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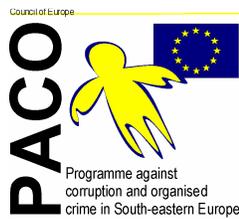
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Programme against Corruption and Organised Crime in South-eastern Europe (PACO)

Project PACO Proceeds

CONFISCATION OF PROCEEDS FROM CRIME IN SOUTH-EASTERN EUROPE

Final project report 2001



TP 17

A contribution to
SPAI and SPOC

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The "Programme against corruption and organised crime in South-eastern Europe" (PACO) is a technical cooperation programme of the Council of Europe to support the implementation of the Stability Pact Anti-corruption Initiative (SPAI) and the Stability Pact Initiative against Organised Crime (SPOC). It was launched in December 1999 and consists of several country-specific and regional projects.

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**The views expressed in this technical
report do not necessarily reflect official
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1 INTRODUCTION

The majority of criminal offences is aimed at acquiring economic benefits. The importance of targeting proceeds from crime in efforts against corruption, organised crime, money laundering and other forms of economic crime is therefore widely recognised:

- Targeting profits serves as a powerful deterrent as economic profit is the rational of most criminal offences
- Leaving criminals with their profits will allow them to infiltrate and corrupt the legal economy
- Taking away of the profits removes the instrument to commit future crimes
- Targeting money helps target the top management of criminal organisations
- Need to hold up the rule of law and the moral principle that nobody should benefit from crime.¹

This is reflected in international instruments such as the “Vienna Convention”², the “Strasbourg Convention”³, and the Criminal Law Convention on Corruption⁴ as well as in the Forty Recommendations of the Financial Action Task Force (FATF).

Strategies against organised crime and corruption within the framework of the Stability Pact for South-eastern Europe take the issue of proceeds from crime into account. By adopting the Stability Pact Anti-corruption Initiative⁵, the countries of the region undertake to adopt and implement relevant international instruments and recommendations. In early 2001, the SPAI Steering Group carried out an assessment of anti-corruption measures in South-eastern Europe against the objectives of the SPAI. The report was adopted in May 2001 and contains country reviews and priorities for reform.⁶ The recommendations for reform in the different countries include enhancing the effectiveness of the confiscation and provisional measures regimes.

The Stability Pact Initiative against Organised Crime⁷ also requires countries of the region to adopt and implement relevant international instruments and provide for regional and international cooperation in these matters. Specific measures – proposed to achieve the objectives of the SPOC – include a focus on financial investigations and measures to trace, freeze, seize and confiscate proceeds.

The legislation of most European countries already provides for the confiscation of proceeds. These include countries from South-eastern Europe. However, these provisions are rarely applied in practice or in the spirit of the Strasbourg Convention (ETS 141). This issue has been raised in several reports of the Council of Europe's money laundering evaluation mechanism (PC-R-EV).

¹ See Naylor (1999) in a study – based on experience with civil confiscation in the USA – actually criticising the “follow-the-money” approach.

² United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). Articles 5 and 6.

³ Council of Europe (ETS 141): Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (1990).

⁴ Council of Europe (ETS 173): Criminal Law Convention on Corruption (1999).

⁵ SPAI. Adopted by the Stability Pact in Sarajevo in February 2000.

⁶ SPAI Steering Group: Current anti-corruption measures in South-eastern Europe – country reviews and priorities for reform (May 2001). To be published in September 2001.

⁷ SPOC. Adopted by the Stability Pact in Sofia in October 2000.

The Council of Europe has therefore launched a project under the PACO Programme, “PACO Proceeds”, which is aimed at enhancing the application of legal provisions on confiscation of proceeds from organised crime, corruption and money laundering in South-eastern European countries.

In 2001, this project consisted of two regional seminars and two study visits. In addition to training officials from South-eastern Europe, these activities resulted in recommendations for legislative and institutional reforms as well as training programmes.

The first regional seminar was held in Bucharest, Romania, from 11 to 13 June 2001, with the participation of 35 representatives from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Moldova, Romania and “The former Yugoslav Republic of Macedonia” as well as representatives from Germany, the Netherlands, Europol and Forum–CSRD (Skopje) who shared their experience.

In October 2001, the participants – divided into two groups – visited The Hague and Stuttgart to study the experience of the Netherlands and Germany with regard to integrated financial investigations aimed at the confiscation of proceeds. Moreover, in the Netherlands participants were briefed on the role of EUROPOL.⁸

The first seminar and the study visits resulted in draft country reports and recommendations for reform. The draft reports were discussed in detail and adopted at the second regional meeting held in Zagreb, Croatia, from 15 to 17 November 2001.

The present report provides an account of the activities and results under the PACO Proceeds project in 2001. Chapter 2 summarises the issues involved, and the experience of the Netherlands and Germany in the confiscation of proceeds. Chapter 3 contains an overview of the confiscation systems in South-eastern Europe and chapter 4 the country reports including the recommendations prepared by participants in the course of project activities in 2001.

Activities under PACO Proceeds in 2001 clearly demonstrated the relevance of the issue and the need for a more pro-active approach in South-eastern Europe. It is therefore proposed to continue this project in 2002.⁹

⁸ The programmes of the study visits and seminars are attached as an appendix.

⁹ A proposal to this effect has been prepared and is attached as an appendix.

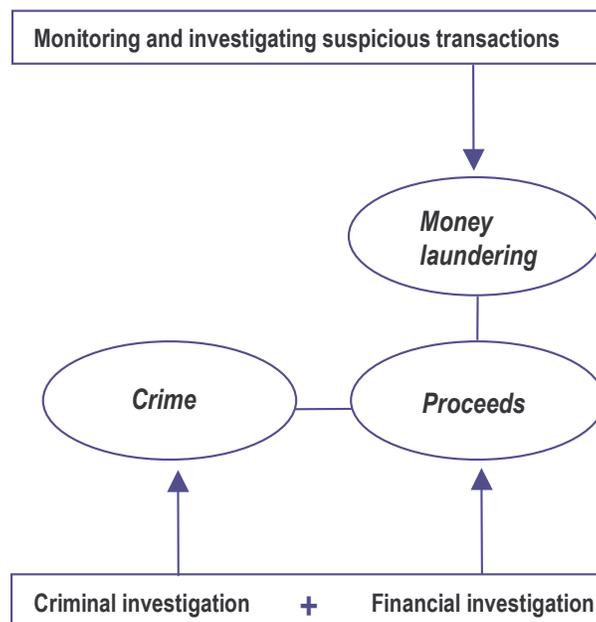
2 CONFISCATION OF PROCEEDS: THE ISSUE

2.1 The rationale

Confiscation is about recovering the proceeds from crime by systematically targeting criminal assets in the course of investigations and judicial proceedings.

Confiscation is not necessarily about the prevention and control of money laundering. Discussions during PACO Proceeds activities have shown the need to distinguish these two separate, but complementary issues:

- The money laundering approach starts with the flow of money (unusual or suspicious transactions) and seeks to link such money to a crime. Money or other property may be seized during the investigation. Once this link has been established, the money or property may be confiscated.
- Under the “financial investigations for confiscation” approach, a criminal investigation of an offence is accompanied by financial investigations to trace, seize and confiscate proceeds from crime.



This has important implications for law enforcement and criminal justice. Under the money laundering approach, financial intelligence units (FIU) play a crucial role by screening reports received from financial institutions on unusual or suspicious transactions. Depending on the type of FIU, this unit follows up with an investigation or hands over the file to the prosecution or police.

Under the financial investigations for confiscation approach, financial investigations are integrated into criminal investigations. The tracing, seizure and confiscation of proceeds is thus primarily the responsibility of the criminal police, of the prosecution, the judiciary, and of other authorities involved in criminal investigations, such as the financial police, tax authorities or customs.

In recent years, many countries of South-eastern Europe have taken legal and institutional measures to prevent and control money laundering. On the other hand, all countries of South-eastern Europe have had legislation for the seizure and confiscation of proceeds from crime for many years without, however, applying this legislation in practice.¹⁰

Common to both approaches is that not only the criminal offences and the perpetrators are targeted but also the proceeds from crime. This means that confiscation should not only be considered an additional sanction following a conviction, but that property which may be proceeds from crime must be identified ("search") and secured through provisional measures ("seizure") at the beginning of an investigations in order to prevent them from being dissipated.

A key European instrument to this effect is the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) of the Council of Europe. According to this convention (Article 1 – use of terms):

- "proceeds" means any economic advantage from criminal offences. It may consist of any property as defined in sub-paragraph b. of this Article;
- "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in such property;
- "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- "confiscation" means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;
- "predicate offence" means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 6 of this Convention.

Parties to this convention shall adopt, among other things, legislative and other measures to enable them to:

- confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds (article 2)
- identify and trace property which is liable to confiscation, and to prevent any dealing in, transfer or disposal of such property (article 3)
- empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 2 and 3 (article 4, para 1)
- use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto (article 4, para 2).

¹⁰ This problem is not unique to South-eastern Europe.

2.2 Confiscation systems and problems encountered

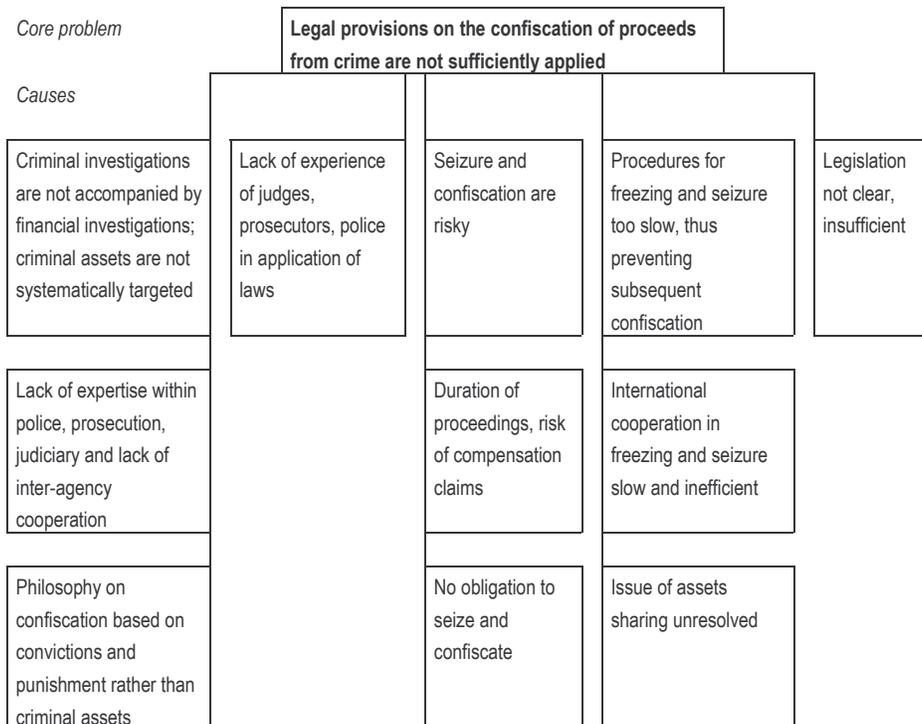
In general terms, the following types of confiscation legislation can be distinguished:

- In personam: a person must be convicted for a crime and then it must be proven on criminal criteria that specific property was proceeds from that crime
- In rem: property can be confiscated if it can be proven by civil criteria (balance of probability) that the property was the proceeds of crime or instrumentality to commit a crime.
- Mixed systems: once a person is convicted for a crime, property can be confiscated using civil criteria.

A variety of confiscation systems is found in Europe. Almost all countries in Europe have provisions in their legislation allowing for the confiscation of proceeds; many of them modified the relevant legislation in the second half of the 1990s. Most countries in Europe have systems:

- allowing for the confiscation of both, specific items of property or items based on the value corresponding to proceeds
- providing for the confiscation of proceeds related to all serious crimes
- requiring a conviction before confiscation (although there are exceptions in several countries)
- requiring criminal standards of proof (exceptions include Ireland and the United Kingdom where civil standards are applied).

At the same time, few European countries have developed approaches to systematically target proceeds, and many countries do not apply these provisions in practice at all. There are many reasons for this:



Among the main reasons are:

- the fact that criminal investigations are not systematically accompanied by financial investigations to search and seize proceeds
- the lack of training and expertise which stands in contrast to the complexity of investigations into corruption, organised crime and economic crime, and of proceedings related to confiscation. This includes in particular the lack of training of the judiciary in this matter
- the standard of evidence required to prove the link between a crime and proceeds. Among the solutions discussed in this connection is to reverse the burden of proof.

2.3 The question of the reversal of the burden of proof

In 2000, the Council of Europe completed a best practice survey on the reversal of the burden of proof in confiscation of proceeds of crime.¹¹ The study states in its introduction that:

“Any discussion of reversal of the burden of proof is likely to generate controversy in systems that seek to uphold the principle of the Rule of Law and Human Rights. This may be true even where there has been a criminal trial which has adjudicated the conviction of the person on a ‘normal’ burden of proof, and certainly where a civil burden of proof is applied to seek to confiscate the property of someone who may never have been charged with a criminal offence”.

The survey analyses a number of human rights considerations and concludes that a “refutable reversal of the burden of proof in confiscation cases seems likely to be upheld as lawful” by the European Court of Human Rights.

The survey compares the experience of three countries:

- Denmark: In 1997 new rules were added to the Penal Code. Article 76a provides for the possibility of total or partial confiscation of property of a person found guilty of a serious crime. Money or other property can be confiscated if the defendant is not in a position to explain the lawful origin of the property.
- Switzerland: Since 1994, a judge can freeze assets suspected to be the proceeds of crime without having to trace them to a specific crime, but on the basis of a civil burden of proof. Article 59(3) introduced a new form of confiscation in the Federal criminal procedure code: The possession of large amounts of money by criminal organisation is considered possession of dangerous objects. “There is a legal presumption that all of the assets of someone who supports or belongs to a criminal organisation will be confiscated unless he proves the contrary.”¹²
- Ireland: The Proceeds of Crime Act 1996 and the Criminal Assets Bureau Act 1996 constitute the basis under which property is confiscated if it can be established on the civil burden of proof that specified property is the proceeds of crime. “Seizure can be and is ordered without a prior conviction or proof of criminal activity on the part of the (civil) respondent, who to defeat the claim, is required to establish the innocent origins of his suspicious and hitherto unexplained wealth.”¹³

The Best Practice Survey concludes by stating “clearly that in no country has confiscation been without serious problems”. A reversal of the burden of proof does not necessarily resolve

¹¹ Council of Europe 2000: Reversal of the burden of proof in confiscation of proceeds of crime (Council of Europe Best Practice Survey no. 2). Strasbourg. (<http://www.legal.coe.int/economiccrime>).

¹² See Council of Europe 2000.

¹³ Council of Europe 2000.

these problems, but it can, under certain circumstances, be a useful tool to make the confiscation system more efficient.

The authors of the survey, finally make reference to the issues of training and financial investigations:

- “Passing laws which change the burden of proof – whether post-conviction or as part of a separate civil process – will not ipso facto lead to a substantial increase in recoveries from offenders or third parties.” Proceeds need to be found first, in particular through financial investigations.
- “Unless appropriate resources and training to enhance the competence levels of key decision-makers – investigators, prosecutors, defence lawyers and judges – occur, legislative changes to the burden of proof will make only the most modest difference.”

2.4 Financial investigations for confiscation: the experience of the Netherlands and Germany

Countries which have tried to introduce a systematic approach to financial investigations and have made efforts to train law enforcement officials and the judiciary are the Netherlands and Germany. Representatives from both countries have participate in all activities of the PACO Proceeds project, and representatives from South-eastern Europe visited both countries in the course of two study visits.¹⁴

2.4.1 THE NETHERLANDS

2.4.1.1 Legal basis

In the Netherlands, new provisions in the Criminal Code and the Criminal Procedure Code entered into force in 1993 in order to make the tracing and investigation of proceeds from crime more effective, the “squeeze’em” legislation.¹⁵ Prior to that, public prosecutors responsible for investigations faced several problems:

- Offenders had the choice between spending an additional six months in prison and having their proceeds confiscated (offenders preferred prison)
- It was difficult to prove a causal link between the specific offence and the advantage obtained
- Temporary measures to secure the property were difficult to apply prior to a judgement.

The legislation introduced in 1993 meant moving away from a traditional offender-based approach in criminal investigations, to an approach under which the targeting of offenders is accompanied by the targeting of proceeds from crime.

The legislation of 1993 – the relevant articles are Article 36e of the Criminal Code and Articles 94 (a) and 126 of the Criminal Procedure Code¹⁶ – facilitates deprivation (confiscation) orders, among other things, in that it provides for a balance of probability approach to determine the connection between the offence and the proceeds to be confiscated. Likewise the scope of seizures (temporary measures) was extended.

¹⁴ Presentations by Mr. Roland Baier (Landeskriminalamt Stuttgart, Germany), Mr. Marcel Pheijffer (Fiscal Intelligence and Information Service, The Netherlands) and Mr. Robert Tjalkens (Europol) (reprinted in PACO TP 13).

¹⁵ See presentations by Marcel Pheijffer at the Bucharest seminar).

¹⁶ The text of these articles is reproduced in the background documents (PACO TP 13)

In addition, the law introduced the “criminal financial investigation” (SFO), a new type of investigation aimed at determining the extent of the advantage illegally obtained by the suspect with a view to depriving him of it. Such an investigation is headed by the public prosecutor and may be instituted only subject to the following conditions:

1. on the basis of an application, giving reasons, by the public prosecutor to the examining magistrate for authorisation to institute an SFO;
2. if there are grounds for suspecting that offences designated by law as serious (offences for which a fifth-category fine may be imposed, that is a fine of 100.000 DFL) have been committed;
3. if there are grounds for suspicion that a substantial advantage (that is more than 25000 DFL) was obtained through the offence.

During the criminal financial investigation, ultimate responsibility for its progress and outcome rests with the public prosecutor. The requirement that the investigation must be authorised by the examining magistrate guarantees a judicial assessment of whether the investigation is justified at the time when the investigation is instituted.

On the basis of the examining magistrate's general authorisation, the public prosecutor is empowered to seize goods with a view to recovery in the future of a fine or deprivation order to be imposed.¹⁷

During the PACO Proceeds study visits to the Netherlands and Germany the question was raised of compensation claims related to property which is temporarily seized and but which is to be returned if there is no court order for a final confiscation. In both countries, property seized by the State is managed - and under certain circumstances even with the involvement of the owner - through the Government agency handling the assets. This reduces (and in most cases excludes) the risk of compensation claims.

