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THE EVALUATION OF ANTI-MONEY
LAUNDERING MEASURES AND
THE FINANCING OF TERRORISM
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Typologies Report on Laundering the Proceeds of Organised Crime

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The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) is a monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems.

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List of Abbreviations

AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
CDD	Customer Due Diligence
CETS	Council of Europe Treaty System
CTR	Cash transaction report
DNFBP	Designated Non-Financial Professions and Business
EU	European Union
FIU	Financial Intelligence Unit
FATF	Financial Action Task Force
IMF	International Monetary Fund
JIT	Joint Investigation Team
LEA	Law Enforcement Agencies
Macau SAR	Macau Special Administrative Region
ML/TF	Money Laundering/Terrorist Financing
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures
OC	Organised Crime
OCG	Organised Crime Group
RE	Reporting Entity
ST	Suspicious Transaction
STR	Suspicious Transaction Report
Warsaw Convention	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

I. Executive Summary

1. The project to examine the laundering methods used by organised crime (OC) was approved by the 41st MONEYVAL Plenary in April 2013. It was agreed that the project team should examine the methods used by organised criminal groups to launder illegally earned profits and should try to assess potential regional vulnerabilities. It was also agreed that trends, methods, red flags and indicators, the means of identification and analysis of organised crime money flows should all be addressed in the report in order to enhance the capabilities of competent authorities in such cases.

2. Two expert meetings were held in the context of this research: the inaugural meeting of delegations was organised in October 2013 in Strasbourg; this was followed by a second meeting, bringing together prosecutors and judges in May 2014 in San Marino.

3. The reason for conducting this research is the recognition that OC presents one of the major threats to the Rule of Law in Europe and globally. A large percentage of all the criminal proceeds that are laundered world-wide are laundered by or on behalf of OC.

4. The report highlights a number of significant challenges to the effective investigation and prosecution of laundering the funds derived from organised crime and achieving final confiscation of assets. Some of these problems arise due to a lack of resources or relevant expertise, some due to reluctance of prosecutors in some jurisdictions to tackle difficult cases and some are caused by the very nature of the laundering techniques themselves. The main problems identified were:

- Lack of financial, accounting and IT expertise;
- Intelligence gaps;
- Lack of adequate risk analysis;
- Inadequate domestic coordination;
- Failure to use the full range of powers and practices available;
- The perception of some prosecutors that they have always to identify a specific predicate offence from which the proceeds are derived for a successful 3rd party prosecution;
- Reluctance of prosecutors to tackle difficult cases;
- Delay in applying provisional measures rendering any subsequent confiscation orders less effective;
- Transnational transactions and difficulties caused by mutual legal assistance;
- Exploitation of new technologies by organised crime groups;
- Lack of transparency of corporate vehicles.

5. The report sets out a number of recommendations on measures that jurisdictions can adopt in order to improve the investigation and prosecution of OC-related ML and the final confiscation of their criminal proceeds. In particular, the report highlights the need to make full use of the powers available to investigators and prosecutors. The recommended measures include:

- Ensuring that there is more high-level commitment to prosecuting OC ML and pursuing deterrent confiscation orders in those cases;
- Including any special issues raised by OC in the ML national risk assessment;

- Ratifying the Warsaw Convention and implementing the revised Financial Action Task Force (FATF) Recommendations 2012 (in particular Recommendation 30 (Responsibilities of law enforcement and investigative agencies));
- Focusing on confiscation;
- Focusing on third party money laundering;
- Making full use of FIU powers and expertise;
- Using financial profiling, trained specialists and expert witnesses;
- Developing national cooperation, coordination and feed-back and improving domestic information exchange;
- Expediting international information exchange;
- Increasing the transparency of information on the real owners of companies and trusts;
- Improving financial supervision;
- Utilising media campaigns, particularly in relation to the risks of persons being exploited unintentionally by OC as money mules.

6. The report draws conclusions on trends from the responses received. It is noted that OCGs will in practice use all available means to launder the proceeds of crime and have the ability to adapt quickly to changing law enforcement and AML/CFT environments. Nonetheless, a number of particular trends were identified, including exploitation of poorly regulated financial institutions and DNFBPs, as well as an increasing use of international transactions by OCGs. The main trends are, however, mostly typical of money laundering generally, but specifically in the OC context include:

- Exploitation of poorly regulated sectors;
- Development of transnational infrastructures to launder funds;
- Use of legal persons to hide criminally derived funds;
- Use of professionals;
- Use of new technologies.

7. The report assesses some of the techniques that have proved successful in investigating and prosecuting the laundering of the proceeds from OC and achieving final confiscations. The analysis considers risk identification as a strategic starting point, ways of detecting potential OC-related transactions (both at the level of FIUs and LEAs), the analytical processes involved, financial investigations and financial profiling and also covers challenges to and best practices for the achievement of convictions and confiscations.

8. It appears that OC and ML are rarely analysed at a strategic level by decision-makers together in jurisdictions. The report suggests that a better collective understanding of the OC vulnerabilities and threats is critical for those who are responsible for overall resource allocation for investigation and prosecution of OC cases.

9. The ability of the reporting entities themselves to detect OCG-related funds for reporting purposes seems limited. Financial institutions rely typically on the information available on the internet or from public and commercial databases.

10. At the FIU level, in order to identify potential OCG indicators, the analysts mostly rely on the number of persons involved in suspicious transaction reports (STR). There are no distinctive procedures for OCG-related STRs but, when recognised, such cases are prioritised and analysed in more detail.

11. Financial investigations are always a key element in ML cases, whether the proceeds result from OC activities or not. This survey revealed that, when deciding upon the initiation of parallel financial investigations, there are no differences between an organised crime case and any other case.

12. In some jurisdictions, the criteria for initiation of a parallel financial investigation is provided by legislation and can be activated automatically in proceeds-generating cases. In other jurisdictions the decision is taken by investigators and prosecutors on a case-by-case basis. There are no special investigative powers dedicated to financial investigations carried out in OC cases. The report concludes that wider use of the power to monitor bank accounts and/or to postpone transactions should increase effectiveness in the asset tracing and freezing processes.

13. One useful tool in asset recovery which has been identified is the use of financial profiles. These are descriptions of the investigated persons' licit income compared with their expenditure and lifestyle. Building such profiles can better assist the authorities to identify unexplained wealth. Nonetheless, such profiles are not routinely conducted in OC financial investigations. In some jurisdictions they are made exclusively in the pre-trial stage and do not always constitute admissible evidence. In order to create accurate profiles, LEAs may need access to a variety of information held by others, including Tax, Customs and the FIU. In some jurisdictions this access is on-line; in others formal requests to another authority need to be made.

14. There appears to be a direct link between the international element of ML cases related to OCG, and the duration of the investigation and prosecution processes. These processes frequently become prolonged because of delays in receiving responses to mutual legal assistance requests. The report notes that prosecutors may sometimes request mutual legal assistance, where the evidence required may be capable of proof in other ways, through the more focussed use of domestically available circumstantial evidence.

15. In order to increase timeliness and success of prosecutions, some jurisdictions have introduced special courts and/or prosecutors' offices as part of the judicial system, which have nationwide competences and jurisdiction for a series of specific offences. This system has the advantage of reducing the possibility of local influence and corruption and deepening specialisation of judges and prosecutors in OC-related cases.

16. The report found that various FIUs and other LEAs, with long-standing experience in the ML area (including in its OC component), are capable individually of addressing the issues related to the fight against the legalisation of OC profits, but that often these efforts are fragmented and the overall outcome is limited. The report identifies obstacles in this area. Some of the most frequently noted difficulties related to obtaining evidence from abroad (especially from offshore jurisdictions) and to the continuing lack of transparency of the ownership of investigated corporate vehicles. The complexity of the financial flows which can be involved create particular challenges for investigators and prosecutors.

17. On a more positive note, valuable tools for OC asset tracing, freezing and confiscation were identified in the course of the research. These include exploitation of the analysis by the FIUs, use of FIU powers (monitoring of transactions, postponement), and use of financial profiling techniques. In addition, the more active use of Joint Investigations Teams (JITs) in appropriate transnational OC investigations is recommended.

18. The report identifies that some jurisdictions achieve success in autonomous ML cases without the necessity to establish precisely from which predicate offences the laundered property comes. These cases are usually based on inferences drawn from facts and circumstances. This is particularly helpful in

OC cases. However, the survey also indicated that there still remains resistance in many jurisdictions to challenging the courts with these types of autonomous and stand-alone cases. The report explains some of the jurisprudence in England and Wales on autonomous and stand-alone ML that has been followed in several other jurisdictions. The case studies also describe some of the successes that have been achieved following this line of jurisprudence. It is strongly recommended that more jurisdictions challenge their courts with cases based on this line of jurisprudence where there are OC connections.

19. The infiltration of financial institutions by OC through corruption (or by other means) is sometimes associated with identified criminal activities, such as illicit waste disposal, trafficking in endangered species, illegal investment in real estate projects, the facilitation of illegal immigration, drug and weapons trafficking, document counterfeiting and crimes which can be facilitated only with the authorisations of local or national administrations. While the incidence of this finding is not measured, it is considered that jurisdictions where the above-mentioned predicate offences are prevalent, should be more alert to the risks of OC infiltrating financial institutions for ML purposes.

20. Finally the report focuses on typologies of ML cases where OC proceeds were laundered. It appears that the most common proceeds-generating crimes are of a financial nature (all forms of fiscal frauds, including tax evasion and internet-related frauds). The survey revealed that the FIUs' capacity and expertise in financial analysis is underused by law enforcement.

21. Red flags and indicators that might point to OCG involvement in a ML case are. The indicators can be used by FIUs at the start of their analysis in order to prioritise potential OC-related cases at early stages.

22. There are certain characteristics that are common in OC laundering:

- Complexity of transactions: OCGs with multiple national and international contacts will use a complex range of transactions in order to avoid confiscation of proceeds and to disguise the origin of funds;
- Complexity of legal structures which disguise the ultimate beneficial owner;
- Quantity: the sums involved are almost always large, although they may be broken up into smaller, connected transactions; and
- Bribery and intimidation: the techniques used to perpetrate crimes will also be used to launder the proceeds. This includes bribing or intimidating employees and officials in financial institutions and DNFBPs in order to launder funds.

23. The case studies provided by the participating jurisdictions are structured under 6 sub-categories:

- Complex transactions;
- Obscure ownership of funds;
- High amounts involved;
- Use of corporate vehicles acting in the legitimate economy;
- Use of Money Business Services (MSBs);
- Use of professionals.

24. The project team included the most relevant case-studies identified in the course of the research. Some of the case studies could be included in several of the categories as they embrace more than one laundering technique.

25. There is very little established indication of exclusively ML-specialised OCGs, as the survey revealed that most of the jurisdictions consider that OC launders its own proceeds, often with the complicity of professionals, of which the most frequently mentioned are lawyers and accountants. Financial advisors are also highlighted in this context.

II. Introduction

II.1 Methodology

26. This report was produced by a team coordinated by Ms Jelena Pantelic (Serbia) who was supported by experts from Bulgaria, Hungary, Montenegro and Ukraine.

27. Apart from the contribution received from our member states, the report benefits from the input of independent experts: Dr Mike Levi, Professor at Cardiff University; Mr Jeremy Rawlins, Senior Legal Advisor Strategy & Policy, Crown Prosecution Service, UK; HHJ Michael Hopmeier, Kingston-Upon-Thames Crown Court, UK; Ms Ann Marie Blaylock, Trial Attorney Asset Forfeiture and Money Laundering Section, U.S. Department of Justice, USA; Mr Boudewijn Verhelst, Deputy Director FIU, Belgium; Mr Vincenzo Di Filippo, Guardia di Finanza Officer; Italy; and Mr Mauro Falesiedi Senior specialist Financial Intelligence Group EUROPOL.

28. Three separate questionnaires were sent to MONEYVAL delegations and to the international community through the FATF Secretariat: one covering the perspective of the FIUs, the second dedicated to law enforcement agencies involved in pursuing and prosecuting money laundering and financing of terrorism cases, and the third seeking input from the prosecuting authorities.

29. A total of 29 jurisdictions¹ replied to the questionnaires (FIU -27², LEAs -17³ and prosecutors -18⁴) and 22 case studies were analysed. The replies showed that 20 of the responding FIUs are of administrative type, 4 law enforcement type and 3 are hybrid.

30. In addition to the replies to the questionnaires, case studies submitted and qualitative analysis performed during the meetings, information from other sources was used to complete the report.

31. In May 2014, two back-to-back meetings were organised. The first was a prosecutors' seminar which aimed to bring legal professionals (prosecutors and judges) throughout Europe (and beyond) together to explore the reasons for the apparent absence of ML convictions of third parties who launder on behalf of organised crime. We also considered the steps needed to be taken to improve both the quality and the volume of prosecutions for money laundering, and further steps to disrupt organised crime through confiscation.

32. Following the prosecutors' meeting, the core-group workshop discussed the emerging findings from the replies to the questionnaire and from the seminar and mapped out the steps to production of the draft report for presentation to the December 2014 MONEYVAL Plenary.

¹ Albania, Republic of Armenia, Austria, Azerbaijan Republic, Belgium, Bosnia and Herzegovina, Bhutan, Bulgaria, Cyprus, Czech Republic, Denmark, Fiji, France, Georgia, Guatemala, Hungary, Italy, Lithuania, Macau SAR, Malta, Republic of Moldova, Montenegro, Poland, San Marino, Serbia, the Slovak Republic, Slovenia, Trinidad and Tobago, Ukraine;

² Albania, Republic of Armenia, Austria, Azerbaijan Republic, Belgium, Bosnia and Herzegovina, Bhutan, Bulgaria, Cyprus, Czech Republic, Denmark, Fiji, France, Georgia, Guatemala, Hungary, Macau SAR, Malta, Republic of Moldova, Montenegro, Poland, San Marino, Serbia, the Slovak Republic, Slovenia, Trinidad and Tobago, Ukraine;

³ Albania, Austria, Bosnia and Herzegovina, Bulgaria, Cyprus, Hungary, Italy, Lithuania, Macau SAR, Malta, Republic of Moldova, Montenegro, San Marino, Serbia, the Slovak Republic, Slovenia, Ukraine

⁴ Republic of Armenia, Bulgaria, Cyprus, Croatia, Denmark, Georgia, Hungary, Israel, Liechtenstein, Macau SAR, Republic of Moldova, Poland, Romania, San Marino, Serbia, the Slovak Republic, Slovenia, Ukraine.

II.2 Background situation

33. Operations involving trafficking in, and the enslavement of, human beings, the illicit trafficking in arms, drugs, cigarettes, organs, works of art, and other products supply new criminal markets all over Europe, and offer criminal organisations enormous opportunities for profits, a significant proportion of which need to be laundered.

34. The traditional criminal organisations have gradually extended their operating range, exploiting the opportunities offered by economic globalisation and new technologies and entered into alliances with criminal groups in other jurisdictions in order to carve up markets and spheres of influence.

35. Criminal organisations have increasingly tended to rely on mutual assistance, enabling them to transcend their differences in terms of language, ethnic origin, and commercial interests and engage in joint trafficking, thereby reducing costs and increasing profits.

36. In defining the risks and the possible areas of actions, the reports prepared by UNODC⁵, SOCTA⁶, the EU of the European Parliament of September 2013⁷ and national expertise were considered.

37. The illegal trafficking in cigarettes results in an annual tax loss of approximately €11 billion. The estimated turnover generated by the global small arms trafficking ranges between \$170 million and \$320 million a year⁸. The United Nations Office on Drugs and Crime (UNODC) estimates that the sum of money laundered globally amounts to between 2 and 5 % of global GDP or between €615 billion and €1.54 trillion each year⁹.

38. According to the UNODC's Digest of organised crime cases (2012) two basic categories of offences were identified: offences that are structurally instrumental to the existence of organised criminal groups (such as participation in the group, corruption and money-laundering); and a diverse array of final offences¹⁰ that produce direct material benefit (drug trafficking, trafficking in firearms, human trafficking, smuggling of migrants, trafficking and smuggling of goods, counterfeiting, cybercrime, forgery, fraud, trafficking in cultural property, maritime piracy, environmental crimes, tax evasion, financial crimes and other crimes against the public administration). Thus, in the context of OC, money-laundering is not the object of the criminal activity but rather a part of the inner organisational structure which keeps it cohesive and profitable. This conclusion can stand if there are no ML specialised organised crime groups operating in the market, that is to say, criminal groups whose main activity is to launder the proceeds of other groups as a separate, profitable business. One of the objectives of this

⁵ UNODC: The Globalization of Crime. A Transnational Organised Crime Threat Assessment of 2010, available at http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf (accessed 27 December 2013).

⁶ Europol SOCTA 2013. EU Serious and Organised Crime Threat Assessment, available at <https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta> (accessed June 2013).

⁷ European Parliament Special Committee's Report on organised crime, corruption and money laundering: recommendations on actions and initiatives to be taken, presented by Salvatore Iacolino.

⁸ European Parliament resolution of 11 June 2013 on organised crime, corruption, and money laundering: recommendations on action and initiatives to be taken; <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-245>.

⁹ Europol SOCTA 2013. EU Serious and Organised Crime Threat Assessment, available at <https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta> (accessed June 2013).

¹⁰ Whose commission constitute the aim of the organised criminal groups for the purpose of obtaining a direct benefit.

research is to ascertain whether such groups do operate solely in the ML field for other organised crime groups or networks.

39. In this context, the G8 and G20 are urging jurisdictions to take action on several fronts: strengthening their anti-money laundering regimes, enforcing greater transparency of company ownership, and supporting efforts to trace, freeze and recover stolen assets.

40. OCGs continue to use traditional methods of money laundering such as the use of shell companies and accounts in offshore jurisdictions. Money launderers also increasingly make use of the internet and other technological innovations (such as pre-paid cards and electronic money) both in the commission of the predicate offences and increasingly in the laundering process. OCGs are adept at exploiting weaknesses such as Money Service Businesses (MSB), Informal Value Transfer Systems (IVTS) and jurisdictions with relatively weak border controls and anti-money laundering (AML) regimes. Illicit financial services providers are emerging in the form of unsupervised payment platforms and banks. The increasing availability of financial products on the internet and illicit financial service structures, both inside and outside of the EU, provide additional opportunities for OCGs to launder money¹¹.

41. Criminal organisations have developed their infiltration capacity, since they now operate in, for example, construction and public works, transport, large-scale retailing, waste management, and many other sectors. Consequently, some organised crime groups increasingly resemble an economic player, with a strong business orientation, enabling them to supply different kinds of illegal goods and services at the same time. Thus, if organised crime, in all its forms, is to be combated effectively, it is essential to take measures striking at the criminal organisations' financial resources, which can be detected, frozen, seized and confiscated through the anti-money laundering processes and procedures and related confiscation measures.

42. In the European Parliament resolution of 11 June 2013, on organised crime, corruption and money laundering, it was noted that in addition to (or instead of) using violence and intimidation, organised crime operates through corruption and money laundering. OCG activity is linked not just to conventional illicit services and extortion, but also to corruption, tax fraud, and tax evasion.

Financial investigations and organised crime

43. Since the 1980s, there has been a major push in rhetoric and institution-building, emphasising the centrality of attacking the financial lifeblood of drug trafficking networks and organised economic crimes. Much progress has been made in legislation and the creation of financial intelligence units. However, further guidance is needed on how to get and use financial information by LEAs in the context of the investigations conducted in OC cases.

44. The survey revealed that at the jurisdiction level there is no generally accepted (or used) definition of "*financial analysis*" or "*financial investigation*"¹² and the understanding of those terms range from basic intelligence gathering activities to complex relational networks and money flows, and financial profiling aimed to identify unexplained wealth or disproportionate income compared with apparent lifestyle and sources of wealth. According the FATF Financial Investigation Guidance, a financial

¹¹Europol SOCTA 2013.

¹²FATF Recommendation 30 gives the following definition as a footnote "A 'financial investigation' means an enquiry into the financial affairs related to a criminal activity, with a view to: (i) identifying the extent of criminal networks and/or the scale of criminality; (ii) identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and (iii) developing evidence which can be used in criminal proceedings. "

investigation involves the collection, collation and analysis of all available information with a view to assisting in the prosecution of crime and in the deprivation of the proceeds and instrumentalities of crime.

45. By their very nature, ML and OC, mostly transnational in character, typically cannot be efficiently suppressed by each state on its own but require a comprehensive approach, including the swift application of international co-operation mechanisms and (financial) information exchange.

46. Various measures have been taken over the years by the international stakeholders through standard setting, including international conventions requiring States' preventive and repressive domestic regimes to combat ML and to provide international co-operation to better facilitate its prosecution and prevention of the underlying predicate offences, and the freezing, seizing and confiscation of criminal proceeds of organised crime¹³. The revised FATF standards of 2012 positively require LEAs to proactively conduct financial investigations in all major proceeds-generating cases in parallel with the investigation of the predicate offence with a view to confiscation measures.

47. According to a recent study¹⁴, in almost half of the OC cases involving the seizure and confiscation of the proceeds of crime, money laundering has also been investigated and/or charged. Indeed, the accumulation of large amounts of proceeds inevitably implies the involvement of money-laundering, so any comprehensive organised crime investigation will inevitably include a parallel financial investigation on related money-laundering activities. The criminalisation of these practices provides an indispensable basis for properly developing investigations of suspected illicit wealth of offenders.

48. The new emphasis in the revised FATF standards on money laundering risk assessments and the focus on effectiveness in the FATF Methodology 2013 (which MONEYVAL will use from the end of 2014) provide a welcome incentive and opportunity to re-appraise financial investigation strategies and concrete practices, in the context of drug trafficking, economic crimes, and the increasing trend towards poly-crime activities of crime networks¹⁵.

Definition

49. For the purpose of the present typologies research we have adopted the definition of an "*organised crime group*" contained in CoE Recommendation (2001)11 concerning guiding principles on the fight against organised crime, which is the same as the one contained in the UN Convention against Transnational Organised Crime (UNTOC)¹⁶.

50. The EU approach to organised crime, corruption, and money laundering is considered to be based on *inter alia*, common definitions of criminal offences, including participation in organised crime and self-laundering, criminalisation of all forms of corruption, reform of certain procedurally relevant arrangements, for example statutes of limitation, effective systems for the confiscation of criminal

¹³Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; Council of Europe Convention on Cybercrime; The European Convention On Mutual Assistance In Criminal Matters with the subsequent additional protocols; The European Convention on Extradition with the subsequent additional protocols; The European Convention on the Transfer of Proceedings in Criminal Matters; The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; Council of Europe Criminal Law Convention On Corruption with the additional protocols, etc..

¹⁴ UNODC Digest of organised crime cases 2012.

¹⁵ Michael Levi, Drug Law Enforcement and Financial Investigation Strategies, September 2013.

¹⁶ "*Organised crime group* shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or material benefit".

groups’ assets, accountability of government, politicians, and professionals, training of judges and police forces, and proper means of prevention¹⁷. At this point no common EU definition for “*organised crime*” has been adopted, nor would this be easy to envisage and agree upon, beyond the loose one in the UNTOC 2000.

51. In almost all the jurisdictions that participated in the survey¹⁸, there is a legal definition of the term “*organised crime*” (Ukraine, Bosnia and Herzegovina, Albania, Serbia, Italy), or its derivatives from the definitions of “*association to commit offences*” or “*mafia-type criminal association*” (San Marino and Italy), “*organised criminal group*” or “*criminal organisation*” (Bulgaria, Cyprus, Slovakia, Republic of Moldova, Lithuania, Hungary, Austria, Liechtenstein).

52. The support provided to a criminal group is in some cases also a criminal offence. For illustrative purposes, we list some examples below.

BOX 1

In **Lithuania** and **Hungary** there is a difference between “*organised group*” and “*criminal association*” which is mainly related to the number of perpetrators, the stability and period of existence of the organisation and the seriousness of the crime.

In **Ukraine** and **Italy** a *hierarchical order* is also given as element of the above-mentioned groups.

In **Slovenia** there is no legal definition of the term “*organised crime*” but certain criminal offences (including money laundering) comprise as *modus operandi* for their commission in the context of a criminal association.

