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Mutual Legal Assistance in ML-related Cases

experience and modalities in rendering procedural
assistance and carrying out
freezing and confiscation requests

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ML-related MLA

...whether and why is it special

▶ **General rules apply**

- ML is just another criminal offence... no specific procedural rules for international judicial cooperation

▶ **Special practical challenges require special solutions**

- **recognize** that it is a ML case – it is not always labelled like that
- contact your **FIU** – they are always one step ahead
- If requesting, address the **competent authority** – prefer direct communication if possible
- act **promptly** and **effectively** to secure the proceeds / to have them secured – the rest can be done afterwards

Practical challenges

#recognition

- ▶ Most ML cases that involve MLA are initiated by authorities that investigate the predicate offence
- ▶ MLA is usually **requested** in a [drug case] or a [fraud case] and rarely in a [ML case] except if ML charges are also prosecuted
- ▶ letters rogatory are usually considered as being related to a foreign predicate offence (**external phenomenon**)
- ▶ whereas they are also related to a domestic ML offence (**internal phenomenon**) which needs to be investigated on its own
- ▶ simple execution of a foreign letter rogatory is not enough: **they** cannot apprehend and prosecute **your** money launderers

Practical challenges

#contactfiu

- ▶ Particularly if executing a foreign request related to freezing/seizure of money transferred to domestic bank accounts:
 - the FIU must already be **aware** of and familiar with the story
 - first steps must have already be taken to **secure** the proceeds
 - suspension... administrative freezing...
- ▶ If seeking the proceeds of a domestic crime that have been transferred to another country
 - make sure the FIU is aware of the case so that immediate steps can be taken

Practical challenges

#contactfiu

- ▶ Foreign predicate / domestic laundering:
 - How can your FIU help you?
 - How can you help your FIU?
- ▶ Information, data, banking documents obtained by the FIU in their proceedings: priceless
 - admissible evidence?
 - restrictions on use as evidence?
 - practical solution: full reports vs non-sensitive reports
 - to avoid: the report the financial institution made... the fact that the transaction was suspended... etc. etc. (to be agreed)

Practical challenges

#competentauthority

- ▶ International judicial cooperation (between judicial authorities)
 - cannot be avoided: coercive measures are requested for
- ▶ Know Your Counterpart: who to ask for assistance
 - MLA through central judicial authorities?
 - whether diplomatic channel is required too
 - MLA through direct cooperation of judicial authorities?
 - also LEA (e.g. Nordic countries)
- ▶ Ideal: direct communication and cooperation of competent judicial authorities
 - to decide whom to turn to: European Judicial Network... EUROJUST... other sources... (Kosovo: probably on a bilateral basis)
 - means of communication (e-mail > fax > ordinary mail)
 - language of communication (English preferred)

Practical challenges

#competentauthority

- ▶ The less of these conditions can be met, the less chances for a successful freezing
 - Communication through central authorities: delay caused by forwarding and/or translating the document...
 - Use of outdated means of communication (ordinary mail) as a primary vehicle: extreme delay (the addressee will only have limited timeframe to act!)
 - pay attention to identify, in advance and by the help of LEA/FIU
 - the competent authority
 - if possible, the magistrate himself/herself who would deal with the case
 - the most effective means for communication (e-mail, fax)
 - English. They speak it.

Practical challenges

#prompt #effective

- ▶ Either submitting or executing a ML-related foreign request, a variety of investigative actions can be asked for ...but there is something that cannot wait:
the proceeds flowing through the banking system must be halted and frozen immediately
- prioritize and act immediately
- incoming request: communicate with FIU
(whether there are actually proceeds... what measures have been done... deadlines...)
- outgoing request: the same and meet all the formalities
(e.g. if your law requires a court order to freeze/seize, produce one)

Characteristics of our recent ML cases

- ▶ Three stages of money laundering (placement – layering - integration)
 - the closer we are to the predicate offence the higher the chances are to (i) obtain evidence (ii) freeze and secure assets
- ▶ Recent cases (2013-2014) related to „social engineering fraud” schemes
 - fraud committed in Western Europe
 - Hungary as an EU member state with convenient and developed banking system is used for placement
 - followed by retransferring to and among various European / Asian bank accounts as layering of the proceeds

