

# CONDUCT OF FINANCIAL INVESTIGATIONS AND THE CONFISCATION OF PROCEEDS OF CRIME IN THE REPUBLIC OF CROATIA

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## I. INTRODUCTION

In the commentary the author presents an overview of police financial investigations from the legislative and organizational point of view. Most significantly, an overview of international and inter-agency cooperation in the implementation of financial investigations is presented. By way of conclusion, there is a brief overview of the legal sources on confiscation of proceed of crime.<sup>1</sup>

The legal obligation to conduct financial investigations is regulated by Art. 38 para. 2(6) of the Criminal Procedure Code, which expressly provides for the right and the duty of the State Attorney's Office to propose measures for the safeguarding of proceeds of crime in criminal cases of offences prosecuted *ex officio*.

Because the police constitute the investigative body with the greatest powers of surveillance, which might lead to criminal prosecution through the search for the proceeds of crime, the legislative Act on Police Duties and Powers, as of 1 July 2009, has governed police duties and police powers in order to prevent and eliminate defects in criminal investigations, and in Art. 3 para. 1(5), *inter alia*, precribes the powers of the police in relation to the pursuit of proceeds of crime and seizure of objects and assets derived from the commission of offences.

The State Attorney's Office can by itself conduct investigations or order that the conduct of an investigation be undertaken by the police. The police are obliged to execute any such order or request by the State Attorney's Office and for such work they are accountable to the State Attorney.

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## **II. THE ASPECT OF THE POLICE IN THE CONDUCT OF FINANCIAL INVESTIGATIONS**

If there are grounds for suspicion of the commission of a criminal offence to be prosecuted *ex officio*, the police have the right and the duty to independently:

- 1) take necessary measures to identify the perpetrator of the crime, or prevent the perpetrator or any accomplice from hiding or fleeing;
- 2) detect and secure any evidence of the criminal offence and any objects that can be used to determine the facts; and
- 3) gather all information that might be useful for the successful conduct of criminal proceedings.

The police must inform the State Attorney's Office immediately, in any event no later than 24 hours after taking action, of an investigation of a criminal offence.

In relation to the notification by the Office for the Prevention of Money Laundering of any collected, processed and stored data relating to unusual and suspicious cash transactions that the police collect, either independently or in coordination with the competent State Attorney's Office or other bodies of state administration, documentation may be temporarily confiscated and such information and documentation submitted to the competent State Attorney's Office in order that the same may serve as evidence of the commission of the criminal offence or of any assets realized through the criminal offence. Measures are necessary in order to determine the identity of the property in question and where it is located, in order to prevent the perpetrators disposing of the property by theft or otherwise. In criminal offences within the jurisdiction of the Office for the Prevention of Corruption and Organised Crime, it is necessary to consider proposing the extended confiscation of any proceeds of crime. It is important to emphasize how financial investigations need to be integrated into regular criminal investigations that are not related only to economic crime, but also to other forms of criminal offences, in particular organized crime and drug crime.

The immediate implementation of law enforcement investigative work within the jurisdiction of the Police of the National Office for Combating Corruption and Organised Crime (PNUSKOK) is carried out in such a way as to form investigating teams, depending on the subject matter of the crime, comprising specialists in the respective areas: the head of criminal investigation, the operational analyst, police officers with specialist expertise (organized crime, drug crime, economic crime) and experts in financial investigations.

Activities carried out during financial investigations involve searching for, identifying, securing and confiscating the material proceeds of crime.

The scope of the work of the police in carrying out financial investigations includes, among other things, “the discovery and connection of suspicious flows of money, objects and rights aimed at the detection of their true source, e.g. actual and the formal change of ownership” and the exercise of inter-agency and international cooperation during their activities.

Apart from police officers in financial investigations working in PNUKOK, in larger police departments (Zagreb, Split, Rijeka, Osijek, Pula) there are working police officers who also specialize in conducting financial investigations and detecting and proving offences of money laundering.

