**Lesson Plan**

Lesson 1.3.3 Introduction to Financial investigations

|  |  |  |
| --- | --- | --- |
| Lesson 1.3.3 Introduction to Financial Investigations | | Duration: 90 Minutes |
| **Resources Required:**   * Laptop or PC running Windows 7, 8 or 10 and with Microsoft Office 2010 or later * Projector and display screen * Whiteboard, flipchart or other technique for recording student input * These resources are only needed if the trainer is using a PowerPoint presentation | | |
| **Session Aim:**  The aim of this session is to introduce the delegates to financial investigations. | | |
| **Objectives:**  By the end of the lesson the students will be able to:   * Explain the relevance of confiscation of crime proceeds and relation to cyber (and online) crime investigation * Define what is a financial investigation * Enumerate relevant international legal instruments * Define relevant terms * Understand the four elements of a financial investigation * Describe different confiscation regimes * Explain the relation to money laundering * Understand the role of the FIU (Financial intelligence Unit) in money laundering investigations | | |
| **Trainer Guidance**  This session provides basic information on financial investigations, for those who have no familiarity with financial investigations.  All information about this session is included in the PowerPoint presentation entitled “Session 1.3.3 – Financial Investigations” in the resource pack. The trainer is responsible for ensuring that the materials are up to date. Changes may be made; however the objectives should be achieved.  Note that it is important that the trainer reviews this material and updates as applicable to reflect national legislation in the country where the course is being delivered. Group discussions should also be carried out on the topics of freezing orders, orders to access bank data, confiscation orders. | | |
| **Lesson Content** | | |
| **Slide Numbers** | **Content** | |
| Slide 5 | One of the main motives of serious and organised crime, including cybercrime, is financial gain. Among the most effective means of combating organised crime is detection, freezing and confiscation of instrumentalities and proceeds of crime.  The confiscation of proceeds of crime has numerous effects:   * Preventative, as economic profit is the rationale of most criminal offences; * It prevents the infiltration of illegal profits and corruption into the legal economy; * It removes the instrument to commit future crimes; * It helps to target the top management of a criminal organisation; * It upholds the rule of law and the principle that nobody should benefit from crime.   The confiscation system and procedure can be divided into three phases:   1. Investigative phase - financial investigation, where proceeds of crime are identified and located and evidences on its/their owner(s) (and information on his/their property) are collected. The result of the financial investigation can be a temporary measure (freezing) of property to secure later confiscation ordered by the court. 2. Judicial phase, where the defendant is convicted (or acquitted) and the decision on confiscation is final. 3. Disposal phase, where the property is actually confiscated and disposed by the State in line with the law, while taking into account international asset sharing. | |
| Slide 6 | Financial investigation can have several meanings, for example investigation of financial crime or investigation for taxation purposes. International legal instruments do not provide for definition of financial investigation, but in the framework of freezing and confiscation of proceeds of crime the descriptive definition provided by the Financial Action Task Force (FATF) can be used as an example.    It should also be noted that the term “financial investigation” might include both investigation for targeting proceeds of crime in the framework of criminal procedure as well as in a (separate) civil (in rem) procedure. It should also be noted that financial investigation can (but does not necessarily) coincide with a money laundering investigation.  Financial investigations are an investigative method that should be conducted in parallel to a criminal investigation of a profitable crime. Financial investigation can be, according to national legislation, carried out also in the judicial phase with the main (but not exclusive) purpose of tracing and freezing proceeds of crime with a view of their final confiscation.  Financial investigation has been defined by the FATF[[1]](#footnote-1) as an enquiry into the financial affairs related to a criminal activity, with a view to:   * Identifying the extent of criminal networks or the scale of criminality; * Identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and * Developing evidence that can be used in criminal proceedings.   A ‘parallel financial investigation’ refers to conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation into money laundering, terrorist financing and/or predicate offence(s). Law enforcement investigators of predicate offences should either be authorized to pursue the investigation of any related money laundering and terrorist financing offences during a parallel investigation, or be able to refer the case to another agency to follow up with such investigations.  As the criminal profits tend to be legalised and at least partly re-used in legal economy, financial investigation might be related or/and lead to a money laundering investigation. The financial investigation can lead to a suspicion of the criminal offence of money laundering. Alternatively, when a Financial Intelligence Unit (FIU) is analysing suspicious transactions, or investigating the criminal offence of money laundering, proceeds from (predicate) crime could become the subject of confiscation (as an object of a money laundering crime).  The trainer should ask the students to discuss what is their national definition of financial investigation? The trainer should, after discussion, provide the national definition of financial investigation if it is not known to the delegates. | |
| Slide 7-8 | “No one should benefit from crime and keep the proceeds from crime.”  This principle has also been developed at the international level. It provides for (i) a legal obligation of Parties to establish measures to trace, freeze and confiscate proceeds from crime and (ii) a legal framework for international cooperation, including mutual legal assistance.  International instruments provide for:   * a legal obligation of Parties to establish measures to trace, freeze and confiscate proceeds from crime and * a legal framework for international cooperation, including mutual legal assistance.   The United Nations has also developed legal instruments dealing with the topic that provide for a (global) framework. The trainer should provide some examples of them, the particularly relevant conventions being the conventions against drugs (United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 19.12.1988), transnational organised crime (United Nations Convention Against Transnational Organised Crime, New York, 15.11.2000) and corruption (United Nations Convention Against Corruption, New York, 31.10.2003).  Some international conventions also provide for monitoring mechanisms, which further develop the standards, such as the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Group of States Against Corruption (GRECO) or FATF.  However the rules on financial investigation and confiscation of proceeds of crime depend on national legal provisions and jurisprudence, its placement into the criminal (or other) procedure, on powers and relations between the relevant national institutions. For the practical application of standards and elements of financial investigation the knowledge of national law is essential.  Search (tracing), seizure (freezing) and confiscation of the proceeds from crime is a central part of the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism[[2]](#footnote-2)(hereinafter: Warsaw Convention), which succeeded the 1990 Convention on Laundering, Search, Seizure And Confiscation of the Proceeds From Crime[[3]](#footnote-3).  The trainer should clarify that cooperation with parties to Strasbourg Convention is regulated in Article 49, paragraph 6 of Warsaw Convention.  Council of Europe Criminal Law Convention on Corruption (Strasbourg, 1999, ETS 173) also refers to the confiscation of instrumentalities and proceeds of corruption criminal offences. | |