Social engineering fraud cases

... and related laundering activities

- ▶ **Predicate offence:** Social engineering frauds committed in various Western European countries (EU Member States)
 - other names “president” “director” or “CEO fraud” – a complex fraud scheme
 - psychological manipulation of employees working for reputable and functioning business companies
 - requires prior research to obtain confidential business information of the company (inner structure, staff, management, decision making mechanism...)
 - this information is then used for a confidential trick to drive employees into an invented scenario including an imperative instruction to transfer a certain amount of money to a foreign bank account for a specific (fake) purpose
- ▶ Simultaneously, a **laundering scheme** is built up worldwide
 - shell companies set up or purchased by use of strawmen
 - bank accounts opened (more than one per company, different banks, typically internet banking) to receive sums of money
 - higher levels of instruction or: banking transactions are performed at higher levels by use of internet banking
 - concerted organized activities, prompt reactions

Social engineering fraud cases

... and related laundering activities

- ▶ What can we see?
 - letters rogatory /freezing orders from various countries
 - separate cases involving different companies but similar stories
 - primary request: to freeze and refund the money
- ▶ Easy way: just execute the letter rogatory
 - freeze and refund (plus anything else asked for) – a successful MLA case
 - but the domestic criminality remains intact
- ▶ Effective way: freeze and refund but also start your own investigation into ML
 - comparative examination of cases often provides immediate results

ML related to social engineering fraud

... an example

- ▶ **MLA #1 – Finland (middle August 2014)**
 - 345.000 € transferred to [P. Ltd Hungary] but frozen by FIU
 - no banking transactions could be attempted
 - letter rogatory + freezing order received but not executed:
 - bank negotiates with client [P. Ltd] who finally agrees that the assets be returned to the victim in Finland - end of the story?
- ▶ **MLA#2 – Portugal (end of August 2014)**
 - 350.000 € transferred to [T. Ltd Hungary managed by Mr. V] but frozen by FIU
 - various banking transactions attempted but failed
 - despite intense communication no letter rogatory arrives in time
 - domestic ML investigation launched: based on the fact that [Mr. V] produced false documents to the bank (fake invoices etc.)

ML related to social engineering fraud

... an example

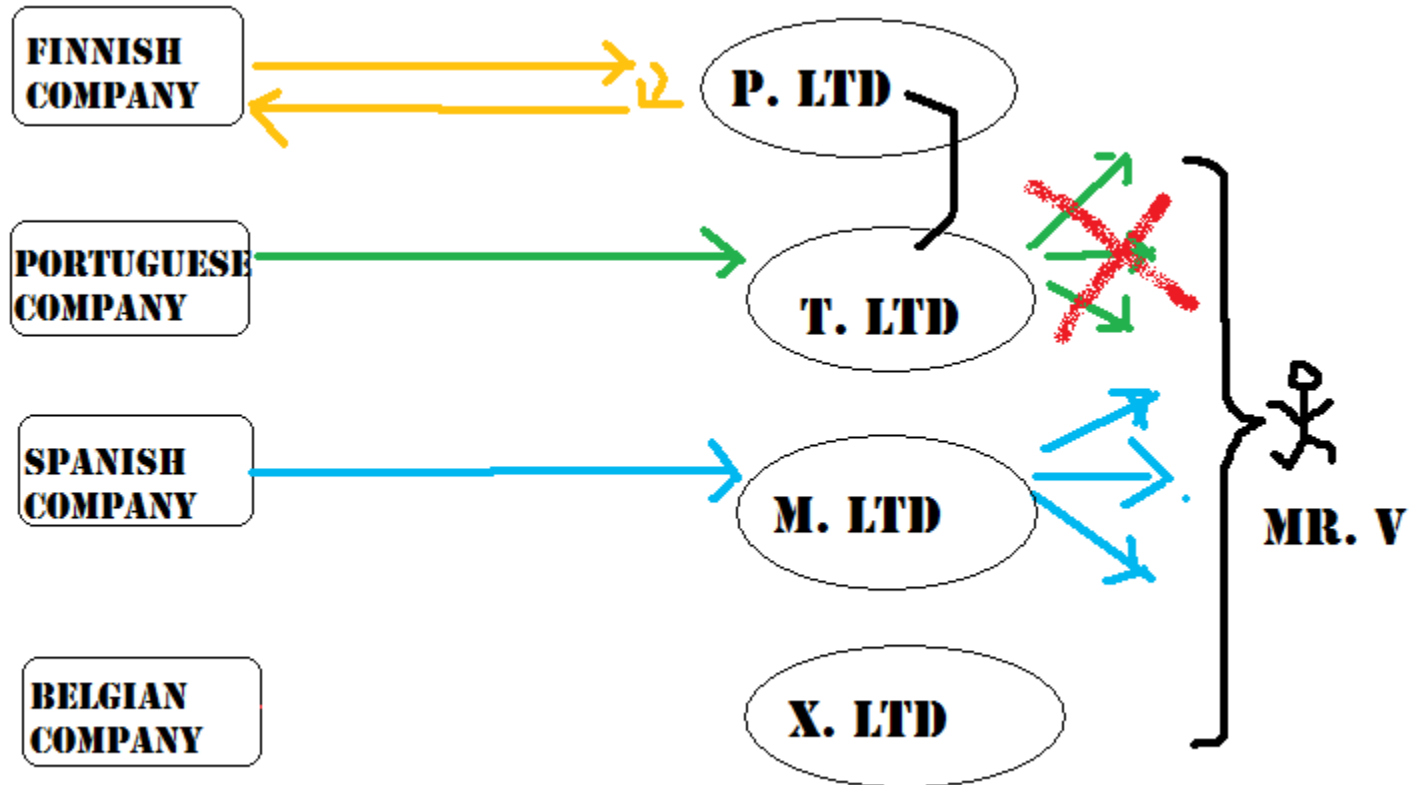
- ▶ case #3 (no MLA) – Spain (June 2014)
 - 280.000 € transferred to [M. Ltd Hungary managed by Mr. V]
 - retransferred immediately to Chinese bank accounts
 - nothing is frozen by FIU – lack of timely communication
 - no MLA but a claim from the victim (reports the fraud to Hungarian LEA) a domestic investigation into the fraud (?!) is initiated
 - but without any result (ML is not recognized, the case goes nowhere...)
- ▶ potential case #4 – Belgium (August 2014)
 - around 1M € to be transferred to [X. Ltd Hungary managed by Mr. V]
 - already reported by the Belgian bank and halted by Belgian FIU

