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MANUAL ON CERTAIN ASPECTS OF FINANCIAL INVESTIGATIONS (ANALYSIS OF FINANCIAL RELATIONS)

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1. National Police of Ukraine
2. Security Service of Ukraine
3. Customs Service of Ukraine
4. State Boarder Guard of Ukraine
5. Prosecutor's General Office
6. National Anti-Corruption Bureau of Ukraine
7. State Bureau of Investigation
8. National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes
9. Specialized Anti-Corruption Prosecutor's Office

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ABBREVIATIONS

FATF – Financial Action Task Force (on Money Laundering)

FATF Recommendations – International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation of Weapons of Mass Destruction (2012)

ARMA – National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and other Crimes

VRU – Verkhovna Rada of Ukraine

SC – Supreme Court

ML – Money Laundering

ECU – Economic Code of Ukraine

SBI – State Bureau of Investigation

SFMS – State Financial Monitoring Service of Ukraine (a financial intelligence unit of Ukraine, Ukraine’s FIU)

STS – State Tax Service of Ukraine

Second Directive – Directive 2001/97/EC of the European Parliament and of the Council of 10 June 1991 amending Council Directive 91/308/EEC

EU – European Union

ECtHR – European Court of Human Rights

USRCD – Unified State Register of Court Decisions

URPTI – Unified Register of Pre-Trial Investigations

Law on Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime – the Law of Ukraine “On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction”

Law on Confiscation of Illegal Assets – the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine Regarding Confiscation of Illegal Assets of Persons Authorized to Perform Functions of the State or Local Government, and Punishment for Acquisition of Such Assets”

MM – mass media

LoU – Law of Ukraine

IAS – information and analysis support

SE – search engine

CC – Criminal Code of Ukraine

CMU – Cabinet of Ministers of Ukraine

Convention of May 16, 2005 (Warsaw Convention) – Council of Europe Convention on

Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16th May 2005

Convention of December 20, 1988 – United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20th December 1988

Convention of November 8, 1990 (Strasbourg Convention) – Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8th November 1990

Convention of November 4, 1950 (ECHR) – Convention for the Protection of Human Rights and Fundamental Freedoms of 4th November 1950

CPC – Criminal Procedure Code of Ukraine

CcTu – Constitutional Court of Ukraine

MIA – Ministry of Internal Affairs of Ukraine

IMF – International Monetary Fund

ILA – international legal assistance

NABU – National Anti-Corruption Bureau of Ukraine

NACP – National Agency on Corruption Prevention

CI(S)A – covert investigative (search) actions

PGO – Prosecutor General's Office

OCG – organized criminal group

OIA – operative and investigative activities

UN – United Nations

First Directive – Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering

TCU – Tax Code of Ukraine

FIU – financial intelligence unit

CoE – Council of Europe

SSU – Security Service of Ukraine

BE – business entity

Third Directive – Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

CR/ACR – case referrals/additional case referrals

CCU – Civil Code of Ukraine

Fourth Directive – Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

INTRODUCTION

World globalization, dissemination of financial inclusion policy, development of modern information technologies represent today's objective trends. They offer unlimited opportunities for rapid economic development, faster payments, digitalization of services, and their availability. Since citizens' financial inclusion tends to grow in the context of combating crime, the indicated trends significantly raise the importance of financial analysis in the course of investigations in the criminal proceedings.

However, significant risks of laundering proceeds from crime are visible in Ukraine. Corruption and illegal economic activities (including tax evasion and fraud) are the major money laundering threats. Organized criminality is on the rise and has a substantial impact on the overall money laundering risk situation¹. Given these threats, the law enforcement system's goals need to be adjusted to address these challenges effectively. Law enforcement agencies' tasks should include the active involvement of each of them – within their competence and using their own tools – in ensuring that illegal profits are seized or payments of compensation collected².

In this regard, upon communicating with representatives of all law enforcement agencies of Ukraine, experts of the Council of Europe MONEYVAL Committee stated the following: *“There is a misunderstanding within LEAs on what exactly is meant by financial investigation – investigation of money laundering or investigation of other financial offences, or investigation of the proceeds received from other crimes that generate income. There are no common instructions on when to initiate a financial investigation and what its purpose is”*.³

The concept of “financial investigations” should be adapted to domestic legal doctrine and practice to create an environment for developing a unified approach towards the law enforcement system's practical operation.

A financial investigation is a tool that offers an effective mechanism to combat crime and ensure confiscation of proceeds from crime. However, in the course of financial investigations, the state and its agencies shall not focus solely on bringing offenders to criminal liability and enforcing the most severe punishments on them. It is important that the benefits and profits received from illegal activities are confiscated to the state revenue and are channelled to support socially beneficial goals, contributing to the overall economic

1. MONEYVAL's Fifth Round Mutual Evaluation Report on Ukraine.

2. Guidance handbook on financial investigations. A Joint Inter-agency Project to Combat Benefits from Illegal Activities. – 2017.

3. <https://www.fiu.gov.ua/pages/dijalnist/mizhnarodne-spivrobitnictvo/zviti-pro-oczinku.html>

development of the state by investing them in basic social services and projects.

Furthermore, objectives of government authorities that conduct financial investigations shall include not only ensuring economic security of the state, detecting and preventing crimes and administrative offences committed in the economic field, including corruption offences, legalization (laundering) of proceeds from crime, financing terrorism, etc.,⁴ but also covering a much more comprehensive range of tasks in the area of combating crime.

Financial investigations, which include tracing criminal assets, their seizure and confiscation, enable the State to:

- deprive criminals of the proceeds from crimes, which results in discouraging them from committing new crimes;
- deprive criminals of the opportunity to continue and develop criminal activities (detection of criminal schemes and connections, key figures, cutting funding to criminal groups).

In line with international standards, all states must ensure that financial investigations are a mandatory part of all criminal proceedings related to the investigation of crimes generating criminal proceeds. After all, a quality financial investigation conducted by a law enforcement agency is a crucial success factor in countering these challenges. It is necessary to find, trace and block available assets to assess the economic impact (benefit) of criminal activities. To do this, the financial investigation should encompass not only the key suspects but also their associates. The financial investigation may also be conducted to discover motives, find additional evidence, identify accomplices, etc.

This manual aims to develop an awareness of the processes of financial investigations, as well as of different approaches of conducting such investigations by those public authorities employees, whose activities are related to combating crime with an economic component, recovery of criminal assets, fighting the legalisation of the proceeds of crime, financing terrorism, and corruption. Active law enforcement officers such as prosecutors, investigators, detectives and operatives may also find this manual helpful.

4. Financial investigations in the field of counteraction to legalization of criminal proceeds in Ukraine [Text]: Guidelines / [S. S. Cherniavskiy et al.]. Kyiv, National Academy of Internal Affairs. 2017, 264 p. — p. 13 .

1. MOTIVATING LAW ENFORCEMENT AGENCIES TO CONDUCT FINANCIAL INVESTIGATIONS

Compared to grave crimes that have no economic basis (murder without mercenary motives, infliction of grievous bodily harm on the grounds of various kinds of intolerance, etc.),⁵ economic crimes and crimes that generate illicit income, which, according to the National Risk Assessment, represent the greatest risk in Ukraine, pose a social danger of dissimilar nature. The primary purpose of such crimes is criminal proceeds.

To combat crime effectively, the potential benefit from committing a crime must be smaller than the potential loss from the punishment. The aim of preventing and combatting crime is, therefore, to move from a specialist money-recovering process to a mainstream harm-reduction activity. This primarily concerns depriving criminals of the proceeds from crime.

Using the tool of financial investigation is key to achieving this goal. Advantages of financial investigation as part of pre-trial investigation in the criminal proceedings consist in increased efficiency of:

- finding and confiscation (special confiscation) of the proceeds from crime (instrumentalities);
- revealing and refunding unpaid taxes, fines;
- compensation of losses to victims and the state;
- recovery of criminal assets, both domestically and internationally, for the benefit of the state budget.
- Advantages of financial investigations also include:
- finding additional evidence, witnesses, accomplices, ultimate beneficial owners, and prosecuting the organizers;
- identifying motives, goals, associations, and links with people and places;
- identifying the use of other services such as phones, transport, and the latest payment tools (cryptocurrencies, e-money, etc.) relevant to the case;

5. The Report of National Risk Assessment in the Field of Prevention of and Counteraction to Legalization (Laundering) of Proceeds from Crime and Terrorism Financing [online resource]. Kyiv, 2016. 208 p. Available at: <http://www.fiu.gov.ua/pages/dijalnist/nacionalni-riziki/naczionalna-oczinka-rizikiv>

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- locating or identifying persons involved in crime, suspects, witnesses, or victims;
 - acquisition of information on actions, behaviour, and relations of persons involved in crime, and those of suspects;
 - potential involvement of specialists and experts – financial crime investigators, including as part of an investigation team;
 - tracing persons, including those hiding from the investigation;⁶
 - and identifying other crimes.

The financial investigation may provide material of use in all types of investigations, including those with no obvious link to money or assets. This is possible because most people have some kind of property, money or assets and use service providers. Many also use electronic means of payment and banking instead of cash. This development has created sources of information that can reveal details about a person's life, activities, interests, associates, movements, plans, and desires, all of which can be used to support the prevention and detection of crime.

Moreover, according to the FATF Recommendations, financial investigations usually result in revealing other, previously unknown offences and assets that were acquired with proceeds from crime and, therefore, are subject to confiscation.

The practice and rationale of financial investigations across the globe are well established, and its advantages are well proved. There are several examples of successful international practices.⁷

It should be noted that the European Court of Human Rights acknowledges the need to confiscate illegal assets not only from convicts but also from close persons who have acquired the property from crime. In its judgment of October 8, 2019, in the case of *Balsamo v. San Marino* (No 20319/17 and 21414/17), ECtHR referred to the preventive nature of confiscation of illegal assets from close relatives, which was intended to prevent further criminal activities.

Using financial investigations, an investigator who conducts a traditional investigation can obtain evidence of a specific person's involvement in crime or evidence of his/her commission of a crime. Such evidence is often obtained by collecting information about persons who are integrated into the chain of financial transactions involving proceeds from crime or are ultimate beneficial owners of legal entities that receive such proceeds, etc.