In **Georgia** the Law defines two major types of organised crime: the first is related to racketeering (racketeering group, racketeer) and the second is related to “*thieves’ brotherhood*”, membership of the thieves brotherhood, and thief in Law.

53. The understanding of this term might be divided into two groups. The first one considers the “*organised crime*” offence as an aggregation of criminal offences committed in conjunction by members of an OCG. The second one provides a definition of “*organised criminal group*” and as a result, it could be concluded that “*organised crime*” is any criminal offence committed by an “*organised criminal group*”. An important part of each definition is the threshold that the law requires for establishing “*organised crime*” or an “*organised criminal group*”. In some cases this threshold is related to the number of perpetrators who commit the criminal offence. In others, an additional minimum penalty for the committed offence(s) is required (see Table 1).

TABLE 1 Thresholds for definition of “*organised crime group*”

	Minimum number of perpetrators (two or more)	Minimum number of perpetrators (three or more)	Minimum imprisonment penalty	Imposition of a fine

¹⁷ European Parliament resolution of 11 June 2013 on organised crime, corruption, and money laundering: recommendations on action and initiatives to be taken; <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-245>.

¹⁸ The exceptions are Armenia and Denmark where such a definition is not provided at all.

Bosnia and Herzegovina		x	x	
Bulgaria		x	x	
Cyprus		x	x	x
Hungary	x	x	x	
Italy		x		
Lithuania	x	x		
Republic of Moldova				
San Marino		x	x	
Slovakia			x	
Serbia		x		
Ukraine		x		

54. The concept of “*organised criminality*”, however defined, brings higher penalties for the perpetrators and determines that the investigation and prosecution is performed by specialised units.

II.3 Scope of the Paper

55. Organised crime has diversified, gone global, reached macro-economic proportions and become involved in various illegal activities stretching from drug trafficking, gambling (in jurisdictions where gambling is prohibited), trafficking of human beings, smuggling, cybercrime, arms trade, to corruption or tax frauds, including tax evasion. The range of activities is so broad and diverse that, in fact, organised crime is nothing but a well-organised underground business which functions on similar principles as legal companies. Therefore, this paper looks at the proceeds of OC (as an illegal profit generating mechanism) regardless of the criminal activities performed by the organisation.

56. Although part of the money earned through offences remains within the criminal underworld, a significant share of the illegally earned profits are reinvested in legitimate activities. The criminals situated in the higher levels of OCG hierarchy need a reliable and apparently legal income, otherwise their lifestyle may attract the attention of law enforcement and tax authorities. Moreover, once a certain level of personal wealth is achieved, criminals tend to invest their criminal assets in legal business within the legitimate economy and become investors or stakeholders in various industries. They can even convert their economic power in certain jurisdictions into political influence, which presents potential threats to democracy, and the rule of law. Thus, through money laundering, organised crime can not only unobtrusively use their profits, but they can subtly shift their activities from the underworld of organised crime to the leadership of societies.

57. Organised crime exploits the opportunities offered by the economic globalisation, by regional weaknesses or by new technologies, and tries to avoid the threats by identifying the vulnerabilities of the financial system (and other areas) in order to achieve the laundering of criminal assets. Criminal organisations have developed the ability to adapt promptly their areas of intervention to the fluctuations of demand and insidiously to infiltrate legal businesses and financial circuits beyond national borders. They operate on a global scale accumulating huge illegal assets and reinvesting them in different jurisdictions through money-laundering schemes. Curbing the financial power of criminal

organisations (*inter alia* by knowing, exposing and doing something about the manner of laundering) would indeed affect their *raison d'être*.

58. Apart from standard law enforcement investigations into the personnel of criminal organisations with a view to their prosecution and imprisonment, improving the capacity of the authorities to reach the real (direct and indirect) criminal assets generated by organised crime is now recognised more generally to be a parallel (or indeed more significant) law enforcement priority. To attack the possibility of organised crime structures effectively through confiscation should be a major step towards ensuring that crime will not remain a lucrative business which damages the lawful economy, entrepreneurs and honest citizens.

59. This report aims to reflect and analyse the criminal justice response to the ML threat posed by OC assets, to identify success stories, best practices but also barriers and challenges to achieving effective confiscations and convictions.

II.4 Objectives of the Study

60. One of the issues that was highlighted in MONEYVAL's third round horizontal review was the modest success that LE has had in investigating, prosecuting and convicting those third parties that launder on behalf of organised crime. Thus, the major questions to which this report seeks answers are:

- Who are the launderers today who facilitate the retention of profits by OC?
- How do OCGs use professionals?
- Are there other OCGs who have become so proficient in ML that they make it their major enterprise?
- Why are there so few prosecutions of those that launder on behalf of organised crime? Are those cases under-reported to the FIU?
- How successful are the authorities currently in achieving confiscation orders that reflect the scale of criminality and how frequently are the confiscation orders fully executed?
- Which are the risk sectors for placing, layering and integration of OC assets?
- What are the obstacles to more successful LE results in this area?
- How successful are the authorities being in preventing criminals from holding or being beneficial owners of significant or controlling interests in financial institutions?

61. The purpose of the analysis of the replies to the questionnaire and of the case studies is to determine the most efficient way to prevent and combat the ML activities of OCGs and to mitigate the integration of dirty money into the financial system. The report aims to determine best practices in successfully analysing, investigating and prosecuting ML cases when OCGs assets are involved.

62. Trends, techniques, red flags and indicators, methods of identification and analysis of organised crime money flows, are described in the report, in order to assist the competent authorities to enhance their capabilities in the fight against OC.

63. The research does not aim to set out priorities from an operational point of view, nor to undertake a threat or risk assessment of the ML risks arising from OC crime proceeds, but seeks to examine the methods used by organised criminal groups to launder illegally earned profits, identify potential regional vulnerabilities and specify areas where action should be taken to improve the authorities' response against it.

III. Emerging findings from the survey

64. This section sets out the principal findings from the questionnaire (Section III.1). It then assesses the challenges faced by FIUs, law enforcement agencies and prosecutors in investigating money laundering linked to organised crime groups (Section III.2). Following on from that, there are a number of recommendations of the steps that can be taken to improve the investigation and prosecution of organised crime and the confiscation of proceeds (Section III.3). Finally, it draws together some trends that were identified from the questionnaires received (Section III.4).

III.1 Principal findings

65. As set out in Section II.4 above, this report sets out to address certain major questions. The principal findings, relating to these major questions, resulting from the information provided by the research to the initial questions are:

Who are the launderers today who facilitate the retention of profits by organised crime?

66. The survey identified some profiles of OC money launderers: some of them are the co-ordinators of the financial scheme, others are straw men or money mules (both used by the co-ordinators). This depends on the complexity of the laundering schemes which OCGs are using. In some instances corruption and trade in influence are crimes used to support the laundering process.

67. According to the survey, the launderers can be divided into three categories:

- Members of OCG dealing with laundering activities (the organisers);
- Money mules and straw men that participate in the laundering process either knowingly or inadvertently;
- Professionals (accountants, lawyers, public servants working in the governmental institutions, financial institution employees) included in various degrees in the laundering process, from acting directly, to giving advice or becoming inadvertently involved by their clients. According to an FATF report on the Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals¹⁹, their involvement in ML of their clients is often not as stark as complicit or unwitting, but can be best be described as being on a continuum of awareness.

How do Organised Crime Groups use professionals?

68. Even in the absence of statistics (which are not kept by the jurisdictions in this respect), the research confirmed (through the case by case analysis of the typologies presented and the discussions held during the seminars) their belief that professionals are increasingly involved by OC in laundering their proceeds, both as advisors and as actual launderers. Their knowledge, experience and expertise are useful for OCGs in decreasing the level of risks of being reported or detected by the competent authorities. They are also valuable in determining to which jurisdiction and economic sector the laundering should be oriented.

Are there other organised crime groups who have become so proficient in ML that they make it their major enterprise?

¹⁹ <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>.

69. Although there is no direct evidence of ML specialised OCGs, there are indications that such groups might exist. In some of the cases presented during the workshops it was determined that although the predicate offences were different, the laundering schemes were essentially the same, which suggested that OC were laundering the proceeds of various predicate offences in the manner which they had mastered.

Why are there so few prosecutions of those that launder on behalf of organised crime or are they under-reported?

70. The questionnaires indicated a number of issues that hindered the prosecution of laundering of funds derived from OC. A number of these issues are dealt with more extensively in section III.2 below. The issues identified included:

- The complexity of the investigations and the evidential information collected;
- Difficulties in international cooperation;
- Lack of specific training for the investigators, prosecutors and judges;
- Uneven understanding among the prosecutors of the level of evidence needed for successful prosecution (cautious prosecution policies and high level of proof frequently required);
- The cases not being presented in court (by the prosecutors) in a simple and clear way;
- The total workload of the prosecutors, judges and investigators being too high to manage complex cases;
- Corruption; pressure from OCG members on witnesses, prosecutors, managers of financial institutions, judges and investigators; trade of influence; etc.;
- Reluctant witnesses;
- Ineffective use of the FIU powers (postponement of transactions, monitoring of bank accounts) and analytical skills;
- Gaps in the legal framework (lack of possibility to apply non-conviction based confiscations, lack of reversal of burden of proof);
- Obstacles to successfully achieving third party ML convictions are described in more detail in Chapter III.1 – Challenges and vulnerabilities of organised crime generated ML cases;
- There were no indications of under-reporting, although some information on the infiltration by OC into management and shareholding structures was revealed (the reader is referred to Chapter III.2 for a more detailed analysis).

How successful are the authorities currently in achieving deterrent confiscation orders?

71. The statistics provided in this survey emphasise increasing results in this area. However, the concept of administrative confiscation does not exist in all jurisdictions and the reversal of the burden of proof is not always used in the most effective manner, perhaps because its legitimacy is not always accepted. Nevertheless, the use of specialised courts and prosecutors' offices seem to positively impact on confiscations.

Which are the risk sectors for placement, layering and integration of OC assets?

72. Bank accounts and exchange offices seem to be preferred for the placement stage. In the layering phase MSBs (which have transfer functions in addition to the exchange of currency) are used and the presence of corruption (willing involvement of a money service bureau employee) can be an aggravating factor.

73. For the integration stage it can be concluded that, on the basis of known information, OCGs invest the proceeds, in preferred economic sectors, chosen according to the following factors:

- The level of AML/CFT supervision in the specific sector, which is directly related to the level of risk of detection of the laundering schemes (real estate, renewable energies, gambling);
- The potential profitability of the sector is increasingly important for OCGs not only to launder the proceeds but also to achieve additional economic benefits within the legitimate economy;
- The degree to which an OCG is familiar with the respective sector (e.g. Chinese OCGs invest in wholesale clothing while, at least as identified by financial investigators, Italian OCGs prefer bars, restaurants and the tourist industry²⁰);
- The liquidity of the assets typical for the sector (bar and restaurants, money transfer agencies, securities);
- Sectors where grants are given by the national Government or international bodies, which usually are coupled with a high level of bureaucracy where there may be indications of corruption (renewable energies, waste management);
- Economic sectors with high turnover, as OCG assets can be laundered through high value transactions consistent with the relevant business; for example the construction and real estate sectors;
- The existence of an international element in the business, as OC needs to move assets swiftly from one jurisdiction to another. The survey revealed that in the phases of layering and integration, the assets tend to be transferred to a different jurisdiction from the one where the criminal activity took place (import/export, international services providers);
- The functionality for the illegal activity carried-out by an OCG (transport, international trade);
- Public exposure: a high profile sector might constitute an attraction for the high level OC members as this would give them public support and trust (renewable energies, sports).

What are the obstacles to more successful LE results in this area?

74. The obstacles to successful investigation of third party ML are described in detail in Chapter III.2 below;

How successful are the authorities being in preventing criminals from holding or being beneficial owners of significant or controlling interests of financial institutions?

75. Indications of the infiltration of OC into the management and ownership of financial institutions were found in some responses. However, the measures put in place by jurisdictions to prevent criminals controlling financial institutions can and do mitigate this, although not in all cases.

III.2 Challenges and vulnerabilities of organised crime generated ML cases

76. It is important that jurisdictions seek to identify the main barriers to tackling organised crime groups and then develop strategies and procedures to counter these barriers. This section sets out some of the main reasons identified in the questionnaires for the failure to successfully prosecute organised

²⁰http://www.ocportfolio.eu/File%20originali/Savona_Riccardi_OC%20investments_24%20March_Bruxelles_v5.pdf.

crime groups and those who launder money on their behalf, as well as for the failure to achieve final confiscations of the proceeds from organised crime.

Lack of financial, accounting and IT expertise

77. A significant amount of crimes (such as VAT/TVA frauds, tax evasion, and other frauds) feature in OC activities and proceeds. In addition, the laundering process in itself is a financial undertaking with multiple purposes: to separate the assets from the predicate crime to avoid confiscation; to invest the proceeds in the legitimate economy for more profit; to secure economic and (at least at times and in some places) political influence for OCG leaders.

78. In these circumstances, although significant steps have been made at national level to increase the **financial analytical capacity of LEAs**, there is still a great need for such experts in police forces and prosecution services. The lack of such expertise constitutes a serious vulnerability in a jurisdiction's capacity to react to OC threats through asset-freezing, seizure and confiscation. The research showed that the, even where the FIU has a financial investigation capacity, their expertise is only used to a very limited extent in OC cases (and in ML cases in general).

79. Global e-commerce and e-finance offer criminals multiple opportunities to generate proceeds and retain the profits of their criminal activities. OCGs use the internet to target the financial sector and exploit various online financial products and services in order to conceal the criminal origins of their proceeds²¹.

80. The survey indicated that cybercrimes have become increasingly part of OC predicates and virtual currencies (e.g. bitcoin), electronic banking and online auctions now feature in their money laundering techniques. The anonymity which characterises digital currencies, and the technical complexity of the use of modern and emerging electronic technologies which require a high level of technical knowledge and cross-border cooperation to achieve a successful investigation, constitute additional challenges for LEAs. The jurisdictions participating in the research indicated that IT expertise is increasingly necessary in order to deter OCGs using cyberspace for laundering; yet IT forensic specialists and special technical equipment are often lacking in LEAs, especially in under-resourced jurisdictions.

Intelligence gaps

81. While the LEAs lack expertise in financial analysis, the biggest challenges faced by FIUs in the early detection of OC-related cases are the lack of information: although it appears that such information is sometimes available at national level, the FIUs either do not know about it or they do not have timely access to it. The complexity of OC cases, the considerable investment of time required, the need for information from abroad and the existence of concealed connections between the entities that are subject of investigations are other difficulties to be faced.

Lack of adequate risk analysis

82. Statistics are not a goal in themselves but are nonetheless an important tool in identifying the environment of the crime and the quality of reaction of LEAs and other actors involved in disrupting the OC. However, few jurisdictions have developed mechanisms for collecting comprehensive statistics that would identify areas of vulnerability to assist in the development of strategies to tackle OC and ML.

²¹ EUROPOL SOCTA Report 2013.

83. According to the revised FATF Recommendation 1, jurisdictions should identify, assess, and understand the money laundering and terrorist financing risks for the jurisdiction, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, jurisdictions should apply a risk-based approach to ensure that the measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

84. One key element in a risk assessment is data. The survey indicates that no comprehensive statistics are generally collected or available for analysis on OCGs' assets and transactions, or at least those that are identified. Even if some statistics are collected, they are rarely used in the process of strategic or risk analysis within jurisdictions. This leaves outside the focus of the authorities areas which might constitute particular threats but which are unknown or only partially known by the LEAs and FIUs. It appears that the implementation of the risk-based approach required by the FATF Recommendations and supervised (and sanctioned) by the national authorities, is better implemented by the private sector than by law enforcement in most jurisdictions, which is often reactive rather than strategic in focus.

Inadequate domestic coordination

85. The survey indicated that the feedback on the outcome of OC financial investigations is generally missing and this generates confusion amongst various separate bodies involved in the analysis and investigation at different stages, as they are unable to measure the utility of their work. In addition, in the absence of feed-back from LEAs on supposed OC STRs, the FIU cannot create patterns and red flags in order to better identify possible other OC-related STRs in the future.

86. In practice, rarely do the FIUs work closely with the investigative authorities and prosecution in OCG cases, although coordination is a critical issue, and the analytical skills and the powers of the FIU (including their capacity to suspend transactions) are valuable in the financial investigations carried out in ML cases.

87. Another issue in prosecuting ML cases proved to be the turn-over of prosecutors in a case. Usually in a pre-trial procedure, the prosecutor considers particular items as the most important factor in achieving conviction. Because of case longevity, if this prosecutor is transferred to another unit or office, retires or even leaves the judicial system, their successor will need time to examine the evidence gathered so far and even may decide to restart the evidence-gathering process. Therefore the turnover might create inefficiency and possibly impunity.

88. The identification of red flags, typologies, patterns and new trends in laundering the assets of OC would help the authorities to set priorities with regard to their operational policies at all levels and segments (FIU, LEA and prosecution). However, not enough information is gathered at the national level in this respect and thus, no credible strategies, guidelines or methodology can be drafted and implemented. However, the revised FATF Recommendation 1 clearly requires the development of risk assessments and the application of the risk-based approach at the national level.

Legal professional privilege

89. Investigating lawyers in ML cases frequently present difficulties generated by confidentiality requirements. For instance, in order to obtain a warrant for access to e-mail correspondence, it may be necessary to overcome the confidentiality requirements for all an attorney's clients, as correspondence with other clients unrelated to the investigation might be placed in the same e-mail account.

90. A recent FATF report challenges the perception sometimes held by criminals, and at times supported by claims from legal professionals themselves, that legal professional privilege or professional secrecy would lawfully enable a legal professional to continue to act for a client who was engaging in criminal activity and/or prevent law enforcement from accessing information to enable the client to be prosecuted²².

Failure to use the full range of powers and practices available

91. The survey revealed that the authorities involved in ML cases related to OC assets are generally satisfied by the legal powers at their disposal to fight organised crime. The exception is related to the situations where the administrative confiscation or the application of any form of the reversal of the burden of proof is made impossible by fundamental legal provisions.

92. The interviews held with prosecutors in the context of the present research indicated that the provisions of the Warsaw Convention to prove the knowledge, intent or purpose from objective, factual circumstances are not tested before courts in a sufficient number of MONEYVAL jurisdictions. Interestingly, it appeared that circumstantial evidence is more frequently used in prosecutions for crimes other than ML. More training for Prosecutors on the international instruments (specifically the Warsaw Convention) appears to be necessary.

93. There is a need to make better use of the financial information and analysis by LEAs in order to increase the quality of OC confiscations of assets, especially in cases where the actual predicate offence is unknown or cross-border activities are hard to prove. In such cases the ML investigation is the only option for the forfeiture of OC assets. More use of the FIUs' powers to postpone transactions and to monitor bank accounts is also necessary.

94. Domestic (especially between FIU and LEA) and international co-operation in the postponement of the transactions is a prerequisite.

Failure to identify a specific predicate offence

95. Cases involving tracing and confiscating OCG assets frequently include overseas jurisdictions, and the reported difficulties relate to jurisdictions' reluctance to provide assistance in the absence of a specific predicate offence. However, clearly linking the suspected assets to a particular predicate is not in the spirit of the international standards, particularly the Warsaw Convention, which encourages the prosecution, conviction and confiscation in third-party ML, based on inferences drawn from facts and circumstances. It was apparent from the survey that the provisions of the Warsaw Convention need to be more widely used and more efforts are needed to promote the tools provided by CETS 198.

96. On the positive side, one solution used by some jurisdictions is to use intelligence indicating OCG links and the lack of a legitimate source of the assets, in order to start an investigation and to secure the assets. Some jurisdictions achieved convictions in ML cases where the proceeds were transferred from abroad and no clear proof was obtained as to which the predicate offence might be.

Reluctance of prosecutors to tackle difficult cases

97. The survey identified a conservative attitude among prosecutors in testing in courts their laws to ascertain the levels to which circumstantial evidence (such as inconsistent lifestyle) can be used in ML

²² <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>.

See also Middleton, D. and Levi, M. (2005) The role of solicitors in facilitating 'Organized Crime': Situational crime opportunities and their regulation, *Crime, Law & Social Change* 42 (2- 3): 123–161.

cases. There is frequently an over-strict approach in establishing the predicate offence in ML cases. Therefore few are brought to court in the absence of a conviction for the proceeds-generating crime. It is a vicious circle: without court practice in this respect it is difficult, if not impossible, actually to determine the manner in which the legal provisions can be used, how evidence should be presented and how the prosecution's case should be best constructed for consideration of these issues by courts.

Delay in applying provisional measures

98. The time-frame from the dissemination of an FIU analytical report to the competent LEA or prosecutor's office, and further investigation until the final judgement is reached is usually too long. An average period is from one to three years, which is extremely lengthy, especially for effective confiscation. The vulnerability in this case is that the prolongation of the investigation and prosecution leads to less confiscations than would be possible from assets available at the beginning of the case. Applying provisional measures from the beginning of the process (even from the FIU stage through postponement of transactions) in order to ensure custody of the criminal assets is considered to be key to achieving successful deterrent confiscation orders.

Transnational transactions

99. The international element is prominent in OC cases and in the related financial transactions, which are widespread across numerous jurisdictions. Thus the LEAs of one jurisdiction can see only a small part of the entire picture. Enhancing international cooperation is crucial in these instances. However, the information exchange remains an impediment to swift trial of transnational OC. Fast exchange of information and good quality of this information make it possible for cases to be solved faster both for the jurisdiction in which an OCG operates and the jurisdiction in which a predicate crime was committed. Although information exchange agreements are increasing, it is considered that some offshore zones continue to represent a distinct problem.

100. Incomplete information in the data gathering process constitutes a further challenge. Late or inadequate responses from foreign FIUs (particularly regarding ownership, account holders and transaction checks) pose additional difficulties and delay the operational effectiveness of the asset tracing and recovery process.

Exploitation of new technologies by organised crime groups

101. New technologies are frequently exploited for the purposes of laundering the proceeds from OC. Virtual currencies and on-line gambling both pose a high risk of being exploited. In particular, the transnational and internet-based (non-face-to-face) character of such exploitation can increase the level of risk in these sectors. This is perhaps negated by the fact that cash is not directly usable and that web transactions (outside the Dark Net) leave traces. Frequently new technologies are either not, or inadequately supervised for AML/CFT purposes, thus increasing their vulnerability to being used for ML purposes. Sharing experience and case studies from the jurisdictions which have encountered such cases will be of considerable benefit in detecting instances where suspicions might be raised in similar cases elsewhere.

Lack of transparency of corporate vehicles

102. The survey confirmed the challenges and risks related to the identification of the beneficial owner (especially in case of corporate vehicles) noted in the MONEYVAL's 2013 Annual report²³. It is noted that

²³ http://www.coe.int/t/dghl/monitoring/moneyval/Activities/2013_AnnualReport_en.pdf.

organised crime regularly hides its profits behind corporate structures. Criminal proceeds are often invested in companies with complex layers of corporate ownership spreading around the globe. One of the biggest problems worldwide in money laundering and confiscation enquiries is identifying who are the ultimate beneficial owners of companies with complex ownership structures into which criminal proceeds have been introduced. Many major investigations run into the ground because information on the real owners of companies is either inaccurate, unavailable or cannot be accessed in a timely way by law enforcement. The lack of beneficial ownership information also impacts on effective confiscation, as according to a recent study, only few companies (and their assets) are actually confiscated although it was established that an important part of OC investments is done in this area²⁴. This whole issue was addressed by the G8 leaders in 2013 who committed to core transparency principles to prevent the misuse of companies and trusts for money laundering and tax evasion, and to self-report against them. MONEYVAL is currently following up the actions which its jurisdictions are also taking in this regard.

III.3 Recommendations

103. The following section sets out a number of recommendations on measures that jurisdictions should consider adopting in order to improve the investigation and prosecution of OC-related ML and the final confiscation of their criminal proceeds.

