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

REPORT ON AUSTRIA

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1. Introduction

At the Multidisciplinary Group on Organised Crime (MDG) meeting of 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluation[1], two of which received substantial support. At the MDG meeting of 6 May 2008, a majority of delegations was in favour of the option of financial crime and financial investigations. On 17 June 2008, the Group decided that the subject of the fifth round was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant in the field of countering financial crime. However, it was also agreed that the evaluation should go beyond simply examining the transposition of relevant EU legislation and take a wider look at the subject matter[2], seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG[3].

The importance of the evaluation was emphasized by the Czech Presidency while discussing the judicial reaction to the financial crisis[4]. The significance of the exercise was once again underlined by the Council when establishing the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA[5].

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[6].

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

1 6546/08 CRIMORG 34.
2 10540/08 CRIMORG 89.
3 16710/08 CRIMORG 210.
4 9767/09 JAI 293 ECOFIN 360.
5 8301/2/09 REV 3 CRIMORG 54.
6 11060/09 JAI 404.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits[1]. Austria is the second Member State to be evaluated during the round.

The experts charged with undertaking this evaluation were Mr Eugenijus Usinskas (Head of the Criminal Police Board, Lithuania), Mr Ernest Nilles (Investigating Magistrate, Luxembourg) and Mr Evert van der Steeg (Senior Counsellor, the Netherlands). Four observers were also present: Mr Christian Tournie (JLS, Commission), Mr Stefan de Moor (OLAF, Commission), Ms Teresa Galvez Diez (Eurojust) and Mr Rafaël Rondelez (Europol), together with Ms Anne Cecilie Adserballe 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, based upon findings arising from the evaluation visit that took place between 7 and 11 September 2009, and upon Austria's detailed replies to the evaluation questionnaire.

2. National system and criminal policy

2.1. Specialized units

2.1.1. Investigative authorities

2.1.1.1 Police

The Austrian police was reformed in 2005, when two separate law-enforcement agencies were merged. Nowadays it consists of about 30000 police officers.

The Austrian Federal Investigation Bureau (*Bundeskriminalamt* - BKA) is a structure within the Federal Ministry of the Interior, established in 2002 and part of the police. The service employs around 700 officers and civilian employees.

The BKA is a service acting at the federal level. At regional level there are nine Regional Investigation Bureaus (*Landeskriminalamt* - LKA), where units dealing with white collar crime, and also asset forfeiture, have also been established.

[1] 5046/1/09 REV 1 CRIMORG 1.

The BKA is composed of 6 departments. One of them, Department 3, is responsible for investigations into organised crime and general crime. Within this structure, 6 sub-departments have been established:

3.1 organised crime;

3.2 serious crime and sexual offences;

3.3 property offences;

3.4 economic and financial investigations;

3.5 drug-related crime;

3.6 central service for combating traffic in human beings and illegal immigration.

This structure is to some extent also reflected at the regional level. In each of the nine regional authorities one investigation unit for white-collar crime (including phenomena such as economic crime, money laundering and corruption, and also dealing with asset recovery) and one anti-fraud unit have been established. Within the investigation units, investigators are trained to act as financial investigators, especially for asset recovery. For example, in Vienna and Lower Austria there are 4 to 5 investigators with this particular background. In the other 7 Regional Investigation Bureaus there are 2 to 3 financial investigators per unit.

The department is supported, by numerous other units, including those providing criminal analysis and facilitating international cooperation and exchange of information.

As far as financial investigations are concerned, the BKA´s sub-department 3.4 (economic and financial investigations) plays the leading role. It consists of the following units:

3.4.1 fraud;

3.4.2 money laundering (Financial Intelligence Unit - FIU);

3.4.3 white-collar crime;

3.4.4 environmental crime;

3.4.5 asset forfeiture (Asset Recovery Office - ARO).

Unit 3.4.5, as stated above, is also the Austrian Asset Recovery Office acting in line with the provisions of Council Decision 2007/845/JHA.

The unit consists of the head of unit, who is also the legal adviser, and 4 investigators.

The unit started its work in 2003. As an ARO, it acts as the central unit for asset recovery, and coordinates national and international activities in this field. It conducts investigations for asset recovery at national and international level and provides support to regional authorities. It also provides legal assistance in relation to asset recovery.

The financial investigators working in the unit are police officers.

The evaluators have been informed that further development of the office is planned and is currently under consideration at ministerial level. Draft plans provide for an increase in the unit's staff as well as the establishment of regional asset recovery units in the LKAs.

The unit does not have a database of its own. Instead, it has access to data to which the Austrian police has exclusive access through the Austrian Electronic Police Information System, named EKIS, the Central Registration Database, databases for property (Land Register) and corporations (Commercial Register) and in addition the Financial Crime Information Centre (FCIC), run by Europol.

The evaluators have, however, been informed that the unit does not have access to certain data available to unit 3.4.2, which is the Austrian FIU.

The FIU is a law enforcement unit with police powers, having access to numerous databases. The FIU became operative on January 1, 1994 upon entry into force of the Austrian Banking Act. Since 2004 the unit publishes annual reports[1] that are publicly available.

The Annual Reports are forwarded to supervision authorities such as the Financial Market Authority and the Austrian Central Bank and all relevant Ministries, for example the Ministry of Finance or the Ministry of Justice.

[1] http://www.bmi.gv.at/cms/BK/publikationen/files/Geldwsche_Jahresbericht_2008.doc

The FIU is the exclusive contact point for professions subject to reporting obligations in the context of money laundering, financing of terrorism and non-disclosure of trusteeships. Furthermore, it is the central information hub for Austrian and foreign law enforcement (e.g. Interpol, Europol, liaison officers) and prosecution authorities. The national law enforcement authorities are obliged to report all cases of money laundering investigations within their jurisdiction to the FIU.

The legal basis for FIU action is complex as there is no separate anti-money laundering law in Austria. The obligation to report suspicious transactions is not regulated in one legal act, but is based on various substantive laws, such as the Banking Act, the Industrial Code, the Gambling Act, the Insurance Supervision Act, the Stock Exchange Act, the Securities Supervision Act, the Attorneys Code, the Notaries Code, the Professional Guidelines for Chartered Accountants and Trustees and the Customs Law Implementation Act.
The service received 1.085 information reports on suspicious transactions in 2007, and 1.059 such reports in 2008. In 2007 this resulted in 229 charges of money laundering, (274 in year 2008). In 2007 there were 14 convictions related to money laundering.

The FIU is also responsible for training courses and awareness raising campaigns for reporting entities and other agencies.

The FIU has numerous international connections, including Egmont and Interpol. However it is not a member of FIU.NET. It was explained that access to the network would be costly and that the means of international cooperation already available are regarded as sufficient.

The evaluators were shown two basic IT tools available to the police.

The above mentioned EKIS System is a database which contains:

- criminal records (the legal basis is the Criminal Record/Clearance Act, run by the Federal Police Directorate of Vienna for the whole country);
- the Central Vehicle Register (legal basis: Article 47 par. Traffic Act);
- the vehicle search and information database (legal basis: Article 57 Code of Police Practice);
- the wanted persons database (legal basis: Article 57 Code of Police Practice);
- the database with information on persons (containing police information, passport information and information about weapons, legal basis: Art 57 Code of Police Practice, Article 22 b Passport Act and Article 55 Weapons' Act);

- database of stolen property (legal basis: Article 57 Code of Police Practice and Article 22 b Passport Act);
- database for cultural property (legal basis: Article 57 Code of Police Practice);
- Criminal Police Files (contain information on any premeditated offence charge filed with the judicial authorities by a law enforcement authority, legal basis: Article 57 Code of Police Practice);
- the database for fingerprints, AFIS (automated fingerprint system) and the DNA-database, (legal basis: Article 75, Code of Police Practice).

Moreover, the evaluators were shown an IT tool named FACTOTUM, which facilitates the coordination of investigations as, theoretically, all police officers may have access to it. It allows to avoid that different police units will investigate the same person/case without knowing about each other's work. It is also an analytical tool able to uncover links between different investigations or types of crime. The database is not connected to other databases, so it contains only information provided by the police. As the database is updated every day, daily reports and analysis showing crime in a given area/the whole country are available. Access to the data base is monitored and restricted, in order to maintain the high quality of inputs. Other services do not have access to the system.

Generally speaking, units at the federal level support regional services in their investigations to trace and seize property obtained through criminal acts. They are also empowered to interrogate suspects and witnesses, use coercive measures, in particular to participate in searches of premises, and to sort and analyze documents to be used as evidence. They also assess the value of goods and draw up analyses of money flows.

They are authorised to control and coordinate national and international investigations in the field of asset forfeiture. In practice, each serious case with an international element will require BKA involvement.

2.1.1.2 The Federal Bureau for Internal Affairs (BIA)

The Federal Bureau for Internal Affairs (BIA) is an autonomous department of the Austrian Federal Ministry of the Interior that operates outside the Directorate-General for Public Security. Although it has investigative powers, it is not part of the conventional law enforcement structure. It was established on 31 January 2001 to conduct inquiries in cases of serious complaints, charges against civil servants and allegations of corruption. Its chief tasks are thus receipt and examination of allegations and complaints made against employees of the Federal Ministry of the Interior and of its subordinate departments and investigations related to malfeasance in office as defined in Articles 302 to 313 of the Austrian Penal Code. Furthermore, the BIA is competent for investigating employees of other ministries or local authorities if the employees involved are in charge of tasks in the fields of security administration or criminal investigation. The BIA is also responsible for some similar cases of serious malfeasance in office or sexual harassment by superiors or colleagues. In addition, the BIA has established itself as a department specialized in investigations of corruption issues in other domains. If necessary, the Bureau investigates, for example, in regional and municipal authorities but also is authorised to make inquiries concerning certain types of criminal behaviour in the private sector.

The BIA takes a four-pillar approach to corruption, i.e. prevention, education, repression and cooperation.

In its capacity as an independent autonomous organisational unit the BIA is not bound by any instructions regarding the cases it handles. In such cases, the BIA co-operates directly with the competent public prosecutor's offices and courts. The BIA conducts investigations nationwide and, given its sphere of responsibilities, represents a centre of competence for all other security services.