| Slide 9 | To understand the instruments it is important to explain the meaning of terms. As mentioned, there is no legal definition of financial investigation, but Article 2 of the Directive 2014/42/EU and Article 1 of the Warsaw Convention provide for the following definitions:   * ‘proceeds’ means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property *and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits* (last part of the sentence is not included in the Warsaw Convention); * ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title 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; * ‘freezing or seizure’ means the temporary prohibition of the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority (Directive 2014/42/EU refers only to the term freezing in this context); * ‘confiscation’ means a final deprivation of property ordered by a court in relation to a criminal offence (the Warsaw Convention defines it as a penalty or a measure).   The trainer should define relevant national legal provisions and compare them with these definitions. The trainer should, in particular, highlight any differences between the relevant national legal provisions and these definitions. | |
| Slide 11 | Trainer should explain that financial investigation can be best defined by defining the elements of a financial investigation and identifying relevant international and national legal provisions to be applied in practice.  Broadly, a financial investigation consists of four elements:   1. Detecting the criminal offence and the perpetrator (parallel to criminal investigation) 2. Establishing the proceeds of crime 3. Establishing property that can be confiscated 4. Freezing order - temporary measures for securing the confiscation. | |
| Slide 12 | Financial Investigation Element 1: Relationship between criminal investigation and (parallel) financial investigation.  Discussion: Trainer should ask students when to start the financial investigation? Also trainer should ask who starts/conducts the financial investigation?  When investigating a criminal offence (organised, economic or classic crime, including cybercrime) and gathering evidence on the elements of the criminal offence, the perpetrator and co-perpetrators, it is necessary to carry out a parallel financial investigation in cases when the criminal offence results in property benefit. Most crime is done for financial gain, so a financial investigation can also unearth evidence that could help to secure a conviction.  With regard to the fact that the purpose of a financial investigation is to enable the confiscation of proceeds, it has to be started at an early date enough to prevent eventual perpetrator’s disposal of the property. The right time would therefore be after detecting the suspect(s) and before carrying out measures, which inform the perpetrator about an investigation against him (e.g. house search). Financial investigation and analysis of transactions may extend the circle of suspects, and in gathering evidence it is also necessary to consider the aims of the financial investigation (e.g. in wiretapping, seizure of documents, etc.).  The relation to the (predicate) criminal offence is relevant also in the case of non-conviction based (civil) confiscation and in case of money laundering investigation.  More detailed instructions on the conditions concerning the introduction of financial investigation can be issued by the police (or the prosecutor’s office).  In cases of banking malware and ransomware, as forms of cybercrime, defined by the Budapest Convention criminal proceeds are the main motive. More details on the modus operandi are found in the lesson “Introduction to Cybercrime”. Conducting parallel financial investigations and paying attention to the possible money laundering of the proceeds from such predicate offences (such as use of money mules, etc.) could benefit the main aims of the criminal (cybercrime) investigation – to identify criminals and to gather evidence, and could also benefit the financial investigation – to trace, freeze and confiscate proceeds of crime, and also to recover victims of a crime.  It should be highlighted at this point also that the FIU in its preventive capacity might be able to contribute to the initiation of a criminal investigation. Based on analysis of suspicious transaction reports (STRs) and Cash transaction reports (CTRs) the FIU may identify suspicion of money laundering, as well as investigative leads to a predicate offence.  The trainer should highlight the role of the FIU as a source of financial intelligence. As mentioned above, analysis of suspicious transaction reports (STR) and Cash Transaction Reports (CTR) may identify new investigative leads. FIUs may also be used to make informal enquiries with other FIUs. If you suspect the defendant has a bank account in another country then your domestic FIU can make FIU-to-FIU enquiries to establish if any financial footprint exists in the foreign jurisdiction. Knowing the nature of this, and its relevance and applicability, will allow a prosecutor to make a more focused MLA request to obtain the financial data as evidence.  FIUs should also have a good understanding of the regulated sectors in their jurisdiction. Consider asking the FIU to make informal enquiries of the regulated entities to establish if any financial leads on the defendant are known.  Identify relevant national legal (material and procedural) provisions obliging responsible authorities to conduct financial investigation – to apply measures to identify, trace, freeze or seize rapidly property which is liable to confiscation in order in particular to facilitate the enforcement of a later confiscation - see the Warsaw Convention Article 4 (Investigative and provisional measures).  Identify who is responsible for initiating, leading and performing financial investigation.  Is there a specialised unit in the criminal police responsible exclusively for FI, so the criminal investigators would invite financial investigators to work together?  Are there specialised investigators/prosecutors for financial investigation that can be consulted or engaged in (parallel to) the criminal investigation?  Warsaw Convention Article 4 (Investigative and provisional measures): measures to identify, trace, freeze or seize rapidly property which is liable to confiscation in order in particular to facilitate the enforcement of a later confiscation. | |
