



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 21 November 2012**

**9302/2/12  
REV 2**

**GENVAL 26**

**DECLASSIFICATION**

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of document:	9302/1/12 REV 1 RESTREINT UE/EU RESTRICTED
dated:	29 June 2012
new status:	Public
Subject:	<u>EVALUATION REPORT ON THE</u> <u>FIFTH ROUND OF MUTUAL EVALUATIONS</u> <u>"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"</u>  <u>REPORT ON CYPRUS</u>

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

**REPORT ON CYPRUS**

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## 1. INTRODUCTION

At the meeting of the Multidisciplinary Group on Organised Crime (MDG)<sup>1</sup> on 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluations<sup>2</sup>, two of which received substantial support. At the MDG meeting on 6 May 2008, the majority of delegations were in favour of selecting 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 to 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<sup>3</sup>, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG<sup>4</sup>.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed<sup>5</sup>. 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 OCTA 2009 and ROCTA<sup>6</sup>.

Topics relating to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen<sup>7</sup>.

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

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<sup>1</sup> Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Affairs and Evaluations (GENVAL).

<sup>2</sup> 6546/08 CRIMORG 34.

<sup>3</sup> 10540/08 CRIMORG 89.

<sup>4</sup> 16710/08 CRIMORG 210.

<sup>5</sup> 9767/09 JAI 293 ECOFIN 360.

<sup>6</sup> 8301/2/09 REV 3 CRIMORG 54.

<sup>7</sup> 11060/09 JAI 404.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits<sup>8</sup>. Cyprus was the fifteenth Member State to be evaluated during this round of evaluations.

The experts charged with undertaking this evaluation were Mr Volkert Sackmann (Prosecutor, Public Prosecution Office Vienna, Austria), Mr Aristomenis Binis (Official from the Financial and Economic Crime Unit, Athens/Greece) and Mr Rafał Woźniak (Head of the Asset Recovery Office, National Police Headquarters, Warsaw/Poland). Four observers were also present: Ms Anne-Marie Smit (Legal officer, Eurojust, The Hague/Netherlands), Mr Carlo van Heuckelom (Head of the Criminal Finances and Technology Unit, Europol, The Hague/Netherlands), Ms Ute Stiegel (European Anti-Fraud Office - OLAF, Brussels/Belgium) and Mr Christian Tournié (European Commission, DG HOME, Brussels/Belgium) together with Mr Hans Nilsson and Mr Peter Nath from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, based on findings arising from the evaluation visit that took place between 18 and 20 July 2011, and on Cyprus' detailed replies to the evaluation questionnaire

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<sup>8</sup> 5046/1/09 REV 1 CRIMORG 1.

## 2. NATIONAL SYSTEM AND CRIMINAL POLICY

### 2.1. Specialized units

As there are no pre-trial proceedings in Cyprus the investigative phase lies in the hands of the law enforcement units and is conducted by the Police, the Unit for Combating Money Laundering (the Financial Intelligence Unit of Cyprus - MOKAS) or the Department of Customs and Excise; in addition the judges play their role when issuing court orders for house-searches and disclosure of bank accounts and other information as well as freezing orders.

#### 2.1.1. Investigative authorities

##### 2.1.1.1. *Police*

##### **Organisational setup**

In Cyprus, there is only one National Police Service. This Service is under the Ministry of Justice and Public Order. The mission of the Cyprus Police is to maintain law and public order throughout the Republic, the preservation of peace, the prevention and detection of crime and the apprehension of offenders.

Cyprus Police has the authority to act throughout the territory of the Republic. This authority emanates from the relative legislations:

- Constitution of the Republic of Cyprus
- Police Law and Regulations
- Police Standing Orders which are issued by the Chief of Police
- Criminal Code
- Criminal Procedure
- Evidence Law
- Law and Regulations on Traffic Offences
- Furthermore, all legislation regarding criminal offences



The organization of the police is based upon a hierarchical structure, headed by the Chief of Police. At the end of March 2011, the total strength of police forces in Cyprus was 6 130 and the distribution in the different ranks was as follows:

Chief of Police	1
Deputy Chief of Police	1
Assistant Chief of Police	4
Chief Superintendent	14
Superintendent A' & B'	29
Chief Inspector	62
Inspector	210
Sergeant	630
Constable	3469
Special Constables	866
Fire Service	743
Specialized posts	101



The functions of the Police are divided into four principal areas: operations, administration, support services and education. Cyprus Police Headquarters is divided also into five basic departments, which are:

1. Administration (Dept. A')
2. Traffic and Transport ( Dept. B')
3. Criminal Investigation (CID – Dept. C')
4. Scientific and Technical ( Dept. D')
5. Research and Development

#### **The Criminal Investigation Department (“Department C’ “)**

The Criminal Investigation Department (referred to as “Department C’ “ hereafter) is under the authority of the Assistant Chief of Police – Operations and undertakes the investigation and detection of serious crimes. There are CID branches in every Police Division, which are under the direct command of the division commander. The coordination and overall supervision is exercised by the Director of Department C’.

The Department C' comprises of the following sub-divisions: Registry, the Criminal Registry Office, the Firearms Office, the Prosecution Office, the Operations Office, the Dogs Section, the Bomb Section, the Crime Intelligence Bureau, the Crime Prevention Office, the Office for Combating Discrimination and Juvenile Delinquency, the Domestic Violence and Child Abuse Office, the Organised Crime Office, the Crime Analysis Office, the Culture Property Office, the Anti-Terrorism Office, the Cyber Crime Unit, the Digital Forensic Lab, Trafficking in Human Beings Office, the Intellectual Property and Betting Crime Office, the Office for Handling Issues Related to Private Security Services and, with particular relevance for the subject under review, the **Economic Crime Investigation Office**.

#### COMPOSITION OF DEPARTMENT C'

At the time of the on-site visit Department C' (Police Headquarters) had 161 staff. The department has one director and two assistance directors (administration and operations). Furthermore, the department has other officers in charge of various division offices.

#### Economic Crime Investigation Office

The **Economic Crime Investigation Office (ECIO)** has the authority to work on the entire territory of the Republic of Cyprus based on the general competence of the National Police as regards financial crimes as well as the more specific legislation on money laundering and corruption. The ECIO is responsible for the investigation of fraud and all crimes related to economic issues, including corruption and fraud against the European Union's financial interests. As a consequence the ECIO works in close cooperation with all police units involved in the fight against serious crime. In this capacity the ECIO also works closely with the Unit for Combating Money Laundering (the Financial Intelligence Unit of Cyprus (FIU) - MOKAS), the Customs and Excise Department and the divisional units of the CID. Four police officials are currently seconded to the FIU – MOKAS.

The Law Office of the Republic acts as a legal adviser and coordinator for legal assistance of criminal investigations and cooperation with OLAF in the area of possible or suspected criminal offences.

The ECIO is also responsible for the investigations carried out upon requests made by Interpol, Europol, from liaison officers at foreign embassies and for the execution of legal requests for assistance to foreign countries (received through the Ministry of Justice). For the year 2010, the Cyprus Police received for execution 210 rogatory letters and for the year 2011 (until March) 57 rogatory letters. The majority of them were concerning economic crime.

#### COMPOSITION OF ECONOMIC CRIME INVESTIGATION OFFICE

Staff of the ECIO at the Nicosia Police Headquarters consists of 15 police officers (CID investigators) that according to the Criminal Procedure Code, Chapter 155, are vested with powers to arrest, search and investigate suspects. The detailed breakdown of ECIO staff is as follows: One Chief Inspector, two Inspectors, five Sergeants, six Constables and one Special Constable.

Economic Crime Investigation Offices exist in every district and investigate the same range of offences as described above. Moreover, serious economic crime offences may be investigated by the Criminal Investigation Department of the Police Headquarters. Furthermore, the Attorney General may appoint independent criminal investigators to investigate financial crimes (e.g. professional accountants or auditors from the office of the Auditor General or from the private sector).

#### **The Crime Analysis Office (CAO)**

The Cyprus Police uses a structured crime reporting and information / intelligence recording computerization environment where all databases are stored in a number of Oracle<sup>®</sup> servers on the premises of the Police Headquarters. The model on which the Cyprus Police performs intelligence analysis is the European Crime Intelligence Model (ECIM).

The office responsible for the criminal intelligence analysis is the Crime Analysis Office (CAO) of Department C', Police Headquarters. It mainly deals with intelligence and tactical analysis and is currently manned with six members, all of them police officials.

Through the development of criminological analysis and based on the needs of the police, the CAO develops various intelligence products amongst which are:

- Analysis and reports on the serious crime on an annual basis
- Analysis and reports on specific crime/offences (e.g. burglaries, thefts, etc)

- Analysis and proposals derived from data assessment across the various databases of the police computerized environment.
- Tactical analysis on specific very serious crimes (e.g. cases of murder and armed robbery)
- The design and management of the development and implementation of the so-called National Crime Reporting System
- Development of ad hoc software/programs for specific analytical purposes
- Analytical charts and reports on telephone data analysis using the i2<sup>®</sup> analysis software

Furthermore, the CAO closely cooperates with the Crime Investigation Departments (CIDs) all over Cyprus supporting them with analytical services during the investigation of serious crime cases.

### 2.1.2. Financial Intelligence Unit (FIU)

The Financial Intelligence Unit (FIU) of Cyprus (Unit for Combating Money Laundering – MOKAS, hereafter referred to as: “the Unit”) was established in December 1996 and became operational in January 1997 according to Section 53 of the **Prevention and Suppression of Money Laundering Activities Law 1996-2004**. This Law has since been amended and consolidated with the **Prevention and Suppression of Money Laundering Activities and Terrorist Financing Law**<sup>9</sup> in 2007 and 2010, and the relevant section is now Section 54 of the AML/CTF Law. The Unit functions under the auspices of the Attorney General of the Republic, an independent official under the Constitution of the Republic of Cyprus, and it is composed of representatives of the Attorney General, the Chief of Police, and the Director of the Department of Customs and Excise. The members of the Unit are appointed by detachment and the representative of the Attorney General heads the Unit. Furthermore, according to the same section the composition of the Unit includes other professionals, such as accountants and financial analysts.

The Unit is the national centre for receiving, requesting, analyzing and disseminating disclosures of STRs and SARs and other relevant information concerning suspected money laundering or financing of terrorism activities. These functions of the FIU are provided in Section 55 of the AML/CTF Law.

<sup>9</sup> Law No. 188(I)/2007 and 58(I)/2010, hereafter also referred to as ‘AML/CTF Law’.

In relation to its competence for suspected financing of terrorism activities, it should be clarified that this task or authority was assigned to the Unit with the provisions laid down in Section 10 of the Ratification Law of the UN Convention on the Suppression of the Financing of Terrorism<sup>10</sup>.

As laid down in Section 55 (1) of the Law the functions of the Unit are as follows:

“The Unit, inter alia, shall-

- (a) be responsible for the gathering, classification, evaluation and analysis of information relevant to laundering offences and terrorist financing;
- (b) conduct investigations whenever there are reasonable grounds for believing that a laundering offence and a terrorist financing offence has been committed;
- (c) co-operate with the corresponding Units abroad, for the purposes of investigation of laundering offences and terrorist financing offences by the exchange of information and by other relevant ways of co-operation.
- (d) issue directives for the better exercise of its functions.
- (e) issue instructions to persons engaged in financial and other business activities for the suspension or non-execution of a transaction, whenever there is reasonable suspicion that the transaction is connected with money laundering or terrorist financing.
- (f) inform persons engaged in financial or other business activities on the results of the investigation of the reports submitted to the Unit, in accordance with sections 27 and 69 of this Law.

The competencies of the Unit are laid down in Section 55 (2):

“For purposes of subsection (1)

- (a) members of the Unit, upon the making of a judicial order, may enter any premises including premises of a financial institution; and
- (b) the Unit may, upon a relevant application to the court, secure an order for the disclosure of information.”

Apart from maintaining its own genuine FIU database, the Unit has access to financial, administrative and law enforcement information, so as to properly undertake its functions and analyse the STRs. The detailed list of databases to which the Unit has access is laid down in chapter 3 of this report.

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<sup>10</sup> Law No. 29(III)/2001

The Unit may obtain financial information using the provisions of the Criminal Procedure Law (Section 6 (1)) without an order of the Court, and/or by applying Sections 45 and 46 of the AML/CFT Law through a Court Order.

According to section 55 of the AML/CFT Law the Unit has the authority to conduct investigations whenever there are reasonable grounds for believing that a money laundering or terrorist financing offence has been committed. Therefore, the Unit conducts the investigation with the assistance of police or customs authorities whenever such cooperation is needed.

Only FIU personnel have access to FIU databases. The Unit's intranet is isolated from any other networks while at the same time a firewall is protecting FIU data at intranet level and a second firewall is installed at government hub level. All documents are stored in archives which are also controlled by an electronic alarm system and CCTV systems: The documents classified as "secret" are kept in a separate strong room with higher physical security. The server room is also equipped with an alarm system, CCTV cameras and fire extinguishing system. Entrance is only allowed to the IT Administrator of the Unit.

The FIU issues periodic reports including statistics, typologies and trends which are sent to the reporting entities, to various government departments, financial institutions as well as to foreign authorities.

It also publishes an annual report which contains a range of information including powers and responsibilities of the FIU, statistics on SARs, freezing and confiscation orders as well as sanitised money laundering cases.

MOKAS has a website<sup>11</sup> where all relevant information regarding the law, the relevant conventions, the EU Directives the evaluation reports on Cyprus of international organisations, the typologies reports, the directives of the supervisory authorities can be found.

Moreover, the head of the FIU chairs the **Advisory Authority against ML/TF** which is a policy making body, comprised of representatives from the public and private sectors. Within this body information is given by the FIU to the members of the Advisory Authority regarding new trends, evaluation reports, actions undertaken by international bodies in this area etc.

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<sup>11</sup> [http://www.law.gov.cy/law/mokas/mokas.nsf/dtttheunit\\_en/dtttheunit\\_en?OpenDocument](http://www.law.gov.cy/law/mokas/mokas.nsf/dtttheunit_en/dtttheunit_en?OpenDocument)

The FIU, when deemed necessary proceeds with press releases to the media regarding certain court cases and/or other issues that may arise.

The FIU is a member of the Egmont Group since June 1998 and it actively participates in the working groups and other Egmont Group meetings.

The Unit, based on its investigative powers, co-operates with the police and in particular with the Drugs Law Enforcement Unit and the Economic Crime Investigation Office (in all districts) when investigating domestic cases as well as during the investigation of STRs and analysis.

As regards the protection of the financial interests of the EU, the FIU is a member of AFCOS (Anti Fraud Coordinating Structure) and the head of the FIU has been designated by decision of the Council of Ministers as the contact point for co-operation with OLAF for the investigation of criminal cases.