An evaluation of this legislation showed that certain problems still persist. These include that the legislation does not allow for the freezing and confiscation of hidden funds or of property held by third persons or companies (unless these have been aware or should have been aware of the illicit origin). A major problem is related to property held by companies which are in turn owned by other companies. Furthermore, money laundering is not a crime in itself. Proposals for legislative amendments are under consideration.

2.4.1.2 Organisation

When the new legislation was introduced in 1993, the main challenge was not only to create additional institutional capacities for its implementation but to create a culture of financial investigations.

In 1997, the “project financial investigation” was therefore established as a five year project with the aim of integrating financial investigations into the work of the prosecution and into criminal investigations. The project is managed by a prosecutor under the supervision of a steering committee which is composed of the Council of Chief Commissioners of the Police and the Board of Prosecutors General. The project reports and provides advice on the organisation and specialisation of agencies involved in financial investigations, communication and cooperation between agencies, information management, education and training, methods of financial investigation, legislation and prevention.

¹⁷ Presentation by Marcel Pheijffer.

According to Dutch experts, financial investigations are about gathering, checking, refining, processing and analysing financial information. However, financial investigations should not be limited to information related to money or money flows but also take into account other relevant information from criminal investigations. On this basis, financial investigators seek to construct a picture as complete as possible. Financial investigations are aimed at:

- generating tactical information for investigations. In the most ideal form, this information is evidence. However, the information can also be the key to obtain evidence
- determining the volume of the unlawfully obtained assets
- tracing assets of criminals and/or criminal organisations
- confiscating the unlawfully obtained assets.

In the Netherlands, the public prosecutor is in charge of investigations, including financial investigations. However, a range of other institutions is also involved¹⁸:

- The Office for the Disclosure of Unusual Transactions (MOT) is the financial intelligence unit and serves as a buffer between financial institutions and law enforcement services. The MOT receives reports on unusual financial transactions, reviews them and turns them into suspicious transaction reports. These reports are forwarded to the competent police agencies (there are 25 police regions and a national police agency) and BLOM.
- BLOM is a service of the national police with 22 staff to support the prosecutors in the investigation of suspicious transactions. Out of approximately 40000 unusual transactions received by the MOT per year some 10000 are referred to BLOM as “suspicious”. Out of these, some 4000 are investigated.
- The Criminal Assets Deprivation Bureau (BOOM) is a national-level, multi-disciplinary unit with four functions: (a) it has a facilitating task by offering a help desk, lectures, compilation of jurisprudence, (b) it provides support to the public prosecutors in investigations and in particular in provisional measures (including the management of seized assets), (c) it provides policy advice to the respective prosecutor general, and (d) it supports the execution of judicial orders (including requests from other countries). Its staff include 3 prosecutors, 2 criminal law advisers, 2 civil law specialists and 4 accountants. The seized assets presently held by BOOM have a value of 100 to 150 million guilders.
- The Criminal Intelligence and Investigation Department of the National Investigation Squad (LRI) investigates organised crime with financial aspects, horizontal fraud, terrorism, cyber crime, problems related to the EURO conversion and supports requests for mutual legal assistance. The forensic expert unit comprises 54 staff with expertise in proceeds from crime, forensic auditing, financial investigations, cyber crime and other fields.
- The Fiscal Information and Investigation Service–Economic Investigation Agency (FIOD–ECD) is a service under the Tax and Customs Administration. Its tasks include the investigation and fight against fiscal fraud and customs fraud, investigations of economic crime, investigations in connection with organised crime. The 40 team leaders have, in addition to the normal investigative powers of the police, special investigative powers and the powers of an assistant public prosecutor. The FIOD-ECD comprises some 700 investigators who are more and more trained to investigate financial records and financial transactions.

¹⁸ The following institutions were visited during the study visit to the Netherlands (in October 2001).

- Furthermore, the (25) regional police agencies are supported by specific units (BFO = Bureaux for financial support), which assist the police in their efforts to identify and seize proceeds from crime.

The authorities of the Netherlands consider the change in attitude to judges, prosecutor, police officers and others as the main challenge: “No longer will the police and the judicial authorities have finished their work when the offender is under lock and key. The offender is the first step, the seizure of financial assets the finishing touch in the process.”¹⁹

2.4.1.3 Training

Under the Project Financial Investigations established in 1997, four to five levels of training are promoted to enhance the expertise of law enforcement agencies and the judiciary:

- Level 1:
 - Training to provide basic knowledge to police officers engaged in ordinary police work (mainly by self-study)
 - Training module to provide basic knowledge through self-study by prosecutors and judges (available since September 1999). To become part of the vocational training programme for judges and prosecutors.
- Level 2:
 - Training for those law enforcement officers involved in criminal investigations
 - Training for all public prosecutors and support staff, as well as judges dealing with fraud cases
- Level 3:
 - Training targeting specialists dealing with financial investigations within law enforcement institutions as well as specialised prosecutors and support staff.
- Level 4:
 - Training for people with an academic background (lawyers, accountants, economists) for horizontal recruitment into law enforcement agencies.
- Management course:
 - Courses for managers of financial investigations.

Training is provided through internal course of the respective agencies, the National Police Training Institute and the training institute for the judiciary. For level 4, special training is provided at university level. Self-study is proposed whenever possible. The use of practitioners as guest lecturers a practice oriented approach. Cooperation with education institutions outside the police and judiciary is sought.

It should be noted that the police of the Netherlands includes some 40 000 police staff, of which about 4000 are investigators, of which some 300 now have a financial specialisation. Within the FIOD–ECD there are about 700 financial investigators.

¹⁹ Presentation by Marcel Pheijfer.

2.4.2 GERMANY

2.4.2.1 Legal basis

Provisions in the German Penal Code aimed at the confiscation of proceeds from crime have been in existence for more than 30 years but have hardly been applied until the mid-nineties. In 1996 they were “rediscovered”, and it would seem that the Landeskriminalamt Baden-Württemberg played an instrumental role in this respect.²⁰

In Germany, financial investigations are fully integrated into criminal investigations. Articles 73 ff of the Penal Code contain the basic rules for the forfeiture of assets²¹:

- Article 73: Proceeds acquired through an offence are subject to forfeiture
- Article 73a: Forfeiture of the value equivalent to the proceeds
- Article 73 d: Extended forfeiture. Introduced in 1992 in connection with a law on organised crime, this allows for the confiscation of property which is assumed to be proceeds from crime even if it is not the proceeds of a specific crime for which the owner has been convicted.

Article 74 regulates the confiscation of instruments and products of crime.

Articles 111b and subsequent of the criminal procedure code provide for rules on provisional measures to seize and freeze assets. Seizure implies that the owner is prevented from disposing of the respective property. The court at which the prosecution files proceedings is responsible for ordering forfeiture and confiscation.

The “rediscovery” of these regulations in 1996 shows an impact. While in 1996 proceeds with an estimated value of DM 800 000 were seized, seizures in 2000 amounted to more than DM 539 million in Baden-Württemberg and more than 589 million in Germany on the whole.²² In 2000, in about 30% of investigations of organised crime, measures were carried out to seize proceeds (against 5% in 1992 and 10,5% in 1996).²³ In 1999, in Baden-Württemberg more than DM 24 million were subject to final confiscation.

2.4.2.2 Organisation

In January 1997, a project group was established at the Landeskriminalamt Baden-Württemberg to identify ways and means to overcome the problem that, contrary to legal provisions, convicted criminals were not deprived of their proceeds from crime.

The project group started its work by analysing existing legal provisions and found that the applicable legislation offered all the necessary possibilities to law enforcement institutions and the judiciary.

In order to intensify their application in practice, a three-pillar model was developed for Baden-Württemberg which consisted of targeted training for police officers through eight-

²⁰ Presentation by Roland Baier (re-printed in PACO TP 13). See also “Zugriff auf kriminelle Gewinne” in: Deutsches Polizeiblatt 6/2000.

²¹ In the German legislation, the term “confiscation” (Einzug) is applied to instruments of crime while “forfeiture” (Verfall) is used for proceeds from crime. In the present report the term “confiscation” is used for both.

²² This figure is somewhat distorted by the fact that it includes one case with a seizure of DM 489 million (the Flowtex case).

²³ Bundeskriminalamt 2001: Lagebericht Organisierte Kriminalität 2000 – Bundesrepublik Deutschland, p. 11-12.

week courses, the designation of police officers specialised in financial investigations and confiscation at decentralised levels within Baden-Württemberg, and the project group at the central level, that is, the Landeskriminalamt in Stuttgart.

Three-Pillar-Model (Baden-Württemberg)

<p>Training of police officers through eight-week courses</p> <ul style="list-style-type: none"> ▪ Law of contract ▪ Law on damages ▪ Law of property ▪ Law on rights in and over land ▪ Company law ▪ Challenges/appeals ▪ Trust/fictitious transactions ▪ Assignment of receivables ▪ Civil procedure ▪ Criminal law ▪ Criminal procedure ▪ etc. 	<p>Designating full-time confiscation specialists at decentralised levels</p> <ul style="list-style-type: none"> ▪ Assignment to a service unit ▪ Presentations, provision of information ▪ Advising local police officers dealing with cases ▪ Working exclusively in the field of tracking/preservation of assets ▪ Possibly providing support for neighbouring sections of the national or Land police 	<p>Central office at Land police headquarters with 2 legal specialists and 10 police officers (at present)</p> <ul style="list-style-type: none"> ▪ Advice and support for teams of investigators: at police headquarters within the Land police force particularly with major cases ▪ Statistics, reporting ▪ Internship possibilities ▪ Analysis of court decisions ▪ Practical further training through decentralised initiatives ▪ Conferences within the police force and with justice system personnel ▪ Support for legal and judicial assistance
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Through this approach, financial investigations for the confiscation of proceeds have become an integral part of criminal investigations. In every case of a criminal offence involving property, the criminal police systematically seek answers to the following questions²⁴:

- How much has the perpetrator gained through the offence?
- What is the value in DM?
- Does the perpetrator still have the original proceeds?
- If not, does the perpetrator have legal assets which can be confiscated the pay the value equivalent to the proceeds from crime?
- Can assets be secured through provisional measures?
- What does the judiciary need to order provisional measures?

In case of seizure of original proceeds or legal property, in principle the court decides during preliminary procedure, or in urgent cases the prosecution. Only in the case of mobile property (original objects) police officers have similar authority as a prosecutor. The seizure of all other property (original objects and legal property), however, is initiated (prepared) by the police.

This approach has in the meantime been extended to involve also the prosecution and judiciary. It has furthermore been expanded to all other states (“Länder”) within Germany

²⁴ Presentation by the President of the Landeskriminalamt, Mr. Schürholtz, during the study visit to Stuttgart.

2.4.2.3 Training

The key to the progress made in the confiscation of assets has been the intensification of training.

Initial and further training for the police is aimed at providing:

- a sound knowledge of the legal possibilities concerning investigations into and forfeiture of assets obtained by unlawful means
- the ability to apply this knowledge for a specific purpose from the tactical points of view;
- additional knowledge required concerning the functions, organisation and powers of law enforcement.

Further training is only considered economical if the officers trained will actually be involved in investigations related to proceeds from crime. In Baden-Württemberg approximately 90 police officers have been trained and work full-time on financial investigations in police units at different levels. As specialists they support the main case officers in aspects related to financial investigations

Training has also been the vehicle for promoting financial investigations for the confiscation of proceeds in other states within Germany and for involving prosecutors and the judiciary.

Following the example of Baden-Württemberg, all other states (Länder) within Germany are implementing similar training courses which are now well established.

In Germany, prosecutors are leading criminal investigations, but in terms of training for the confiscation of proceeds they had been left behind. The same is true for judges. Efforts have therefore been made to provide them with training opportunities not only in Baden-Württemberg but also in other states. This includes two-week training courses on material and procedural law for prosecutors. The need for further training is recognised by the police and the judiciary.

3 CONFISCATION OF PROCEEDS IN SOUTH-EASTERN EUROPE: OVERVIEW

3.1 Confiscation systems

In recent years, countries of South-eastern Europe have made considerable progress in acceding to international instruments. These include the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) which has been ratified or signed by all countries participating in the PACO Proceeds project, except Bosnia and Herzegovina. These countries, with the exception of Bosnia and Herzegovina, also participate in the money laundering evaluation mechanism of the Council of Europe, the PC-R-EV.

	Accession to the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141)	Participation in the money laundering evaluation mechanism of the Council of Europe (PC-R-EV)
Albania	Signed April 2000. Ratified by Parliament, instrument of ratification pending	Evaluation mission in December 2000. Report to be adopted in Dec 2001
Bosnia and Herzegovina	–	–
Bulgaria	Ratified June 1993	Evaluated in June 2000
Croatia	Ratified October 1997	Evaluated in June 2000
“The former Yugoslav Republic of Macedonia”	Ratified May 2000	Evaluated in June 2000
Moldova	Signed May 1997	Evaluation mission in June 2000. Report to be adopted in Dec 2001
Romania	Signed March 1997	Evaluated in February 2000

The legislation of all seven countries provides for the confiscation of the instruments and proceeds of crime.²⁵

All countries have relevant provisions in their criminal codes and in some (such as Bulgaria and Romania) these are complemented by provisions in the administrative and civil law or special laws on drug trafficking or money laundering.

In most countries confiscation is a mandatory measure, and in Moldova and Romania it is mandatory for certain crimes.

According to information provided at the seminar in Bucharest, in all countries:

- confiscation measures can be applied to all crimes, or at least to all serious crimes
- the property which is the proceeds from crime is to be confiscated, but if this property is no longer available, the corresponding value can be confiscated
- a conviction is required prior to final confiscation. The proceeds to be confiscated must be linked to the crime for which there is a conviction.
- property held by third persons can also be confiscated, but in Croatia, Moldova and Romania only if the third party is aware of the illicit origin

²⁵ Although in “The former Yugoslav Republic of Macedonia” the situation is not entirely clear, mainly because of a problem of terminology. The provisions on “taking away” in the penal code refer to what in other countries is called “confiscation” or “forfeiture”.

- provisional measures are foreseen to seize assets which may become subject to confiscation at a later stage
- international cooperation is possible in terms of providing investigative assistance and executing requests for seizure and – under certain conditions – for confiscation.²⁶

However, this legislation is not applied effectively in practice. Although statistical data on seizures and confiscation is not available for any of the seven countries, it would appear that there are:

- very few cases of seizures in Albania, Bulgaria, Croatia and Moldova
- no cases of seizures of suspected proceeds in Bosnia and Herzegovina, Moldova and “The former Yugoslav Republic of Macedonia”
- no or very few final confiscations in any of the countries (statistical data is not available)
- no or very limited experience with international cooperation.

Reasons include shortcomings in the legislation (unclear terminology, discretionary elements in the systems, conditions for provisional measures etc.) and limited institutional capacities (limited knowledge of the issues involved, lack of training opportunities and thus a lack of specialists trained in financial investigations, few specialised units, problems of interagency cooperation etc.).

However, the main reason seems to be that there is a limited understanding of the importance of the issue and the opportunities offered by already existing legislation among key decision makers. Financial investigations are not considered a priority. In consequence,

- strategic and systematic approaches to integrate financial investigations for the confiscation of proceeds into criminal investigations have not been developed
- resources to enhance the specialisation of law enforcement officers and the judiciary have not been made available
- investigators and prosecutors are reluctant to take the risk of complex and long-term financial investigations or provisional measures to seize property.

²⁶ With the exception of Moldova and Bulgaria.

CONFISCATION SYSTEMS IN SOUTH-EASTERN EUROPE	Albania	Bosnia and Herzegovina	Bulgaria	Croatia	Moldova	Romania	FYROM
Legal provisions	Articles 30 and 36 of the Penal Code. Mandatory confiscation of instruments and proceeds. Articles 208, 210 and 274 of the Criminal Procedure Code for provisional measures	Fed of BiH: Article 68 of Criminal Code on security measures; articles 110 and 111 on confiscation of proceeds. Articles 486, 105 and 200 of the criminal procedure code on provisional measures. Rep. Srpska: Article 64 of the Criminal Code on security measures; articles 93 and 94 on confiscation of proceeds; articles 482 to 492 on provisional measures	Confiscation as a sanction (Art. 44 of Penal Code). Confisc. as a coercive measure (Art 53 of Penal Code). Art. 253(5) on confiscation related to money laundering offences. Art 242 (5) confisc related to customs offences. Articles 133 to 139, 156, 156a, 185 of the criminal procedure code on provisional measures	Articles 80 and 82 of the Penal code on the principle. Articles 136 to 138, 184 to 186, 218 to 221, and 467 of the criminal procedure code on provisional measures	Art. 33, para 1 and 2 Penal Code on principle. Mandatory confiscation for some 42 crimes. Discretionary confiscation for 31 crimes. Art 64, 66, 74-2, 84 of Penal Code	Art. 118 of the criminal code. Special provisions in Law 21/1999 on money laundering (mandatory confisc.), in Law 143/2000 on drug trafficking, and in Law 78/2000 on corruption. Law 32/1968 with art. 8 "administrative confisc." for minor offences	Article 61 Criminal Code (security measures), Art. 68, and 97 – 100 (taking away). Mandatory "Taking away" regime
Does the legislation apply to drugs, to all serious crimes or to all crimes?	All crimes	All crimes	Serious crimes and other crimes (e.g. corruption, poaching, illegal gambling)	All crimes	All crimes	All crimes. Special provisions for serious crimes	All crimes
Is a conviction required before confiscation, or is confiscation possible without a conviction (either in a wide or a limited range of cases)?	Conviction required. Proceeds to be confiscated must be linked to the crime for which there is a conviction	Conviction required. Proceeds must be linked to the crime for which there is a conviction	Conviction required. Proceeds must be linked to the crime for which there is a conviction	Conviction required. Proceeds must be linked to the crime for which there is a conviction	Conviction required. Proceeds must be linked to the crime for which there is a conviction	Conviction required (in principle). Proceeds must be linked to the crime for which there is a conviction	Conviction required
Can the court reverse the burden of proof so that the defendant or owner of the property to be confiscated must prove that the property is not proceeds of crimes for which he is convicted?	Reversal of burden of proof not possible	Reversal of burden of proof not possible	Reversal of burden of proof not possible	Reversal of burden of proof not possible	Reversal of burden of proof not possible	Reversal of burden of proof not possible	Reversal of burden of proof not possible
Can proceeds from crime owned or held by a third person also be confiscated?	Third-party confiscation possible	Third-party confiscation possible	Third-party confiscation possible	Third-party confisc. possible, if party knows of illicit origin	Third-party confisc. possible, if party knows of illicit origin	Third-party confisc. possible, if party knows of illicit origin	Third-party "Taking away" possible
Does the confiscation law provide for the confiscation of property, or that the person pay a sum of money equivalent to the value of the proceeds from crime, or both?	Both (although legal provisions need to be clarified)	Both	Both (but limited to existing proceeds)	Both (but value-based provisional measures are not possible)	Both	Both	Both

3.2 Entry points

Given the experience of the PACO Proceeds project in 2001, the following steps could help countries integrate financial investigations aimed at the confiscation of proceeds from crime into criminal investigations:

1. A two-day round table or seminar could be organised to convince key decision makers and senior managers of the importance of the issue. The purpose of such an event could be to reach agreement on a strategic approach to financial investigations and confiscation, for example, through the creation of a specific “project”.
2. A project on “integrated financial investigations for confiscation” could be established in each country. Such a project could be carried out by a project group within the criminal police²⁷ or the prosecution or under the Ministry of Justice²⁸ of Interior. A project-based approach would also lend itself to seeking donor funding.
3. The project group could start its work by reviewing existing legislation in order to determine how the present legislation could be applied more effectively in practice, and whether in addition amendments would be need to be proposed.
4. Training programmes to enhance the specialisation of law enforcement officers, prosecutors and judges would need to be designed and implemented.

