

Project against Economic Crime in Kosovo¹ (PECK)

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**International Conference
on
Enhancing international cooperation
in the Anti-Money Laundering and Combating the Financing of Terrorism field**

23 September 2014

Hotel Sirius, Pristina

SUMMARY OF MAIN DISCUSSIONS AND CONCLUSIONS

This Conference aimed to exchange experience, good practices and peer advice on international cooperation and mutual legal assistance between Financial Intelligence Units (FIUs), prosecutors and law enforcement authorities in the anti-money laundering and combating the financing of terrorism field. The event is expected to further foster cooperation between the Kosovo authorities and their foreign counterparts.

The Conference was organised around three thematic sessions covering the following issues:

- International cooperation between FIUs;
- International cooperation between law enforcement authorities; and
- International judicial cooperation.

Session 1: International cooperation between FIUs

(Modalities and best practices of administrative (informal) cooperation and exchange of information between FIUs (prerequisites for effective cooperation, legal and practical key features, good practices and case studies))

The panel comprised of representatives from FIU Kosovo, Albania, Montenegro and Germany who presented their practical experience and modalities of national and international cooperation illustrated with concrete case studies.

The presentations did highlight the need for an effective national cooperation of all the agencies tasked with the prevention and combating of money laundering and financing of terrorism as an important factor that will also have a positive impact on the level of international cooperation with the relevant counterparts. Such national cooperation becomes even more important when one considers the specific requirements arising from the FATF Recommendation 2 (National Cooperation and Coordination) that will

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

have an impact on the rating that eventually will be assigned during future assessments of Kosovo. In this regard, the following main points were underlined as important aspects for efficient cooperation:

- Regular cooperation of law enforcement authorities involved (such as *inter alia* police, customs, FIU, tax investigation authorities, supervisory authorities, Prosecutor's Office as well as international counterparts including Interpol or Europol) necessity;
- Establishing networks (e.g. FIUs, Police and Prosecutor's Office) and setting up Joint Investigative Teams;
- The necessity to first finding out where and how to get relevant information (e.g. Police, international requests for legal assistance).

The importance of knowing the particularities of relevant international partners that will in return determine the scope of the requests for information in accordance with their reach in the respective jurisdictions was also highlighted. According to the Albanian experience, adopting a policy "knowing your partner FIU" has been instrumental in ensuring the efficient exchange of valid and timely information. In this regard, it is also important to develop a policy for providing request feedback and avoiding requests that are not clearly justified (fishing expeditions);

The establishment of the ILECU (International Law Enforcement Cooperation Unit) in Kosovo is a welcome step and the role of the FIU in the exchange of information should be further considered in order to ensure that it is in accordance with the provisions of the bilateral applicable MoUs. FIU K has signed MoUs with several of its partners that foresee *inter alia* the need for prior dissemination consent.

Due consideration of the above experience in asset sharing and drafting of such agreements in the future will be an important factor in further encouraging effective international cooperation.

Encouraging further proactive ML/FT investigations by Law Enforcement Agencies since it became clearly evident during the conference that such experience already exists among the prosecutors and it should be enhanced further. In this regard, it is also very important to carry out parallel financial investigations when dealing with major proceeds generating offences since this would also increase the level of Kosovo compliance with the FATF Recommendation 30 "Responsibilities of law enforcement and investigative authorities".

Some of the presentations showed that in addition to Financial Institutions the Designated Non-Financial Businesses and Professions (the so called "gatekeepers" or DNFBPs) do play an important role in providing advice to criminals that would like to conceal the source of their ill-gotten gains. Their supervision should be based on the relevant risk profile and become an important part of the yearly oversight plan for the FIU as well as other authorities that do license and supervise them.

The work undertaken by Kosovo authorities to assess ML/FT risks is commendable and it should be further encouraged by taking into account the methodologies that have been adopted to this end by FATF, IMF and World Bank.

In the specific context of the Kosovo FIU, it was recommended to identify specific markets susceptible to money laundering by strictly applying the risk-based approach and then use the available resources.

Represented FIUs reiterated their readiness to work closely with FIU Kosovo in order to share good practices and thus ensuring further enhancement of human and technical capacities in fulfilling respective role and responsibilities as FIUs.