Ensure that there is high-level commitment

104. The first Intermediate Outcome of the FATF effectiveness assessment Methodology requires that money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation. FATF Recommendation 30 requires that at least in all cases related to major proceeds-generating offences (which frequently involve OC), the designated LEA should develop a pro-active parallel financial investigation when pursuing ML, associate predicate offences and terrorist financing. To achieve these goals, a high level commitment is frequently necessary to ensure that the LEA and prosecutors are provided with all the necessary resources to fight and combat ML effectively, especially by achieving asset confiscation and third party ML convictions. In some jurisdictions which have achieved success in confiscation there have been high level statements from Ministers to focus law enforcement efforts in these areas, or by Attorneys General to prosecutors to ensure they also focus on the laundering and confiscation aspect of cases. Indeed, including these issues in strategies and performance indicators (where this is possible) for law enforcement or prosecution authorities does concentrate the attention of law enforcement and prosecutors to the importance of these issues.

Include OC in the ML national risk assessment

105. When conducting their national risk assessments, jurisdictions should focus on OC-generated assets, on how much has been temporarily and permanently frozen and in what way these cases are treated. Attention should be paid, separately from other issues, to the integration of illicit proceeds into legitimate financial systems by OCGs. It should be determined what portion of a total of illicit proceeds is money belonging to members of OCGs, in order to try and estimate to what extent a jurisdiction is exposed to the risk of being abused by organised crime.

²⁴ The investments of organised crime across Europe;

[http://www.ocportfolio.eu/File%20originali/Savona Riccardi OC%20investments 24%20March Bruxelles v5.pdf](http://www.ocportfolio.eu/File%20originali/Savona%20Riccardi%20OC%20investments%2024%20March%20Bruxelles%20v5.pdf)

106. Jurisdictions are encouraged to analyse the ML convictions achieved in relation to OCG to detect the convictions that relate solely to stand-alone ML, and to include the findings in their national risk assessments.

107. The replies to this survey and the findings of various other reports indicate that cash (including bulk cash) remains a serious threat. The FIU information included in cash transaction reports (CTR) and STRs (value of transactions, features of the transactions etc.) and their potential link with OC should be regularly exploited in the risk assessment and in developing strategic analyses. Meaningful and timely statistics on cross-border cash transportations should be kept and used in the context of OC and ML risk assessment as.

108. It is advised that jurisdictions make a specific connection between OCGs and money laundering when creating strategies. To achieve this, jurisdictions need to keep meaningful statistics that would enable them to form a view on the dimensions and features of the OC assets being laundered. To the extent possible it is recommended to integrate these statistics so it makes it easier to identify the persons linked to organised crime by FIUs and LEAs at early stages. The FIUs are encouraged to keep records on persons and cases in which links with OC have been identified even if only at the level of suspicion or intelligence.

Ratify the Warsaw Convention and observe the new FATF Recommendations

109. In order to achieve better results in stand-alone ML convictions and confiscations the jurisdictions are encouraged to ratify the relevant international treaties, including the Warsaw Convention. The ratifying jurisdictions are recommended to use the provisions of the conventions and test more third party ML cases in courts.

110. Jurisdictions should consider more carefully the possibility to apply (or at least give assistance in) non-conviction based confiscation, since consideration of the non-conviction based issue has now been introduced into the revised FATF Recommendation 4²⁵. Revised FATF Recommendation 38 requires jurisdictions to cooperate by responding to requests made on the basis of non-conviction based confiscation proceedings²⁶.

111. It also has to be noted that according to the new FATF Recommendation 3 (essential criteria 3.8) it should be possible for the intent and knowledge required to prove ML offence to be inferred from objective factual circumstances.

²⁵ FATF Recommendation 4: Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

²⁶ Countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered; proceeds from money laundering, predicate offences and terrorist financing; instrumentalities used in, or intended for use in, the commission of these offences; or property of corresponding value. This authority should include being able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law. Countries should also have effective mechanisms for managing such property, instrumentalities or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets.

Focus on confiscations

112. As noted, the cases involving OCG assets are usually more complex and are more time-consuming. While this is a challenge in itself for the national authorities, in some cases, additional hurdles are posed by the appraisal system used in FIUs, LEAs and prosecutors' offices, which can over concentrate on the quantity of cases rather than the quality of the cases processed. Thus, naturally, the analysts, officers and prosecutors may be inclined to concentrate on the easier cases and overlook the financial part. In order to achieve better results in confiscations, consideration might be given to the articulation of this policy aim more regularly in law enforcement and prosecutorial overarching strategies. Consideration might also be given as to whether there are benefits to be gained in the fixing of broad targets for confiscation in particular prosecutorial regions (without including specific confiscation targets in the objectives of individual prosecutors).

113. More asset-sharing agreements should be concluded between jurisdictions. This is because jurisdictions are less likely to put resources into tracing criminal proceeds abroad where those assets are incapable of being returned to the jurisdiction from which they came. There is also evidence that the setting up of national Asset Recovery Offices increases the effectiveness of confiscations.

Focus on third party laundering – do not just go for the “low hanging fruit”

114. There are many types of money laundering cases that are prosecuted. Unfortunately, MONEYVAL has noted in previous rounds a tendency to go for the “*low hanging fruit*”, the easy money laundering cases – frequently unrelated to the predicate offences in the jurisdiction that generate the most criminal proceeds. It is necessary now for jurisdictions to focus on quality money laundering prosecutions which will make a difference to the fight against organised crime (where such risks are identified in the national risk assessment) and in respect of other profit-generating criminality. This is likely to be best achieved only through financial investigations which can lead to those who launder on behalf of organised crime and on behalf of other criminals as well as the identification of the indirect proceeds liable to deterrent confiscation orders.

115. This will also require an active prosecution policy targeting third parties in stand-alone, or autonomous money laundering cases. It is recalled that the 2013 FATF effectiveness Methodology will examine under Immediate Outcome 7 how successful jurisdictions are being in third party laundering cases, complex money laundering cases and stand-alone money laundering cases. Examples of successful money laundering cases involving transnational and domestic organised crime is a likely indicator of a regime that fits the characteristics of an effective system.

116. The types of money laundering cases most frequently encountered in practice in many jurisdictions involve money laundering on the same indictment as the predicate offence – typically in self-laundering, but also where the launderer can be prosecuted in the same proceedings as the author of the predicate offence. In such cases it is not problematic to establish the underlying predicate criminality. But what if the underlying predicate criminality cannot be prosecuted? Perhaps the perpetrator cannot be traced or there is insufficient evidence to convict a suspect even though there is clear evidence of predicate criminality. What if the prime suspect has died or fled? In these circumstances it is necessary to establish, to the satisfaction of the court, that element of the money laundering offence covering the offences from which the proceeds derived.

117. To prosecute the launderers alone means a “*stand-alone*” or “*autonomous*” money laundering prosecution – where money laundering is the only count on the indictment. For the purposes of this report no differentiation is made between “*stand-alone*” or “*autonomous*” money laundering as subsets

of money laundering. The real issue is how the underlying predicate criminality is established in such circumstances. MONEYVAL over several rounds has regularly recommended to jurisdictions that they challenge their courts more with these cases, otherwise prosecutors will never know in their own jurisdictions what levels of evidence their courts will require in this regard.

118. There is some guidance from the international standards to assist prosecutors. The Methodology for the money laundering offence on criteria 3.5 states that *“when proving that property is the proceeds of crime it should not be necessary that a person be convicted of a predicate offence”*. Article 9.5 of the Warsaw Convention requires States Parties to ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering. This seems now to be widely accepted in jurisdictions which resisted this principle for many years.

119. The Warsaw Convention goes further than this to assist prosecutors. Article 9.6 requires States Parties to ensure that a conviction for money laundering is possible when it is proved that the property originated from a predicate offence, without it being necessary to establish precisely which offence. Thus parties may implement Article 9.6 by establishing in a prosecution that the launderer knew (or suspected) that the property came from a particular class of predicate offence (e.g. drug trafficking) without it being necessary to establish the particulars of a specific offence of drug trafficking on a particular date. This is what was primarily in the minds of the drafters of that Article of the Convention 10 years ago.

120. There still continues to be much debate as to how particularised evidence should be of the underlying predicate criminality in autonomous and stand-alone money laundering cases. The Council of Europe standards in Article 6.5 undoubtedly require the prosecution to adduce circumstantial evidence to establish underlying predicate criminality. But case law, as will be seen below, in some jurisdictions has moved further and it may now suffice that the court can convict a money launderer where it is not clear what particular type of predicate crime was involved, but that the circumstantial evidence is such that the proceeds could only have been derived from crime.

121. In a leading judgement on this point in England and Wales, the Court of Appeal [in R. v Anwoir, Melatosh, Meghrabi, Elmograhbi (2008) EWCA Crim 1534] was, of course, careful to stress that it will all depend upon the facts. However, the Court of Appeal went on to say that, on the facts of this case, there was clear evidence from which the jury could infer that the money in question (laundered property/criminal proceeds) came from drugs and/or VAT fraud. The only innocent explanation that the money came from legitimate trading was said by the Court of Appeal to have been *“roundly rejected by the jury”*. The Court held that there are 2 ways of establishing that property derives from crime. The first is by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind is unlawful. The second is by evidence of the circumstances in which the property is handled, which are such as to give rise to the irresistible inference that it can only be derived from crime.

122. The second limb of the Anwoir judgement was followed in R. v FB (2008) EWCA Crim 1868. In that case the defendant was stopped at Heathrow trying to board a plane to Tehran and the defendant’s baggage contained £1,184,670. While the trial judge allowed a defence submission of no case to answer on money laundering, the Court of Appeal, following Anwoir said that the case should have been put to the jury to decide if the circumstances were sufficient to draw an irresistible inference that the money could only have been derived from crime (even if it was unclear which crime).

123. The Court of Appeal in England and Wales also followed the same line in a 2011 case R. v G (2011) EWCA 2140. Here the Court of Appeal upheld a money laundering conviction where G was arrested in

connection with a transfer of £200,500 in notes in cling film and plastic bags to another in a car park at 9.30p.m. G was unemployed and no legitimate source for the cash could be identified. It was conceded that there was **no direct evidence of the crime which generated the cash**. The Court of Appeal approved the trial judge's summing up to the jury, directing them on the inferences that could be drawn as set out in the second limb of the Anwoir judgement.

124. The Anwoir line of authority has been considered persuasive in jurisdictions other than England and Wales. Indeed there is some more general evidence of an increased inclination of the courts to accept cases based on circumstantial evidence where the predicate offence is unknown.

125. The case studies presented in the course of the present research revealed that the level of knowledge (and therefore evidence) in respect of predicate criminality in money laundering cases ranges from indications and suspicions in relation to the particular criminal activity generating the proceeds (see, for example, case studies presented by Serbia, the Republic of Moldova and Latvia in Chapter V) to indications of the categories of crimes committed by Organised Crime Groups, without a clear knowledge as to which precise crime generated the laundered property or proceeds (see cases presented by Belgium, Guernsey, Bulgaria, France, San Marino, Montenegro and Italy in Chapter V).

126. Thus from the above survey and international practice there are some positive indications that should inspire prosecutors in more jurisdictions to test what their courts require by bringing more stand-alone and autonomous third party money laundering cases – and particularly in respect of those who launder on behalf of organised crime. To this end, it is, in the context of this report, reminded that the new FATF Recommendation 30 requires, at least in all cases related to major proceeds-generating offences, designated law enforcement authorities to develop a proactive parallel financial investigation when pursuing money laundering, and associated predicate offences. As already noted, such financial investigations, if properly resourced with well-trained financial investigators, can lead to those third parties (including professionals) that launder on behalf of organised crime. It will be interesting to see how MONEYVAL States and territories respond to this new challenge in the coming round of mutual evaluations. It is recommended that domestic success stories in third party money laundering are widely shared among relevant competent authorities and throughout prosecution services in the jurisdictions concerned.

Make more use of FIU powers and expertise

127. LEAs and prosecutors should be encouraged to use more often the FIU's financial analysis capacity in operational cases and their powers of postponing transactions and monitoring bank accounts, as set out in the Warsaw Convention and in the domestic laws. Monitoring of bank accounts has proved to be a powerful tool in applying provisional measures and in financial profiling of the offender²⁷ (both at national and international level).

Use financial profiling

128. The financial profiling of the persons involved in OC cases (or in any other ML case), in order to identify possible unreasonable or unexplained wealth and to sustain the case in front of the Judge, needs to be used more routinely.

Use trained specialists and methodologies

²⁷ http://www.coe.int/t/dghl/monitoring/moneyval/Typologies/MONEYVAL%282013%298_Postponement.pdf

129. Complex cases are present in almost all areas but in the case of ML the complexity is about an area that is less known to lawyers (and many investigators). The survey indicated insufficient knowledge amongst the state authorities related to ML issues, which undermines the effectiveness of the system. Further education and training on financial analysis, financial profiling, and ML methods and techniques used by criminals is necessary.

130. Due to the increased incidence of cybercrime and laundering done via new technologies in OCGs' activities, jurisdictions expressed a real need for IT forensic specialists in the LEAs, without whom, gathering electronic evidence is virtually impossible.

131. The jurisdictions are encouraged to develop and use domestic methodologies, handbooks and best practices, in order to assist the LEAs in correctly assessing the financial profile of the suspect when OCGs are under investigation. When doing so, a requirement that criminal forfeiture should be considered in all cases, as well as instructions on asset identification, freezing and confiscation should be included.

Use expert witnesses

132. During some ML trials, it may be necessary for the prosecution to consider bringing expert witnesses to court to explain the normal or abnormal financial flows and, in particular, economic activity and commercial business conduct which can be considered to be unreasonable (contracts, legal documents, agreements, decisions etc.).

Develop national cooperation, coordination and feed-back

133. Jurisdictions need to enhance operational coordination and feedback. Even in instances where early administrative provisional measures were taken by the FIU, many MONEYVAL reports showed that the FIU frequently complained of insufficient feedback concerning any subsequent confiscation orders. Indeed statistical data in numerous MONEYVAL reports have indicated a general lack of information on the numbers and value of confiscations made in major proceeds-generating cases.

134. The prosecutors generally may need to take a major, if not the leading role in OCG investigations and coordination of further activities conducted by state authorities in such cases, if this is within their national competencies. They could initiate joint working groups and determine the other institutions to participate in accordance with their competences in ML investigation. The FIU should participate in such working groups by assisting with its expertise in the limits and according to its legal competences. Effective coordination is a prerequisite in cases where the investigative authority requests the FIU to suspend domestic or even foreign transactions, to block or to monitor bank accounts.

135. Jurisdictions certainly need to increase cooperation between LEA bodies in OCG cases and should encourage the creation of JITs which should include FIU experts in order to advise and improve on (if possible) the financial analysis capacity of LEAs. The research identified JITs as a very effective instrument in combating ML (and the respective predicate offence) especially when OC assets are involved (due to the higher complexity of the case). Moreover, organising JITs on a regular basis is required by revised FATF Recommendation 2, which provides that the jurisdictions should ensure that policy-makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities shall have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically both at the policy-making and operational levels. Jurisdictions may consider that cooperation at the operational level could utilise JITs, which it is advised could be set up, at least in major cases.

136. There should be feedback on these cases so that the FIUs also appreciate and understand the OC laundering features in order to manage effectively the cases and as appropriate, re-allocate its own resources.

Expedite international information exchange

137. Information exchange between jurisdictions should be faster and more efficient. The timeframe for FIU to FIU exchange needs to be shortened in many cases. Jurisdictions are recommended to raise more frequently problem areas in international cooperation before on-site evaluation visits.

138. During the workshops held in the context of the present report, it was emphasised by the participating experts that jurisdictions need to find better ways of prioritising international requests. Requesting jurisdictions need to be more precise in the information needed and not go on “*fishing expeditions*”. In major cases it may well be worth physically visiting counterparts to expedite cooperation.

139. Data received from FIUs is used for intelligence purposes only in some jurisdictions, whereas in fewer jurisdictions it can be used as evidence. It should be considered if usage of data from FIUs and information exchanged internationally could contribute to more efficient processing if it can be used as evidence. It is envisaged that exchange of information between FIUs could be the first step, followed by a MLA request for the same information, as the second step.

140. It is well known that international co-operation is critical for achieving major ML convictions in transnational cases. To reduce the effects of the difficulties associated with obtaining proofs from abroad, jurisdictions should consider implementing internal mechanisms to enable them to prosecute and convict for ML using as little information from abroad as possible.

Increase transparency of information on the real owners of companies and trusts

141. Numerous cases related to OC are connected to operations of fictitious companies or foreign companies where the beneficial owner is difficult to identify. As noted above, MONEYVAL warmly welcomed this G8 initiative on transparency of corporate vehicles. Jurisdictions are encouraged to follow the G8 core-principle on transparency, and to consider these issues carefully in the context of their own national risk assessments or in specific national action plans. Widening the information held by the commercial registers on beneficial owners of the companies; implementing verification mechanisms; widening the availability of the information on the corporate ownership at national and transnational level are ways to achieve real progress here and increase public confidence in our States’ capacities to detect and prosecute major criminals and deprive them of their ill-gotten gains.

Improve supervision

142. AML/CFT supervision is one of the highly effective ML/TF preventive measures. It was proven that when taking their investment decisions, OCG choose sectors with a lower or ineffective level of supervision. It is understood that OCGs use highly qualified experts as consultants when identifying the weakest points in the AML/CFT regimes, including in the level of supervision and in the legal framework. Effective supervision of financial institutions and widening the AML/CFT supervised sectors to the full extent required by the FATF Recommendations can contribute to the fight to stop OC assets infiltrating the legal economy.

143. The various ways in which employees of financial institutions have become involved in ML schemes, if they are proved in court cases, need to be more widely shared with other financial

institutions in the jurisdiction to assist them in amending and re-adjusting their internal controls systems to avoid such situations.

Utilise media campaigns

144. The use of money mules was reported as increasing and as being often linked to OC assets. In some cases the persons involved were aware of the illegal profile of the transactions but most of them were not, and became innocent victims. Jurisdictions are encouraged to consider media campaigns (particularly targeting Universities and schools) to draw wider attention to the risks associated with such activities.

III.4 Trends

145. OCGs continue to use **traditional methods of money laundering** such as “*smurfing*” funds through bank accounts. However, this section considers a number of trends that were identified from the analysis of the questionnaires received.

146. The notion of a trend in laundering organised crime’s assets contains two key elements: the first is the evolution of the organised groups themselves: how they relate to each other and what sorts of crimes are being committed, to what extent, and with what social effects; the second part is related to the manner in which they launder the illegally gained profits, which channels, investments and professionals they use. Although the scope of this research does not address OC as such, only the manner in which the proceeds are laundered, the two are to a certain extent related, because the predicate offence has an influence on the laundering method.

Exploitation of poorly regulated sectors

147. It is apparent that OCGs are aware of the AML/CFT vulnerabilities of various financial institutions and DNFBP sectors and they are orienting some of their investments to explore the under-regulated or ineffectively supervised areas.

Development of transnational infrastructure to launder funds

148. Another significant element of OCGs’ money laundering schemes is the geo-political factor. Corridors and channels used for the transport of illicit goods have specific infrastructure in place, including persons, networks, corrupt officials, and means of transportation. The more transnational OCGs are familiar with the local environment, the more the same channels are (or are likely to be) used for laundering purposes.

149. Court cases presented during the seminars organised during this project indicated that OC appear to keep the criminally acquired assets in a different jurisdiction from the one where the predicate crime(s) was (were) committed. This conclusion is reinforced by a recent study²⁸ which emphasises that, on the basis of financial intelligence collected on Mafia-type groups – primarily in Italy, the Italian Mafia prefers to investment in other Western European countries (mainly UK, Germany, France, Spain) and in a limited number of Eastern European countries (Romania, Albania and Croatia), while the

²⁸ Savona E. and Riccardi M., “*The investments of organised crime across Europe*”, presentation at the conference *The investments of organised crime in Europe*, DG Home Affairs, Brussels, 24 March 2014;

Russian/Georgian Mafia prefers Northern European countries (Sweden, Finland) together with an important part of Western Europe, and is less interested by Eastern Europe (with the exception of Ukraine and Poland). The Chinese Mafia investments are oriented virtually exclusively in Western Europe: UK, Spain, France, Italy, Belgium, The Netherlands and Germany²⁹.

Use of legal persons to hide criminally derived funds

150. When criminal groups penetrate the legitimate economy in order to legitimise their proceeds, they often use legal entities either as profitable businesses resulting from the investment of criminally-derived proceeds (renewable energy, waste management) or as a shield and as facilitators to carry out the (partial) legitimation (shell companies). In such cases (when a company's accounts are used) forging of the accounting documents to justify the unofficial liquidity, serves two unlawful purposes: to reduce the amount of tax payable; and to provide documentation (justification) in the ML process.

Use of professionals

151. Although not supported by national statistics, the information available indicated that criminal groups are supported by a wide range of professionals, working alongside the criminal activity: lawyers, accountants, financial advisers, corrupt public servants, etc.. Increasingly, in addition to using violence and intimidation (or instead of it), OC now operates through corruption which involves use of the criminal proceeds already laundered or in the process of being laundered. Therefore, OC, corruption and money laundering though distinct issues in reality often remain interrelated. This is discussed further under Section V.8 below.

Use of new technologies

152. OCGs continue to use **traditional methods of money laundering** such as money mules the banking sector and shell companies (often) located in "bank secrecy" jurisdictions to disguise the actual origin of the assets. However this research, together with other sources, confirmed that OCGs also make use of the new technological innovations such as pre-paid cards, electronic money and virtual currencies.

Use of non-financial sectors vulnerable to laundering of OC funds

153. **The construction** sector, construction work and trade are areas recognised as being amongst the most vulnerable. These are areas noted in almost all of the jurisdictions as extremely exposed to being used by organised crime (high value transactions, high profitability, low supervision, high security of investment).

154. **Real estate** (including land) remains vulnerable for the same reasons as above. **Agriculture**, for its stability, appears to be an emerging sector for the integration of OC proceeds.

155. As financial fraud is expected to expand, multiple **under-regulated targets** remain at risk and unprotected (e.g. the renewable energy market). Due to the high yield – low risk character of frauds, it is to be expected that more OCGs and criminals will be attracted to it. This is enforced by legislative complications when multiple jurisdictions are involved and technical developments exploited to help obscure the locations where frauds are committed and where the illegally obtained money and assets

²⁹ Please also see: Transcrime 2014, *Preliminary maps of EU funded project Organised Crime Portfolio* (www.ocportfolio.eu), March 2014

are transferred to³⁰. It is necessary to determine if reforms are needed to poor legislation allowing for loopholes through which money goes into these sectors, or whether this is primarily a supervision problem.

156. The area of **international trade** has also been identified as highly risky business area, especially in relation with off-shore zones. Money is transferred from a jurisdiction through payments for goods or advance payments for goods and services, transiting multiple jurisdictions and usually including an off-shore account.

157. The industries where **grants or contracts** are offered also present a particular risk. Due to the bureaucracy sometimes inherent in the process (which foster corruption), OCGs are more skilled in obtaining the grants, providing a legitimate source of income, at least until they are found to have stolen the funds. When grants are given, the **waste disposal** management sector also appears as particularly risky.

158. The **services industry** (especially bars, restaurants and hotels) as a whole still remains a threat. It is difficult to determine the real price of a service and whether the service was actually provided or only papers are manipulated in order to justify money transfers. Members of OCGs commonly use such transactions and contracts to launder their proceeds, as well as simply to spend the funds on a lavish lifestyle.

159. Nightlife, jewellery, exchange offices, the financial sector, tourism, casinos, procurement and construction are some of the sectors that continue to be vulnerable to infiltration by organised crime groups. By reinvesting illicit profits through legal economic mechanisms, these groups undermine the legitimate commercial activities in this area in a way that works against the free market and fair competition³¹.

³⁰ EUROPOL SOCTA Report 2013.

³¹ Council of Europe White paper on transnational organised crime 2014.

IV. Techniques for investigating and prosecuting the laundering of the proceeds of organised crime

IV.1 The risk assessment

160. The research showed that most of the jurisdictions have strategies for the prevention of OC but those deal with the problem of money laundering only indirectly and no special attention is paid to the links between certain types of financial transactions, categories of STRs, risky financial products and services, and OCGs' assets and activities.