At present, the BIA's staff consists of 60 police officers and civilian administrators.

In the field of European cooperation the BIA plays a driving role within the „European Partners Against Corruption“ (EPAC), an informal network linking the EU's national Police Oversight Bodies and Anti-Corruption Authorities. Organisations of countries neighbouring the EU are involved as observers. The Director of BIA was elected President of this network as well as of the more formalized EU contact-point network against corruption (EACN), which EPAC had been tasked to implement based upon its own existing structures by Council Decision 2008/852/JHA, and which aims to further strengthen cooperation between operational anti-corruption organizations within the EU. BIA gives its secretarial support to both networks.[1]

2.1.1.3 Fiscal and Customs Authorities

The Federal Ministry of Finance is composed of 6 Directorates General. At the local level it has 41 local tax offices and 9 local customs offices. The structure of the Ministry was established in 2003, when units responsible for customs and taxes were merged, creating a Department for Taxes and Customs. Within the Department a division (IV/3) for enforcement and anti-fraud has been established.

It has the following tasks:

- planning and coordination of anti-fraud activities;
- strategic direction of all anti-fraud units;
- strategic risk analysis and audit planning;
- steering of the risk analysis centre;
- supervision of investigation branches and of the Central Liaison Office;
- coordination of important cases with an international dimension.

[1] After the mission the evaluators were informed that with the entry into force of the Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK) on 1 January 2010, the BIA has been transformed into the BAK. The BAK is an institution of the Ministry of the Interior. Organizationally speaking, it is, *de jure*, established outside the Directorate-General for Public Security and has nationwide jurisdiction in the prevention of and the fight against corruption, in the close cooperation with the Public Prosecutor's Office against Corruption (*Korruptionsstaatsanwaltschaft*) as well as in security police and criminal police cooperation with foreign and international anti-corruption institutions.

In order to fulfil its tasks the Division supervises and coordinates the activities of two investigative services, namely the Tax Investigation Service (TIS) and the Customs Investigation Service (CIS), which have been described in detail below.

To support the anti-fraud effort, the Risk-, Information- and Analysis Centre (RIA) was established in 2005. It exploits the capabilities of electronic data processing to develop new tools meeting modern quality management standards. The RIA Centre works on a project basis. The processes resulting from its work constitute an important contribution to risk management. In addition to the modules for VAT risk analysis and the compilation of customs audit plans, which have already been installed, methods are being developed for income tax and corporation tax purposes, to allow cases is be selected with great precision. A large project area includes the analysis of data to be used in identifying economic operators who offer goods and services on the Internet but are not registered for tax.

Further priority areas of the RIA Centre are audit automation, new audit methods and the development of risk analysis programs as well as customs matters resulting from the implementation of EU requirements.

This comprises the analysis of measures taken under the EAGGF (European Agricultural Guidance and Guarantee Fund), the compilation of customs audit plans, and work on export refunds as well as the *e-zoll* risk analysis module, the Risk Information Form (RIF), customs-related VAT fraud, seizure statistics, railway fraud and product piracy.

Strategic analysis of leading tax- and customs- related threats are made in the Ministry. As part of an awareness-raising campaign, key findings are also available to the public (including foreigners, as they have been translated into English). These present major challenges and their implications for the Austrian economy, and also describe the action undertaken by the Ministry and its services.

In 2006, tax audits carried out by the tax offices resulted in the additional assessment or recovery of more than half a billion euro in VAT from businesses, with the lion's share of more than EUR 150 million being accounted for by unjustified deduction of input tax. Every year, tax auditors detect cases of carousel fraud worth EUR 50 – 100 million in revenue loss. In the construction and related industries, setting up fake companies for the systematic evasion of wage taxes and social security contributions is a widespread practice. The "lifecycle" of such companies is short (not more than six months). The only purposes of these fake companies are tax evasion and social security fraud. The bankruptcy notices of such "firms" – if they can be traced at all – fill the weekly insolvency reports of *Kreditschutzverband*, Austria's leading credit protection agency. However, liability rests only with the managers of these enterprises. As they are usually just front men, it is generally very difficult to actually hold anyone accountable for the fraud. In the course of insolvencies, the fiscal authorities filed claims worth about EUR 406 million in 2005.

In customs proceedings, the main problems identified by the Ministry were irregularities or fraudulent activities involving the import of goods from third countries or their release for domestic circulation. Retroactive customs audits completed in 2006 resulted in the collection of additional duties amounting to EUR 17.7 million.

The Federal Ministry of Finance considers that the export of agricultural products to third countries is particularly prone to fraudulent activity.

2.1.1.3.1 Tax Investigation Service (TIS)

The TIS is a unit within the Austrian finance administration under the strategic supervision of division IV/3. The service acts nationwide.
TIS consists of:

- independent Tax Investigation Units responsible for tax fraud and fraud linked to social security;
- the Central Liaison Office (CLO), which is based in Vienna and is responsible mainly for cooperation with other EU Member States;
- the Fast Investigation Unit, based in Vienna, established in order to combat illegal employment and tax fraud within the construction/building industry.

Each investigation team and fast investigation team consists of approximately 9 team members and is headed by a team leader.

Tax investigation teams have the following competences and tasks:

- carrying out investigations according to Austria's national fiscal penal code;
- execution of penal measures;
- evaluation of suspicious cases;
- execution of compulsory measures;
- analysis of evidential material;
- reporting to the fiscal penal authority/court;
- undertaking tax audits.

The TIS has police powers and members of its staff may serve as judicial officers on behalf of the public prosecutor. Its officers are entitled to:

- undertake covert surveillance and controlled delivery;
- undertake confiscation, arrest, house search, telephone tapping (upon authorisation of the prosecutor);
- investigate tax and customs offences and crimes (not for drug matters);
- make use of all documents of declarations/procedures as evidence or also indicators;
- undertake interviews/hearings of all necessary persons involved.

In order to avoid overlaps with other services, the TIS is not responsible for money laundering and drugs-related cases, which are to be investigated by the police.

The Central Liaison Office (CLO) has been established within the service in order to foster international cooperation. Its main goals are as follows:

- support of tax offices;
- implementation of mutual assistance concerning double taxation agreements, Directive 1798/2003/EC, Regulation 77/799/EEC and Regulation 76/308 EEC;
- acting as a contact point for administrative assistance for competent foreign authorities, the European Commission and all institutions of the Austrian Finance Administration (except customs);
- pre-selection of requests from third states and passing them on either to the competent tax office or other competent authorities;
- collection of all outgoing requests for administrative assistance and deciding on subsequent procedure.

2.1.1.3.2 Customs Investigation Service (CIS)

As far as customs-related investigations are concerned there are about 140 officers working for the Customs Investigation Service (CIS). Its action is supervised and coordinated by Division IV/3 of the Federal Ministry of Finance. The service is composed of customs investigation units in all 9 customs offices, 2 surveillance teams and a special team dealing with customs fraud on the internet and with forensic data saving for criminal procedures.

Customs investigators are authorised to:

- carry out investigations according to Austria's national fiscal penal code;
- execute penal measures;
- evaluate suspicious cases;
- execute compulsory measures;
- analyse evidential material;
- report to the fiscal penal authority/court.

They have police powers and may serve as judicial officers on behalf of the public prosecutor. Their powers are similar to those of tax investigators, described above.

It should also be mentioned that overlaps or parallel investigations between this service and the police are unlikely, as the CIS has a permanent liaison officer in the BKA and uses police mechanisms for certain special investigative techniques. In order to avoid overlaps with other services, the CIS is not responsible for money laundering and drug-related cases which are to be investigated by the police.

2.1.2. Prosecuting authorities

There are no specialized units or authorities dealing exclusively or mainly with financial crime and/or financial investigations within the prosecuting authorities, with exception of the Vienna Office of Public Prosecution. The unit at the Vienna Office of Public Prosecution which is specialized in economic crime cases (*Gruppe für Wirtschaftsstrafsachen*) consists of ten public prosecutors under the direction of the head of unit.

The unit is responsible for prosecutions regarding violations of the Financial Crime Act, the Banking Act, the External Trade Law, the Anti-Trust Law, the Capital Market Law, the Law on Foreign Exchange and also against the Corporate Law Acts.

Territorial responsibility of the unit is restricted to Vienna, as it is part of the municipal prosecution service. It was explained that this was on account of the special status of the city, where the vast majority of economic activities are concentrated.

Moreover, the unit is responsible for all cases related to the stock exchange, no matter where in Austria they occur.

At several other prosecuting authorities, some public prosecutors are to a certain extent - however not exclusively - engaged in economic crime cases, in particular with the Financial Crime Act. It was explained that the number of prosecutors in local offices is very limited, so that any kind of exclusive specialization is not desirable.

All prosecutors competent for economic crime cases are part of the normal internal structure at the public prosecutor's offices. They have a hierarchical structure and are bound by written instructions of the senior public prosecutors and ultimately the Federal Minister of Justice.

The staff of the public prosecution offices must comply with the instructions given by the office director. The prosecutors dealing with these cases do not have any extra powers other than those available to other members of the prosecuting service. There is no special level of expertise required from the prosecutors who are to deal with economic crime. However, most of the public prosecutors competent in that field participate in additional training on an optional basis.

On 1 January 2009, changes in the Law on Public Prosecution entered into force and thus the Anti-corruption Public Prosecution Office (KStA) was established. It is situated in Vienna and is competent for the whole territory of Austria. The law stipulates that only public prosecutors with particular economic knowledge and experience in the legal area concerned are to be employed there. In cases where there is a reporting obligation the office reports to the head of the public prosecutor's office for Vienna, which in turn reports to the Minister for Justice. The KStA is bound by the instructions of the two authorities mentioned above.

It is the only public prosecutor's office to deal with several offences concerning corruption and abuse of public authority.