Financial investigations can also provide information on the scale and specifics of the activities of an organized criminal group, its relations, leaders of a higher criminal organization, hierarchy of a criminal organization. Such information may not always constitute evidence in each particular case but is essential for the understanding of the

6. https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/financial-investigation_en

7. Eleanor Gale and Jessica Kelly (November 2018). Exploring the Role of the Financial Investigator (online resource) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753213/exploring-the-role-of-the-financial-investigator-research-brief-2018.pdf

functioning and structure of organized crime groups, their members, related legal entities, and fields of activity. Analysis of this information may be used in the process of a strategic review to assess those areas of crime that are most dangerous for society, to determine priorities in the activities of the law enforcement agency, and to allocate resources properly.⁸

Financial investigation not only indirectly assists in organized crime investigations, through the provision of building-block financial intelligence but also directly support a number of convictions through the provision of financial evidence. The contribution that financial investigation makes to tackling organized crime goes beyond simply a mechanism to recover assets.

The role of financial investigation in the investigation of organized crime is further explored in this helpful occasional paper from the Royal United Services Institute for Defence and Security Studies (RUSI).⁹

The motivation of law enforcement agencies to conduct financial investigations also implies optimization of organizational and functional structure, namely:

- study of European experience in advanced training and in improving professional skills of the personnel of law enforcement agencies;
- expanding the analytical resources of law enforcement agencies by setting up an efficient and timely exchange of information through wider application of information solutions, data set analysis and processing techniques, risk analysis, and management systems;
- review of approaches to the staff selection system, development of employees' knowledge, skills and abilities, their motivation and encouragement to perform their duties honestly and proactively, based on the best global practices;
- removal of duplicate functions related to combating economic crimes.

8. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation of Weapons of Mass Destruction. FATF Recommendations — online resource. - <http://www.fiu.gov.ua/pages/dijalnist/mizhnarodne-spivrobotnictvo/mizhnarodni-standarti>

9. Helena Wood (2017). Every Transaction Leaves a Trace — The Role of Financial Investigation in Serious and Organised Crime Policing (online resource) - https://rusi.org/sites/default/files/201709_rusi_everytransactionleavesatrace_wood_web.pdf

2. POWERS OF LAW ENFORCEMENT AGENCIES IN CONDUCTING FINANCIAL INVESTIGATIONS

Comprehensive analysis of Art. 216 of CPC of Ukraine as well as of relevant articles of CC of Ukraine allows us to say that practically all pre-trial investigation agencies are currently authorized to conduct pre-trial investigations of crimes generating criminal proceeds. It is worth adding that according to Part 9 of Art. 216 of CPC, in criminal proceedings concerning the crimes provided for Article 209 (Legalization (laundering) of criminal proceeds) and 209-1 (Intentional violation of requirements of legislation on prevention and counteraction to legalization (laundering) of criminal proceeds, terrorist financing, and financing of proliferation of weapons of mass destruction) of CC of Ukraine, a pre-trial investigation shall be conducted by an investigator of the authority that initiated the pre-trial investigation or the authority under whose jurisdiction is a predicate offence to the legalization (laundering) of criminal proceeds, except in cases when such offences are subject to NABU's jurisdiction under this Article. Accordingly, the National Police, NABU, the authority monitoring compliance with tax legislation, SSU, and SBI are responsible for investigating (related) predicate offences (Art. 216(1)-(7) CPC) and investigating ML/TF crimes related to predicate offences within their competences (Art. 216(8) CPC). Besides, SSU is responsible for investigating financing terrorism crimes (Art. 216(2) CPC). Similarly, all pre-trial investigations are subject to control by the Prosecutor General's Office and the Specialized Anti-Corruption Prosecutor's Office.

During the pre-trial investigation, the mentioned authorities may use the powers granted under their constitutive laws to identify and trace property. Law enforcement agencies may provisionally seize property if there are reasonable grounds to believe that such property (1) was used (or intended to be used) as an instrumentality to commit a crime; (2) is the object of crime; (3) derives from the commission of a crime; or (4) is property which such proceeds have been converted into, whether in full or in part (Art. 167 CPC). The property shall continue to be provisionally seized until such time as an investigating judge or a court issues an order to seize property during a trial (Art. 170 CPC). In urgent cases, the Director of NABU may, with the approval of PGO, order to seize property or funds in accounts held by financial institutions during criminal proceedings of offences within NABU competence. Within 24 hours of issuing the order, the Director of NABU shall file a motion for property seizure with an investigative judge or a court (Art. 170 (2) CPC).¹⁰

10. MONEYVAL's Fifth Round Mutual Evaluation Report on Ukraine.

According to Art. 170 of CPC of Ukraine, a seizure may be imposed to ensure 1) preservation of evidence; 2) asset forfeiture; 3) confiscation of property as a form of penalty and legal measure applied to a legal entity; compensation for damage. At the same time, according to Art. 171 of CPC of Ukraine, the following shall be mentioned in the motion of investigator or prosecutor on the seizure of property: grounds and purpose of the seizure (acc. Art. 170 CPC); list and types of property to be seized; property's supporting documentation or specific facts and evidence that indicate the possibility of possession, use, disposal of property, extent of damage caused or improper advantage obtained by legal entities.

The above, in particular, provides the legal basis for law enforcement agencies to conduct financial investigations, which will help to substantiate the circumstances of an offence as required by criminal procedural legislation.

The information obtained during the financial investigation will also facilitate the enforcement of such form of penalty as asset forfeiture pursuant to Article 96-1 of CC of Ukraine.

It should be noted that pursuant to par. 5 pt. 2 Art. 36, par. 3 pt. 2 Art. 40 and Art. 41 of CPC of Ukraine **operational units** of the National Police, security agencies, the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigations, authorities monitoring compliance with tax legislation, the State Border Guard Service of Ukraine, National Anti-Corruption Bureau of Ukraine are authorized to conduct investigative (search) activities and covert investigative (search) activities in criminal proceedings **by written order** of relevant investigator, prosecutor, detective.

Law enforcement agencies' structural units play an important role in preventing, detecting, suppressing, investigating, and solving financial crimes. E.g., such units are as follows in the National Police: Main Investigative Department, Strategic Investigations Department, Cyber-Police Department, Criminal Intelligence Department, Department on Combating Drug-Related Crimes, relevant units in regional headquarters, etc. The Security Service of Ukraine has the following functional subdivisions: investigations, counterintelligence, counterintelligence protection of the state's interests in the field of economic security, countering corruption and organized crime, counterintelligence protection of the state's interests in the field of information security, information analysis, operational and technical measures, operational documentation, units in regional headquarters, etc. Authorities monitoring compliance with tax law have the following structural units: investigative departments and branches, units of operational and investigative activities, organizational and analytical support, etc. The structure of the State Bureau of Investigations consists of the Main Investigative Department, Main Operational Department, Main Operative and Technical Department, relevant units in regional headquarters, etc. The organizational structure of the National Anti-Corruption Bureau of Ukraine includes the Main Detectives Department, Second Detective Department, Information Processing and Analysis Department, Operative and Technical Department, relevant units in regional headquarters.

Knowledge in the field of financial investigations is necessary for officials engaged in cases of recognition of assets as unfounded and their recovery to the state revenue. This area

is currently regulated to a large extent by the Civil Procedure Code provisions. Mentioned issues became relevant upon adoption of the Law “On Amending Certain Legislative Acts of Ukraine Regarding Confiscation of Illegal Assets of Persons Authorized to Perform Functions of the State or Local Government, and Punishment for Acquisition of Such Assets” of 31.10.2019. In accordance with Art. 2 and Art. 23 of the Law “On Prosecutor’s Office”, representation of the state’s interests in such cases shall be performed by prosecutors of the Specialized Anti-Corruption Prosecutor’s Office, while in cases stipulated by law – by prosecutors of Prosecutor General’s Office. Earlier, before the adoption of the law, scholars emphasized the intersectoral nature of the institute of representation of the state’s interests by prosecutors.¹¹ Thus, the new legislation highlights the need for knowledge in financial investigations to be practised in different areas of law.

All of the above-listed law enforcement agencies’ structural units may carry out financial investigations to some extent. This list is not exhaustive.

Also, there are several draft laws currently submitted to the Verkhovna Rada of Ukraine aimed at establishing a legislative framework for the future law enforcement agency, which will also have respective powers, in particular:

- “On Bureau of Economic Security of Ukraine” (reg. No 3087-d) (adopted at the first reading on 03.09.2020, being prepared for the second reading);
- “On Amending Certain Legislative Acts of Ukraine Regarding Implementation of Certain Provisions on Bureau of Economic Security of Ukraine” (reg. No 3959);
- “On Amending Administrative and Criminal Legislation Regarding Introduction of Bureau of Economic Security of Ukraine” (reg. No 3959-1).

11. M. M. Stefanchuk. Directions for improving the procedural status of the prosecutor as implementing performer of a citizen’s or the state’s interests representation in court [electronic resource] / M. M. Stefanchuk // Scientific Bulletin of Uzhhorod National University. Series : Law. - 2015. - Ed. 34(3). - 3. 115-121. – Available at: [http://nbuv.gov.ua/UJRN/nvuzhpr_2015_34\(3\)__31](http://nbuv.gov.ua/UJRN/nvuzhpr_2015_34(3)__31)

3. CONCEPT OF FINANCIAL INVESTIGATION

3.1. Definition and principles of financial investigation

In accordance with FATF Recommendation 30 and its imperative note, a “financial investigation” means an enquiry into financial affairs related to criminal activity, with a view to:

- identifying the extent of criminal networks and/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.

FATF Recommendation 30 calls on countries to designate criminal investigators to pursue money laundering and terrorism finance offences. The new direction includes the need to pursue parallel financial investigations as well as to make use of domestic and international investigative task forces or multidisciplinary teams. Whilst the focus is on creating specialized “financial investigators”, all criminal investigators should be trained on the value of financial evidence to support all criminal investigations. Raising awareness should also apply to street level crimes, in addition to long-term investigations, thus requiring changing the dynamics and attitudes of investigators and prosecutors regarding the utility of financial investigations.

FATF Recommendation 31 stresses the need for investigators to have access to all necessary documents. This includes having powers to compel the production of financial records and obtain evidence. The Recommendation is designed to enable the use of a wide range of investigative techniques, which include undercover operations, intercepting communications, accessing computer systems, and controlled delivery.