Session 2: International cooperation between law enforcement authorities

(Modalities, standards and best practices of international cooperation and sharing of information between law enforcement authorities in investigating and prosecuting money laundering cases – cooperation through ILECU and INTERPOL):

- Bilateral cooperation forms (police assistance, information-sharing, cooperation channels, cooperation during investigations);
- Practice of rogatory letters and joint investigative teams;
- Status of play: bilateral experiences, involvement in existing networks, initiatives and projects, future plans and opportunities.

The panel was comprised of representatives of law enforcement authorities from Bulgaria, Italy, Kosovo and UK who presented modalities and their practical experience in cooperating with foreign jurisdictions and through existing networks and initiatives in investigating and prosecuting money laundering cases, illustrated with concrete case studies.

General observations

- Participants coming from different branches of Kosovo executive and judicial authorities demonstrated genuine interest in the topics discussed and in the working implementation of good practices from different case studies in particular.
- Active participation provoked vivid input on how to tackle problems and deficiencies in the area of law enforcement and legal assistance.
- Presentations from the PECK Project identified international experts demonstrated that there is a wide range of international cooperation instruments at both regional (e.g. SELEC and SEEPAG), European (e.g. Europol and OLAF) and international (e.g. Interpol) levels.
- In addition, the experts and representatives of neighbour countries reiterated their readiness to cooperate and provide further advice and assistance to respective Kosovo counterparts.
- Issues around maintaining confidentiality, integrity of data and the difficult subject of PEP management which are generic to everyone have been discussed in practical terms.
- There is room for improvement in relation with the ties and level of cooperation stemming from day to day work between administrative, law enforcement and prosecution authorities on local, national and international level.

- A single point of contact for exchange of information (ILECU) created within the law enforcement authorities could be a good basis for fully operational platform for cooperation nationally and internationally.
- A range of initiatives and tools for law enforcement and judicial cooperation such as joint investigation teams, arrangement and execution of extraditions and others have already been organized and conducted.
- The issue of suspicious activities was subject of practical discussion. Whereas in some jurisdictions, it is referred to such concept through the common use of “transfers without clear purpose”, in others (i.e. UK) a test of “lack of business rationale” has been applied in describing suspicious activity i.e. no commercial enterprise operating in a tight economic climate would use a particular model for financial transactions. It was also interesting to mention financial transactions undertaken by criminals ‘late on a Friday afternoon’ timed to take advantage of office hour culture in the FIU and to see how they are recognised by law enforcement.
- Some jurisdictions reported that they assist others by ‘joining the dots’ on requests for information/intelligence and the experience of some other jurisdiction has been that productive lines of enquiry not initially requested but which are nevertheless encountered are proactively pursued and not ignored.
- Finally, one aspect which was touched on time and again was the nature and application of material sought from one jurisdiction by another. Material should be produced in a format admissible in the requesting jurisdiction and within a timeframe allowing its use and application. This is often misunderstood. In practice, a number of investigations were damaged by the inability to get material back in the right format or in time for the court case, particularly as under Article 6 of the European Convention on Human Rights defendants are entitled to have matters dealt with within a reasonable time.

However, notwithstanding active participation and interesting and stimulating presentations by international experts, it seems some critical issues have been identified. Local participants particularly appreciated practical case studies and a low level of interaction took place, revealing a possible lack of technicality. On the bases of these remarks the following *challenges* and *recommendations* have been outlined:

Several topics have been under the focus of presentations and discussion during the Session 2, in particular concerning the issues of Suspicious Activity Reports (SAR)² handling, consent periods, legislation, land registration database and asset sharing arrangements.

SAR handling

Each country appeared to treat the subject of SAR handling in a different way. Some gave feedback to the reporting sector, some did not. The lesson from the UK (following the Lander report) is that the major ‘complaint’ from the reporting sector was lack of feedback (“we make lots of reports and never hear anything back”).

² This is the equivalent term used in United Kingdom instead of Suspicious Transaction Reports (STRs) that seems to have a narrower meaning.

Feedback isn't always possible particularly where the disclosure either initiates or impacts on an existing investigation but as the database matures there will always be some cases, suitably redacted which can be fed back.

Similarly, if the Reporting sector entities aren't getting feedback then they won't know whether the level of reporting is cogent and relevant. FIUs should seek quality over quantity every time. While Germany handled 19,000 SARs in 2012; in the UK for the same period it was around a quarter of a million.