Based on a recommendation made by a previous evaluation on organised crime, the three law enforcement bodies of Cyprus (Police, Customs, MOKAS) developed a new joint database. The scope of this database is to give the opportunity to these bodies to share certain information/intelligence and hence to add value to any investigation is carried out by police, customs or the FIU.

Two police officers, members of MOKAS have access to this database and in many cases this found to be very useful since it gives the ability to link suspicious transactions with suspicious criminal behaviour.

Furthermore, MOKAS has been connected with the central government hub and in the future it is planned to be connected with other government departments with which, for the time being, has indirect access.

Moreover, for analytical work MOKAS investigators use the i2<sup>®</sup> Analyst's Notebook. MOKAS has been connected with the FIU.NET of the European Union for the exchange of information with EU FIUs.

### 2.1.3. Asset Recovery Office (ARO)

The Cyprus Financial Intelligence Unit (FIU) was designated as the Asset Recovery Office (ARO) for the purposes of and in conformity with Article 1 of Council Decision 2007/845/JHA<sup>12</sup>. The designation was made by a Council of Ministers Decision on 18 March 2009.

Moreover, for this purpose, a legislative amendment of the Prevention and Suppression of Money Laundering Activities and Terrorist Financing Law<sup>13</sup> was adopted in June 2010 that stipulates in Section 2 (1):

“Asset Recovery Office” means the Asset Recovery Office as it is defined in the Council Decision 2007/845/JHA of 6 December 2007 concerning co-operation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

And, furthermore, in Section 55 (1)(c):

“The Unit shall co-operate with the corresponding Units abroad, as well as with Asset Recovery Offices, for the purposes of investigation of laundering offences and terrorist financing offences by the exchange of information and by other relevant ways of cooperation.”

One distinctive feature of the situation in Cyprus is that the staff of the FIU Cyprus is identical with the staff of the ARO. The prosecutors, police officers and customs officers serving in the Unit are seconded from their departments for at least three years. The financial analysts are permanent staff.

The ARO co-operates with prosecutors, police and customs, wherever a need arises for the tracing and identification of property for purposes of freezing and following conviction, for purposes of confiscation.

The Cyprus ARO has the mandate to undertake the functions described in Council Decision 2007/845/JHA for the purposes of facilitating the tracing of proceeds of crime and other crime related property.

<sup>12</sup> COUNCIL DECISION 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, O.J. L 332 of 18.12.2007, pp. 103-105.

<sup>13</sup> Law 188(I)/2007 as amended by Law 58(I)/2010.



The Cyprus FIU has investigative powers in relation to asset tracing and recovery of criminal proceeds, under the Provisions of the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 and 2010.

The Cyprus ARO has its own database which contains data regarding the number of cases examined, the number of incoming and outgoing requests and information regarding the subjects involved.

The Cyprus ARO only examines requests and provides assistance in criminal cases.

#### **2.1.4. Judicial authorities**

##### *2.1.4.1. Prosecution services*

In the Office of the Attorney-General which is the Prosecuting Authority in Cyprus there are no specialized financial crime prosecutors. All public prosecutors dealing with criminal cases have the authority to prosecute financial crimes as well.

These prosecutors are assisted by the prosecutors of the FIU who are specialized in confiscation matters to successfully carry out confiscation proceedings.

Prosecutors receive training in Cyprus and abroad, e.g. training seminars organized by OLAF for financial investigators.

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

There are no pre-trial investigations in Cyprus.

##### *2.1.4.3. Courts*

The evaluation team was not made aware of any specialised judges or courts that are dealing with matters of financial or economic crime.

### 2.1.5. Department of Customs and Excise

The Department of Customs and Excise is both an investigative and prosecuting authority, which deals mainly with financial investigations.

#### 2.1.5.1. Specialised Unit

The **Specialised Unit** within the department is composed by 10 officers who are lawyers, economists and accountants and located within the investigation and intelligence sections at customs headquarters.

The mission of the specialised unit is the prevention and combating of customs economic fraud and the securing of the financial interests of the Republic of Cyprus and the European Union.

The customs officers are empowered with the following legal powers, according to the Customs Code<sup>14</sup>:

1. Entry, visit, inspect and control any place subject to customs supervision.
2. Exercising controls on all goods related to the entry or importation, exit or exportation, or movement or deposit thereof in places of business activities, as well as on any records, books, documents or particulars, even in electronic form, of any natural or legal person.
3. Use of appropriate scientific means for control purposes.
4. To demand provision of information and production of records, books, documents, or particulars.
5. To enter any premises, other than a dwelling house or place, and inspect and search these premises as well as any goods, records, books, documents or particulars, even in electronic form, therein.
6. To enter and search a dwelling house or place, with a judicial warrant.
7. To search any premises, other than a dwelling house or place, where anything liable to forfeiture is lying therein.
8. To enter and search a dwelling house or place, where anything liable to forfeiture is lying therein, with a judicial warrant.
9. To stop and search vehicles and vessels in order to verify or secure compliance with the customs legislation or the other legislation.
10. To search persons.

11. To demand from a person to attend for examination.
12. Arrest without a judicial warrant any person whom the customs officer finds committing or attempting to commit any offence provided by the customs or the other legislation punishable with imprisonment.
13. Power for customs prosecutions for offences against the customs and the other legislation and proceedings for the recovery of duties, taxes or penalties, or for the condemnation or forfeiture of vessels or other means of conveyance or goods.
14. To compound any offence or act committed or reasonably suspected of having been committed by any person against or in contravention of the provisions of the customs or the other legislation.
15. To detain or seize goods, liable to forfeiture under the customs or the other legislation.
16. To examine incoming or departing persons from and to a third country.

Customs officers are vested by virtue of the provisions of Criminal Procedure Code (Chapter 155) to conduct criminal investigations like police officers.

#### 2.1.5.2. *VAT Service*

The VAT Service is part of the Department of Customs and Excise, acting however, independently. One of the units within the VAT Service, is the VAT Investigation Unit. It consists of 15 officers and acts as an investigative authority concerning VAT offences, described in Article 46 of VAT Law, such as:

- VAT evasion
- False declarations
- Fraudulent attitude and act
- Involvement in tax evasion

As stipulated in the VAT. Law, VAT investigators are empowered with the following legal powers:

1. Enter, inspect and search business premises
2. Search houses (after a court search warrant has been issued)
3. Search persons
4. Confiscate documents and items
5. Exercise reasonable violence

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<sup>14</sup> Law No. 94 (I) of 2004

6. Conduct interrogations
7. Take samples of goods
8. Require a security deposit in order a taxpayer continue conducting business.

As ordinary customs officers, VAT Officers are vested by virtue of the provisions of Criminal Procedure Law (Chapter 155) to conduct criminal investigations.

#### **2.1.6. Financial Supervisory Authority**

The financial sector in Cyprus is supervised by the following supervisory authorities: Central Bank of Cyprus<sup>15</sup> that is responsible for the supervision of the 41 banks (7 local banks, 8 foreign banks and 21 branches of foreign banks) that are doing business in Cyprus. Investment firms and cooperative credit societies are subject to the supervision by the Cyprus Securities and Exchange Commission<sup>16</sup>. according to the Law Regulating the Structure, Responsibilities, Powers, Organisation of the Securities and Exchange Commission and Other Related Issues<sup>17</sup>

The supervision of cooperative credit societies in Cyprus is under the competence of the Authority for the Supervision and Development of Cooperative Societies<sup>18</sup>.

Lawyers are supervised by the Council of the Cyprus Bar Association, Accountants by the Council of Certified Public Accountants. Moreover real estate agents and dealers in precious Metals and Stones are supervised by the FIU.

#### **2.1.7. Level of expertise and Training**

##### **2.1.7.1. Police**

The Cypriot police have a generic education system whose principal stakeholder is the Police Academy. Since September 2010 the training of the Police in Cyprus was in a transition period as the curricula were under renovation in order to be brought in conformity with the Bologna Process. The Academy is applying modular education and training methods.

The Academy offers training programmes for investigators, specialised courses regarding financial and economic crime and a financial crime investigation course.

<sup>15</sup> <http://www.centralbank.gov.cy>

<sup>16</sup> <http://www.cysec.gov.cy>

<sup>17</sup> Law No. 4212, 10.07.2009 73(I)/2009 and Law No. 4317, 24.2.2012 5(I)/2012

<sup>18</sup> <http://www.cssda.gov.cy>

Lecturers from other governmental agencies and the private sector are used by the Police Academy in the course of lectures and training courses, e.g. the Ministry of Justice, the General Attorney's office, MOKAS, JCC (a private-sector credit card organisation), the Central Bank of Cyprus, the Association of Chartered Accountants to name but a few.

#### *2.1.7.2. Financial Intelligence Unit - MOKAS*

According to the information received the staff of MOKAS maintains high professional standards. For the position of the financial analysts the scheme of service prescribes the qualifications needed and the duties to be performed. All financial analysts are university graduates with relevant degrees and are of high integrity and appropriately skilled.

All members of the Unit receive adequate ongoing relevant training for combating money laundering and financing of terrorism both domestically and abroad. They participate in training seminars of international organisations dealing with the issues e.g. Council of Europe, European Union, Egmont Group, Europol, Interpol.

The training includes training on the issues of tracing of assets, obtaining disclosure orders, analysing financial information, on investigation and supervision techniques, trends and typologies studies, as well as IT training and software training.

All new members of staff, following the decision for their employment, receive the basic training on the relevant laws, and on investigation issues.

#### *2.1.7.3. Customs and Excise*

Apart from the normal training as customs officials, the Cypriot authorities informed that customs officers had participated in several training seminars on investigative techniques, intelligence matters, asset recovery measures, European search warrants which were organized either nationally at customs facilities or at the Police Academy and abroad.

## 2.2. Criminal Policy

### 2.2.1. Proceeds-oriented Policy

#### 2.2.1.1. *Police*

In their answers to the questionnaire the Cypriot authorities maintained that the investigation of suspicious economic activities has been at the forefront of the Cyprus Police concern. Therefore, in order to meet the ever-growing need to investigate economic crimes, the CID Economic Crime Investigation Office (ECIO) was established in 1994. Since then the Cyprus Police has been investigating a considerable number of cases involving fraud, as well as other financial crimes, including corruption.

The ECIO is responsible for the investigation of fraud cases, money laundering and other economic and financial crime cases. If necessary, the ECIO cooperates with the Attorney General's Office of the Republic of Cyprus and with the FIU (MOKAS). Every police officer (from the CID or any other police station) who is investigating a case with financial interests realising that property has been gained by an illegal act, has the responsibility to proceed with the proper procedure for financial investigation in order to deprive this property from the offender and inform the FIU according to the Anti-Money Laundering Law 188(I)/2007. Freezing orders can be obtained by the FIU for the cases investigated by the police for the purpose of securing realisable property or for a possible confiscation order to be obtained following conviction.

In such an investigation into the predicate offence, all competent departments jointly seek to establish whether the persons involved or their accomplices have also committed the crime of money laundering and search for indicators of asset movement (bank records, receipts for capital transfers, investment documents, receipts for currency exchanges and contracts for the purchase of real estate). In case of a suspicion of money laundering, every police officer can apply to court for the issuing of a disclosure order. As described above, in the event of a positive outcome, a report is sent to the FIU (MOKAS) for the procedure of establishing a freezing order and - following the conviction - a confiscation order.

To this end, written guidance has been issued by the FIU to the police as well as the public prosecutors, explaining the use and importance of financial investigations, not only for tracing criminal proceeds but also for securing evidence relevant to the main offence.

The guidance contains a brief description of the legislation and the investigative tools available as well as the provisional orders and orders for confiscation which can be obtained.

In addition to this written guidance, training has been arranged by the FIU on a number of times both for the prosecutors as well as for the relevant investigation departments of the police.

#### *2.2.1.2. Department of Customs and Excise*

According to the Customs Code Law, when an offence is committed and a customs debt has occurred, the goods involved are detained or seized as liable to forfeiture. Furthermore, if the case involves for example VAT fraud and fraudulent evasion, then the FIU is usually informed for the purpose of freezing realizable property identified to belong to the suspect for securing a confiscation order.

#### **2.2.2. Official investigation (police) or prosecution policy to trace crime proceeds (financial investigation)**

The Office of the Attorney General is responsible for public prosecutions. In the event of a criminal offence, the aim of a criminal investigation is to gather sufficient evidence on the constituent elements of an offence and to find out who committed it. Once it is established that an offence has been committed and the perpetrator has been identified or not, the aim of the investigation is clearly to identify the proceeds of the offence. The financial investigation and the criminal investigation are enjoying the same priority since both may produce evidence about the person who committed the predicate offence and can lead to depriving the perpetrator of possible proceeds or equivalent value property of such proceeds.

#### **2.2.3. Prioritisation to combat financial and economic crime**

In answering the questionnaire the Cyprus authorities maintained that for the Cyprus Police combating financial and economic crime was prioritised and that for that reason within the police an

Economic Crime Investigation Office (ECIO) has been established which is responsible to investigate this kind of cases with a view to trace, seize and confiscate assets.

Furthermore, it was stated that the Department of Customs and Excise was also giving high priority to the field of financial and economic crime.

#### **2.2.4. Tracing, seizing and confiscation of assets a separate goal of criminal investigations**

The Cypriot authorities have stated that the tracing, seizing and confiscation of assets did not constitute a separate goal of criminal investigations but was a parallel objective during criminal investigations. Therefore it is an obligation for any police officer and the prosecutors to seek tracing and freezing assets (with the assistance of the FIU (MOKAS)) with a view to their confiscation and if necessary extra manpower, resources and/or investigation time can be used to achieve this goal, e.g. by employing accountants or financial experts at any stage of the proceedings.

### **2.3. Conclusions**

#### **2.3.1. Investigative authorities**

- From an overall perspective the theoretical arrangement of the entities involved in preventing and countering economic and financial crime in Cyprus appeared to be sound and the main purpose of the departments to trace, seize and confiscate criminally gained assets was visible through the projects implemented by them.
- The structures and division of tasks between the Cypriot law enforcement agencies seems to be straightforward which seems to prevent unproductive competition between different police services. The agencies have a legal obligation to cooperate with each other. Additionally the services encountered during the on-site visit basically have all the necessary legal and technical tools to achieve the objectives set them by law. Certain mechanisms, however, need to be strengthened.
- As regards seizure, freezing and confiscation the statistical figures provided by the Cypriot authorities are showing a marked increase in numbers and values after 2007, both for the proceeds frozen as well as those confiscated. However, taking into account the absolute number of cases and the variation in the amounts confiscated from 2005 until 2012 an



absolute assessment appears to be rather difficult to make. This also applies to the registration and enforcement of foreign court orders: From 2005 until the end of April 2012 a total of 16 freezing orders have been registered, five of them under Framework Decision 2003/577/JHA while four orders for confiscation have been executed.