Its competence comprises the offences listed in Section 20a para. 1 of the Code of Criminal Procedure (CCP). This catalogue of offences was amended by the Act amending the Criminal Law on Corruption 2009. Hence, the Public Prosecutor's Office against Corruption is now competent to investigate and prosecute the following offences: abuse of official authority (Section 302 of the Austrian Penal Code [PC]), corruptibility (Section 304 PC), acceptance of advantages (Section 305 PC), facilitation of corruptibility (Section 306 PC), bribery (Section 307 PC), offering an advantage (Section 307a PC), facilitation of bribery of acceptance of advantages (Section 307b PC), illicit intervention (Section 308 PC), breach of trust due to abuse of an official function or due to involvement of an office holder (Sections 153 para. 2 case 2, 313 or in connection with Section 74 para. 1 nr. 4a PC), acceptance of gifts by rulers (Section 153 a PC), agreements restricting competition in procurement procedures (Section 168b PC) as well as serious fraud (Section 147 PC) and commercial fraud (Section 148 PC) on the basis of such agreements, acceptance of gifts by employees or agents (Section 168c para. 2 PC), specific cases of money laundering (Section 165 PC) and specific cases of criminal association and criminal organization (Sections 278 and 278a PC).

The formal scope of responsibility of the Public Prosecutor's Office against Corruption includes the supervision of preliminary investigations concerning the offences listed above, their discontinuation, the indictment of cases, the representation of the accusation in the main trial as well as in the appeal proceedings.

In all the cases mentioned above, the office is competent for judicial cooperation with other Member States or the institutions of the EU. It is the contact point for OLAF and Eurojust in these cases as well.

The service is obliged, according to § 2a (5), to report to the Minister of Justice every year, by the end of April, on solved and ongoing cases. Moreover, it is entitled by law to present in those reports a general assessment of the fight against corruption, deficiencies identified in the law *("Mängel der Gesetzgebung"*) as well as to table proposals for changes ("*Änderungvorschläge*"*).*

The general lack of specialised prosecuting units is also reflected in the court system.
In some bigger regional courts, several judges are competent for trials in economic crime cases, however no special panels devoted to financial crimes have been established. Within the regional courts, there are judges specialized in trials in so-called economic crime cases, e.g. in charges of violations of the Financial Crime Act, the Banking Act, the External Trade Law, the Anti-Trust Law, the Capital Market Law, the Law on Foreign Exchange and also against the Corporate Law Acts. However, the judges do not exclusively deal with such cases, but also deal with regular crime. In smaller courts there are normally no specialized judges for those cases.

Apart from a normal qualification as a judge, there is no special level of expertise required in economic crime cases. However, most of the judges competent in this field participate in additional training on an optional basis.

Apart from the normal powers of a judge (given by the Constitution and by law), there are no special powers for judges acting in the field.

2.1.3 Training

As mentioned above, the authorities in question, namely the police, prosecutors and judges do not have any obligatory training on financial investigations. Optional training courses are organized on an ad hoc basis and are made available to individuals requiring specific knowledge. They are based on mutual teaching (exchange of experience among public servants) but external experts such as academics, professionals from the private sector, are also invited as lecturers.

Due to the specific tasks of the services, the fiscal and customs authorities seem to have more extended training and professional development methods, including tax auditing.

Representatives of all authorities in question are entitled to participate in seminars involving international and European institutions, such as ERA, OLAF and EUROJUST.

As far as training and awareness-raising are concerned, a BKA internal website called the *Kriminalistischer Leitfaden* (forensic guideline), available via intranet to all police staff, should be mentioned as best practice. It comprises a great deal of practical information and guidelines for officers. There is, among other things, a chapter devoted to asset recovery developed by the ARO. It explains the advantages of a proceeds-oriented approach as well as presenting possible procedures and relevant legal acts. As the evaluators discovered, the website is known to officers, even in regional centres.

In the field of anti-corruption, the BIA's training programmes should be mentioned. In addition to organising and conducting courses, seminars and advanced career coaching programmes at the Austrian Law Enforcement Academy for experts from the Ministry of the Interior, BIA staff members have repeatedly been invited to give lectures at national and international educational institutions and at conferences. In cooperation with other Member States, and with co-financing from the EU, specialised training courses are organised annually (International Anti-Corruption Summer School). Networking of its participants is being maintained.

The National Anti-Corruption Day, organised annually by the BIA, is one of the key elements of its awareness-raising strategy. Numerous publications and a website[1] available in German and English should be mentioned too.

Furthermore, the BIA is a leading organiser of the International Anti-Corruption Academy (IACA) – a joint initiative by UNODC, INTERPOL and the Government of Austria with the support of OLAF and other partners – which will serve as a center of excellence for anti-corruption training and academic research in the field.

The Academy intends to take a holistic approach to combating corruption by combining academic research, training activities, contributing to international initiatives and professionalizing anti-corruption work.

[1] www.bia-bmi.at

The Academy will employ full-time professors, researchers and practitioners. Students will be awarded internationally accredited diplomas. Agreement with recognized universities will be sought to harmonize the Academy's diplomas with university degrees.

The curriculum will be based on the United Nations Convention against Corruption (UNCAC) covering: prevention of corruption, law enforcement measures and cooperation, asset tracing and recovery, money laundering and international cooperation.

Opening of the IACA is scheduled for the winter semester 2010/2011.

2.2. Criminal policy

The evaluators were not shown any strategic document describing any specific long-term policy towards financial crimes and financial investigations. Only medium-term (annual) action plans of different operational services were mentioned. To some extent, policy is created by the Ministry of Justice, that is able to issue decrees with guidelines for prosecutors. It may underline the limited practical use of certain legal provisions and set out priorities.

The general approach of the Austrian authorities to finance-related criminal phenomena seems to be based on existing legal provisions and principles, such as “crime must not pay”, set out in the Penal Code. This means that the profits from criminal acts are supposed to be confiscated and incorporated into the State budget or returned to the lawful owners. The confiscation of property is therefore not considered a punishment but a means of putting an end to any enrichment as the result of the commission of a crime.

As mentioned above, the lack of overall strategy or policy means that the national approach can be only deduced from the existing legal framework. However, some provisions of the Austrian law raised doubts on the part of the evaluating team.

Noteworthy, for example, is the way Austrian law addresses the counterfeiting of goods. It is a *Privatanklagedelikt*, an offence prosecuted only at the request of the injured party. This leads to numerous practical difficulties, as the injured party has to be first identified and then contacted. Further investigation and prosecution are dependant on its decisions. Moreover, counterfeiting is not considered as a predicate offence for money laundering nor it is covered by the definition of an organized crime group in §278 of the Penal Code.

It was explained that this offence will not be added to the definition of organized crime as long it remains a *Privatanklagedelikt*. It would indeed create a complex legal situation if action for organized crime could be undertaken at the initiative of an injured party.

There are similar problems with tax fraud, which, contrary to customs fraud, is not considered a predicate offence for money laundering. Moreover, certain apparent cases fall outside the scope of the legal definition of money laundering, which, by virtue of § 165 of the Penal Code, explicitly requires involvement of at least two persons.

Austrian law provides for criminal liability of legal persons. However, practice shows that it is not widely used. Corporate criminal liability, introduced in 2006, is considered to be of limited use in fighting organised crime since the legal persons involved are most often empty shells.

As far as the Police and prosecution are concerned, financial crimes are not given priority and do not involve use of any special techniques, powers or human resources. However, enhancement of the system (development of an asset recovery network) is currently under consideration. Moreover, the creation of an anti-corruption prosecution service should be mentioned, as it may lead to some measure of prioritisation for corruption-related investigations. Future establishment of a specialised anti-corruption law enforcement agency, mentioned during the visit, would further support this judgment.

2.3. Conclusions

The structure of the Austrian law-enforcement and judicial authorities is clear, thus limiting possible conflicts of competences and overlaps. The Austrian Federal Constitution (Article 22) obliges public authorities to provide one another with mutual administrative assistance. Moreover, according to Article 98 of the Code of Criminal Procedure, the criminal police and the public prosecutor's office have to pursue investigations in agreement as far as possible. Both, law enforcement and prosecution, seem to have appropriate tools at hand to avoid parallel, uncoordinated action by different regional units against the same person or for the same crime. Moreover, thanks to these tools, certain links between files can be identified.

As far as the police itself is concerned, the fact that the structure of regional centres (LKAs) mirrors the structure at the central level (BKA) is also an advantage, facilitating cooperation and coordination.

Overlaps between the police and other services, such as tax investigators, are also uncommon since certain technical investigative mechanisms are shared. Moreover, a prosecutor plays a coordinating role in complex cases involving more than one service. Good personal relations, fostering cooperation between different services, were mentioned many times by the experts interviewed.

On the other hand, databases and IT analytical tools are quite often of an internal character, which means other interested services do not have access to them. Thus the databases cannot be cross-checked and certain links between, for example, customs-related crimes and ordinary crime may remain undiscovered.

Prosecuting authorities also have a clear division of tasks (including all stock exchange - related crimes delegated to one specific unit in the capital) making overlaps highly infrequent. However, lack of specialised prosecutors dealing with financial crimes is regarded to some extent as a discrepancy between the prosecution service and the police, which has separate structures devoted to white-collar crime.

The consequences of the recent establishment of a separate prosecution service dedicated to corruption cannot be assessed at this stage.

The overall impression of the evaluators, however, is that certain units responsible for financial investigations are heavily understaffed given the potential added value they could present for financial investigations.

Human resources policy is considered a serious obstacle for financial investigations, as the remuneration of experts engaged in analytical tasks can be lower than that of those undertaking operational activities. This may be seen as disadvantage preventing certain officers from choosing this specialization. Moreover, HR policy is considered to be to some extent inflexible and incentives for experts in certain specific fields, like accounting, are limited. The current system does not motivate officers to acquire new skills or undertake specialized training.

Draft plans, currently being analyzed at the ministerial level, provide for an increase in the number of financial investigators serving the ARO as well as the establishment of regional asset recovery units in the LKAs. This proposal has to be assessed as appropriate and justified as long as it is accompanied by additional staff and resources. The creation of regional AROs, if it takes place as planned, could be considered as good practice, considerably enhancing financial investigations. It seems a desirable solution, especially in the light of the tough new prosecution approach to freezing and confiscation, described below.

Although the findings on the range of legal tools available for fighting economic and financial crime are positive, certain weaknesses in the system have been identified.

For example, under Austrian legislation, the predicate offence and money laundering require two different individuals to be involved. The result is that a drug trafficker cannot be convicted of money laundering in relation to his own trafficking. This is unfortunate, since a separate investigation for money laundering could be conducted, focusing on the profits generated by the drug trafficking with a view to possible confiscation later, independently of the main drug trafficking case.