The assets of perpetrators of criminal offences which are of concern to bodies of criminal prosecution can be classified into several categories: money, securities, movable assets, real estate, and assets abroad. Each of these categories offers good guidelines for the implementation of a financial investigation.

The work of the police force is aimed at strengthening the implementation of financial investigations, based on the identification and pursuit of the proceeds of crime, as a result of investigation of the original offences. Financial investigations are carried out in all cases where there is suspicion that a specified natural or legal person has illegally acquired a large material gain. The effectiveness of this activity is substantially dependent on cooperation with other relevant institutions.

### III. INTER-AGENCY COOPERATION

Data on property is usually obtained by the following state administration bodies, i.e. legal persons as public authorities, trade associations and judicial authorities: the Ministry of Interior, the Ministry of Finance (Tax Administration, Customs Administration, Financial Inspectorate, Office for the Prevention of Money Laundering), the Central Clearing Depository Company Inc., the Commercial Court (Court Register), the Municipal Court (Land Registry Department), offices for cadastral and geodetic works, the Croatian Agency for the Supervision of Financial Services, banks, the register of ships, the register of aircrafts, and the registry data base “Poslovna Hrvatska” (Business Croatia).

Therefore, in addition to the data base of the Ministry of Interior, the *Tax Administration* has wide powers in the area of data collection, monitoring traffic and other activities that are necessary for proper taxation. The Tax Administration has information on taxpayers, their tax obligations, tax bases, revenue and income, and the acquisition and disposal of movable assets and real estate on which special taxes are paid.

*The Customs Administration* has information on customs duty payers, customs matters, and the transfer of money and securities across state borders. According to Art. 74 of The Act on the Prevention of Money Laundering and

the Financing of Terrorism, which entered into force on 1 January 2009, the bodies of the customs administration of the Republic of Croatia are required, in relation to each log entry or exit of money in local or foreign currency to the value of the HRK equivalent of 10,000 Euro or more across the state border, to immediately inform the Office for the Prevention of Money Laundering, and at the latest within three days from the day of the transfer across the state border. In relation to the importation, exportation and attempt to import and export money in an amount less than the HRK equivalent of 10,000 Euro, the Customs Administration shall inform the Office for the Prevention of Money Laundering, if in connection with the person who transfers the money, or with the means of transfer or with other circumstances of the transfer, there are reasons to suspect money laundering or the financing of terrorism.

*The Financial Inspectorate*, in the area of foreign exchange, supervises compliance with conditions and means of carrying out cross-border exchange, as well as business in foreign currencies in the country (they possess information in the area of foreign exchange and foreign trade, and business activities between residents and non-residents in foreign and local currencies, and the transfer of assets to and from the Republic of Croatia which do not bear the characteristics of business conducted between residents and non-residents), and, in the area of payment services, it monitors the progress of payment transactions and other business transactions.

According to the provisions of Art. 4(2) of the Act on the Financial Inspectorate, the Inspectorate, at the request of the State Attorney's Office or the court, provides help in conducting financial investigations, especially in cases where it is necessary to obtain information about the financial transactions and business documentation of the defendant, and on the monitoring of the movement of the proceeds of crime.

According to the provisions of Art. 206, para. 5, of the Code on Criminal Procedure, *banks* are obliged to deliver to the State Attorney's Office the data requested of them, except in those cases where confidentiality is protected by law. Pursuant to the provisions of Art. 169 of the Act on Credit Institutions, there is no obligation of banking confidentiality on a credit institution in respect of the regular State Attorney's Office, and such an obligation does not exist if the confidential data are disclosed to the Office for Combatting Corruption and Organised Crime, in accordance with the provisions of Art. 169, para. 3(11) of the Act. In such cases, the regular State Attorney's Office can access such data only through the verification procedure of the temporary seizure of objects (Art. 265, para. 1 of the Code on Criminal Procedure).