FATF Recommendation 40 makes clear that a financial investigation can be used as an instrument to reveal undiscovered predicate offences and to identify other persons or companies. Thus, it is imperative for countries to use financial intelligence upstream and downstream within their value chain. This means that the flow of financial intelligence between regulators, supervisors, FIUs, law enforcement, and other competent authorities should be free-flowing to and from all entities in accordance with existing domestic laws,

policies, and procedures and should be result-driven, not process-driven. It goes on to explain that financial investigation should be an integral part of an overall crime strategy. Countries should therefore establish a comprehensive policy that sufficiently emphasizes financial investigations as an integral part of law enforcement efforts.

There are different interpretations and concepts related to the notion of financial investigations. FATF Report “Operational Issues Financial Investigations Guidance”¹² introduces financial investigations as an enquiry into the financial affairs related to criminal conduct. In other words, it is a search for traces of crime through financial relations. FATF recommendations describe the financial investigation as a tool able to assist law enforcement agencies during classic investigations. Therefore, this manual treats financial investigations as activities of the law enforcement authorities.

In a general sense, financial investigations are interpreted as collection, consolidation, comprehensive review, study of financial statements, and tracking of financial transactions aimed at detecting illegal actions related to obtaining and distribution of financial resources, e.g., securities or currency counterfeiting, money laundering, fraud with credit cards, violation of tax laws, etc.¹³

At the same time, the tasks of public authorities conducting financial investigations should include not only ensuring economic security of the state, detecting and preventing crimes and administrative offences committed in the economic field, including corruption offences, legalization (laundering) of proceeds from crime, etc.,¹⁴ but also a much wider range of crime-fighting activities.

Key objectives of the financial investigation are as follows:

- to reveal illegal income, find assets, and initiate asset forfeiture proceedings using such remedies as termination/seizure (if applicable), including:
 - » determining the origin of funds or other assets obtained from or related to illegal activities;
 - » tracking the flow of money or other assets related to illegal activities;
 - » determining the location, movement, change of asset form (modification), as well as acquisition, ownership, or use of funds or other assets obtained as a result of a wrongful act that is dangerous to the society;
 - » determining assets for subsequent confiscation.

12. FATF Repot “Operational Issues Financial Investigations Guidances” [Electronic resource] -<http://www.fatf-gafi.org/publications/methodsandtrends/documents/operationalissues-financialinvestigationguidance.html>

13. Financial investigations in the field of counteraction to legalization of criminal proceeds in Ukraine [Text]: guidelines / [S. S. Cherniavskiy et al.]. – Kyiv: National Academy of Internal Affairs, 2017. – 164 p. – p. 9-10.

14. Financial investigations in the field of counteraction to legalization of criminal proceeds in Ukraine [Text]: guidelines / [S. S. Cherniavskiy et al.]. – Kyiv: National Academy of Internal Affairs, 2017. – 164 p. – p. 13.

- to initiate pre-trial investigations as part of criminal proceedings related to money laundering (if applicable), in particular to:
 - » determine methods used to conceal or disguise illegal money or other assets.
 - » to reveal financial and economic organized structures, destroy transnational criminal ties, and obtain information about the types and nature of criminal schemes (FATF Recommendations).¹⁵
 - » identifying persons who own such money, assets, or rights to such money or assets.

The financial investigation includes the collection, comparison, and analysis of all available information to facilitate criminal investigation and deprive criminals of their revenues and means for committing offences. The ability of law enforcement agencies to conduct financial investigations and access to financial and other information is vital for the effective fight against money laundering, predicate offences, and offences related to the financing of terrorism. Such investigations usually result in revealing other, previously unknown offences and assets that were acquired using the proceeds from crime and, therefore, subject to confiscation.

The main principles of financial investigations are as follows:

- need to track the flow of funds and/or other assets by comparing the following facts: the source of funds/assets, funds/assets recipient, a time when they were obtained, and the method used to save or invest them;
- guarantee of confidentiality, the use of open and closed information sources in line with restrictions and procedures established by the legislation;
- professionalism, ensuring the conduct of the financial investigation by investigators, detectives, and operatives, including specially trained ones, with financial investigations based on the specialized analysis of documents that include accounts, financial statements, banking information, data on immovable property, the flow of funds related to financial crimes, and cover all information received both from internal and external sources and in the course of operational-investigative activities and or investigative activities;
- consistency of approaches, depending on the type and nature of the financial crime, where the subject of the financial investigation is viewed as a system of interconnected elements, and links between them are revealed;
- objectivity of financial investigation – reliable and unbiased information shall serve as a basis for the financial investigation, while conclusions must be based on respective quantitative (analytical) calculations;
- compliance of methods and tools of financial investigation with recent trends, since the world financial system is constantly developing, new technologies are introduced, various financial systems and payment methods are applied. Under

15. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation of Weapons of Mass Destruction – FATF recommendations, 2012 – electronic source. - http://www.sdfm.gov.ua/content/file/Site_docs/2012/22.03.2012/1.pdf

such circumstances, the most advanced means and tools, international expertise, and innovative technologies should be used for investigations.¹⁶

As noted above, the concept of financial investigations is relatively new for Ukraine. Although the concept itself is rather simple, its implementation could be quite complicated.

Financial investigation is simply an examination of the everyday interaction between people and the financial and commercial world and utilizing the footprints that these interactions leave for law enforcement purposes. The financial investigation model for law enforcement can focus on: gathering financial intelligence and evidence to support pro-active and reactive criminal investigations, conducting investigations into fraud and financial crime, conducting money laundering and terrorism investigations, identifying and recovering the proceeds of crime, and civil recovery (utilizing newly adopted legislation).

Each of those investigative strands uses financial investigation techniques to a greater or lesser extent and will require different strategies and structures.

Thus, the financial investigation may be a tool of pre-trial investigation in criminal proceedings concerning criminal offences that resulted in obtaining illegal income, the essence of which is the study of financial aspects of criminal activities, including by means of a complex of analytical and investigative (search) steps aimed at performing tasks of the criminal proceedings and obtaining evidence that may be used in the criminal procedure and demonstrate the extent of criminal activities, identify proceeds from such activities, funds used to finance them, as well as other assets subject to seizure, forfeiture, or confiscation.

The decision to initiate a financial investigation when there is a need to trace or track individuals and their activity is an obvious benefit to the investigative process. However, there is also a danger of conducting financial investigations to find compromising information that may breach human rights. Investigators need to be conscious of the ECHR provisions and ensure that all infringements of rights under Article 8 are properly justified, proportionate, and in accordance with legislative authority.¹⁷

The international practice and standards distinguish a concept of *parallel financial investigation*. Parallel financial investigation means the simultaneous use of a financial investigation tool as part of one pre-trial proceeding on predicate offence and money laundering, terrorist attack, and financing of terrorism and pre-trial investigation of any offence. FATF Recommendation 30 states that when pursuing money laundering, associated predicate offences, and terrorist financing, law enforcement agencies should develop a pro-active parallel financial investigation. During the parallel investigation, expertise and knowledge from various investigation domains complement each other, which contributes to a more comprehensive investigation of offences.¹⁸

16. Guidance Manual on Financial Investigations. Countering Illegal Gains joint interagency project. – 2017.

17. CONVENTION for the protection of human rights and fundamental freedoms - https://zakon.rada.gov.ua/laws/show/995_004#Text

18. International Standards on Combating Money Laundering and the Financing of

The concept of parallel financial investigation envisages the creation of an investigative team during the investigation of a crime that resulted in criminal proceeds, when, for example, designated person(-s) from the team investigate(-s) the main offence (for instance, drugs production), while other(-s) analyze(-s) the financial aspects of crime.

Such teams should meet periodically to discuss progress and agree on further actions.

Implementation of this concept is possible by creating specialized investigators units in each law enforcement agency or utilizing existing units specialized in financial investigations by involving them in the investigation of financial aspects of the committed crime.

Parallel investigations ensure competent authorities uncover and identify all of the participants in a criminal enterprise. A parallel financial investigation also provides insight into the hierarchy of criminal organizations, exposing them to possible prosecution.¹⁹

Information, intelligence, and evidence obtained during parallel investigations can be shared, and resources can be effectively used to avoid duplication of service. For example, a predicate offence investigation may utilize the interception of communication to collect information/evidence not only of a predicate offence but also of the associated money laundering offence; this information could then be used in seizure and forfeiture orders. A financial investigation enhances and supports to a predicate offence investigation, as it shows lifestyle, unexplained wealth and, depending on the country, can be used as indirect proof (inferred by the court) as the only explanation that the wealth is from illegal activity, thereby helping to establish sufficient evidence to prosecute a person on criminal charges for both predicate and related money laundering offence. This will form the basis for seizure and forfeiture and can be accomplished through the collation and presentation of either direct or indirect evidence. Thus, financial investigations help to target the top echelon of a criminal organization.²⁰

Useful information could be found by following a link to the UK Keith Hughes financial investigation awards scheme.²¹

Terrorism & Proliferation of Weapons of Mass Destruction – FATF recommendations, 2012 – electronic source. - http://www.sdfm.gov.ua/content/file/Site_docs/2012/22.03.2012/1.pdf
 “Parallel financial investigation” means conducting financial investigation at the same time or in the context of a (traditional) criminal investigation of money laundering, terrorism financing and/or predicate offence(-s). “Financial investigation” means investigating financial cases related to criminal activity in order to: (i) identify the extent of criminal networks and/or the scale of criminality; (ii) identify and trace the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and (iii) develop evidence which can be used in criminal proceedings.

19. https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/financial-investigation_en

20. Investigative strategies (electronic resource) - <https://www.app.college.police.uk/app-content/investigations/investigative-strategies/financial-investigation-2/using-financial-information/>

21. UK Keith Hughes financial investigation awards scheme (electronic resource) - <https://altia-abm.com/keith-hughes-awards-winners-2019/>

An example of a parallel financial investigation.¹

During Operation Buoy, an investigation into a large organized crime group (OCG) involved in drug importation and supply affecting the South East and London, the South East Regional Organized Crime Unit (ROCU) leading the investigation requested the support of a financial investigation specialist from the Regional Asset Recovery Team (RART).

While there was a rich intelligence picture concerning the drugs, efforts to gather evidence against the main subjects using traditional surveillance techniques had proven unfruitful to date, and little or nothing was known about how the criminal proceeds were laundered.