In an effort to increase quality, reduce 'defensive' reporting or reporting 'by rote' the UK appointed experienced investigators whose role was active engagement with the sector. This dramatically increased quality and was welcomed by Reporters. The existence of groups within the reporting sector (e.g. Joint Money Laundering Steering Group in the UK) who know their industry and who can effectively self-police serves to strengthen overall effort.

A similar approach should be borne in mind for the "end-user" of the SAR. FIUs should seek regular assessment of the usefulness (or otherwise) of disseminated SAR data from law enforcement and other recipients as this allows reporting on the efficacy of the system.

Finally, in most jurisdictions an FIU can both process intelligence and apply sanctions for non-compliance. Whilst systems and statute may be in place, the UK experience demonstrated that unless systems are actually policed they are ineffective and will be exploited by organised criminals.

There appears to be a piecemeal approach to the use of suitable software for SAR management. So many times in law enforcement, on the micro and macro scale agencies and departments reinvent the wheel when their budgets would be better served by adopting best practice from countries with longer experience. Licence issues and overly generic systems are to be appreciated although it is questionable to assume that the right software system suitable for all Balkan jurisdictions is already in use elsewhere.

Consent periods

Most jurisdictions allow 72 hours from refusal of consent to taking action to freeze funds. The UK approach (ECHR compliant to date) is seven working days (i.e. weekends and holidays excluded) to consider what if any action to take and, in the event of a decision to freeze, 31 days thereafter to address the legislative requirements leading to an application usually to a court. It wasn't clear whether the 72 hours was the entire period. FIUs might like to lobby to bring themselves into line with the UK time periods, something they will need to consider as reporting levels grow with, it would be expected, a concomitant level of cases involving consent issues.

Legislation

Thanks primarily to EU directives there appears to be harmonisation in legislation around money laundering and clear parallels between jurisdictions. Where the problem appears to lie is implementation. The various presenters ably demonstrated that their

legislation appears to undergo regular refinement but the questions that should be asked include:

- how often is someone actually prosecuted;
- are all aspects being brought to bear such as asset recovery, any civil penalties and other statutory preventative measures.

The UK experience demonstrates that whilst some aspects of legislation are well used (the Proceeds of Crime Act for instance) others equally important are seldom applied.

By way of example the various Money Laundering Regulations (1997, 2001, 2007) by which the Reporting Sector are largely governed contains criminal sanctions for breaches (failing to keep records/train staff/act with due diligence etc.). There are, at last count in excess of twenty separate statutory bodies each with a responsibility for oversight of a part of the reporting sector. The numbers of prosecutions for such breaches (successful or otherwise) are very few indeed. Regulation without application and active sanctions is no regulation at all.

Land Registration database

It was disheartened to hear the difficult experiences colleagues in Kosovo have accessing a meaningful database of land registration. Most money laundering schemes usually involve the purchase, either of land or property and the ability to establish who owns what with confidence is central to investigating both the predicate offence, associated money laundering and perhaps of equal importance in recovering assets.

Experiences encountered when land registration is both piecemeal and localised with no central records not only make investigation time consuming but often led to compromise of the investigation. In the context of Kosovo, there are difficulties between Kosovo and Serbia with the latter apparently reluctant to release pre-1999 records. Nevertheless access to a secure database of land registration is very important and paramount to tackling acquisitive serious and organised criminals, to allow assessment of holdings and to prevent Kosovo becoming a 'safe haven' for land and property based asset acquisition.

Asset sharing arrangements

There does not appear to be generally agreed asset sharing agreements between jurisdictions. Asset sharing refers to those assets confiscated at the concluding part of a criminal justice process, usually (but not necessarily) the conviction of a criminal. For instance it was noted that Albania does not have one – yet. The existence of such agreements can enhance the levels of international co-operation and assistance.

In the UK experience it has been a case of "*Aut inveniam viam aut faciam*" (we will find a way or we will make one) having to broker arrangements on a case by case basis with other jurisdictions. Better to have up-front clarity.

As an aside, an FIU will often learn of the arrest of one of its expatriate citizens in another jurisdiction. If that jurisdiction is one with actively applied asset recovery legislation and the offence is a suitable one, then a bit of pro-active investigation as

regards assets held by the individual in the country of origin followed by lawful dissemination of their extent can be hugely beneficial.

Ex-patriot criminals repatriating and flaunting their wealth can be destabilising to local economies and set unwelcome role models to others. This represents a largely untapped opportunity, a perfect vehicle for establishing asset sharing agreements and more importantly one which may even discourage cross-border criminality.