On 1 March 2007, the 'Protocol on cooperation and the establishment of the inter-institutional working group for the prevention of money laundering and the financing of terrorism' came into force, which regulates cooperation between the Ministry of Justice, the State Attorney's Office of the Republic of Croatia, the Ministry of Interior – Directorate of Police,

the Ministry of Finance (Office for the Prevention of Money Laundering, the Customs Administration, the Tax Administration, the Foreign Currency Inspectorate, the Financial Police), the Croatian Agency for the Supervision of Financial Services, the Croatian National Bank and Security Intelligence Agency.

The joint work of the State Attorney's Office, the police and other authorities is regulated by the Code on Criminal Procedure (Art. 206, para. 3), the Act on the State Attorney's Office (Art. 63, para. 2), the Act on the Office for Combating Corruption and Organised Crime (Article 24, para. 3; Art. 25, para. 2; and Art. 26), the Act on Police Affairs and Competences (Art. 8), and the Protocol that was signed by the State Attorney's Office of the Republic of Croatia and the Ministry of Interior - Directorate of Police on 29 August 2011.

In addition to these, the following inter-agency agreements have been concluded:

1. The 'Protocol on access to information from criminal records, misdemeanour records of assigned ID numbers, and records of residents and temporary residents' was concluded between the Ministry of Interior and Ministry of Justice;
2. The 'Protocol on cooperation and exchange of information between the Ministry of Interior of the Republic of Croatia - Directorate of Police and the competent services of the Ministry of Finance (the Customs Administration, the Tax Administration, the Financial Police, the Foreign Exchange Inspectorate and the Office for the Prevention of Money Laundering)'.

In December 2011 an addition to the Protocol was made between the Directorate of Police and the Office for the Prevention of Money Laundering which ensured direct access to data contained in the records of the information systems of the Office for the Prevention of Money Laundering and the Directorate of Police.

In 2014 an addition to the Protocol was made between the Ministry of Finance - Tax Administration and the Ministry of Interior which enabled direct access to certain records of the Tax Administration to the Ministry of Interior – Directorate of Police.

3. The Agreement on the exchange of data in the pre-trial phase of proceedings between the State Attorney's Office, the Office for Combating Corruption and Organized Crime, and the Ministry of Interior – Directorate of Police.

#### **IV. INTERNATIONAL COOPERATION**

International cooperation in the implementation of financial investigations is carried out through the following institutions:

1. INTERPOL - The Republic of Croatia has been a member since 4 November 1992. Interpol Zagreb has a 24-hour duty cover by the special Telecommunication Centre, and a translation service for English, German, French, Spanish and Italian, i.e. for all the official languages of Interpol, except Arabic.
2. EUROPOL - The Republic of Croatia, on the basis of the Agreement on Cooperation, has been a member since 2006. The information that Croatia submits to Europol is checked through available databases under various items (first name, last name, credit card number, license number of the vessel, ship, aircraft, etc.) and in case they match, is delivered to the national Office. On the basis of the information received a clearer picture of a particular criminal phenomenon is achieved. Croatia is an active participant in the central function that deals with search and identification of assets acquired from committing criminal acts. This way, through the exchange of data it is possible to obtain high-quality analytical products which direct and help implement concrete criminal investigations. Additionally, an excellent instrument in directing criminal investigations is the data that is entered into the Europol Information System (aka. "EIS") through which one can easily get information about committing resources, contact details and information about offences / suspects / detainees.
3. SELEC CENTAR (Southeast European Law Enforcement Centre) was founded in 1999 as an initiative of the 13 countries of southeast Europe for cooperation and projects on combating cross-border crime in the region with its headquarters in Bucharest. In June 2004, the Ministry of Interior and Customs Administration appointed a joint liaison officer.
4. CARIN (Camden Asset Recovery Inter-Agency Network) is an international organization of practitioners from the police and the State Attorney's Office dealing with financial investigations and the pursuit of proceeds of crime. This network was founded in 2002, and Croatia has been actively involved in the work of CARIN from 2006. The Croatian representatives in the CARIN network, as contact points for the exchange of data, are a representative of the State Attorney's Office and a police representative. The work of the CARIN network consists of the exchange of information, during the implementation of financial investigations, with other member states of the CARIN network, and the establishment of best practice and proposals to improve efficiency.