The financial investigator (FI) discovered that a previously unknown element of the OCG was involved in laundering the drug money using bank accounts opened using Uzbek students as ‘money mules’.

The financial investigation discovered that once cash had entered the banking system, it was transferred between multiple accounts before being transferred out of the country or used to buy property and high-performance vehicles used by the OCG and others involved in criminality in the UK.

As a direct result of the financial investigation, the FI was able to recommend new lines of enquiry to the Senior Investigating Officer (SIO) regarding alternative ways of bringing an expensive and resource-intensive operation to a successful conclusion.

This involved using accounts analysis to provide evidence of large amounts of unexplained cash movements in order to gain search warrants under the Proceeds of Crime Act 2002 (POCA).

These search warrants, obtained on the basis of financial investigation, led to significant drugs finds, including 2.5 kg of cocaine, the seizure of £60,000 in cash, and financial documentation for 200 accounts in the names of 80 individuals.

Although the addresses were in the names of other unknown individuals, financial enquiries undertaken by the FI linked the addresses back to the OCG to provide crucial evidence.

Subject A was charged with offences of possession with intent to supply cocaine and money laundering and subsequently pleaded guilty to the first offence, receiving seven-and-a-half years in prison

3.2. Categories of criminal proceedings involving financial investigations

As noted above, the financial investigation must be conducted in the framework of criminal proceedings where the offence resulted in the generation of illegal income (property, assets).

However, since a financial investigation is a tool requiring resources, it is necessary to take into account the public danger of the crime – its severity, amount of damage, connection with corruption, terrorism, national security, drug trafficking, organized crime, the participation of public politicians, etc. All of the above should be considered when planning the financial investigation and its scale.

In the Glossary to International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation of Weapon of Mass Destruction, FATF classifies the types of offences (so-called predicate offences) that may be associated with the illegal movement of money and requires expert analysis or financial investigation.²² Such offences include participation in an organized criminal group and racketeering; terrorism, including terrorist financing; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; fraud; counterfeiting currency; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; kidnapping, illegal restraint and hostage-taking; robbery or theft; smuggling (including in relation to customs and excise duties and taxes); tax crimes (related to direct taxes and indirect taxes); (criminal) extortion; forgery; piracy; insider trading and market manipulations.

It should be noted that in cases related to money laundering, the case law of the European Court is formed in such a way that a conviction for money laundering is possible without a precise classification of the predicate actions that generated the received funds. In addition, the European Court motivates its decisions on, inter alia, the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. According to the Convention, the parties shall ensure no recognition of previous or simultaneous conviction for a predicate offence as a precondition for a conviction for money laundering, while a neglected attitude of the accused person to the origin of the property from crime shall constitute a crime (*Timmermans v. Belgium* (12162/07), judgment of May 2, 2017).

22. S.I. Lepskyi. Financial information on the criminal activity as a subject of financial investigations. Academic Bulletin of Lviv State University of Internal Affairs, 2013. - No. 1. – P. 251-257.

One must understand that the above offences are not always associated with financial matters. For instance, murder may be committed because of jealousy without any financial component involved.²³ However, in case of the organization of a criminal group for the purpose of regular contract killing, the financial component will be observed in settlements between customers, organizers, and performers, or manipulations to conceal the source of financial resources and methods used to spend money. In this case, financial information on the offence may and must be used by law enforcement agencies. Such a conclusion must be applied to each of the above types of offences.²⁴

At the same time, when conducting a financial investigation, planning it, developing a plan (strategy,) one should prioritize cases, for example, depending on the identified risks, the degree of public danger, the consequences of the crime, or size of the assets involved in the investigation. Worth noting that the creation of an effective system of cases prioritization requires the introduction of a certain methodology and compliance of such actions with the principal of publicity of criminal proceedings.

3.3. Pre-requisites for financial investigations

According to FATF recommendation, a practice sufficiently confirming that financial investigation is an integral part of the law enforcement agencies' activities should be implemented. Countries must take steps to ensure that financial investigations would become a regular part of all law enforcement investigations associated with crimes and financial gains.

Pre-requisites for financial investigation include the following:

- suspicion in the legalization of the proceeds from crime, financing of terrorism or proliferation of weapons of mass destruction;
- design, manufacture, purchase, storage, sale, transportation of weapons of mass destruction;
- commitment of financial crimes or financial component of a crime;
- financial gain;
- grounds to trace assets, confiscate them;
- property far in excess of the suspect's income.

It is fair to say that in any case, the information constitutes a pre-requisite for decisions concerning the conduct of the financial investigation.

23. O.Y. Korystin. Money laundering: theoretical and legal principles for countering and preventing it in Ukraine: monograph / O. Y. Korystin. – K.: PE "Publishing House of the Ministry of Internal Affairs of Ukraine", 2009. – 336 p.

24. M. Yermoshenko. Financial security of the state: national interests, actual threats, security policy / M. Yermolenko. – K.: Kyiv National University of Trade and Economics, 2001. – 309 p.

Most crimes generating illegal income are associated with the legitimization of the proceeds of crime. Therefore, the financial investigation must always focus on revealing such component of the crime.

Money laundering and financing of terrorism is a global phenomenon, and the entire world has united in opposing it. For instance, one of such global events was the G20 Summit in Osaka, where the main issues included the use of cryptocurrencies, the global fight against money laundering, and the financing of terrorism. After G20 Summit, leaders assumed an obligation to intensify anti-money laundering efforts, combating the financing of terrorism and proliferation of weapons of mass destruction. In this context, they welcomed the UN Security Council's resolution that emphasizes the role of FATF in setting global standards concerning these issues.

Inspection by MONEYVAL Committee confirmed substantial technical conformity of the provisions of Article 209 of the Criminal Code of Ukraine to FATF International Standards: *“All criteria are in conformity or substantially in conformity.”* However, the analysis of efficiency of the practical use of this Article enabled experts to draw the following conclusions and give the following recommendations: *“The need to determine, convict for the predicate crime before ML cases would be considered by a court, may become a significant impediment on the way to the overall efficiency of ML criminalization. This requires a legislative solution. Most general verdicts relating to ML are either self-laundering or third-party laundering when third parties are held liable in the same proceeding, avoiding the need to establish a separate predicate offence. Autonomous (disputable) cases relating to ML must be appealed in court, where main predicate offences must be determined based on individual facts and circumstances. If this is impossible, ML criminalization will not be effective”* and *“Art. 209 CC must be supplemented with a provision clearly stating that a person may be convicted for ML if the court did not find him/her guilty for committing the main offence and provided that the existence of the predicate offence may be determined based on the indirect or other evidence without the imposition of an obligation on the prosecuting attorney to prove conviction for committing the main crime”*.²⁵

Pursuant to the above recommendation and making the national legislation closer to the European standards, since April 2020, a revised version of Article 209 of the Criminal Code was implemented in Ukraine, which does not contain any reference to a specific predicate crime, instead stating that the criminal origin must be proved based on factual circumstances, and must be stated that the person was aware of, “could and had to know” that the property was obtained illegally, which points to an implied intent.

Exclusion of a part regarding clarification of cases of the individual investigation of Art. 209 CC in Art. 216 CPC became an innovation of the national legislation and made conducting of the **autonomous investigation of criminal proceeds legitimization possible, in each case identifying such crime, in the absence of information on the predicate offence.**

Types of money laundering, in addition to the classic one – committing of a predicate offence by a person with subsequent money laundering (self-laundering), also include

25. MONEYVAL's Fifth Round Mutual Evaluation Report on Ukraine.

laundering of money by a third party (e.g., professional money laundering; in our country, the most common money launderers are “conversion centres”) and autonomous money laundering (when a conviction for a predicate offence is impossible (death of a person who committed the predicate offence, search, etc.)) and laundering of money from foreign predicate offences.

Evidence shows that in most cases, legalization (laundering) of the proceeds of crime may be revealed at the time of investigation of criminal cases based on the substantive (preceding) crime. Evidence of the use of proceeds of crime obtained during the investigation of the substantive crime serves as a basis for revealing elements essential to legalization (laundering) thereof which, correspondingly contributes to the complete solution of a predicate crime.²⁶

The relevant practice is actively implemented in European countries and is supported by decisions of the European Court of Human Rights. Thus, in its judgment of November 4, 2014, in the case *Aboufadda v France* (N 28457/10), the European Court of Human Rights acknowledged the existence of a public interest in punishing the applicants through the disposal of assets identified in the course of financial investigation in relation to their relative. The initial investigation in relation to the relative had been conducted for the movement and trafficking of drugs. The French authorities confiscated all assets derived from crime.

In criminal proceedings relating to the legitimization of criminal proceeds or financing terrorism, the start of the criminal proceeding with the determination of the nature of crime pursuant to Art. 209 (Legalization (laundering) of the proceeds of crime), Art. 258-5 (Financing terrorism) of CC will be a starting point to initiate the financial investigation. In addition, an effective financial investigation of crimes that proceed legalization of income will result in revealing of the above crimes and proper subsequent financial investigation in the context of legalization of the illegal income and financing of terrorism.

Revealing legalization (laundering) of criminal proceeds involves ascertainment, recording, determining the fact and circumstances of such offence, including circumstances of accumulation of proceeds of crime (time, place, method, etc.); the source of their illegal origin and disguise, relocation and use in the legal economy; place and method to conceal and store criminal proceeds; identifying organizers and other persons who participated or might be involved in preparation or execution of such actions; nature and extent of the damage caused by such offence. Achievement of the result requires several measures in the form of inspection, audit that will enable obtaining initial information about the essential elements of possible legalization (laundering) of the proceeds of crime.²⁷

The complexity of revealing the legalization (laundering) of proceeds of crime used by a criminal organization is connected with the need to establish a connection between members of the organization who may act seemingly independently. The fact of employment

26. R. Zhurbyn. Uncovering legalization of proceeds from crime. *Legality*. 2006. No.12. P. 14-16.

27. Financial investigations in the field of counteraction to legalization of criminal proceeds in Ukraine [Text]: guidelines / [S. S. Cherniavskiy et al.]. Kyiv, National Academy of Internal Affairs, 2017. – 164 p.

at a front company does not prove that a person is a criminal organization member. Actual organizers stay in the background and use intermediaries who have no idea of the criminal nature of business.