| Slide 13 | Financial Investigation Element 2: Establishing the proceeds of crime.  The trainer should recall the definition of ‘proceeds’: it means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property *and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits.*  Proceeds can be an element of a criminal offence (especially in crimes against the property or in economic crimes, including computer related fraud). Moreover, direct proceeds constitute evidence of the criminal offence. By detecting proceeds resulting from a criminal offence (e.g. money (or virtual currencies) as payment for online purchase of drugs (e.g. on the Darknet), child pornography, stolen artistic painting or benefit from online financial fraud) and investigating it, co-perpetrators or even organisers of the criminal offence can be detected, as well as third persons from whom proceeds can be confiscated.  Classically, proceeds resulting from a concrete criminal offence under investigation or for which the perpetrator has been convicted are the only property that can practically be confiscated. The connection between the specific criminal offence and the amount of (concealed) proceeds is relaxed to a certain extent in the case of the criminal offence of money laundering (when first, the amount of a suspicious transaction is identified). On the other hand, there are legal systems where extended confiscation is applied and reversed burden of proof regarding the origin of property. In addition to confiscating proceeds resulting from the concrete (proved) criminal offence, such systems enable the confiscation of additional property, which under specific conditions is assumed to result from a criminal offence.  Both the direct proceeds and the indirect proceeds gained by a criminal offence or because of it (e.g. the perpetrator sells a stolen painting, for the money he buys securities, whose value on the stock market increases) are confiscated.  As a rule, gross proceeds are counted, without subtracting the costs the perpetrators has had in order to commit the criminal offence (e.g. remaking a vehicle for illegal transport across the state border).  The establishment of proceeds from a concrete criminal offence represents an important basis both for the implementation of temporary measures and for the final confiscation ordered by the court. Some penal procedural laws enable the court to decide on the amount of confiscated proceeds also at its own discretion when the amount cannot be accurately established. However, such a decision must be explained, proportionate and based on the findings and assessment of the financial investigation.  When the direct proceeds cannot be confiscated (e.g. a stolen vehicle), the (legal) property corresponding to such proceeds can be confiscated (value based confiscation system). Freezing is therefore possible on all (including legal) property of the defendant. | |
| Slide 14 | The ways to establish the amount and type of illegal proceeds are various. Sometimes, this is clear from the complaint by the injured person (e.g. theft, fraud (including online fraud), robbery). In such cases, an estimate of the damage can be helpful which, however, does not necessarily equal the illegal proceeds.  In organised crime, the amount and type of proceeds are also established through covert investigation measures, by wiretapping, covert surveillance, undercover operations. For example, in gathering evidence on drug trafficking, it is established how many drugs have been sold, at what price and to whom, to which bank accounts etc. Based on such data, the assessment of the amount of proceeds is prepared. In economic criminal offences, the damage or illegal proceeds are established by the examination of business documents, also in collaboration with the tax service.  In establishing the proceeds, data on the financial transactions carried out by the suspect and other persons are also relevant. As a rule, access to bank data is only possible with a court order and is conditional upon a certain standard of evidence. Through the analysis of payments and money orders, the perpetrator’s financial flow and other related persons are established. In analysing financial flows, it is often necessary to obtain data from abroad. When current data on transactions on a specific bank account are relevant for the investigation, a monitoring order is an important measure, which also enables to immediately prevent a money order from being effected to another account, notably one abroad. In such cases, it is especially important to have good and fast co-operation with the court that issues such orders and the financial institution that implements them.  In case of money laundering the powers of FIU should be considered for the access to bank data, for their analysis, for access to bank data abroad and possibility of administrative freezing. Depending on the particularities of each jurisdiction, the role of the FIU might not be limited to money laundering.  Virtual currencies  Virtual currencies, in addition to e-banking are often used as a means of payment for online crime[[4]](#footnote-4), such as purchase of drugs of weapons online, or for receiving payments from extortion victims, or to transform/hide money deriving from crime.  Virtual currencies[[5]](#footnote-5) means a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural and legal persons as a means of payment and can be transferred, stored or traded electronically.  Virtual currencies such as bitcoin are not legally considered currency, with some exceptions[[6]](#footnote-6), as they are not issued by licensed bodies (central banks) nor regulated as part of the financial system. The bitcoin wallet is created online and can be saved on a personal computer. Transfers from one wallet to another are done online. Value can be converted to fiat money either online or at specific exchange machines (cash machines). This means that the identification of the holder of bitcoin and the tracing of bitcoin transactions are challenging tasks.  It is important to note that a bitcoin has a market value, and can be considered as property. It should also be possible (with a wallet key) to seize it – transfer it to another wallet and to keep it or exchange it.  More information on virtual currencies is presented in a later session.  Trainer should ask the students what are the national legal provisions to use special investigative techniques, and to access to bank data (on holder, transactions and monitoring)? See the Convention Article 7.  Warsaw Convention Article 7 (Investigative powers and techniques) requires Parties to establish:   1. measures to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized Bank secrecy should not prevent it. 2. measures to:  * determine whether a natural or legal person is a holder or beneficial owner of one or more accounts in bank and obtain all of the details of the identified accounts; * obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account; * monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts; and, * ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained or that an investigation is being carried out. * Parties shall consider extending this provision to accounts held in non-bank financial institutions.  1. measures to enable it to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto, such as observation, interception of telecommunications, access to computer systems and order to produce specific documents. | |
