concerning European cooperation mechanisms and tools.
  3. The Commission is invited to consider financial support for Romanian projects within the framework of its existing funding programmes.
  4. Relevant EU institutions and agencies are encouraged to continue their efforts concerning the standardisation and interoperability of financial-crime analysis.
  5. In order to guarantee proper participation by Romanian experts in operational coordination meetings, Europol is invited to implement funding solutions similar to those of Eurojust or OLAF.
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ANNEX A

## PROGRAMME FOR VISIT

### Tuesday 7 July 2009

- 9.30-10.30 Ministry of Justice and Citizens Freedoms.  
Welcome meeting. Plenary working meeting with experts from all the Romanian institutions involved in the evaluation.
- 10.30-10.45 Coffee break
- 10.45-12.30 Working meeting with experts from Ministry of Justice and Citizens Freedoms
- 12.30-14.15 Lunch. Transfer to the Prosecutor's Office of the High Court of Cassation and Justice
- 14.30-17.30 Prosecutor's Office attached to the High Court of Cassation and Justice. Working meeting with the representatives of the Prosecutor's Office of the High Court of Cassation and Justice, National Anticorruption Directorate, Directorate for Investigating Organised Crime and Terrorism
- 17.30 Transfer to the hotel

### Wednesday 8 July 2009

- 09.30-10.45 National Office on Preventing and Combating Money Laundering (NOPCML), session I
- 10.45-11.00 Coffee break
- 11.00-12.30 NOPCML, session II
- 12.30-14.00 Lunch
- 14.00-14.30 Transfer to the General Inspectorate of the Romanian Police - (DLAF). Working meeting with experts from DLAF
- 14.30-15.45 DLAF
- 15.45-16.00 Coffee break
- 16.00-18.00 Working meeting with police officers and representatives from the General Inspectorate of Police, MOI

### Thursday 9 July 2009

- 07.45 Departure to Focsani
- 11.00-12.30 Prosecutor's office attached to Vrancea Tribunal. Meeting with representatives from County Police Inspectorate Vrancea
- 12.30-14.00 Lunch
- 14.00-15.00 Prosecutor's office attached to Vrancea Tribunal. Meeting with prosecutors
- 15.00-15.15 Coffee break
- 15.15-16.15 Prosecutor's office attached to Vrancea Tribunal. Meeting with judges
- 16.15 Departure to Bucharest

### Friday 10 July 2009

- 09.30-10.15 Palace of Justice. Working meeting with judges from Bucharest Court of Appeal and Bucharest Tribunal
- 10.15-12.00 Ministry of Finance. Working meeting with the representatives of National Agency for Tax Administration, Custom National Authority, Financial Guard
- 12.00- Ministry of Justice and Citizens Freedoms. Debriefing
- Afternoon Transfer to the airport

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ANNEX B

## LIST OF PERSONS INTERVIEWED

### Ministry of Justice and Citizens' Freedoms

Gabriel Tănăsescu, State secretary  
Sorin Tănase, Director DRMPPCC  
Anca-Luminița Chelaru, Deputy Director DRMPPCC

Viviana Onaca, Director DDIT  
Adrian M. Samson, Legal adviser DAE  
Magdalena Lepădatu, Legal Adviser on European Affaires DDIT

Dragoș Panaitescu, Legal adviser DEANSD

### Government of Romania

Claudia Big; Coordination Positions Unit, Department for European Affairs  
Oana Schmidt Hăineală, State Counsellor

### GPOHCCJ

Valentin Horia Șelaru, Prosecutor, Counsellor of the General Prosecutor  
Flavius Crasnic, Prosecutor, Service for International Judicial Cooperation, International Relations and Programmes

Alina Panciu, Translator  
Anca Maria Stăncioiu, Translator

### DIOCT

Remus Jurj Tudoran, Chief Prosecutor, Fight Against Money Laundering Bureau  
Georgiana Hosu, Chief Prosecutor, Service for Fighting Economic Financial Crime  
Nadina Spinu, Prosecutor, Cooperation and International Judicial Assistance Bureau

### NAD

Florin Ciobotaru, Police Commissioner within the Liaison Office of NAD  
Horațiu Baias, Section II Deputy Chief Prosecutor  
Claudiu Dumitrescu, Service Chief Prosecutor within Section I  
Florin Ciobotaru, Judicial Police Inspector, Bureau for International Judicial Assistance within the International Cooperation Service

### Bucharest Court of Appeal

Luciana Mera, Judge  
Cristina Rotaru, Judge  
Dumitrița Piciarcă, Judge  
Simona Cîrnaru, Judge

### Bucharest Tribunal

Raul Nestor, Judge

### Prosecutor's Office attached to Bucharest Court of Appeal

Ana Dana Manuela, Prosecutor



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## Prosecutor's Office Attached to the Bucharest Tribunal

Vlad Cătălin Dumitru, Prosecutor

## NOPCML

Adriana Luminița Popa, President

Adrian Vartires, Senior Member of the Board, Representative of the Ministry of Justice and Citizens' Freedoms

Daciana Dumitru, Director, Information Processing and Analysis Directorate

Irina Talianu, Head of Department, Information Processing and Analysis Directorate