Criminal liability for money laundering occurs, and the sentence is imposed regardless of the stage in the money laundering process. Therefore, attention should be paid to any signs of actions relating to concealment of sources or actual ownership of the money. No need to deposit these funds to bank accounts; they might as well be stored in a safe, a bag, or in a car because of search operations.

At the same time, initiation of proceedings in connection with money laundering (Art. 209 CC), provided there are respective grounds, at the early stages of the investigation gives certain advantages to the investigator (admission of evidence in court, increasing capabilities to receive information, engagement of other competent authorities (SFMS, FIUs of the other countries) to participate in the investigation and exchange of information using ILA (legalization of criminal proceeds is recognized as a crime by all countries of the world).

Thus, in case of any evidence of a crime pursuant to the Art. 209 CC, based on the objective actual circumstances, it is reasonable to enter such data into URPTI and conduct a pre-trial investigation pursuant to the Art. 209 CCU with a parallel financial investigation as a part of the investigation of the predicate offence.

Information that may induce to start the financial investigation in view of whether the pre-trial investigation has already been initiated or has just been received, and no investigative actions or measures have been taken yet, will be divided into 1) data received as part of the pre-trial investigation and 2) data that require the initiation of new proceedings by way of entering such data into the Unified Register of Pre-trial Investigations (which will enable further investigative activities and financial investigation measures).

Indications of pre-requisites to start the financial investigation may include the following information:

1. Information from criminal cases and obtained in the course of special intelligence operations.

It is information obtained within investigative and search measures related to the subject and/or criminal activities. Information about previous arrests, accusations, convictions, and reports of links to known criminals. Information about crimes is usually collected by means of observation, from informants, interviews/surveys, and data evaluations, or obtained from other sources.

2. Information from the private sector.

This is information about the financial operations of the interested subjects that helps to understand their nature, resources, structure and capabilities, as well as to foresee their future activities and assets location. Such information includes bank and financial accounts numbers, other records of personal or financial transactions, as well as information

collected in the context of obligations concerning adequate verification of the financial institutions' customers. It may also include information from whistle-blowers.

3. Information from open sources.

All information available in open sources, such as the Internet, social media, and other media, printed and electronic media, as well as in the registers functioning on a public or private basis. Using data from this source becomes more relevant due to the development of a significant number of those online sources that disclose data on companies, the increasing transparency in public procurement, and active development of social media. However, it is important to keep in mind when conducting financial investigation and using information from publicly available sources, the need to verify the accuracy of the obtained data and to confirm relevant facts. Investigators should understand the risks related to the use of information from open sources, the Internet, and social media and should take into account an evaluation of data verification and the general rules on intelligence management.

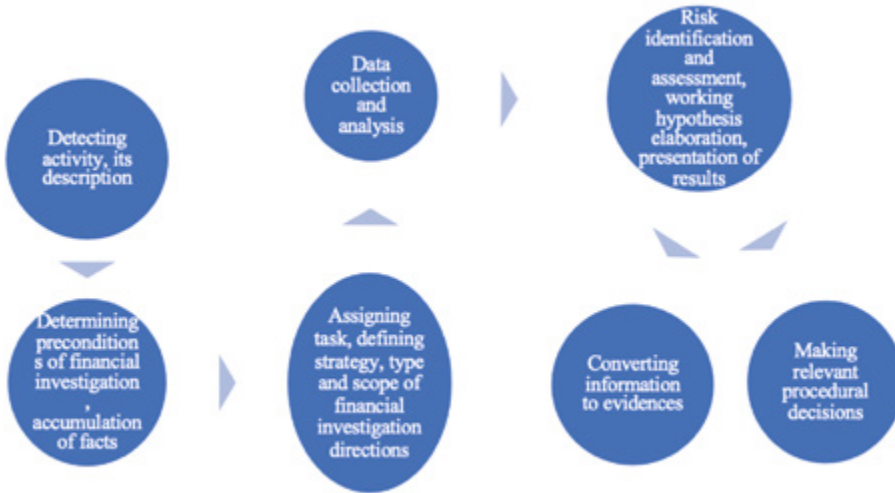
4. Information from the public sector.

Information supported by the regulatory, supervisory, and other authorities. The access is generally limited to internal use only. This category of information may be stored by central banks, tax authorities, Financial Intelligence Unit (SFMS), ARMA, etc.

Law enforcement authorities and competent agencies may use such information to initiate and conduct financial investigations.

3.4. Adopting decision to conduct a financial investigation

The order of the decision-making process in financial investigations can be presented as follows:



The decision to conduct a financial investigation by law enforcement agencies may be taken depending on the availability of certain information and essential elements of committing a criminal offence.

The decision to start financial investigation as part of the criminal proceedings, if a pre-trial investigation has already been started.

Information indicating the need to initiate a financial investigation as part of the pre-trial investigation includes the nature of a crime under investigation since in certain criminal proceedings, the pre-trial investigation is essentially an axiom and will generally match the pre-trial investigation strategy. These include pre-trial investigations relating to laundering of criminal proceeds, financing of terrorism, other crimes essentially involving financial transactions.

Alternatively, in the course of a pre-trial investigation, the prosecuting attorney must, based on the data contained in the evidence of the criminal proceedings, determine whether there is any illegal income obtained and whether any further actions were taken in connection with such income (property, assets), which will be the initial cause to start the financial investigation.

The decision as to initiate financial investigation may also be taken if there is a need to search for individuals, their relocation (i.e., by means of tracking bank card use), search for

assets to further seize and confiscate them as indemnification of damage, or if confiscation is stipulated by a sanction of the article of the Criminal Code.

A decision to initiate a financial investigation simultaneously with the entry of data on the committed crime into the Unified Register of Pre-Trial Investigations.

If no pre-trial investigation has been initiated yet, data indicating the need of financial investigation and initiation thereof immediately upon entry of data on the committed crime into the Unified Register of Pre-Trial Investigations will be a part of the information on a criminal offence (as a nature of the criminal actions). These may include SFMS's files containing direct indication to the need of financial investigation, other materials from supervisory authorities, journalistic investigations, information data received from open sources pointing to the committed acts, transactions involving property or assets obtained as a result of the criminal actions.

Financial investigations must be initiated and conducted with due regard to the requirements for jurisdiction in criminal proceedings. Current CPC provides for three types of jurisdiction: subject-matter (Art. 216 CPC), territorial (Art. 218 CPC), and instance (pt. 5 Art. 36 CPC).

Art. 216 CPC determines five authorities responsible for pre-trial investigation and lists articles of a special part of CC or other characteristics establishing the distribution of functions between investigative authorities.

Art. 218 CPC determines a place of pre-trial investigation according to a territorial logic, considering which such pre-trial investigation shall be conducted by an investigator of the pre-trial investigation authority under whose jurisdiction the crime scene is located.

Part 5 Art. 36 CPC provides for the only possibility of changing the authority conducting the pre-trial investigation, i.e., the right of the public prosecutor to charge another pre-trial investigation authority with conducting the pre-trial investigation only due to ineffective pre-trial investigation, including within one authority. Criminal proceedings investigated by NABU are an exception to the above rule.²⁸

Subject to the requirements of Art. 36 CPC, the public prosecutor shall make a decision concerning the pre-trial strategy development and implementation, as well as the tools required to fulfill tasks of the criminal proceeding, ensure adequate evidence, meet the requirements for prosecuting attorney concerning clarification of all circumstances to be proven and defined by Art. 91 CPC, ensure adequate charges in court and confiscation of illegally obtained property. It must be taken into consideration that pursuant to pt. 5 Art. 40 CPC, during the exercise of powers pursuant to the requirements of this Code, an investigator is acting independently within his/her procedural functions, and the interference of individuals without statutory powers shall be prohibited. Public authorities, local governments, enterprises, institutions and organizations, officials, other individuals shall satisfy legitimate claims and procedural decisions of the investigator.

28. Illia Tkachenko. Jurisdiction as a legitimacy myth // Yurydychna Gazeta. – No 23 (677). <http://yur-gazeta.com/dumka-eksperta/pidslidnist-yak-mif-zakonnosti.html>

In the investigation, the investigator should consider what financial intelligence regarding the suspect may be of benefit to the investigation. This invariably will be different and dependent on the nature of the offending and the objectives of the investigation. The direction should not be too strictly defined, and flexibility should be encouraged.

In case the prosecuting attorney has made a decision as to the need for the financial investigation, the next step shall be selecting its type depending on the extent of subsequent measures.

In particular, it can be a **simplified or in-depth financial investigation or another type of financial investigation.**

Skilled investigators and prosecutors can develop yet unknown methods of developing financial intelligence, and their skills and lateral thinking should not be restricted.

Should the public prosecutor conclude that a financial investigation is required, giving written instructions indicating, the deadlines would be expedient.

General instructions are as follows:

- direction of investigation, i.e., pursuant to which legal mechanisms it will be used (e.g., for the purpose of tracing people, valuation of crime and search for criminal assets to ensure confiscation of accumulated criminal proceeds, determining their source and ways to use foreign economic activity in criminal schemes or applying certain confiscation form);
- what economic aspects must be clarified;
- which persons and for which period must be covered;
- what information must be analyzed;
- when legal arrangements must be initiated as part of the investigation;
- procedure for reporting on investigation progress (in case of deviations from the pattern).

More specific instructions may apply to the following:

- determining origin and possession of assets;
- searching for required information on the Internet, in other official information sources, registers;
- carrying out certain investigative and covert investigative activities and measures;
- studying some particularly interesting assets types;
- seizure / temporary seizure of assets (under certain circumstances);
- searching for and analyzing data concerning documents and items that may be indicative of the link between assets and a certain person, e.g., credit cards, receipts, and invoices;
- specific materials that must be collected (e.g., account statements);
- establishing contacts with authorities (officials) to receive required data;
- considering assumed problems of confidentiality during the investigation and ways to solve such problems;

-
- possible need to prepare a request for (international legal assistance) international cooperation with Interpol, Europol, Eurojust, ARO (*Asset Recovery Office*)/CARIN (*Camden Asset Recovery Inter-Agency Network*), or SFMS.