161. The survey revealed that special risk analysis on organised criminal groups is performed periodically. Some jurisdictions rely on SOCTA reports produced by Europol, while others undertake the risk assessment nationally. The most common OC offences identified in the analytical process are drug trafficking, corruption, prostitution and human trafficking, smuggling of goods, VAT frauds and other tax crimes, illegal financial activity, extortion, cyber-crimes, etc..

BOX 2

In **Lithuania**, the risk analysis established that mainly national OCGs operate in the country. They have three levels of hierarchy and a moderate level of economic and corruption-related potential. Main spheres of criminal activities include trafficking in excise goods and narcotic substances as well as smuggling and property crimes. OCGs have international links and are flexible in adapting to new crimes and new territories.

Israel indicated in the reply to the questionnaire that most of the OCG proceeds are laundered by MBS. The reasons are related to the shortcomings in the regulation of MSBs and the use of MSBs to lend money which is proceeds of crime to innocent 3rd parties which makes it more difficult to identify and confiscate the assets. The laundering is finalised by the organised groups by collecting the debt.

162. In order to comply with the new FATF requirements on assessing risks and applying a risk-based approach, most of the respondent jurisdictions are in different stages of the risk assessment process.

163. The risk assessment, as a strategic approach, would provide jurisdictions with possible ways to deal with OC trying to launder their assets on a bigger scale, as contrasted with case by case analysis. For this purpose, gathering statistics and drawing trends is the first step. However, the survey did not identify significant steps taken in this direction by the authorities and limited information is available on the scale and the features of the ML issue in the context of OC cases.

164. The general observation is that although efforts are invested in the risk assessment projects, in most of the cases, there are no strategic documents dedicated to OC and ML issues seen and analysed together. Only in a few jurisdictions does the strategic analysis of OCG have a dedicated section for money laundering and asset recovery. The major benefit of such approach is a better understanding of the vulnerabilities and an improved ability of the authorities to deploy a focused and more effective response to combat OCGs and to trace, seize and confiscate the assets. Jurisdictions are encouraged to include a thorough analysis of the OCG component in their ML national risk assessment.

165. The strategic risk analysis on OCGs is generally conducted by the police forces and not by prosecution authorities.

166. Following the risk assessment, jurisdictions should be encouraged to include organised crime-related ML in their national strategies. This means, that beside the recognition of ML as a very important part of OCG activities, there is an analysis of cases to identify the ways OCGs operate and subsequently launder their assets in their jurisdiction and to establish the laundering characteristics. It is important to understand the manner in which OCGs act and to identify the typologies. Sharing this analysis between the national authorities (police, FIU, prosecutors, supervisors) and updating the strategies regularly is imperative. Nonetheless, jurisdictions should be alert to changing trends either related to new technologies or to OCGs reacting to avoid improving AML/CFT measures.

BOX 3

In **Bulgaria** the risk analysis is based on the awareness of the identified ML trends which are determined by two groups of factors: on one hand by the observed changes in the illegal activities and markets, and on the other, by the dynamics of the financial and economic environment. The global financial and economic crisis lead to the restructuring of the ML methods, due to the decrease of the foreign direct investments, the decline of several sectors (construction, real estate, trading on the Bulgarian Stock Exchange, etc.). A significant part of the proceeds generated by organised crime are subject to more usual forms of ML and do not normally use complex financial schemes.

In **Republic of Moldova, Slovenia** and **Slovakia** such strategic analysis is conducted by police forces.

In **Denmark** internal assessment of organised crime is made twice a year but is focused on crime areas rather than crime groups.

167. Although they do not have a national risk assessment, most jurisdictions take part in international research related to OCGs, so the actual risk is covered to a limited extent in those analyses, though they are more technical and team-building – which are important – rather than a preparation for strategic analysis. The participation in international initiatives differs, as can be noted from Table 2 below:

Table 2: Participation in international initiatives

	Developing contacts for easier investigations	Learning about investigative techniques	Giving ideas about how to analyse problems	Other ways	The jurisdiction does not participate in such research
Austria	x	x	x		
Albania	x	x			
Bosnia and Herzegovina	x	x			
Bulgaria	x	x	x		
Cyprus					
Hungary	x	x			
Italy	x	x	x	x	
Lithuania	x				
Macau SAR	x	x			
Republic of Moldova	x	x	x		

Montenegro	x	x	x		
San Marino					x
Slovakia					x
Serbia	x	x	x		
Ukraine	x	x			

IV.2 Detecting ML cases related to OC assets

FIU

168. The analysis of the responses received from the jurisdictions indicated that the FIUs do not have an operational definition related to OCG activity which could be used in their analytical work. The definition is to be found in the Criminal Codes but this does not assist the FIUs in detecting potential OC-related STRs. The identification of such suspicious transactions is usually based on the **number of persons** involved, which might indicate a relation to an OCG. The survey revealed that there is no alternative system used by FIUs in order to identify (and prioritise) the STRs potentially linked to organised crime.

169. The STR templates provided to the private sector **do not contain** a special mark, box or any other kind of labelling where reporting entities could note that the report might be related to OCG activities, but they have the possibility to indicate such suspicions in the descriptive section in the body of STR. The reporting entities are obliged to report, among other things, any significant element which has come to light in the course of its analysis and OC could be such a significant element.

170. The ability of the reporting entities to detect the OCG-related funds seems limited and the replies to the questionnaire indicated that such detection can occur either if there is information available (internet, media, online databases, or published verdicts) or the suspicions are typical for OCGs: significant cash deposits; drug trafficking suspicions; fast movement of funds into and out of the accounts; or partitioned transactions that suggest smurfing. Interestingly, according to the survey, indications of cybercrime appear to be one key-element to conclude that OCG might be involved.

171. According to the experience of the FIUs contributing to the survey, the most frequent proceeds-generating crimes identified in the OC-related cases are tax evasion, narcotics, frauds and e-crimes. These crimes are classified as highly risky.

172. In most of the responding jurisdictions, the OCGs' illegally gained assets are believed to be laundered and integrated into the real economy through the banking system (approximately 90% of cases). Besides the banks, the proceeds are exchanged for high value goods or use the bureaux de change, money transfer agents, broker-dealer companies, pension funds and leasing companies.

173. There are no distinctive procedures for OCG-related STRs in most of the FIUs. The survey indicates that such cases are analysed more thoroughly but the different approach is rather informal and is due to the fact that they are considered high priority cases, and thus, are analysed in more detail (using all available information sources). In addition, closer cooperation with the LEAs is involved. However, not all FIUs actually have a requirement to prioritise OC-related STRs clearly expressed in their internal rules.

174. The replies revealed that the main source of information for the FIUs concerning OCG assets and transactions are the STR filed by the domestic entities and the information received from foreign FIUs, in form of requests. The latter is valid mostly for jurisdictions that have low internal criminal activity and

important financial sector (e.g. Malta). The CTRs are relevant especially when linked with information received from LEAs, as in such cases, the connection with OC is pointed out from the very beginning of the analysis.

175. The majority of FIUs keep statistical records on the number of STRs and CTRs received but do not maintain data on OCG-related reports. Many FIUs participating in the survey do not have statistics on the total amount of money (or assets) involved in STRs and CTRs, although this information seems important both for OCG analysis and development of strategic analyses.

176. Although the information included in the CTRs proved to be relevant for the OC-related analysis, there are no statistics kept concerning the amount reported as cash transactions which were subsequently proved to be OC linked.

177. Only 5 jurisdictions participating in the survey maintained data about the number of OC-related STRs and 4 jurisdictions have data about the value of such reports. Five jurisdictions have statistics on the total value of CTRs. There are no jurisdictions with statistics about CTR related OCG.

178. This demonstrates that, although difficult to determine in an early phase of the FIU's work that a case is of OCG character, it is still possible, and when this is actually done, the quality and the speed of the analysis improves. In fact, it appears that identification of OCGs is mainly related to the FIU's strategic approach and long term policies concerning OC assets and transactions and when sufficient attention is paid to those, the results might be significantly improved.

179. The survey emphasised the importance of CTRs in the analysis of OCG-related cases and it was noted that in a significant number of responding jurisdictions the amounts involved in the threshold reports related to OCG proceeds was far higher than the sums involved in STRs.

Law Enforcement

180. Apart from the CTRs and STRs, a relevant source of information in detecting OC-related cases is the information received from LEAs in the form of requests for assistance. According to the answers received from the FIUs, in analysing the cases related to OCGs, access to police databases is critical to connect the data included in the STRs, CTRs or in any other financial information held by the FIU, to persons having a criminal record or being under investigation by LEAs. This will influence the direction of the analysis and would generate a speedy reaction in processing the case.

181. Based on the answers received it appears that access to police databases could be divided into three categories:

- FIUs that have direct access to police databases (12 FIUs out of which 6 are of administrative type)³²;
- FIUs that do not have direct access to such databases (13 countries)³³. In some of the jurisdictions information is obtained indirectly, based on case-by case requests;
- FIUs that have liaison officers (France, Belgium).

³² Ukraine, San Marino, Bulgaria, Hungary, the Slovak Republic, Austria, Denmark, Georgia, Cyprus, Azerbaijan, Trinidad and Tobago.

³³ Albania, Armenia, Czech Republic, Montenegro, Serbia, Poland, Malta, Republic of Moldova, Guatemala, Fiji, Macau SAR.

182. The databases held by LEAs are different from jurisdiction to jurisdiction and the majority of responses emphasised that there is no separate database related to OCGs but rather a unified record of all persons from the criminal milieu, including the persons whose criminal activities are linked to OCGs.

183. However, in San Marino, Bulgaria, Republic of Moldova, Serbia, Italy, Poland, Denmark and Lithuania (and, for example outside the CoE region, Macau Special Administrative Region (Macau SAR)) there are separate databases concerning OC groups, investigations and convictions. Where separate databases do exist, they contain information related to the members of the group (details related to committed crimes, role within the group etc.); the level of activities; when and which LE unit registered the OCG; level of organisation according to parameters evaluated from 1 to 5 (like: corruptive influence, financial power, etc.); composition of the group; locations where the OCG meets and which it visits; territory of its activity; criminal offences it commits; whether a person is attributable to an OCG etc..

184. In San Marino, the OC database contains all information on natural and legal persons investigated (natural persons: personal details, profession, criminal records, owned vehicles, family and affiliates, protests. Legal persons: registered office, purpose, shareholders or partners, vehicles, current and former directors, protests). The database is managed by the Police Force (Gendarmerie) with access granted to some specific Police units and the FIU (indirectly).

BOX 4

In **Italy** the Guardia di Finanza has databases emphasising:

1. a graphical representation of the presence in the national territory of the persons who have been or subjected to a measure of prevention pursuant to the anti-mafia legislation; and
2. allowing to create a map of organised crime in the area, with the aim of tracing, and in the places of origin and in other areas of the country, the composition of individual organisations, including areas under their influence.

In the **Republic of Moldova** there is an OC specialised unit within the Ministry of Interior which keeps a separate database on OCG members. However, information regarding investigations and convictions is not uploaded to the database. Currently certain efforts are made toward this direction.

In **Slovenia** there is a new electronic central case management system (CMS), which has been implemented in 2013. Based on the new CMS statistics and databases concerning OC groups, investigations and convictions would be possible to be gathered (reference to criminal offences investigated and indicted).

185. The survey revealed that only in a few jurisdictions does the FIU have direct access to the information related to OCG databases managed by LEAs. In some cases, the FIUs were not aware of the existence of an OC dedicated database in their jurisdiction although the replies from the LEAs revealed that such information did exist.

BOX 5

In **Denmark** the FIU has access to a database that keeps records on identified OCG's members, core members and accomplices, hierarchy, vehicles, surveillance, suspicion of crimes etc. The database contains details on on-going investigations).

IV.3 Analysing, investigating and prosecuting ML derived from OC activity

IV.3.1 Analysis

186. Most of the jurisdictions participating in the survey have chosen to apply the *all-crimes approach* to money laundering, thus any proceeds-generating offence committed by an OCG is a predicate crime (including the proceeds of tax offences). The only exceptions are as follows:

- Liechtenstein where tax related offences are not currently predicates for ML;
- Ukraine and Macau SAR (where there is an exception related to the requirement for the predicate offence to be punishable with more than 3 years of imprisonment).

BOX 6

In **Bulgaria** (where the *all-crimes approach* is applicable) there is another element required: namely the crime should be committed in the (financial) interest of an OCG. As such, if a member of an OCG commits a crime outside of the interests of the group, will not fall under the OC provisions.

187. As described above, the FIUs do not have specific instructions in dealing with OC-related STRs but in the majority of jurisdictions, informally they are considered higher priority and more attention is given to such cases.

BOX 7

The internal methodology of the **Bulgarian FIU** provides for the prioritisation of cases according to different indicators which include the existence of a suspicion of OCG involvement. The methodology includes specific instructions for dissemination of cases if related to OCG, namely to the OC specialised law enforcement unit.

In **Serbia** the internal procedure of the FIU provides step-by-step instructions for an analyst on how to deal with a subject of analysis. The cases related to OC are of **high priority** (for example, cases initiated by the Prosecutor's Office for Organised Crime or by Organised Crime Service in the Ministry of Interior).

In **Slovakia**, the Methodological Guideline of the FIU determines that if a case officer finds out that information from an STR is linked with a person who is under surveillance of or is a person of interest to the competent unit of the Criminal Agency such information has to be disseminated to this unit.

188. To determine links between the STRs and OCG, the FIUs heavily rely on LEA information. The degree of detail of the data received from the police varies. Few jurisdictions have specialised OC databases but in cases where such information is available it would include names of the groups, territory of the groups, names of the members, nicknames, addresses, weapons used, motor vehicles in their possession etc. Data on operational investigations³⁴ is maintained in very few jurisdictions but, when it is maintained, it includes very relevant information, such as whether the person is a member of an OCG, or is linked to an organised criminal group.

189. The type of access the FIU has to the police databases is equally divided amongst respondent jurisdictions as being carried out directly with the national units or indirectly, through a central body.

³⁴ It appeared that in some jurisdictions there are databases containing a wider range of information which include the on-going cases and links with persons that are not convicted nor part of the OCG.

190. The connection between the STRs and OC assets or activities is difficult to establish but when such a case is recognised, the majority of jurisdictions assign priority, and the cooperation channels (both domestic and international) are immediately activated. If necessary, in-depth analysis of OC cases may be extended to all financial institutions in the jurisdiction. However, in order to avoid any tipping-off, there is a case by case judgment on the proper procedure to follow.

191. If a LEA sends a request for information with an already identified OCG dimension, such a case is treated with priority in all jurisdictions.

192. The average time frame for the analysis of an STR to the dissemination to LEAs in OCG-related money laundering cases depends on the scheme's complexity, the volume of financial transactions, hidden links, the number of participants who can be detected at different stages and in respect of whom there is a need to collect additional information, the existence of links with previously analysed cases, the need for submission of requests for information to foreign FIUs and the period of time for receiving their answer, etc.. However, the survey revealed that in normal circumstances, the average time would normally be no longer than two or three months.

193. In terms of barriers, the responding FIUs mentioned the additional difficulties that might be posed by the need for information from jurisdictions which are not members of the EGMONT group, or from jurisdictions that do not provide necessary information to certain jurisdictions, etc..

IV.3.2 Financial investigations

194. The majority of the jurisdictions responding did not have a special administrative mechanism or law enforcement methodology which determines when a financial investigation in OC cases should start, and the LEAs have different approaches in relation to this issue. The survey revealed that when deciding upon the initiation of a financial investigation, there is no difference between an organised crime case and any other crime case.

195. In some jurisdictions, the financial analysis is automatically initiated together with the criminal investigation opened for the predicate crime (Republic of Moldova), while in other jurisdictions, in case of suspicions, a proactive examination and investigation activity is carried out, in collaboration with other authorities, but no other special mechanism is established (San Marino).

196. According to the survey, in most of the jurisdictions, the criteria for the initiation of a financial investigation are set forth in the legislation (Lithuania, Ukraine, Slovakia and Macau SAR). However, it is noted that the FATF standards (Recommendation 30) requires that a financial investigation should be initiated in all cases related to major proceeds-generating offences. According to the new standard, the designated law enforcement authorities should develop a pro-active parallel financial investigation when pursuing money laundering, associated predicate offences and terrorist financing which should include cases where the associated predicate offence occurs outside their jurisdictions. Jurisdictions should ensure that competent authorities have responsibilities for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Jurisdictions should also make use, when necessary, of permanent or temporary multi-disciplinary groups specialised in financial or asset investigations.

BOX 8

A special law in **Serbia** (The Law on Crime Proceeds Confiscation) defines the conditions, procedures and authorities competent for detection, confiscation and management of proceeds from crime of

individuals and legal entities. The procedure is initiated if the accused owns significant assets (approximate value of the assets exceeds €10,000). The Law does not define any specific time frame when financial investigation should be initiated but usually it starts during the preliminary analysis or in the later stage of investigation. The financial investigation can be initiated by the order of the public prosecutor in charge with the case in the pre-trial and trial stage, as well as after the enforceable verdict is pronounced.

In **Slovenia** the law regulates the civil non-conviction based confiscation of illegal assets. Though this is not a criminal procedure and such financial investigation is not a criminal law tool, financial investigation can be initiated if there are reasons to suspect that certain person committed a serious criminal offence, including organised crimes. A financial investigation is ordered by the competent State Prosecutor.

197. The main body competent to decide when a financial investigation in OC cases should begin is the Prosecutor, although some jurisdictions recognise the need for special rules and regulations providing how and when such investigations should be performed. In most cases, the jurisdictions rely on the professionalism of the investigators and the proactive approach of the participants in the law enforcement system.

198. In 2012 the FATF issued Operational Guidance on Financial Investigations which is a valuable tool in defining the investigative strategy, the objectives, dedicated action, the necessary resources, the training for investigators and use of the legal instruments available for a comprehensive, creative, consistent, and committed manner of conducting effective financial investigations³⁵.

199. The survey identified that there are no special investigative powers for the financial investigations carried out in OC cases. When OCGs are involved, special investigative measures are used, but there is no specific differentiation between the general special investigative measures and those used only in financial investigations. The main techniques identified were:

- surveillance and technical recording of telecommunications;
- access to the computer systems and computerised data processing;
- surveillance and technical recording of premises;
- covert following and technical recording of individuals, means of transport and objects related to them;
- undercover investigators and informants;
- simulated and controlled purchase of certain objects and simulated bribery;
- supervised transport and delivery of objects of criminal offence.

200. The monitoring of bank accounts was not mentioned as an investigative technique used in financial investigations although, according to the MONEYVAL typologies report on Postponement of transactions and Monitoring of bank accounts, jurisdictions consider the monitoring procedure to be a valuable power in tracing illegal funds and the fight against money laundering³⁶. It is likely that this was seen as a technique for preserving funds before they can be dissipated rather than as an investigative technique per se.

³⁵ http://www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf

³⁶ http://www.coe.int/t/dghl/monitoring/moneyval/Typologies/MONEYVAL%282013%298_Postponement.pdf

IV.3.3 Financial profiling

201. When mingled with licit funds and income, identifying the illegal assets and determining their extent is one challenge for LEAs. For this purpose, developing a financial profile of the defendant to establish the legal income compared with identified expenditures or living standards, might be a key component of financial investigations to define the financial gains or profits derived from the crime. Establishing the amount of the illegal proceeds provides the possibility to seize and confiscate, and offers circumstantial evidence for the predicate offence itself. For this reason, it is essential that financial investigators be proficient in the various methods of financial profiling, determining the legal income and establishing which evaluation method is applicable to a particular case.

202. Some jurisdictions make reference to the financial analysis of the transactions performed by the persons investigated for OC-related actions. Others do prepare a financial profile, but this is done occasionally and it is not based on a formal methodology designed to assist the investigators in correctly determining the legal, justified income and comparing it with the volume of wealth or assets held by the person in question. Understanding and handling the financial issues by LEAs is a critical point as, on the one hand the survey revealed that a significant proportion of the crimes in which OCGs are involved are financially related (tax evasion, fiscal frauds etc.), and on the other hand the successful tracing, freezing and confiscation of the illegally acquired assets depends on financial knowledge and skills. The interviewed prosecutors unanimously confirmed the importance of using the financial profile of the defendant in successful ML cases.

BOX 9

In **Italy**, financial profiles are reconstructed systematically from economic status of the subjects investigated and this is done on the basis of investigative procedures and practices. This allows the authorities to identify and apply seizure of assets which are not justified by the official income.

203. Notwithstanding the usefulness of financial profiling, the replies to the questionnaire were not convincing in demonstrating that all jurisdictions determine the financial profile of the persons involved in OC cases in order to identify possible unreasonable or unexplained wealth. Nevertheless, some of the replies demonstrate positive tendencies indicating that more attention is being paid to this issue, and efforts are invested in financial profiling.

BOX 10

In **Serbia** the police officers run relevant checks through available databases and create a profile of certain person, (e.g. create an asset chart presenting assets and legitimate incomes). These checks are conducted in the pre-trial and trial stage, but only for the purpose of investigation and collection of evidences pertaining to the actual criminal offence, since the criminal offence of Illicit Enrichment is not known in Serbian legislation.

In **Lithuania** the financial profiling methodology is still under creation and the competent authorities are examining the international experience in this area.

In **Montenegro** OCTA and SOCTA documents include the analysis of assets with OCGs origin. In Serbia for example special assets card, presenting assets and legitimate incomes is created in each OC-related case.

204. The new FATF Recommendation 31 stresses the need for investigators to have access to all necessary documents. This includes having powers to compel the production of financial records and obtain evidence. The Recommendation is designed to enable the use of a wide range of investigative techniques which include undercover operations, intercepting communications, accessing computer systems and controlled delivery. Specific requirements also include the establishment of mechanisms to identify the owner or controller of accounts, including the ability to identify assets without tipping off the owner and to seek and utilise information from the FIU.

205. The law enforcement authorities from the jurisdictions participating in the research have access to tax, customs, FIU and other financial information. It depends from jurisdiction to jurisdiction if and to what extent the access to this information is direct or is made via specific request. For the Police forces, the access to financial information is always subject to a prosecutor's approval.

IV.3.4 Confiscation and reverse burden of proof

206. In terms of recovery of OC assets, most of the responding jurisdictions use the provisions of their Criminal Codes, Criminal Procedure Codes and any special legislation on this issue. These tools, where in practice they fully apply all the FATF and Warsaw Convention technical standards, should provide a legal basis which is fully enabling the policy aim to attack OC using confiscation measures in the criminal process. It was noted that some jurisdictions also apply elements of civil confiscation where criminal process is not available.

207. Reversing the burden of proof is reported as one of the most important legal instruments for the achievement of significant asset recovery in OC cases. Of the responding jurisdictions, it appears that most existing legal systems now provide for some form of the reversal of the burden of proof or extended confiscation as it has been defined in the European Union. However, there are jurisdictions which continue to assert that the presumption of lawful acquisition of property is a fundamental principle which should be safeguarded. In such jurisdictions it remains necessary for the authorities to present direct evidence of the unlawful acquisition of alleged proceeds to criminal standards of proof. Nevertheless, during the meetings with the prosecutors, a slightly different perspective on this issue was raised, which may deserve further attention in the relevant jurisdictions. Some prosecutors argued that the fact of a lack of a visible legal source of assets does not of itself constitute a reversal of the burden of proof, but important direct evidence which can be presented in courts.

208. A significant number of the replies indicated that there is a low level of effectiveness in the application of provisional measures. This deficiency, in itself, constitutes an obstacle to successful asset confiscation, as given the length of the criminal process in many responding jurisdictions, the likelihood of available proceeds to be confiscated after conviction is remote. The limited use of provisional measures was attributed in part to the lack of training of the judiciary and prosecutors on the importance of early provisional measures. Some members of the judiciary in certain jurisdictions argue that they cannot act *ex officio* and make such orders, without a prosecution request as it would compromise their neutrality between the prosecution and the defence. Given this position, it is essential that law enforcement identify proceeds quickly in the course of the early investigation process and that

prosecutors are properly trained to make early applications for freezing and seizing in major proceeds-generating cases, particularly those involving OC.

BOX 11

In **Albania** there is also a special Antimafia law, where “*Preventive seizure*” is provided for the investigations on organised crime.