Some of the services heard during the evaluation deplored the fact that tax fraud and tax evasion were not predicate offences for money laundering. A change of legislation, according to some of the experts interviewed, would enable the tax services to investigate money-laundering cases with the full policing powers they do not currently enjoy.

Certain problems concerning "reversal of the burden of proof" and limited use of confiscation have also been also identified. However, they will be discussed in another part of the report on confiscation.

Problems related to counterfeiting, as mentioned above, also need to be highlighted. In this case an inconsistency (or lack) of national policy became apparent. Austrian authorities admit[1] that counterfeit products inflict substantial financial losses on business. In addition, companies have to spend financial resources on fighting product piracy. Counterfeiting is considered harmful for the labour market (job losses) and leads to significant loss of tax revenue. However, this assessment seems not to be shared by the Ministry of Justice and is not reflected in the law, which does not allow any action to be brought except by the injured party.

The above-mentioned legal considerations, especially the latter, may possibly be the result of inadequate mechanisms for coordination and exchange of views at strategic level. Major strategic challenges and legal problems are viewed differently by the authorities involved. The impression of the evaluating team is thus similar to an assessment by the Austrian Court of Auditors (*Rechnungshof*), which states in its report[2] that there is no organized cooperation between the two Ministries (of the Interior and Justice) or the police, the prosecution and the courts, so that efficient strategies cannot be developed. The evaluators are of the opinion that the Ministry of Finance and its services should also be added to this list of authorities.

The evaluating team has been made aware of certain steps to address the problem. A decree[3] containing guidelines for the prosecution has recently been issued by the Ministry of Justice. It also covers cooperation with the police and opens the way for future improvements. However, as it is limited and addressed only to the prosecution, it is judged to be a valuable, but unilateral and partial solution.

The decree in question has been described in the chapter on freezing and confiscation.

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1 https://www.bmf.gv.at/Publikationen/Downloads/BroschrenundRatgeber/Folder_Betrugsbekaempfung(1).pdf p.13.

2 Der Bericht des Rechnungshofs der Reihe Bund 2008/12 an den Nationalrat vom 9.12.2008 "Geldwäschebekämpfung und Vermögensabschöpfung" available at *www.rechnungshof.gv.at*

3 Erlass vom 11. September 2009 über die verstärkte Anwendungvermögensrechtlicher Anordnungen und praktische Probleme ihrer Handhabung.

3. Investigation and prosecution

3.1. Available information and databases

3.1.1 Bank accounts

In Austria there is no central register of data for the banking system. The evaluators were told that in the event of an investigation, the law-enforcement authorities, upon the approval of a judge, may turn to a contact point representing bank associations in order to obtain the necessary data, even if the specific banking institution is not known. Disclosure is not possible if the punishment for the crime is less than 3 years of imprisonment. An answer to the request should be available within two weeks. This timing is considered an obstacle by the law-enforcement agencies involved. Account holders do not have to be informed about inquires into their accounts, if so specified in the request.

Data concerning identification of a bank account, identification of the 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", including Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The reason is further that these data can be obtained only by taking coercive measures. Consequently, such data can be provided only through judicial cooperation mechanisms. The 2001 Protocol to the Convention on MLA has been implemented by Article 145a of the Code of Procedure (now: Article 116 of the new Austrian Code of Procedure) and Articles 38 para. 2 subpara. 1, 40 and 41 para. 4 of the Banking Act.

Those provisions of the Protocol that have not been explicitly implemented are considered self-executing, that means directly applicable by Austrian authorities upon ratification of the Protocol.

Minor practical problems have come to light: in some cases, the requesting authority fails to establish in its request for information on bank accounts why it considers the requested information relevant for the purpose of the investigation. Furthermore, Austria has made a declaration to the effect that execution of a request is subject to the same conditions as those applicable for a request for search and seizure. Therefore, the executing Austrian authority needs and asks for supplementary information, namely for a judicial decision for the production of bank information in Austria. If such a judicial decision is not available under the law of the requesting State a formal declaration is required that all conditions for the production of the bank information in question are met under the law of the requesting State.

The bank company produces the bank records on the basis of an Austrian court decision. In order to get the necessary court approval the Prosecutor's Office has to state in the application that all requirements under foreign and Austrian law are met.

Infringements of banking secrecy for the purposes of criminal proceedings are allowed under Article 116 of the Austrian Code of Criminal Procedure (CCP).

A distinction has to be made between the two following cases:
Article 109 n° 3 lit. a CCP covers disclosure of the name and other information about the identity of the holder of a business relation (*Geschäftsbeziehung* - an account, safe deposit or similar) as well as his/her address and whether a suspect maintains business relations with the (financial) institution, is the economic beneficiary of that relation or has power of attorney over it as well as the presentation of all documents regarding the identity of the holder of the business relation and his authority to dispose of it.

Article 109 n° 3 lit. b CCP refers to access to documents and other papers of a credit or financial institution regarding the nature and extent of a business relation and other business operations for a given past or future period of time.

Pursuant to Article 116 para 1 CCP, in both the above cases (Article 109 n° 3 lit. a and lit. b StPO) disclosure of information on bank accounts and bank operations must appear necessary to clear up a criminal offence or misdemeanour subject to the jurisdiction of the regional courts (Article 31 para. 2 to 4 CCP).

Pursuant to Article 116 para 2 CCP, the disclosure of information on bank accounts and bank operations under Article 109 n° 3 lit. b is allowed only if there are grounds to believe that the business relation of a person with the credit or financial institution is actually connected to commission of a criminal act and that either the holder of the account himself/herself is suspected of having committed the act or it is expected that a person suspected of having committed the act will conduct or has conducted a transaction via the account, or that the business relation will be used for operations involving a financial benefit that was gained through or in return for criminal acts (Article 20 of the Austrian Penal Code - PC), or is at the disposal of a criminal organization or terrorist organization or has been provided or collected as a means of financing terrorism (Article 20b PC).

The order and the authorisation for the disclosure of information have to contain the title of the court case and the criminal conduct it is based on as well as its legal name, the credit or financial institution, the designation of the documents to be handed over and the information to be disclosed, the facts on which the necessity and proportionality of the order are based, and in the case of an order under Article 116 para. 2 CCP, the timeframe within which operations are to be disclosed and the grounds for assuming a connection between the business relation and the subject of the proceedings. The Austrian Code of Criminal Procedure does not place any maximum limit on the duration of the measure.

In all cases the disclosure of information on bank accounts and bank operations has to be requested by the public prosecutor's office and authorised by a court.

The criminal investigation department (*Kriminalpolizei*) is responsible for enforcing such orders. Pursuant to Article 116 para 5 CCP the order, together with the court authorisation, has to be served on the credit or financial institution, the accused and the persons entitled under the business relation, as soon as they are known to the public prosecutor's office. Service on the accused and on the entitled persons can be postponed for as long as the aim of the proceeding would otherwise be endangered. The credit or financial institution has to be informed of this and has to keep the order and all facts and operations in connection with it secret from clients and third parties. Under the conditions of Article 116 CCP banking secrecy cannot impede the execution of the measures (Article 38 of the Austrian Banking Act (*Bankwesengesetz* – BWG)). Regarding tax and customs authorities, all the above-mentioned measures can be taken upon order of the prosecutor pursuant to Article 109 and 116 CCP after formal initiation of fiscal criminal proceedings.

3.1.2 Real Estate

A database on real estate is available. The Land Register contains the owners of real estate and other persons who have rights *in rem* over immovable property (e.g. pledges). The total number of entries is approximately 3,1 million.
The Land Register is administrated by the district courts. It is open to the public and can also be accessed via the Internet.

3.1.3 Companies

Austria has an electronic database for companies, the Commercial Register. The Company Registration Act governs details regarding the entities to be registered in the Commercial Register and the data to be submitted for registration.

The Commercial Register consists of the main book and a document archive.

The main book contains details of the registered entities, i.e. in particular master data of the legal entity (name, legal form, registered office, addresses), names of the managing directors and other authorised officers, partners or shareholders, nominal capital, branch offices, mergers, etc.
The document archive contains the documents which form the basis for entries in the main book or which, otherwise, have to be submitted in compliance with legal obligations (e.g. articles of association, minutes of shareholders' meetings, etc).

In 2008 there were 194.324 legal entities registered.

The Commercial Register is administered at regional court level. It is open to the public. There is no need to demonstrate a specific legal interest or give a reason. An excerpt from the Commercial Register may be obtained either in person at court or via special websites, both for a small fee.

3.1.4 Vehicles and vessels

The Federal Ministry of the Interior runs a central database for registered vehicles, the Central Vehicle Registry. To that end the registration authorities which run the local database of registered vehicles have to forward the data of registered holders, the data of persons from other EU Member States renting vehicles and data on vehicles as well as trailers and registration data to the Federal Ministry of the Interior.

Data from the register are made available to the Federal Ministry of the Interior, the Federal Ministry of Traffic, Innovation and Technology, the Federal Ministry of Finance and the tax authorities, the police services, the Federal Police, the district authorities, the border police, the army authorities in order for them to enforce the Military Powers Act, and to the municipalities according to their technical prerequisites and if required for them to fulfil their tasks. Upon request the authority may provide the name and the address of a registered holder if the inquiring person can provide information such as the licence plate, the engine number or the VIN and if he/she can prove a legal interest in this information.

A ship register is available. The Ship Register contains the owners of boats and other persons who have rights *in rem* over them (e.g. pledges). There are separate Ship Registers for maritime vessels and river boats. The Ship Register is administrated by the district courts. The Ship Register is open to the public.

It is important to underline that the above-mentioned databases, although administrated by courts, are of a centralized character. The competence of different courts covers only to entries and deletions in the registers, but it is still possible to search the whole database to find, for example, all data concerning a specific person with a single query.

3.2. Financial investigation and use of financial intelligence

Austria does not have any specific legal framework for financial investigations as they are carried out in the context of normal criminal investigations. Financial investigations are not particularly applied against any specific type of crime. Financial intelligence information is considered a vital indicator for the initiation of criminal investigations. The evaluators were informed of some significant cases triggered by financial intelligence.