3.5. Sources of information for financial investigation

Information for financial investigation can be obtained from various sources:

- from the private sector (including financial and non-financial institutions that are subjects to primary financial monitoring);

Within the context of financial investigations, a key source of information will include the private sector, in particular, so-called financial intermediaries and designated non-financial intermediaries providing services to their clients and monitoring their transactions according to the Law of Ukraine “On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime.”

- from the public sector (law enforcement and other public authorities, including files obtained during operational-investigative activities and/or pre-trial investigations);
- from relevant authorities of foreign countries;
- from open sources, closed-access and open registers (media, commercial databases, websites of “Prozorro”, “Public Procurements”, Unified State Register of Court Decisions, Smida, YouControl, OpenDatabot, Pep.org.ua, and other state registers, media reports, etc.);
- information obtained from citizens, businesses, institutions, organizations;
- information from internal sources (information resources of government authorities involved in financial investigations).

From the standpoint of uncovering crimes related to money laundering, it is most appropriate to analyze the use of information resources belonging to organizations of both state and non-state ownership, including the following:

- border control and customs authorities (information on the movement of persons and cargo across the state border of Ukraine);
- police (information on lost and stolen passports, other identification documents, registration of vehicles);
- state registration authorities and notaries (real estate data);
- advertising agencies;
- transport enterprises (information from the list of customers for transportation);
- State Property Fund of Ukraine (data on a share of the state in the statutory fund of business entities of different legal forms, as well as state-owned BEs in the process of privatization or those planning to be exposed for privatization);

- commercial banks (information on customers deposits and loans);
- State Migration Service of Ukraine (information on passports issued for travelling abroad);
- travel agencies (information on customers who go on expensive trips);
- city and district administrations (data on registration of business entities);
- tax authorities (information on the completeness of accrued and paid taxes, open and closed accounts in banking institutions, income, and expenses of business entities, sources and amounts of citizen income, determining all contractors of BEs (suppliers and customers) that were engaged in financial and economic relations), etc.

Therefore, where there are legal grounds, it is necessary to carry out investigative (search) activities to check individuals working at the specified business entities or involved in their activity.

4. FINANCIAL INVESTIGATION PROCEDURE

4.1. Data collection and analysis

The role of financial information analysis in counteracting economic crime is quite important: financial investigations help to identify economic crimes and confirm characteristics required for criminal prosecution as mechanisms of changes in money and commodities flows, methods of entering distorted data into the accounting system, financial loss caused by the crime, influence on the financial performance of the business entity - victim, etc.²⁹

Document control and accurate recording of all actions and the authority used to access material is essential to maintain the integrity of a financial investigation, and therefore it is requested from investigators and prosecutors at the very beginning of the financial investigation.

A comprehensive risk assessment should be an ongoing feature of all financial investigations, not only to ensure the prevention of assets dispersal and concealment but also guaranteeing the safety of documents, witnesses, investigators and safeguarding the reputation of law enforcement agencies. Such risk assessment should be performed on a regular basis.

There are two ways to collect information. First, by directing such activities as a part of the investigation plan (investigation strategy), and secondly, by using the information already obtained in the course of such activities.

Human rights principles must be adhered to when collecting information. By its definition, financial investigation is interference and breach of Article 8 of ECHR (Right to respect for private and family life, home, and correspondence). However, as this is a qualified right, the circumstances in which an authority may interfere in human rights are clearly set out in a handbook issued by CoE, together with references to the key cases claimed.³⁰

In criminalistics, any changes in the external environment resulting from a criminal act are usually considered traces of the crime. These changes may also reflect individual facts, actions, or complexes in people's minds.

Traces of all, without exception, methods of legalization (laundering) criminal proceeds

29. S.I. Lepskyi. Financial information on the criminal activity as a subject of financial investigations. Academic Bulletin of Lviv State University of Internal Affairs, 2013. – No 1. – p. 251-257.

30. CONVENTION for the Protection of Human Rights and Fundamental Freedoms https://zakon.rada.gov.ua/laws/s_how/995_004#Text

wholly or partially related to international transfers of funds are to a greater or lesser extent reflected in the first group of documents – in **banking documents**. In order to identify signs of criminal activity in the array of banking documents, one should conduct a consistent analysis of basic primary documents³¹ (*bank account contract concluded between client and bank, copies of contracts, freight customs declarations, goods invoices reflecting various operations of clients*).

The second group of documents that may contain traces of criminal activity as a constituent element of money laundering is **accounting documents**, i.e., written evidence of the fact of a business transaction conduct or the right to conduct it. A wide range of business operations involves the preparation and use of multiple documents, as well as various supporting records. The analysis of intelligence and fact-finding practice makes it possible to distinguish a certain group among numerous accounting documents where the identification of some signs of generation (acquisition) of criminal proceeds and their legalization are usually the most probable, although these signs are also disguised.

The third group of documents, which also show traces of criminal money laundering, contains **settlement documents**: payment orders, letters of credit, checks, collection letters, etc. Settlement documents are the basis for non-cash payments. Being primary documents, they imply the existence of appropriate entries in accounting records. Information contained in the settlement documents is vital for identifying data on payers and payees that may be sections in the criminal chain of revenue legalization. After all, besides usual information, they are indicated here by their tax identification numbers, account numbers, correspondent account numbers of servicing banks, codes, etc. When analyzing consolidated accounting documents, the results obtained should be compared against the data obtained through the analysis of relevant primary documents. Such comparative study will identify important aspects of concealing criminal activities that are not included in summary documents.

The fourth group of documents containing important information for the identification of traces of criminal capital laundering is **founding documents** that serve as a basis for establishing a legal entity and its operation. These documents usually record such information as a legal entity's name, its location, purpose of its activities, composition, and competence of the authorities, the legal status of founders, their location, information about state registration, size of the authorized capital of the established enterprise, etc. All information contained in the founding documents plays a significant role in identifying both directly criminal proceeds and the perpetrator. In addition, professional analysis of founding documents makes it possible to timely suspend specific facts of capital legalization to ensure their effective search and seizure.

Thus, it can be stated that crimes related to money laundering are one of the most latent types of criminal offences that require considerable effort to identify essential elements of

31. L.I. Arkusha. Mechanism for reflecting traces (signs) of criminal activity of legalization (laundering) of criminal proceeds, in the main groups of documents. The South Ukrainian Law Journal. 2010. No 1. P. 226–228.

committing them. Nevertheless, they cannot but leave traces since proceeds legalization schemes involve the use of various documents (both authentic and counterfeit, partly counterfeit, with false information, etc.). Usually, to be successful, legalization schemes require authentic documents since they are the only means to reliably hide the criminal origin of money.

Misuse of a specific document ultimately leads to signs of completed legalization that law-enforcement authorities must promptly respond to upon considering all possible versions. Legalization (laundering) of criminal proceeds is not a type of criminal offence that would be reported by the subject of crime or following an enterprise audit. Basically, it can be uncovered in the course of the investigation of a substantive offence when one of the criminal group members makes a mistake.³²

It should be kept in mind that the information necessary for the economic analysis must be handled following requirements for confidentiality to prevent possible leakage of information, especially since in such cases, active executives of fictitious companies quickly and easily transfer cash balances and carry out subsequent similar transactions through other affiliated business entities or individuals.

At the initial stage of all priority proceedings or proceedings of relevant categories without exception, it is advisable to conduct a simplified financial investigation that is aimed at identifying differences in the property status of suspect or subject of investigation, persons involved in criminal activity, indistinctive (suspicious) financial transactions, additional circumstances of the case or sources of information.

The simplified financial investigation only requires the use of available or accessible internal databases to analyze profiles of persons involved in a crime or a financial component of the crime.

For the purpose of conducting **a simplified financial investigation**, it is also advisable to consider the information available in open sources and registers of public authorities.

In the course of financial investigation, the investigator/prosecutor tries to reveal a “financial footprint” of the crime.

Data are mainly collected and analyzed depending on the subject of analysis:

1. identification data of the subject of analysis;
2. financial profile of the subject (financial status characteristics);
3. financial or business transactions/activities (financial transactions scheme).

Based on available investigation data, financial or asset transactions should be analyzed in terms of their economic viability, compliance of incoming money flows with outgoing payments, payment details, information on contracts, statements of work or service acceptance, size of commissions, objects of purchase and sale, etc. Sources of funds or

32. Financial investigations in the field of counteraction to legalization of criminal proceeds in Ukraine [Text]: guidelines / [S. S. Cherniavskiy et al]. – Kyiv: National Academy of Internal Affairs, 2017. – 164 p. – p. 54-57.

their further use, legal justification of financial transactions should be ascertained. Persons engaged thereof and their links should be identified as well.

The available financial component is compared with the profile of a person who conducted or controlled the transaction involving assets or, in the absence of transactions, an analysis of the property status of the subject and its related persons in comparison with officially declared income should be conducted. Besides, during criminal proceedings in cases where no financial footprint related to the case circumstances is directly identified (e.g., trafficking in human beings, drugs, OCG activities, etc.), it is necessary to analyze the property status of persons involved in criminal activity, suspects and those related to them to identify criminal proceeds that may already have been laundered.

It is worth noting that a simplified financial investigation can be transformed into an in-depth one if relevant risks, circumstances, facts that will require more thorough analysis and involvement of relevant experts are identified.

The significant discrepancy between the value of assets found and an official legitimate income of a person may indicate that money laundering action has already been completed and may serve as a ground to start **the in-depth financial investigation** aimed at seizing illicitly acquired assets.

For instance:

- flow of funds in subject's bank accounts;
- subject's interaction with customers and suppliers of goods or assets (works, services);
- subject's foreign economic activity;
- other subject's financial and economic activities.
- This information is taken as a whole, including the following to be considered:
 - interrelation between transactions both in time and space;
 - interrelations between transactions by type (their logics);
 - transactions amounts;
 - interrelations between founders, directors, beneficial owners of legal entities, their financial and social status;
 - interrelations between data on the date and place of registration of legal entities, their financial and economic activities;
 - incomes of individuals;
 - differences in the identification and other data obtained from different sources;
 - logics of concluded contracts conferring property or other rights, their legal validity, and financial security;
 - size of assets, legality of their acquisition.
- The analysis of the subject's financial and economic activity includes the following:
 - determining validity of subject's financial status indicators (solvency, financial stability, profitability, etc.);

- determining lawfulness of foreign economic transactions and order of relations between subjects;
- determining validity of property structure and sources, its disposal;
- determining status and intensity of current asset use and sources of their generation;
- identifying subject's asset managers and its ultimate beneficial owners;
- establishing validity of personal funds sources and results of financial and economic activities;
- determining actual fact of settlements with debtors and creditors;
- determining economic feasibility of obtaining and using credits, loans, lending, and other transactions;
- determining conformity of costs and prices as factors of financial solidity, break-even operation;
- determining the correlation between the cost, profitability, and economic feasibility, as well as fair pricing.