Countries requested assistance in initiating this process through the proposed project “PACO Proceeds II”²⁹. This should include advice in the preparation of projects “integrated financial investigations for confiscation”, support to the organisation of a two-day decision maker seminar as well as a one-week training course for law enforcement officers and the judiciary in each country.

²⁷ See the experience of Baden-Württemberg.

²⁸ See the experience of the Netherlands.

²⁹ See the project outline in the appendix.

4 COUNTRY REPORTS

4.1 Albania

4.1.1 INTRODUCTION

Albania has made considerable progress in recent years to accede to international instruments and adopt legislative reforms in accordance with European standards. This includes legislation against organized crime, corruption and money laundering.

Albania signed the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) in April 2000. The Parliament has ratified the convention in July 2000 and according to the respective instrument of ratification deposited this convention will enter into force in Albania on 1 February 2002.

Albania participates in the money laundering evaluation mechanism (PC-R-EV). The country was visited by a PC-R-EV team in December 2000. The report is scheduled to be discussed and adopted at the plenary meeting in December 2001.

In December 2000, Albania acceded to the United Nations Convention of 1988 on Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Albania plays also an active role by being part in several international instruments, such as European Convention on Extradition and its respective protocols, European Convention on Mutual Assistance in Criminal Matters, European Convention on the suppression of Terrorism, Criminal and Civil law Conventions on Corruption, etc.

In order to harmonise the Albanian legislation with international standards, the Albanian parliament adopted some amendments in the Criminal Code. A special law on anti-money laundering measures is in force and the respective FIU is newly established. Relevant amendments in the Criminal Procedure Code have been accepted by the Government and will be passed soon by the Parliament for final approval. The Law on Speeding boats, Law on prevention and fight against trafficking of drugs, Law on establishment of Financial Police and Law on creation of the Centre for data elaboration are already in force.

Albania participates actively in the Stability Pact Anti-corruption Initiative (SPAI) and Stability Pact Initiative against Organised Crime (SPOC).

The SPAI assessment report on anti-corruption measures in South-eastern Europe includes the following recommendations addressed to Albania :

- Enhance the effectiveness of the confiscation and provisional measures regime.
- Further promote specialised anti-corruption training for prosecutors, police and the judiciary, as well as for financial intelligence officers.

Representatives of Albania participated in the first regional seminar of the PACO Proceeds project (Romania, June 2001), the two study visits to the Netherlands and Germany (October 2001), and the second regional seminar in Croatia (November 2001). The present report summarises the information received and the recommendations prepared by Albanian participants in the course of this project.

4.1.2 THE CONFISCATION SYSTEM

4.1.2.1 Legal basis

Several articles in the Criminal Code and Criminal Procedure Code cover confiscation and provisional measures.

Article 30 of the Criminal Code provides for confiscation as a supplementary punishment. An offender may be punishable by “*Confiscation of the means relevant to the commitment of the criminal act and of the profits deriving from it.*”

Article 36 of the Criminal Code on the “confiscation of the means for committing the criminal act” provides for confiscation instruments and proceeds of crime:

“Confiscation is necessarily applied by the court on persons committing criminal acts, and consists of the seizure and transfer in favour of the state of the means which have served or were chosen as a means to commit a criminal act, as well as the objects, money and any other property resulting from the criminal act or the reward given or promised for its commitment.”

These articles allow for the confiscation of direct and indirect proceeds as well as for value-based confiscation orders and third-party confiscation.

The system is conviction-based and does not allow for civil forfeiture. The burden of proof to link property to a specific crime remains with the prosecutor. The question of reversing the burden of proof or applying civil standards when determining the illicit origin of property is said to be under consideration.

Provisional measures to prevent instruments and proceeds of crime from being dissipated are regulated by articles 208, 210, 217 and 274 of the criminal procedure code. Article 208 states that evidence and objects can be seized, if “they are indispensable to reveal the fact”. Article 210 allows for the freezing of bank accounts, stocks, and bank documents, if there are justified reasons that they are connected to the criminal offence. This decision may be taken by a court or in urgent cases by a prosecutor. Article 274 provides inter alia that objects can be seized which are permitted to be confiscated.

The Albanian representatives are of the opinion that articles 208, 210 and 274 read together allow for the seizure of any object which may be subject to a confiscation order, and not only objects of an evidential value.

4.1.2.2 Organisation

The Albanian authorities being aware of the need to undertake major efforts to investigate the proceeds of crime and to freeze assets to preserve the position for post-conviction confiscation orders, have established respective institutions responsible for financial investigations as follows:

The Directorate for Organised Crime and Corruption of the Prosecutor General’s Office which was created on 1 October 2001. This Directorate consists of 12 prosecutors and 24 judicial police officers. This new structure is responsible in a national base for the investigations into corruption, money laundering and organized crime in Albania. The intention of such a centralisation is to increase professionalism in such investigations and to reduce local interference, blackmail and threats. The creation of this Directorate complements changes in the Criminal Code adopted in February 2001 and forthcoming changes in the Criminal Procedure Code as well as the Law on Courts for Severe Crime.

On 1st October 2001 a special Sector against organized crime was established in the Ministry of Public Order under direct authority of the General Directorate of the Albanian Police. It cooperates with the Directorate for Organised Crime and Corruption of the Prosecutor General, and its investigation office is directly lead by the Prosecutor General's Office.

Two departments of the Criminal Police under General Directorate of the Albanian Police which is under the control of the Ministry of Public Order. These are the Department for Economic and Financial Crime, and the Department for the Fight against Drugs with links in every of 12 regions of Albania.

The General Directorate of Customs (Ministry of Finance) should also play an important role in financial investigations as it has investigative powers and mobile anti-smuggling teams.

In addition, the creation of a Financial Police is envisaged.

The adoption of the money laundering legislation requires the establishment of a Financial Intelligence Unit to receive and analyse reports on suspicious transactions. Such an FIU

4.1.2.3 Training

Relevant training institutions include:

- Directorate of Organizing of Judiciary on the Ministry of Justice (under several programs with the Council of Europe, World Bank and others interested)
- School of magistrates: Training for judges, prosecutors and judicial administration
- Police Academy: Special courses for less experienced police officers and criminal police
- Ministry of Finance and Faculty of Economy: course for economics and administration experts as well as for financial police (including police officers and staff of the Ministry of Finance)

Other training opportunities are provided through the East West Management Institute, Ministry of Public Order in cooperation with MAPE until March 2001, Interforce, ICITAP, France, England and others interested, USAID, etc.

However, specialised training for law enforcement officers, prosecutors and judges on financial investigations and the confiscation of proceeds from crime is yet not available in Albania.

4.1.2.4 International cooperation

Albania can grant and receive international co-operation in all areas and including in relation to the tracing, seizing, freezing and confiscation of the proceeds of crime. The legislation sets out how international co-operation can be provided in the execution of provisional measures on behalf of a requesting state and which procedure should be adopted for enforcing foreign confiscation orders. The ratification of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) gives the authority to trace property, seize property or share confiscated assets and enforce foreign confiscation orders.

4.1.3 ASSESSMENT

Albania has made considerable progress in recent years to accede to international instruments and adopt legislative reforms in accordance with European standards. This includes legislation against corruption, organized crime and money laundering. Nevertheless, while thus legal provisions on provisional measures and confiscation of proceeds are in place, they are not yet effectively applied in practice:

- Provisional measures have only been taken in very few cases (and these may have been related to objects of an evidential nature rather than proceeds).
- Only few reports on final confiscation of proceeds are available (related to the pyramid schemes).
- There is limited experience in international cooperation in financial investigations, tracing, seizure and confiscation of proceeds, and money laundering investigations.
- Criminal investigations into severe crime seem to be rarely accompanied by financial investigations.

Reasons include the following:

- The legislation does not seem “robust” enough to enable prosecutors and investigators to identify, trace and seize property, and for judges to decide on final confiscation:
 - It is unclear with regard to provisional measures, that is, whether only instruments, or objects of an evidential nature or all objects which may be subject to confiscation can be seized
 - It is furthermore unclear with regard to the possibility of value-based confiscation
 - The confiscation system is basically discretionary
 - Prosecutors must prove – using criminal standards – that property is indeed the proceeds of an offence for which there is a conviction
 - The use of special investigative means, such as bugging, undercover operations and others, has recently been regulated through the amendments on Art. 221 of Criminal Procedure Code and on recent approved law on drug trafficking. However, their application in practice is limited due to the lack of equipment (in particular equipment to intercept mobile phone communications) and training
 - Investigators have difficulties obtaining information from banks because of strict conditions for lifting bank secrecy, despite new regulations in this regard which are now in force.

- Institutional capacities to carry out financial investigations are limited:
 - Financial investigations and confiscation of proceeds have been not considered priorities, but efforts are now underway within the Prosecution Service and the Ministry of Public Order to strengthen the institutional framework against corruption and organized crime. In consequence, there does seem to be an opportunity for a more systematic and strategic approach to the issue
 - The burden of financial investigations presently rests with a small group of officers within the Department of Economic and Financial Crime of the Ministry of Public Order and within the Prosecutor General’s office. Structures of the Financial Judicial Police under the Ministry of Finance are yet to be established
 - Specialised units focusing on financial investigations, provisional measures and the confiscation of proceeds within the framework of criminal investigations, or institutions managing property seized have not been established
 - A Financial Intelligence Unit is only in its beginnings; skills and expertise of staff is very limited
 - Training opportunities in financial investigations and confiscation are not yet available. The understanding of the issues involved appears to be limited at all levels, including among judges.

- Other reasons preventing the application of the confiscation system include the fact that the economy is largely cash-based, the low level of protection offered to law enforcement and criminal justice officers, and the general lack of resources to provide training and equipment, and to strengthen institutional capacities.

4.1.4 ALBANIA: RECOMMENDATIONS FOR REFORM

4.1.4.1 Policies and legislation

- Rec 1 Develop a financial regime and special banking sectors.
- Rec 2 Clarify the concepts of “value-based confiscation”, “objects of confiscation” and “preliminary return of seized object to the real owner” in the criminal law.
- Rec 3 Improve the status of judicial police officers, prosecutors and judges by reviewing legislation and improving protection.

4.1.4.2 Organisation and institutional capacities

- Rec 4 Make financial investigations for confiscation integral part of criminal investigations.
- Rec 5 Provide modern technical equipment and expertise required for financial investigations.
- Rec 6 Create similar structures and procedures against economic and organised crime in different agencies to exchange information and co-ordinate common efforts.
- Rec 7 Improve financial investigations by implementing the Financial Intelligence Unit, using special investigative means and strengthen interagency and international cooperation.
- Rec 8 Develop guidelines for financial investigations and prepare of manual for confiscation.

4.1.4.3 Training

- Rec 9 Organise training courses and sensitisation for judges and prosecutors, the police and financial and fiscal experts in the following fields:
- money laundering, corruption organised crime, trafficking in drugs and human beings, etc.
 - equipment with proper knowledge on managing financial investigations
 - training courses on information collection, computer skills and implementation of a centralised database system.
- Rec 10 Joint training courses for senior judicial police officers, prosecutors and judges on:
- improvement in the relationship between them, especially between the respective economic crime units in the police and prosecution offices
 - specialised training in the fight against money laundering crimes, corruption and drug trafficking
 - information collection and the creation of a centralised database system.
- Rec 11 Training courses and study visits for senior prosecutors and judges aiming at:
- giving proper knowledge on managing case investigations
 - strengthening international co-operation, mostly on a regional basis, and creating a network of contacts
 - creating similar structures to fight economic and organised crime, to exchange information and co-ordinate common efforts.

- Rec 12 Training courses for judicial police officers, SAEF and officers of organized crime sector (short-term) where basic knowledge can be given and experience on the following matters be shared:
- money laundering concept (very new law in the Albanian legal framework, not yet properly implemented)
 - definition of corruption and organised crime
 - cross-border illegal trafficking of drugs, human beings, stolen vehicles, etc.
 - modern investigative means and methods against economic and organised crime.
- Rec 13 Training courses for judges with financial experts to gain expert knowledge on economic matters and cases.

4.2 Bosnia and Herzegovina

4.2.1 INTRODUCTION

Bosnia and Herzegovina is not party to the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) and does not participate in the money laundering evaluation mechanism of the Council of Europe (PC-R-EV). The country is, however, party to the United Nations Convention of 1988 on Illicit Drugs and Psychotropic Substances. It has furthermore signed the Criminal Law and Civil Law conventions on corruption of the Council of Europe and joined GRECO in 2000. In December 2000, Bosnia and Herzegovina signed the United Nations Convention on Transnational Organised Crime.

Bosnia and Herzegovina participates in the Stability Pact Anti-corruption Initiative (SPAI) and the Stability Pact Initiative against Organised Crime (SPOC).

The SPAI assessment report on anti-corruption measures in South-eastern Europe includes the following recommendations addressed to Bosnia and Herzegovina:

- Accede to relevant European and other international instruments. In particular ratify the Council of Europe Criminal and Civil Law conventions on corruption, and accede to the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime.
- Criminalize bribery of foreign and international officials and money laundering, and adopt specific criminal money laundering legislation establishing an effective confiscation and provisional measures regime
- Continue specialised training for prosecutors and the police, and enhance training on corruption for the judiciary.

Representatives of Bosnia and Herzegovina participated in the first regional seminar of the PACO Proceeds project (Romania, June 2001), the two study visits to the Netherlands and Germany (October 2001) and the second regional seminar in Croatia (November 2001). The present report summarises the information received and the recommendations prepared by participants from Bosnia and Herzegovina in the course of this project.

4.2.2 THE CONFISCATION SYSTEM

4.2.2.1 Legal basis

In the Federation of Bosnia and Herzegovina, confiscation is regulated by Article 68 (confiscation of instrumentalities as a security measure) and Articles 110 to 113 of the Criminal Code.

The basis for confiscating profit is Article 110:

- 1) "No person may keep illicit profit
- 2) "Profit, as in paragraph 1 of this Article shall be subtracted in accordance with the court decision which establishes the execution of a criminal offence under the conditions regulated by this Law".

The way in which profit is confiscated is regulated by Article 111:

- 1) "Money, objects of value, and any other forms of illicit profit shall be confiscated from the perpetrator, and if confiscation is not possible, the perpetrator shall oblige himself to pay the amount of money that corresponds to the property profit gained."
- 2) "Illicit profit may be subtracted from the person to whom it was transferred with no compensation or with compensation unequal to the real value, if one knew or might know that the profit has been gained through criminal offence. If the profit is transferred to close relatives, it shall be confiscated from them if it is not proven that the compensation was equal to the true value."

Confiscation of the profit from legal persons is regulated by Article 113:

- 1) “If, by a criminal offence, profit is gained for a company or any other legal person, such profit shall be confiscated from this company or the legal person”.

The Criminal Code of the Republica Srpska contains similar provisions. Article 64 of the Criminal Code foresees confiscation of instrumentalities as a security measures. Article 93 corresponds to Article 110 of the Federation and Article 94 to Article 111.

The Criminal Code of the District Brčko (an autonomous region in Bosnia and Herzegovina) contains a similar provisions.

According to information provided by participants from Bosnia and Herzegovina, these provisions apply to all crimes and allows for the confiscation of property and value-based confiscation orders. Only proceeds from crimes for which there is a conviction can be confiscated. The burden of proof to link property to a specific crime remains with the prosecutor. Third-party confiscation is possible.

Provisional measures are provided for in the Criminal Procedure Codes of both entities, that is, in Articles 486, 105, and 200 of the CPC of the Federation, and Articles 482 to 492 of the CPC of the Republica Srpska.

In both entities, an investigative judge may forbid the disposal of property until the completion of the procedures. Representatives of Bosnia and Herzegovina are of the opinion that this can only be done once the formal investigation (subject to an order for investigation of the investigative judge) has started.

The Criminal Code of the Republica Srpska, adopted in June 2000, contains a provision on money laundering. Both, the Republica Srpska and the Federation have recently adopted money laundering legislation which criminalize money laundering and foresee the forfeiture of laundered proceeds.

At the moment, the Criminal Code of Bosnia and Herzegovina as well as the Criminal Procedure Code for the State of Bosnia and Herzegovina is in preparation.

4.2.2.2 Organisation

A coherent approach to the confiscation of proceeds from crime, including provisional measures, and to the prevention of money laundering is not in place in Bosnia and Herzegovina.

In both entities and the District Brčko, a financial police department has been established under the respective Ministry of Finance. The Financial Police, Ministry of Interior – Crime Police, Customs and Tax Administration are responsible for investigating economic and financial crime, each in its own competence.

The Ministries of Interior and the Criminal Police Departments in both entities and the District Brčko are responsible for criminal investigations, including into organised and economic crime. New rules of procedure adopted for the Criminal Police of the Federation regulate the establishment of a special service for inter-cantonal and organised economic crime, including a special division for corruption and money laundering.

Criminal investigations are led by investigative judges in interaction with prosecutors. The role of prosecutors is considered more important in cases related to organised and economic crime. Suspects need to be interrogated before an investigation is formally opened.

State level law enforcement and criminal justice institutions are not in place. A financial intelligence unit has not been established, neither at the State nor at the entity level.

4.2.2.3 Training

Relevant training institutions include in the Republica Srpska a police academy, and a training institute for judges and prosecutors which is being established.

In the Federation of Bosnia and Herzegovina, a proposal has been submitted to set up a permanent education and training institution for judges and prosecutors in the prevention of crime.