| Slide 15 | Financial Investigations Element 3: Establishing property that can be confiscated  Depending on Confiscation regimes, financial investigations can focus on direct/indirect proceeds, property of corresponding value, extended confiscation or even civil (in rem) confiscation.  Criminal offenders usually hide or conceal direct proceeds from crime, as they constitute evidence. In addition to that, they also conceal their property. Namely, when direct proceeds from a criminal offence cannot be confiscated (found), confiscation of (legal) property corresponding to the value of illegal proceeds is possible. An important part of financial investigation is therefore to establish the property owned or controlled by the offender or the persons from whom property can be confiscated.  Money  Data on cash money can be obtained through information, interviews, a house search (hidden places, safes, key to a bank safe, etc.). In order to obtain data on a bank account, a court order is usually necessary. Access to data as to which bank accounts the suspect has is also relevant.  Data on bank account holders can be found in the central records of the central bank or within FIU records, otherwise it is necessary to verify data with all the banks and financial institutions[[7]](#footnote-7). Data on the account can also be obtained from income tax or tax returns, profit and loss statements, bank cards or bank statements of account, which can be found during a house search.  Frequent money orders from the bank account to another account (at a foreign bank) may also give rise to suspicion. In analysing bank data, attention also has to be placed on different money laundering techniques. But, although money is the type of property that is most easy to be temporarily secured and stored, other types of the suspect’s property also need to be established.  Securities  Central records of the holders of securities are normally kept by the Clearing and Depositary Company. The conditions to access such data depend on the national legislation.  Data on ownership of companies that do not list on the stock exchange are evident from the legal entities register (the court), the tax return or the profit and loss statement. The type of registration, data and records are governed by the legislation on companies and tax legislation.  Movable property  Records on vehicles are normally under the competence of the responsible Ministry. Attention should also be placed on vehicles that the suspect uses although they are not formally his property. The circumstances of such use should be investigated (leasing, formal ownership by a friend, a partner, etc.). As regards vessels and aircrafts, central records of their owners are normally kept. Data on ownership of more valuable movable property (e.g. artistic paintings) can be obtained from the insurance companies that ensure such property.  In addition, possession and ownership of movable property can be established during a house search.  Real estate  The source of information is the land register. If the land register does not consist of up to date centrally computer kept records, obtaining data can be more difficult. If the land register is kept by local courts, data should be verified with those courts. Data on ownership can normally also be obtained from the tax service (real estate trade tax, real estate tax).  Virtual currency should also be considered, especially if relevant for the crime in question (see previous section).  Property abroad  The offenders may also hide (have) their property abroad. See the Mutual legal assistance part.  Data on a person’s income and property can be obtained from the income tax return (natural persons) or the tax return or the profit and loss statement (companies). For this reason, a good co-operation with the tax service (and proper legal basis) is important in order to access their records.  Financial investigation can also reveal disproportion between the suspect’s legal (reported) property and his actual property. This is relevant in legal systems where extended confiscation of proceeds is possible and where the offender has to rebut the Prosecutor’s assertion of illegal origin of the property, otherwise the property may be confiscated (the reverse burden of proof).  Financial investigation should focus on relevant third and legal persons.  If the perpetrator transfers the proceeds to another person who is aware that they result from a criminal offence, that person can be responsible as the concealer or for the money laundering and the proceeds are confiscated. Moreover, it is also possible to confiscate property from third persons who obtained a property benefit (an object) for a non-market value and should or could have known that it might originate from a criminal offence and from perpetrator’s close relatives. Proceeds have to be subject to confiscation even in case when they are transferred to a legal entity.  In order to implement financial investigation, interdisciplinary knowledge and knowledge of a wide spectrum of legislation (civil, bank, tax, securities, and companies) is necessary. The existing records and access to data depend on the national legislation, and the above ways to establish property are listed only as an example. Financial investigation is facilitated and made quicker if the necessary records are in place, if they are kept up to date and if quick access to data is provided, which again implies a good co-operation with different institutions.  Being familiar with the rules regarding access to data and contact persons in institutions is therefore of great importance for financial investigators.  (Tactical) decision is to be taken whether to focus on tracing the proceeds from concrete criminal offence at the initial phase (parallel criminal and FI) and the extended scope will follow after the evidence for criminal offence is gathered (and secured) and person is arrested/accused. Especially if there is a danger to reveal the conduct of covert criminal investigation by contacting different institutions to identify the property of a suspect.  Warsaw Convention Article 5 (Freezing, seizure and confiscation) require that measures to freeze, seize and confiscate also encompass:   * the property into which the proceeds have been transformed or converted; * property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds; * income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.   Directive 2014/42/EU Article 6 (Confiscation from a third party)   1. Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value. 2. Previous paragraph shall not prejudice the rights of bona fide third parties.   Trainer should describe for the students the national legal provisions on property that can be confiscated including from third person – see the Warsaw Convention Article 5 and Directive 2014/42/EU Article 6?  Trainer should describe for the students the national legal provisions for the access to bank data, stocks, land register, movable property, tax reports and for cooperation with relevant institutions, such as tax office? | |