After collecting and evaluating gathered information exhaustiveness, risks should be identified, and a working hypothesis regarding possible breaches of the law should be formulated.³³

Example of an initial stage of the financial investigation

Background information:

*A company that a citizen of Ukraine K. has links to purchased a real estate in London (UK) worth **GBP 900,000 thousand (equivalent to over UAH 35 million)**.*

*In addition, a citizen of Ukraine K. received funds in the amount of **UAH 2.6 million** as a payment for corporate rights transferred by two individuals to his account opened with a Ukrainian bank.*

To develop an investigation strategy in this case, a simplified financial investigation is required at the initial stage of the investigation.

First of all, citizen K's identification data should be clarified, while available and accessible information on him should be studied.

The following resources should be used for the simplified financial investigation of the said case using existing and available databases:

- registers with registration data of individuals and legal entities (Unified State Demographic Register);
- SFS registers on declared income and taxes paid, membership in activities of legal entities, place of employment;
- State Register of Property Rights to Real Estate;

33. According to STS's files provided when drafting the Manual.

- Unified State Register of Vehicles;
- Unified Register of Pre-Trial Investigations;
- Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations;
- Unified State Register of Declarations;
- Unified State Register of Court Decisions.

<https://beta.companieshouse.gov.uk/> register to verify involvement with UK businesses and Pep.org.ua resource to check if a person is a public figure.

Used resources may vary depending on the case.

The corresponding results should be formed, including the identified risks and preliminary qualification of allegedly committed crimes based on the analysis.

The results of a simplified financial investigation:

- person's identity is ascertained;
- citizen K. was a Member of Ukrainian Parliament from 2010 to 2019;
- citizen K. repeatedly received gifts from individuals who are not his family members while holding public office;
- list of companies belonging to citizen K. has been identified (statutory capital constitutes **UAH 2,6 million**);
- During 2010-2019, citizen K. declared income in the amount of **UAH 4,6 million**, including **UAH 2,0 million** as an income received as a gift from non-family members;
- owner of UK Company that purchased the real estate is a person who, according to media, has already been featured in scandals involving citizen K. as a false name person, in whose name several British companies were registered at the mass registration address;
- citizen K. has not declared beneficial ownership of any companies in Ukraine or abroad;
- property purchased in London has not been declared;
- citizen K. owns high-priced luxury cars.

Identified risks indicating the commission of crimes: inconsistency of the income officially declared by citizen K. with the amounts of actually conducted financial transactions and property status, which may indicate the use of hidden proceeds (money laundering, provisions of Art. 209 CC). There are also essential elements of declaring knowingly unreliable data by a politically exposed person (Art. 366-1 CC).

Therefore, given this example, the issue of sufficient grounds to initiate criminal proceedings can be considered at the initial stage.

Results of the above financial investigation require a more sophisticated analysis of assets acquisition's financial aspects in the framework of criminal proceedings.

Thus, the results of the simplified financial investigation may be as follows:

- detection of elements of committing criminal offence and identifying involved persons;
- refutation of initial grounds for suspicion of committing criminal offence (detected activity) and confirmation of case's circumstances legality.
- The outcomes of the simplified financial investigation may be as follows:
- decision-making by law enforcement agencies on initiating a new criminal proceeding, entering data to URPTI;
- adjustment of investigation plan (strategy) in criminal proceeding or other law enforcement measures;
- transformation of a simplified financial investigation into an in-depth one.

The in-depth financial investigation involves making inquiries to banking institutions, enterprises, organizations, ARMA, STS, NBU, NSSMC, etc. in order to conduct a more complex financial analysis of data and financial flows in the case and participants hereto, which foresees a detailed economic analysis, including of financial flows, and also requires examinations, request for international legal assistance, as well as involvement of specialized units or authorities.

Capacities of some of these authorities and procedure of their involvement in an in-depth financial investigation are described in Section *“Using capacities of other government agencies in financial investigations.”*

The detailed economic analysis involves collection, processing, systematization, aggregation of objective, reliable information coming from sources that are not prohibited by law concerning the conduct of financial, economic, and other activities by business entities, individuals and legal entities, non-profit enterprises, institutions, and organizations (hereinafter referred to as “entities”).

For example, a process of enterprise (BE) activities analysis is described below.

Economic analysis of BE's activities involves the study of the following issues:

1. analysis of money flow in the current account. The most important indicators of allegedly illegal activities of an entity are as follows:
 - transactions on crediting money to correspondent accounts with non-resident banks. The indicated information may be obtained from a commercial bank that opened an account for the economic entity or at the Clearing House of the National Bank of Ukraine;
 - considerable turnover of cash assets in the current account since its opening with the bank;
 - regular withdrawal of large amounts of cash from current accounts.
- This list can be supplemented by the following:
- financial transactions are complex, unusually large-scale for its activity, or they do not correspond to financial status;

- there are grounds to believe that the entity structures financial transactions or conducts them in a way to avoid certain thresholds/requirements set by law;
- conducting financial transactions for unusually large amounts (or total turnover), which is not common for client's activity known by bank;
- product (service) is complicated in terms of its transaction trackability (in particular, transfers made using many intermediaries, fast electronic services (international transactions carried out in electronic money));
- large share of cash transactions, which is not common for the relevant type of client's activity;
- possibility of conducting complex, large-scale transactions with many parties involved (in particular, certain types of bank guarantees or documentary letters of credit);

This list is not exhaustive. The link below leads to the list of indicators of illegal (suspicious) activities summarized by SFMS based on international organizations researches "INTERNATIONAL STANDARDS (EXTRACTS) on criteria/indications/indicators of risky transactions that may be related to the legalization (laundering) of criminal proceeds, terrorist financing and financing proliferation of weapons of mass destruction."³⁴

In the course of financial investigation, an investigator (operative), detective receives a certain amount of additional information that can be divided into two components: information on financial flows and tools of the crime or financial results of the crime; and the profile (characteristics) of the suspected entity, suspect or group of suspects and his/her (their) estates.

Based on results of the obtained information analysis, in particular, data from financial institutions, the following must be considered:

- *Banking institution customer's questionnaire* contains information on contact telephone numbers, e-mail addresses, signatures of accounts holders, information on legal entities' ultimate beneficial owners, authorized persons, type of individual's activity, earnings, etc.;
- *Account statements* describe funds flows, therefore, it is essential to pay attention to payment details, transactions amounts (considerable round amounts), their frequency, concentration of flows to one or more counterparties. If this is an account statement of an individual, then places such individual visits, amount of income and expenses, individual's lifestyle can be identified, etc.;
- *Contracts, agreements* that served as a basis for a financial transaction may also be obtained from a financial institution, notaries, etc. Often, there are cases when financial institutions are provided with contracts that differ by their terms and conditions from the ones actually concluded in order to make conducted financial

34. fiu.gov.ua/pages/finansovii-monitorint/metodologija/rekomendaci/0350zagalnauzagalnenimizhnarodni-indikatorii-shhodo-pidozrilix-tranzakcij-30-09-2020-pdf.html

translations look legitimate. Such agreements shall be compared with those obtained as a result of searches or seizures. The difference between such agreements may indicate forgery;

- *SWIFT messages and foreign economic contracts* (SWIFT messages contain a number of the account opened abroad, as well as details of financial institutions, including correspondent banks, which can provide additional information on their clients and contracts submitted to financial institutions abroad);
- *Other additional information* (IP addresses, correspondence with banking institution, crypto addresses, etc.).

To analyze information about financial flows, sources of funds (assets) related to criminal activity or their subsequent movement are examined. This information can be obtained from financial institutions or other intermediaries in the form of account statements (cash, securities, cryptocurrencies); if it concerns assets, it is expedient to analyze contracts concluded for purchase/sale of the asset, additional agreements, foreign trade contracts, freight and customs declarations. It is important to obtain and compare information on what is stated from different sources. Often, criminals resort to falsification of documents in order to give financial transactions a legitimate appearance. For example, when analyzing foreign trade transactions, banking institutions and customs authorities may be provided with documents, amounts, or volumes of goods or other components that are different from those that can be obtained from customs or from abroad (through SFMS or in the framework of ILA). Therefore, it is important to compare information from various sources and a wide range of public registers available and accessible today by law enforcement agencies to make relevant conclusions.

Tracking the movement of funds or movement of a certain amount of funds is equally important. When analyzing bank statements, if at the time of transaction start the balance was insignificant or equal to zero, there should be no problem with tracking a specific amount. Cases where there is a considerable positive balance on the account or after the amount being tracked was replenished with other significant payments are more complicated. This often applies to activities of a network that provides professional money laundering services³⁵ and other related illegal services (e.g., forming tax credits with VAT to reduce payments to the budget or claiming its reimbursement from the budget).

35. A Professional international network for money laundering (source – FATF Report: Professional money laundering) is a collection of associates or contacts working together to facilitate professional money laundering and/or subcontract their services for specific tasks. These interpersonal relationships are not always organized, and are often flexible in nature. These money laundering schemes are performed by persons who were not involved in the commission of the predicate offence, but only provide criminal proceeds legalization services.

The clients of such “networks” are mainly representatives of a real economy who want to optimize tax payments and/or representatives of a shadow economy who want to legalize criminal proceeds.

Persons who provide such services are mainly professional bankers and lawyers. Mentioned persons register a significant number of companies in jurisdictions with simplified registering procedures and open bank accounts in financial centres. These bank accounts further used for money layering and transferring

In this case, there are certain methods of analysis that shall be followed. Two of them are described below:

- FIFO (First in - First out), which is related to accounting rules according to which the amount of funds first credited to the account will be the first transferred further. This is the most used method to track the subsequent flow of funds.