The District Brčko has a judicial commission that is authorised to provide training.

In addition, law enforcement and criminal justice officer participate in training activities organised by international organisations and bi-lateral donors.

Specialised training on financial investigations and the confiscation of proceeds from crime is not available.

4.2.2.4 International cooperation

The Criminal Procedure Codes of both entities and the District Brčko foresee the provision of mutual legal assistance. In the Republica Srpska there is no experience with mutual legal assistance related to the confiscation of proceeds. The Federation has requested assistance from abroad. An example given was a request for legal assistance from Germany, Austria, Slovenia, the Czech Republic and the USA following a request from the Cantonal Court in Sarajevo. Otherwise, experience is rather limited also in the Federation.

4.2.3 ASSESSMENT

The recent adoption of anti-money laundering legislation in both entities may indicate at a political commitment towards a follow-the-money policy, which would also include financial investigations, provisional measures and the confiscation of proceeds. Provisions aimed at the confiscation of proceeds (not only instrumentalities) have been in place before. There is no data, however, showing that they have actually been enforced in practice. Criminal investigations into serious crime are not accompanied by financial investigations and provisional measures to secure property which may be subject to a confiscation order later on.

Reasons include the following:

- The legislation does not seem sufficiently coherent and complete:
 - With regard to provisional measures (“temporary confiscation”) it is unclear whether an order of investigation must be in place in addition to an judicial order for provisional measure, or whether the instruments and suspected proceeds can be seized by law enforcement officers already prior to that to avoid them from being dissipated (as foreseen under Article 146 of the CPC of the Federation for objects under Article 200 and for property in general under Article 105 in conjunction with Article 486).
 - It seems that different provisional measures apply to physical “articles” and bank accounts. In practice only instruments are seized in pre-trial criminal procedure
 - An Anti-money laundering legislation was enacted only recently in both entities. The legislation includes provisions on provisional measures and confiscation. However, it remains to be seen whether it will also function in practice.

- Institutional capacities are limited and in addition fragmented:
 - A systematic and strategic approach to financial investigations and confiscation of proceeds has not been developed. A money laundering strategy has been adopted but lacks implementation
 - There is a general lack of expertise and skills on financial investigations and confiscation among law enforcement officers, prosecutors and judges. Training programmes to enhance specialisation have not been implemented
 - There are no prosecutors specialised in financial investigations
 - Specialised units focusing on financial investigations, provisional measures and the confiscation of proceeds within the framework of criminal investigations, or institutions managing property seized have not been established
 - Cooperation between law enforcement institutions is weak and multi-disciplinary approaches to financial investigations are not applied. For example, the criminal police (with specialised units for organised and economic crime to be established) and the financial police are responsible for financial investigations, but there appears to be little interaction
 - The sharing of information between entities and between cantons faces serious obstacles
 - State level institutions, including a financial intelligence unit, are not available.

- The possibilities for Bosnia and Herzegovina to cooperate internationally are limited:
 - Bosnia and Herzegovina has not acceded to relevant international conventions permitting cooperation
 - There is no state level institution, such as a financial intelligence unit, which could serve as a counterpart for the exchange of information.

- In more general terms, the fragmentation of the country and its institutions, the fact that the economy is largely cash-based, and the size of the underground economy constitute further obstacles.

4.2.4 BOSNIA AND HERZEGOVINA: RECOMMENDATIONS FOR REFORM

4.2.4.1 Policies and legislation

- Rec 1 The existing anti-corruption strategy and the anti-money laundering strategy should be implemented (the money laundering laws of the Federation and the Republica Srpska have been adopted recently).
- Rec 2 The Criminal Procedure Codes need to be improved and made more consistent with regard to the confiscation of proceeds and provisional measures, especially in the pre-trial criminal procedure (including before the formal commencement of judicial investigation).
- Rec 3 Confiscation should be introduced in the Criminal Code as an additional punishment.
- Rec 4 Law should regulate the liability of and sanctions and security measures against legal persons.
- Rec 5 Changes in the Execution Law should be adopted in view of establishing an agency for the management of assets seized and confiscated.
- Rec 6 Relevant international conventions should be signed and ratified, including in particular Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141), and the conditions for mutual legal assistance should be improved.
- Rec 7 Adoption of the Law on Office for Fighting of Corruption and Organized Crime.
- Rec 8 Adoption the Law on Conflict of Interests.

4.2.4.2 Organization and institutional capacities

- Rec 9 The anti-money laundering law should be implemented including an institutional mechanism to receive and review unusual and suspicious transactions. A financial intelligence unit should be established to this effect. Staff of the FIU and other professionals should be trained.
- Rec 10 The project on law enforcement organisations should be implemented.
- Rec 11 Criminal investigations should be accompanied by financial investigations from the start. Consistent, determined and comprehensive actions by judicial bodies (prosecutors and judges) and internal affairs authorities should be pursued in the implementation of provisions of the Criminal Code and Criminal Procedure Code related to the confiscation of proceeds from crime.
- Rec 12 Multi-disciplinary approaches should be introduced, including cooperation between law enforcement agencies during the pre-trial procedure.
- Rec 13 The bank payment system should be expanded in order to reduce the cash economy and the underground economy.
- Rec 14 Cooperation between law enforcement bodies should be improved and made more efficient.
- Rec 15 The time span between investigations and court procedures should be considerably reduced.
- Rec 16 Contact points for mutual criminal assistance should be established to facilitate cooperation.
- Rec 17 Establishing the Office for Fighting of Corruption and Organized Crime.

4.2.4.3 Training

- Rec 18 A strategy for basic training of law enforcement officials, as well as advanced training for specialists should be developed and adopted.
- Rec 19 Post-graduate education in financial investigations should be established in academic institutions.
- Rec 20 Joint training activities of different agencies should be organised in order to promote cooperation, harmonisation and multi-disciplinary approaches.
- Rec 21 Use should be made of the experience of other countries through study visits and expertise.
- Rec 22 Training programmes could comprise the following:
- Judges and Criminal police officers (short-term), where basic knowledge can be given and experiences on the following matters be shared on:
 - Concept of money laundering
 - Definition of corruption and organised crime
 - cross-border illegal trafficking of drugs, human beings, stolen vehicles, etc.
 - modern investigative means and methods to fight economic and organised crime.
 - Joint training courses and study visits for senior prosecutors, targeting:
 - equipment with proper knowledge on managing the investigations of these cases strengthening international co-operation, mostly on a regional basis and creating a network of contacts
 - creating similar structures to fight economic and organised crime to exchange information and co-ordinate common efforts.

- Joint training courses for senior criminal police officers and prosecutors on the:
 - improvement in the relations between them, particularly between the respective economic crime units, in the police and the prosecution offices
 - specialised training for money laundering crimes, corruption and trafficking
 - training courses on information collection and the creation of a centralised database system.

- Courses for judges and financial experts for specialised knowledge on economic matters and cases.

- Special training for all kinds of financial investigations.

- Special training for mutual criminal assistance.

- As a starting point, two seminars should be organized with the support of the Council of Europe.

4.3 Bulgaria

4.3.1 INTRODUCTION

Bulgaria ratified the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) in June 1993. Bulgaria participates in the money laundering evaluation mechanism (PC-R-EV). The country has been visited by a PC-R-EV team and the evaluation report was adopted in June 2000. Bulgaria is party to the United Nations Convention of 1988 on Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Bulgaria participates actively in the Stability Pact Initiative against Organised Crime (SPOC). However, it does not participate in the Stability Pact Anti-corruption Initiative (SPAI). Recommendations resulting from the SPAI assessments are therefore not available.

Representatives of Bulgaria participated in the first regional seminar of the PACO Proceeds project (Romania, June 2001), the two study visits to the Netherlands and Germany (October 2001), and the second regional seminar in Croatia (November 2001). The present report summarises the information received and the recommendations prepared by Bulgarian participants in the course of this project.

4.3.2 THE CONFISCATION SYSTEM

4.3.2.1 Legal basis

According to the Bulgarian legislation there are four kinds of confiscation:

- confiscation as a punishment according to articles 37 and 44, 45 and 46 of the Penal Code;
- confiscation as a coercive measure according to article 53 of the Penal Code, which is not a punishment;
- confiscation as an administrative sanction (articles 21 and 22 of the Administrative Violation and Punishment Act) and
- confiscation as a civil sanction according to chapter III and article 34 (3) of the Citizen's Property Act.

Provisions in the Penal Code connected with confiscation are Articles 44, 45, 46 and 53, which are general norms and apply to all kind of crimes. Article 44 gives a definition for confiscation as a kind of criminal punishment according to the Bulgarian system of criminal sanctions:

"Confiscation shall be compulsory appropriation without compensation of property in favour of the state, of assets belonging to the culprit or of part thereof, of specified pieces of property of the culprit, or of parts of such pieces of property."

Article 53 of the General part of the Penal Code defines the objects, which can be expropriated in favour of the state (this is a special kind of confiscation in the sense of general coercive measure):

(1) "Notwithstanding the penal responsibility, expropriated in favour of the state shall be:

- a) objects belonging to the culprit, which were intended or have served for the perpetration of intentional crime;*
- b) objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code.*

(2) Confiscated in favour of the state shall also be:

- a) objects that have been subject or means of the crime, the possession of which is forbidden, and*

b) the acquired through the crime, if it does not have to be returned or restored. Where the acquired is not available or have been disposed off, an equivalent value shall be adjudged."

In the sense of the provisions of article 53 (2) "b" of the Penal Code, confiscation as an enforcement measure is directed to specific property, namely proceeds from crime. It applies notwithstanding of the penal responsibility and only to objects and property directly connected with the committed crime – when means and objects are obtained through the crime (art. 53 (2) "b" PC) or when they are identified as means or subjects of the committed crime (art.53 (2) "a" PC).

Article 53 (2) "b" in the general part of PC establishes the principle that nobody shall be able to obtain property rights by a crime. This kind of confiscation is applied with regard to objects and property, obtained from criminal activity and also where there is not a collision with property rights of third persons, who do not know about this criminal activity. When there is such collision the property, obtained from the crime is returned to its owners.

The grounds on which article 53 (2) "b" PC is applicable are as follows:

- conviction by the competent court, which defines that the assets are obtained by a crime
- the assets, obtained by a crime, shall be not returned or recovered to their owners.

Subject to confiscation by article 53 (2) "b" PC are only real obtained assets, on the basis of the principle that a crime is not allowed to be a way of proper earnings, including movable and immovable property and all kinds of assets as proceeds from crime.

Article 53 (2) "b" PC provides the opportunity for confiscation either of the property or assets obtained by the crime as proceeds of crime, or confiscation of its equivalent corresponding value when the obtained proceeds are not available. The aim of this provision is to be guaranteed the efficiency of the confiscation of proceeds from crime in the cases when the charged person aims to hide the proceeds from crime.

The confiscation provided by article 53 (2) PC gives the opportunity for confiscation as an enforcing measure for proceeds from crime, even when they do not belong to the charged person, that is no matter who is their owner. Article 53 (2) PC makes a difference between assets – proceeds from crime and objects which are subject to crime, otherwise there will be two property sanctions for one and the same crime (which would be contrary to the principle "non bis in idem").

On the basis of the provisions of article 53 (2) in the general part of the Penal Code these coercive measures are provided for in some articles of the special part of the Penal Code, concerning different crimes as follows:

- corruption /art. 225b (4) PC/ - confiscation of the object, required by the crime;
- poaching /art. 237 (3), 238 (2), 240 (3) PC/- confiscation of the objects required by the crime;
- smuggling /art. 242 (1), art. 242a, including contrabands through the state border of strong poison substances, explosives, arms and ammunitions, narcotic substances - confiscation of the objects of the crime /242 (7)PC / and the vehicle, by which the smuggling is committed, regardless of whose property it is /article 242 (8)PC/;
- currency crimes and crimes connected with financial operations and negotiations, export and import of currency / art. 251/ - objects of the crime are confiscated and when they are not available or are disposed of, their equivalent value is adjudged;
- money laundering /art.253 (5) PC/ - objects from crime are confiscated and when it is not available or is disposed, their equivalent is adjudged;
- traffic of human beings / art. 280 (1) PC/ - in the cases when a vehicle has been used, it is confiscated if it is a possession of the convicted person;
- bribery / art.301-307a/ - the objects, acquired by the crime are confiscated and when they are not available or are disposed, their equivalent value is adjudged;
- organized criminal groups, including armed groups for committing intentional crimes as robbery, contrabands of narcotics, analogues and precursors, blackmailing in various kinds in order to get

proceeds from it / art. 321 (1)(3), 321a (1) (3) PC - the acquired from the crime is confiscated if the persons, from whom proceeds are obtained or their successors are unknown;

- illegal gambling /art. 327 (1) (5) PC/ - money and things / objects/, obtained from the crime are confiscated and when they are not available their equivalent value is adjudged;
- production, manufacturing, acquirement and distribution, keeping and possession, transportation or transiting of narcotic substances or analogues and precursors / art. 354a (1) (2) (3) (6) PC/ - objects of the crime are confiscated.

Thus, in the Bulgarian PC there are provisions for confiscation of proceeds from crime, connected with serious and other types of crimes. It is only a question of amending the texts in the general and special part of the PC in order to develop better provisions completing confiscation as a coercive measure.

With regard to money laundering, the main provision on confiscation of the proceeds of crime is Article 253(5): “The object of the crime shall be confiscated in favour of the state, and if it is missing or has been alienated, an equivalent value shall be adjudged.” This provision is applicable only if there is a conviction for the predicate offence. That means that the offence of money laundering is punishable only after the issuing of the conviction for the previous offence. The scope of the previous offences is broad - article 253 para 1 PC stipulates that all kinds of crimes could be considered as previous offences.

The standard of the required proofs for confiscation as a coercive measure according to article 53 (2) “a” and “b” PC is the one that is applied in the penal procedure system according to the Penal Procedure Code. Under Bulgarian law confiscation is broadly mandatory and can be value based but is limited to existing proceeds.

Firstly, a conviction is required before confiscation is possible. Proceeds must be linked to the offence for which there is a conviction.

Secondly, the burden of proof to link property to a specific offence rests with the prosecutor. The reversal of the burden of proof in Bulgarian PPC is not provided. The reversal of burden of proof is against the general principle of the Bulgarian Penal Legislation, it is connected with proof of the guilt of the charged person in the criminal proceedings.

The search and seizure of property, in connection with the discovery of evidence, is regulated in Articles 133 - 139, 156a, 185 of the Penal Procedure Code. Article 133 PPC under the grounds in article 134 PPC, provides that the court and the bodies of the pre-trial proceeding (prosecutors and investigators) can initiate search and seizure. When it is initiated by prosecutor or investigator in the pre-trial stage of the penal proceeding, article 135 PPC provides that a court permission for the search and seizure of property is required. The order with the permission shall be performed from a judge from the respective first instance court.

In cases of urgency, when this is the only possible way to collect and keep evidence, according to article 185 PPC, the prosecutor and the investigator in pre-trial proceedings are obliged to take the necessary measures without court permission, in order to prevent a crime about which there is a suspense that will be committed, which measures include also search and seizure of the means by which the crime may be committed. In this cases according to article 135 para 2 PPC the protocol for the executed measures shall be presented to the judge from the respective first instance court for approval immediately, but no later than 24 hours. In the court proceedings search and seizure shall be performed by a decision of the court which is trying the case.

Article 156a PPC provides measures of procedure enforcement to secure the confiscation in order to ensure future forfeiture in the framework of the penal proceedings. The measures according to article 156a PPC are initiated by the bodies of the pre-trial proceedings prosecutors and investigators. For the purpose, the prosecutor makes a request to the court, which pronounces by a decision of a single-judge panel, sitting in private - parties are not summoned to discuss and give their opinion. The court decision is irrevocable. The seizure is carried out under the provisions of the Civil Procedure Code.

Temporary measures to stop a specific transaction are applicable under the Measures Against Money Laundering Act (last amendments in “SG” 1/2.01.2001). According to article 12 (1) the Minister of Finance on proposal of the Financial Intelligence Bureau (Financial Intelligence Unit) when there is a bank report for a suspicious transaction, can stop the financial operation for three days. The Bureau for Financial Intelligence is obliged to immediately inform the Prosecutor’ Office about the stopping of a transaction. The prosecutor orders may order preventive measures, and according to the provisions of article 156a and 185 of the Penal Procedure Code is obliged to present a request to the court for decision about the ordered measures. The court is obliged to pronounce a decision in a term of 24 hours.

4.3.2.2 Organisation

- **Public Prosecution:**
Prosecutors lead the pre-trial penal prosecutions and take part in court-trials as representatives of the interest of the state, charging the offenders and supporting the charge during the criminal proceeds before the court (art. 43 PPC). According to article 48 (3) PPC prosecutors lead and supervise the investigating bodies. In the field of search, seizure and confiscation of proceeds from crime, the prosecutor’s functions are defined in the above mentioned articles 133-139, 156a and 185 of the Penal Procedure Code and article 12 para (2) and para(3) of the MMLA.
- **The Investigators:**
Pursuant to the Bulgarian Constitution, investigators are part of the judicial system. According to article 48 (1) PPC and article 172 PPC they are the investigative organs. They are the Specialised Investigative Service and the District Investigative Services. Within the Specialised Investigative Service there is a specialised department investigating economic crimes.
- **The other investigative bodies in the pre-trial proceedings according to 48 (1),(2) PPC are police-investigators in the Ministry of Interior.**
According to the Ministry of Interior Act, the Ministry of Interior has two Services within which there are Economic Crime Divisions dealing with economic crimes : National Service Police (NSP) and National Service for Combating Organised Crime (NSCOC).
- **Regarding money laundering:**
As far as money laundering is concerned under the Law on Measures against Money Laundering (LMML), a specialised unit, the Bureau for Financial Intelligence (BFI), was created. The BFI has the status of an agency attached to the Minister of Finance. Pursuant to the provisions of the LMML the BFI collects, processes, discloses, keeps and analyses information about suspicious transactions (STRs) received from obliged by the law entities.

4.3.2.3 Training

The following relevant training institutions are available:

- **Training Centre for Magistrates (judges mainly):** Established in 1999 as a foundation and non-governmental organisation. It organises seminars on changes on the legislation. The focus is primarily on judges. Investigators and prosecutors can attend the seminar subject to available resources. The subjects are primarily related to European law; there are some courses on criminal law. No specialised courses on confiscation of proceeds of crime are available.
- **Police Academy of the Ministry of Interior:** As part of their training, officers participate in courses on criminal law and criminal procedure law. There are also some courses on specialised topics, but no specialised courses on confiscation of proceeds of crime are available.