ML related to social engineering fraud

... an example

- started with the Finnish MLA request – nothing to do then
- then came the Portuguese case: no MLA received in time but sufficient ground for a domestic ML investigation and related freezing
- in these cases: intense communication with FIU (precious information and banking documents too)
- FIU turned our attention to the Spanish case (different recipient companies but both managed by Mr. V)
- FIU told us about the Belgian case (attempted ML) also related to the same Mr. V
- finally we noticed that Mr. V had mentioned the P. Ltd. (shell company used for the Finnish case) as their regular business partner in the banking documents of his T. Ltd

ML related to social engineering fraud ... an example

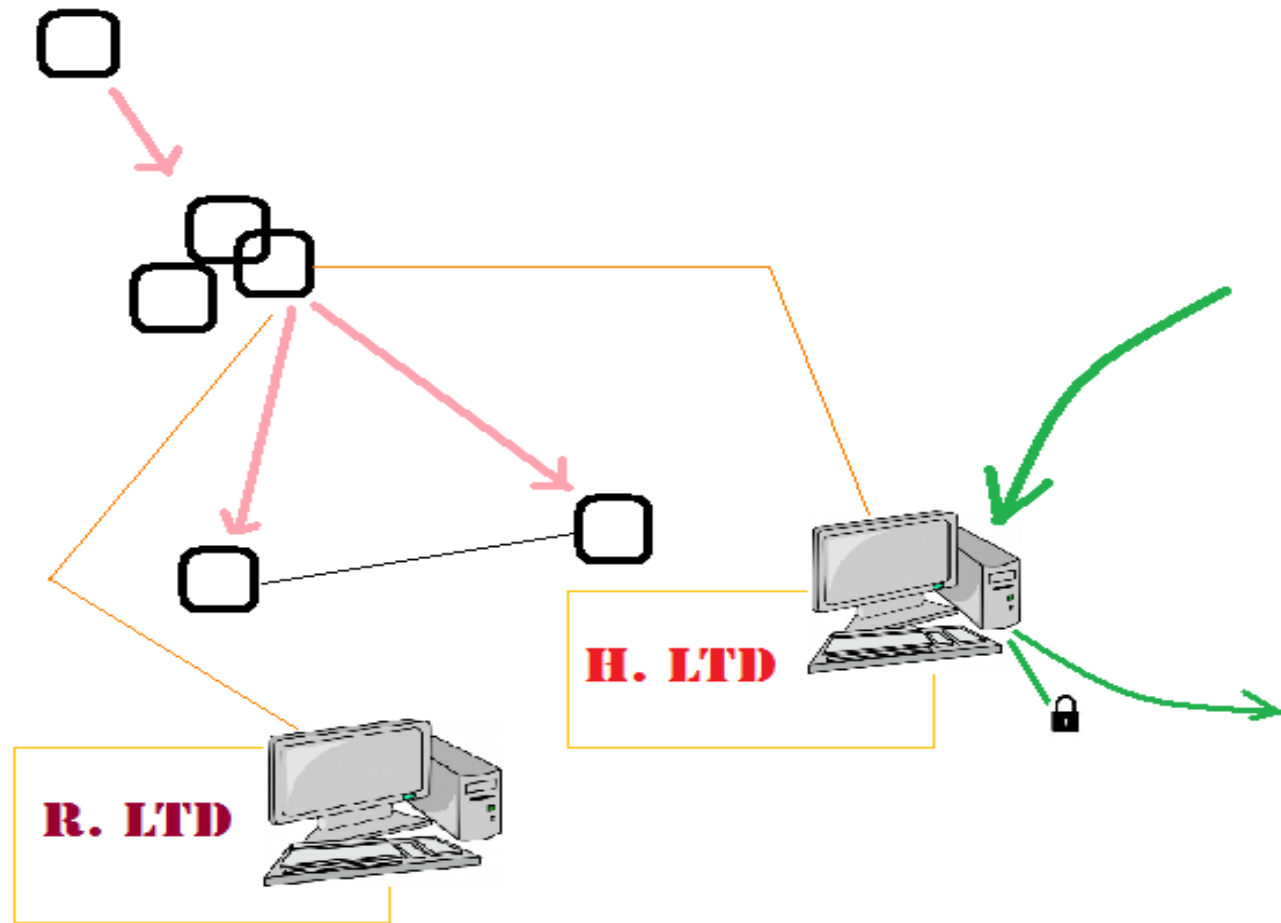


ML related to social engineering fraud

... an example

- ▶ Key issues in this case:
 - **failure** to recognize ML results in losing 2 months time
 - **FIU provided** information and documents by which cases could be connected: priceless help
 - upon the same documents, PP could easily **connect another** case to the story
 - finally FIU provided further information on the perpetrator's latest attempt: unique source
 - now sufficient basis to start **open and operative** investigation
 - whereabouts unknown (false data)
 - chance to find him red handed in his next ML offence
 - aim at higher levels of the structure

ML related to social engineering fraud ... another example



ML related to social engineering fraud

... another example

- ▶ Key issues in this case
 - letters rogatory and freezing order **arrived in time**
 - **communication** directly # by e-mail and fax # in English
 - three substantial conditions to minimize losing time
 - coordinating **best venue** for investigating laundering activities
 - separate MLA request: hearing witnesses, suspect...
 - communication: separation of proceedings, no overlap
 - domestic investigation: success in identifying higher levels
 - **requirements** for having the funds returned to the victim
 - no direct communication with victim company
 - civil claims represented by foreign judicial authority + the conditions where and how to transfer

ML related to social engineering fraud

... the ultimate case

- ▶ Starting from separate cases → domestic ML cases
- ▶ ...horizontal extension (first case)
- ▶ ...vertical extension (second case)
- ▶ ...but eventually we get to the borders of our country and need to follow the track abroad:
 - banking information via MLA
 - identification of natural persons behind corporate vehicles
 - joint investigations or also JIT's
 - EUROJUST coordination

ML related to social engineering fraud ... the ultimate case



ML related to social engineering fraud

... the ultimate case

- ▶ Key findings so far
 - extreme large ML scheme operating worldwide
 - placement and preliminary transfers within EU
 - then offshore and/or Far-Eastern and South American companies involved
 - money is siphoned in cash or via offshore companies
- ▶ MLA aspects
 - asking for international cooperation: far beyond EU
 - time consuming procedure to obtain corporate or banking documents from other continents (FIU assistance)
 - coordination of domestic investigations into the same scheme
 - EUROJUST