- Based on the information on caseloads it was not possible to evaluate whether human resources are sufficient to maintain a proper approach to tracing and eventually seizing proceeds of crime.
- Owing to the restricted geographical size of the island, all officials involved in combating financial and economic crime seemed to be in touch with each other and there appears to be close co-operation between the various authorities. As it is a small jurisdiction, the authorities have a direct overview of the crimes that take place on the island and are in a position to react to them quickly.
- On the other hand however, the experts had the impression that all services, especially the police, customs and the prosecution, are rather reactive. From the information gathered it seemed that their activities are not based on any comprehensive threat assessments or analysis anticipating future criminal trends, and as a consequence there is no pro-active approach to financial crime.
- The police have specialized units dealing with economic and financial crime and the staff seemed to be well educated and constantly trained.
- The experts were informed that Cyprus Police gave priority to the combating of financial and economic crime and that this policy decision had led to the creation of the Economic Crime Investigation Office (EICO).
- However, the rather low ratio of financially skilled and specialized investigators is currently not compensated by any means and is even amplified by the huge pressure which is impacting on the financial investigators resulting from the disproportionate amount of mutual legal assistance request they receive from foreign jurisdictions. Obviously, this is a result of Cyprus' emerging status as a financial centre, having a financial industry that is not really proportional with the size of the jurisdiction itself. As a consequence Cyprus seems to suffer from a "scale" problem or even anomaly, which appears to be somewhat deliberately ignored on a political level.
- During the on-site visit the evaluators were informed that police had in focus individuals from the former Soviet Union countries investing in Cyprus, but so far had not gathered any evidence that money used in these transactions had been derived from criminal activities.

Therefore police believe that there were no acute problems with the Russian-speaking criminal groups. The expert team felt however, that police officers should familiarise themselves with Europol's Russian Organized Crime Treat Assessment (ROCTA) and in the light of the ROCTA and AWF EEOC re-evaluate the situation in Cyprus again.

- As far as this was possible to assess police cooperation within Interpol and Europol takes place. The experts also noted that Cyprus had a liaison officer in Greece and an expert in FRONTEX.
- The police's Economic Crime Investigation Office (ECIO) closely cooperates with the Customs and Excise Department as well as with MOKAS. Together with the secondment of four police officers (number during the on-site visit) to MOKAS was considered as a good practice which increases the possibility of ongoing co-operation.
- The issue regarding wire tapping and storing call data is a very important one. The Constitution of Cyprus (Art. 15 and Art. 17) prevents the legislator from issuing suitable legislation<sup>19</sup>. This could be a problem when - for example - a VAT-carrousel is investigated within the European Union and it is linked to Cyprus. There will be no way of tracing the backers without the possibility of wire tapping, especially in view of the fact, that these offenders often use prepaid mobile phone cards.

The fact that police are legally barred from using special investigative techniques, such as interception of telecommunications etc. and are even not allowed to record the contents of a conversation from police officers operating under cover seems to be hampering the efforts when combating financial and economic crime and appears in the face of technical developments rather obsolete. In the opinion of the expert team this is a significant obstacle for the police in efficiently conducting investigations in a technologically-driven world. The experts would therefore deem it urgently necessary to rectify this situation by introducing appropriate legal instruments that would empower police and other investigative services with such capabilities.

- Police have a database, where all information received from informants is collected and that is also available for other services. The fact of the accessibility to databases of other services within one MS is not widespread within the EU certainly deserves attention as strengthening the capabilities of services in fighting against crime.

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<sup>19</sup> The Cypriot authorities have clarified after the on-site visit that according to the Law on the Retention of Telecommunication Data for the Investigation of Serious Criminal Offences (Law No 183 (I)/2007) they are able to retrieve any data regarding communications (e.g. telephone numbers, location of mobile phone, IP address) however, not the contents.

- Police have got access to information covered by bank secrecy through the courts and to that covered by fiscal secrecy with the help of the Ministry of Finance. Having access to such information is often crucial in the investigative process and then in the process of proving the crime. This should be regarded as good practice.
- Police are empowered to issuing a disclosure order.
- MOKAS, performing the role of the Cyprus FIU and at the same time being designated as ARO, has very broad powers; It is more an investigative body composed of representatives of the Office of the Attorney General, the Chief of Police and the Director of the Department of Customs and Excise, furnished with law enforcement powers. The representatives are supported by accountants and financial analysts. During the on-site visit three lawyers of the Office of the Attorney General, four police officers seconded from the Economic Crime Investigation Office and two customs officers of the Department of Customs and Excise were employed by MOKAS. The head of MOKAS is a representative of the Attorney General. MOKAS' task is to receive, request, analyze and disseminate disclosures of STRs and SARs as well as other relevant information regarding suspected money laundering or financing of terrorism activities. Whenever there are reasonable grounds for deeming that a laundering or terrorist financing offence has been committed it has the power to initiate and conduct investigations. Their investigative powers allow them to go beyond the competencies of administrative-type FIU activities. MOKAS also cooperates with the Police, particularly with the Drugs Law Enforcement Unit and the Economic Crime Investigations Office as well as with the Department of Customs and Excise if needed;
- The Unit employs well-educated staff that also receives training on an ongoing basis. Furthermore, specialized and up-to-date analytical tools are being applied. Not only employs MOKAS accredited accountants who belong to professional organizations in both Cyprus and the UK but another very positive aspect in MOKAS is that analysts within this Unit have an investigative background (four seconded police officers) which is a benefit in tracing assets.,
- When acting as asset recovery office (ARO) MOKAS has its own database, containing information about the cases and people ever appearing there - the expert team thought that this was a very helpful practice and as this is far from being common among the AROs in the EU, thought that this fact merited to be highlighted.
- MOKAS when dealing with ARO requests and acting as an ARO is able to provide any information based on the FD 2007/783/JHA (e.g. on immovable property, vehicles, naval vessels, shares etc.) as well as information held in its own database, this also extends to the information from the FIU database to which the ARO has access.

- The Cypriot authorities have provided additional information after the visit concerning the ARO's operation; therefore the ARO had since 2009 received 104 requests and since the beginning of 2009 sent four (4) requests.
- There is no separate structure in place dealing with the management of seized assets. Although being a smaller jurisdiction within the EU, the experts deemed it potentially beneficial for Cyprus to develop such a structure.
- MOKAS has a liaison officer in the Ministry of Finance that is the person designated to cooperate with them.
- It was noted by the expert team that the strong position that MOKAS obviously exercises in the Cypriot system of fighting financial crime and conducting financial investigations is reflected in its head accumulating a number of important functions (head of FIU, head of ARO, member of the Anti Fraud Co-ordinating Structure<sup>20</sup> as well as chair of the Advisory Authority against ML/TF). Although the expert team found no evidence to sustain this assumption they and understood that the size of the country necessitated the grouping of certain administrative functions they from a principal point of view had concerns whether such accumulation of functions would have potentially adverse effects in the event of arising incompatibilities when exercising the different functions.
- The Department of Customs and Excise is both an investigative and prosecuting authority, dealing mainly with financial investigations. Whenever they spot a tax or customs offence they submit the data to the FIU which will support them in investigation matters. In that case they are not bound by tax secrecy. Unfortunately the meeting with the unit was rather brief. In the view of the expert team there appears to be a lack of surveillance when it comes to the problems generated by the occupied territories in the northern part of Cyprus beyond the Green Line that seems to be a considerable source of tax and customs crime which should be of particular concern to the EU as it seems to be a vulnerable spot in its external border. Although the transport of counterfeit products from beyond the Green Line was forbidden and special controls are conducted at check points, leading to seizure and forfeiture<sup>21</sup> such products obviously find their way into EU territory outside Cyprus.

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<sup>20</sup> The Cypriot authorities have clarified after the on-site visit that any member of the FIU can be delegated to participate in the Anti-Fraud Co-ordinating Structure.

<sup>21</sup> The Cyprus Department of Customs and Excise has emphasized after the on-site visit that strict controls are conducted at all authorized crossing points, which are laid down in Annex I of Council Regulation (EC) No 866/2004 of 29th April 2004, so as to combat the illicit movement of smuggling and prohibited goods. These effective controls have led since now, to a significant number of seizures”

Customs and Excise reported that they were able to get hold of several cigarette smugglers (cigarettes obviously smuggled via the port of Famagusta). But since there is no legal regulation for wire-tapping and other forms of special investigative techniques, the unit appears to exclusively depend on whistleblowers. Consequently they were only able to catch the minor offenders and efforts never lead to tracing the masterminds of the smuggling.

- During the on-site visit the Department of Customs and Excise maintained that they had contact points in all authorities that were significant for their work from their point of view. However, during the visit it appeared that the centre of activity was mainly focussing on fighting crime linked to undeclared cash import into and export from Cyprus. It was stated that 99% of the individuals that failed to declare cash paid a fine, and the remaining money was then returned to them, this being in contravention of Regulation (EC) No 1889/2005<sup>22</sup> on controls of cash. According to the information given the amounts seized ranged between 100 000 to 200 000 GBP over a three-month period. In this respect it also became apparent that the intelligence on the cash seizures was not shared with Europol's AWF SUSTRANS but only with the national FIU and the European Commission's DG TAX;
- Although such cases are reported to MOKAS this approach means that Customs and Excise limit their actions to indirect tax collection for undisclosed sources of income. This limited action however, neglects the search for a possible criminal source for the funds carried;<sup>23</sup>

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<sup>22</sup> Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, O.J. L 309 of 25.11.2005, pp. 9-12.

<sup>23</sup> The Cypriot Customs and Excise Department has commented after the on-site visit that “[f]or every case a criminal investigation is carried out by a customs officer at Customs Headquarters which includes written statement from the offender and in depth examination of the relevant documents in order to identify the source of the detained funds. If there is a ground for a suspicion for illegal sourcing of funds, then the case is communicated immediately to the FIU – MOKAS for further investigation as the competent authority”.

- On cash controls the experts were informed that those have been exercised since the independence of Cyprus; as apart from EC Regulation 1889/2005 the Cypriot Law 53(I)/2009 also covers intra-EU cash transport the national regulations regarding cash declarations that are applied are stricter than those in the rest of the EU;<sup>24</sup>
- On the positive side the experts noted that co-operation of the Department of Customs and Excise with the police was close and that Joint Investigation Teams were employed as a tool for cooperation. Customs and Excise reported that it was common practice for the police to request assistance in their activities. It was also noteworthy that the Customs Service have access to police databases – which is rare in other countries,

### 2.3.2. Prosecuting authorities and Judiciary

- During the on-site visit the experts learnt that prosecutors and judges in Cyprus did not have any specific training to deal with complex financial cases nor do they receive any continuing professional training during their careers. They are considered to be generalists and work accordingly.

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<sup>24</sup> With regard to the controls of cash the Cypriot Customs and Excise Department has declared after the on-site visit:

“The relevant national legislation is the Control of Cash Entering or Leaving the Community and the Exercising of Intra - Community Cash Controls Law No. 53(I) of 2009. According to this law, any person entering or leaving the Republic of Cyprus through the entry or exit control points:

- With € 10 000 or more in cash;
- Or its equivalent in other currencies or easily convertible assets (e. g. bonds, shares, traveller’s cheques [etc.])
- Or gold of value of € 10 000 or more.

has the obligation to declare it to a Customs officer at the control point through which the person enters or leaves the Republic of Cyprus. The declaration form for the persons entering or leaving from/to third countries is the one prepared by the European Commission. For the intra-community controls the same form is used in different colour, which has referrals on the national legislation and covers the obligation to declare gold.

According to the above mentioned national law, in case of failure to declare, the cash could be detained or seized and the person involved is subject to a penalty up to € 50 000. The majority of the cases are compounded by the Director and the agreed penalty is deducted from the detained or seized cash and the remaining amount is returned to the person who failed to declare the money. Similar procedure is applied in other Member States as well and no contravention to the provisions of the Regulation (EC) No 1889/2005 can be established.

All the available data to the Department of Customs [and] Excise are communicated quarterly to the European Commission.”

- Furthermore, the experts are of the opinion that from a procedural angle, the absence of specialised prosecutors and judges dealing with financial issues may in many cases lead to investigative efforts undertaken by law enforcement agencies not bringing the expected results. The experts therefore concluded that a formalised specialisation of both prosecutors and judges could improve this situation.
- The experts noted positively and as an example of good practice that a seconded police officer in the rank of chief inspector works in the Ministry of Justice, thereby providing his professional experience, contacts and knowledge of police institutions.

### **2.3.3. Training**

- Cyprus police is rolling out a comprehensive and qualitatively well developed modular training trajectory for all of its officers. The Bologna Process is partly applied, which is worth noting and laudable. In the basic training modules, attention is being given to different aspects of financial crime and financial investigation. More in depth training and knowledge is provided to senior rank training modules. All training courses are in the process of getting accredited for ECTS purposes. The Cyprus Police Academy merits to be regarded upon as EU “good practice” as they provide basic training on financial crime investigation in the main stream training trajectory and offer “in depth” dedicated training for specialized officers. The only criticism to be given is that the dedicated financial crime courses do not appear to be adequately balanced. Too much attention is being given to specific sub phenomena (e.g. skimming) whilst others do not seem to get the attention they should. It was striking to see that on the curriculum one hour was dedicated to one single Europol AWF (TERMINAL), whereas the other financial crime AWFs were not even mentioned. The experts would therefore see it fit to recommend dedicating more time in the courses to designated EU police cooperation fora and the products and services to be provided to investigators would be appropriate. In this respect it had to be noted that Academy representatives were e.g. unaware of the existence of FCIC, which is the Europol Experts Platform for Financial Investigators.
- The experts were of the opinion that as the training and maintenance of required professional skills in Cyprus seems to be generally well structured, designing a formalized accreditation system for financial investigators should not be too big an effort. This would certainly allow better monitoring of continued professional improvement efforts throughout the official’s careers and would definitely result in an overall qualitative improvement of financial investigation in Cyprus.