As there is no specific legal framework, general investigative measures are applied, such as: seizure, sequestration, information about bank accounts and bank transactions (Articles 110 to 116 CCP), search of locations, objects or persons (Articles 117 to 124 CCP); observation, undercover operations, simulated transactions (Articles 129 to 133 CCP); monitoring of data, audio-visual monitoring of individuals by technical means and computer-aided data cross-referencing (Articles 134 to 143 CCP).

In some complex cases private experts, such as accountants, may be involved. According to Article 126 CCP during preliminary proceedings the public prosecution authority can order an expert, if the proceedings require expert knowledge which cannot be provided within the public prosecution authority, its specialized facilities or permanent employees. This involves significant cost, and the remuneration offered by public authorities is sometimes lower than average rates in the private sector. However, experts rarely refuse, as cooperation with the prosecution service is considered an honour for the expert concerned.

When the investigation is closed, it is possible, in certain cases, to continue an investigation into the proceeds of the crime or more generally into its financial aspects. In principle, according to Article 443 CCP, the decision on the confiscation of profits, forfeiture or confiscation is to be made in the (final) judgment. But if the results of the criminal proceedings (either in themselves or after taking evidence which does not significantly delay judgment on the question of guilt and punishment) are insufficient to judge the pecuniary sanctions reliably, an order may be made reserving the determination of such sanctions for a separate decision (Articles 445, 445a CCP).

Furthermore the conditions for the confiscation of profits, forfeiture or confiscation can be met irrespective of a conviction or commitment to an institution listed in Articles 21 to 23 of the PC. In such cases as these, confiscation or forfeiture orders can be issued in an independent (objective) proceeding based on a special application by the prosecutor.

This objective proceeding is regulated by Article 445 CCP, which states that, if there are reasons to suppose that the conditions for confiscation of profits, for forfeiture or for confiscation are fulfilled, and if it is not possible to issue the order in a criminal proceeding or in a proceeding on preventive measures involving deprivation of liberty, the public prosecutor has to make an independent application to obtain an order for such pecuniary sanction.

3.3. Cooperation with Europol and Eurojust

3.3.1. Cooperation with Europol

In the field of financial crime Austria is a member of the AWF SUSTRANS (suspicious transactions), AWF MTIC (missing trader intra-community fraud or VAT carousel fraud). Austria is also member of AWF SMOKE, which relates to organised crime in the area of cigarette smuggling.

Regarding cooperation with AWF MTIC it is obvious that the FIU has an important position as it is an integral part of the police structure which allows for a direct interface with the AWF MTIC. Although the number of contributions seems to be above average, the quality of the data provided is average. The FIU reported a lack of resources (manpower) which restricts more productive and proactive cooperation with the AWF SUSTRANS. Throughout the evaluation it appeared that the FIU prefers to use the Interpol channel rather than to communicate and exchange information with Europol.

In the field of VAT carousel fraud, cooperation has been established with the Federal Ministry of Finance (BMF), more specifically the Customs Service, which joined the AWF MTIC in January 2009.

The cooperation is assessed as very good. There is good exchange of information and the customs investigators acknowledged the added value of the support provided by the AWF MTIC. However the BMF joined the AWF MTIC conditionally, namely for the duration of a specific operation related to Custom Procedure 4200 (CP4200) fraud (the procedure in question relates to import customs clearance from a third country involving exemption from turnover tax on imports). Due to the Austrian Tax Secrecy, information exchange outside the scope of criminal proceedings is limited to that with other tax authorities. This is regarded as an obstacle for the permanent participation.

Furthermore with regard to VAT fraud it appears that the Tax Investigation Service has ongoing criminal investigations regarding VAT carousel fraud. During the meeting with the representatives from the Ministry of Finance it appeared clearly that the option of joining the AWF MTIC has not been considered so far, despite the potential added value it could provide for their financial investigators.

Regarding involvement in AWF SMOKE, the police as well as the customs service are members of the AWF. In general the cooperation is above average although the input fluctuates depending on the level of commitment from the investigation teams.

From the Austrian perspective, cooperation with Europol and the assistance it provides are assessed as excellent. Mutual contacts, available data and exchange of experiences were praised. Regarding tax and customs administration, Europol's support concerning particularly data analysis and data mining with regard to cigarette smuggling was mentioned. These are also the fields that need, according to the Austrian authorities, be maintained and developed.

3.3.2. Cooperation with Eurojust

Eurojust was involved in the investigation of fraud involving some criminal organisations operating Europe-wide. Eurojust supplied the authorities with information about investigations pending in other Member States.

The Austrian authorities recognize Eurojust's support and coordination in large multinational criminal investigations into serious and organised crime, such as smuggling cases.
There is a coordination role for Eurojust in the technical support of JITs. Eurojust is also in a position to identify most effectively similar investigations under prosecution at judicial level in other Member States.

Regarding tax and customs administration Austria is interested in enhanced and continued cooperation on the coordination of large multinational criminal investigations in smuggling cases related to customs procedure 4200 and MTIC – fraud as well as improvement of the provision of information from other Member States.

3.4. Conclusions

Financial intelligence information is considered a vital indicator for the initiation of criminal investigations. The evaluators were informed of some significant cases triggered by financial intelligence, which proves that it is appropriate for use in the detection of crime. The cases discussed, where financial intelligence revealed criminal activities or indicated their scale, previously unknown to the law-enforcement authorities, are a sound argument for enhancement of the relevant units.

The Austrian law-enforcement and prosecution authorities have appropriate access to relevant databases. The banking system seems to be the only exception, as no central base is available there. The evaluators were told that there is no legal obstacle preventing such a database from being established. Currently questions related to bank accounts are forwarded to a single contact point representing banks, which provides the requested data within two weeks. The law-enforcement experts interviewed view this procedure as impractical, especially when urgent requests are to be handled. However, this critical assessment is not shared by the Ministry of Justice.

As far as cooperation with the relevant European agencies is concerned, it should be pointed out that Austria joined the AWF MTIC conditionally, namely for the duration of a specific operation related to CP4200 fraud. Based on recent experience, permanent membership of the AWF MTIC seems advisable.

4. Freezing and confiscation

4.1. Freezing

4.1.1. At national level

With regard to the possibility of freezing assets before conviction the Austrian Code of Criminal Procedure (CCP) distinguishes between seizure (*Sicherstellung*) and sequestration (*Beschlagnahme*).

Pursuant to Article 109 n° 1 CCP seizure is the temporary establishment of the authority to dispose of objects (Article 109 n° 1 lit. a CCP), temporary prohibition on the transfer of objects or other assets to third persons (third party prohibition) and temporary prohibition on the sale or pledging of such objects and assets (Article 109 n° 1 lit. b CCP).

Article 110 para. 1 CCP allows seizure, if it is considered necessary for evidential reasons, for securing rights based in civil law or securing confiscation of profits (Article 20 of the Penal Code - PC), forfeiture (Article 20b PC), confiscation (Article 26 PC) or any other order relating to property rights provided for under the law.

Seizure has to be ordered by the public prosecutor and to be executed by the criminal investigation department of the police (Article 110 para. 2 CCP). In certain instances (Article 110 para. 3 CCP), the criminal police is entitled to seize objects at its own discretion, if nobody has authority to dispose of the objects, they were taken from a victim through a criminal act, were found on the crime scene and could have been used or intended to be used for committing the criminal act, or are of low value or can be easily substituted for a limited period of time, or if their possession is generally prohibited, or if the objects are in the possession of a person arrested under Article 170 para. 1 n° 1 CCP when arrested or they are found during a search under Article 120 para. 1 CCP, or in the cases referred to in article 4 of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (Official Journal L 196, 02/08/2003 P. 0007 – 0014.) In these cases the criminal police has to report to the public prosecutor's office immediately and at the latest within 14 days of the seizure (Article 113 para. 2 CCP).

Pursuant to Article 111 para. 4 CCP persons affected by a seizure have to be given or served a confirmation of the seizure immediately or at the latest within 24 hours, and also informed of the legal remedies against the seizure.

Persons affected by a seizure have the right to object. According to Article 106 CCP, in the investigative proceedings, anyone who claims that the public prosecutor's office or the criminal police has violated their rights is entitled to raise an objection to the court, on the grounds that the exercise of a right under the law was denied to him/her or that an investigative measure or coercive measure has been ordered or implemented violating provisions of the law.

Pursuant to Article 114 CCP the criminal police is responsible for custody of objects until the court decides on sequestration; after that the public prosecutor's office is responsible.
Seizure is terminated if the criminal police cancels it, if the public prosecutor's office orders it to be cancelled, or if the court orders sequestration.

Sequestration is a similar mechanism, but requires court involvement. According to Article 109 n° 2 CCP, sequestration is a decision of a court to establish or continue a seizure order and a prohibition by a court on the sale, encumbrance or pledging of real estate or rights listed in a public register.

Sequestration is permitted if it is likely that the objects seized will be required as evidence in subsequent proceedings, are subject to civil law claims or will be needed to secure a judicial decision on the confiscation of profits (Article 20 PC), on forfeiture (Article 20b PC), on confiscation (Article 26 PC), or on any other legal measure relating to property rights, whose execution would otherwise be endangered or made considerably more difficult (Article 115 CCP).

The public prosecutor has to apply for sequestration and the court has to decide on the application immediately (Article 115 para. 3 CCP). In a decision permitting sequestration in order to secure a judicial decision on the confiscation of profits (Article 20 PC) or forfeiture (Article 20b PC) an amount of money has to be determined that will cover the amount likely to be confiscated or declared forfeit (Article 115 para. 4 CCP).

The decision of the court has to be served on persons affected by the sequestration and they have the opportunity to appeal against the decision (Articles 86, 87 CCP).

If, or as soon as, the conditions for sequestration do not or no longer exist or an amount of money as referred to in Article 115 para. 5 CCP is deposited, the public prosecutor's office, or, after charges have been brought, the court, must terminate the sequestration. A decision on how to proceed with the confiscated objects has to be made at the latest after final judgment.

With the Budget Accompanying Act 2009 the CCP will be amended, as the court will have to decide on sequestration only at the request of the public prosecutor's office or of the persons affected by the seizure. In the case of Article 109 n° 1 lit. b CCP the public prosecutor's office has to request the court to sequestrate the objects immediately or, if the conditions are not or no longer fulfilled, order cancellation of the seizure.