5. ARO OFFICE (Asset Recovery Office) - in recognition of the good practice of CARIN, the Council of Europe, on 6 December 2007, adopted Council Decision 2007/845 /JHA by which every EU member state must, by December 2010, establish or designate a national Asset Recovery Office, which will be in charge of tracing and identifying proceeds of crime, and which later may be subject to freezing and seizure under a decision of a competent court. In this context, EU member states must ensure that their national AROs collaborate with other AROs by exchange of information and best practice on the basis of requests or spontaneously. Every ARO is required, on the basis of a request from another country, to provide data on a suspect's account, real estate, vehicle, boat and other high-value items, and information on legal and natural persons. Croatia opted for a model according to which the national ARO is located within the police. This has the advantage that the police, with the largest investigative capacities, first come up with specific knowledge and can immediately begin to act. At the same time, some countries have decided on a system according to which the ARO is located within the judiciary, i.e. it is a multi-disciplinary body in which representatives of the state attorney, the police and the judiciary participate. Such a structure has the advantage that in a particular case it is possible to act immediately on the request for legal assistance or to allow the use of data delivered under mutual exchange for evidential purposes. In Croatia, this is not possible because the police is not the "body conducting the proceedings" or a judicial body which can decide on a request that may be used for "judicial" purposes. If practice points to the need for fast decision-making in relation to foreign demands, especially if other countries request the delivery of letters rogatory from Croatia, the possibility of the organization of the ARO as a multi-disciplinary body should be considered.
6. The police also participate actively in the work of specialized international organizations responsible for issues of financial investigation and money laundering, and also in the work of MONEYVAL (Committee of Experts on the Evaluation of Anti-Money Laundering Measures) as a Special Committee of experts of the Council of Europe for the evaluation of measures against money laundering and the financing of terrorism, which was founded in 1997, and through which member states, as well as the candidate countries for membership in the Council of Europe, define the measures against money laundering and the financing of terrorism, and assess whether its members adhere to appropriate standards related to the recommendations of FATF (the Financial Action Task Force - an international body that has members from all over the world, and whose objective is the development and promotion of national and international strategies for the fight against money laundering and the financing of terrorism), and provisions contained

in the Convention relevant to the prevention of money laundering and terrorism financing. During 2000, 2003 and 2006 MONEYVAL evaluated the effectiveness of the competent authorities in the Republic of Croatia in charge of preventing money laundering and terrorism financing, and the implementation of measures to prevent money laundering and terrorism financing in the Republic of Croatia, and experts from MONEYVAL filed a report with recommendations to improve the system and to comply with relevant international standards for individual institutions, each of which (in both preventive and coercive ways) participate in the fight against money laundering and terrorism financing. The Republic of Croatia is a member of the Board of MONEYVAL at the Council of Europe, and Croatian representatives on the Board of MONEYVAL are representatives from the Ministry of Interior, the Office for the Prevention of Money Laundering and the State Attorney's Office.

## **V. CONFISCATION OF PROCEEDS OF CRIME IN THE CRIMINAL LAW OF THE REPUBLIC OF CROATIA**

The Institute of Confiscation of the Proceeds of Crime is regulated in Croatian legislation by the following laws: Criminal Code of 1997 and Criminal Code of 2011, Act on the Liability of Legal Persons for Criminal Acts, Act on Criminal Proceedings, Act on the State Attorney's Office, Act on the Office for Combating Corruption and Organised Crime, Act on Police Affairs and Powers, Act on the procedure of confiscation of pecuniary gain acquired through a criminal offence or misdemeanour.