In **Italy** in the investigation stage two types of seizure can be distinguished:

a) in criminal proceedings pursuant the Code of Criminal Procedure, which:

- requires a high coefficient of evidence;
- is applicable in cases of disproportion between capital and income officially declared compatible on the basis of a reasonable time between the enrichment and the criminal activity;

b) in the field of preventive anti-mafia law, which:

- requires a lower standard of proof;
- is applicable not only in cases of disproportion, but also in the presence of “*sufficient evidence*” that lead them to believe that the goods are the result of illegal activities or constituters.

Since 2009 **Serbia** has introduced specific legislation according to which the burden of proof on the legality of the property owned by the defendant is on him, while the burden of proof with regard to the identification of the property and the amount of the legal income is on prosecution.

209. The table below sets out how frequently OC investigations include asset tracing and recovery procedures as well as seizure and confiscation.

TABLE 3 Use of Asset tracing, provisional measures and confiscations in organised crime investigations

	0%-4% of the cases	5%-25% of the cases	26%-50% of the cases	51%-75% of the cases	More than 75% of the cases
Austria				x	
Albania					x
Bosnia and Herzegovina					x
Bulgaria				x	
Cyprus					
Hungary					x
Italy					x
Lithuania					x
Republic of Moldova					x
Montenegro				x	
San Marino					x
Slovakia		x			
Serbia					x
Ukraine		x*			x**

* according to the Ministry of Revenue and Duties of Ukraine;

** according to the Ministry of Interior of Ukraine;

210. The above-mentioned results indicate that in most jurisdictions, in more than 75% of the cases, the OC investigations include asset tracing and recovery procedures as well as seizure and confiscation. However, this data should be used as a starting point in the analysis of the effectiveness of the confiscation regime in all the jurisdictions, as effectiveness was not always demonstrated in practice.

IV.3.5 Joint investigation teams (JITs)

211. The aim of a Joint Investigation Team (JIT) is to bring together a range of relevant expertise from a number of disciplines in order to establish a generically competent task force to investigate a certain type of crime or a group of criminals. The JIT may comprise representatives from a number of agencies who have a specific interest in a case and may also include persons with a specific expertise in investigation a generic type of crime (e.g. cybercrime, etc.); as such JITs are particularly appropriate when investigation organised crime.

212. Presentations given in the Prosecutors seminar in San Marino highlighted the value of the JITs particularly when investigating ML when organised crime's assets are involved.

213. JITs between FIUs and LEAs are organised in a number of jurisdictions and it is becoming increasingly common to arrange regular meetings between the FIUs and the representatives of the LEAs and prosecutors in the course of the work on cases, to determine the status of the analysis and investigation and the further steps to be taken.

214. In conducting OCG cases, FIUs support the LEAs in obtaining and analysing financial documents and conducting financial investigations and assets seizure when they have the adequate powers provided by the domestic Laws, participate in JITs and conduct monitoring of financial transactions.

BOX 12

In **Croatia**, the State Attorney's Office for Suppression of Corruption and Organised Crime established a department for investigation of pecuniary advantage gained from a criminal offence which is in charge of conducting financial investigation. There is a close cooperation with the Ministry of Finance experts (FIU) as well as with the police officials for financial investigations. These experts obtain and analyse the information, and according to the Croatian authorities, their expertise is of great benefit for the prosecutors investigating ML cases.

215. The EUROJUST JIT Manual³⁷ has set out the following advantages of using a JIT:

- Ability to share information directly between JIT members without the need for formal requests;
- Ability to request investigative measures between team members directly, dispensing with the need for Letters Rogatory. This applies also to requests for coercive measures;
- Ability for members to be present at house searches, interviews, etc. in all jurisdictions covered, helping to overcome language barriers in interviews, etc.;
- Ability to co-ordinate efforts on the spot, and for informal exchange of specialised knowledge;
- Ability to build and promote mutual trust between practitioners from different jurisdictions and work environments;

³⁷ <https://www.europol.europa.eu/sites/default/files/st15790-re01.en11.pdf>

- A JIT provides the best platform to determine the optimal investigation and prosecution strategies;
- Ability for Europol and Eurojust to be involved with direct support and assistance;
- Ability to apply for available EU, Eurojust or Europol funding;
- Participation in a JIT raises awareness of the management and improves delivery of international investigations.

216. The formation of a JIT helps to eliminate intelligence gaps and allows for the pooling of both intelligence and evidence that may not necessarily be available to individual agencies. In investigating complex crimes or complex criminal networks, the participants in a JIT can agree to assign specific aspects of the investigation to different agencies. This allows for an efficient and effective use of available resources and helps to avoid duplication of effort. In order to assist communication between JIT members it can be helpful to appoint a single point of contact in each participating agency.

217. In terms of membership, the JIT should not be limited to law enforcement agencies, but should be extended to the FIU when financial analysis is necessary. In certain circumstances, regulatory bodies and non-law enforcement government departments may have an interest in a particular case and may also have expertise that can assist and inform the JIT members. Likewise, in some situations regulatory actions (e.g. on-site visits, disciplinary actions, etc.) may be more appropriate and more effective than law enforcement actions; this is particularly the case when investigating financial crimes. Likewise, regulatory bodies and non-law enforcement government departments may be well placed if disruption of criminal activities is required or in raising awareness with the private sector and the public of the risks imposed by a particular crime.

218. Within Recommendation 2 of the revised FATF Recommendations, there is an essential criterion requiring jurisdictions to ensure mechanisms to enable policy makers, the FIUs, law enforcement authorities, supervisors and other relevant competent authorities to co-operate, and where appropriate, co-ordinate domestically with each other concerning the development and implementation of AML/CFT policies and activities. Such mechanisms should apply at both policymaking and operational levels. Thus the JIT (operational co-operation) are now a part of the international standard in the AML/CFT area. In addition, Recommendation 30 requires now that *“Countries should also make use, when necessary, of permanent or temporary multi-disciplinary groups specialised in financial or asset investigations”*.

219. Most jurisdictions participating in the survey had experienced coordination problems. One way of improving the situation seems to be giving the leading role to the prosecutor, with responsibility to organise all other state bodies and delegate the duties in OC-related ML cases.

IV.3.6 Prosecution

220. According to the research, the average duration for finalising a prosecution in a money laundering case when OCGs are involved depends on the complexity of the case and the existence of the international element. Mutual legal assistance is one of the main reasons for the prolongation of the investigation period. The general rule in the responding jurisdiction is that ML investigations when OC assets are involved are complicated and lengthy and are rarely completed in less than a year. The complexity of the case and thus of the requests made to foreign counterparts, may prolong the investigation up to three years. In a significant number of jurisdictions, the LEAs cannot assess the average length of a ML case when OCG are involved.

221. As for the access to the information containing bank secrecy, generally the prosecutors receive or obtain information regarding bank accounts either from the FIU or according to a court decision.

BOX 13

The **Moldovan** investigators and prosecutors have access to the databases of tax authorities, customs, related to individuals and legal persons data, real estate and vehicles.

In **Hungary**, the law enforcement authorities (including the investigative authority of the, National Tax and Customs Administration (NTCA) which is responsible for investigating tax crimes), have indirect access – upon request – to the suspicious transaction reports either as the result of HFIU’s analysis and dissemination, concerning violation of international economic restrictions; criminal misuse of military items and services and dual-use items and technology; money laundering; failure to comply with the reporting obligation related to money laundering; budgetary fraud. The encrypted data and information shall be restored in their original condition by the supplier prior to communication or delivery, or made cognisable to the requestor thereof.

In **Georgia** the law enforcement bodies which are in charge of financial and OC investigations have online access to tax and customs databases.

222. Bulgaria, Bosnia and Herzegovina, Austria, Slovenia, Lithuania, Israel, Italy and Macau SAR have a procedural methodology, handbook or best practices to help the prosecutors in asset searching, tracing and recovery when investigating and prosecuting OC cases. In San Marino this is an ongoing process.

BOX 14

In **Bulgaria** in 2010 a Manual for ML investigation was issued at the initiative of a non-governmental organisation and aimed to be used by the competent governmental authorities, such as the State Agency for National Security (including the FIU), Prosecutor’s office, MoI and NGOs.

In **Hungary** if there is data which indicates that there are proceeds which seem to be illicit, it is part of the investigation to trace them and reveal their origin. Hungarian authorities participated to the development of the European Union Delivering Excellence in Financial Investigation (EUDEFI) handbook, which can give general guidance in this regard. The EUDEFI project, was funded by the European Commission and produced by Spain, United Kingdom and Italy, with the help of participants from all member states and candidate countries.

223. In some jurisdictions there is a legal framework defining the maximum length of the investigative and prosecutorial process (usually provided in the criminal procedural legislation or in the internal methodologies) which helps the practitioners in prioritising the actions they should take during the pre-trial process. In those jurisdictions where there is no such period defined, the working process may end with delays and the inability to achieve proper convictions. In general the prosecutors and LEAs define the time frames for their work on OCG cases.

BOX 15

The Criminal Procedure Code of the Republic of **Serbia** limits the duration of investigation to **six months** in case of regular procedures, and to **one year** in cases of criminal offences which are to be prosecuted by an authority of special jurisdiction, as prescribed by separate laws (Prosecutor’s Office against

Organised Crime and Prosecutor's Office against War Crimes). Both deadlines are considered as providing a delay in which it is objectively possible to terminate the investigation.

Unless an investigation is terminated within the prescribed deadlines, a public prosecutor is obliged to notify their superior prosecutor on the reasons why the investigation has not been terminated. The latter has a control function and may instruct undertaking specific actions which will result in a swifter termination of the investigation (they may issue mandatory instructions).

The authorities explained that the investigation duration was limited to avoid unduly prolongation and it is considered that the legal limits of six months or a year are sufficient to conduct the investigation. Particularly in cases where the defendant is in detention during the investigation (which are the majority of cases in the Prosecutor's Office for Organised Crime), the limited duration is a good solution as the duration of detention itself is limited to a maximum of six months.

224. Prosecution agreements (including agreements on witness immunity and asset confiscation) were considered by both judiciary and prosecution as a useful tool in reducing the costs and the timing of the criminal procedures.

225. In some jurisdictions (Slovak Republic, Bulgaria, Italy, Serbia) specialised courts have been introduced as part of the judicial system. The specialised courts have nationwide competences in a series of specific offences usually related to corruption, organised crime, terrorism or other forms of serious crimes. The specialised courts have jurisdiction over the regular courts if one person is prosecuted for more than one crime, of which one falls under the competence of the specialised courts, and in the particular circumstances of the case the different offences should be tried together.

226. The judges of the Specialised Criminal Courts have special status, must have relevant experience in the matter, but the specific training is not provided in all cases. The proceedings before Specialised Criminal Courts are not regulated by any specific procedural rules but the general criminal proceedings apply.

227. The main advantage of having specialised courts is considered to be the removal of local links (relationships) for ensuring fair and independent decision-making outside the local structures either within the Police Forces or among local politicians. Other benefits include:

- specialisation of the judges and prosecutors in OCG cases;
- more specialised training;
- creation of JITs with high qualified police and investigating experts;
- achieving a higher level of transparency and increase of public trust in the ability of the judicial system to bring OCG to justice.

228. The complex system of special material jurisdiction of the Specialised Criminal Court as well as the existence of the Office of Special Prosecution creates further conditions for generalisation and unification of procedures regarding decision making, unified level of penalties for identical criminal acts, more unified practice in evaluating different pieces of evidence and more efficient procedures in unifying jurisprudence.

229. Due to the special conditions, many cases handled by the specialised courts appear to have a more efficient approach with the cases being finalised faster than in the regular courts. However the terms are not always comparable as being limited to serious crimes. The specialised courts often have a much lower workload than the other courts.

BOX 16

In **Slovakia**, the Office of Special Prosecution was established as government body as part of the General Prosecutor's Office with jurisdiction on the entire territory of the country. Any prosecutor of the Office of Special Prosecution is competent to act before a Specialised Criminal Court, to supervise the criminal proceedings including preparatory actions and to prosecute individuals suspected of commission of crimes within the jurisdiction of the Specialised Criminal Court. The Minister of Interior of the Slovak Republic established special Police units with nationwide competence in order to reveal and investigate criminal acts falling within the competence of the Specialised Criminal Court.

The authorities exemplified the efficiency of the Specialised Court with long sentences and high confiscations imposed. In one case, 15 persons (members of an organised criminal group operating in the whole territory of the Slovak Republic) were sentenced for extremely serious criminal acts. The sentences of deprivation of liberty were imposed from **24 years to 1 year**, protective supervision, obligation to compensate damage caused, and the obligation to undergo a medical treatment. For 11 sentenced persons, the **criminal forfeiture** was imposed for their entire property.

In another case a sentence of 15 years of imprisonment was given for extremely serious fraud. The justification for the confiscation was that the defendant purchased high value goods (the diamonds) with money obtained through criminal activity as he had no legitimate financial means available.

230. In other countries (Romania) there are no specialised courts but there are specialised Prosecutor's Offices that have been established with the specific jurisdiction and tasks for the detection, prosecution and trial for the offences of organised crime and other serious offences (which includes money laundering). In Serbia and Bulgaria there are both: specialised courts and specialised Prosecutor's Offices.

BOX 17

In **Serbia** there is a Special Department of the High Court in Belgrade dealing with organised crime cases. This is provided by the Law on Organisation and Jurisdiction of Government Authorities in the Suppression of Organised Crime, Corruption and other Serious Criminal Offences.

In **Bulgaria**, the specialised prosecutor's offices are created with the same structure as the specialised courts – namely Specialised Prosecutor's Office and Specialised Prosecutor's Office of Appeal. The Specialised Criminal Court (first instance court) is a centralised institution (with no territorial branches) situated in Sofia. The criminal offences under the jurisdiction of the Specialised Criminal Court (essentially those committed by or for organised criminal groups) are listed in the Penal Procedure Code (PPC) and include the serious crime offences. The Specialised Criminal Court of Appeal is a second instance court for decisions taken by the Specialised Criminal Court. The Supreme Court of Cassation is the supreme judicial instance in criminal and civil cases. It exercises supreme judicial review over the proper and uniform application of laws by all courts. It has its seat in Sofia. It is also supreme judicial instance for decisions taken by the Specialised Criminal Court of Appeal.

IV.3.7 Other useful practices

231. The replies indicated that some of the most valuable tools for the tracing, freezing and confiscation of OC property are:

- analysis provided by the FIU which can be used not only to detect money laundering, but to prove numerous predicate offences;
- other FIU information;
- domestic cooperation and joint investigation teams;
- stricter legislation (all crimes approach, the possibility to use the reversal of the burden of the proof, broader reporting system – covering all DNFBPs for instance, administrative confiscation, etc.);
- monitoring of bank accounts powers;
- controls of the cross border movement of cash and currency;
- (good) financial profiles;
- monitoring of financial operations of the suspected clients, temporary suspension of transaction;
- use of special investigative techniques;
- exchange of information in real time.

BOX 18

In **San Marino**, successful ML convictions were achieved by using the logical proof of the origin of money from a criminal organisation (the person was proved to be member of an OCG), while the precise identification of the crime perpetrated by the organisation was not necessary. Transactions of large amounts of money, inconsistent with the economic activities of the subjects to which they formally refer, were considered effective to demonstrate the connection between such funds and organised crime.

232. The prosecutors indicated that the data received from the FIUs is useful in ML cases related to OC, especially due to their capacity to swiftly obtain financial information. The FIUs' assistance in tracing the property owned by the investigated person (bank accounts, real estate) and the ability to obtain data from foreign FIUs were equally mentioned.

233. The main outcomes pointed out by LEAs from the involvement of the FIU in OCG-related financial investigations are to:

- **speed up** the criminal investigation;
- **collect** information, proof, evidence;
- contribute to asset **tracing, seizure and confiscation** (FIU tool being the suspension of transaction);
- identify the **beneficial owner** of the assets;
- create **financial profiles** and **financial flows**;
- perform **financial analysis**;
- identify company and personal **connections, links**;
- obtain faster financial information from **abroad** instead of mutual legal assistance;
- obtain faster **bank and tax data** via FIU without using prosecutorial or judicial gateways;
- identify the **perpetrators**.

234. The analysis of the answers received from various jurisdictions leads to a conclusion that the FIUs' financial analysis is not routinely used by LEAs and prosecutors, but the jurisdictions that do use it consider it as one of the most effective tools in tracing and freezing OCG's assets. Another interesting

finding relates to the cross-border controls which were considered as an effective instrument in tracing, seizing and confiscating OC assets. However, very few jurisdictions actually have statistical information on this issue, which is an indicator that the connection between the cross-border cash (and derivatives of cash) and OC is not widely known or understood.

235. Another way of improving the level of stand-alone ML convictions and confiscations was the building up of a case theory where in addition to the financial profile, the prosecutor should demonstrate in the court the sources of wealth or assets provide by the defendant are not credible (slot machines, internet sales etc.). JITs may be helpful in financial profiling and building a case theory.

V. Obstacles and challenges

V.1 Obstacles

236. The main obstacles experienced by the responding jurisdictions in successful **investigations** in ML cases when OC assets are involved were:

- Obtaining evidence abroad when executing rogatory letters;
- Obtaining information and evidence from offshore jurisdictions;
- No trace or no link to the real beneficial owner of offshore companies, when gathering information from abroad;
- Differences of views between LEAs and prosecutors. On one hand, the investigative authority considered that certain financial transactions, investments made beyond the predicate offence were money laundering. On the other hand, the public prosecutor's office adopted a contrary point of view, stating that if the action could be linked with the predicate offence, then it does not constitute a separate crime;
- High level of evidence required by prosecutors for the indictment relating to money laundering.

237. The main impediment to achieving **convictions** identified by the survey is the lack of trace or link to the real beneficial owner of offshore companies, and the difficulties in gathering information from abroad.

238. Other reported obstacles:

- Collection of evidence in ML cases connected with OCG which need expert witnesses from various agencies, which in some cases are located abroad. For this reason any time limits for investigation need to have built in the capacity to be prolonged;
- The lack of "*self-laundering*" criminalisation in the legislation is of particular relevance in a case of OCG proceeds, because this means that there will be no parallel prosecution in circumstances where the laundering offence carries a higher penalty than that for the underlying predicate; also, there is no deterrent for self-laundering of criminal proceeds. The absence of self-laundering situations where ML carries higher penalties than the predicate crime might encourage defendants to say they were complicit in the predicate offence and plead guilty or risk connection with that offence knowing that the sentence will be lower in any event;
- Lack of appropriate training available for the LEAs and prosecutors carrying out the investigation can lead to insufficient or unconvincing court cases. Judiciary participating in the research noted that very complicated cases in this area can be presented by prosecutors. The judges emphasised that it is an art to present in court a complex case in a simple manner, which is critical where juries are involved;
- The survey revealed that the complexity of the financial flows and the techniques employed by the perpetrators in ML cases is particularly challenging for many investigators (due to the specific knowledge required of forensic accounting and finances) and that they tend to avoid them for this reason;
- Difficulties in proving that the laundered property (often presented in a form other than money) has been derived from the crimes. The very high criminal standard of proof concerning the *Mens Rea* of the suspect, proving their knowledge that the assets were derived from a criminal activity;

- There appears to be a reluctant attitude of the prosecutors to test the barriers by bringing more third party ML to courts and proving the illicit origin of the assets using circumstantial evidence;
- Overloaded prosecutors. Prioritisation of counts or charges is necessary. In some jurisdictions, the principle of opportunity is not known and all charges must be dealt with regardless of their relevance and social danger. To achieve effective deterrence of OC, the respective ML cases should be considered a priority. This issue is closely linked with the prosecutor's appraisal system in some jurisdictions which does not always take into account the complexity and the relevance of the cases prosecuted but only their number.

239. Apart from the above impediments indicated by the jurisdictions participating in the research, the survey included a question related to the challenges encountered both by LEAs and prosecutors in investigating and prosecuting ML resulting from OC activity: that is to say an especially difficult aspect which does not necessarily impede the success of the case (as above), but poses a particular burden on the investigators:

- Witness immunity;
- slow international cooperation especially with off-shore zones;
- difficulties in tracing property, proceeds;
- seizing and freezing overseas proceeds from criminal activities;
- complexity of cases;
- identification of beneficial owner and offshore bank account owners;
- risk of an information leak (tipping off) especially by bank clerks who are recruited by OCG to inform them (against a monthly allowance) about any LEA requests in relation to the companies belonging to the group;
- obtaining data on suspected persons' bank accounts and their turnover ;
- obtaining information in real time;
- opportunities offered by the globalisation (e.g. lower or inexistent border controls inside supra-national jurisdictions, fast banking transfers in large geographical areas);
- to trace the beneficial owner and prove the illegal origin of assets;
- collecting evidence concerning the predicate offence or collecting evidence from foreign jurisdictions.

V.2 Organised crime infiltrating financial institutions

240. According to the replies to the survey, the infiltration of the public and private sectors by OCG is done through corruption and intimidation, which remains a serious threat especially in the context of the compliance obligation of the financial institutions and DNFBPs. Corruption appears in many forms, as bribery, abuse of office and conflict of interest.

241. When corrupting financial institutions, the purpose of OCGs is to obtain information, manage the risk of having their financial transactions reported to the national FIU or determine that the financial institution's employee should abstain from checks and inspections in certain areas.

242. Based on the experience of the respondent FIUs, it is very difficult to identify a corruption component in laundering of the proceeds of OCG, especially in the early phases of analysis. For the reporting entities, in the process of analysing data with a view to filling an STR, when a corruption

component is considered, the participation of a PEP in the respective transaction appears to be an indicator.

BOX: 19

In **Hungary**, an organised criminal group bribed the employees of a domestic financial institution in charge of managing bank accounts of companies founded by the group, in order that they provide information if the investigating authorities request data in relation to financial transactions regarding the concerned companies. Their role also encompassed the task of not generating STRs with regard to the bank's compliance officer. The financial institution's employees were not actually members of an OCG but only helped the group for financial interest. They were indicted with corruption related charges.

In a **Belgian** case, an Eastern European Bank (EEB) was used by its' managers for laundering money using the correspondent banks accounts (located in Western Europe) as transit accounts. One financial institution identified some suspicions and disclosed the case to the FIU. The information gathered by the FIU indicated that 75% of the EEB's customers were companies located in tax havens and only 5% of the bank's activity was domestic. The majority of the clients were shell companies and 10% of the clients had direct links with OCGs. After the first disclosure, three other banks froze the assets of the EEB which went bankrupt. The case was referred to the country of origin but no prosecutions or convictions were achieved there.

In **Serbia** an investigation was led against the head and members of an OCG which produced false documentation and used bank clerks (e.g.: manager of branch office and member of the board deciding on the loan requests) who were themselves members of the OCG, enabling unjustified loans to a large number of persons. The money obtained from the loans was kept for the personal use of the head of the OCG and its members, and another part this was utilised to create legal entities and purchase real estate and luxury vehicles. Criminal charges were pressed against the OCG for association for the purpose of abuse of office, forgery of documents, forgery of official documents and money laundering.

The **Ukrainian** law enforcement agency exposed 4 officials of a bank branch (chief, cashier, chief expert) all being alleged members of an OCG responsible for theft of assets of the banking institution by means of registration of fictitious loans and legalisation of the subsequent proceeds. It was established that the persons involved were aware that the meetings of the credit committee were not organised, that credit files were not properly kept, and fictitious data was entered in the reports of the credit committee in order to transfer the assets from a credit account to the current account of the borrower. About 80% of credits were withdrawn in cash and was spent on OCG members own needs. The rest was invested in the economic activity of the private enterprise. A criminal case was initiated for misappropriation, embezzlement, legalisation (laundering) of proceeds from crime, forgery, sale or use of forged documents and abuse of power or official powers. The case was forwarded to the court.