In addition, training is provided by international organisations and bi-lateral projects.

4.3.2.4 International cooperation

Bulgaria has not only ratified the most important conventions in this field and entered into bilateral agreements with some countries but is also able to assist on the basis of reciprocity without any treaties or more formal agreements.

Bulgaria can provide investigative assistance on the basis of mutual legal assistance in penal matters according to the European Convention on Mutual Legal Assistance in Criminal Matters and Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141), but Bulgaria cannot enforce foreign confiscation orders.

The frame of the possible international cooperation on the ground of mutual legal assistance is arranged in articles 21 and 22 of the Measures Against Money Laundering Act.

4.3.3 ASSESSMENT

Bulgaria in recent years improved its legal and institutional framework against corruption, organised crime and money laundering. This includes mechanisms for international co-operation. Data on provisional measures and final confiscation of proceeds, however, are not available.

Financial investigations and provisional measures for confiscation as a coercive measure exist in practice, but their legal base needs to be improved in the Penal Procedure Code. The provisional measures contained in the Penal Procedural Code (Articles 133 – 139, 156a and 185) are not provisional measures specifically related to the seizure of property derived from crime.

An analysis would be necessary in view of a possible amendment of article 53 of the general part of the Penal Code to bring it in compliance with the special part of the Penal Code in connection with the requirements of the Strasbourg Convention (1990) and the Vienna Convention (1988).

Reasons include:

- The term “proceeds” does not appear to be sufficiently broad and be applied in the sense of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) in all the articles of the special part of the CC, concerning receiving proceeds from crimes.
- Burden of proof to link property to crime for which there is a conviction rests with the prosecutor. Changes are not under consideration.
- Criminal investigations are not mandatory accompanied by financial investigations in practice.
- The approach seems to be reactive, that is, that financial investigations follow the identification of suspicious transaction reports.
- Inter-agency cooperation and multi-disciplinary approaches have to be improved.
- Training structures are available but specialised training on confiscation issues is limited.

4.3.4 BULGARIA: RECOMMENDATIONS FOR REFORM

4.3.4.1 Policies and legislation

- Rec 1 To analyse the necessity of amending the Penal Code and the Penal Procedure Code in order to achieve full compliance with the Strasbourg Convention (ETS 141) for proceeds from crimes.
- Rec 2 To improve the legal framework in order to make more efficient the process of confiscation of proceeds from crime in the following aspects:
- to strengthen the powers of the competent authorities (prosecutors, investigators and the police);
 - to improve the system of provisional measures for securing the confiscation as a coercive measure;
 - to improve the regulations that concern international co-operation in freezing and confiscating proceeds from crime and exchange of information.

4.3.4.2 Organisation and institutional capacities

- Rec 3 To promote financial investigations through a project approach.
- Rec 4 To develop a set of co-operation measures to be applied by the competent authorities in financial investigations and with a view to creating a multi-disciplinary team. This system will ensure the proper level of co-operation by the competent authorities and the most efficient method for carrying out measures to secure confiscation.
- Rec 5 Problems connected to the practical execution of confiscation measures cannot be analysed separately. They are interlinked to the extent that proper and effective interagency co-operation provides the necessary evidence. In some cases, the lack of interagency co-operation may lead to the impossibility of reaching a conviction for confiscation. Our recommendation is to enhance interagency co-operation in the field of the practical application of confiscation measures.

4.3.4.3 Training

- Rec 6 Specialised training of multidisciplinary teams as task forces.
- Rec 7 To develop specialised training in confiscation issues with emphasis on its practical application.
- Rec 8 Specialised training connected not only with national measures and procedures, but also with legislation, competent institutions, measures and best practices of the corresponding authorities of other countries, in order to achieve effective mutual legal assistance in the field of confiscation.
- Rec 9 Provide for distant learning and self-studies.

4.4 Croatia

4.4.1 INTRODUCTION

Croatia ratified the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) in October 1997. It participates in the money laundering evaluation mechanism (PC-R-EV). The country has been visited by a PC-R-EV team and the evaluation report was adopted in February 2000. Croatia is party to the United Nations Convention of 1988 on Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Since December 2000, Croatia is an active member of the Group of States against Corruption (GRECO).

Croatia participates actively in the Stability Pact Anti-corruption Initiative (SPAI) and Stability Pact Initiative against Organised Crime (SPOC).

The SPAI assessment report on anti-corruption measures in South-eastern Europe includes the following recommendations addressed to the country :

- Review the confiscation and provisional measures regime to make it fully operational.
- Improve systematic and on-going specialised training of police officers, prosecutors and judges. Design a training programme for the Office for the Prevention of Money Laundering.
- Improve national data protection legislation and standards as a basis for enhanced international exchange of information fully in line with the standards set by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) and Recommendation R (87) 15 regulating the use of personal data in the police sector.

Representatives of Croatia participated in the first regional seminar of the PACO Proceeds project (Romania, June 2001) and the two study visits to the Netherlands and Germany (October 2001). Croatia furthermore hosted the second regional seminar in November 2001. The present report summarises the information received and the recommendations prepared by Croatian participants in the course of this project.

4.4.2 THE CONFISCATION SYSTEM

4.4.2.1 Legal basis

The general confiscation regime is established by articles 82 (confiscation) and 80 (provisional measures) of the Criminal Code:

Confiscation of Pecuniary Benefit Acquired by Criminal Offence

Article 82

- (1) No one shall keep any pecuniary benefit acquired as a result of a criminal offence.
- (2) The confiscation of a pecuniary benefit shall be ordered by court decision establishing that a criminal offence has been committed. If it is impossible to seize in full or in part the pecuniary benefit consisting of money, securities or objects, the court shall obligate the perpetrator of the criminal offence to pay the corresponding pecuniary counter-value.
- (3) The pecuniary benefit shall also be forfeited if it is owned by third party on any legal ground if such a party, according to the circumstances in which he/she has acquired certain benefits, knew or could and ought to have known that such benefits were obtained as a result of a criminal offence.
- (4) The injured party who, in the course of criminal proceedings, or within the maximum time-limit of three months after the final decision of the forfeiture of objects, wishes to realise his/her right in regard to the forfeited pecuniary benefit through a civil action, shall have the right to reimbursement within a period of three months after the decision regarding his/her right.

The procedures for confiscation are set out in the Criminal Procedure Code (articles 463 to 472). The article 82 of the Criminal Code seems to point at a mandatory confiscation regime, also the Criminal Procedure

Code (article 464) proscribes that the proceeds from crime must be defined by the court. The problem comes out from the provision of article 468(1) of the Criminal procedure code, which indicates that the system is in fact discretionary. Therefore there is a need to make necessary changes in order to avoid possible misunderstandings.

Confiscation is possible for all criminal offences. The system is both property- and value-based. If the pecuniary benefit to be confiscated is not available, the corresponding value can be confiscated. Confiscation of proceeds from third parties is possible if they are aware or should have been aware of the illicit origin of the property.

Contracts can be voided if the parties to the contract knew or should have known that it could impede the recovering of claims. This is to render the transfer of property to third persons more difficult.

Provisional measures to secure claims of the injured party can be ordered by a court at an early stage in criminal proceedings (Articles 136 – 138 Criminal Procedure Code). Temporary measures to secure confiscation are found in Articles 184 – 186, 218 – 224, and 463 – 472, of the Criminal Procedure Code. Article 184 of the Criminal Procedure Code allows the police to temporarily seize objects. Value-based seizures are not possible.

The new Law on suppression of corruption and organised crime was adopted on 11 October 2001. This law, among others, proscribes a special regime of freezing of proceeds from crime for future confiscation, when the criminal offences of corruption and organised crime are committed. These measures are proscribed in art. 44 – 56 of this law. According to these provisions, the Office is capable to propose the provisional measures before the criminal procedure starts, by respecting the civil law provisions. The office can also order and co-ordinate the financial investigations to other responsible bodies in Croatia (tax administration, banks etc.).

4.4.2.2 Organisation

Within the Criminal police directorate of the Ministry of the interior, Economic crime and corruption department was established this year. Its task is carrying out the investigations of corruption related criminal offences.

As mentioned above, in October 2001 the Parliament passed the law on the creation of Office for suppression of corruption and organised crime (USKOK). The establishment of this Office within the prosecution service is in underway. Among others, its task will be, under a special procedure, to undertake measures for freezing and confiscation of proceeds from crime. Criminal offences committed by structured group or a criminal organisation, in accordance with UN Palermo convention, criminal offences related to corruption, as well as criminal offences for which the imprisonment is at least three years if they are committed with an international element, are within the jurisdiction of the Office. Furthermore, criminal offences which are committed in relation to specifically mentioned offences (such as money laundering and obstruction of justice) are also within the jurisdiction of the Office.

According to the Law on customs service the customs officers can temporarily seize the objects which come from crime or from misdemeanours.

The Office for the Prevention of Money Laundering serves as a financial intelligence unit. The Office reviews reports on suspicious transactions and when it has reason to believe that money laundering is involved it forwards these reports to the Public Prosecutor for investigation in co-operation with the criminal police.

Tax administration have a database on legal property of citizens, which is important source of information for comparison with real situation in particular investigation.

Specialised units for confiscation of proceeds are not available.

4.4.2.3 Training

Prosecutors and judges receive their education at the law faculty and police officers at the police college.

The Police Academy can provide further training.

Within the Ministry of Justice a special training department for judges and prosecutors has been established in 1999. Among others, its task is to educate judges and prosecutors on international legal instruments as well as harmonisation of domestic legislation within the European Union standards. Hitherto the department has organised 14 seminars for more than 540 participants. However, courses can be organised by the Ministry of Justice, for example, on new laws or specific topics. In addition, experts meetings on specific issues can be organised. In 2000, such a meeting was held on the seizure of proceeds from crime.

In general terms, however, training opportunities on provisional measures, financial investigations and confiscation of proceeds for police, prosecutors and judges are rather limited.

4.4.2.4 International cooperation

Croatia can provide investigative assistance to foreign countries and it can seize property on the basis of a foreign confiscation order. Croatia has some practical experience in such cooperation.

4.4.3 ASSESSMENT

Although reportedly there have been some recent cases of seizures and confiscation related to organised crime, drugs and money laundering, the Croatian confiscation and provisional measures regime appears not to be fully operational and to be very rarely used in practice.

Reasons include:

- Legislation
 - The term “pecuniary benefit” is not necessarily in line with the broad meaning of proceeds under the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141). The interpretation appears to be too narrow in practice
 - There is no clear understanding of the meaning of the legal provisions, and there are differences of opinion on their interpretation
 - The standard of proof required to determine the link between the offence for which there is a conviction and the property is not in accordance with Convention 141.
- Institutional capacities
 - There is no pro-active approach to financial investigations, seizure and confiscation. Criminal investigations are not accompanied by financial investigations and measures to secure property. Specialised units within the prosecution or the police to focus on financial investigations, provisional measures and confiscation have not been established. The same is true for institutions handling property seized
 - Fear of compensation claims by prosecutors in cases of seizures which are not followed by confiscation
 - The fact that the time limit of two hours for freezing a suspicious financial transactions is too short is often mentioned by Croatian representatives. However, this is a very specific problem related to the prevention of money laundering, but should not be a major obstacle to financial investigations in the context of criminal investigations and to other provisional measures
 - There is a general lack of experience and knowledge of financial investigations, provisional measures and confiscation among law enforcement officers, prosecutors and judges.

4.4.4 CROATIA: RECOMMENDATIONS FOR REFORM

4.4.4.1 Policies and legislation

- Rec 1 The period of two hours during which the FIU can freeze and analyse STR should be extended (the period which is proscribed in the provisions of the Law on Combating Money Laundering).
- Rec 2 Since there are some misunderstandings about nature of application of existing legal provisions which cover the provisional measures for seizure of proceeds from crime, there is a need to change this provisions in order to make these provisions more effective (see chapter Legal bases).

4.4.4.2 Organisation and institutional capacities

- Rec 3 Public Prosecutors and investigative judges should be specialised in financial investigations and mutual legal assistance in criminal matters.
- Rec 4 A department for combating economic crimes and to employ new staff with economic experts in the Prosecution service and courts should be established.
- Rec 5 The process of distinguishing the property owned legally by a defendant and the property which is proceeds from crime should be accelerated.
- Rec 6 The data regarding investigation and final sentences on provisional measures and confiscation should be included in official statistics.
- Rec 7 Data exchange and data protection should be strengthened.
- Rec 8 Contact points responsible for facilitating requests for mutual legal assistance between officials in the Ministry of Justice and the Ministry of the Interior should be established in order to enhance co-operation between competent domestic and foreign authorities.
- Rec 9 The competent authorities in Croatia dealing with organised crime, corruption and economic crimes must speed up the criminal procedures in their jurisdiction. In order to ensure this, it is necessary to have better links among law enforcement units dealing with serious crimes, Prosecution service and investigating judges, and to improve the exchange of information between them.
- Rec 10 In order to improve the legal infrastructure and practice a modern computer system should be established for prosecutors, courts and law enforcement authorities.
- Rec 11 The investigations of criminal offences committed with purpose of gaining of illegal proceeds, must also include the carrying out the financial investigations.
- Rec 12 In order to avoid the significant expenditures as a result of grate number of applications for compensation, the proceeds which are temporarily seized need to be left to the management of the defendant.
- Rec 13 Police officers, prosecutors and judges must persist in their daily work on implementation of existing provisions in the field of freezing and forfeiture of proceeds from crime.

4.4.4.3 Training

Rec 14 Apart from basic training, which is compulsory, special training for law enforcement officers dealing with sophisticated offences should be offered. Including:

- secondary level experts working in smaller groups
- small working groups for judges and prosecutors regarding this issue.

The financial investigations need to become a subject of training programs for police officers, prosecutors and judges.

Rec 15 For efficient development of educational programs and for further realisation of financial investigations as well, it is important to appoint a person who will undertake leading role, bought, international contacts and education of experts in Croatia, and in carrying out of financial investigations.

4.5 Moldova

4.5.1 INTRODUCTION

Moldova signed the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) in May 1997, but has not yet ratified it. It participates in the money laundering evaluation mechanism (PC-R-EV). The country was visited by PC-R-EV team in June 2000, and it is expected that the evaluation report will be adopted in December 2001.

Moldova participates actively in the Stability Pact Initiative against Organized Crime (SPOC). It recently also joined the Stability Pact Anti-corruption Initiative (SPAI).

The SPAI assessment report on anti-corruption measures in South-eastern Europe – prepared prior to Moldova joining SPAI – does not include a chapter on Moldova.

Representatives of Moldova participated in the first regional seminar of the PACO Proceeds project (Romania, June 2001), the two study visits to the Netherlands and Germany (October 2001), and the second regional seminar in Croatia (November 2001). The present report summarizes the information received and the recommendations prepared by Moldavian participants in the course of this project.

The Law on Money Laundering was passed by the Parliament on 15 November 2001 and entered into force on the same day.

4.5.2 THE CONFISCATION SYSTEM

4.5.2.1 Legal basis

Article 33 *Confiscation of property* of the Penal Code establishes the principles of confiscation as a complementary penal sanction reads:

- (1) Confiscation of property consists in a forced and gratuitous transfer into the state property of the objects that belong to the convict and were intended to be used, were used or obtained as a result of the perpetration of crime, and also of the profits obtained through the use of goods and valuables acquired in the criminal way.
- (2) Money and gifts received illicitly are confiscated, and value of illicitly received services is exacted according to the decision of court, but in case they were not found the court exacts from the convict an equivalent sum of money, basing on their value at the moment of the perpetration of crime.
- (3) Confiscation can be ordered only in cases provided by the legislation of the Republic of Moldova, and for the crimes committed with a material interest – also in cases provided by the Special Part of present Code.
- (4) The court must indicate in the sentence if the whole property of the convict is confiscated or only a part of it; in the latter case the court must indicate what part of the property is confiscated, or to enumerate the objects that shall be confiscated.
- (5) Cannot be confiscated objects, enumerated in the list attached to the present Code, that are necessary for the convict and the persons which are supported by him.
- (6) In case the property of the convict is confiscated, the state doesn't bear any responsibility for the debts and obligations that appeared after the investigative authorities or the court had taken the measures of seizing the property and actions were taken without their permission.
- (7) In regard of the claims that shall be satisfied at the expense of the confiscated property the state is responsible only in the limits of the assets. The procedure of satisfying these claims is provided by the Code of Civil Procedure.

The Penal Code foresees mandatory confiscation for 42 crimes (for example, articles 66 *Sabotage*, 74-2 *Establishing and leading and membership of the criminal organization*, 75 *Smuggling*, 84 *Currency counterfeiting*, etc.), while for 31 crimes confiscation is at the discretion of the court.

Objects resulting from a crime, i.e. proceeds from crime, consist of any economic advantage from criminal offences, that is, any property, whether corporeal or incorporeal, movable or immovable, as well as legal documents or instruments evidencing title to, or interest in such property.

Indirect advantages - such as money resulting from the sale of stolen vehicles, houses bought with the money from crime – can also be confiscated.

The system is property based and only the proceeds from crime can be confiscated. But corresponding value can be exacted from the convict only in case when illicitly received money, gifts and services cannot be found (see point 2 article 33 Penal Code).

A conviction is required before confiscation. The burden of proof on the link between the property and the offences for which there is a conviction rests fully with the prosecutor.

Confiscation of property from the third persons is possible if the third party knew of the illicit origin of property.

The Code of Administrative Misdemeanours also contains provisions regarding confiscation which is applied in case of minor (administrative) offences. Point 1 article 28 of the above mentioned Code reads that confiscation of the object, that constituted the tool of commission or immediate objective of administrative misdemeanour, consists in a forced and gratuitous transformation of this object in to the state property.

Procedure of the application of seizure of property is provided by the Code of Criminal Procedure. Thus, according to Article 155 of this Code, in order to secure the civil claim and eventual confiscation of property the criminal investigator is obliged to put under seizure the property of the suspect or the accused or the person that, according to the law, bears the material responsibility for his actions, or of the other persons which hold the property obtained in the criminal way. The persons whose property is seized, and also other persons whose rights are violated by this action, must get the explanation of their right to complain against the actions of the criminal investigator to the prosecutor, then to the court.

Confiscation is imposed through a written warrant issued by a investigator from the law enforcement bodies.