In the case of seizure of objects (Article 109 n° 1 lit. a CCP) which are not under anyone's authority to dispose of, are of low value, or can be easily substituted for a limited period of time or whose possession is generally prohibited, or if other regulatory measures have been taken that fulfil the purpose of the sequestration, the court will not order sequestration even if an application is made.

Regarding an application for confiscation of profits or forfeiture, the court with jurisdiction has to decide, after the public and oral trial; the court with jurisdiction is the court which had or would have had jurisdiction for trial and judgment of the underlying offence; but in the absence of such jurisdiction the competent court is the court of first instance where the profits or property is located. In the court of first instance the decision is taken by a single judge. If a court of lay assessors or a jury court has decided on the offence which is to form the basis for the order or has reserved judgment, its presiding judge is to act as the single judge. Regarding an application for confiscation, it is the district court which has to decide where the offence was committed; but if this place is unknown or situated abroad the district court has to decide where the object is located.

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

Austria has implemented Framework Decision 2003/577/JHA. This has been done by the provisions of Articles 45 – 51 and Annex III of the Act on Judicial Cooperation with the Member States of the European Union (EU-JZG). It replaces the formerly applicable domestic legal regime where its provisions are not compatible with that regime. However, instead of a "request" in accordance with the Framework Decision, it is still possible to issue a request for seizure of the property concerned on the basis of the traditional Mutual Legal Assistance regime.

There has only been a very small number of incoming and outgoing requests so far under the new regime, thus no statistics are available.

4.1.2.1. Experience when acting as an issuing State

A prosecutor is competent to issue a freezing order as referred to in Framework Decision. It is also the authority that is mentioned in part (c) of the certificate as the one which must be contacted by the executing authorities.

The certificate annexed to the Framework Decision is a part of the Austrian implementing legislation (as Annex III to the EU-JZG). Consequently, it has to be used when issuing a "request" under the Framework Decision. No additional guidance has been given on the use and practical completion of the certificate, as it is considered to be self-explanatory.

Furthermore, no guidance has been given on the content and format of the freezing order, as the rules for issuing national freezing orders apply.

Austrian national legislation does not require any material beyond the freezing order and the certificate. No standard interpretations have been defined in Austrian national legislation or elsewhere in respect of prescribed elements of the certificate, e.g. for the definition of offences.

There are no further formalities and procedures as referred to in the second subparagraph of Article 5(1) of the Framework Decision which have to be observed in the executing State in order to ensure that evidence taken is valid in Austria.

Experience so far shows that the majority of requests were transmitted directly to the competent executing authority. Eurojust, EJN, SIS or Interpol were not involved. No Central Authority has been nominated by Austria in connection with the Framework Decision.

An unknown recipient authority may be located via the EJN Atlas that is available for all Austrian judicial authorities. By decree of the Ministry of Justice, guidelines for the use of this tool have been published.

Austria has no experience of executing Member States questioning the appropriateness, the manner in which the certificate was completed, or the scope of a freezing order (for example in terms of the application of the double criminality regime). However, supplementary information has been requested from the issuing authority through direct communication.

There is no formal mechanism for discussion of the nature of requests with executing States so as to improve coordination and therefore the efficiency of the relevant process. However, consultations between the competent authorities of the issuing and the executing States are always possible. If considered appropriate, Eurojust or the EJN can be involved in any such dialogue.

Any problems experienced so far were discussed and solved in direct contacts between the issuing and executing authority.

Austria has not experienced difficulties regarding the subsequent treatment of evidence or property which has been frozen in the executing State so far. However, some problems have been experienced in respect of bank accounts, as there is no necessity to transfer money for evidential purposes. Finally, it depends whether or not a final, enforceable decision can be rendered by the issuing authority.

4.1.2.2. Experience when acting as an executing State

Freezing orders together with certificates may be transmitted directly to the Austrian judicial authority competent for their execution. Transmission by fax or e-mail is also admissible.

Certificates in languages other than German are accepted in accordance with the principle of reciprocity, i.e. if the issuing Member State also accepts certificates in German or other languages.

There is no formal procedure in place in respect of the certification/verification of incoming freezing orders. However, if the certificate is missing, incomplete or manifestly incorrect, the issuing authority will be asked to provide, complete or correct it. Furthermore, the court with jurisdiction always has to examine if the requirements under the Framework Decision, as implemented by Articles 45 – 51 EU-JZG, for recognizing and enforcing the incoming freezing order are met.

The authority competent to decide on the execution of a freezing order is the Regional Court where the property in question is located.

No Central Authority is involved in the process.

The asset recovery unit ARO does not play any role in the enforcement procedure.

The Austrian executing authority informs the issuing authority about the time limit under Austrian law and the date on which the Austrian order will expire. The issuing authority will be invited to request an extension of the order if justified by the outcome or the state of play of the proceedings pending in the requesting Member State.

The parties concerned are entitled to the legal remedies available under the Austrian Code of Procedure with regard to frozen property, i.e. a complaint to the Court of Appeal.

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

Austria has already implemented Framework Decision 2006/783/JHA (see Articles 52 – 52n *Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union (EU-JZG)*).

The relevant national provisions on confiscation are Article 20 of the Austrian Penal Code (PC) (confiscation of profits), Article 20b PC (forfeiture) and Article 26 PC (confiscation).

Article 20 PC (confiscation of profits) contains rules for confiscation of profits. Anyone who has committed an offence and has obtained economic benefit from it, or has received economic benefit for committing an offence, is to be condemned to payment of an amount of money equivalent to the illegal profits gained. Insofar as the extent of the profits cannot be established at all, or cannot be established without disproportionate effort, the court may fix the sum of money to be confiscated according to its own opinion.

If the offender has committed crimes continuously or repeatedly and has obtained economic benefits from, or received such benefits for, their commission and has gained further economic benefits during the same period, there being an obvious assumption that these benefits derive from other crimes of the same nature, and the court has not been convinced that the benefits were acquired legally, these economic benefits have to be taken into consideration in fixing the amount of money to be confiscated.

An offender who, during the period of his membership of a criminal organization (Article 278a PC) or a terrorist group (Article 278b PC), has gained economic benefits, is to be condemned to payment of an amount of money which the court may fix corresponding to the profits which it believes have been gained, if there is an obvious assumption that these profits derive from offences and the court has not be convinced that they were acquired legally.

Anyone who profits illegally and directly from an offence committed by another person, or from the economic benefit given for the commission of such an offence, is to be condemned to payment of an amount of money equivalent to these profits. This applies mutatis mutandis to legal persons and partnerships which have gained profits.

The evaluators are however uncertain if the scope of the Austrian provisions in question fully reflect the intended scope of Framework Decision 2005/212/JHA. The Austrian law refers to "*Abschöpfung der Bereicherung"* translated as "confiscation of profits" while the Framework Decision clearly distinguishes between "proceeds" (*"Ertrag"*) and "property" (*"Vermögensgegenstände"*) and describes confiscation as leading to "deprivation of property". The word "profit" indicates, as the evaluators understand, a relation between the property and the crime which might possibly limit the scope of the confiscation. It is difficult, however, to assess at this stage if the above complexity presents an actual challenge or is merely a linguistic problem.

According to Article 20a PC, the confiscation of profits is not allowed where the person who has gained illegal profits has satisfied civil claims derived from the criminal act or has undertaken a contractual and enforceable obligation to do so, or has been condemned, or is condemned simultaneously, to do so or if and insofar as the profits are removed by other legal measures. Profits are not to be confiscated where the amount of money to be confiscated or the chances of enforcing the order are disproportionate to the effort involved in issuing such order or enforcing it, or if payment of the amount of money would unreasonably endanger the subsistence of the person who has gained the profits or would constitute an inappropriate hardship for him, especially because the profits do not exist any more at the time of the order; other adverse consequences of a conviction are to be taken into consideration.

Forfeiture is regulated in Article 20b PC, whereby property at the disposal of a criminal organization (Article 278a PC) or a terrorist group (Article 278b PC) or which has been provided or collected as a means for financing terrorism (Article 278d PC) is to be declared forfeit. In addition, property deriving from an offence where Austria does not have jurisdiction is also to be declared forfeit if the offence is punishable under the law of the State where it was committed.

Article 20c PC provides that forfeiture is not allowed where the property concerned is legitimately claimed by a person who did not take part in the offence or in the criminal organization or terrorist association, or its purpose is achieved by other legal measures, especially where the illegal profits have been declared confiscated in foreign proceedings and if the foreign decision can be executed in Austria. Forfeiture is not to take place if it would be out of proportion to the importance of the matter, or to the effort involved.

Article 26 PC (confiscation) provides that objects which have been used or were intended to be used by the offender to commit an offence or have been produced by that offence are to be confiscated if the particular characteristics of the objects is such that confiscation appears appropriate in order to prevent the commission of offences. Confiscation is not to take place if the beneficiary removes the particular characteristics, in particular by removing or rendering useless devices or indications which facilitate the commission of offences. Objects which are legitimately claimed by a person who did not take part in the offence are to be confiscated only if the person concerned fails to guarantee that the objects will not be used to commit offences. If the requirements are fulfilled the objects are also to be confiscated if no given person can be prosecuted or convicted for the offence.

The decision on confiscation of profits, forfeiture or confiscation can be made either as part of the main criminal trial or separately.

The decision of the court has to be served on the persons concerned and they have the opportunity to appeal against the judgement.

There are no provisions for investigators representing the ARO to take part in the court proceedings, unless it is suspected that new crimes have been committed and new investigation proceedings are initiated.

As far as the implementation of Framework Decision 2006/783/JHA is concerned the authority competent to issue a confiscation order is the court that ruled at first instance. The authority competent to execute a confiscation order is the regional court where the property is located.

Additional practical guidance on the issuing of a confiscation order and on the use of the certificate was not considered necessary as the issuing of a confiscation order is governed by the relevant provisions of the Austrian Code of Procedure and the certificate is considered to be self-explanatory.

Austria has no practical experience in the use of the new regime.