| Slide 16 and 17 | Financial Investigation Element 4: Freezing order – temporary measures for securing confiscation  Trainer should recall for the students the definition of ‘freezing or seizure’: meaning the temporary prohibition of the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority (Directive 2014/42/EU refers only to the term freezing in this context).  The purpose of temporary measures for securing property is to prevent disposal, transfer or hiding of proceeds or the offender’s property and to enable final confiscation. The temporary measure for securing property is an essential result of the financial investigation, if legal conditions exist.  The measures are defined in the criminal procedural legislation, which in some countries also refer to civil executive legislation (temporary orders).  Can the police seize property (other than direct proceeds) during house search to secure value based confiscation?  As regards seizing objects, police powers normally cover objects used to commit a criminal offence (instrumentalities), objects that resulted from a criminal offence, and evidence. The police can thus only seize the direct proceeds that have resulted from the criminal offence and the evidence (stolen vehicle, banknotes resulting from a bank robbery, etc.).  Would a consequent court freezing order be required to allow for legal remedies?  Freezing (temporary securing) order  Temporary securing order is issued by the (investigative) judge upon the proposal by the prosecutor’s office (based on the report on financial investigation from the police). The proposal to issue a temporary securing order is given upon the conclusion of a financial (and classic) police investigation, together (or not) with the crime report, and before the institution of court proceedings, when the offender is informed about the evidence burdening him. This is why it is important for the legislation to enable the issue of an order also during the pre-trial procedure.  A proposal can also be given before the conclusion of a police investigation, if there is danger of disposal (e.g. the person wishes to send a money order abroad, intends to sell his property, etc.), although care should be taken that the investigation of the criminal offence and gathering of the necessary evidence are not jeopardised by this measure. Careful weighing is especially required in lengthy and more demanding investigations of organised crime.  The conditions, procedure and contents of a freezing order are defined by the national legislation. The proposal for temporary securing of property, which results from financial investigation, has to comprise all the necessary elements for the issue of an order.  Normally, the conditions for the issue of an order are as follows:   * probability (or a standard of evidence higher than grounds for suspicion) of the existence of a criminal offence and the resulting proceeds (the amount), * danger of the offender’s disposal of hiding or destroying the proceeds or making seizure impossible in some other way.   The proposal has to include the results of the financial investigation:   * findings and evidence in relation to the criminal offence and the perpetrator (this is normally part of the crime report), * findings on the type and amount of the illegal proceeds, * findings on the property that can be seized and proposal as to which property is to be secured and the persons it belongs to, indication as to whether any property has already been seized, * grounds for the legal conditions for the issue of an order (standard of evidence, danger of disposal)[[8]](#footnote-8).   In some countries the criminal legislation regarding the conditions of ordering temporary measures instructs to apply the rules of the executive procedure.  Trainer should describe for the students the relevant national legal provisions for freezing order and its conditions? See also Directive 2014/42/EU Article 7 and 8 and Warsaw Convention Article 5 and 8.  Trainer should ask the students to discuss when to request a freezing order and to consider the consequence for criminal investigation.  Trainer should also explain the possibility of temporary suspension of a transaction by FIU in case of money laundering. Take into account the speed and time limits of FIU freezing. – This will be discussed later in the lesson on FIUs.  The trainer should provide a template for a proposal for freezing order (prosecutor) and a template of a freezing order (court order).  Directive 2014/42/EU Article 7 (Freezing)   1. Member States shall take the necessary measures to enable the freezing of property with a view to possible subsequent confiscation. Those measures, which shall be ordered by a competent authority, shall include urgent action to be taken when necessary in order to preserve property. 2. Property in the possession of a third party, as referred to under Article 6, can be subject to freezing measures for the purposes of possible subsequent confiscation.   Directive 2014/42/EU Article 8 (Safeguards)   1. Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the right to an effective remedy and a fair trial in order to uphold their rights. 2. Member States shall take the necessary measures to ensure that the freezing order is communicated to the affected person as soon as possible after its execution. Such communication shall indicate, at least briefly, the reason or reasons for the order concerned. When it is necessary to avoid jeopardising a criminal investigation, the competent authorities may postpone communicating the freezing order to the affected person. 3. The freezing order shall remain in force only for as long as it is necessary to preserve the property with a view to possible subsequent confiscation. 4. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing order before a court, in accordance with procedures provided for in national law. Such procedures may provide that when the initial freezing order has been taken by a competent authority other than a judicial authority, such order shall first be submitted for validation or review to a judicial authority before it can be challenged before a court. 5. Frozen property which is not subsequently confiscated shall be returned immediately. The conditions or procedural rules under which such property is returned shall be determined by national law. 6. Member States shall take the necessary measures to ensure that reasons are given for any confiscation order and that the order is communicated to the person affected. Member States shall provide for the effective possibility for a person in respect of whom confiscation is ordered to challenge the order before a court. 7. Without prejudice to Directive 2012/13/EU and Directive 2013/48/EU, persons whose property is affected by a confiscation order shall have the right of access to a lawyer throughout the confiscation proceedings relating to the determination of the proceeds and instrumentalities in order to uphold their rights. The persons concerned shall be informed of that right. 8. In proceedings referred to in Article 5, the affected person shall have an effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct. 9. Third parties shall be entitled to claim title of ownership or other property rights, including in the cases referred to in Article 6. 10. Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure does not prevent those victims from seeking compensation for their claims.   Warsaw Convention Article 8 (Legal remedies): measures to ensure that interested parties affected by such measures shall have effective legal remedies in order to preserve their rights. | |
| Slide 18 | Trainer should ask the students to discuss what issues will influence the nature and scope of the application for the freezing order.  Through guided discussion, the trainer should get the students to consider:   * the relevant national provisions for the freezing order and its conditions (see also Directive 2014/42/EU Article 7 and 8 and Warsaw Convention Article 5 and 8) * When to propose/issue the freezing order – consider the consequence for the criminal investigation. * What property to freeze * Consider temporary suspension of transaction by FIU in case of money laundering. Take into account the speed and time limits of FIU suspension.   At the end of the discussion, and if possible, the trainer should provide the students with an example of a court freezing order prepared under the national legislation. | |