International criminal legal assistance and cooperation in the field of confiscation of the proceeds of crime is primarily regulated by the Act on International Legal Assistance in Criminal Matters. Certain provisions are contained in the Act on the Office for Combating Corruption and Organised Crime. Thus, in accordance with Art. 61 of the Act, in relation to corruption offences and criminal offences of organized crime, the seizure and safeguarding of proceeds of crime shall be carried out under conditions determined by international treaties and the rule of law. All provisions of national legislation in the area of international legal assistance in the confiscation of proceeds of crime are in accordance with the provisions of the UN Convention Against Transnational Organised Crime whereby, in the implementing component itself, they complement one another exactly with the specifics of judicial cooperation from the Convention.

In addition to the UN Convention Against Transnational Organised Crime, the Republic of Croatia has also ratified the UN Convention Against Corruption, which governs the seizure of material gain in criminal offences

of corruption, but also a variety of other multilateral conventions that regulate this area. Some of the most important are: the European Convention on Mutual Judicial Assistance in Criminal Matters, The Convention on Laundering, Search, Temporary Seizure and Seizure of Income Gained from a Criminal Offence and the Criminal Law Convention on Corruption.

On December 15 2010, the Croatian Parliament adopted the Act on the procedure of confiscation of pecuniary gain acquired through a criminal offence or misdemeanour, which was the first Croatian regulation that governs the confiscation of proceeds of crime and violation in both branches of the law: criminal and civil.

The Act regulates the procedure on determining the proceeds of crime, the process of securing confiscation of the proceeds of crime, the procedure for enforcing a decision to confiscate the proceeds of crime, and for dealing with confiscated assets and assets in respect of which a temporary measure of seizure has been ordered, and the exercise of the rights of a person damaged by a criminal offence, and the protection of the rights of a third party.

One of the basic positions of the Act is that a decision on the seizure of proceeds is solely in the jurisdiction of the court, which seeks to ensure that the court examines the merits of the measures, and rules on any change of legal measures, and except where determining guilt, the amount of the confiscation of material gain is determined by court decision. Once a defendant has been properly found guilty, any unlawfully acquired assets (movable and real estate) become the property of the Republic of Croatia.

Confiscated and temporarily confiscated property is managed and disposed of by the Central Office for the Management of State Assets, which also keeps track of transferred assets. If the keeping of assets is dangerous or threatened by danger of deterioration, and a significant loss of value, the Office may, without prior public announcement, sell temporarily confiscated movable assets, rent them or transfer them under a lease. (Art. 20 and Art. 21).

The Office manages and disposes of property confiscated under the Act. Any money confiscated in accordance with the provisions of the Act and any funds realized by sale of property seized under the Act is paid into the account of the state budget (Art. 22).

## VI. CONCLUSION

Monetary transactions in today's global world are conducted with incredible speed, there are no boundaries, no barriers. Speculation on stock markets and through changes in currency values give individuals unimagined possibilities of getting rich overnight, but at the same time expose economic

systems, especially in smaller economies, to sudden changes. Therefore, the international exchange of data in financial investigations needs to take place at least as quickly. The Republic of Croatia has, by the adoption of the 'Act on simplifying the exchange of information between the authorities of member states of the EU competent for the implementation of the law' and its accompanying Regulation, transposed into national legislation the provisions of Council framework decision 2007/845/JHA. The national point of contact for the implementation of this framework decision is within the specialized services of economic crime and corruption, and outside normal working hours in the Telecommunications Centre of the International Police Co-operation (Interpol-Europol-SIReNE), which operates 24 hours, 7 days a week.

Future challenges include the need to further strengthen inter-agency collaboration, and the use of data exchanged for evidential purposes on which a decision can be taken only by "the authority which conducts the proceedings", never the police, but the judicial authority in criminal proceedings (court or state attorney).