Mrs. Maria Fratila, Head of Department, Information Processing and Analysis Directorate

Claudia Bonto, Financial Analyst, Supervision and Control Directorate

Laura Banu, Head of International Relations Department, Interinstitutional Cooperation and International Relations Directorate

Nicolae Fuiorea, Head of Interinstitutional Cooperation, Interinstitutional Cooperation and International Relations Directorate

Mircea Pascu, Director, Information Technology and Statistics Directorate

Marius Dumitriu, Head of Department, Information Technology and Statistics Directorate

## NIM

Ruxana Ana, Coordinator of the Training Department

Gianina Radu, Legal adviser on European Affairs

## ANAF

Octavian Deaconu, Director, International Cooperation Department

Sabina Bendas, Public Manager, International Cooperation Department

Cristina Bodnar, Superior Counsellor, International Cooperation Department

Marian Morcoasa, General Director, General Department for Coordination and Tax Inspection

## Financial Guard

Gabriel Carburaru, Deputy General Commissioner

Eugen Șerban, Superior Counsellor

## Custom National Authority

Dorel Fronea, Deputy Director, Department for Excise Duty and Customs Tax Supervision

Claudiu Ardeleanu, Head of Service, Department for Excise Duty and Customs Tax Supervision

## GIRP

Chester Dumitru Pârvu, Chief Deputy

Dan Bucur, Chief Commissioner, Director Department for Fraud Investigation

Costel Pelcaru, Chief Commissioner, Deputy Director, Department for Fighting Organised Crime

Adina Vărădeanu, Chief Commissioner, Head of Service for European Affairs, Programmes and International Cooperation

Aurel Dobre, Fight Against Fraud Department

Laurențiu Afrăsine, Principal Inspector, Expert Department for Fighting Organised Crime

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Mihaela Radu, Service for European Affairs, Programmes and International Cooperation

## MAI

Vihelmina Lucinescu, European Affairs and International Relations Department

Marius Rășcanu, European Affairs and International Relations Department

## Romanian Border Police

Roxana Dumitrescu, European Affairs and Relations Service

Mihai Brătan, Chief Commissioner, Director, Department for Fighting against Illegal Migration and Transnational Crime

## DLAF

Adina Petrescu, State Secretary, Head of DLAF

Corina Badea, Director, Directorate A Legislation, Policy, Training

Andrei Chendi, Director, Directorate B Control

Cristian Belu, Director, Directorate C Intelligence

Raluca Găinușă, Directorate A Legislation, Policy, Training

Alin Breșug, Directorate C Intelligence

## Prosecutor's Office attached to Vrancea Tribunal

Lefter Ion, Chief Prosecutor

Strună Gigi, Head of Criminal Investigation and Forensic Section

Ghianiș Neculai, Prosecutor

Mihăilă Paul, Prosecutor

Diță Constantin, Judge, Vice President of Vrancea Tribunal

## Court of Focșani

Murguleț Ana Dinu, Judge

Badiu Măndica, Judge

Jelea Dinu, Judge

## Prosecutor's Office attached to the Court of Focșani

Pîrcălăbescu Nicolae, Prosecutor

## District Inspectorate of Vrancea Police

Doagă Săndel, Chief Commissioner

Norocea Victor, Chief Commissioner

Harap Marian, Chief Commissioner

Mocanu Vasile, Chief Commissioner

Crăciunică Gabriel, Principal inspector

## National Agency for Cadastre and Land Registration

Marcel Grigore, Deputy general director

Catalin Badin, Chief service

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ANNEX C

## LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
AML/CTF	Anti-Money Laundering/Counter Terrorism Financing
ANAF	National Tax Administration Agency
ARO	Asset Recovery Office
AWF	Analytical Work Files
CBR	Cross-border transaction report
CTR	Cash transaction report
DCTML	Directorate for Combating Terrorism and Money Laundering
DIOCT	Directorate for the Investigation of Organised Crime and Terrorism
DLAF	Fight against Fraud Department
DRMPPCC	Department for Relations with Public Ministry, Preventing Crime and Corruption
EGO	Emergency Governmental Ordinance
EJN	European Judicial Network
FID	Fraud Investigation Directorate
GD	Governmental Decision
GIRP	General Inspectorate of Romanian Police
GPOHCCJ	General Prosecutor's Office of the High Court of Cassation and Justice
MAI	Ministry of Administration and Interior
MDG	Multidisciplinary Group on Organised Crime
MJLC	Ministry of Justice and Citizens' Freedoms
MTIC	Missing trades intra-community



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ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
NAD	National Anticorruption Directorate
NATA	National Agency for Tax Administration
NIM	National Institute of Magistracy
NOPCML	National Office on Preventing and Combating Money Laundering
NOTR	National Office of the Trade Register
OCTA	Organised Crime Threat Assessment
OLAF	European Anti-Fraud Office
OWNRES	Committee's own resources
HCCJ	High Court of Cassation and Justice
RNA	Romanian Naval Authority
ROCTA	Russian Organised Crime Threat Assessment
SFO	State Prosecutor for Serious Economic Crime
STR	Suspicious transaction report
TAIEX	Technical Assistance Information Exchange Unit (European Commission)
UCAAPI	Central Unit for Harmonisation of Public Internal Auditing