Cooperation on the execution of confiscation with a Member State that has not yet implemented Framework Decision 2006/783/JHA is based mainly on Article 64 ff of the Austrian Extradition and Mutual Legal Assistance Act (*Auslieferungs- und Rechtshilfegesetz; ARHG*), and in relation to other States Parties also the European Convention on the International Validity of Judgments of 28 May 1970.

4.3. Conclusions

As far as freezing and confiscation are concerned, the Austrian law seems to have all the necessary provisions and mechanisms. Implementation of the relevant Framework Decisions is deemed to be appropriate. However, practical use, especially of Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence, is very limited. The Austrian authorities refer to the findings of a report titled "Analysis of the future of mutual recognition in criminal matters in the European Union"[1] with explanations of this limited use. Reference is made to the fact that it is still possible to send a request for seizure of the property concerned on the basis of the traditional MLA-regime instead of a "request" under the Framework Decision. The extent of information to be provided in the certificate is, in opinion of Austrian authorities, more burdensome as a request for seizure of property under the traditional MLA-regime. Consequently, the Austrian authorities are of the opinion that the Framework Decision is of little added value compared to the previous regime.

Austria thus shares the opinion expressed in the above-mentioned report, that with regard to MLA the traditional regime as provided for in particular by the 2000 Convention and its Protocol should continue to apply.

A certain weakness of the freezing regime may be also related to management of seized objects. Under current law seized items, such as cars, have to be stored by law-enforcement authorities. Thus, especially during long proceedings, they may suffer a significant loss of value. This may be a problem for the accused if he or she is acquitted. In the event of conviction the item may not represent the value expected by the court. This leads to a conclusion that a more flexible approach should be applied and that certain high-value goods, prone to losing their value, could be converted into cash immediately after seizure.

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1 ttp://ec.europa.eu/justice_home/doc_centre/criminal/recognition/docs/mutual_recognition_en.pdf

The "reversed burden" provided for in Article 20 para. 2 and 3 PC seems to be a tailor-made provision against terrorism and organised crime. Although it entered into force in November 2002 the evaluators were not informed of any single case where the provisions were requested by the prosecution or applied by a court. No satisfactory explanation of this fact was given.

Moreover, the evaluators learned that comprehensive statistics are not available. Those quoted in the above-mentioned decree of the Justice Ministry show extremely limited practical use of confiscation as such. In Vienna confiscation was applied in only 13 % of drug cases and 1‰ of cases of crime against property. The conclusion may be that prosecutors are not keen to make use of the provisions on confiscation as they create significant additional workload. The extra effort be needed in such cases does not affect the desired outcome of the proceedings, namely conviction. Thus there is no incentive for the prosecution to apply this provision, as the basic result of the trial remains the same.

The evaluators have high praise for the fact that the Ministry has identified these shortcomings and addresses them in the decree that is designed to promote the use of confiscation.

The main guidelines of the decree deserve to be listed as they present a good description of the current situation and a practical way forward.

First of all the Ministry stresses the mandatory nature of the provisions on confiscation.
Moreover, there should be no bottom line for confiscation; the authorities are obliged to apply the rules except in exceptional cases stated in the law. The Ministry underlines that these exceptions should be interpreted in a restrictive way.

The Ministry urges a restrictive interpretation of the rule that confiscation is not necessary if the procedural effort involved would be unreasonable, which should be assumed only if the amount to be confiscated is less than EUR 100,- and would involve disproportionate procedural effort.

The Ministry urges a restrictive interpretation of the hardship clause, i.e. cases where confiscation is not applied in order to avoid exceptional hardship for the convicted person.

Investigations into the cause, amount and fate of the proceeds should be undertaken, particularly in drug cases, sexual crimes committed for profit, traffic in human beings, facilitating, corruption, money laundering, financing of terrorism, organised crimes, economic crimes as well other crimes against property causing a large amount of damage. Such investigations need to be undertaken as early as possible in order to prevent concealment of the proceeds.

The investigations should also consider the financial situation of persons close to the suspect.
Public prosecutors must explain and give reasons for failure to confiscate in their files in cases concerning crimes mentioned above. They have to order necessary steps if these are not taken by the police on their own initiative. Routine inquiries at the land, business and vehicles registries as well as inquiries at the social security agencies and banks should take place.

Moreover, the Ministry stresses that confiscation (and also freezing) is not dependent on the identity of the assets gained by the crime and actually present, so that it is equally possible to confiscate assets not directly gained by the crime. Orders for investigation should not only include the search for evidence but also the search for objects capable of being confiscated as well as evidence capable of leading to objects capable of being confiscated (bank statements, credit card receipts and other evidence allowing conclusions on the assets of the suspect):

Finally, the Ministry gives a comprehensive list of the procedural aspects of confiscation, e.g. whether a special application by the public prosecutor is needed and what kind of decisions are supposed to be taken by courts. It also mentions how confiscation is to be enforced.

In addition to these reminders and clarifications regarding the law, the Ministry re-establishes a reporting obligation for prosecutors that is, as the evaluators understand it, meant to allow a coherent review of the current situation and lead to improvements of the system.

The Ministry orders heads of public prosecutor's offices (*Oberstaatsanwaltschaften*) and the Anti-corruption prosecution office to provide it, by 31 October 2009, with reports concerning:

- experience with confiscation;
- problems encountered (inefficiencies in substantive or procedural law, problems with evidence of unjust enrichment, problems concerning enforcement);

- cooperation with the police and the quality of their reports on investigations concerning confiscations, as well as the knowledge of police officers on this topic and the existence of specially trained and experienced staff;
- suggestions for improvement of the system (substantive law, procedural law, training, police work, existence of forms etc.) and which issues should be dealt with in a manual on confiscation;
- additional work and costs (personnel, costs of bank inquiries, costs of expert witnesses) caused by the proper application of the decree.

The evaluators praise the proposed reporting mechanism. However, its usefulness is very much related to the future follow-up, that remains unknown. The experts are of the opinion that it could be a regular exercise, especially if new guidelines have been recently given and their impact needs to be assessed after certain period of time.

The planned action, proposed interpretations of the law and the reporting scheme are regarded as positive developments. However, as they are limited to the Ministry of Justice and the prosecution service, which are only an element of the national system, they have to be assessed as unilateral and partial. Undoubtedly they will indirectly affect other authorities involved, especially the law enforcement agencies which act under the prosecution's supervision and are instrumental in its activities.

5. Protection of the financial interests of the Communities

5.1. Available mechanisms, particularly cooperation with OLAF

The evaluators were not informed of any overarching mechanism of coordination and cooperation with OLAF. This is, however, not regarded as an obstacle by the Austrian authorities as cooperation is based on a flexible and pragmatic approach to specific cases and needs.

The cooperation between the Federal Bureau for Internal Affairs and OLAF is assessed by the Austrian authorities as very good. It is said to be particularly fruitful in the field of prevention. OLAF experts regularly give presentations at the training courses organized by the BIA (e.g. International Anti-Corruption Summer School, panel discussions, etc).

As indicated above, there is no specific national legislation or internal rules in place to ensure pro-active transmission of information to OLAF. In relevant cases initial contacts are, for example, coordinated by the competent central unit for mutual assistance and enforcement of the Austrian Tax and Customs Administration in the Ministry of Finance. Further contacts and transmission of information take place directly between the involved units under the supervision of the central unit for mutual assistance and enforcement of the Austrian Tax and Customs Administration in the Ministry of Finance.

Additionally, Regulation No 515/1997 as amended by Regulation No 766/2008 lays down a general legal obligation to inform the EU Commission about major customs cases involving irregularities or fraud. The obligation to inform OLAF of the outcome of criminal cases related to fraud against the financial interests of the Communities is still under consideration and discussion in Austria.

Austria does not have any experience with the European Commission playing a role in criminal investigations involving fraud against the financial interests of the Communities. For the time being, the role of agents of the European Commission in criminal investigations involving fraud against the financial interests of the Communities is limited to that of an observer, subject to authorisation by the public prosecutor. It is possible for OLAF agents to take part in joint investigative teams subject to authorisation by the public prosecutor. There has been one joint investigative team dealing with fraud against the financial interests of the Communities. The JIT was established to combat the illegal import of goods, especially textile products, from some Asian countries into the European Union. OLAF was informed and involved.

Furthermore, OLAF arranged coordination with the other authorities involved at international level and also arranged investigation missions in the countries concerned to establish and prove important evidence.

The Austrian authorities underline that OLAF can provide valuable assistance by arranging coordination with the other authorities involved at international level and also arranging investigation missions in the countries concerned to establish and prove important evidence. OLAF can also provide valuable technical support (analysis of databases, container tracking, analysis of import and export of goods at EU level etc.). From the point of view of the Austrian Tax and Customs Administration, OLAF has provided excellent support in many cases, especially those concerning commodity flows. At this stage the Austrian authorities do not see any need for specific additional support.

As far as international co-operation is concerned there is an intensive exchange of information and experience. The exchange of "best practice" takes place through networks such as "European Partners Against Corruption" (EPAC), where OLAF is a member and the "OLAF Anti-Fraud Communicators Network" (OAFCN), in which the BIA is also represented.

5.2. Conclusions

The evaluators are not aware of any overarching mechanism of coordination and cooperation with OLAF. However, the daily cooperation is based on a flexible and pragmatic approach.

A mechanism for informing OLAF about outcomes of criminal cases related to fraud against the financial interests of the Communities, especially those where OLAF was involved, needs to be developed. The function of OLAF in providing Commission support for the judicial authorities in all matters of fraud and corruption against the Communities' financial interests needs to be promoted and explained to judicial practitioners.