In **Guernsey** a case involving a US securities fraud committed from a base in a South-American country proved to have been directed by a Costa Rican company hiding its identity behind a multitude of smaller brokerage firms largely based in the US. The main conspirators in that case are serving a range of prison terms up to 20 years, imposed in 2011 and 2012 by the court in US. In order to facilitate this fraud, it was necessary to hype the sale of 'penny' stocks (stocks listed on the unregulated securities market) to unsuspecting and usually UK investors, before the mass sale of the stock at a predetermined time and date, leaving the vast majority of genuine investors out of pocket. The Guernsey connection is that an unregulated corporate service provider was willing to provide nominee beneficial owners (distinct from

nominee directors) – individuals who in law owned the brokerage accounts from which the shares were bought and sold, thereby preventing the authorities from identifying the actual South-American company behind the sales drives’ and as a consequence, allowing a ‘pump and dump’ scheme worth \$20,000,000-\$30,000,000 to prosper. This did not require knowledge of the predicate criminal scheme but did involve a willingness to mislead the US authorities, in order to frustrate law enforcement enquiries, the prosecution say. The evidence has been obtained from 6 different jurisdictions and includes access to Hotmail accounts in America. A lengthy trial is due to take place in 2015.

243. The cases provided to the project team confirmed that if the banks knowingly participate in laundering schemes, the corresponding banking relationships are particularly vulnerable, as the responding institutions would not have any concerns about the customers actually performing the transactions, and the sums transferred through the accounts of a bank are considerable.

244. One difficulty in detecting OC infiltrating financial institutions is that it is almost invisible. The managers of financial institutions are normally already wealthy people, having already important legitimate incomes and assets. Thus it is much more challenging to detect unlawful (corrupt) additional wealth.

245. As emphasised by the examples provided³⁸, the state-owned companies appear to bear a separate risk as shortcomings exist regarding their supervision, where legislation is unclear and politicisation impedes merit-based appointments and the pursuit of the public interest. Moreover, there are insufficient anti-corruption safeguards or mechanisms to prevent and sanction conflicts of interest. There is little transparency regarding the allocation of funds and, in some cases, purchase of services by these companies. Recent investigations into alleged misuse of funds, corrupt practices and money laundering linked to state-owned companies indicate the high level of corruption related risks in this area, as well as the weakness of control and prevention³⁹.

³⁸ The reader is referred to the Serbian case presented in the typologies chapter below.

³⁹ EU Anti-Corruption report 2014.

VI. Typologies of laundering the proceeds of the OC

VI.1 General

246. When analysing the manner in which OGC launder their proceeds, the situation varies significantly across the responding jurisdictions. In nearly half of jurisdictions, all three stages of the laundering process are present, but there are jurisdictions where only the layering and the integration phase are dominant. Interestingly, there were answers pointing to a mix of placement and integration, with the intermediary stage being absent.

247. Not all law enforcement agencies and prosecutors have relevant statistics on OCG cases or available statistics were frequently incomplete or inconsistent. (See tables in the Annex)

248. The most frequent crimes identified as the main activity of OCGs are narcotics and tax crimes. The other crimes listed are less relevant for OC activities but other examples were given by some jurisdictions participating in the survey: racketing, extortion fraud, misappropriation and bankruptcy and migrant smuggling.

249. The value of organised crime provisional measures varies from €2,500-3,900 million to tens of thousands of euros per year, depending on the size of the jurisdiction, the proceeds-generating criminal activity and the maturity of the judicial system.

250. Jurisdictions do not routinely disaggregate their statistics into self-laundering and autonomous third party cases with some exceptions: in Poland half of the ML cases are autonomous and half are self-laundering and in San Marino they are all third party, as self-laundering was only incriminated recently.

BOX 20

In **Italy**, the investigative experience has shown that criminal organisations are resorting to the services provided by professionals (especially accountants, lawyers, bank officials) when necessary to accomplish complex "*shields*" of legal entities (trusts, trust companies, legal entities located in tax havens) through which they dissimulate the track of the crimes and hinder the identification of the origin and destination of the cash flows.

In **Lithuania**, the analysis of the activities of OCGs involved in economic crimes revealed a close cooperation between groups specialising in smuggling and illicit circulation of goods; money couriers and professionals such as lawyers and experts in accountancy and finance.

251. There are no overall statistics concerning the incidence of participation of the professionals in the laundering process on behalf of OCGs but according to the survey, it varies from a quarter of cases (San Marino, Austria) to half (Slovakia, Serbia), and even some jurisdictions report most of the OCG laundering cases involve professionals (Romania, Israel, Ukraine, Bulgaria, Hungary). Poland, Malta, Bosnia and Herzegovina, Slovenia and Lithuania consider that the professionals only rarely participate in laundering of OCG proceeds.

252. As emphasised by the tables in the Annex, with few exceptions, there are important discrepancies between the number of investigations and the number of convictions in ML cases regardless of whether OCGs are involved or not. The main impediments to successful convictions indicated by the prosecutors were related to the need for evidence and information from abroad and from *offshore* zones in particular. Tracing of objects of laundering was noted as the biggest challenge in OCG ML investigations.

However, the need for evidence from foreign jurisdictions may be overstated, given that the experience of some jurisdictions shows that ML convictions can be achieved in the absence of a conviction for the predicate offence or without having clear proof demonstrating the predicate offence abroad.

253. The responding jurisdictions do not keep statistics on ML investigations, prosecutions or convictions in respect of those who own or control financial institutions but the survey revealed that seven of the jurisdictions indicated that such cases exist in various stages of the judicial procedures in respect of employees and directors of financial institutions (San Marino, Austria, Serbia, Ukraine, Hungary, and Romania). Owners of financial institutions (MSBs) have been indicted with ML only in Israel.

254. The main laundering methods used can be structured geographically:

255. **Central Europe⁴⁰**: cash courier, bank accounts of individual person and offshore companies, cash withdrawals (using ATM machines and bank branch offices), straw man, shell companies, property and real estate dealings, dead (fictitious) commercial bargains, use of trustees and of offshore zones loans.

256. **Baltic countries⁴¹**: property and real estate business, luxury goods (cars), incorporation of cash based business (coffees and car wash outlets) and (fictitious) trading activities.

257. **Eastern Europe⁴²**: cash couriers, bank account of offshore companies, property and real estate business, credit from banks (instalment with black money) and loan bargains (instalment with black money).

258. **South and South Eastern Europe⁴³**: cash withdrawals in bank branch offices by individuals, fictitious commercial deeds, loans from offshore jurisdictions, offshore companies bank accounts, real estate transactions (between friends and family members), money transferred in a loop, credits from banks reimbursed with black money), purchase of real profitable companies to use as front for laundering schemes or as investment, use of straw man (including as shareholders which hand over the dividends to OCGs), under invoicing, escrow accounts and use of trustees.

259. The transnational component of OCGs is largely present in all responding jurisdictions (either “frequently” or in “most of the cases”). The interviews indicated that OCGs frequently do not keep the dirty money in the same jurisdiction(s) where the predicate offence(s) is (are) committed.

260. Once the laundering process is terminated, the resulting assets are cash or bank deposits, followed by real estate properties, luxury items and securities. Precious metals and stones as well as other luxury items (watches, vessels, airplanes and cars) are also present. The use of the real estate sector together with commercial companies to launder and integrate illegal assets is equally emphasised by other reports⁴⁴.

TABLE 4: The most common types of assets identified as laundered (integrated) proceeds of organised crime⁴⁵

Country	Precious Metals and stones	Securities	Luxury items	Real estate	Cash or bank deposits
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⁴⁰ Austria, Hungary, Slovakia.

⁴¹ Lithuania.

⁴² Ukraine, Republic of Moldova.

⁴³ Italy, Montenegro, Bosnia and Herzegovina, Bulgaria, Serbia, Slovenia.

⁴⁴ EUROPOL SOCTA Report – 2013.

⁴⁵ The countries gave marks from 1 to 6, 6 being the most commonly laundered assets.

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	FIU	LEAs	Prosecutor's office	FIU	LEAs	Prosecutor's office	FIU	LEAs	Prosecutor's office	FIU	LEAs	Prosecutor's office	FIU	LEAs	Prosecutor's office
Republic of Moldova	-	-	-	-	-	-	-	-	-	2	2	2	6	6	6
Serbia	2	2	2	3	4	3	4	3	4	6	5	6	5	6	5
Croatia	1	1	1	3	3	3	3	3	3	6	6	6	3	3	3
Bulgaria	2	2	-	4	3	-	3	4	-	5	5	-	5	6	-
Denmark	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Liechtenstein	3	3	3	2	2	2	3	3	3	3	3	3	6	6	6
Cyprus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Georgia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Slovenia	5	-	5	3	-	3	4	-	4	2	-	2	1	-	1
San Marino	1	1	1	3	3	3	3	4	3	2	4	2	6	5	6
Ukraine	2	4	2	4	5	4	3	1	3	5	3	5	6	6	6
Armenia	-	-	-	-	-	-	-	-	-	4	-	4	6	-	6
Slovakia	2	2	2	1	2	1	3	4	3	6	3	6	2	6	2
Albania	-	-	-	-	-	-	-	-	-	-	5	-	-	6	-
Lithuania	-	5	-	-	3	-	-	4	-	-	6	-	-	5	-
Hungary	-	1	-	-	1	-	-	4	4	-	4	5	-	6	6
Montenegro	-	1	-	3	3	-	-	4	-	6	6	-	5	5	-
Bosnia and Herzegovina	-	2	-	-	5	-	-	3	-	-	6	-	-	4	-
Malta	-	-	4	-	-	-	-	-	5	-	-	3	-	-	6
Israel	-	-	3	-	-	1	-	-	6	-	-	4	-	-	6
Poland	-	-	1	-	-	-	-	-	1	-	-	2	-	-	6
Total	18	24	24	26	34	20	26	37	39	47	58	50	51	70	65

261. In the field of confiscation things seem to move slowly in the right direction. Very few jurisdictions (if any) do not have confiscations for ML although, more often, it is the case that no proper statistics are kept. However there remains a big gap between the estimated economic loss and the recovered assets. The confiscated items range from real estate (both buildings and land), vehicles, companies' assets, money in form of cash or bank accounts and business premises.

262. In the reported period (2011-2013) around 1,400 OC investigations were undertaken in 12 European countries⁴⁶. In the same timeframe, the number of OC ML investigations range between 74 and 81 in the responding states. The situation is similar so far as indictments are considered in all ML and OC ML cases. The number of indictments is almost 400 annually for all ML cases, the number of OC ML cases is only 67-100, this appears to be decreasing. The number of convictions in all ML cases is declining also: in 2011 only 51; in 2012 only 21; and in 2013 only 7.

263. Very few jurisdictions keep statistics on the seized funds related to cross-border physical transportation of cash which are proceeds of OCG. Thus, it is difficult to conclude whether or not there are links between the two. Jurisdictions would benefit from collecting such data in order to perform a strategic analysis and to better understand the risk related to OCGs.

264. Only two countries provided statistics on the seized OCG assets at the border.

TABLE 5: Organised Crime assets seized at border crossings

	2011	2012	2013
Albania	€159,990; \$140,700	€319,650; \$76,000; £17,000; AED 96,650	€607,000; \$48,100
Italy	€36,969,780	€47,192,922	€258,270,949

265. Information on the cross-border physical transportation of cash (including seizures) is collected by the San Marino authorities (FIA and Fortress Guard) but the possible links with OCGs are not considered in that specific context but only if an investigation starts.

266. According to the survey, the top six ML techniques used by OCGs are:

- The use of cash couriers (money mules);
- The use of bank accounts of natural person and offshore companies;
- Use of straw man;
- Real estate transactions;
- Money service business providers;
- Use of professionals.

267. The most frequent crime identified by the responding jurisdictions as the main proceeds-generating activities of OCG are: **tax frauds** (mostly VAT and excise fraud); **drug related crimes** (narcotics); **various types of e-frauds** and **smuggling** of high taxed goods (which in essence is a form of tax evasion). According to the replies, human trafficking and the sexual exploitation are present as OC predicates but to a lesser extent. Some jurisdictions also indicated extortion, counterfeiting of goods and electronic products, intellectual property rights fraud and robbery.

⁴⁶ The reader is referred to the Tables in the Annex to the report.

268. The use of money mules is often associated with all ranges of IT frauds but is not limited to them. One of the reasons why the money mules technique is associated with OC is the need for a structure and network in order to achieve the laundering. Thus is more difficult for an individual criminal to actually commit the predicate and to manage the money mules. The existence of money mules can imply that the activity is connected with OCGs.

269. In some cases the mules are members of an OCG but more often they are people that are looking for a job on the internet and are recruited for what they believe is a legal job. In case of the latter, even when caught by a LEA, the mules cannot provide any information on the scheme's organisers because they are not aware of the real beneficiary of the financial flows. However, the interviews with the LEA and prosecutors indicated that the possibility that they did not rule out a knowing participation by mules. Some jurisdictions indicated that the use of money mules is increasing.

270. To reach the real mastermind behind some laundering cases, the LEA must get information from servers located in other jurisdictions because in the absence of IT generated proofs, the link between the proceeds and the crime is difficult to be established.

VI.2 Red flags and indicators

271. It is difficult to determine the indicators of OC laundering because OC is mostly using the same techniques utilised by any other criminal. What the drafters of this report did was to identify the most common red flag and indicators that characterise OC money laundering that can be used in the FIUs' financial analysis to recognise the cases where OCGs might be involved:

- Multiple parties or persons involved in the STR;
- Links with OCG;
- Use of money mules;
- Transfer to or from off-shore zones usually described as loans or credit reimbursement;
- Beneficial owners difficult to identify and/or located in off-shore jurisdictions;
- Cash transactions in large amounts and usage of high denomination banknotes;
- Structured cash deposits used as collateral to guarantee loans;
- Use of a straw man;
- Involvement of many jurisdictions in a scheme;
- Indication of e-crimes coupled with significant amount of money involved in the transaction;
- Use of temporary transit accounts and escrow accounts;
- Large number of transfers between a group of individuals and accounts made in a systematic way.
- Multiple companies fictitious invoices;
- Suspicious use of bank credits;
- Funds sent or received to/from jurisdictions known as being risky for drugs or human trafficking, without apparent economic or legal purpose;
- Small amounts of funds are transferred via alternative remittance system from/to abroad;

272. In practice OCGs utilise all methods of laundering that are available to them. There are, however, certain characteristics that are unique to OC laundering:

- Complexity of transactions. OCGs with multiple national and international contacts will use a complex range of transactions in order to avoid confiscation of proceeds and to disguise the origin of funds. OCGs are able to adapt quickly to changing law enforcement and AML/CFT environments and will therefore use a range of methodologies.
- Complexity of structures. There are few good reasons for developing complex and obscure legal structures which disguise the ultimate beneficial owner.
- Quantity. The sums involved are large. Although they may be broken into smaller transactions, the ultimate aim will be to launder large sums of funds.
- Bribery and intimidation. The techniques used to perpetrate crimes will also be used to launder the proceeds. This will include bribing or intimidating employees and officials in financial institutions and DNFBPs in order to launder funds and provide apparent legitimacy to transactions.

VI.3 Complex transactions

CASE 1 - Lithuania

273. The Financial Crime Investigation Service received information about OC cash smuggling from Poland to Latvia through the territory of Lithuania, carried out by Lithuanian and Latvian citizens. The investigation was initiated in co-operation with the LEAs from the jurisdictions concerned. At early stages of the investigation, links with accomplices located in the Czech Republic and Ukraine were identified and thus, the investigations were extended to those jurisdictions.

274. It was established that the leader of the OCG was a Vietnamese citizen residing in Ukraine who was giving instructions to three persons in Lithuania who systematically (2-3 times a week) transported illegal proceeds in cash from Germany, Czech Republic and Poland via Lithuania to Latvia. The amount transported on each occasion was about €/\$250,000-300,000. It was identified that the criminal activities carried out by this group were the import of under-priced consumer goods (to avoid EU taxes) resulting in large amounts of cash which needed to be subsequently laundered and sent back to the suppliers in Asia.

275. Three groups of money mules were identified, out of which one consisted of the representatives of a Latvian commercial bank and the two others were operating widely in the Baltics and other jurisdictions providing ML services. The role of the group operating in Latvia was to change the criminally acquired cash into non-cash financial assets, usually through bank accounts opened on behalf of companies registered in secrecy havens. The cash was transported to Latvia through cash couriers who handed it over to other groups who already had assets in their bank accounts. After the receipt of this cash, the second group made transfers from Latvian banks to accounts of Lithuanian nationals held in Singapore, Hong Kong and China, as a payment for the purchased goods. In the investigation process it was estimated that over time more than €100,000,000 and \$300,000,000 were legalised in this manner.

276. In the investigation process, about 60 additional companies were detected as a different branch of the scheme, the link being the laundering group operating in Latvia. The main source of the money in this case was tax fraud acts committed in Latvia and Lithuania (and possibly in other jurisdictions) for the legalisation of unofficially purchased steel scrap.

277. Altogether, the investigation was extended to more than 170 bank accounts, in which there were over 150,000 bank transactions.

278. Three money mules (Lithuanian citizens) were arrested and €265,000 found in the interior of their car was seized. The funds used in the ML scheme (more than €4,000,000 in total) found in the bank accounts of 60 companies were frozen.

279. The Lithuanian authorities consider that this case is a good example of international co-operation and information exchange. The collaboration was aimed not only at the interests of Lithuania, but also to preclude acts detrimental to the budget of the European Union, to identify international illegal money flows and to dismantle transnational crime.

CASE 1 - Red flags indicators:

- Transfers from/to offshore zones;
- Involvement of many jurisdictions in a scheme;
- Multiple parties or persons involved in the STR;
- Use of money mules;
- Cash transactions in large amounts and usage of high denomination banknotes;
- Large number of transfers between a group of individuals and accounts made in a systematic way.

CASE 2 – San Marino

280. The case involved two different OCGs which were co-operating for laundering purposes.

281. The first group was Chinese, located and operating abroad, and involved in illegal activities such as smuggling of goods and migrants (involving the misuse of counterfeited identification documents) and counterfeiting of goods. The illegally obtained funds were mainly transferred through money remittances to China. The San Marino banking and financial systems were used as a complementary mechanism to transfer illegal funds (mainly) to China, in favour of:

- Chinese natural persons; and
- Legal entities having English names, which led the investigators to the conclusion that they were incorporated in other jurisdictions.

282. The financial investigations carried out by the San Marino authorities indicated that the Chinese group contacted financial institutions requesting to establish business relationships. Subsequently, money in cash form was deposited.

283. The second group was Mafia-type and needed cash to finance their illegal activities such as loansharking. The group had cheques generated by VAT frauds or issued by legal companies in favour of fictitious companies, having had names evoking the real estate sector, but which were in fact used only to simulate legal commercial activities. All these entities were created in recent years, with nominees as evidence of their presence in public business databases. To hide their tracks, their offices were transferred several times in numerous cities.

284. For laundering purposes the Chinese and Mafia-type OCGs members opened business relationships at banking and financial institutions in San Marino and cleared their positions: the Mafia-type group opened accounts and deposited their cheques, and immediately withdrew the value in cash,

on the basis of the deposits made by the Chinese customers. At the same time, the funds generated by the deposit of cheques were then used to make wire transfers to China.

285. This clearance system satisfied the requirements both OCGs: the cash generated by the illegal Chinese activities was used by the Mafia-type group to perpetrate illegal activities, while the funds generated by the cheques (illegal activities of Mafia) were deposited in current accounts and thus transferred to Chinese accounts in favour of persons indicated by the Chinese customers.

CASE 2 - Red flags indicators:

- Multiple parties or persons involved in the STR;
- Links with OCG;
- Cash transactions in large amounts;
- Structured cash deposits used as collateral to guarantee loans;
- Involvement of many jurisdictions in a scheme;
- Use of temporary transit accounts and escrow accounts;
- Large number of transfers between a group of individuals and accounts made in a systematic way.

CASE 3 - Slovenia

286. In 2008 the Slovenian Customs identified a bag on the rear seat of a car at a border crossing which was found to be full of banknotes (more than 400 €20 banknotes, more than 400 €100 banknotes and more than 8,000 €50 banknotes, totalling more than €500,000). The money was seized. The initial suspicion was triggered by the fact that the driver was a Serbian national, having a Portuguese passport and driving a car with Italian plates.

287. The Customs sent an STR to the FIU which, after a brief analysis, notified the LEA and the prosecutor about ML suspicions related to drug trafficking. The FIU continued their analysis by seeking to collect more information about the origin of cash. However, the international information requests did not bring any added value.

288. The suspected person (supported by a lawyer's office) presented the Customs documentation about his business in Portugal claiming that this was the origin of the cash. Customs judged this documentation as insufficient and did not unfreeze the cash. 14 days after seizure, the suspect was imprisoned for a different matter and only the lawyers' office represented him in these procedures.

289. This money smuggling was just a part of a series of criminal offences conducted by an OCG in several jurisdictions. The operation was carried out in the following manner:

- money (cash) resulted from drug trafficking came from Serbia and was handed to Slovenian members of an OCG;
- the Slovenians smuggled the money through Africa to South America where drugs had been purchased;
- transportation groups (South American sailors) delivered the drugs to Italy;
- a specialised part of the OCG sold the drugs through Europe (mainly Italy), collected money and transported it back to Serbia.

290. In Serbia and Italy, several natural persons have been indicted, detained or found guilty for drug trafficking and money laundering (including the head of the OCG). All over the Balkans (Serbia, Croatia, Bosnia and Herzegovina) LEAs confiscated real estate and other laundered assets (including a sugar factory).

291. In Slovenia a number part of the people who transferred money to South America were found guilty. The head of the Slovenian part of the OCG is still under investigation and assets in the form of real-estate totalling €7,000,000 remain to be confiscated.

CASE 3 - Red flags indicators:

- Multiple parties or persons involved in the STR;
- Cash transactions in large amounts and usage of high denomination banknotes;
- Use of money mules;
- Involvement of many jurisdictions in a scheme.

CASE 4 – Bulgaria

292. This typology is based on multiple STRs received from different reporting entities. At the beginning, (2008-2009) the scheme was simple and consisted of multiple internet crimes (mostly Trojan horse frauds) committed abroad (in various jurisdictions) and related to natural persons' ID data theft; but over time the scheme became more complex. The proceeds were transferred from the victims' bank accounts to Bulgarian bank accounts opened in the name of natural or legal persons who were controlled by the OCG. Subsequently, the money was withdrawn in cash by the account holders or their representatives.

293. Another form of internet fraud was to clone bank web-pages in order to steal the personal data, empty the bank accounts of the victims, and then transfer the money into accounts opened in Bulgarian banks by natural persons.

294. Money mules were recruited in two different ways:

- In the first scheme, thousands of e-mails were sent to natural persons having e-mail addresses with Bulgarian domains. The e-mails contained a standard text which appeared as though it had been translated into Bulgarian using automated translation applications giving the appearance that the text was not written by a native speaker (there were indications that it might have been composed by a Russian speaker). The messages offered a highly paid job with an "*international financial company*". The company gave details about its business and the reasons why it was profitable to use natural persons for market research. To prove their competences, the candidates were required to open bank accounts where money below the AML/CFT reporting threshold (€5,000) was transferred, withdraw this money in cash, retaining a specified commission, and then send the money abroad (to one Eastern European country) via a money remittance system.
- In the second scheme, the recruitment was done directly in front of bank branches. The member of the OCG waited for persons to come out of the bank and then asked if they wanted to earn some money. Those who responded positively were transferred a relatively small amount of money (below the AML/CFT reporting threshold), which they were supposed to withdraw in cash, retain their commission, and then send the money abroad (to the same Eastern European country) via a money remittance system. This second system not the preferred option for the OCG

because the risk was higher as it required face-to-face contact and if arrested, the money mule could identify the recruiter.

CASE 4 - Red flags indicators:

- Multiple parties or persons involved in the STR;
- Use of money mules;
- Large number of transfers between a group of individuals and accounts made in a systematic way;
- Indication of e-crimes coupled with significant amount of money involved in the transaction;
- Small amounts of funds transferred abroad via alternative remittance system.

VI.4 Obscure ownership of the funds and corporate vehicles

CASE 5 - Belgium

295. A foreign bank B, established in Eastern European country Y, opened two accounts in Belgium for correspondent banking purposes.

296. An analysis of the transactions performed in the Belgian accounts revealed that they were used as transit accounts. The incoming funds were transfers from the accounts of companies opened at bank B. 75% of bank's B customers (approximately 460 customers) were companies headquartered in tax havens. Only 5% of the transactions were related to customers in the country Y. The outgoing transactions on the Belgian accounts consisted of payments (by order of the customers of bank B) to various counterparties across the world. A large number of these transactions were performed in USD and between 2008 and 2009 the amounts totalled up to over €1 billion.