- In the Cyprus Police Academy classes are implemented with lecturers from different stakeholders from the public and the private sector, e.g. Customs and Excise, Department of the Registrar of Companies and Official Receiver, prosecutors, Ministry of Justice, the Central Bank, the Association of Accountants, MOKAS, etc. Furthermore, the Academy seems to actively cooperate with the European Police College CEPOL and benefit from its experience.
- The experts felt that this kind of involvement was contributing to a broad based and up-to-date training of high quality. It was interesting to note that such strong emphasis is put on the practical aspects and the assistance of experts from outside the Police, even if this demands additional remuneration for such experts, which is not a common move taking into account the budgets of police services of other EU MS.
- The experts were fully aware of the important and decisive role MOKAS is playing in conducting training activities for the police, accountants and other stakeholders and their sharing the practical knowledge about preventing and combating money laundering.
- Part of the training in the Cyprus Police Academy on economic crime and assets identification and disclosure within other courses is run by MOKAS and some of the experts felt that tuition on the former field of expertise needed to be supplemented by expertise on law enforcement financial investigations, e.g. by course modules on asset recovery and asset tracing;
- It was noted that MOKAS had issued a written guidance to the police and public prosecutors explaining how to use financial investigations and emphasising their importance, this being an important tool in implementing methods and applying legal standards at the practitioner's level.
- Although the experts were generally very satisfied with the achievements of the Academy they were missing a course solely dedicated to disclosure and identification of assets. The scope of program of such a course could easily be agreed upon the experience of police and services of other countries in this regard, of course, supplemented by the needs of Cyprus. Such courses are common in other countries and worth disseminating, in particular, because they bring good results.
- Another area identified by the expert team where the impact of the Academy's work could be improved was e-learning: online courses which could improve the education process would not only reduce costs but could also, more importantly, be used to consolidate already acquired knowledge.

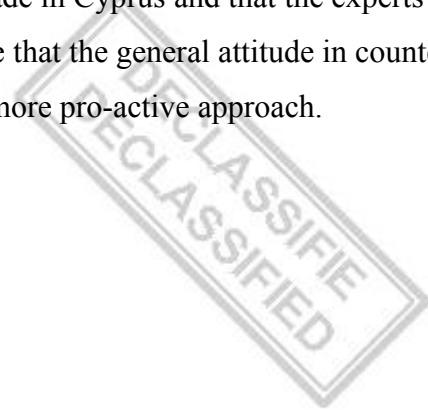


- The evaluation team noted with regret the absence of similar training trajectories for prosecutors and the judiciary. In addition, although training, including on financial crime and relevant topics, seems to be of importance for judges and prosecutors, their specialisation is not formalized in any way.
- To sum it up: training activities focused on financial issues should be considered a priority. They must not be limited to investigators, but offered also to prosecutors and judges. Common training schemes for all three groups would be advisable. Following comprehensive training, specialisation of judges could be considered in order to reflect the existing specialisation of investigators and prosecutors.

#### 2.3.4. Criminal Policy

- There is clear, consolidated legislation in Cyprus, enacted relatively recently because in 2010, which certainly helps in the process of preventing and combating economic crime. Cypriot authorities have at their disposal a well-established and effective legal framework for investigation and prosecution,
- A factor that facilitates coordination which should be taken into account is the relatively compact size of the country and the good institutional and personal connections between authorities responsible for the prevention of financial crime.
- The expert team has not been made aware of the existence of a coherent and consistent crime proceeds oriented law enforcement policy. Even though Cyprus appears to have adequate legal instruments embedded in their Penal Code and Criminal Procedural Code, there was no evidence presented of the existence of a national strategic security or policing plan, especially not with regards to financial crime.
- MOKAS publishes an annual Report on the Unit for Combating Money Laundering that gives an overview over the situation in Cyprus.
- The head of MOKAS chairs the Advisory Authority, a policy making body against money laundering and terrorist financing, where the representatives of MOKAS, police, MS, MF, Central Bank, the Association of Banks and Lawyers convene. Meetings take place every three months and refer to policy making, practical problems, training and evaluation of operating practices. Furthermore, numerous non-governmental players as well as authorities, whose primary tasks are not of a law enforcement nature, are involved and cooperate in a coordinated manner.

- Although the experts have taken note of the legal provisions that Cyprus has in place with regard to politically exposed persons (PEPs) they were of the opinion that the exposed geographical situation of Cyprus necessitated particular safeguards regarding their implementation.
- Finally, notwithstanding the efforts that are being made in Cyprus and that the experts were able to note, they have sensed on a more general note that the general attitude in countering financial and economic crime would benefit from a more pro-active approach.



### 3. INVESTIGATION AND PROSECUTION

#### 3.1. Information and databases available

##### 3.1.1. Databases and Registers

###### 3.1.1.1. *Real Estate*

The following information is held in the database for real estate property at the Land Registry Department:

- Details of the current registered owner of a certain plot of land
- Type of real estate (i.e. house, apartment etc)
- Date of purchase
- Previous owners
- Mortgages or other charges affecting the said property
- Sale contracts deposited to the Registry involving the property

All law enforcement authorities have access to the Land Registry database, i.e. police, customs the FIU and also the Asset Recovery Office. The access is indirect, i.e. upon request however, without the need for a judicial authorization.

###### 3.1.1.2. *Companies*

The company register is held in a database at the Department of the Registrar of Companies and Official Receiver, containing the following information:

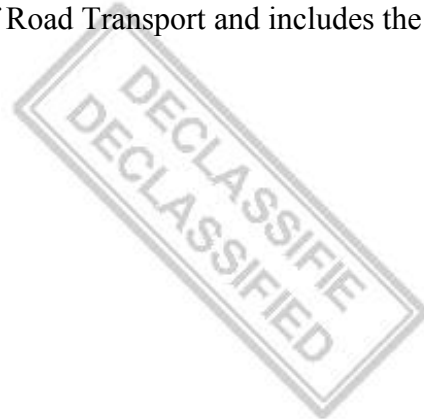
- Name of the company
- Registration number
- Date of registration
- Current and previous share holders
- Issued share capital
- Value of the share capital
- Name of the director, name of the secretary of the company
- Registered address

The information held is considered as public information and access for the law enforcement authorities is facilitated via direct online access.

#### 3.1.1.3. *Vehicles*

The national vehicle database is held by the Department of Road Transport and includes the following vehicle information:

- Current owner
- Previous owners
- Date of purchase and the
- History of the vehicle (e.g. stolen vehicle)
- Identification number and the engine number



Police, MOKAS and Asset Recovery Office have direct access to this database.

#### 3.1.1.4. *Boats*

A database on ships and vessels is held at the Department of Merchant Shipping, containing the following data:

- Name of the ship
- Name of the owner
- IMO number
- Call sign
- Registration number
- Charges

All law enforcement authorities and the Asset Recovery Office have access to this database via an indirect access.

#### 3.1.1.5. *Bank accounts*

Cyprus has no centralized bank account registry, the law enforcement authorities can however, obtain a court order addressed to all banking institutions in Cyprus in order to disclose whether a suspect holds any bank account with their institution and give details of such account.

Furthermore, following an amendment of the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 and 2010 (AML/CTF Law) under Section 68 B, it is now provided that persons engaged in financial business activities have to timely respond to enquiries of the FIU as to whether they keep or have kept during the last five years a business relationship with specific persons and the type of this business relationship.

#### 3.1.1.6. *Databases used by the FIU*

The FIU (MOKAS) has direct and indirect access to the following databases/information:

##### Direct access:

1. FIU database
2. Law enforcement database: Criminal records, departure/arrival records, stop list records, criminal analysis, law enforcement joint database
3. Administrative information: company registration information, immigration records, vehicle registration information
4. Customs information in relation to cash declarations
5. Direct access to several private, commercial databases (WORLD-CHECK, WORLD COMPLIANCE, LEXIS-NEXIS, COMPLINET, CREDITINFO)
6. Companies' Register
7. Arrest/Investigation/intelligence records

##### Indirect access:

1. Land Registry Information
2. Tax records
3. Supervisory Bodies records

All databases held within MOKAS are securely protected through various firewalls and passwords. All data is also properly backed up on a daily basis. Information can only be shared with the police authorities for assistance in the course of investigations if deemed necessary. All the information held by the Unit is dealt with utmost confidentiality and in case of breach of this duty the members of the Unit could be criminally liable according to Section 48 of the AML/CFT Law.

3.1.1.7. *Databases used by the ARO*

The members of the ARO have access to the following databases:

- The FIU database and information
- Department of Road Transport / Motor vehicles
- Boats and Aircraft Registry
- Department of Lands and Survey
- Department of the Registrar of Companies and Official Receiver
- Criminal records
- Law enforcement records
- Cash seizure
- Cash declarations



**3.2. Cooperation at national level**

**3.2.1. Identification of bank accounts**

3.2.1.1. *Legal Framework*

With regard to

- (a) the identification of an unknown bank account belonging to a specified person
- (b) the identification of the unknown owner of a specified bank account
- (c) the identification of operations from and to a specified bank account in a specified period in the past,

these measures are available during an investigation under several legal bases.

During the investigation and also for the purposes of tracing proceeds it is possible for law enforcement authorities to apply to the court and obtain a court disclosure order under Sections 44 and 45 of the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 and 2010 (the AML/CTF Law). The Court Disclosure Order can be addressed to any person, legal or physical, who appears to the court to be in possession of the information to which the application relates, calling upon the said person to disclose or produce the said information to the

investigator within seven days or within such a longer or shorter period of time as the court may specify in the order if it considers expedient under the circumstances.

Also investigators can use the provisions of Section 6 (1) of the Criminal Procedure Law, Cap. 155.

Furthermore, the FIU, using Section 68.B. of the AML/CTF Law can refer to all or to any banking institution in Cyprus requesting them to state whether they keep or have kept during the last five years any account – business relationship- with a specific person and the type of this business relationship.

As regards

(d) the monitoring of operations to and from a specified bank account in the future,

Section 45 (3) provides that “Any person to whom an order of disclosure is addressed shall have an obligation to notify forthwith the investigator about any subsequent change in the information that has already been given under this section”. Furthermore, in case of a SAR submitted to the FIU, directions are given to the reporting entity from the FIU as regards the monitoring of a bank account to provide information.

Therefore **for the FIU and the police the legal basis to obtain an order of disclosure** are Sections 45 and 46 of the AML/CFT Law:

“45.-(1 ) Without prejudice to the provisions of other laws, in relation to the receipt of information or documents in the course of investigating the possible commission of offences, for the purposes of inquiry in relation to prescribed offences or in relation to inquiry for the determination of proceeds or instrumentalities, the court may, on the application of the investigator of the case, make an order for disclosure under the provisions of this Part.

(2) For the purposes of this section, inquiry shall also include an inquiry conducted abroad and investigator of the case in respect of investigation conducted abroad shall include any investigator under the provisions of any relevant law of the Republic who cooperates with the investigator of the case.

(3) Any person to whom an order of disclosure is addressed under section 46 (Conditions for the making of an order for disclosure), shall have an obligation to notify forthwith the investigator about any subsequent change in the information that has already been given under this section.

46.-(1) The court before which an application for the making of an order for disclosure is submitted, may, if satisfied that the conditions of subsection (2) are fulfilled, make an order called order for disclosure, addressed to the person who appears to the court to be in possession of the information to which the application relates, calling upon the said person to disclose or produce the said information to the investigator or any other person specified in the order within seven days or within such a longer or shorter period of time as the court may specify in the order if it considers expedient under the circumstances.

(2) The conditions referred to in subsection (1) are that:

- (a) there is a reasonable ground for suspecting that a specified person has committed or has benefited from the commission of a prescribed offence;
- (b) there is reasonable ground for suspecting that the information to which the application relates is likely to be, whether by itself or together with other information, of substantial value to the investigations for the purposes of which the application for disclosure has been submitted;
- (c) the information does not fall within the category of privileged information;
- (d) there is a reasonable ground for believing that it is in the public interest that the information should be produced or disclosed, having regard to:

(i) the benefit likely to result for the investigation from the disclosure or provision of the said information; and

(ii) the circumstances under which the person in possession of the information holds it.”

**For the Department of Customs and Excise** according to article 78.-(1) of the Customs Code Law, “authorised officers, in order to verify or secure compliance with the customs or the other legislation, may demand within a reasonable period of time and at a reasonably specified place from any person related under any capacity with the goods and or with any records, books, documents, or particulars, even in electronic form



- (a) any information;
- (b) the production of any records, books, documents or particulars, even in electronic form, in order to verify or secure compliance with the customs or the other legislation”

#### 3.2.1.2. *Types of crimes covered*

The measures can be obtained whenever a predicate or a money laundering offence is under investigation.

#### 3.2.1.3. *Duration of a measure regarding a bank account*

The duration of a measure will depend on the case.

#### 3.2.1.4. *Other conditions necessary to obtain the measure*

The conditions necessary to be met in order for the measure to be taken and for the Court to issue the Order are included in section 46 (2) (cf. above). In summary, there must be a reasonable ground for suspecting that a specified person has committed or benefited from the commission of a prescribed offence and the information to which the application relates is likely to be, whether by itself or together with other information, of substantial value to the investigations and that the information does not fall within the category of privileged information<sup>25</sup>.

#### 3.2.1.5. *Competent authorities*

The authorities competent to apply for a court order of disclosure and obtain this order are the law enforcement authorities (police, customs, and the FIU) and no prior authorization is required.

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<sup>25</sup> According to Article 44 of the AML/CTF Law “Privileged information” for the purposes of part V [orders for the disclosure of information] means:

- “(a) a communication between an advocate and a client for the purposes of obtaining professional legal advice or professional legal services in relation to legal proceedings whether these have started or not, which would in any legal proceedings be protected from disclosure by virtue of the privilege of confidentiality under the law in force at the relevant time;
- Provided that a communication between an advocate and a client for the purposes of committing a prescribed offence shall not constitute privileged information;
- (b) any other information which is not admissible in court for the protection of the public interest under the law in force at the relevant time.”

3.2.1.6. *Information of persons affected by the measure*

The order is obtained following an *ex-parte* application. The order obtained is served on the banking institution.

The person, legal or natural, owner of the account is never informed of the existence of the disclosure order, since otherwise it will constitute a tipping-off offence, as provided in Section 48 of the AML/CFT Law.

3.2.1.7. *Secrecy obligations or privileges impeding or affecting the measure*

The disclosure order cannot be obtained in relation to privileged information which is specifically defined in the AML/CFT Law, under section 44 as follows:

“(a) a communication between an advocate and a client for the purposes of obtaining professional legal advice or professional legal services in relation to legal proceedings whether these have started or not, which would in any legal proceedings be protected from disclosure by virtue of the privilege of confidentiality under the law in force at the relevant time;

Provided that a communication between an advocate and a client for the purposes of committing a prescribed offence shall not constitute privileged information;

(b) any other information which is not admissible in court for the protection of the public interest under the law in force at the relevant time.”

Other than that, according to Section 46 (3) (c) of the AML/CTF Law, the order for disclosure shall have effect despite any obligation for secrecy or other restriction upon the disclosure of information imposed by law or otherwise.

3.2.1.8. *Enforcement of the measures in practice*

The orders for disclosure are obtained *ex-parte* and are served on the Anti Money Laundering Compliance Officer, respectively department of the financial institution with whom the investigators maintain direct communication, and as far as monitoring is concerned there is a transmission of the results on a regular basis.