6. Recommendations

6.1. Recommendations to Austria

1. A coherent, overarching policy towards financial crime and financial investigations should be drawn up. It could be reflected in a long-term national strategy. It needs to be combined with a regular review and an evaluation methodology as well as sound reporting mechanism for the entities involved. (See 2.2)

2. A coordination mechanism, such as a high-level committee, should be established in order to foster dialogue, mutual understanding and cooperation between the ministries, law-enforcement and prosecuting services involved, identify shortcomings in legislation and practical obstacles relevant for financial investigations. (See 2.3)

3. Certain questions regarding the existing legal framework and possible improvements need to be discussed by the authorities involved. The following topics deserve special attention:
   a) the *ex officio* prosecution of counterfeiting;
   b) the possibilities for prosecution of a person laundering his/her own money;
   c) the list of crimes constituting a predicate offence for money laundering. (See 2.2)

4. Operational cooperation between police, tax and customs services and units should be fostered via mutual access and interoperability of databases. Liaison officers between services should be appointed. Temporary exchanges of staff for training purposes could be considered. (See 2.1)

5. More importance should be attached by law-enforcement and, above all, by prosecuting services to forensic financial analysis, asset tracing, seizure and confiscation. These should become more prominent elements of investigations. Provisions on the "reversed burden of proof" need to be used extensively against organized crime. Steps undertaken recently by the Ministry of Justice need to be continued in cooperation with all interested entities. (See 2.3)

6. Prioritization of financial investigations and extensive use of confiscation need to be reflected in appropriate training, human resources and structural developments within investigating and prosecuting services. In particular, the establishment of specialized law-enforcement units responsible for asset recovery and the appointment of prosecutors dedicated to financial investigations at the regional level should be considered. Dedicated judicial panels dealing with financial crimes could be also established in major courts. (See 4.3)

7. Personnel management policy should be reviewed and redeveloped in order to strengthen existing units and foster inflow and promotion of individuals with particular experience or knowledge. Means to motivate investigators and prosecutors to acquire additional knowledge relating to financial investigations, especially concerning the collection and analysis of financial evidence and asset tracing, should be applied more widely. (See 2.3)

8. The amount of assets traced and seized should be taken into account every time that the performance of units or individual officials is assessed by their superiors. Introduction of incentives could be considered for units and services successful in asset tracing and seizure. (See 2.3)

9. A centralized register of bank accounts should be considered, in order to provide the relevant investigating authorities with access to necessary data, especially to allow speedy identification of bank accounts available to a person under investigation. (See 3.1.1)

10. Sound management of seized goods, including their conversion into cash, needs to be promoted and applied more extensively. (See 4.3)

11. A mechanism for informing OLAF about outcomes of criminal cases related to fraud against the financial interests of the Communities, especially those where OLAF was involved, needs to be established. The function of OLAF in providing Commission support for the judicial authorities in all matters of fraud and corruption against the Communities' financial interests could be promoted and explained to judicial practitioners. (See 5.1)

12. Cooperation with Europol, especially contribution to and use of its analytical tools as well as its communication channels needs to be enhanced. Its capabilities and potential added value for investigations need to be promoted and explained to interested practitioners, especially law-enforcement officers and prosecutors. (See 3.3)

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

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

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

2. European authorities, namely OLAF, Eurojust and Europol, should, in close cooperation with Austrian authorities, promote and explain their potential added value for investigation and prosecution. Their analytical capabilities, information and intelligence exchange, available communication channels and means of practical assistance need to be presented.

3. Relevant EU institutions and agencies are encouraged to continue their efforts on the standardisation and interoperability of financial criminal analysis.

4. The Commission is invited to promote and facilitate training in the field of financial investigations and forensic financial analysis including a certification system at national and European level.

ANNEX A

PROGRAMME FOR VISIT

Tuesday 8 September 2009:

8.30-9.00	Ministry of the Interior, Criminal Intelligence Service (Bundeskriminalamt): Welcome by the Head of Division II/BK/3, Director Ernst GEIGER
9.00–12.30	introduction of office 3.4, units 3.4.2 (FIU) and 3.4.5 (ARO) legal bases; situation in Austria from the point of view of the Criminal Intelligence Service; financial investigations by the Criminal Intelligence Service (FIU, ARO) as well as international cooperation (division II/BK/2); involvement of the Federal Bureau for Internal Affairs *(Büro für innere Angelegenheiten)* concerning investigations with regard to corruption offences;
12.30–13.30	Lunch break
13.30-14.30	Transfer to St. Pölten, Lower Austria
14.30–17.00	Federal Police Directorate Lower Austria, Criminal Intelligence Department, Investigation Unit for economic and financial crime (*Landespolizeikommando NÖ, Landeskriminalamt EB4 – Wi*) as competent authority for asset recovery at regional level

Wednesday, 9 September 2009:

10.00-10.15	Ministry of Justice: Welcome and introduction of the participants by the Head of the Unit for negotiation and implementation of EU- and other multilateral instruments in the field of cooperation in criminal matters, Director Fritz Zeder
10.15–10.30	general debate
10.30–11.30	national law (division II 3): information on bank accounts; freezing of assets; confiscation of assets
11.30–11.45	coffee break
11.45–12.45	EU-cooperation (divisions II 2 and IV 1): implementation of FD 2003/577/JI; practical experiences; implementation of FD 2006/783/JI; practical experiences
13.00–14.30	Lunch break
14.45	Regional Court of Vienna
14.45–15.45	office of Public Prosecution, unit for economic crime cases
15.45–16.00	coffee break
16.00–17.00	Meeting with judges specialized in economic crime cases

Thursday, 10 September 2009:

9:30	Ministry of Finance: Welcome and introduction of the participants
9:45	Federal Ministry of Finance, tasks, competences in general, the role of the MoF regarding financial crime and/or financial investigations
10:15	Tax investigation Service (TIS), tasks, competences in general, the role of the TIS regarding financial crime and/or financial investigations
10:45	Customs investigation service (CIS), tasks, competences in general, the role of the CIS regarding financial crime and/or financial investigations
11:15	Cooperation with the European Commission from the Austrian Tax and Customs Administrations perspective, OLAF, Eurojust, Europol
12:00	Open questions, AOB

15:00 – 17:00 Criminal Intelligence Service Austria (Bundeskriminalamt), introduction of unit 3.4.1 (fraud) and office 3.1 (organised crime),
Answering of questions

Friday, 11 September 2009:

09:00 Criminal Intelligence Service Austria, Office 4.1 - Analysis

10.00–12.00 Final round in the Ministry of Justice in order to discuss the "left-overs", with participants from the Ministry of Justice, the Ministry of the Interior and the Ministry of Finance.

ANNEX B

LIST OF PERSONS INTERVIEWED

Ministry of Interior:
Ernst GEIGER, Head of Department 3

Rudolf UNTERKÖFLER, Head of Sub department 3.4, Economic & Financial Investigations
Gerald STALLER, Head of Unit 3.4.1 – fraud
Josef MAHR, Head of Unit 3.4.2 – FIU, Money Laundering

Ulrike SCHRAMMEL, Head of Unit 3.4.4 Environmental Crime
Hannes SEDLAK, Head of Unit 3.4.5, ARO, Asset Recovery
Gerhard JOSZT, Head of Sub department 3.1, Organized Crime

Gabriele LOIDL, Legal Advisor with National Europol Unit 2.2
Gerlinde WAMBACHER, Legal Advisor with BIA, Bureau for Internal Affairs
Karl FISCHER, Public Prosecutor, Regional Court of St. Pölten, Lower Austria

Klaus SCHACHNER, Head of sub department 4.1 – Strategic Crime Analysis
Martin KOBER, Analyst
Brigitta RANNICHER, Interpretor

Federal Police Directorate Lower Austria:
Klaus PREINIG, LKA NÖ / District Police Command Lower Austria

Office of Public Prosecution, Vienna:
Maria-Luise NITTEL, Head of the Office of Public Prosecution
Beatrix WINKLER, Public Prosecutor
Carmen PRIOR, Public Prosecutor

Peter VESELY, Public Prosecutor
Volkert SACKMANN, Public Prosecutor
Michael RADASZTICS, Public Prosecutor

Regional Court of Vienna:
Eva BRACHTEL, Vice-President
Christina SALZBORN, judge
Thomas KREUTER, judge

Claudia MORAVEC-LOIDOLT, judge
Daniela SETZ-HUMMEL, judge

Ministry of Justice:
Fritz ZEDER, Director, Head of unit for negotiation and implementation of EU- and other multilateral instruments in the field of cooperation in criminal matters
Christian MANQUET, Director, Head of unit responsible for the Austrian Penal Code
Irene GARTNER, Senior Public Prosecutor, Deputy head of unit for negotiation and implementation of EU- and other multilateral instruments in the field of cooperation in criminal matters

Stefan BENNER, Senior Public Prosecutor, Deputy head of unit for individual cases of extradition/surrender, mutual assistance and other forms of cooperation in criminal matters
Wolfgang PEKEL, Public Prosecutor, Advisor, Unit for negotiation and implementation of EU- and other multilateral instruments in the field of cooperation in criminal matters
Monika SCHWINGENSCHUH, Advisor, Unit responsible for the Austrian Penal Code

Ministry of Finance:
Herwig HELLER, Head of Division IV/3, Enforcement and Anti-fraud unit in the area of taxes and customs
Thomas TUREK, Division IV/3
Josef PFEIFFER, Division IV/3

Vienna Customs Office:
Egon VOGT, Legal Advisor of the Customs Investigation Service
Erich LINDMAIER, Team-Leader of the Customs Investigation Service

Tax Investigation Service
Michael HRIBERNIGG, Tax Investigations Service, Experts Department
Klaus STRAHLER, Tax Investigation Service

ANNEX C

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
AFIS	Automated fingerprint system
ARO	Asset Recovery Office
BIA	Federal Bureau for Internal Affairs
BKA	*(Bundeskriminalamt)* Federal Investigation Bureau
BMF	Federal Ministry of Finance
BMI	Federal Ministry of the Interior
CCP	Austrian Code of Criminal Procedure
CIS	Customs Investigation Service
CLO	Central Liaison Office
EAGGF	European Agricultural Guidance and Guarantee Fund
FCIC	Financial Crime Information Centre
FIU	Financial Intelligence Unit
IACA	International Anti-Corruption Academy
JLS	Justice, Liberty and Security
LKA	(*Landeskriminalamt*) Regional Investigation Bureau
MDG	Multidisciplinary Group on Organised Crime
OAFCN	OLAF Anti-Fraud Communicators Network
OCTA	Organised Crime Threat Assessment
OLAF	European Anti-Fraud Office
PC	Penal Code
RIA	Risk-, Information- and Analysis Centre

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
RIF	Risk Information Form
ROCTA	Russian Organised Crime Threat Assessment
TIS	Tax Investigation Service
UNCAC	United Nations Convention against Corruption