297. Given the international character of the case, CTIF/CFI (the Belgium FIU) sent requests for information to at least ten different FIUs through the Egmont Secure Web (ESW). Requests for information were also sent to Belgian customs, the State Security Department and the fiscal authorities. The Belgian FIU also checked its own database for all counterparties, as well as police databases and public sources.

298. The analysis revealed that the majority of the clients of bank B had to be considered as shell companies, administered by trusts, lawyer's offices and/or companies specialising in constituting offshore companies.

299. The analysis also revealed that several of these companies and/or economic beneficiaries were known to be involved in serious and organised tax fraud, corruption, embezzlement, fraud and organised crime. It was established that more than 10% of the identified customers were directly related to criminal activity. Taking into account the international context of the case, a percentage of 10% was regarded as very significant.

300. Bank B involved another Belgium bank to execute the suspicious transactions, probably because it deemed it quite unlikely that a bank would disclose another bank's activities. However, it was the Belgian bank who took the initiative to report the transactions on the accounts of bank B to CTIF/CFI. The Belgian bank closed the accounts of bank B soon after it had made a disclosure to CTIF/CFI.

301. It should be noted that despite the substantial amount of the transactions in USD, there were no financial correspondents to carry out transactions in this currency. The FIU of country Y confirmed that

bank B had been the subjects of several STRs concerning infringements of AML legislation and/or infringements of the Bank Secrecy Act.

302. The method used by bank B enabled it to conceal the origin of the funds: receipt of money on the accounts in the home country and transfer of part of these funds in an aggregated way to two Belgian correspondent accounts in order to carry out payments in favour of third parties. Thus, each separate transaction performed in country Y was then grouped with other transactions and transferred to the bank in Belgium. This made it difficult for the bank in Belgium to determine the origin of the money.

303. On the basis of the data collected, CTIF/CFI decided that it was probable that bank B offered its customers the possibility to perform unlawful financial transactions through a foreign bank (the Belgian bank), without the foreign bank being able to trace the origin of the funds. The Belgian FIU forwarded the case file to the Public Prosecutor on the basis of a suspicion of money laundering probably related to organised crime.

304. After CTIF/CFI had forwarded the case file, it received STRs from three other Belgian banks concerning bank B (similar transactions taking place on the *vostro* accounts), as well as an FIU request. These disclosures were made soon after the judicial authorities made public that they were investigating a huge money laundering case concerning bank B. The judicial enquiry concerning the foreign bank is still ongoing.

CASE 5 - Red flags indicators:

- Transfer to or from off-shore zones;
- Beneficial owners difficult to identify and/or located in off-shore jurisdictions;
- Involvement of many jurisdictions in a scheme;
- Use of temporary transit accounts and escrow accounts;
- Large number of transfers between a group of individuals and accounts made in a systematic way.

CASE 6 - Romania

305. The Romanian FIU received an STR regarding non-EU citizen A, who received €35,000 from an EU company (C1) on three consecutive days with the explanation “*loan under agreement no. x/2012*”. The amounts were exchanged into Romanian currency (RON) and withdrawn in cash.

306. The financial analysis revealed that in 2012, the same company (C1) had sent €200,000 to non-EU citizen A, using the same explanations of “*loan/invoice*”. The money was withdrawn in cash and exchanged into RON on the same days it was received.

307. Citizen A was linked to EU citizen B and they were shareholders of the Romanian company R (a textile and garment manufacturing business). Citizen A was a proxy on the accounts of citizen B and company R.

308. Between 2011 and 2012 citizen B was the beneficiary of transfers totalling €1,000,000, sent by two EU companies – C1 and C2. The motives indicated for the transfers were: “*loan*”, “*other transactions*” and “*wages*”.

309. The final destination of the amounts was that €800,000 was exchanged in RON and withdrawn in cash by citizen B and €200,000 was transferred to the personal accounts opened by citizen A.

310. When the accounts of company R were analysed, it was discovered that citizen B repeatedly deposited significant amounts in cash with the explanation “*loan to company*” into these accounts. The deposits were carried out the same day and in the same amount with the funds being withdrawn in cash from the accounts of citizen B.

311. Out of €800,000 received by company R, €300,000 was used for real estate purchases, and the remaining amount was transferred to citizen A’s country of residence.

312. The reply to the information request made to the country of origin of citizen B revealed that he was a director of company C1, and he was the subject of an investigation as member of an OCG involved in illegal narcotic shipments. A European arrest warrant was issued in October 2012 for citizen B, and he was extradited by the Romanian authorities to the requesting Member State. He was charged with being a member of an organised crime group that transported drugs (non EU jurisdictions – Romania – EU jurisdictions) using company R as cover.

313. Based on the information received on B, as well as the identified financial flows, the case was passed to the General Prosecutor’s Office.

CASE 6 - Red flags indicators:

- Suspicious transfers described as loan;
- Funds sent or received to/from foreign jurisdictions, without apparent economic or legal purpose;
- Links with OCGs.

CASE 7 - Guernsey

314. The case concerned a retired banker (L) at a private bank, who was able to introduce undeclared cash into the banking system on behalf of property developers (D). He achieved this was through a wealthy and elderly businessman (P) and client of the private bank. For whatever reason, P required large amounts of cash to be delivered to his home address by L (£100,000 each time). L, as a trusted private banker, had unrestricted access to P’s accounts. The Ds handed L undeclared cash which he then passed on to P. In order to balance the books, L created false invoices to justify transfers between P and D which then allowed L to hand P equal amounts of cash, originating from D. During an 8 year period, L spent over £1,000,000 of money from P’s account on himself, his family and also female dancers. By the time of the investigation, P had died, meaning his explanation remained untold. L was convicted after trial of one count of entering in to an arrangement to launder money on behalf of others which was an alternative to a number of theft charges relating to the funds he had spent from P’s account. He received a 5 year prison sentence and paid back confiscation set at over £450,000.

315. The case established a number of important legal principles in the Bailiwick of Guernsey, notably that it is not necessary to establish the predicate offence, if the way the property is handled can only lead to one conclusion.

CASE 7 - Red flags indicators:

- Multiple fictitious invoices;
- Beneficial owners difficult to identify and located in off-shore jurisdiction;

- Cash transactions in large amounts;
- Use of straw men.

VI.5 Significant amounts involved in the transactions

CASE 8 – Italy

316. The investigations concerned a criminal organisation of a “*ndrangheta*” type, headed by the powerful “*ndrine of Locride*” (Zone within Calabria region), and highlighted an important example of the penetration of organised crime in the business world. This was implemented through the management and control (including indirect or mediated) of tourist and residential real estate complexes, located in the Ionian-Reggio Calabria area. The investigations identified a transnational profile with the involvement of professionals and foreign companies, in particular, with registered offices in Spain and the United Kingdom.

317. The acquisition of property was made possible by huge flows of money from Spain and the United Kingdom into the bank accounts of Italian companies.

318. These resources enabled the criminal organisation to gain control of individual building complexes through an international corporate structure, consisting of Italian and foreign companies engaged in real estate brokerage.

319. Special features arising from comparison with similar previous investigations were that in almost all cases, the money flows from abroad, were sent to bank branches, established in small towns of the Locride Area; in some cases even located immediately adjacent to homes or places of interest to subjects related to the heads of local “*ndrangheta*” clans.

320. The case concluded with the execution of 20 arrest warrants and the simultaneous seizure of financial resources and assets with a value of approximately €450,000,000.

CASE 8 - Red flags indicators:

- Multiples parties involved;
- Links with OCG;
- Involvement of many jurisdictions in the scheme;
- Large amounts transferred to/from multiple jurisdictions to accounts linked to OC figures.
- Large number of transfers between a group of individuals and a company’s

CASE 9 – Montenegro

321. The case was initiated following receipt of two STRs from two different commercial banks (relating to transactions totalling over €1,100,000). The same natural person (M) appeared as the sender of funds in both STRs and the declared purpose of the transactions was “*help/ assistance- gift*”. According to the first STR, the client AA opened an account and one day later a significant amount was transferred by M, from an account opened with a bank in country X. Client A withdrew a part of the sum in cash.

322. According to the second STR (received the next day), another client, natural person B, who had recently opened an account, received a significant amount from M from the same bank from country X.

On the same day, B withdrew the whole amount. Another transaction was made the next day, following the same pattern and a cash withdraw request was made. The FIU suspended both the cash withdrawal request submitted by B and subsequent cash withdraw requests made by A.

323. Subsequently, the FIU received information (from the domestic LEA) that the persons involved in the STRs were related and part of an OCG and that other connected accomplices intended to perform similar transactions which would conclude with cash withdraws. The compliance officers had been warned by the FIU so that they could take appropriate action if such patterns were identified.

324. Subsequently, a third STR (involving natural person C, who was part of the same OCG) was sent to the FIU because the transaction followed the same “*modus operandi*” and the funds were transferred from the same country X. The SWIFT message contained no details regarding the sender of the funds or the purpose of transaction. Furthermore, the domestic bank notified the FIU that it had received information from the ordering foreign bank that the funds were proceeds from internet fraud and thus, the foreign bank required the return of the funds; however, the bank was not able to return the mentioned funds because the FIU had postponed the transaction and the Higher Prosecutors Office extended the postponement.

325. Prior to the identification of the laundering scheme, the competent state authorities noticed that the subject persons (A, B and C), though unemployed, were spending large amounts of cash, purchased luxury vehicles and spent substantial amounts in tourist resorts on the Montenegrin coast. This was one indication that led to the OCG. Foreign FIUs informed the FIU that the subject persons had criminal backgrounds in their respective jurisdictions.

326. As a result of these actions, the FIU temporarily suspended 5 transactions, the suspensions were extended by the order issued by Higher Prosecutors Office and the subject natural persons were under sentence of imprisonment. The case is currently in the court process.

CASE 9 - Red flags indicators:

- Multiple parties or persons involved in the STR;
- Multiple STRs;
- Links with OCG;
- Cash transactions in large amounts;
- Involvement of many jurisdictions in a scheme;
- Indication of e-crimes coupled with significant amount of money involved in the transaction.

CASE 10 – Bosnia and Herzegovina

327. Following an international information request, the FIU started an analysis of the transactions performed by a “*drug lord*” and his accomplices. Following the investigation conducted in Bosnia and Herzegovina and abroad, three persons were indicted for laundering €7,000,000 on behalf of a drug cartel.

328. The illegal drug trafficking (large quantities) operated from South America to Europe. The main predicate offences had been committed in countries A and B where criminal proceedings were pending. In Bosnia and Herzegovina, the ML criminal case was brought before court (based on objective factual circumstances) mainly grounded on the data and information provided by the authorities of countries A and B.

329. To launder the proceeds, the drug money was transferred from countries A and B to bank accounts opened in Bosnia and Herzegovina by legal entities registered in different countries (Bosnia and Herzegovina, Country A and Country B and offshore jurisdictions), based on false invoices, false commercial contracts, false agreements for mutual cooperation, money lending agreements etc.. The Bosnian companies were not formally owned by the "drug lord" but by his accomplices.

330. A part of the money was sent back to companies in countries A and B. As an example, €1,000,000 was transferred by a company from country A to a company in Bosnia and Herzegovina based on a false invoice for an alleged delivery of large quantity of corn (which never happened). Part of that amount remained with the company in Bosnia and Herzegovina, and the other part was transferred to a company in country B based on a false agreement for money lending in the course of businesses.

331. The investigation was conducted by the FIUs in cooperation with police units in three jurisdictions and it was established that total assets of €11,500,000 (shares, other financial assets and an airplane) were laundered using legal entities. One defendant was convicted for ML and the assets were seized and then confiscated.

CASE 10 - Red flags indicators:

- Transfers from/to offshore zones described as loan;
- Involvement of many jurisdictions in a scheme;
- Multiple fictitious invoices;
- Funds sent or received to/from jurisdictions known as risky for drugs or human trafficking, without apparent legal purpose;
- Links with OCGs.

CASE 11 – Bulgaria

332. A Bulgarian legal entity, Company A, was the subject of an STR based on the suspicion that substantial amounts were transferred from two other Bulgarian legal entities L and B (over €5,000,000 in total) with the explanation "*securities trading*". Usually the operations on the account of Company A were made by two proxies, N and K. Companies A and B had common ownership linked, according to media reports, with an OCG.

333. In the course of the analysis, the FIU found that Company A had sold the shares it held in Company B through the unregulated securities market. The selling price of the shares was several times higher than the price of the same shares traded on the regulated Stock Exchange. Immediately after receiving the counter value of the shares, the funds were transferred into a foreign bank account of offshore Company Z, with the justification "*instalment loan*". The loan in question was of a total amount of €6,000,000 granted to Company A by Company Z. According to the contract, the loan has been received in instalments 15 years ago, but only recently declared to the Bulgarian National Bank.

334. Subsequently other payments in large amounts were ordered on the account of Company A by two other Bulgarian legal persons with a vague justification "*under contract*".

335. The accumulated funds were repeatedly transferred from the account of Company Z to Company A and back without any reasonable justification.

336. Based on the highly suspicious circumstances and the absence of an economic reason for the transfers, the case was sent to the LEAs and is currently under investigation.

CASE 11 - Red flags indicators:

- Links with OCG;
- Transfer to or from off-shore zones usually described as loans or credit reimbursement;
- Beneficial owners difficult to identify and/or located in off-shore jurisdictions;
- Large number of transfers between a group of individuals and accounts made in a systematic way.

CASE 12 - France

337. Several STRs and information from the police were received by the FIU, related to 29 cases mainly concerning legal persons. The suspicions were related to multiple predicate offences: tax crimes, social fraud, illegal work and drug trafficking. The proceeds, totalling over €90,000,000, were laundered through a complex system:

- Shell companies were incorporated mostly in the construction or trading sector;
- The shell companies generated financial flows, cash or cheques, to other firms, mostly from the construction sector, with a lack of apparent economic purpose, which acted as financial intermediaries to transfer the funds abroad to collecting firms;
- The collecting firms sent the money to officially registered companies, working in the trade and transportation sector;
- The trading and transport companies then bought, exported and sold goods to one country in North Africa.

338. The judicial police found out during an operation that drug trafficking proceeds were also laundered through the same network. International cooperation with the foreign FIU was not smooth, and hampered the identification of the beneficial owners of the funds. The judicial procedure is still underway.

CASE 12 - Red flags indicators:

- Multiple parties or persons involved in the STR;
- Beneficial owners difficult to identify and/or located in off-shore jurisdictions;
- Structured cash deposits;
- Use of front companies;
- Involvement of many jurisdictions in a scheme;
- Large number of transfers between a group of companies in a systematic way.
- Fictitious invoices.

VI.6 Use of corporate vehicles acting in the legitimate economy

CASE 13 - Israel

339. The OCG established a network involved in distributing forged drugs through a middleman that owned a legitimate advertising agency. His role was to advertise the pills, ensure that the final customer

receives the pills, collect the proceeds (in the aggregated sum of approx. \$450,000) and transfer them back to the distributors while receiving a commission.

340. The middleman registered the funds received from the sale of the counterfeit pills on his company's accounts, under false names, in order to disguise the true identity of the distributors. On one occasion he issued a false pay slip to one of the distributors in order to justify in his book accounts the transfer of money from his advertising agency to the distributor.

341. Following the investigation, the middleman was convicted of aiding the distribution of the pills by laundering the funds received from the sales. The ML convictions were based on the following grounds:

- Depositing proceeds in the bank accounts of the legitimate advertising agency and by that comingling dirty with legal money;
- Registering the proceeds of the sales in false names in order to disguise the true identity of the distributors;
- Issuing fictitious documents (pay slip) in order to disguise the true nature of a bank transfer from the advertising agency to the distributors.

342. The middleman's sentence for ML was **more severe** (2 year imprisonment) than the punishment imposed on the distributors (18 months imprisonment). In addition, the court handed down a confiscation order against the middleman in the sum of \$450,000 and a fine of \$75,000.

343. On appeal, the Supreme Court held that the scale and scope of the counterfeit sales would have not been possible if not for the money laundering facilities arranged by the middleman. In light of the above it was justified to impose a more severe punishment on the middleman notwithstanding the distributors having the main interest in the sales.

CASE 13 - Red flags indicators:

- Structured cash deposits;
- Use of a straw man;
- Large number of transfers between a group of individuals and accounts made in a systematic way;
- Multiple companies fictitious invoices.

CASE 14 - Poland

344. The Internal Security Agency (ISA) investigated an OCG operating in Poland, the Czech Republic, Lithuania and Ukraine and which has been active for more than four years. The group was proficient in tax evasion with big amounts being defrauded from the state budget. The group forged (under-priced) the value of the invoices for shipments of goods (ranging from electronic gadgets to clothing to household appliances) typically bringing the price to a tenth of its real value. The goods were exported by Polish companies through the port of Hamburg.

345. The goods were sold on for vast profits which were deposited in cash and then transferred into the bank account of one member of the OCG.

346. The leader of the OCG lived in Ukraine and was reported as having dozens of properties across the country, as well as a fleet of luxury cars. However, on his visits to Poland, "the boss" was apparently less ostentatious - he travelled in old cars and did not display his wealth.

347. 180 searches were carried out in this case, and thousands of accountancy documents were seized, as well as about 15 million PLN in cash (€3.4 million).

CASE 14 - Red flags indicators:

- Forged invoices;
- Multiple parties or persons involved in the STR;
- Cash transactions in large amounts and usage of high denomination banknotes;
- Structured cash deposits;
- Involvement of many jurisdictions in a scheme.

CASE 15 – Hungary

348. A criminal organisation (led by a Hungarian citizen) committed tax fraud with the use of individuals and companies dealing in the area of service provision (labour force for the security industry). The proceeds obtained from tax fraud were transformed into tangible assets (e.g. real estate, cars, etc.) of another company (a legitimate one) run by the offender, in order to cover its origin. In the course of the investigation it was established that the company had no income-generating activities and no registered employees.

349. The dirty money was provided in cash by the leader of the criminal organisation with instructions to purchase real estate. In order to disguise the origin of the proceeds, the money was deposited in smaller amounts in bank accounts by natural persons and then transferred into the company's account. Furthermore, for the real estate transactions, VAT refunds were claimed and obtained from the state budget. Due to those VAT refunds, the company made apparently legitimate sources of revenue.

CASE 15 - Red flags indicators:

- Multiple companies fictitious invoices;
- Links with OCG;
- Large number of transfers between a group of individuals and a company's accounts.

CASE 16 - Latvia

350. A representative of a legal person, Company X, a natural person, Mr. M, established an OCG with the purpose of avoiding tax payments and laundering of proceeds derived from criminal activity with the help of an accomplice, Mr. K. Mr. K's role was to find natural persons who agreed (for a fee) to register front companies, thus becoming their nominal representatives.

351. Mr. M registered fictitious invoices (issued by the fictitious companies) in the books of account of Company X and produced delivery notes. Mr. K. handed the fictitious documents to the nominal representatives of the front companies for signing. No actual business transactions among the companies were performed.

352. The VAT and other tax declarations of company X significantly underestimated the amount of taxes to be paid.

353. In order to launder the proceeds of the tax evasion, bank accounts were opened on behalf of the front companies and funds from Company X were transferred to these accounts. Subsequently, part of the funds were withdrawn in cash and given to nominal representatives of the front companies (straw men). A further part of the funds were transferred to other natural persons, members of a criminal group, from where they were immediately withdrawn in cash, and another part of the funds were transferred to a foreign company holding an account with a foreign credit institution. All the funds withdrawn in cash were ultimately delivered to the organiser of the group, Mr. M.

354. The criminal proceedings were initiated in relation to the activities of Company X and it was established that the chain of fictitious invoices and false accounting records went beyond the front companies and that additional layers of fictitious companies were also producing fake documents.

355. Subsequently, the FIU received intelligence about suspicious financial transactions performed by another legal person, Company Y. A credit institution had initiated refraining from debit operations on an account of Company Y for the amount of €52,000. The FIU issued an order to suspend the funds on Company Y's account and sent the case to the competent LEA.

356. In the course of the investigation it was established that the criminal activities carried out through Company X and Company Y followed similar schemes and they were both organised by Mr. M as different branches of the same OCG. A total amount of €2,000,000 was produced and laundered through the two companies.

357. As a result of the prosecution, both persons involved were found guilty on ML charges. Mr. M was sentenced to deprivation of liberty for 5 years, confiscation of his property and a fine. The accomplice, Mr. K, was sentenced to deprivation of liberty for 2 years, a fine and confiscation of property.

CASE 16 - Red flags indicators:

- Multiple parties or persons involved in the STR;
- Cash transactions in large amounts;
- Use of a straw man;
- Multiple companies fictitious invoices.

VI.7 Use of MBSs and exchange offices

CASE 17 – Republic of Moldova

358. The FIU, in cooperation with specialised US authorities, investigated and dismantled an OCG involved in internet fraud and subsequent money laundering. The scheme had two stages, banking transfers and cash withdraws, followed by money remittance operations.

359. The investigations determined that the transfers were part of an international internet fraud and money laundering scheme with proceeds amounting to \$70,000,000. The OCG used malicious software named "*Trojan Zeus*" to steal account access data, user names and passwords of numerous US citizens. The suspects used the authentication data to access the banking accounts of the victims and misappropriate the funds. Subsequently they transferred the funds to natural persons abroad.

360. The persons involved were recruited using various job sites, in the name of shell companies that offered them a job as payment agents in exchange for a salary and commission for each transaction.

361. Their duty was to receive certain amounts of money on their accounts and then transfer them, via MSBs, to various private individuals from different jurisdictions, including the Republic of Moldova. One stage of the money laundering scheme was deployed in the Republic of Moldova where the criminal group organised the withdrawal of cash, using Moldovan citizens who were not aware of the real purpose of the transactions (vulnerable categories such as students and young people). Through this scheme the OCG managed to launder several million US dollars via the network developed in the Republic of Moldova; at the current time, due to a very large number of victims, the US authorities are still working to establish the total loss from the criminal activities of the group.

362. This criminal case was sent to court and already one suspect of this group confessed his guilt and was sentenced to 5 years imprisonment.

363. In order to detect and prevent this scheme, all the compliance officers of the Moldovan commercial banks were made aware of the scheme in order to adapt their AML/CFT programs to address these risks.

CASE 17 - Red flags indicators:

- Multiples parties involved;
- Use of money mules;
- Indication of e-crimes coupled with significant amount of money involved in the transaction;
- Involvement of many jurisdictions in the scheme;
- Small amounts of funds are transferred via alternative remittance system from abroad.

CASE 18 – Israel

364. In the framework of an embezzlement scheme at a bank, approx. \$75,000,000 was stolen from the bank. A senior employee of the bank (the sister of a professional money launderer associated with OCGs), fraudulently drew bank cheques in the name of various customers or in the name of fictitious costumers. These cheques were handed over by the senior employee to her relative who passed the cheques to MSB's.

365. In order to deposit the cheques in their bank accounts, the MSBs endorsed the cheques while forging the costumers' signature on the cheques or forging the signature of the fictitious costumers (the drawees). After depositing the cheques, the MSBs withdrew cash from their accounts and handed it back to the relative.

366. During the investigation, all of the parties were indicted for theft, and the MSBs' representatives were also indicted for forgery, fraud and ML. The court acquitted the MSBs from the theft account, stating that there was insufficient to prove that they knew the bank cheques were the proceeds of the embezzlements scheme as they contended that it was in the normal course of their cheque discounting business to receive cheques and discount them. Nevertheless, the court convicted the MSBs on independent and different felonies of forgery and fraud (both predicate offences under the Prohibition of ML Act). The fraud conviction was based on the MSB's forged endorsements which caused bank clerks to believe that the endorsement signatures were authentic and in fact this was the MSB's main intention in forging the endorsement signatures.

367. The above factual findings were the basis for a money laundering conviction of the MSBs, with regard to the cheques deposited by them. The MSB's representatives were sentenced to imprisonment for one year.

368. This is an example of a conviction of third parties for laundering the proceeds of theft, notwithstanding their acquittal from the theft count itself. The ML conviction of the MSBs was based on their conviction for an independent predicate offence (in this case, forgery and fraud) which was executed as part of the laundering scheme itself but nevertheless was found by the court to be an additional independent predicate offence for ML.