### 3.3. Cooperation at European level

#### 3.3.1. Legal Framework

The Protocol to the Convention on Mutual Legal Assistance between Member States of the EU<sup>26</sup> has been ratified with Law No. 25(III)/2004 dated 30.4.2004 as a whole.

All information related to measures under (a) to (c) referred to in sub-chapter 3.2.1.1 of this report can be provided to a law enforcement authority of another Member State, through judicial cooperation. According to Section 8 of the above mentioned Ratification Law, for the implementation of Articles 1, 2, 3 of the Protocol, the relevant provisions of the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 and 2010 apply.

Cyprus has adopted Council Framework Decision 2006/960/JHA via the Decision of the Council of Ministers No. 65.597, dated 31 May 2007.

Exchange of information under FD 2006/960/JHA<sup>27</sup> relates to any type of information or data which is held by law enforcement authorities or any type of information or data which is held and which is available to law enforcement authorities without the taking of coercive measures. The Cypriot authorities have clarified after the on-site visit that e.g. information that the ARO has obtained from the FIU database in the course of processing a request can be exchanged under this FD.

#### 3.3.2. Information requests via the ARO

The ARO examines such requests and if the information requested is one which falls under the category of information to which has access and can be given, then it proceeds accordingly. Each request is examined on a case-by-case basis.

<sup>26</sup> Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, O.J. C 326 of 21.11.2001, pp. 1-8.

<sup>27</sup> Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union; O.J. L 386 of 29.12.2006, pp. 89-100.

**3.3.3. Competent authorities****3.3.3.1. *Acting as issuing State***

With regard to a mutual legal assistance request any law enforcement or investigative authority can ask for the issuing of a request through the Ministry of Justice and Public Order.

**3.3.3.2. *Acting as receiving State***

The Ministry of Justice and Public Order acts as the receiving authority for a mutual legal assistance request and forwards the request to the competent law enforcement authority for execution.

**3.3.4. Problems encountered**

When receiving such a request the Cypriot Authorities proceed without any delays for execution. However, when submitting such requests to other Member States the Cyprus law enforcement authorities have been facing difficulties in some cases such as delay in getting a response.

**3.4. Financial investigations and use of financial intelligence****3.4.1. Legal framework**

Cyprus has ratified the 2005 Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (the “Warsaw Convention”)<sup>28</sup> on 27 March 2009 and it entered into force on 1 July 2009.

**3.4.2. Special legal powers and tools for investigating the financial aspects of criminal activities****Police**

The Cyprus Police uses a combination of different laws for the investigation of financial crimes. In the frame of usual penal investigations, the police use the Criminal Procedure Code (Cap. 155) and, more specifically Articles 4, 5, 6 which can provide the following:

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<sup>28</sup> CETS 198

“4. (1) Any police officer may investigate into the commission of any offence.

(2) The council of Ministers may authorize any person, by name or by his office, who appears to him to be competent for the purpose, to investigate the commission of any offence.

5. (1) Every investigating officer may require any person, whom he has reason to suppose to be acquainted with the facts or circumstances of the offences which he is investigating, to attend at such time and place as such officer may reasonably direct for the purpose of examining him and taking a statement from him in relation to such offence.

6. (1) The investigating officer during the investigation of an offence may, if he considers the production of a document to be necessary or desirable for the purpose of such investigation, issue a written order to the person in whose possession or under whose control such document is, or is believed to be, requiring him to produce it at such reasonable time and place as may be specified in the order.”

Furthermore, the investigator often applies the AML/CTF Law and, more specifically the Articles 3,4,5 and 6. The above mentioned Law refers to the offences of money laundering and predicate offences. Predicate offences are:

- (a) All criminal offences punishable with imprisonment exceeding one year, as a result of which proceeds have been derived which may constitute the subject of a money laundering offence as defined by Section 4.
- (b) Financing of terrorism offences as these are specified in Article 4 of the Financing of Terrorism (ratification and other provisions) Laws of 2001 and 2005, as well as the collection of funds for the financing of persons or organisations associated with terrorism.
- (c) Drug trafficking offences, as these are specified in Section 2 of this law.

In the same Law, the possibility for issuing a disclosure order (Article 45) is described above.

#### Department of Customs and Excise

For Customs and Excise financial investigations are carried out in the context of normal criminal investigations.

The FIU

When conducted by the FIU financial investigations are carried out in the context of normal criminal investigations. In particular investigative authorities make use of the provisions of the Criminal Procedure Law, Cap. 155 and the provisions of the AML/CFT Law in relation to the disclosure court orders.

**3.4.3. Use and effectiveness of financial investigations in specific crimes**Police

According to the answers to the questionnaire provided by the police the conducting of financial investigations in certain crimes has proven to be very useful and led to a more effective investigation both of the predicate and/or the money laundering offence as well as the tracing of criminal proceeds. By enforcing the above mentioned Laws, the tracing of all income from illegal activities of the defendant and the confiscation of such income, can be ensured to a large extent.

The Department of Customs and Excise maintained that financial investigations in their experience might lead intelligence connected to organised crime, terrorism, weapons of mass destruction etc.

From the FIU perspective financial investigations are always carried out in major asset generating cases, as well as in drug trafficking cases on a case by case basis and in other serious cases, also on a case by cases basis, for the purpose not only of securing property but also for the gathering of evidence for the investigation of the main offence. Financial investigations are carried out in parallel with the investigation of the main offence by the investigators of the case with the assistance of financial experts e.g. accountants if needed or with the assistance of the FIU and its financial analysts.

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

In the view of the Cypriot authorities financial investigations may be continued even after conviction for the purposes of confiscation, since the confiscation procedure according to Section 6(1) of the AML/CFT Law is carried out after a conviction is obtained and before sentencing. It is also possible to have such investigation even after sentencing according to Sections 35 and 36 of the AML/CFT law for the purposes of reconsideration of a case or for the re-assessment of proceeds under certain conditions.

### 3.4.5. Involvement of private experts during investigations

The legal framework of Cyprus allows the involvement of private experts (accountants, financial experts) in the investigation of the proceeds of crime or their financial aspects. The Criminal Procedure Code, Cap. 155, article 4(2), stipulates that the Council of Ministers may authorize any person, either personally or by capacity of the office held, who appears to be competent for the purpose, to investigate the commission of any offence. For financial crimes and investigation of complaints against the police this power has been assigned by the Council of Ministers to the Attorney-General.

### 3.4.6. Financial intelligence

#### 3.4.6.1. *Financial investigations in the intelligence phase*

In their answers to the questionnaire the Cypriot authorities confirmed that they conducted financial investigations in the intelligence phase and that they were using the analysed financial intelligence information as an indicator to initiate a criminal investigation and financial investigation.

#### 3.4.6.2. *Financial intelligence information as a starter for criminal and financial investigations*

Financial intelligence information is used as a starter for criminal and financial investigations. In particular the database of the FIU on SARs is an important tool in financial investigations during the financial intelligence phase. The FIU in 2011 has made a restricted view of the FIU SAR database<sup>29</sup> available to certain authorized police and customs officers.

#### 3.4.6.3. *Cooperation with and collection of financial intelligence from other authorities in the intelligence phase*

The Cypriot authorities ascertained that cooperating with and collecting financial intelligence from other authorities in the intelligence phase was an established method.

<sup>29</sup> The Cypriot authorities have clarified after the on-site visit that under the condition of 'restricted view' the following mechanism is applied: If these police officers make a query against the law enforcement joint database and a certain entity is known to the FIU through a SAR received, the only information the officer will see is a flag on MOKAS. Any additional information can then be provided on a case-by-case basis at the discretion of MOKAS.

### **3.5. Cooperation with Europol and Eurojust**

#### **3.5.1. Cooperation with Europol**

##### *3.5.1.1. Experience to date*

Cyprus Police cooperates with Europol via the Europol National Unit (ENU) to gain and share information about financial crimes and investigations within the EU. Cyprus participates in 14 Analytical Working Files (AWF). Cyprus is a member of AWF Sustrans (suspicious transactions) with the Unit for Combating Money Laundering (MOKAS). Contributions are made to this AWF on a regular basis and possible feedback from the AWF is requested.

The Cypriot authorities informed in their answers to the questionnaire that although the legal background for joint investigation teams (JIT) existed, until today they had not participated in any JIT.

##### *3.5.1.2. Expectations regarding Europol support*

The Cypriot authorities saw a clear added value by Europol assisting Member States' investigations aimed at combating both the laundering of the proceeds of crime and financial crime in general.

The expectations regarding support are that Europol has to provide operational and strategic analysis on cases under investigation and in specific through the development of joint investigation teams and feedback from analytical work files.

#### **3.5.2. Cooperation with Eurojust**

##### *3.5.2.1. Experience to date*

In the course of executing requests for mutual legal assistance (MLA) representatives from the FIU had to the date of the on-site visit participated on a few occasions in coordinating meetings held on the premises of Eurojust and in other Member States, organized for this purpose by Eurojust. The evaluation team was also informed that Cyprus' Eurojust national representative had been employed on a few occasions to obtain information as to the progress of a request and also to give information and to expedite the procedures and executions of MLA requests and vice versa.



### 3.5.2.2. *Expectations regarding Eurojust support*

In the view of the Cypriot authorities the added value that Eurojust can bring to the work of their authorities lies in the valuable support through organising coordinating meetings in the course of specific investigations that subsequently help resolving uncertainties and foster deciding the next steps to be followed for more effective results.

## 3.6. Conclusions

### 3.6.1. Information and databases available

- All services in Cyprus seemed to be aware of the need to coordinate their efforts and share the information that is stored in a unified database. Police, customs and MOKAS are sharing a joint database that is updated on a daily basis. Furthermore, MOKAS as the main actor in combating money laundering and terrorist financing has full access to police databases, also of the operational kind.
- Given the fact that most databases and collections of information necessary for the smooth implementation of the financial investigations objectives is available in electronic form, Cyprus could consider creating tools/analysis program, which would collect information from all available databases maintained in electronic form and help conducting their analysis. Cyprus has everything which would significantly improve and accelerate work of law enforcement agencies. Such tools are already in use in other EU MS, e.g. the MOLECOLA system in Italy. This is a kind of financial relations database which is an investigation support tool that enables law enforcement and other entities fighting financial crime and conducting financial investigations to quickly access information needed in this type of undertaking.
- Cyprus has no central register of bank accounts. As the expert team was assured this however, considering the size of the country and the number of banks did not constitute an operational obstacle. According to the information provided, even without such register information on bank accounts and relations was obtained in a timely manner. It should be noted, however, that creation of such a register would also be relatively easy to accomplish and certainly could help in the Cypriot system functioning improvement and allow especially avoiding sending request letters consequently to each and every bank.

- Also, MOKAS has access to a wide range of databases, virtually all of which are maintained in Cyprus in electronic form.
- Access to databases and collections of information necessary to achieve the objectives of financial investigations, is available via ARO-issued request or the country FIU using the FIU NET channel or EGMONT. There is also the assistance of liaison officers at Europol.
- The experts were informed that MOKAS does not have an access to the SIENA system although it would be beneficial in facilitating the communicating with other AROs, particularly in situations when this system is to be eventually used by all AROs.
- MOKAS has also access to all channels of communication, available to the FIU, ARO and police and their choice depends on practical experience with the speed of sending and receiving information
- Due to the fact that both Cypriot FIU and ARO have been established within one organisation - MOKAS - the ARO, when accessing the FIU database for the purpose of answering an information request of the ARO of another Member State in the course of international cooperation may use and forward this information without the need for an MLA request. If the requesting ARO wants to further submit the information received to another ARO it should request from MOKAS the permission to disseminate the information provided.
- However, to obtain banking information a formal mutual legal assistance request will be required except in cases where an SAR has been received and banking information is already in the database of MOKAS. Such information can be shared with another ARO.
- MOKAS in its role as the Cypriot ARO has full access to a broad spectrum of information about asset entities like transportation, real estate, financial products, companies including directorship, the beneficial owners, publisher accounts, etc. In most cases the access is accomplished in electronic form, and due to the Cyprus-possessed centralized databases, the results can be obtained immediately. The experts therefore concluded that in terms of access to databases and collections of information, access mode and response time to obtaining the information, the Cypriot ARO could serve as a model for other EU countries.
- The Cypriot authorities have informed the experts during the on-site visit that in order to digitalise its systems and procedures and to connect to other governmental databases Cyprus is trying to get financial support from the Norwegian Financial Mechanism. The connection with other governmental databases will be achieved through another project (government data warehouse<sup>30</sup>) that the Department of Information Technology of the Ministry of Finance is currently developing.

### 3.6.2. Cooperation

- While the number of money laundering investigations by the police has significantly varied over the last years (from 97 cases in 2006 to 31 in 2010), the number of administrative orders for the postponement of transactions issued by MOKAS has nearly doubled after 2007 and has stayed at that level since. This would suggest an increased performance of the system. However, the absolute numbers do not offer a reliable base to judge the overall performance of the system as such.
- Notwithstanding the organisational and legal provisions that are in place - e.g. Framework Decision JHA/960/2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States that has been adopted by Cyprus in 2007 - it appeared as if financial investigation and financial crime are dealt with in a rather reactive way. The same goes for international police cooperation by Cypriot law enforcement where the expert team noted the absence of a pro-active approach.
- Furthermore, MOKAS' statistics point out that in 2009 less than 400 STRs were received from entities that are obliged to reporting to the FIU. By far most of them came from financial institutions. It appears somewhat an anomaly that in that same year, 435 cases were initiated on request or notification of foreign authorities; this would represent more than 50 % of the overall case load. This would seem to indicate that the AML disposition is not very efficiently applied as the financial institutions do not seem to filter out the transactions notified by foreign authorities. Again it illustrates the fairly passive attitude displayed by Cypriot law enforcement towards organised crime money laundering.
- Another incomprehensible situation is that the Article 17 of the Cypriot Constitution of 1960 does not allow any measure to intercept communications at all<sup>31</sup>. This has been the subject of an ongoing Parliamentary debate, of which the outcome has been described as utterly unsatisfactory as it will only allow a disposition which still does not give access to the content of the communication itself. It is simply inconceivable that this situation still continues, especially because it significantly cripples investigators in gathering evidence, especially

<sup>30</sup> [www.mof.gov.cy/dits](http://www.mof.gov.cy/dits)

<sup>31</sup> The Cypriot authorities have informed that the legal situation following the on-site visit has changed and that there has been an amendment of Art. 17 of the Constitution which allows interception of communication for the purposes of certain serious offences. Following this amendment, a law will have to be drafted which would, under certain conditions, allow access to the content of the communication.

whilst investigating financial crimes such as money laundering. Cyprus is one of the few jurisdictions where these vital special investigation techniques are not allowed by law. Even the European Convention on Human Rights and Civil Liberties foresees in its Article 8, Par. 2 the applicability of similar coercive measures.