| Slide 20 | Financial Investigation Element 4: Confiscation of proceeds of crime  Trainer should recall for the students the definition of ‘confiscation’: it means a final deprivation of property ordered by a court in relation to a criminal offence (the Warsaw Convention defines it as a penalty or a measure).  Proceeds are confiscated with a judgment of conviction. The court decides on the confiscated amount and the type of confiscation. In case of non-conviction based (civil) confiscation judgment of conviction is not necessary for confiscation of proceeds but there is a special civil procedure in place (for example in Ireland, UK, Slovenia etc.).  In cases where the proceeds constitute an element of the criminal offence, the court must decide on their confiscation. The prosecutor proposes confiscation during the trial and if the court does not take a decision, this constitutes grounds for appeal. If the legislation allows it, the confiscation is also possible without a judgment of conviction, upon the conclusion of the criminal procedure (e.g. due to the defendant’s death or the criminal offence becoming statute barred).  In any case, the confiscation of proceeds is possible if the property has been temporarily secured. Otherwise there have been numerous cases when at the end of the criminal procedure the perpetrator had no property left, as he had disposed of it or hidden it.  Trainer should explain the national legal provisions on confiscation – see the Warsaw Convention Article 3 and Directive 2014/42/EU Article 4, 6 and 9?  Trainer should also discuss the issue of confiscation in cases where proceedings are stopped (e.g. death of defendant).  Directive 2014/42/EU Article 4 (Confiscation)   1. Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia. 2. Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.   Directive 2014/42/EU Article 6 (Confiscation from a third party): See part 2.3.  Directive Article 9 (Effective confiscation and execution)  Member States shall take the necessary measures to enable the detection and tracing of property to be frozen and confiscated even after a final conviction for a criminal offence or following proceedings in application of Article 4(2) and to ensure the effective execution of a confiscation order, if such an order has already been issued.  Warsaw Convention Article 3 (Confiscation measures) necessary measures to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property.   1. (ML reservation – see 9/4 + evaded tax )   Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence. | |
| Slide 21 | When it is possible to enforce a property claim due to the damages suffered by the criminal offence under the criminal procedure, such a claim has precedence over the confiscation of proceeds. The injured party can file the property claim at the same time as he files the complaint to the police concerning the criminal offence. The court has to decide on such a claim, except in cases when such decision-making would disproportionately prolong the criminal procedure, in which case the injured party is instructed to start a civil action. If the court decides on the claim, the confiscated proceeds are used to pay the damages first and the remainder of the illegal proceeds becomes part of the budget.  What are the relevant national provisions?  Directive 2014/42/EU Article 8 (Safeguards)  10.   Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure does not prevent those victims from seeking compensation for their claims. | |
| Slide 22 | Experience in practice shows that proving the criminal origin of offender's property is in many cases very difficult or impossible.  The introduction of reversal of burden of proof of the origin of the property (not of guilt!) has been promoted by international legal instruments including the Warsaw Convention and Directive 2014/42/EU. Some countries are using such solutions in practice. Also the jurisprudence of European Court for Human Rights confirms that such approach under specific conditions is compliant with human rights standards of the European Convention on Human Rights: the right to a fair trial, the presumption of innocence and the protection of property Article 1 of the Protocol No. 1 to the European Convention (See Case *Minelli vs. Switzerland*, 1983, Case *Salabiaku vs. France*, 1988, Case *Murray vs. UK*, 1996, Case *Saunders vs. UK*, 1996, Case *Welch vs. UK*, 1995, Case *Phillips vs. UK*, 2001 etc.).  The recent Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union replaced the relevant provisions of Article 3 of Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property, which provided for three possible approaches to Member States regarding the extended confiscation. The Directive obliges MS to regulate extended confiscation: when a court is satisfied that the property derived from criminal conduct for example if the value of property is disproportionate to the lawful income of a convicted person.  Non-conviction (civil) confiscation: While the Framework Decision 2005/212/JHA in Article 3/4 provided for an option for Member States that may use procedures other than criminal procedures to deprive the perpetrator of the property in question, the Directive does not have such explicit provision any more, except in recital.10.  Trainer should explain the national legal provisions regarding extended confiscation and/or civil confiscation – see the Warsaw Convention Article 3/4 and Directive 2014/42/EU Article 5?  Directive 2014/42/EU Article 5 (Extended confiscation)  Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.  Warsaw Convention Article 3/4 Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.  Note: according to the paragraph 4 of Article 53 the State may declare a reservation to the use of this provision.  Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property (Article 3 Extended powers of confiscation)   1. Each Member State shall as a minimum adopt the necessary measures to enable it, under the circumstances referred to in paragraph 2, to confiscate, either wholly or in part, property belonging to a person convicted of an offence 2. committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union[(5)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32005F0212#ntr5-L_2005068EN.01004901-E0005), when the offence is covered by:   Council Framework Decision 2000/383/JHA (counterfeiting euro), Council Framework Decision 2001/500/JHA (money laundering, confiscation of proceeds), Council Framework Decision 2002/629/JHA (trafficking in human beings), Council Framework Decision 2002/946/JHA (unauthorised entry, transit and residence), Council Framework Decision 2004/68/JHA (child pornography), Council Framework Decision 2004/757/JHA drug trafficking.   