4.5.2.2 Organisation

The authorities responsible for conducting criminal and financial investigations are the following:

- The Office of Public Prosecution conducts criminal investigations through its central and local offices. Within the Office of the Prosecutor General three units play an important role:
 - The Anti-corruption Section
 - The Section for Financial and Economic Crime Investigations
 - The Section for Investigation of Exceptional Cases (most serious and complicated cases).
- The Ministry of Interior investigates criminal offences through its central and local departments. The following services are of relevance:
 - The Directorate for economic and financial crimes
 - The Department of the fight against corruption and organised crime
 - The Department of Criminal Investigation.
- The Customs Department has investigative power in cases related to customs activity.
- Service of Intelligence and Security.

Starting from the 1st of January 2002 the Financial Police with respective investigative powers in case of tax related crimes will be established within the Ministry of Finance.

A Financial Intelligence Unit has not yet been established. However, under the law on money laundering which entered into force on 15 November 2001, the Office of the Prosecutor General will perform the functions of an FIU.

4.5.2.3 Training

Training for police and other law enforcement bodies, both pre-service and in-service, is provided by the national Police Academy. On graduation its students receive the rank of lieutenant and are assigned to different departments of the Ministry of Interior, including investigative units. Penal and administrative law, criminal procedure law, investigative tactics are the main disciplines taught at the Academy. The period of studies is 4(5) years.

Courses are offered on special topics such as investigative tactics, criminal law, criminal procedure law. Also specialised training (e.g. on banking system, fiscal law etc.) is provided for students and acting officers from economic and financial police units.

Confiscation of property as one of the complementary penal sanctions is studied by the 2nd year students at the Police Academy, being included in the Penal Law course, general part. Financial investigations, investigation of fiscal, bank frauds and related issues of property confiscations or seizure are taught as a part of special course for the students specialised in financial and economic police.

The Centre of Professional Training for judges and prosecutors offers in-service training for judges and prosecutors during their probation period of one year which ends with an examination. It also provides specialised training (for a 2 - 4 week period) for experienced officials, mostly on new legislation. Regional seminars are organised on special topics, for example, on financial fraud. Sometimes joined seminars are held with customs and tax authorities.

4.5.2.4 International cooperation

Moldova does not have any experience in mutual legal assistance in this matter. According to the law, it can provide investigative assistance to identify and trace property and obtain documents. It cannot carry out a seizure based on a foreign confiscation order or enforce a foreign confiscation order. Although according to the recent amendments to the Code of Penal Procedure Moldova can enforce a foreign penal judicial sentence.

4.5.3 ASSESSMENT

Moldova is making efforts to adopt European standards against corruption and organized crime and has acceded to relevant European and other international instruments. Moldova has signed the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141), but this instrument has not been ratified yet. The legal system comprises articles on confiscation of proceeds and temporary measures. At present, the provisions of the Convention – in their broad meaning – are not implemented in Moldova. Although statistics on confiscation are not available, it would appear that proceeds from crime have hardly been confiscated in practice.

Reasons include the following:

- Relevant legislation is not sufficiently complete:
 - The burden of proof to link property to a crime for which there is a conviction fully rests with the prosecutor

- The money laundering legislation has not been enacted and money laundering is not yet a criminal offence
 - Lack of criminal liability of legal persons
 - The 'Law on the Compensation for Damage caused by Illegal Actions of Investigative Bodies and Judiciary' provides for material liability of prosecutors and investigator even in cases of legal seizure when the charges are dropped. Prosecutors and investigators therefore prefer to not carry out provisional measures.
- Institutional capacities are limited:
 - Criminal investigations are not accompanied by financial investigations to target the proceeds
 - Lack of cooperation between agencies involved, but also between the law enforcement institutions and banking institutions who are reticent to provide information
 - The seizure of property can only be ordered once the criminal procedure is opened. However, at this stage usually, the proceeds from crime will have already disappeared
 - A Financial Intelligence Unit has not been set up
 - The institution managing seized and confiscated property has not been established.

4.5.4 MOLDOVA: RECOMMENDATIONS FOR REFORM

4.5.4.1 Policies and legislation

- Rec 1 To review international instruments available in the field of confiscation/seizure of the proceeds from crime, to accede to relevant international conventions, to sign necessary inter-governmental agreements. This includes in particular the ratification process for the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) and the Civil Law Convention on Corruption and the adjustment of the national legislation to the provisions of these convention.
- Rec 2 To pass the anti-money laundering law.
- Rec 3 To accede to respective international conventions on data protection in order to facilitate the international exchange of information.
- Rec 4 To introduce legal provisions regarding criminal responsibility for money laundering crime, and to define money laundering offence in the Criminal Code.
- Rec 5 To provide for the obligation of financial institutions to report every suspicious transaction, to define the notion of a suspicious transaction, and to indicate its legal criteria (to be provided by the afore-mentioned law).
- Rec 6 To provide for the criminal liability of legal persons, including the possibility of confiscation of illegally obtained property.
- Rec 7 To modify the system for collecting evidence by changing the legal provisions, inserting in the Code of Criminal Procedure new stipulations concerning the application of special investigative means (undercover operations, electronic surveillance, wire-tapping, etc.).
- Rec 8 To introduce into the national legislation civil law principles of confiscation basing on comparative analysis of other countries experience and international standards.
- Rec 9 To change the national legislation in view of facilitating the lifting of bank secrecy in the course of preliminary proceedings, that is, before the opening of the formal criminal case.

- Rec 10 To change the law on the compensation for damage incurred by illegal actions of investigative bodies and the judiciary, abolishing the liability of these authorities and concrete investigators in cases of justified seizure and confiscation of property, even when charges are dropped.
- Rec 11 To introduce a special chapter in the Code of Criminal Procedure concerning international co-operation, including legal provisions on assistance in the field of confiscation of proceeds from crime.

4.5.4.2 Organisation and institutional capacities

- Rec 12 To promote financial investigations through a project-approach in order to improve the cooperation between law enforcement bodies, especially between specialized units, to apply multi-disciplinary approach, and thus to achieve better results.
- Rec 13 To ensure that financial investigations are integral part of criminal investigations from the start.
- Rec 14 To set up a financial intelligence unit in charge of financial investigations in accordance with the money laundering law.
- Rec 15 To establish contact points for mutual legal assistance in cases related to the confiscation of proceeds from crime.

4.5.4.3 Training

- Rec 16 To organize a multi-disciplinary seminar for decision makers and senior managers in cooperation with the Council of Europe in order to rise the awareness about the strategic importance of the financial investigation and confiscation.
- Rec 17 To organise specialised training activities for criminal investigators, criminal intelligence analysts and strategic intelligence analysts in order to increase the level of understanding and the knowledge about the financial investigation.
- Rec 18 To develop a special training course for judges and prosecutors within the Centre for the professional Training of Judges and Prosecutors.
- Rec 19 To introduce a special training course on financial investigation in the Police Academy for students and acting police officers.
- Rec 20 To focus the training activities on the following topics:
- General overview of international legal framework and experience regarding seizure and confiscation of proceeds from crime
 - National and international communication and cooperation
 - National legal and institutional framework for combating financial crime
 - The importance of data collection and financial analysis concept
 - Methods of financial investigations
 - Proactive approach in financial investigation, etc.
- Rec 21 The elaboration and implementation of the proposed training activities for the year 2002 to be assisted and supported by the Council of Europe.

4.6 Romania

4.6.1 INTRODUCTION

As a member State of the Council of Europe and a candidate for accession to the European Union, Romania is making efforts to harmonise its legislation and practice with European standards also with regard to the prevention and control of crime. Romania signed the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) in March 1997. Parliamentary procedures to ratify the convention are underway.

Romania is party to four follow up programmes to monitor and promote the implementation of appropriate measures to combat corruption: the Council of Europe's partial agreement "Group of States against Corruption" (GRECO); the Council of Europe's Select Committee for the evaluation of Anti-Money Laundering Measures (PC-R-EV), in the framework of the Financial Action –Task Force on Money Laundering (FATF); the Ad-hoc Group of Non-Members of the OECD Working Group on Bribery in Business Transactions; and the Stability Pact Anti- Corruption Initiative's Steering Group.

Romania participates actively in the Stability Pact Anti-corruption Initiative (SPAI) and Stability Pact Initiative against Organised Crime (SPOC).

Romania hosted the first regional seminar of the PACO Proceeds project (Bucharest, June 2001) and representatives of Romania participated in the two study visits to the Netherlands and Germany (October 2001), and the second regional seminar in Croatia (November 2001). The present report summarises the information received and the recommendations prepared by Romanian participants in the course of this project.

4.6.2 THE CONFISCATION SYSTEM

4.6.2.1 Legal basis

Romanian legislation contains legal provisions on both criminal confiscation and administrative confiscation of proceeds of crimes or minor offences.

Article 118 of the Criminal Code reads:

Art 118 – The following are subject to special confiscation.

- a) The objects which resulted from the action provided in the criminal law*
- b) The objects which were the instruments of a crime, if they belong to the criminal*
- c) The objects which were granted for the perpetration of a crime or for the rewarding of the criminal*
- d) The objects obtained in a clear way from the perpetration of the crime, if they are not restituted*
- e) to the injured person to the extent in which they serve to the injured person's compensation*
- f) The objects possessed in non-compliance with the legal provisions.*

This article applies to all offences, but there are provisions in special laws related to specific serious crimes, such as Law no. 21/1999 on fighting money laundering, Law no. 143/2000 on fighting drug trafficking and Law no. 78/2000 on fighting corruption.

Law no. 21/1999 (art. 25) on money laundering provides that the items that constitute the object of the crime shall be confiscated and, should they not be found, the perpetrator shall pay for their equivalent value. Law no. 143/2000 (art. 17) on drug trafficking contains similar provisions regarding the confiscation of drugs, as well as the confiscation of the money or any other goods obtained by drug dealing. Law no. 78/2000 on fighting corruption (art. 19) provides that the money, the items or any other goods, whether they were offered to the perpetrator in order to commit the corruption offence, or if they served as a reward for the perpetrator, or they were obtained by the perpetrator for the offence committed, shall be confiscated, unless

they are given back to the aggrieved party or they serve as damages. Should they not be found, the perpetrator shall pay for their equivalent value.

Administrative confiscation refers to the confiscation of the proceeds from minor offences. According to Law no. 32/1968 on sanctioning minor offences, modified by the Government Ordinance no.2/2001, the following types of items can be subject to confiscation:

- items resulted from the perpetration of a minor offences;
- items obtained by the perpetrator from the minor offences committed, unless the said items are given back to the aggrieved party;
- items used in violation of the law.

The Romanian system of confiscation is basically conviction-based.

The burden of proof to link property to a specific crime for which there is a conviction remains with the prosecutor. Third party property can be confiscated if this party is aware of the illicit origin of the property. Value-based confiscation is possible.

Seizure order, as a provisional measure, can be issued both by the public prosecutor and by the court, as provided by the Criminal Procedure Code. Both mobile and immobile assets can be subject to seizure for the purpose of ensuring the compensation of the damage caused by the offender and proceeds from crime.

The seizure of the proceeds is compulsory in the cases of offences provided by special laws regarding corruption, money laundering, drugs trafficking, arms, explosives, toxic substances, radio-active substances, etc.

4.6.2.2 Organisation

Criminal investigations, including financial investigations, are primarily the responsibility of public prosecutors and the criminal police.

At the Public Prosecutor's Office attached to the Supreme Court of Justice, a Division for Fighting Corruption and Organised Crime has been established. Within the Division there are two services functioning: the Service for Combating Corruption and the Service for Combating Organised Crime.

The Service for Combating Corruption includes the Internal Investigation Office and the Anti-Corruption Office.

The Service for Combating Organised Crime consists of four offices, namely: the Anti-Drug and Organised Criminality Office, the Financial-Economic and Banking Crime Office, the Office for Violence Crime and the Office for IT Criminality and Frauds related to community funds.

Within the Division there is also functioning the Office for Centralising, Analysing and Using the data regarding the acts of corruption and organised criminality; the said office being directly subordinated to the head of the Section.

The Division coordinates and controls the activity of the territorial structures specialised in this field, respectively departments within the prosecutor's offices attached to the courts of appeal and offices within the prosecutor's offices attached regional courts.

This specialised structure is similar to other European structures from Spain, Italy, France and from the Central and East European Countries (Hungary, Poland and Czech Republic).

Already mixed teams were set up in accordance with the protocols signed with the Ministry of Interior and Ministry of Public Finance; these teams are made of police officers and specialists in the financial banking and customs sectors.

The General Inspectorate of Police comprises several departments, which are involved in financial investigations. These include the Squad for countering organised crime and corruption, the Directorate for countering economic and financial crime.

Furthermore, Customs General Directorate and the Financial Guard under the Ministry of Finance also perform relevant law enforcement functions.

The National Office for the Prevention and Control of Money Laundering was established through Law no 21/1999 which came into force on 22 April 1999. The role of the Office is to receive, analyse and process information from the reporting entities, and when there are solid grounds to suspect money laundering offences, to transmit the data to the competent authority, that is, the Public Prosecutor's Office attached to the Supreme Court of Justice. The Office thus functions as a buffer between those institutions obliged to report suspicious transactions and the investigative institutions, that is, the prosecution and the police.

It should also be noted that the Government through decision no. 763/2001 created the National Committee for Crime Prevention – an inter-ministerial entity under the authority of the Prime minister and coordinated by the Minister of Justice. The main objective of this committee is to elaborate, integrate, coordinate and monitor the Government's policy of crime prevention at the national level.

This Committee will play an important role in promoting financial investigations and confiscation of proceeds.

Romanian authorities took important steps to sign and ratify the international rules against corruption, organised criminality, terrorism, trafficking in human beings: UN Convention against cross border organised criminality and also its additional Protocols, EC Penal and Civil Convention on Corruption, EC Convention on the Laundering, Disclosure, Search and Confiscation of proceed from crime, (signed and in the parliamentary procedure of ratification).

In the meantime, important internal laws were adopted or drafted in the following fields: Law no 296/2001 on extradition, The National Program for Prevention of Corruption and the National Plan against Corruption, The Government's Emergency Ordinance no.112/2001 on the sanction of acts committed outside the Romanian territory by Romanian citizens or by individuals without citizenship residents in Romania, the Government's Emergency Ordinance no.141/2001 on the sanctioning of terrorism acts, Government's Emergency Ordinance for the enforcement of Resolution no 1373 of the UNO Security Council on terrorism. The most recent draft of law regards the prevention and combating of using the financial – banking system for financing of terrorist acts.

4.6.2.3 Training

The National Institute for Magistrates is the official institution in Romania providing training for judges and prosecutors, both initial and continuous training, including in criminal law and criminal procedure. The Institute was re-organised in 1997. Among other things it organises training courses for judges and prosecutors on general management and training skills; for Chief Judges in judicial management, for prosecutors in forensic investigation and new crime areas. Courses also cover general EU law, competition, industrial property law, company law, environmental penal law, new crime areas, constitutional and administrative law, human rights.

The Police Academy, the Training Centre for Investigators and the National School for Interior Officers also provide training, including on financial aspects.

The tasks of the National Office for the Prevention and Control of Money Laundering include the training of its own staff as well as of the legal entities, covered by the law on money laundering. Three training events were organised in 2000.

4.6.2.4 International cooperation

Romania can provide international assistance on the basis of reciprocity and international or bi-lateral agreements. Romania cooperates with judicial authorities of other European countries and actively promotes regional cooperation, among other things, through the SECI centre on trans-border crime, which is based in Bucharest.

Regarding the financial investigation and money laundering, ONPCSB as member of Egmont Group has exchanged information with more than 12 FIU's from Austria, Belgium, Bulgaria, Cyprus, France, Italy, Netherlands, Slovenia, Switzerland, the UK and the USA.

Romania has not received requests for the enforcement of foreign confiscation orders, nor has it issued such requests to other countries.

4.6.3 ASSESSMENT

Romania has taken important steps to establish the legal and institutional framework for countering organised crime, corruption, money laundering and other forms of economic crime. Proceedings are underway in a number of money laundering cases. Provisional measures to secure laundered proceeds have been taken in several cases. Some cases have been sent to court.

Many of the legal and institutional changes are rather recent. It is therefore difficult to determine their effectiveness in practice. It appears that criminal investigations are sometimes accompanied by financial investigations. However:

- While progress has been made in bringing legislation in line with European standards, the existing provisions on confiscation of proceeds and provisional measures raise some questions:
 - The burden of proof on the links between property and the offence remains entirely on the prosecutor
 - The legislation foresees that temporary measures are taken only after a criminal investigation has been started.
- With the creation of the National Office for the Prevention and Control of Money Laundering and of specialised divisions for economic and financial crime within the Prosecutor's Office and within Police, important steps have been taken. Also it should be underlined that:
 - There does seem to be a pro-active approach to the confiscation of proceeds from crime in some cases. However, criminal investigations are not necessarily accompanied by financial investigations
 - A specialised unit has been established within the General Inspectorate of Police – Department of Financial and Economic Investigation; this unit is focusing on identification of proceeds from crime in order to take provisional measures and in view to ensure the confiscation of these proceeds by the court
 - Although training institutions are in place, specialised training in financial investigations, confiscation and provisional measures is still limited
 - In this field, cooperation between different institutions is newly established.
- Romania is actively promoting regional cooperation and is furthermore strengthening its capacities for mutual legal assistance. However, the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) is still in the parliamentary procedure of ratification.

4.6.4 ROMANIA: RECOMMENDATIONS FOR REFORM

4.6.4.1 Policies and legislation

- Rec 1 After two years of experience in enforcing the Law on Money Laundering some amendments are required in order to improve the legal framework in this field:
- reducing the threshold provided in the Law on Money Laundering, for the foreign exchanges houses and casinos, as a customer identification requirement
 - the prosecutor to be empowered to order the suspension of suspicious transactions for another period up to 10 days in cases in which financial expertise is required
 - to be eliminated the civil responsibility of the National Office for Money Laundering in cases of suspension of suspicious transactions for any resulting financial loss or to introduce “the bona fidae” condition.
- Rec 2 Adoption of new appropriate regulations to enable the enforcement authorities to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto. Such techniques could include monitoring orders, observations, and electronic supervisions.
- Rec 3 Implementation of the National Program for the Prevention of Corruption and the National Plan against Corruption. Both documents provide for capacity building measures against corruption or corruption-related offences such as: special investigative means, specialised anti-corruption task forces within the of the General Prosecutor’s Office, national-level databases and networks.
- Rec 4 The ratification process of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, the Penal Convention against Corruption and the Civil Convention against Corruption should be accelerated. Ratification should be followed by the harmonisation of the domestic legislation with the provisions set forth in these instruments.
- Rec 5 Legislative changes are needed in order to enhance the implementation of the legal provisions on confiscation, such as: reviewing the burden of proof at the trial stage in cases of corruption and money laundering.