- An extremely powerful tool, complementary with criminal confiscation, is the civil recovery of illicit proceeds. According to Sections 32-32 of the AML/CFT Law there is the possibility to freeze and confiscate assets without a criminal conviction in cases of an absent suspect i.e. a suspect who is outside the jurisdiction or who has died. Cyprus is not able to recognise and execute foreign civil seizure and confiscation orders. The Cypriot authorities have explained that they can provide assistance in these instances to the extent possible and especially as regards evidential material.
- Although the Cyprus FIU maintained that they were pursuing a proactive attitude with regard to sharing financial intelligence with their international counterparts and the police, the latter, seemed to lack a strategy-driven and financial intelligence-led approach in tackling financial crime and conducting financial investigations.
- Notwithstanding MOKAS' expertise in the field of combating money laundering and terrorist financing the impression gathered during the on-site visit prevailed that a substantial share of the Cypriot system to prevent financial crime seemed to be focussed on MOKAS, which on the other hand does not cover the full spectrum and does not reach beyond its role as FIU.
- MOKAS is the main national contact point for requests received via both ARO and FIU channels. This is an interesting solution and is generally effective. It could be recognized as an example; however, it could not be finally clarified whether the separation of responsibilities within MOKAS when acting as ARO and FIU results in the lacking possibility to use all information stored in both functions.
- From the information received during the on-site visit it appeared that MOKAS seemed to employ the ARO function as only 'another' channel of information exchange ancillary to its main function as FIU. Consequently the expert team were left with the impression that activities aimed at identifying and disclosing assets and the ensuing actions were rather administrative in their nature.
- MOKAS is also a CARIN contact point in Cyprus, but these requests are treated as informal inquiries. This is congruent with the network policy; nevertheless a lot of countries treat this informal channel as a legally binding channel for inquiries and provide an answer, while exercising the necessary caution to protect sensitive information.

- The experts found it worthwhile investing more in promoting the CARIN among practitioners throughout the country and the added value that the work of the network can bring in return.
- The expert team noted that information requested from banks in Cyprus is provided to investigators within a relatively short period of time and is supplied in an electronic format which facilitates the analysis of such information.
- According to the information received the experts came to conclude that contrary to Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the EU MOKAS treats foreign inquiries differently from those of national origin although Article 3(3) of the FD stipulates that Member States shall ensure that conditions should not be stricter than those applicable at national level for providing and requesting information and intelligence are applied for providing information and intelligence to competent law enforcement authorities of other Member States.
- The expert team felt that Cyprus should pro-actively facilitate the sharing of criminal intelligence with international partners and review the precise conditions under which their criminal intelligence can be pro-actively shared with international partners.
- In 2008, the average duration of complying with an MLA request was eight months, in 2009 and in 2010 it was six months, a phenomenon which is inexplicable when there is an access to any database, most of which are centrally held in electronic form. During the on-site visit the experts could not gather any concrete reasons for this and the only reason given was a possible inaction on behalf of the local police units that needed to verify some data on site. At the same time, however, in many discussions the effective speed of police service actions was emphasized due to the fact that the country is relatively small and nearly everyone knows each other. The experts were astonished that such tardiness was tolerated since it apparently constituted the only obstacle to the timely reply.
- Though Russia is the second country among those from which the requests were received in 2010, there is still claim that there are no problems in Cyprus with Russian crime groups.
- Even if Cyprus does not have a scale problem with organised crime originating from inside the country, its role as one of important financial markets has to be regarded as being of special importance in the international context, both with regard to the EU Member States and third countries. There is a looming threat of Cyprus being misused as a possible platform for the interests of organised crime networks that are mainly connected to money laundering and the financing of terrorism.

- With reference to the activities of MOKAS as the Cypriot ARO, the expert team was informed that the AML/CFT Law had been amended in June 2010. There was a note of the following content: “The Unit shall cooperate with corresponding Units abroad, as well as with ARO, for the purposes of investigation of laundering offences and terrorist financing offences by the exchange of information and by other relevant ways of cooperation”. This provision, in the view of the experts, confines the information exchange with AROs only to matters of money laundering and terrorist financing, which is within competence of financial intelligence units in other EU countries. Disclosure and identification of crime-derived assets and conducting financial investigations however, is not limited only to crime involving money laundering. AROs across the entire EU could deliver dozens of examples of cases that are not in any way related to money laundering. During the discussions the experts were informed that any request from a foreign ARO which did not contain a suspicion of money laundering will be implemented and will be sent as a complete response, therefore this legal provision is broadly understood. However, in order to clarify the text the experts suggest that the Cypriot authorities should consider that the AML/CFT Law be amended accordingly.

### **3.6.3. Cooperation with Europol**

- The Europol country report on Cyprus clearly indicates that the cooperation through Europol and the use made of products and services offered by Europol to the MS in the field of financial crime seems to be below average. The emphasis lies on non-financial crime areas, whereas the contribution to financial crime-related AWFs and projects could be improved.
- The experts noted a considerable degree of unawareness regarding the structure of cooperation through Europol: Customs seemed to be scarcely aware of how cooperation through Europol is structured and how to address it. The awareness about the current constellation of EU forums in matters of police cooperation could also be considered to be insufficient. Regulation 1889/2005 is implemented in such a way that it also covers intra-community cash movements but none of them are notified to AWF SUSTRANS as customs appeared to be only vaguely informed on the definite advantage this would offer to them. The experts also noted room for improvement in the FIU regarding the benefits to be obtained from having this intelligence cross-checked on a European level.

- The other customs-related AWFs are hardly used by customs or provided with relevant intelligence by Cypriot Customs. During the on-site visit customs informed that the only AWF they were participating in was AWF SMOKE. It deserves consideration to post a full-time customs liaisons officer at Europol to improve and enhance the intelligence flow with customs, as currently 22 Member States have done so far.
- The key requirement for an optimal use of the AWF instrument is adopting a pro-active attitude. This however, is an aspect where there seemed to be room for improvement in all segments of the Cypriot law enforcement community..
- Although the Cypriot authorities have maintained that cooperation with EUROPOL has been very good and that they extensively took advantage of the opportunities offered by the analytical work files this is not reflected in the statistics of their contribution to individual AWFs.
- Despite the fact that there are successful cases of cooperation with Europol, the practitioners met were not always aware of all the advantages and tools made available by the agency.

#### **3.6.4. Cooperation with Eurojust**

- Cooperation with Eurojust appeared to be well known by the law enforcement authorities and prosecutors.
- Cypriot representatives complained about the fact that their country did not have a permanent representative at Eurojust.
- Awareness of the tools and possible added value that Europol (as well as Eurojust and OLAF) provide needs to be raised among law-enforcement officials and prosecutors. Awareness of the different products and services provided could be addressed easily, since the number of experts involved is very limited.

## 4. FREEZING AND CONFISCATION

### 4.1. Freezing

#### 4.1.1. At national level

##### 4.1.1.1. *Legal basis*

The legal basis for freezing of assets before conviction are Sections 14 and 15 of the AML/CFT Law which provide for restraint and charging orders to be issued by the court following an *ex parte* application by the Attorney General (made by the prosecutors of the FIU) if the conditions set out in section 14 (1) (or 15 (1) in case of a charging order) are satisfied.

Section 14 (1) (2) (3) provides as follows:

“14.-(1) The court may make a restraint order where-

(a) criminal proceedings have been instituted and have not been concluded or are about to be instituted in the Republic against a person for the commission of a predicate offence, or an application by the Attorney General has been made under sections 28 (Confiscation order where accused has died or absconded), 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) of this Law; or

(b) the Unit possesses information which creates a reasonable suspicion that a person may be charged with the commission of a laundering offence; and

(c) the court is satisfied that there is a reasonable ground to believe that-

(i) where an application under section 36 is submitted, the provisions of subsection (3) of the same section are fulfilled; and

(ii) the person mentioned in paragraphs (a) and (b) above has benefited from the commission of a predicate offence.

(2) A restraint order made under subsection (1) prohibits transactions in any way in realizable property. The prohibition shall be subject to such conditions and exceptions as may be specified in the order.



(3) A restraint order may apply-

(a) to all realizable property held by a specific person whether the property is described in the order or not; and

(b) to realizable property held by a specific person which was transferred to him after the order was made.”

Moreover, section 32 of the AML/CFT Law provides for an order for the freezing of property of a suspect who is outside the jurisdiction of the Republic or has died. It is issued by the court following an application of the Attorney General. The conditions of such order are provided in subsections (2) and (3) of section 32:

“32.-(1) Subject to the provisions of subsection (2) and upon the application of the Attorney General, a court may make an order for the freezing of property of a suspect who is outside the jurisdiction of the Republic or has died.

(2) The court shall make a freezing order under subsection (1), if satisfied by affidavit or other evidence that-

(a) there is *prima facie* evidence against the suspect for the commission of a prescribed offence; and

(b) the property of the suspect may be converted or transferred or removed outside the jurisdiction of the Republic for the purpose of concealing or disguising its illicit origin.

(3) The freezing order shall have effect for six months but the court may extend its validity for up to a period of one year if reasonable grounds concur.”

4.1.1.2. *Types of crime for which the measure can be obtained*

The measure can be applied for any kind of “realizable property”, movable or immovable. The term “property” is defined in Section 2 as “movable and immovable property whether situated in the Republic of Cyprus or abroad”. Equivalent value property can be restraint. As it is defined in section 13 (1) “realizable property” means: -

“13.-(1) In this Law, subject to the provisions of subsection (2), “realizable property” means-

- (a) any property held by the accused whether situated in the Republic of Cyprus or abroad; and
- (b) any property held by another person to whom the accused has directly or indirectly made a gift prohibited by this Law whether situated in the Republic of Cyprus or abroad.”

4.1.1.3. *Duration of the measure*

The freezing order is valid until the final determination of the case in question (see Section 14 (6)

(b)). However, as provided under section 16 (1):

“16.-(1) The court may make an order discharging orders made under sections 14 (Restraint order) and 15 (Charging order) before the making of a confiscation order, if the contemplated criminal proceedings have not commenced within a reasonable period of time or within the period of time specified by the court in making the order.”

4.1.1.4. *Competent authority*

The authority competent to take the measure is the Attorney General by filing an application to the District Court. No authorisation is required. It is enforced by the same authority and the court.

4.1.1.5. *Information of persons affected by the measure*

The order is made *ex parte* and following the procedure of Section 14 it is served on all persons affected by the order, who have the right to appear before the court on a specific date set by the court in the order (usually within 7 days) and file an objection and state their views as to why the

restraint order should not remain in force. (Section 14 (5) (b)). They have also the right to appeal before the Supreme Court according to the Civil Procedure Rules (Section 72), if they are not satisfied by the decision of the court at first instance.

4.1.1.6. *Legal remedies for the person concerned by the measure*

The legal remedies for a person concerned by a freezing measure are laid down in sub-chapter 4.1.1.5.

4.1.1.7. *Withdrawal of a freezing order*

The legal provision for the withdrawal of a freezing order is laid down in sub-chapter 4.1.1.5 of this report.

4.1.1.8. *Management of seized assets*

As to the management of the assets during the freezing, sections 14 (7) (8) and (9) of the AML/CFT law provide the following:

“(7) The court may at any time after the making of a restraint order, appoint a receiver-

(a) to take possession of any realizable property and place it under his custody; and

(b) to manage or otherwise deal with the said property, in accordance with the directions of the court.

(8) The court may, on appointing a receiver, impose such conditions as it considers necessary and may direct any person in possession of the property in respect of which the receiver was appointed to give possession of it to the receiver.

(9) For the purposes of this section the expression "dealing with property", without prejudice to its generality, includes-

(a) making a payment towards a debt with a view to reducing the same; and

(b) removing or transporting the property out of the Republic.”

#### 4.1.1.9. *Role of the ARO in the freezing process*

The Asset Recovery Office, as mentioned before, assists in tracing and identifying such property which will be the subject of the restraint order.

#### 4.1.1.10. *Withdrawal of a freezing order*

The freezing order can be withdrawn in cases where the Attorney General does not proceed with the prosecution of a criminal case or where the accused is acquitted or in cases where the foreign authority, on behalf of which the freezing order is obtained, does not proceed with the criminal case or where the case did not result to the conviction of the accused.

In case of a freezing order made against the property of an absent suspect or dead person (Section 32), this is valid for 6 months and it can be renewed up to a period of one year, if reasonable grounds exist.

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

Cyprus has implemented Council Framework Decision 2003/577/JHA<sup>32</sup> by amending the AML/CFT Law in June 2010. The relevant implementing sections are contained in PART IV A of the Law.

The formerly applicable domestic legal regime still exists in the AML/CFT Law (PART IV) and it is still applied for registration and enforcement of foreign freezing or confiscation orders submitted from non-EU Member States or from EU Member States which have not yet implemented the above Framework Decision, for the registration of freezing orders.

Under the former legal regime it was a prerequisite before applying to court for the registration and enforcement of a foreign restraint order, that such order was final in the sense that no appeal was pending against it and that in case it was made in the absence of the accused or of any person affected by the order, such persons received notice of the proceedings in time to enable them to

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<sup>32</sup> Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, p. 45.

present their case and state their views. Such provisions are not included in the implementing sections of the abovementioned Framework Decision, for the registration and enforcement of freezing orders.

#### **4.1.3. Mutual assistance in the area of freezing**

##### *4.1.3.1. Statistics*

###### **(a) Requests by Cyprus**

According to the information given by the Cyprus authorities at the time of the on-site visit no request had been sent under the Framework Decision, and only one request to the UK under the MLA procedure.

###### **(b) Requests to Cyprus**

Since June 2010, date in which the abovementioned Framework Decision has been incorporated into the Cypriot legislation, its authorities have registered and enforced four (4) foreign freezing orders following the procedure set out in PART IV A of the AML/CFT Law and the relevant sections implementing the FD 2003/577/JHA. Two orders were registered and enforced in 2010 and two in 2011 (until June).

##### *4.1.3.2. Experience when acting as an issuing State*

###### **Competent authority**

The authorities competent to issue a freezing order referred to in Framework Decision 2003/577/JHA are the Courts, following an application made by the Attorney General and specifically the lawyers of the Unit for Combating Money Laundering MOKAS (FIU/ARO).

###### **Guidance on freezing order**

No written guidance on the freezing order exists. The Certificate of Art. 9 as given in the Framework Decision has to be completed by the FIU and accompany the order obtained by the District Court. No further material is required.

There is also no guidance with regard to requests or instructions which accompany the freezing order and the certificate and which relates to the subsequent treatment of the frozen property (cf. Article 10 of FD 2003/577/JHA).