CASE 18 - Red flags indicators:

- Links with OCG;
- Small amounts of funds operated by MSBs by the same person or group of people;
- Suspicious use of bank credits or services; (cheques in this case).

CASE 19 – Croatia

369. OCG members created a money laundering system by using other people to exchange money for them, using their family members to purchase real estate in Croatia in their name, and setting up businesses in order to invest and conceal the true source of money which they had acquired through drug trafficking. Since drug trafficking involved a large number of individuals who operated in different countries (Netherlands, United Kingdom, Sweden, Austria, Italy and Croatia) one of the key features was to avoid banks and STRs filed to the FIU.

370. In this case, the drugs were procured by the defendants in Netherlands and the United Kingdom, where they was packed and shipped illegally by trucks or refrigerator cars and delivered to unknown persons, who were then in charge of distributing them to end buyers in the United Kingdom, Sweden, Austria and Italy.

371. Some of the money obtained was used to purchase further quantities of drugs and to settle the costs of transport and hired help, and the rest of the money (the profit) was transported to Croatia. The money was transported by persons employed in legitimate transport companies, who were hired by OCG members to hide the money in their vehicles and cross the border without reporting the money to customs. Subsequently, the transporters exchanged the money using banks and exchange offices and hand it over to Mr I, the ML defendant.

372. In order to conceal its true source, Mr I invested the money in real estate and motor vehicles in Croatia, buying some of the property in his own name or in the names of his wife and son. During the investigation it was determined that Mr I bought 5 apartments, one office space and one plot of land in his own name. He also bought 7 apartments and one vehicle in the names of his wife and son. From the testimony of the real estate sellers, the property was usually paid for in cash, in Euros.

373. In one instance Mr I applied for a loan with a bank in Croatia in order to buy the real estate which loan was later repaid with the money he obtained by drug trafficking. Some of the illegally gained money was also used to invest in the construction of buildings in Zagreb.

374. The property was used by Mr I to set up a company, as well as a number of restaurants in Croatia, which he would later use to launder the money from future illegal profits.

375. The money laundering investigation was conducted in parallel with the investigation for the drug trafficking. Evidence relating to money laundering was gathered through:

- a search of the defendant's property;
- by obtaining reports and information from the Croatian revenue agency regarding the defendant's income, property purchases and his businesses;
- from information provided by the banks and Croatian Anti-money laundering office, land registries and motor vehicle registries; and
- from the testimony of persons that were ordered by the defendants to exchange money for the OCG.

376. The criminal proceedings included 22 defendant members of the OCG whose identities were established during the investigation along with their affiliation. All of them were indicted for abuse of narcotic drugs, while Mr I and another person, Mr X, were also indicted for money laundering.

377. Plea agreements were concluded with four of the defendants. Mr I pleaded guilty to drug trafficking and money laundering and was sentenced to 8 years in prison. All of the property owned by him, his wife and son was confiscated along with the pecuniary gain in the amount of €232,453.

CASE 19 - Red flags indicators:

- Suspicious use of bank credits;
- Multiple parties or persons involved in the STR;
- Use of money mules;
- Use of exchange offices;
- Use of a straw man.

VI.8 The use of professionals

General remarks

378. Not all the responding jurisdictions have information on who is actually laundering the proceeds of OC in a structured manner. Some replies indicated that OCGs launder their own proceeds with the help of lawyers, accountants, bookkeepers, bank officials and financial advisers.

379. Another group of jurisdictions pointed to the use of separate professionals (which might include DNFbps), networks and groups (including specialised OCGs), but the scale of this was unknown. Very often offshore companies and the financial services offered by the offshore zones are reported as being used. However, the general lack of information as to who are the launderers in the case of OCGs' assets cannot be regarded as a good sign for LEAs to pro-actively investigate and for prosecutors to effectively pursue ML cases involving OC assets. Better knowledge (domestically) on who is handling OC proceeds would increase effectiveness in achieving successful outcomes in convictions and confiscations of OCGs' assets. It is therefore important that jurisdictions take time to analyse the methodologies identified to launder OC proceeds and use these findings to detect and prevent the use of professionals.

380. Although clear statistical information was not available, the analysis of the case studies presented during the seminars in the context of the present research, indicated that many of the ML convictions achieved in relation to OCGs included the involvement of a professional (usually a lawyer or an

accountant), although only in few cases was the involvement of the respective professional proved in the court.

381. The professionals are used at various stages of the ML schemes to give advice (on how to avoid the legal provisions and not trigger red flags) or even to directly assist in the laundering process (e.g. by providing false documents).

382. Other sources⁴⁷ reinforced the conclusion that the availability of legal, financial and other expertise allows OCGs to engage in more complex and lucrative enterprises and that professionals are crucial to the setting up of complex networks of existing and specifically created businesses through which money can be laundered. OCGs make use of different experts, both on a permanent basis and *ad hoc* for specific tasks; predominantly for financial crimes. Many of the skills and services sought by OCGs are offered by otherwise legitimate professionals such as business people and financial experts, as well as specialised lawyers and accountants.

383. Jurisdictions are encouraged to actively analyse the ML convictions achieved in relation to OCGs to identify those that are stand-alone ML acts and to include the findings in their national risk assessment.

Case 20 – Serbia

384. OCG members created a ML scheme involving several banks in Serbia in order to legalise large amounts of cash obtained from drug trafficking by buying shares of state-owned companies. One feature of the scheme was to avoid STRs being filed to the FIU knowing that according to the national Law, a financial institution must notify the FIU on each transaction above €15,000, and all cash transactions of less than €15,000 if they are connected and assessed as suspicious.

385. At auction sales the OCG appeared in the form of a consortium composed of two companies (under OCG control) that supposedly had a common interest in investing in the purchase of shares in state-owned properties (hotels). In order to qualify for the auction sale, the bidders needed to have adequate bank guarantees (guaranteeing that the winner could pay the price). To obtain the bank's endorsement, the OCG members hired legal professionals, especially lawyers, as well as a number of economic experts who helped in the process of legalisation of drug money. The role of the economic advisers was to design an appropriate way to avoid the state control mechanism against the inflow of dirty money into the economy, and the role of lawyers was to find a proper legal form for those transactions. Some economic advisers had previously worked in state institutions, such as the Central Bank and other state agencies.

386. One bank manager was also involved in the scheme through agreeing that the guarantee for the participation of the OC consortium in the auction would be secured through cash deposits (in practice drug money). In order to evade STR reporting, the OCG identified 42 persons who agreed to make cash deposits in amounts less than €15,000 (ranging from €14,100 to €14,900) in their names and accounts, and justify them as savings. Subsequently, those individuals declared that they agreed that the money could be used as collateral (in total €603,400) for the participation of the Consortium in the auction. The persons used as depositors were not members of the OCG but they were employees of the hotels, who were forced to participate in the scheme by being threatened that otherwise they would lose their jobs.

⁴⁷ EUROPOL SOCTA Report 2013

387. The corrupt bank director and the OC Consortium concluded the agreement on the bank guarantee allowing the participation in the auction. According to the contract, the bank would pay the relevant sum for the hotel shares after the auction and in case the buyer could not fulfil their financial commitments, the bank would cover the price from the collateral.

388. After the auction, the OC Consortium acquired the ownership of the hotels and continued to invest dirty money into their reconstruction and improvement. The same laundering scheme was used with seven individuals depositing sums below €15,000 and giving their approval to the bank to use it as collateral for a bank guarantee. The agreement stipulated that, on the basis of the bank guarantee, the bank would make all necessary payments to contractors for the reconstruction of the hotel.

389. During the investigation, the bank's officials stated that the bank's management advised them about the account openings of the natural persons. The Director of the bank initially pleaded not guilty, stating that the authorised persons responsible for combating money laundering at the bank were obliged to recognise suspicious transactions and indicated that their obligation was to report those transactions, even without his approval, to the FIU.

390. However, after the investigation, the director of the bank was convicted to serve a prison sentence for a term of one year and banned from banking for 3 years. The Central Bank also revoked the license for the bank.

391. The shares purchased in the hotel were temporarily seized until the final decision in the proceedings against the organiser of the criminal group. The shares are managed by the State through the Directorate for Management of Seized Assets at the Ministry of Justice.

392. The investigation in this case was initiated based on a number of intelligence sources, including information from the FIU, that the members of the OCG appeared as the hidden owners of certain companies which were formally owned by other persons (front men).

393. The ML investigation was conducted in parallel with the investigation for the criminal offence of trafficking of narcotics, in this case cocaine.

394. During the investigation numerous evidentiary actions were applied, such as:

- covert interception of communications of the suspects (both telephone communications, communications through the Internet, e-mail and at the premises of their companies) on the basis of a court order;
- searches of the apartments, safes and office premises; and
- use of cooperative witnesses and international legal assistance.

395. The evidence for the ML offence was collected before the evidence of the commission of the predicate offence. The prosecution encountered greater difficulties in collecting evidence to prove the illegal drug trafficking (which had an important transnational component) rather than proving the ML offence.

396. The criminal proceedings included 58 defendants who were members of this criminal group. Nine members indicted for cocaine trafficking concluded a plea agreement by which they were convicted with prison sentences from four to eleven years. Millions of euros in cash were seized along with numerous apartments and luxury passenger vehicles.

397. The same OCG took over profitable private companies in Serbia that had a large turnover on their bank accounts with a legitimate business and owners willing to sell. This was only the first step in the

laundering scheme, and it was necessary in order to purchase large agricultural companies having in their possession several thousands of acres of quality land and food factories. For these specific companies, the law stipulated that the prospective buyer had to be companies with a turnover higher than €10 million.

398. The members of the OCG used a lawyer who contacted the owner of a profitable company, A, and agreed on the takeover of the company for €350,000. The underlying business of the company had already been moved (by the owner) to a second company, B, so the OCG essentially bought only the statement of accounts for the previous year displaying a good business turnover of Company A which was all they needed to purchase (via this company) the agricultural companies with large real estate assets (land).

399. The money (€350,000) was paid in cash. The FIU identified all the accounts held by the seller and subsequently, at the request of the prosecution, the court ordered the freezing of the money and all transactions on identified accounts of this owner as a provisional measure.

400. With this defendant, the prosecution concluded a plea agreement. Based on this agreement the court found that the defendant owner of the company was guilty, sentenced him to one year of imprisonment and confiscated the relevant money from the account at the bank.

401. After taking over Company A, the OCG bought the shares of the agricultural company for the price of €18,000,000. This amount they paid to the seller, a foreign citizen who was sentenced for being a member of an OCG.

402. After buying the company, the OCG invested the dirty money in agricultural production and further ventures. For the investments, they used already tested smurfed cash deposits totalling €303,000.

403. So far, in the case against this criminal group, assets worth about €100 million have been seized, which are being managed under the temporary seized assets regime.

CASE 20 - Red flags indicators:

- Multiple parties or persons involved in the STR;
- Links with OCG;
- Structured cash deposits used as collateral to guarantee loans;
- Use of a straw man (company);
- Suspicious use of bank credits.

CASE 21- United States

404. The US attorney Mr P was convicted on a federal charge of money laundering for handling \$177,500 in cash from a former client who is now facing prison for drug offences. Before the money-laundering allegations came to light, Mr P served as defence attorney and had a lucrative side business as an agent for professional hockey players.

405. Mr J, the attorney's client, was targeted in a federal investigation in 2012 after authorities learned of his involvement in a large-scale drug OC smuggling operation spanning from California to Maine.

406. The laundering was done through smurfing and during the investigation Mr P admitted that when he received more than \$10,000 from Mr J at one time, he broke up the deposits into amounts under \$10,000 to avoid the currency reporting requirements, which was in violation of (federal law). The money was deposited into the attorney's escrow account and subsequently, cashiers' cheques were issued based on those deposits and used to partially cover the price of real estate bought jointly by Mr J and Mr P. Although the real estate was bought jointly by Mr J and Mr P, they intentionally removed J's name from the paperwork toward the end of the transaction. To explain the smurfing, Mr P stated he did not want to file paperwork regarding the deposits. In addition to the above, Mr J purchased an interest in a sports agency owned by Mr P for \$250,000 paid in instalments of \$50,000 in cash, all delivered in backpacks.

407. Mr P was convicted for money laundering and imposed a fine of \$500,000. A preliminary order for forfeiture of laundered assets entered which will become final after sentencing (awaited November 2014).

Case 21 Red flags indicators:

- Links with OCG;
- Use of temporary transit accounts and escrow accounts.

408. In **Italy**, the investigative experience shows that criminal organisations are resorting to the services provided by professionals (especially accountants, lawyers and bank officials) and when necessary, they incorporate or use complex fronting legal entities (trusts, trust companies, legal entities located in tax havens and corporations) to disguise the track of the assets and hinder their origin and destination.

409. Some **UK court cases** indicate the increased involvement of lawyers in laundering the proceeds of the Russian OCGs.

410. In **Republic of Moldova**, a state employee of a labour related public agency, provided information to OC on the targets that could become money mules (persons looking for a job and their e-mail coordinates).

Red flags reported:

- Involvement of many jurisdictions in a scheme;
- Funds sent or received to/from Jurisdictions known as risky for drugs or human trafficking, without apparent economic or legal purpose;
- Small amounts transferred via alternative remittance system from abroad;
- Links with OCGs.

Annexes

Annex 1. Cases involving organised crime groups, number of indictments and convictions

		2011	2012	2013
Bulgaria	Indictments	175	121	86
	Conviction	N/A	N/A	N/A
Cyprus	Indictments	1	2	N/A
	Conviction	1	0	N/A
Hungary	Indictments	28	22	39
	Conviction	19	20	37
Israel	Indictments	1	2	2
	Conviction	1	1	1
Liechtenstein	Indictments	0	0	0
	Conviction	0	0	0
Lithuania	Indictments	2	3	6
	Conviction	1	1	1
Macau SAR	Indictments	15	22	18
	Conviction	1	0	1
Republic of Moldova	Indictments	1	0	1
	Conviction	0	1	0
Romania	Indictments	33	37	22
	Conviction	7	7	3
San Marino	Indictments	3	0	1
	Conviction	1	1	2
Serbia	Indictments	29	27	25
	Conviction	20	40	47
Slovakia	Indictments	1	5	8
	Conviction	3	6	11
Ukraine⁴⁸	Indictments	396	264	174
	Conviction	282	260	154

⁴⁸ In case of Ukraine there was an important gap between the answers received from Prosecution and the one received from LEA. The drafters of this report took into account the bigger number (LEA)

Annex 2. Organised crime groups, number of indictments and convictions (persons)

		2011	2012	2013
Bulgaria	Indictments	598	432	330
	Conviction	290	121	117
Croatia	Indictments	87	153	201
	Conviction	168	114	172
Cyprus	Indictments	3	4	N/A
	Conviction	3	0	N/A
Hungary	Indictments	3	1	0
	Conviction	2	1	0
Israel	Indictments	7	12	13
	Conviction	1	5	6
Liechtenstein	Indictments	0	0	0
	Conviction	0	0	0
Lithuania	Indictments	8	36	6
	Conviction	8	4	19
Republic of Moldova	Indictments	11	0	4
	Conviction	0	11	0
Romania	Indictments	33	37	22
	Conviction	35	8	6
San Marino	Indictments	5	0	17
	Conviction	1	2	3
Serbia	Indictments	221	187	183
	Conviction	107	219	209
Slovakia	Indictments	10	24	49
	Conviction	12	9	20
Slovenia	Indictments	39	78	N/A
	Conviction	34	64	N/A
Ukraine	Indictments	1,585	1,116	664
	Conviction	1,057	992	N/A

Annex 3. Organised crime and money laundering asset seizures and freezing (value of assets in EURO)

	Seizures and freezing	2011	2012	2013
Albania	OC	7,250,000	13,000,000	1,200,000
	ML	7,250,000	13,000,000	1,200,000
Armenia	OC	N/A	N/A	N/A
	ML	5,300	1 apartment, value 50,000	1,300
Austria	OC	N/A	N/A	N/A
	ML	19,000,000	34,200,000	5,210,884
Bulgaria	OC	803,854 ⁴⁹ 1,500,000 ⁵⁰	N/A	N/A
	ML	807,869	327,972	243,675
Croatia	OC	92,120	12,399,528	3,820,821
	ML	-	-	-
Hungary	OC	2,391,487	349,942	4,556,235
	ML	362,712	0	9,396,117
Israel	OC	N/A	N/A	N/A
	ML	26,798,019	32,911,526	11,643,071
Italy	OC	2,900,000,000	3,841,000,000	2,448,000,000
	ML	147,000,000	140,400,000	48,800,000
Liechtenstein	OC	0	0	0
	ML	32,400,000	75,900,000	20,900,000
Macau SAR	OC	N/A	N/A	N/A
	ML	150,000	510,000	3,140,000
Poland	OC	N/A	N/A	N/A
	ML	N/A	41,839,206	81,612,672
Republic of Moldova	OC	46,222		
	ML		13.700	882.000
Romania	OC	12,000,000	12,000,000	92,000,000
	ML	N/A	N/A	N/A
San Marino	OC	N/A	N/A	N/A
	ML	19,013,798	7,003,082	16,363,932
Serbia*	OC	133 real estates ⁵¹ 19 movable property ⁵²	41 real estates ⁵³ 4 movable property ⁵⁴	48 real estate ⁵⁵ 3 movable property ⁵⁶

⁴⁹ Reported by Prosecution

⁵⁰ Reported by LEA

⁵¹ Assessment conducted by the Directorate for Confiscated Property

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

		Monetary funds in the amount €791,884 and RSD 1,764,536.00 Stocks 26,332,239 (~€39,000,000)	Shares in 4 companies	Monetary funds in the amount €565,486
	ML	N/A		
Slovakia	OC	N/A	N/A	N/A
	ML	1,537,243	835,717	N/A
Ukraine	OC	48,820,000	77,050,000	49,050,000
	ML	9,930,000	234,920,000	17,440,000

Annex 4: Organised crime and money laundering asset confiscation (value of assets in Euro)

	OC Proceeds and ML Confiscations	2011	2012	2013
Armenia	OC	-	-	-
	ML	800,000	23,000	45,000
Austria	OC	N/A	N/A	N/A
	ML	5,730,000	6,097,600	14,200
Bulgaria	OC	N/A	N/A	1,331
	ML	1,350,000	N/A	N/A
Croatia	OC	1,643,554	2,347,371	3,101,703
	ML	N/A	N/A	N/A
Italy	OC	946,000,000	1,187,000,000	559,000,000
	ML	N/A	N/A	N/A
Israel	OC	N/A	38,597	178,799
	ML	2,251,393	13,151,044	11,643,071
Liechtenstein	OC	0	0	0
	ML	4,300,000	4,000,000	1,500,000
Lithuania	OC	17,312	39,507	258,795
	ML	N/A	10,000	2,317
Macau SAR	OC	3,600,000	N/A	N/A
	ML	3,600,000	N/A	N/A
Poland	OC	N/A	N/A	N/A
	ML	N/A	1,942,260	1,098,011
Republic of Moldova	OC	0	0	0
	ML	0	0	0
Romania	OC	12,000,000	12,000,000	92,000,000
	ML	230,000	120,000	N/A
San Marino	OC	N/A	N/A	N/A
	ML	1,552,450	1,644,054	2,580,679
Serbia	OC	3 real estates ⁵⁷	11 real estates ⁵⁸ , 9 movable property ⁵⁹ Monetary funds in the amount €18,610	12 real estate ⁶⁰ , 2 movable property ⁶¹ Monetary funds in the amount €544,430
	ML	N/A	N/A	N/A

⁵⁷ Assessment conducted by the Directorate for Confiscated Property

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

Annex 5: ML investigations, prosecutions and convictions

		2011		2012		2013	
		All ML ⁶²	OC ML ⁶³	All ML	OC ML	All ML	OC ML
Albania	Investigations	85	N/A	160	N/A	112	N/A
	Indictments	N/A	N/A	N/A	N/A	N/A	N/A
	Convictions	N/A	N/A	N/A	N/A	N/A	N/A
Armenia	Investigations	14	-	17	-	18	-
	Indictments	3	-	1	-	2	-
	Convictions	5	-	2	-	2	-
Austria	Investigations	N/A	N/A	N/A	N/A	N/A	N/A
	Indictments	N/A	N/A	N/A	N/A	N/A	N/A
	Convictions	13	N/A	23	N/A	15	N/A
Bulgaria	Investigations	66	N/A	87	N/A	45	N/A
	Indictments	31	N/A	29	N/A	17	N/A
	Convictions	29	N/A	27	N/A	9	N/A
Croatia	Investigations	28	N/A	0	0	N/A	N/A
	Indictments	21	N/A	10	4	N/A	N/A
	Convictions	11	N/A	9	2	N/A	N/A
Cyprus	Investigations	N/A	N/A	N/A	N/A	N/A	N/A
	Indictments	40	N/A	68	N/A	N/A	N/A
	Convictions	10	N/A	17	N/A	10	N/A
Georgia	Investigations	58	N/A	93	N/A	31	N/A
	Indictments	143	N/A	91	N/A	38	N/A
	Convictions	123	N/A	N/A	N/A	N/A	N/A
Hungary	Investigations	21	1	37	1	36	1
	Indictments	14	0	16	0	16	0
	Convictions	9	0	5	0	8	0
Italy	Investigations	449	N/A	651	N/A	613	N/A
	Indictments	N/A	N/A	N/A	N/A	N/A	N/A
	Convictions	N/A	N/A	N/A	N/A	N/A	N/A
Israel	Investigations	315	N/A	314	N/A	N/A	N/A
	Indictments	71	7	113	12	61	13
	Convictions	29	1	37	5	41	5
Liechtenstein	Investigations	55	0	56	0	93	0
	Indictments	2	0	1	0	3	0
	Convictions	0	0	0	0	0	0
Lithuania	Investigations	27	N/A	17	N/A	55	2
	Indictments	8	N/A	11	N/A	15	1
	Convictions	6	N/A	2	N/A	5	N/A
Macau SAR	Investigations	34	N/A	22	N/A	14	N/A
	Indictments	3	N/A	3	N/A	0	N/A
	Convictions	1	N/A	0	N/A	0	N/A

⁶² "All ML" refers to all investigations/ indictments/ convictions for ML in their jurisdiction.

⁶³ "OC ML" only refers to ML investigations/ indictments/ convictions where the predicate offence was committed by OCG.

Montenegro	Investigations	N/A	N/A	N/A	N/A	3	2
	Indictments	N/A	N/A	N/A	N/A	N/A	N/A
	Convictions	N/A	N/A	N/A	N/A	N/A	N/A
Poland	Investigations	N/A	N/A	712	N/A	617	N/A
	Indictments	N/A	N/A	30	N/A	65	N/A
	Convictions	N/A	N/A	14	N/A	37	N/A
Republic of Moldova	Investigations	27	1	34	1	56	1
	Indictments	2	0	2	0	1	1
	Convictions	2	0	2	0	2	0
Romania	Investigations	207	250	340	229	65	261
	Indictments	67	33	87	37	39	22
	Convictions	10	7	17	7	13	3
San Marino	Investigations	41	---	23	---	17	---
	Indictments	5	---	1	---	2	---
	Convictions	4	---	1	---	6	---
Serbia	Investigations	1	N/A	3	N/A	0	N/A
	Indictments	1	N/A	0	N/A	0	N/A
	Convictions	1	N/A	1	N/A	6	N/A
Slovakia	Investigations	31	N/A	61	N/A	61	N/A
	Indictments	17	N/A	38	N/A	35	N/A
	Convictions	10	N/A	12	N/A	29	N/A
Slovenia	Investigations	35	9	29	N/A	36	N/A
	Indictments	13	N/A	22	N/A	N/A	N/A
	Convictions	10	N/A	9	N/A	N/A	N/A
Ukraine	Investigations	408	3	414	N/A	466	2
	Indictments	301	61	313	77	175	51
	Convictions	N/A	N/A	N/A	N/A	N/A	N/A

Property benefit gained through or owing to the committing of a criminal offence is confiscated with judgment through the criminal procedure, based on the Criminal Procedure Act.

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