4.6.4.2 Organisation and institutional capacities

- Rec 6 In order to improve the enforcement of the legislation on financial frauds, laundering proceeds from crime, it is recommended to:
- consolidate the specialised units within the Police and the Prosecutor’s Office trained in financial investigations
 - set up and train persons in view to create the ad-hoc groups composed by the above mentioned units and the representatives from other institutions for financial investigations.
- Rec 7 Development of electronic databases on financial and economic crime by all the relevant law enforcement authorities.
- Rec 8 In order to enhance the co-operation among the authorities competent to carry out financial investigations, it is very important to set up and implement an on-line communication system. The training programme should also include courses on the use of such resources.
- Rec 9 Special attention should be paid to international cooperation, in particular to regional cooperation.

4.6.4.3 Training

- Rec 10 A national training program on confiscation issues for judges, prosecutors, police officers, customs experts and financial guard officers should be developed and implemented.
- Rec 11 Specialised training is required for police officers within the Police Academy that include courses and practices in the field of money laundering
- Rec 12 Specialized training for magistrates within National Institute of Magistrates (NIM). This should include:
- training in financial offences, corruption offences and money laundering
 - the NIM should organise conferences on financial investigations and proceeds from crime on a regular basis.
- Rec 13 Special attention must be paid to the practical side of the training programme, which should also cover aspects related to investigation techniques, financial information analyses.
- Rec 14 In order to create the necessary financial support for training programmes, legislative amendments are needed so that the training system may benefit from a percentage of the income obtained from confiscations.
- Rec 15 Training programmes should include multidisciplinary teams, consisting not only of investigators, judges or prosecutors, but also of representatives from the relevant private entities, from banks, insurance company, financial information specialists as well as foreign experts from financial investigation units, money laundering, etc.
- Rec 16 Needs for training are to be covered by introducing lecturers on financial crime on the training programmes of the National Institute of Magistrates and of the Police Academy. Post-graduate courses at universities could include training on:
- aspects on financial investigations
 - aspects on special investigative techniques
 - money laundering
 - proceeds from crime
 - notion on the use of telecommunications systems
 - notion on the management of electronic databases.
- Rec 17 Seminars on a regular basis should be organised for the mixed teams involved in financial investigations with invited experts – banking specialists, financial information specialists, accountants, as well as foreign experts from financial investigation units, Europol, etc.

4.7 “The former Yugoslav Republic of Macedonia”

4.7.1 INTRODUCTION

“The former Yugoslav Republic of Macedonia” ratified the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141) in May 2000. It participates in the money laundering evaluation mechanism (PC-R-EV). A PC-R-EV team visited the country in October 1999, and the evaluation report was adopted in June 2000. “The former Yugoslav Republic of Macedonia” is party to the United Nations Convention of 1988 on Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

It participates actively in the Stability Pact Anti-corruption Initiative (SPAI) and Stability Pact Initiative against Organised Crime (SPOC).

The SPAI assessment report on anti-corruption measures in South-eastern Europe includes the following recommendations addressed to the country:

- Review provisions concerning confiscation and provisional measures to enhance their effectiveness and ensure that general and specific provisions are consistent.
- Finalise the drafting, adoption and implementation of the Law on Corruption and the Law on Money Laundering that would ensure the establishment of compulsory reporting systems.
- Create a Financial Intelligence Unit as foreseen in the draft Law on Money Laundering.

Representatives of “The former Yugoslav Republic of Macedonia” participated in the first regional seminar of the PACO Proceeds project (Romania, June 2001), the two study visits to the Netherlands and Germany (October 2001) and the second regional seminar in Croatia (November 2001). The present report summarises the information received and the recommendations prepared by Macedonian participants in the course of this project.

4.7.2 THE CONFISCATION SYSTEM

4.7.2.1 Legal basis

With regard to the SPAI recommendations, the Law on Money Laundering was adopted by Parliament on 29 August 2001; it shall enter into force on 1 March 2002. This law also foresees the creation of a financial intelligence unit within the Ministry of Finance.

It should also be noted that the Second Protocol to the Convention on Mutual Legal Assistance was signed on 8 November 2001. Furthermore the Civil Law Convention on Corruption was recently ratified.

The Macedonian legal system comprises various legal provisions related to “taking away” and provisional measures.

Article 68 of the Criminal Code refers to the confiscation of objects used or intended to be used or originating from a crime. Articles 97 to 100 cover the “taking away” of property gained by a crime:

7. Taking away property gain gained by a crime

Grounds for taking away property gain

Article 97

- (1) No one may retain the direct or indirect property gained through a crime
- (2) The benefit from item 1 shall be taken away with the court decision with which the execution of the crime was determined, under the conditions foreseen by this Code.

Manner of taking away

Article 98

- (1) The money, objects of value, property and other property gain gained through the crime, shall be taken away from the offender, and if the taking is not possible, the offender shall be bound to pay an amount of money which corresponds to the gained property gain.
- (2) The property gain gained by the crime is taken away also from person to whom it was transferred if they did not know, but could have known and who were obliged to know that it was gained through a crime.
- (3) Objects that have been declared cultural monuments, archive or library materials and a natural rarity, as well as those to which the damaged person is personally connected, are taken away from third persons, notwithstanding that they did not know, nor could they have known nor were they obliged to know that they have been gained through a crime.
- (4) The goods that are taken away are returned to the damaged person and if there is no damaged person, they become the property of the state.
- (5) If during the criminal proceeding, the damaged person is adjudicated a property and legal claim, the court shall pronounce a taking away of property gain, if this exceeds the amount of the claim.

Article 100 foresees the “taking away” of proceeds from legal persons.

In addition to general provisions on “taking away”, various articles dealing with specific offences also include provisions on confiscation. These include Article 273(5) on “money laundering and other unlawful property gain” which states that in cases of money laundering

“The money and other direct and indirect property gain shall be confiscated, and if confiscation is not possible because they were transferred abroad, other property of the offender that corresponds to their value shall be confiscated”.

Further provisions on “taking away” and temporary seizure are contained in the Criminal Procedure Code (97 – 107, 203, 485, 489) and the Law on executing proceedings (264-276).

A court can decide on temporary measures to secure proceeds of crime according to the Law on executing procedure, ex officio, and according to Article 489 of the Criminal Procedure Code. According to Article 105 of the Criminal Procedure Code the damaged person can also request temporary measures. However, Public Prosecutors cannot initiate provisional measures such as seizure of property.

Under Article 190 (4) of the Customs Law, customs authorities also have the possibility to seize goods, which may include cash.

The Macedonian confiscation regime is conviction-based. Proceeds to be confiscated must derive from the offence for which there is a conviction. The prosecutor must prove the link between property, which should be confiscated, and an offence for which there is a conviction. A reversal of the burden of proof in this respect or confiscation on the balance of probabilities is not possible.

The system for confiscation is obligatory according to article 97 of Criminal Law and Article 486 of the Criminal Procedure Code (the property from crime is estimated in criminal procedure ex officio, and the Court is obliged to collect the necessary evidence to estimate the proceeds of crime). However, it is compulsory with regard to confiscation in money laundering cases.

4.7.2.2 Organisation

Institutions specialised in financial investigations and confiscation of proceeds has not been established.

Within the criminal police under the Ministry of Interior, the department in charge of organised crime of the Ministry of Interior comprises a unit dealing with financial and economic crime.

The Customs Administration also has investigative powers, which have been reinforced through the adoption of the new Customs Code, which entered into force in April 2000.

As mentioned above, a financial intelligence unit is to be established under the new Law on Money Laundering which will enter into force in March 2002.

The creation of a financial police which is to carry out investigations into financial and economic crime is under consideration.

4.7.2.3 Training

State training institutions for the education of judges and prosecutors are not available. Training activities are carried out by the Centre for the Education of Judges in the framework of Judges Assembly.

Public prosecutors rely on training activities offered by the Assembly of Prosecutors.

The organised crime department of the Ministry of Interior organises training activities on legal changes in tax division system, new ways of following organised groups in trafficking with arms, people and drugs.

4.7.2.4 International cooperation

The rules on judicial assistance (Articles 503 – 508 Criminal Procedure Code) permit the enforcement of foreign confiscation orders, if a “lawful property request” has been submitted. Article 508 on mutual legal assistance states that legal orders forwarded by a foreign court will be considered like legal orders by a domestic court. However, with regard to financial investigations, seizure and confiscation there is no practical experience so far.

4.7.3 ASSESSMENT

“The former Yugoslav Republic of Macedonia” has ratified a series of European and other international instruments, which imply a commitment to take effective measures aimed at the confiscation of proceeds from crime. The Macedonian legal system already contains provisions on provisional measures and confiscation of proceeds from crime. In practice, however, they are not applied. There are no reports on provisional measures taken to secure property and no reports on confiscation of proceeds from crime.

Reasons include the following:

- The legislation is not sufficiently consistent and complete:
 - The large number of legal provisions and their complexity make it difficult to apply the legislation in practice.
 - Key terms and concepts of the legislation are not clearly defined (for example, “objects” versus “property”, “indirect property”, the level of proof required to trigger confiscation or apply provisional measures, confiscation of property held by third persons, value-based confiscation in case property has not been transferred abroad, use of value-based provisional measures, application of provisional measures to legal persons etc.).
 - There appear to be apprehensions towards the term “confiscation” (which in past has often been abused in socialist countries). The term “taking away gains from crime” is used to denote what in

- other countries and in international instruments would also be called “confiscation of proceeds and instruments”.
- The use of the legislation with regard to confiscation is mandatory but as prosecutors cannot initiate provisional measures means that in practical terms confiscation is not applied.
- Institutional capacities for financial investigations, provisional measures and confiscation are not in place:
 - Financial investigations, the prevention and control of money laundering, and the confiscation of proceeds from crime do not appear to be priorities in the Macedonian criminal justice system. There seems to be a general lack of understanding of the importance of the issue within the criminal justice system.
 - Investigations into criminal offences are not accompanied by financial investigations.
 - Institutions specialised in financial investigations, provisional measures and confiscation are not yet in place. The creation of a financial police is under consideration. The capacities of the Unit for Financial and Economic Crime of the Police are limited. Only few prosecutors are familiar with economic crime cases.
 - A Financial Intelligence Unit has not yet been established (this is foreseen, however, under the new money laundering law).
 - Cooperation between criminal justice institutions, in particular between the police, prosecutors and financial inspectors, is rather weak, and multi-disciplinary or task force approaches are not applied.
 - No cases are reported on international cooperation with regard to financial investigations, provisional measures or confiscation.
 - Training opportunities for law enforcement personnel, judges and prosecutors are limited in general, and very scarce with regard to specialised training in financial investigations.
 - In more general terms, given the present political situation, the Macedonian authorities may have other priorities than the control of organized crime, corruption and money laundering. On the other hand, effective measures in these fields would seem to be important prerequisites for stability, security and the rule of law.

4.7.4 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”: RECOMMENDATIONS FOR REFORM

4.7.4.1 Policies and legislation

- Rec 1 As a first step, a joined working group with representatives from different institutions involved (including criminal law experts) should be established to analyse the problem and elaborate a project proposal for the field of confiscation, in particular to promote the possibility of making financial investigations for confiscation an integral part of criminal investigations. There are two reasons for this:
- To reach a political agreement on this issue by holding a discussion on this topic at a round table involving relevant decision makers and senior managers
 - To use this project proposal to obtain international support.
- Rec 2 The criminal legislation should be amended:
- To improve the legal basis for financial investigations for confiscation as an integral part of criminal investigations
 - To prescribe the use of civil standards (balance of probabilities) in criminal proceedings when determining the link between the offences for which there is a conviction and the property.

- Rec 3 Further efforts should be made to harmonise legislation with European and other international standards against money laundering. Including:
- The terminology used in the legislation will need to be harmonised with European standards.
 - Confiscation should be introduced in the legal system as a specific criminal measure
 - The legislation should be amended to allow the public prosecutor to propose freezing and other temporary measures for property and bank accounts already during preliminary procedures
 - Special investigative means should be introduced and their use should be permitted in investigations of financial crime
 - Reduce bank secrecy and permit access to financial and bank information.

4.7.4.2 Organisation and institutional capacities

- Rec 4 In order to initiate the actual use of legal provisions on confiscation a project group should be established. This group which will consist of representatives from different ministries and ran by the representative from Ministry of Justice should study the possibilities offered by the existing legislation, and create the direction in which way different involved institution should organize training.
- Rec 5 A specialised financial police should be established. This type of police should be obliged to cooperate with the investigative judges and the public prosecutor's office.
- Rec 6 Close co-operation during preliminary procedures between the customs, the financial police, the police, financial inspectors, banks; public prosecutors, investigating judges should be promoted. The exchange of information between these institutions should be improved in order to better exploit tactical possibilities and to obtain the information necessary for financial investigations.
- Rec 7 To create and provide database, which will be with open access to all institution, mentioned before.
- Rec 8 Close co-operation in the fight against financial crime should also be developed between the Financial Department of the Police, the Public Income Department, as part of the Ministry of Finance, Custom and the National Bank of Macedonia, which, according to the law, is responsible for controlling the work of banks and the Exchange Office. The exchange of information among all these institutions and in particular with the Public Prosecution Office and with investigative judges should be strengthened
- Rec 9 A state property service for the management of seized and confiscated assets should be created.

4.7.4.3 Training

- Rec 10 Financial experts from domestic and foreign financial institutions, in the fight against financial crime, should train trainers.
- Rec 11 Materials for training and self-training should be developed after the first workshops and changes in the legislation.
- Rec 12 Special training for customs, financial police and police involved in fighting financial crime should be made available by setting up a common database. Training should furthermore be provided to judges and prosecutors. This education should be performed on three levels:
- First level: direct training of participants for discovering crime. Joint education for police officers, special financial institutions (Department for Public Income), Customs, Public Prosecutors, investigative judges

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- Second level: training of specialists of all institutions involved, those responsible for discovering financial crime and those responsible for co-ordinating
- Third level: special education of Public Prosecutors, judges in the field of finance, legislation, comparative experience between countries of the fight against financial crimes.

The training should be on a regional, national and international level.

A part of the proceeds confiscated should be used for the training of police officers, judges and public prosecutors.

5 APPENDIX

5.1 PACO Proceeds 2001 – Programmes of the seminars and study visits

5.1.1 PACO PROCEEDS – PROGRAMME OF THE 1ST REGIONAL SEMINAR (ROMANIA, JUNE 2001)

Sunday, 10 June 2001	
19h00	Reception
Monday, 11 June 2001	
9h00	Opening session Opening of the seminar by Ms. Christina Luzescu, Ministry of Justice The PACO Programme and the purpose of the seminar – presentation by a representative of the Council of Europe Confiscation of proceeds from crime and specialised training: introduction to the theme – presentation by representative of the Council of Europe
10h00	Presentation and discussion of draft country reports Summary of replies to the questionnaire (10 minute presentation by the delegation of each country to be followed by a short discussion)
13h00	Lunch break
14h30	Presentations by experts – to be followed by discussions – on the institutional and legislative framework and practices for the confiscation of proceeds from crime in different countries: Germany – Presentation by Mr. Roland Baier (Germany) Netherlands – Presentation by Mr. Marcel Pheijffer (Netherlands) Experience from South-eastern Europe – Presentation by Ms. Slagjana Taseva ("The former Yugoslav Republic of Macedonia")
16h00	Coffee break
16h15	Presentations by experts – to be followed by discussions – on specialised training for the confiscation of proceeds from crime and financial investigations in different countries: Germany – Presentation by Mr. Roland Baier Netherlands – Presentation by Mr. Marcel Pheijffer (Netherlands) Comparative data from European Union countries – Presentation by Robert Tjalkens (EUROPOL)
Tuesday, 12 June 2001	
9h00	Workshops Group 1: Institutional and legislative framework and practices related to the confiscation of proceeds from crime: Analysis of strengths and weakness and discussion of proposals for reform in each country. Participants: 2 – 3 representatives from each country Facilitators: Ms. Slagjana Taseva, Mr. Alexander Seger Group 2: Training for financial investigations and confiscation of proceeds: Analysis of training needs and discussion of proposals to enhance specialisation in each country. Participants: 2 – 3 representatives from each country involved in training measures Facilitators: Mr. Roland Baier, Mr. Marcel Pheijffer, Mr. Robert Tjalkens
Wednesday, 13 June 2001	
9h00	Preparation of reports and recommendations by the delegations of each country
11h00	Presentation of recommendations in the plenary
13h00	Closure of the seminar

5.1.2 PACO PROCEEDS – PROGRAMME OF STUDY VISIT TO THE HAGUE (1 – 5 OCTOBER 2001)

Date	Time	Organisation	Topic	Speaker
1-10	9.30 – 9.45	Ministry of Justice	Welcome	Mr J. Demmink Director General (IAV)
	9.45 – 10.45	MoJ, DGIAB/DISAD	International aspects	Mr R. van der Veer,
	10.45 – 11.30	MoJ, DGRH/DH	Legislation	Mr P.J.J. van Voorst
	11.30 – 12.00	MoJ, dDob	Closing	Mr J.H. van den Heuvel
	12.00 – 14.30	Lunch + some spare time		
	14.30 – 16.30	Project organisation for Financial Investigation	Financial Investigation	Mr F. Speijers
2-10	09.30 – 12.00	MOT (Zoetermeer)	Role and tasks of the administrative FIU	Mr H.V. Koppe
	12.00 – 14.00	Lunch		
	14.00 – 17.00	BLOM (Zoetermeer)	Role and tasks of BLOM	Mr J.K.A. Janse
3-10	9.30 – 12.00	LRT (Driebergen)	The National (financial) Investigation Squad	To be decided
	12.00 – 13.00	Lunch		
	14.00 – 17.00	FIOD (Haarlem)	The investigation and intelligence service of the Ministry of Finance	Mr M. Pheijffer and others
4-10	10.30 – 16.30	BOOM (Leeuwarden)	Role and tasks of the Criminal Assets Deprivation Bureau	Mr E.H. van der Steeg
5-10	9.00 – 11.00	Europol	Role and tasks of Europol	Mr J. van Doorn + ?
	11.00 – 12.30	Work on report		Participants
	12.30 – 13.15	Lunch		
	13.15 - ?	Work on report + Closing of the visit		Participants + Alexander Seeger