Should there be any formalities and procedures referred to in Article 5(1), second alinea, which must be observed in the executing State in order to ensure that evidence taken is valid in your Member State the Cypriot authorities would request this expressly.

#### **Preferred transmission channels**

According to Section 43.B of the AML/CFT Law it is provided that:

“43.B. Any order issued, in accordance with the provisions of this law, by a court of the Republic of Cyprus following an application by the Attorney-General, which relates to property situated in a member state, is transmitted by the Unit for execution directly to the competent authorities of the said member state, accompanied by the certificate signed by the Unit.”

The preferred source of information to identify the addressees of a freezing order would be the EJN-Atlas.

#### **Difficulties observed**

The Cypriot authorities have informed that to date of the on-site visit they had not experienced any specific difficulties with regard to an issued freezing order.

#### *4.1.3.3. Experience when acting as an executing State*

#### **Mechanisms of receipt**

The Certificate is accepted either in Greek or in English (Section 43 (c) (3) of the AML/CFT Law), however we accept both the original or a true copy of the order.

According to section 43 (c) (1) it is provided:

“43.C. (1) Any request for execution as regards freezing order or confiscation order is submitted directly to the Unit, which, if it considers that the requirements of this Part are met, submits it to the Court as soon as possible for registration and enforcement and informs as soon as possible the competent authority of the issuing state.”

Therefore the Unit will not proceed with an application to the court until it is satisfied that all the provisions are met, both as regards the order as well as regarding the certificate and its contents.

#### 4.1.3.4. *Reasons for non-enforcement*

The reasons for non-enforcement of a freezing order are given in section 43.E which provides:

“43.E. A freezing order may not be enforced, if the Unit or the Court consider that:-

- (a) the certificate is not produced or is incomplete or manifestly does not correspond to the freezing order;
- (b) there is immunity or privilege which makes it impossible to execute the freezing order;
- (c) the execution of the freezing order infringes the ne bis in idem principle;
- (d) the freezing order relates to an act which under the law of the Republic does not constitute an offence which permits freezing.”

When matters need clarification the Unit directly contacts the issuing state, usually via e-mail for clarification or for further and better documentation.

#### **Competent authorities and role of ARO**

According to section 43 (C) (1) of the AML/CFT Law, any request for execution as regards freezing orders is submitted directly to the Unit, which, if it considers that the requirements of this part of the law are met, submits it to the court for registration and enforcement.

If such a request is submitted to the Central Authority, which is the Ministry of Justice and Public Order, the Central Authority forwards the request to the Unit.

The ARO is contributing to the tracing of the property and in identifying any property within the jurisdiction for the purposes of freezing.

### Legal remedies

Regarding the remedies available to interested parties in relation to frozen property the mechanism works as follows: as soon as the order is registered and enforced, a notice is also given to any person (legal or natural) affected by the order. Anyone affected has the right to challenge the court order for the registration of the freezing order both at first instance and also on appeal according to the Civil Procedure Rules.

However, regarding the contents of the freezing order per se, Section 43.H D of the AML/CFT Law provides as follows:

“43.H D (1) A freezing order or a confiscation order may be amended or revised only by a Court or any other competent authority of the issuing state.

(2) The court, when exercising the powers conferred upon it by section 43 H A, as well as other powers in respect of the execution of a freezing order or confiscation order, shall be bound by the findings as to the facts in so far as they are stated in the conviction or decision of a court or judicial authority of the issuing state or in so far as such conviction or judicial decision is implicitly based on them.”

#### **4.1.4. Assessment of FD 2003/577/JHA by the Cypriot authorities**

The Cypriot authorities considered FD 2003/577/JHA as an important step since in their view it improves and provides for a uniform procedure to be followed by Member States in the area of cooperation and mutual recognition, without delays and other formalities, of external orders.

The fact that there is a common legal basis on which to cooperate is seen to have overcome many problems which were faced in the past in absence of a common legal basis, with adverse consequences in the effectiveness of the measures.

Owing to the pending implementation or partial implementation in a number of Member States Cyprus strongly advocates that this process be finalised. Only then the practical implementation can be evaluated and suggestions for more effective legislative steps can be taken.



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

### 4.2.1. Confiscation at national level

#### 4.2.1.1. *Legal basis*

The legal basis in relation to the confiscation of assets after conviction and the procedure to be followed are provided in Part II of the AML/CFT Law, in Sections 6-13. In particular, Sections 6, 7, 8 provide the following:

“6.-(1) A Court which has convicted a person for a prescribed offence shall, before sentencing, proceed with an inquiry in order to determine whether the accused acquired any proceeds from the commission of a predicate offence, by applying the procedure set out in this Part of the Law or the procedure referred to in Part VI.

(2) For the procedure set out in this Part to be applied, the Attorney General shall so decide by submitting a relevant application to the Court. The Court may make a confiscation order if the procedure under this Part is applied or impose a corresponding pecuniary penalty if the procedure under Part VI is applied.

7.-(1) For the purposes of this Law-

(a) all payments which have been made to the accused or to any other person at any time before or after the commencement of this Law in connection with the Commission of a predicate offence are deemed to be proceeds of the accused from the commission of a predicate offence irrespective of whether this has been committed by the accused himself or another person.

(b) the value of the proceeds acquired by the accused from the commission of a predicate offence is the aggregate value of payments or other rewards made to him or the product of a predicate offence, or proceeds as this term is defined in section 2 of this Law.

(2) The Court may, for the purpose of determining whether the accused has acquired proceeds from the commission of a predicate offence and of assessing the value of these proceeds, assume, unless the contrary is proved under the circumstances of a case, that-

(a) any property acquired by the accused after committing the said offence or transferred into his name at any time during the last six years prior to the commencement of criminal proceedings against him, was acquired by him as early as the court considers that it has been so, constitutes proceeds, payment or reward from the commission of a predicate offence.

(b) any expenditure incurred by the accused during the above period was met out of payments or rewards made to him in connection with a predicate offence committed by him;

(c) for the purpose of valuing such property, he received the property free of any charge or any interest of any other persons in it.

(3) The provisions of subsection (2) shall not apply if-

(a) it is proved that they do not apply to the accused; or

(b) the court considers that there would be a serious risk of injustice against the accused, if they were to apply.

(4) Where the court decides not to apply the provisions of subsection (2), it shall set out the reasons for taking such a decision.

(5) For the purposes of assessing the value of the proceeds acquired by the accused from the commission of a predicate offence, if a confiscation order had previously been made against him, the court shall not take into account any of his proceeds from the commission of a predicate offence that are shown to the court to have been taken into account in determining the amount referred to in the said order.

8.-(1) Where the court, after the conduct of an inquiry under this Part, determines that the accused has acquired proceeds, it shall, before sentencing him for the offence for which he has been convicted or for offences which the court can take into consideration in sentencing-

(a) make a confiscation order for the recovery of the amount of proceeds in accordance with section 9 as assessed and determined under section 7;

(b) make an order for the confiscation of instrumentalities;

and shall, thereafter, impose any of the penalties which it has the competence to impose.

(2) The making of a confiscation order is not affected by any provision in any other law limiting the power of the court in the imposition of pecuniary penalties.”

Also, section 11 provides for the procedure to be followed in order for the Court to issue a confiscation order. Finally, section 12 defines the amount to be recovered under a confiscation order.

#### 4.2.1.2. *Types of crime for which confiscation is possible*

Confiscation can be obtained in relation to prescribed offences, i.e. predicate offences (Section 5) and money laundering offences (Section 6). Under Section 5 of the AML/CFT law predicate offences are:

“5. Predicate offences are:

(a) All criminal offences punishable with imprisonment exceeding one year, as a result of which proceeds have been derived which may constitute the subject of a money laundering offence as defined by section 4.

(b) Financing of Terrorism offences as these are specified in Article 4 of the Financing of Terrorism (Ratification and other provisions) Laws of 2001 and 2005, as well as the collection of funds for the financing of persons or organisations associated with terrorism.

(c) Drug Trafficking offences, as these are specified in section 2 of this law.”

4.2.1.3. *Competent authorities*

The Court issues the confiscation order following an application made by the Attorney General, as provided in the abovementioned sections of the AML/CFT Law.

The authority to enforce it is the Attorney General and the court.

4.2.1.4. *Information of persons affected*

The procedure for issuing the order is set in Section 11 which provides:

“11.-(1) The prosecution, together with the application of the Attorney General for an inquiry under Section 6 (Inquiry in order to determine whether the accused acquired proceeds) or under Sections 35 (Reconsideration of a case) or Section 36 (Re-assessment of proceeds) or within such a time limit as the court may direct, submits a statement of allegations in which facts and particulars are set out in relation to the inquiry for the determination of whether the accused has acquired proceeds from the commission of a predicate offence or to an assessment of the value of the proceeds and, if the accused, in accordance with the procedure prescribed in this section, admits the correctness of the content of the said statement or of a part thereof, the court for the purposes of such inquiry and assessment may treat such an admission as conclusive proof of the facts and particulars to which it relates.

(2) Following the submission by the prosecution of the statement of facts and particulars under subsection (1), the court, if satisfied that a copy of it has been served on the accused, calls upon him to declare whether he admits any of the allegations contained in the statement and to submit a statement in relation to those of the allegations he does not admit (hereinafter to be referred as a "statement in rebuttal") in which he shall indicate the particulars and the reasons on which he intends to rely both in rebutting the allegation of the prosecution and in determining the amount that may be received from his realizable property. The statement in rebuttal is submitted within such a period of time as the court may direct or within three days from the service of the statement of facts and particulars on the accused by the prosecution.

(3) Failure of the accused to comply with any of the directions of the court shall be treated for the purposes of this section as an admission of all the facts and particulars contained in the statement of facts and particulars.

- (4) Where in the statement of rebuttal allegations are included which are relevant to determining the amount that may be realized at the time the confiscation order is made and the prosecution accepts all or some of these allegations or a part thereof, the court may treat such acceptance on the part of the prosecution, for the purposes of such determination, as conclusive proof of the allegations to which it relates.
- (5) The acceptance of allegations either by the prosecution or by the accused is made orally before the court unless the court otherwise directs.
- (6) The admission made by the accused for the purposes of this section shall not be admissible as evidence in any other criminal proceedings.
- (7) The court may set a date for the conduct of the inquiry and adjourn it whenever it appears to the court necessary to do so.
- (8) The court delivers a reasoned decision on all matters of the inquiry.”

#### 4.2.1.5. *Legal remedies for a person affected*

The person concerned, i.e. the person against whom the confiscation order is sought has the right to file a “statement in rebuttal”, as provided in Section 11(2) in which to indicate the particulars and reasons rebutting the allegations of the prosecution and in determining the amount that may be received from his realisable property.

When a confiscation order is served by the court, the person against whom the order has been made has the right to file an appeal before the Supreme Court and challenge the confiscation order, as part of the sentence.

#### 4.2.1.6. *Involvement of the ARO during this procedure*

The ARO is involved at the stage of tracing realisable property for the purposes of identifying the realisable property of the accused during the confiscation procedure so as to estimate the value of the confiscation order to be issued.

*4.2.1.7. Possibilities for extended powers of confiscation*

In the AML/CFT Law there are provisions for extended powers of confiscation as provided in Article 3(2) of the FD 2005/212/JHA. In particular, sections 7(2), 7(3), 7(4) of the AML/CFT Law stipulate:

“7(2) The Court may, for the purpose of determining whether the accused has acquired proceeds from the commission of a predicate offence and of assessing the value of these proceeds, assume, unless the contrary is proved under the circumstances of a case, that-

(a) any property acquired by the accused after committing the said offence or transferred into his name at any time during the last six years prior to the commencement of criminal proceedings against him, was acquired by him as early as the court considers that it has been so, constitutes proceeds, payment or reward from the commission of a predicate offence.

(b) any expenditure incurred by the accused during the above period was met out of payments or rewards made to him in connection with a predicate offence committed by him;

(c) for the purpose of valuing such property, he received the property free of any charge or any interest of any other persons in it.

(3) The provisions of subsection (2) shall not apply if-

(a) it is proved that they do not apply to the accused; or

(b) the court considers that there would be a serious risk of injustice against the accused, if they were to apply.

(4) Where the court decides not to apply the provisions of subsection (2), it shall set out the reasons for taking such a decision.”

The above provisions have been successfully implemented, especially in drug trafficking cases.

#### 4.2.1.8. *Confiscation of property owned by corporations*

The Cypriot legal regime allows confiscation of property owned by corporations when the corporation is convicted or where the beneficial sole owner has been convicted.

### 4.2.2. Confiscation at European level

Cyprus has implemented Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders<sup>33</sup> by amending the AML/CFT Law in June 2010. The relevant implementing sections are contained in PART IV A of said Law.

#### 4.2.2.1. *Competent authority*

The authorities competent to issue a confiscation order and execute them are the courts following an application filed for this purpose by the Attorney General.

#### 4.2.2.2. *Practical guidance*

There is no practical guidance on the issuing of a confiscation order and the use of the certificate.

#### 4.2.2.3. *Experiences as requesting and requested State*

At the date of the on-site visit Cyprus did not have any experience of confiscating property using this procedure yet. Cyprus reported however, that they had registered and enforced foreign confiscation orders using the procedure provided in Part IV of the Law (not the Framework Decision 2006/783/JHA procedure.)

#### 4.2.2.4. *Legal basis for cooperation with MS that have not yet implemented FD 2006/783/JHA*

There are provisions in the AML/CFT Law, Part IV, which provide for the registration and enforcement of foreign confiscation orders, which can be applied for orders obtained in countries outside the EU or for confiscation orders obtained in Members States which have not yet implemented the Framework Decision 2006/783/JHA.

<sup>33</sup> Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders; OJ L 328, 24.11.2006, pp. 59-78.

### 4.3. Conclusions

- In Cyprus the legal framework for freezing and confiscation seems to be well established and comprehensive. The provisions of the relevant Framework Decisions seem to have been transposed appropriately. The legal system has a set of measures that can be used in order to secure assets and deprive criminals of their resources after a final judicial decision.
- The AML/CFT Law also provides provisions (Part IV A, sections 43.A to 43.HA) for freezing property or evidence as required in the Council Framework Decision 2003/577/JHA<sup>34</sup>. MOKAS is able to get bank-information very quickly within a day (see sections 45 and 46 of the AML/CFT Law). Foreign freezing orders have to be sent to the Ministry of Justice and Public Order which will – in order to save time – immediately forward it to the only competent authority, MOKAS. They prepare an application on behalf of the Attorney General which is brought to Court. The Court will then issue a freezing order. The report from the Commission<sup>35</sup> states that Cyprus has made a reservation of non-recognition or non-execution if there is a conflict with general principles. Unfortunately the provisions for that case have not been revealed. Furthermore Cyprus will not enforce a freezing order if the freezing order relates to an act which under the law of Cyprus does not constitute an offence which permits freezing. This is – regarding freezing orders for confiscating proceeds - in line with the FD.
- Another task of MOKAS is to support the Attorney General in Court when it comes to confiscation orders. As set out in section 6 of the AML/CFT Law the Court has to proceed with an inquiry in order to determine whether the accused has acquired any proceeds from the commission of a predicate offence (all criminal offences punishable with imprisonment exceeding one year) before sentencing. MOKAS is the unit to prepare the claim and support the public prosecutor in Court. These provisions meet the requirements of the FD 2005/212/FHA utterly.