1. which is covered by the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism   provided that the offence according to the Framework Decisions referred to above   * regarding offences other than money laundering are punishable with criminal penalties of a maximum of at least between 5 and 10 years of imprisonment, * regarding money laundering, are punishable with criminal penalties of a maximum of at least 4 years of imprisonment, * and the offence is of such a nature that it can generate financial gain.  1. Each Member State shall take the necessary measures to enable confiscation under this Article at least: 2. where a national court based on specific facts is fully convinced that the property in question has been derived from criminal activities of the convicted person during a period prior to conviction for the offence referred to in paragraph 1 which is deemed reasonable by the court in the circumstances of the particular case, or, alternatively, 3. where a national court based on specific facts is fully convinced that the property in question has been derived from similar criminal activities of the convicted person during a period prior to conviction for the offence referred to in paragraph 1 which is deemed reasonable by the court in the circumstances of the particular case, or, alternatively, 4. where it is established that the value of the property is disproportionate to the lawful income of the convicted person and a national court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that convicted person. 5. Each Member State may also consider adopting the necessary measures to enable it to confiscate, in accordance with the conditions set out in paragraphs 1 and 2, either wholly or in part, property acquired by the closest relations of the person concerned and property transferred to a legal person in respect of which the person concerned — acting either alone or in conjunction with his closest relations — has a controlling influence. The same shall apply if the person concerned receives a significant part of the legal person’s income.   4.   Member States may use procedures other than criminal procedures to deprive the perpetrator of the property in question. | |
|  | Financial Investigation Elements: Management of frozen/confiscated property  Note for trainer: This is a relevant topic for consideration, but needs to only be mentioned.  The trainer should provide information to the students about the responsible authority and relevant rules on management of frozen/confiscated property. Powers to sell frozen property?  Directive 2014/42/EU Article 10 (Management of frozen and confiscated property)   1. Member States shall take the necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation. 2. Member States shall ensure that the measures referred to in paragraph 1 include the possibility to sell or transfer property where necessary. 3. Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes.   Warsaw Convention Article 6 (Management of frozen or seized property): measures to ensure proper management of frozen or seized property. | |
| Slide 26 | Financial Investigation Elements: Data and Statistics  It is important to keep the evidence and statistics on estimated value of property benefit/damage from criminal offence; on proposals for freezing orders; issued freezing orders; frozen property domestic and abroad; decisions on confiscation and value; executed confiscation; open claims to be executed; mutual legal assistance (legal basis (Warsaw Convention and other for: incoming/outgoing requests for bank data, freezing orders, frozen property, confiscation orders, confiscated property, asset sharing).  Such data is needed to monitor the implementation of freezing and confiscation of proceeds of crime, and to improve institutional and/or legal frameworks if the results are not as expected.  In some cases the obligation to report is established by international instruments and monitoring bodies, such as MONEYVAL or GRECO.  Trainer should explain to students national situation concerning data kept on (legal basis):   * financial investigation and value of property benefit/proceeds * freezing orders and value of frozen property (domestic and abroad) * management (and disposal) of frozen property * confiscation decisions and value * executed confiscation decisions and value * pending executions of confiscation decision * international cooperation – mutual legal assistance in access to bank data (account holder data, transactions and monitoring order), for freezing orders, confiscation orders and assets-sharing.     Is your record centralised?  If no, are relevant institutions (police, prosecution, courts, FIU) cooperating in gathering data and their presentation in e.g. yearly report?  Trainer should present the statistics in relation to number of criminal offences, number of money laundering offences and cybercrime offences.  Directive 2014/42/EU Article 11 (Statistics)   1. Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities. The statistics collected shall be sent to the Commission each year and shall include: 2. the number of freezing orders executed; 3. the number of confiscation orders executed; 4. the estimated value of property frozen, at least of property frozen with a view to possible subsequent confiscation at 5. the time of freezing; 6. the estimated value of property recovered at the time of confiscation. 7. Member States shall also send each year the following statistics to the Commission, if they are available at a central level in the Member State concerned: 8. the number of requests for freezing orders to be executed in another Member State; 9. the number of requests for confiscation orders to be executed in another Member State; 10. the value or estimated value of the property recovered following execution in another Member State. 11. Member States shall endeavour to collect data referred to in paragraph 2 at a central level. | |
| Slide 27-29 | Conducting financial investigations in parallel to criminal investigations requires interagency cooperation (prosecutor, units within the police – cybercrime unit, financial investigation unit, etc.) and Financial Intelligence Unit (FIU) in cases of money laundering.  It is important to understand the roles, responsibilities and powers of such agencies/units, according to national legislation, in order to be able to build on synergies of cooperation.  A cooperation protocol on practical issues might be considered to address questions like sharing information, information flow, division of tasks, forms like task force, joint investigation, regular meetings, etc.  Trainer should provide information on national situation concerning:   * Specialised units in the police/prosecutors office/courts * Financial investigation * Cybercrime * E-evidence (forensics) * Money laundering * Unit for management of frozen/confiscated property * Interagency cooperation under the lead of the prosecutor * Task force approach led by prosecutor, participation police, tax service, FIU, others (accounting, cyber experts etc.) * Relevant legal provisions for task force approach. | |