5.1.3 PACO PROCEEDS – PROGRAMME OF STUDY VISIT TO STUTTGART (OCTOBER 2001)

Day	Time	Programme	Speaker	Evening programme
Monday 15.10. 2001	09.00 h	Visit to the bank	Alexander Seger	Dinner at a restaurant in Cannstatter
	11.00 h	Opening	Mr. Schürholtz, President of the LKA	
	13.30 h	Organisation and responsibilities in law enforcement and confiscation / forfeiture of assets Legal basis	Roland Baier Kornelia Kühner	
Tuesday 16.10.2001	09.00 – 16.00 h	Legal basis cont'd	Roland Baier Kornelia Kühner	16.30 h – 18.30 h Sightseeing tour Stuttgart Visit to Calwer Eck with option of dinner
		Priorities in training Confiscation Archive		
		Tactical possibilities	Wolfgang Köder	
Wednesday 17.10.2001	09.00– 11.00 h	Review and discussion of recommendations	Alexander Seger	Free
	11.00 – 16.00 h	Case studies	Dr. Johann Podolsky	
Thursday 18.10.2001	08.30 - 10.00 h	International cooperation	Hubert Eberhart	17.30 Uhr Departure for wine tasting at the Winzergenossenschaft Fellbach Transport by bus
	10.30 – 12.00 h	Case studies and training measures cont'd	Dr. Johann Podolsky	
	13.30 – 16.00 h	Case studies	Hans-Peter Layer	
Friday 19.10.2001	09.00 – 13.00 h	Elaboration of country reports and recommendations Closing of the study visit	Alexander Seger	Free

5.1.4 PACO PROCEEDS – PROGRAMME OF THE 2ND REGIONAL SEMINAR (CROATIA, NOVEMBER 2001)

Wednesday, 14 November 2001

Arrival of participants

Thursday, 15 November 2001

- 9h00 Opening session
 Opening of the seminar by Mr. Radovan Ordinsky, Prosecutor General of the Republic of Croatia
 The PACO Programme and the purpose of the seminar – presentation by Mr. Alexander Seger, Council of Europe
- 9h30 Presentations
 Confiscation of proceeds from crime and specialised training: summary of findings – presentation by representative of the Council of Europe
 Key features of the German confiscation system and specialised training – presentation by Mr. Roland Baier
 Key features of the confiscation system in the Netherlands – presentation by Mr. Robert Tjalkens
 Proposals for specialised training – presentation by Ms. Slagjana Taseva
 Confiscation and provisional measures in Croatia/recent developments – presentation by Mr. Dragan Novosel, Deputy Prosecutor General of Croatia
- 10h45 *Coffee break*
- 11h00 Discussion of draft country reports
 Short presentation by the delegations of each country (ca 10 minutes) to be followed by a discussion:
- Albania
 - Bosnia and Herzegovina
 - Bulgaria
 - Croatia
- 13h00 *Lunch break*
- 14h30 Discussion of draft country reports cont'd
- Moldova
 - Romania
 - "The former Yugoslav Republic of Macedonia"
- 16h00 *Coffee break*
- 16h15 Work within each delegation to make amendments to the draft country report
- ca 17h00 End of the first day

Friday, 16 November 2001

- 9h00 Working groups to discuss the implementation of recommendations (Priorities, responsibilities, timeframes):
- Group 1: Albania, Bosnia and Herzegovina, Bulgaria, Croatia
 Facilitators: Mr. Roland Baier, Mr. Robert Tjalkens
- Group 2: Moldova, Romania, "The former Yugoslav Republic of Macedonia"
 Facilitators: Ms. Slagjana Taseva, Mr. Alexander Seger
- 15h00 Work within each delegation to finalise country reports and implementation plans

Saturday, 17 November 2001

- 10h00 Presentation of country reports and plans for implementation in the plenary
 Adoption of the country reports
- 13h00 Closure of the seminar
-

5.2 PACO Proceeds in 2001 – List of participants

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5.4 PACO Training and implementation proposals 2002

5.4.1 ALBANIA

Type of training:	Training seminar for decision makers and senior managers
Duration:	2 days
Objective:	To enable decision makers and senior managers to better manage financial and fiscal investigations
Participants:	Ministry of Justice experts (law drafting division), Prosecution office experts, Ministry of Finance, Public Order experts, Law Commission of Parliament, Legal adviser of the President, Prime Minister's Office
Contents:	
Organised by:	Ministry of Justice

Type of training:	Training course for investigators, prosecutors, judges
Duration:	5 days
Objective:	To improve the ability to detect and investigate the elements of a crime, such as money laundering, corruption, organised crime, illicit trafficking, and to apply relevant legislation and conventions
Participants:	<p>Joint course for</p> <ul style="list-style-type: none"> ▪ Judicial police officers; financial and fiscal experts ▪ chief of police officers; prosecutors and especially economic investigators ▪ financial experts, prosecutors, SAEF officers (anti-crime section) and judges with specialised jurisdiction and knowledge to investigate, organised and economic crime
Contents:	
Organised by:	School of Magistrates

5.4.2 BOSNIA AND HERZEGOVINA

Type of training:	Training seminar for decision makers and senior managers
Duration:	2 days
Objective:	Education and development attitude in PACO field
Participants:	<ul style="list-style-type: none"> ▪ Justice Ministers ▪ General Prosecutors ▪ Assistant Ministers of Justice ▪ Ministers of the Interior and assistants ▪ Finance Ministers and assistants
Contents:	<ul style="list-style-type: none"> ▪ Legislation ▪ Organisation ▪ Skills/Training
Organised by:	

Type of training:	Training course for investigators, prosecutors, judges
Duration:	5 days
Objective:	Developing skills/methods
Participants:	<ul style="list-style-type: none"> ▪ Judges ▪ Prosecutors ▪ Police officers ▪ Financial investigators
Contents:	<ul style="list-style-type: none"> ▪ Financial investigation ▪ Intelligence ▪ Assessment ▪ Reporting ▪ Co-operation and co-ordination
Organised by:	

5.4.3 BULGARIA

Type of training:	Training seminar for decision makers and senior managers
Duration:	2 days
Objective:	Discussion about the role of targeting proceeds from crime in efforts against corruption, organised crime, money laundering and other forms of crimes. Emphasizing the importance of <i>“financial investigations for confiscation” approach</i> in the fight against the criminal activities
Participants:	High-ranking representatives of: Bulgarian Parliament, Ministry of Justice, Ministry of Interior, Ministry of Finance (Tax and Custom Directorates), Judiciary (the Courts, the Prosecutor’s Office, the Investigative Authorities), National Bank.
Contents:	Review of the existing legal base and the practical enforcement of treating the proceeds of crime Elaborating proposals for legal framework and practical ways in order to achieve that the criminal investigation of an offence is accompanied by financial investigations to trace, seize and confiscate proceeds from crime Analysing possibility for additional institutional capacities for their implementation.
Organised by:	To be identified

Type of training:	Training course for investigators, prosecutors, judges
Duration:	5 days
Objective:	Presentation of the <i>“financial investigations for confiscation” approach</i>
Participants:	Ministry of the Interior (National Service Police, National Service Combating Organised Crime), Police Academy; Ministry of Finance (BFT, Tax Service and others); the Judiciary ((judges, prosecutors, investigators).
Contents:	To create a culture of financial investigations: <ul style="list-style-type: none"> - systematically presentation of the existing legislation and the possibilities, which it provides, for targeting the proceeds from crime; - presentation of methods to identify and trace property which is liable to confiscation and discussing the use of special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto - elaborating multidisciplinary team-type of work organisation; - analysing the ways to secure the property concern through provisional measures (“seizure”) at the beginning of an investigations in order to prevent them from being dissipated; - Discussing the possibility of establishing a project on “integrated financial investigations for confiscation with training programmes to enhance the specialisation of law enforcement officers, prosecutors and judges.
Organised by:	To be identified.

5.4.4 CROATIA

Type of training:	Training seminar for decision makers and senior managers
Duration:	2 days
Objective:	New sophisticated forms, especially of crime in the economic sector.
Participants:	Participants: Senior managers from prosecution service, judges, police, customs, tax administration and Ministry of justice, and criminal law experts as well.
Contents:	<p>General overview of the problem, experts will explain the fundamental categories in the banking sector, how they work, about off-shores, money laundering, where the problems are and how to solve them.</p> <p>Purpose of carrying out of financial investigations and expected benefits.</p> <p>Using experience of German and the Netherlands.</p>
Organised by:	<p>Ministry of Justice and Ministry of the Interior, Office of the Public Prosecutor, in cooperation with Council of Europe providing experts with international experience</p> <p>Organisers could be the or the Ministry of Justice</p>

Type of training:	Training course for investigators, prosecutors, judges
Duration:	5 days
Objective:	To educate people on how to seize property and money and how to confiscate the proceeds of criminal offences.
Participants:	
Contents:	<p>Experts will describe different and important issues of different types of crime and together with participants, try to solve these problems.</p> <ul style="list-style-type: none"> - legal possibilities - criminal law, - criminal procedure law, - civil law <p>organised crime, corruption, economic crime related offences and other criminal offences for which the financial investigations needs to be carried out.</p> <p>Possible sources of information's on proceeds of crime.</p> <p>Case studies.</p>
Organised by:	

5.4.5 MOLDOVA

Type of training:	Training seminar for decision makers and senior managers
Duration:	2 days
Objective:	To organize a multi disciplinary seminar for decision makers and senior managers in cooperation with the Council of Europe in order to rise the awareness about the strategic importance of the financial investigation and confiscation
Participants:	Heads of relevant Parliamentary commissions, high-level representatives from the Supreme Court, General Prosecutor's Office, Ministry of Interior, Ministry of Justice, Customs Department, Intelligence and Security Service
Contents:	
Organised by:	Office of the Prosecutor General

Type of training:	Training course for judges, prosecutors and investigators
Duration:	5 days
Objective:	To organize a specialized training activities for judges and prosecutors, criminal investigators, criminal intelligence analysts and strategic intelligence analysts in order to increase the level of understanding and the knowledge about the financial investigation.
Participants:	
Contents:	<p>General overview of international legal framework and experience regarding seizure and confiscation of proceeds from crime</p> <p>National and international communication and cooperation</p> <p>National legal and institutional framework for combating financial crime</p> <p>The importance of data collection and financial analysis concept</p> <p>Methods of financial investigations</p> <p>Proactive approach in financial investigation, etc</p>
Organised by:	Center for professional training of judges and prosecutors, Ministry of Interior

5.4.6 ROMANIA

Type of training:	Training seminar for decision makers and senior managers
Duration:	3 days
Objective:	enhance co-operation between different institutions involved in the enforcement of the legislation on financial fraud, money laundering and confiscation of proceeds from crime.
Participants:	Representatives from: <ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of the Interior ▪ Ministry of Finance (Customs, Financial Guard) ▪ National Office for Money Laundering ▪ Public Ministry ▪ National Bank of Romania ▪ Bank Association of Romania ▪ Romanian Intelligence Service
Contents:	Romanian legal framework in the field <ul style="list-style-type: none"> ▪ International legal framework ▪ International co-operation ▪ Information provided by each representative of institutions ▪ Modalities to enhance co-operation between authorities ▪ Possibility to strengthen legislation
Organised by:	Ministry of Justice

Type of training:	Training course for investigators, prosecutors, judges
Duration:	3 days
Objective:	specific training for law enforcement representatives aimed at obtaining an improvement in the quality of enforcement.
Participants:	<ul style="list-style-type: none"> ▪ Police officers ▪ Prosecutors ▪ Judges
Contents:	<ul style="list-style-type: none"> ▪ Legislation in that field ▪ Enforcement of legislation by various institutions
Organised by:	Ministry of the Interior, National Institute for Magistrates

5.4.7 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

Type of training:	Round table for decision makers and senior managers
Duration:	2 days
Objective:	Need to change legislation and practice in this field (harmonisation with European standards)
Participants:	Minister of Justice, Minister of Interior, Prosecutor General, criminal law experts (professors), senior prosecutors, senior officials from the Ministry of Finance, Director of the Customs Department, Director of the National Bank, Director of the Public Income Department, President of the Supreme Court and appeal courts, head of Department of the Criminal Police, media as observers
Contents:	<ul style="list-style-type: none"> ▪ Presentation of European standards and experience in other countries (comparative approach) including benefits and results ▪ Review legislation and practice in Macedonia ▪ Discussion and elaboration of a strategy for action for Macedonia
Structure:	<p>Day 1:</p> <ul style="list-style-type: none"> ▪ Presentation of international experience and standards ▪ Review of the problem in Macedonia ▪ Discussion of a project proposal <p>Day 2:</p> <ul style="list-style-type: none"> ▪ Preparation and agreement on a strategy for action
Organised by:	Jointly by Ministry of Justice and the Ministry of Interior

Type of training:	Training course for investigators, prosecutors, judges
Duration:	5 days
Objective:	To improve the use of the present legislation and to prepare proposals for changes
Participants:	Senior officers from the Ministries of Justice and Interior, criminal law experts (professors), judges, senior prosecutors (about 25 participants)
Contents:	<ul style="list-style-type: none"> ▪ Comparative approach: experience from other countries ▪ Macedonian legislation in this field and its application ▪ Action to be taken to implement existing legislation ▪ Proposals for improvement of the legislation
Structure:	<p>Day 1</p> <ul style="list-style-type: none"> ▪ Review and underline the importance of the issue of confiscation and provisional measures <p>Day 2</p> <ul style="list-style-type: none"> ▪ Compare present legislation with European standards and norms <p>Day 3</p> <ul style="list-style-type: none"> ▪ Application of present legislation in criminal investigations <p>Day 4</p> <ul style="list-style-type: none"> ▪ Discussion of proposals for application of present legislation and for improvement of legislation <p>Day 5</p> <ul style="list-style-type: none"> ▪ Finalisation of proposals in the form of a proposal of the Ministry of Justice to the Government
Organised by:	Ministry of Justice

5.5 Project outline “PACO Proceeds II”

Project title:	PACO – Confiscation of proceeds from crime (Phase II)
Duration:	January 2002 – December 2002
Project area:	South-eastern Europe
Implementing agency:	Economic Crime Division/ Directorate General I – Legal Affairs / Council of Europe
Inputs required:	EURO 410 000
Sources of funding:	Voluntary contributions to PACO

PROBLEM TO BE ADDRESSED

The importance of targeting proceeds from crime in efforts against corruption, organised crime, money laundering is now widely recognised. This is reflected in relevant European instruments as well as in the initiatives of the Stability Pact against corruption (SPAI) and organised crime (SPOC).

The legislation of most countries provides for the possibility to confiscate proceeds from crime. This includes countries from South-eastern Europe. However, these provisions are rarely applied in practice or in the spirit of the Strasbourg Convention (ETS 141). This issue has been raised in several reports of the Council of Europe's money laundering evaluation mechanisms (PC-R-EV). The SPAI Assessment Report, adopted in May 2001, recommends as a priority for reform that countries enhance the effectiveness of the confiscation and provisional measures regimes.

In 2001, the Council of Europe therefore launched “PACO Proceeds”, a regional project under the "Programme against corruption and organised crime in South-eastern Europe" (PACO). The project consisted of two regional seminars (Romania in June 2001 and Croatia in November 2001) and two study visits (to the Netherlands and Germany in October 2001). Seven countries participated in this project: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, “The former Yugoslav Republic of Macedonia”, Moldova and Romania.

Results of the PACO Proceeds project in 2001 confirm that the legislation of all countries provides for the confiscation of proceeds from crime. At the same time, there are very few seizures and no information on final confiscation of proceeds.

Reasons include shortcomings in legislation and institutional capacities, the complexity and the risks associated with this issue, the low priority attributed to financial investigations and confiscation, and – perhaps most importantly – the lack of understanding of the issue and of skills required to apply the relevant legislation in practice.

PACO Proceeds in 2001 provided training and opportunities for experience exchange for 35 officials from seven countries in South-eastern Europe. At the same time it helped them elaborate recommendations for legislative and institutional reform as well as for training programmes for their respective countries. These recommendations include proposals for the development of projects in each country to ensure the integration of financial investigations for confiscation into criminal investigations. The organisation of two-day decision maker seminars in each country has been suggested as a starting point.

In order ensure the implementation of these recommendations it is proposed to follow up on PACO Proceeds through a second phase of one year (January – December 2002).

OBJECTIVES AND EXPECTED RESULTS

The overall objective of this project is to enhance the application of legal provisions on confiscation of proceeds from organised crime, corruption and money laundering.

The objective of this second project phase is **to strengthen capacities for financial investigations and the confiscation of proceeds through confiscation projects training and programmes in each of the participating countries.**

This objective will be achieved through the following outputs and activities:

Output 1: Approaches to integrate financial investigations for confiscation into criminal investigations will have been adopted in each country

Activities:

- Assist countries in the drafting of projects "integrated financial investigations for confiscation"
- Review project proposal within the framework of a first regional seminar
- Organise a two-day decision maker seminar in each country to promote and adopt approaches to financial investigations for confiscation
- Review progress made within the framework of a second regional seminar.

Output 2: At least 25 officials will have been trained in each country, and training materials will be available for each of the participating countries

Activities:

- Governments to nominate three trainers in each of the countries
- Organise a regional seminar for three trainers from each of the countries in order to prepare a draft training manual
- Organise, in each country, a one-week training seminar for investigators, prosecutors and judges
- Test the manual in the course of these training activities
- Finalise and present the manual in a second regional seminar.

PARTICIPANTS

Countries:

Albania, Bosnia and Herzegovina, Bulgaria, Croatia, "The former Yugoslav Republic of Macedonia" , Moldova, Romania and the Federal Republic of Yugoslavia.

In all activities from each country:

Three trainers involved in the design and implementation of training activities at training institutions of the judiciary, the police or other law enforcement agencies.

In the review of legal and institutional reforms from each country:

Three officials representing ministries of justice and interior and the prosecution.

In in-country training activities and seminars in each country:

- 15 senior officers of the police, the prosecution, the judiciary, and the ministries of Justice, Interior and Finance
- 15 investigators, prosecutors and judges.
- 4 trainers from 2 other countries.

IMPLEMENTATION

The project will be implemented by the Economic Crime Division (DG 1 – Legal Affairs) of the Council of Europe.

Date	Activity
Feb/March 2002	Assistance to countries in the drafting of projects 1 st regional seminar: <ul style="list-style-type: none"> ▪ for government representatives: review of draft projects ▪ for trainers: drafting of training manuals
May to October	<ul style="list-style-type: none"> ▪ Decision-maker seminars/round tables in each country ▪ Training courses in each of the participating countries
Nov/Dec 2002	2 nd regional seminar to finalise and present training manuals and to review progress made in institutional and legal reforms.

INPUTS

Training adviser 12 w/m and short-term advisers	120000
1 st regional seminar (40 participants and three experts for four days)	65000
9 x 2 in-country training events	150000
2 nd regional seminar (48 participants and three experts for three days)	65000
Other cost	10000
Estimate in EURO	TOTAL 410000

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