<sup>34</sup> The Cypriot authorities have clarified after the on-site visit that freezing orders under FD 2003/577/JHA are sent directly to MOKAS (according to section 43(c) of the AML/CFT Law). Freezing orders not under the FD 2003/577/JHA are sent to the Ministry of Justice and Public Order which transmits them to MOKAS for execution (according to section 38 (1) of the AML/CFT Law).

<sup>35</sup> COM/2008/0885 (final) Report from the Commission based on Article 14 of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.



## 5. PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

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

#### 5.1.1. Measures to ensure pro-active transmission of information to OLAF

Article 4 (4) of the Cypriot Customs Code Law of 2004<sup>36</sup> stipulates that the Department of Customs and Excise, regarding matters of its competence, should cooperate with and support other authorities of the Republic of Cyprus as well as external entities such as OLAF.

Such cooperation of Customs and Excise with OLAF is governed by Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>37</sup>.

In order to facilitate this process, customs officers receive training through OLAF on the electronic systems used for the exchange of information.

The FIU is a member of AFCOS (Anti-Fraud Coordination Service) and the head of the FIU, representing the Attorney General, has been appointed as the central contact point for the cooperation with OLAF in criminal cases. However, in ongoing investigations also direct contacts are kept with OLAF by the customs authorities and the police.

#### 5.1.2. Information of OLAF on the outcome of relevant cases

The Cypriot authorities consider cooperation with OLAF being productive and efficient. In cases where OLAF requests the cooperation of the Department of Customs and Excise, this normally happens via an official letter of request and the outcome of the relevant case is communicated back to OLAF in the same official way.

In case of the Department of Customs and Excise seeking the assistance of OLAF, this is also done by the means of an official letter of request. If there is a need for an investigation to be carried out in another country (either in a Member State or a third country), officials from OLAF may participate in a joint investigation team with officers from the Department of Customs and Excise.

<sup>36</sup> Law 94(I) of 2004, Schedule I(I) of the Official Gazette no. 3849 on 30 April 2004.

After such a case is concluded, OLAF is informed about the outcome by official letter from the Department of Customs and Excise.

### **5.1.3. Possible role of the European Commission in a criminal investigation**

It was confirmed that the European Commission - through OLAF - could play a role in a criminal investigation in Cyprus and that this has been the case in the past.

There have been cases where OLAF has coordinated criminal investigations concerning fraud against the financial interests of the Communities where two or more Member States have been involved. In this respect the Cypriot authorities have highlighted a case where OLAF had filed a motion against a tobacco manufacturer on behalf of the majority of Member States in order to secure the financial interests of the Communities. The Cypriot FIU also assisted OLAF in a coordinated action of on-the-spot controls carried out by OLAF on the basis of Council Regulation 2185/96<sup>38</sup> which took place in several Member States. In the context of such on-the spot controls in the area of direct expenditure, the FIU possesses enforcement powers only when an own investigation is opened.

### **5.1.4. Participation of OLAF officials in a criminal investigation**

It was confirmed that it was possible for OLAF agents to take part in a criminal investigation with the approval of the Attorney General, an instance that has occurred several times in the past.

However, although OLAF experts may be present during an investigation, national Cypriot law does not allow them to actively participate, but only indirectly.

The Cypriot authorities consider the practice of OLAF officials taking part in an investigation being generally beneficial as it may help revealing the possible transnational dimension of e.g. a financial fraud. Moreover it is understood that the sharing of intelligence facilitates the cooperation between the national enforcement authorities and OLAF. Furthermore, such cooperation helps customs officials and other law enforcement staff to gain expertise and experience with up-to-date investigative techniques.

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<sup>37</sup> OJ L 82, 22.3.97, pp.1-16

<sup>38</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, OJ L 292, 15.11.1996, pp. 2-5.

#### **5.1.5. OLAF participation in a joint investigative team (JIT)**

Cypriot authorities confirmed that it was possible under their domestic system for OLAF agents to take part in a joint investigative team. However, even though OLAF experts can be present during the investigation, according to national law, they cannot actively participate.

#### **5.1.6. Experience with JITs dealing with fraud against the financial interests of the European Communities**

The Cypriot authorities reported that there has been experience by the Department of Customs and Excise with JITs dealing with fraud against the financial interests of the European Communities where OLAF had assumed the role of coordinator of the case.

#### **5.1.7. Coordination of contacts with OLAF**

The head of the FIU, representing the Attorney General has been appointed as the contact point for the cooperation with OLAF in concrete cases. Through this contact point law enforcement authorities are involved depending on the nature of the case. Moreover, the Customs and Excise Department has a direct conduct with OLAF in cases concerning violation of customs legislation in the framework of the securing of the financial interests of the Community.

#### **5.1.8. Expectations with regard to support from OLAF**

In the view taken by the Cypriot authorities, OLAF's role is primarily seen as a coordinating one. Nevertheless the results of their investigations are considered to be very useful for the Cypriot authorities, enabling them to determine whether further domestic investigations should be instigated and a case finally being prosecuted.

In terms of support from OLAF the Cypriot authorities have expressed that they would expect the following: sharing of intelligence and evidence, confirmation of authenticity of documents, training as well as co-financing of necessary high-tech equipment.

## **5.2. Conclusions**

- The Cypriot authorities provide the organisational and functional framework to ensure cooperation with the European Anti Fraud Office (OLAF).
- Under certain conditions OLAF can participate in a criminal investigation in Cyprus; its role is however, limited to accompanying the investigation without taking an active role in the proceedings. The same applies to OLAF participation in a JIT. Therefore the main benefit of OLAF was seen in its coordinating and support role.

## 6. RECOMMENDATIONS

### 6.1. Recommendations to Cyprus

Given the present legal and organisational set-up, while taking into account the specificities of the Cypriot governmental and administrative services, the evaluation team came to the conclusion that cooperation between the different players works well in general terms. All practitioners met seemed to be highly motivated and dedicated to their duties. Nevertheless the evaluation team thought fit to make a number of suggestions for the attention of the Cypriot authorities.

The experts would like to summarise their suggestions in the form of the following recommendations:

Cyprus should

1. Develop strategies to adopt a more pro-active approach in all fields and entities entrusted with combating financial and economic crime, e.g. police, customs and the prosecution; (cf. 2.3.1, 3.6.2)
2. Consider setting up a centralised register of bank accounts or another instrument to ensure quick access allowing the identification of bank accounts and bearers<sup>39</sup>; (cf. 3.1.1.5, 3.2.1 and 3.6.1)
3. Setting up a specialised structure for the management of assets; (cf. 2.3.1)
4. Re-assess the situation regarding the possible illicit background of investments from individuals from former Soviet Union countries; (cf. 2.3.1)
5. Align its legislation with international and European Union standards in order to authorise the employment of special investigative techniques, more specifically the interception of communications, in cases of economic and financial crime of any form; (cf. 2.3.1)
6. Consider the specialisation of prosecutors and judges in the field of economic and financial crime; (cf. 2.3.2)

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<sup>39</sup> The Cypriot authorities have upheld that Cyprus had in place a clear legal provision in the AML/CFT Law, section 68(B), which enables the FIU to obtain quick access on bank account information held by financial institutions in order to identify bank accounts or registers. Notwithstanding the fact that it was stated during the on-site visit that the FIU has never failed to receive bank information in time the expert deemed it appropriate to uphold this recommendation as it was in the general interest of law enforcement to have quick access to such data during an investigation.

7. Design a formalised accreditation system for financial investigators; (cf. 2.3.3)
8. Consider introducing in the curriculum of the Cyprus Police Academy a course solely dedicated to the disclosure and identification of assets; (cf. 2.3.3)
9. Consider introducing e-learning to improve the education process while at the same time reducing cost and consolidate the knowledge acquired; (cf. 2.3.3)
10. Supplement MOKAS training at the Cyprus Police Academy on economic crime and assets identification and disclosure by expertise on law enforcement financial investigations; (cf. 2.3.3)
11. Dedicate more time in Police Academy Courses to designated EU police cooperation and the products and services that can be provided by EU institutions and agencies; (cf. 2.3.3)
12. Develop - notwithstanding existing legal instruments - a coherent and consistent crime proceeds-oriented law enforcement policy; (cf. 2.3.4)
13. Should pro-actively facilitate the sharing of criminal intelligence with international partners and review the precise conditions under which their criminal intelligence can be pro-actively shared with them; (cf. 3.6.2)
14. Take steps to raise within its law enforcement community and among the Judiciary the general awareness regarding the tools and possible added-value provided by Europol as well as Eurojust and OLAF; (cf. 3.6.3)
15. Ensure that Customs and Excise forward data on seizures from cash controls to Europol's AWF SUSTRANS; (cf. 2.3.1 and 3.6.3)
16. Take the necessary technical and administrative steps to connect to the SIENA system; (cf. 3.6.1)
17. Consider seconding a full-time customs liaison officer to Europol; (cf. 3.6.3)
18. Conduct a follow-up on the recommendations given in this report eighteen months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL).

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

The European Union should

19. Take note of the unsatisfactory situation with regard to the level of tax and economic crime emanating from beyond the Green Line and the limited powers that the Republic of Cyprus has to combat this phenomenon; (cf. 2.3.1)

The Member States should

20. Take note of the added value that the practise of inter-service accessibility to databases provides in combating economic and financial crime; (cf. 3.6.1)
21. Take note of the efforts of the Cyprus Police Academy and the way in which training is implemented; (cf. 2.1.7, 2.3.3)
22. Revert to the services that CEPOL and other Member States can provide in cases where an individual Member State is lacking sufficient resources or expertise for specialized fields of training; (cf. 2.3.3)

**ANNEX A: PROGRAMME FOR THE ON-SITE VISIT**

*Tuesday, 19.7.2011*

VENUE: OFFICES OF THE FIU

0930 Meeting with the FIU/ARO (MOKAS)

1100 Coffee break

1130 Discussions

1300 Lunch

1400 Discussions



*Wednesday, 20.7.2011*

VENUE: CYPRUS POLICE HEADQUARTERS

0900 Economic Crime Investigation Office (ECIO), Europol/Interpol

1100 Coffee break

1130 Discussions

VENUE: CYPRUS POLICE ACADEMY

1200 Police Academy (training)

1300 Lunch

1430 Discussions

*Thursday, 21.7.2011*

VENUE: MINISTRY OF FINANCE/CUSTOMS DEPARTMENT

0900 Meeting with Department of Customs and Excise/VAT

VENUE: ATTORNEY GENERAL'S OFFICE

1130 Ministry of Justice and Public Order (Central Authority for International Cooperation)

1230 Meeting with the Attorney General/public prosecutors

1330 Lunch



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

*Meeting at the Unit for Combating Money Laundering FIU (MOKAS)*

- Eva Rossidou-Papakyriacou – Senior Counsel of the Republic (Head of the FIU)
- Maria Kyrmizi-Antoniou – Lawyer, Member of MOKAS
- Theodoros Stavrou – Police Investigator, Member of MOKAS
- Antigoni Hadjixenophontos – Financial Analyst, Member of MOKAS

*Meeting at the Police Headquarters*

- Christakis Mavris – Chief Superintendent
- Panayiotis Nicolaides – Superintendent B'
- Demetris Demetriades – Superintendent B'
- Christoforos Mavrommatis – Chief Inspector
- Michalis Gavrielides – Inspector
- Costas Andreou – Police Constable
- Marianna Papadaki – Police Constable
- Eva Rossidou-Papakyriacou – Senior Counsel of the Republic (Head of the FIU)

*Meeting at the Police Academy*

- Zacharias Chrysostomou – Chief Superintendent
- Kyriaki Lambrianidou – Superintendent B'
- Nathanael Demetriou – Inspector
- Elena Adamidou – Police Const.
- Panayiotis Nicolaides – Superintendent B'
- Christoforos Mavrommatis – Chief Inspector

*Meeting at the Ministry of Justice and Public Order*

- Marianna Patsalidou – Director of Justice Sector
- Andreas Kyriakides – Administrative Officer A'

- Panayiotis Kountoureshis – Chief Inspector
- Maria Mounti – Administrative Officer

*Meeting at the Customs and Excise Department*

- Costas Georgiou – Customs Officer A', Head of Investigation Department
- Mari Charalambous – Customs Officer
- George Constantinou – Customs Officer

*Meeting with the Attorney General*

- Petros Clerides – Attorney General
- Ninos Kekkos – Counsel of the Republic A'
- Eva Rossidou-Papakyriacou – Senior Counsel of the Republic (Head of the FIU)



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

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
AFCOS	-/-	Anti Fraud Coordinating Structure
AML	-/-	Anti money laundering
ARO	-/-	Asset Recovery Office
AWF	-/-	Analytical work file
CAO	-/-	Crime Analysis Office
CARIN	-/-	Camden Assets Recovery Inter-Agency Network
CCTV	-/-	Closed circuit television
CEPOL	<i>Collège européen de police</i>	European Police College
CID	-/-	Criminal Investigation Department
CPC	-/-	Criminal Procedure Code
CTF	-/-	Counter terrorist financing
ECIM	-/-	European Crime Intelligence Model
ECIO	-/-	Economic Crime Investigation Office
ECTS	-/-	European Credit Transfer and Accumulation System
EU	-/-	European Union
FIU	-/-	Financial Intelligence Unit
GBP	-/-	ISO 4217 code of Pound Sterling
IMO	-/-	International Maritime Organisation
MDG	-/-	Multidisciplinary Group on Organised Crime
ML	-/-	Money laundering
MOKAS	-/-	The Financial Intelligence Unit of Cyprus

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
MS	-/-	Member State
OCTA	-/-	Organised Crime Threat Assessment
OLAF	<i>Office européen de lutte anti-fraude</i>	European Anti-Fraud Office
PC	-/-	Penal Code
PEP	-/-	Politically exposed person
ROCTA	-/-	Russian Organised Crime Threat Assessment
SAR	-/-	Suspicious Activity Report
SIENA	-/-	Secure Information Exchange Network Application
STR	-/-	Suspicious Transaction Report
VAT	-/-	Value added tax

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