| Slide 31 | Financial investigation and money laundering can have specific mutual interaction.  Criminal investigation and financial investigation can lead to the identification of money laundering typologies[[9]](#footnote-9) (techniques for concealing the origin of money) and therefore to the elements of criminal offence of money laundering. When such conditions are met, the FIU can be engaged and its powers can be invoked. In cases of cybercrime or online crime it is important to focus on possible elements of money laundering, including the typologies of money laundering online (see lessons on online criminal money flow typologies). In such cases the FIU can contribute with its analytical ability of financial (bank) data, as well as with speedy postponement of transactions, both domestically and internationally.  As mentioned in relation to the first element of financial investigations in this presentation, criminals tend to cover the source of criminal proceeds and to reinvest criminal profit to legal economy so during the financial investigation typologies of money laundering should also be observed.  The value of suspicious transactions is identified by FIU. With further analysis a link to predicate offences could be established, though it is not necessary to prove the link with a specific criminal offence. It is therefore not required to precisely identify and prove the value of criminal proceeds from a specific predicate offence. It is considered that the proceeds from a predicate offence become subject (instrumentality) of a money laundering offence (as discussed in relation to the second element of financial investigations in this presentation).  Also by analysing bank transactions and connections of suspect in case of money laundering, other relevant bank accounts and property can be discovered (as mentioned in relation to the third element of financial investigations in this presentation). Engagement of FIU could be most useful in case financial investigation shows the suspicion also of money laundering in addition to the (predicate) offence.  Apart of access of FIU to bank data domestically and abroad, and its analytical capability it is also important to take into account the power of FIU to timely postpone bank transactions both domestically and abroad. Such possibility can be considered in relation to the fourth element of financial investigations as discussed in this presentation.  This topic will be discussed in more detail in the lesson on FIUs. | |
| Slide 32 | On the other hand, the anti-money laundering legislation provides for a series of prevention measures that enable the FIU to identify and analyse suspicious transactions that are reported by obliged institutions (banks, exchange offices and other entities). Based on such analysis, typologies of money laundering can be identified, which lead to the suspicion of money laundering by certain person or persons. In such cases, the prevention system can trigger, based on reports by banks and other entities and consequently by the FIU, a criminal investigation of a predicate offence by the police and prosecutor. This is particularly relevant in cases of online crime, including cybercrime, where timely reaction might be crucial to identify the criminal and to secure the crime proceeds.  In such cases the information of the FIU (intelligence) would be crucial to start the criminal and financial investigations. The temporary (administrative) postponement of a transaction by the FIU (nationally and internationally) would be complemented by court freezing order in criminal proceedings and request for mutual legal assistance in cross-border cases.  The trainer should use this slides to explain the interlinking relationship between the FIU role and the police/prosecutor role, as discussed above, FIU role involves monitoring and investigating suspicious transactions to identify money laundering activities. Criminal investigations and financial investigations pursue criminal activity and proceeds from crime. Proceeds from crime are typically laundered in some way, and laundered funds are in many cases used as in instrumentality to commit further crime. Therefore, the trainer should explain that as shown in this diagram, the work of the FIU and the police/prosecutors are closely linked together. | |
| Slide 33 | The interaction between a financial investigation and the FIU should be taken into account and benefits explored. However it depends on national legislation and jurisprudence (relevant judgments?)on necessary elements for criminal offence money laundering. And also on the status and powers of financial intelligence unit (FIU).  The trainer should guide a discussion with the students covering this and also the following questions:   * In practice, is the result of a Financial Investigation a money laundering charge? * Can the money laundering charges be more efficient than charging for predicate offence? Question of evidence! * What are the relevant ML typologies in similar (predicate) offences in practice? * Can FIU data be used as evidence in court criminal proceedings?   Because FIUs hold data usually submitted as a STR/SAR its reliability is untested. STRs represent the subjective suspicion of the reporter and as such may be of undetermined value. STRs in the context of an investigation (relevant to the defendant/s) are usually regarded as privileged information and there may be legislation that defines the status of STR material similar to that from a confidential informant. Even the existence of a STR is usually not disclosed.  However, STR material is usually a pointer to a bank account or financial institution from which evidence can be directly obtained in the usual way. In certain cases FIU analysts have given evidence of their conclusions in analytical reports to Police or prosecutors showing how financial transactions separately evidenced demonstrate money laundering activities. | |
| Slide 34 | Discuss domestic legal provisions and jurisprudence for:   * Financial investigation (report on FI, access to bank data – account, transactions, monitoring, use of special investigative methods (SIMS)) * Freezing of transaction/property * Confiscation of criminal proceeds * Extended confiscation * Money laundering offence   Provide/discuss template/forms for:   * Financial investigation (report on FI, access to bank data – account, transactions, monitoring, use of special investigative methods (SIMS)) * Freezing order and proposal * Confiscation decision (part of judgment?) and proposal * Extended confiscation * FIU order to bank to postpone financial transaction | |
| **Practical Exercises**  No practical exercises are envisaged in this lesson. | | |
| **Assessment/Knowledge Check**  No knowledge check or assessment is prepared for this session. | | |

1. FATF (2012), Interpretative Note to Recommendation 30, 2nd paragraph.

   See also: FATF (2012) Report Operational issues- Financial Investigation Guidance. [↑](#footnote-ref-1)
2. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, CETS 198, 16.05.2005. [↑](#footnote-ref-2)
3. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, ETS 141, 8.11.1990. [↑](#footnote-ref-3)
4. See Europol: 2016 Internet Organised Crime Threat Assessment (IOCTA):

   <https://www.europol.europa.eu/activities-services/main-reports/internet-organised-crime-threat-assessment-iocta-2016> [↑](#footnote-ref-4)
5. The Proposal for a Directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directive 2009/101/EC is aiming at regulating virtual currencies by obliging providers of exchange services and custodial wallet providers to cooperate with FIU. [↑](#footnote-ref-5)
6. See European Court of Justice Judgment C-264/14, October 22nd 2015. [↑](#footnote-ref-6)
7. Normally the effort should be made to discover the bank accounts of the suspect during the investigation. If this is not successful, it is an international standard that information on bank accounts of a criminal has to be provided (see art. 7 and 17. of the Warsaw Convention and Chapters 2.3 and 2.5.1). In some countries the court practice does not allow for such circular query at the moment. [↑](#footnote-ref-7)
8. If the legislation allows extended confiscation of proceeds with a reversed burden of proof, additional elements are defined on the basis of which it can be deduced that the offender's property exceeding legally reported property within a certain period results from criminal offences. [↑](#footnote-ref-8)
9. FATF and national FIUs publish money laundering typologies. See FATF website at <http://www.fatf-gafi.org/publications/?hf=10&b=0&q=typologies&s=desc(fatf_releasedate)> [↑](#footnote-ref-9)