Identified challenges and recommendations:

- Sufficient legal basis such as bilateral, multilateral agreements for cooperation with partner institutions and agencies from different states to be initiated and implemented.
- Closer mutual understanding and cooperation between administrative, law enforcement and prosecution authorities to be developed.
- Alignment and harmonisation of working standards and services provided with peer institutions and agencies in EU states as prerequisite for creation of mutual trust and successful cooperation.
- Joint investigation teams as a proven tool for effective and efficient cooperation are to be exploited more often.
- Kosovo law enforcement authorities should take advantage of the experience and good practices they gained to pave the way for more proactive approach in cooperating with services from different states (including the preparation of needed agreements).
- There is a necessity to improve capacities to carry out administrative checks and inspections.
- Practitioners underlined the need to acquire an in depth and thorough understanding of accounting and auditing.
- Kosovo authorities should better analyse in the future phenomena of economic and financial crimes.
- Specific training courses should be also continued to be developed in the future.

Session 3: International judicial cooperation

(Exchange of views, experience and best practices of rendering MLA, handling extradition and carrying out freezing and confiscation requests)

Session 3 focussed on the challenges faced by practitioners in Kosovo when making, or receiving, MLA requests generally, and those relating to asset tracing, seizure and confiscation.

The Kosovo practitioners highlighted the following as their main areas of concern:

1. Nature of the relationship between the requesting and requested state – the need to build working relationships;
2. The need to make early “informal” contacts in order to avoid difficulties such as not receiving the evidence sought, or, receiving evidence or material that is different from that requested by the prosecutor;
3. Format and content of the request;

4. Precision requirements in order to avoid delays or refusal (both within Kosovo and by foreign states)
5. Translation of requests (urgent requests in English)

The panel comprised of representatives from Croatia, Hungary, Kosovo and UK who shared their experiences and how each of them had sought to address such challenges.

In a nutshell, the group made the following observations/recommendations that may assist the practitioners in Kosovo:

1. It is acknowledged that the nature of the relationship between the requesting and requested state and, it has to be said, on the attitude and helpfulness of those officials to whom the request is made, cannot be ignored. In order to overcome such obstacles, the practitioners emphasised the importance of excellent working relationships being built up and maintained trans-nationally. Some ways of addressing this is through joint training courses, mutual exchanges of personnel, seminars and regional information exchange sessions, such as the one held in Kosovo.
2. Prosecutors and investigators sometimes have recourse to mutual legal assistance without exploring whether administrative, that is to say, investigator to investigator/prosecutor to prosecutor mutual assistance would, in fact, meet their needs. The mutual assistance route has proven to be invaluable to the practitioners in a number of ways, for instance, to narrow the scope of the enquiries, in particular, financial enquiries. The practitioners strongly urged prosecutors and prosecuting authorities in Kosovo to make early contact with a counterpart in the State to which the request is to be made.

However, it should be remembered that, although the means of making the request is administrative or informal, the material that can be sought is evidential and in admissible form. The word 'informal' is not being used in relation to the material itself, but rather in relation to the way in which the request is made and the route by which it is communicated.

That said, the golden rule is as follows: mutual assistance must be made and executed lawfully.

- It must be evidence that could be lawfully gathered under the requesting State's law.
 - It should be evidence that may be lawfully gathered under the laws of the requested State.
 - The requested State should have no objection.
3. The format and content of the letter of request: The practitioners highlighted the importance of being precise when drafting letters of request. Both Croatia and Hungary representatives suggested that the Kosovo practitioners develop templates, which contain all the formal parts required in a letter of request, so that they are able to give more attention to the enquiry/assistance needed and draft that more carefully. The practitioners all agreed that whilst they appreciated the frustration being faced by the Kosovo authorities in not

receiving the evidence they require, this may be largely attributable to the drafting of the request. A possible solution/recommendation would be to have a team dedicated to international co-operation within the prosecutor's office.

4. In addition to the need for precision, the panel recommended that practitioners may find it useful to ensure that the request does not ask for unnecessary enquires to be made, as this either ends in delay or a refusal to assist.
5. The need to translate letters of request is problematic, and becomes even more challenging, when a request is urgent, for example, when it relates to a freezing order. The representative from Hungary said they had overcome this challenge by accepting letters in English, and suggested that it would be worth asking the requested state if they would be willing to accept an urgent letter in English.