Example: *At the time of transaction, an amount on the account constituted UAH 5 million, it was credited from two contractors by payments in the amount of UAH 2 and 3 million, respectively. In addition to available funds, another 2 million UAH were credited to the account, which needs to be traced. Subsequently, funds are dispersed by making multiple payments to 25 counterparties with different sums for a total amount of UAH 4 million. Further, a transaction (No. 26) of UAH 3 million was carried out in favor of 1 counterparty.*

According to the FIFO method, funds in the amount of UAH 2 million that are to be tracked are considered to be held on the account until the transfer of funds that were previously accounted for takes place, that is, until the transaction amounting to UAH 3 million. Then, UAH 2 million within the amount of UAH 3 million has been transferred to another account; to trace it, it is necessary to analyze the account statement of the recipient of UAH 3 million.

- Another method is more sophisticated and is based on logical conclusions when analyzing schemes of transactions with ML, which are often used for the purpose of professional money laundering (transit accounts, mixer accounts). The complexity of examining the flow of funds on such accounts is due to the chaotic flow of funds, which uses multiple accounts and numerous chaotic transactions. This is done to hide traces of money origin.

In such cases, it is worth analyzing longer periods of money flows on the account to understand the holistic picture. ML networks usually use numerous companies, and amounts with significant funds flows. In this case, it is necessary to identify a group of companies whose accounts are used to transfer funds to network accounts, as well as group enterprises using the same IP addresses. Such network accounts should be grouped into so-called “clusters” and focus on network outbound and inbound flows. These will be follow-up transactions or source of funds required for a financial investigation.

using thousands of shell companies. Using this scheme, the engaged parties interact with each other on a daily basis embroiling money flows to prevent identification of sources of funds transferred between accounts.

Accounts of such companies have a transit nature, when the sent funds are instantly transferred further along a “chain” of transfers. When conducting surveys by bank employees, representatives of these companies provide fictitious documents or even cannot explain economic reasons for financial transactions.

The analysis could be complicated if professional ML networks use specially developed software and large-scale networks, i.e., proxy networks aimed at making “financial trace” confusing using numerous enterprises and accounts.

The functioning of money laundering networks has been researched in details in FATF Report “Professional Money Laundering”, in particular, the operations of so-called “proxy networks” is described as follows:³⁶

Proxy networks are professional money launderers who supply a type of banking service to organized criminal groups, generally through the use of multi-layered transfers via bank accounts. These specialized services offer all of the advantages that come with moving funds globally via the legitimate financial sector. The main task of these proxy networks is to move client funds to the final, pre-determined destination and to obfuscate the trail of the financial flows. In many cases, these schemes are supported by trade-based money laundering mechanisms.

Professional money laundering schemes that are arranged with the use of bank accounts consist of multiple layers of shell companies in different jurisdictions, which have been established purely to redistribute and mix funds from various sources. These shell companies could be located in the country where the predicate offence occurred, transit countries, or countries where the final “investment” of funds is conducted. This scheme is designed to make the portion of funds that belong to a client untraceable. In most cases, laundered funds are transferred to a client’s personal bank account(s), affiliated companies, or foundations under their control or handed over to them as physical cash.

To analyze such cases, one can use a method of “cloud” (clusters). This method implies identifying a list of persons who are part of the network and their accounts that constitute a “cloud” (cluster). Then, one should track “cloud’s” (cluster) inbound and outbound flows for a short period of time.

Additionally, the analysis of links between transactions’ parties, their founders and officials, beneficial owners, and other information makes it possible to conclude on the subsequent movement of funds or sources of funds. Usually, the analysis of such transactions requires the involvement of experts and analysts of law enforcement agencies, SFMS, or ARMA.

Modern tools and technologies of data visualization (in particular, IBM I2 and Chainalysis in case of virtual currency transactions) are useful for analyzing cash flows, as well as relationships between participants in financial transactions. Moreover, Artificial Intelligence (AI) has already been used overseas for financial investigation purposes, in particular for the analysis of large arrays of information. It helps to solve complex tasks much more effectively than engaging teams consisting of experienced investigators or analysts. The use of AI in the context of digital transformation is also auspicious for the Ukrainian settings, but, indeed, it needs appropriate funding and legal regulation.

It is also essential to analyze an entity’s profile, compare transactions with available information on income, accessible assets, identification data, and documents submitted,

36. <http://www.fatf-gafi.org/media/fatf/documents/Professional-Money-Laundering.pdf>

for example, to banking institutions, in particular, to justify transactions, data obtained from abroad regarding transactions and open accounts. All of the above will complete the picture of possible circumstances of the committed offence, its scale, etc.

Continuing with pattern analysis of BE, the following should be performed:

2. verification of the entity's bank details, including USREOU code, against taxpayers database. A fact of providing tax authorities with information about the lack of activities during the specified reporting period should also be ascertained (if data on considerable cash flow on current accounts are available). If Ukrainian tax authorities do not possess such information or if these data are contradictory, a more thorough check-up of the entity's financial and economic activity is required.
3. analysis of the following:
 - entity's name (typically, dummy companies have names that are consonant with names of state institutions, well-known brands, or entity's name indicates a specific activity type, e.g., foreign economic, industrial, scientific research, etc.);
 - entity's tax address: several conversion companies would specify the same address for different business entities, a non-existent address, or an address where BE is not actually located; it is necessary to explore the place of registration (address of the place of registration, mailbox, mass registration address, registration office, address of registering company, law firm (especially popular abroad));
 - availability of production facilities, warehouses, vehicles (specialized motor vehicles), as well as other movable and immovable property that could indicate that entity performs financial and economic activities in real terms and not nominally;
 - BE's activity, which is reflected in accounting and tax reporting, in accordance with the type of financial and economic activity provided for in the statutory documents of a business entity based on the industry classification system;
 - number of persons employed at the enterprise (institution, organization), BE's total income amount and accrued (paid) taxes, fees, and other payments;
4. checking availability of constituent elements indicating illegal financial activities of conversion centres and/or dummy companies, in particular as follows:
 - involvement of officials (office holders) and founders in the conduct of financial and economic activities of business entity (so-called BE's registration in the false name);
 - newly created business entities with high financial and economic performance over a short period of time since registration;
 - short-term existence of BE with considerable indicators of financial and economic activity;
 - registration of a large number of business entities with considerable financial and economic activity indicators per one person (individual or legal entity), as well as senior officers (director/accountant) managing the same BE;
 - receiving or spending large amounts of money (usually from numerous enterprises,

institutions, organizations) under the guise of payments for various goods, services, etc.;

- use of correspondent accounts for settlements with foreign commercial entities (usually in the form of payments for works and services rendered, bulk consignment of fuel and lubricants, machinery, etc.).

It is also possible to:

5. analyze mass media and commercial registers;
6. search for information on the company's participation in tenders or public procurement.

When analyzing non-resident companies, it is possible to check the above characteristic features availability and additionally to:

7. identify relations with Ukraine through transactions' contractors, supplies of goods and services or founders;
8. analyze publicly available commercial databases of foreign countries;
9. analyze the financial component of non-resident company (capital dimension), frequency of reporting, dept to the registrar, registration at the specialized registering company or mailboxes addresses, etc.

While analyzing this and other information about an enterprise, one may find out whether it is fictitious or real (i.e., it actually carries out financial and economic activities, has an adequate number of employees, production facilities, pays taxes, etc.).

If the above indicators show that this is a fictitious business entity, information about officials (officers) and founders should be requested from the address bureau of the State Migration Service of Ukraine. If no such information is available in the address bureau, one should contact the passport issuing authority to check the availability of data regarding a possible loss. At the same time, if necessary, other investigative and search activities should be conducted to verify and ascertain the financial and economic activity of such business entity, as well as its employees.³⁷

The thorough analysis of these indicators set allows determining a fictitious nature of the business entity. Where such data exist, its credibility, including information on officials and founders, should be verified by requesting from the passport issuing authorities information on its possible theft (or death of actual passport holders). The absence of such information or its contradictory nature requires additional verification of the specified business entity.

Search activities in the field of counteraction to the legalization of criminal proceeds should be carried out by using overt and covert measures.

37. Based on Financial investigations in the field of combating the legalization of proceeds of crime in Ukraine [Text] : guidelines / [S. S. Cherniavskiy et al.]. – Kyiv: National Academy of Internal Affairs, 2017. – 164 p.

4.2. Determining the plan (strategy), scope, and direction of financial investigation

After data collection and initial analysis stage, it is necessary to formulate a working hypothesis to determine the plan (strategy) of further investigation, which make it possible to localize the amount of information to be investigated, and at the same time, predetermines the need to detail as much as possible the data selected for the analysis.

Consider that the investigative plan (strategy) will dictate the focus and direction of the investigation, and therefore the material to be collected and analyzed at every stage. It is useful to know the sources that can be examined at the 'simple' stage, but at no stage should be restrictive or indeed necessary. When looking at more in-depth cases, for example, money laundering, the investigation plan (strategy) should be directed by the points to be proved for the specific money laundering offence, which may be a simple methodology or an extremely complex, multi-faceted system. Running alongside should be an investigation to identify assets for future confiscation. There will obviously be an overlap. Defining the plan (strategy) and focusing on the investigation is vital and cannot be overestimated. Experience shows that not tightly controlling this can lead to time-consuming, resource-intensive investigations which are prolonged with little or no productive outcomes.³⁸

The extent and direction of financial investigation depend on the existence of one or more circumstances to be ascertained:

- circumstances that form financial crime (including criminal proceeds legalization (laundering), terrorist financing, and financing proliferation of weapons of mass destruction);
- circumstances related to financial crime (including criminal proceeds legalization (laundering), terrorist financing, and financing proliferation of weapons of mass destruction);
- circumstances that characterize the subject of financial crime (including criminal proceeds legalization (laundering), terrorist financing, and financing proliferation of weapons of mass destruction or activities related to money legalization (laundering));
- circumstances, primarily aggravating or mitigating that affect bringing the subject of financial crime to legal liability or releasing it of responsibility for financial crime (including criminal proceeds legalization (laundering), terrorist financing, and financing proliferation of weapons of mass destruction or activities related to money legalization (laundering));
- availability of assets that can be reimbursed for caused damages and that can be seized in terms of further confiscation;
- circumstances that contribute to financial crime (including criminal proceeds

38. https://www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf

legalization (laundering), terrorist financing, and financing proliferation of weapons of mass destruction or activities related to financial crime (including money legalization (laundering) and those pertaining to the case.

Relevant circumstances sources should be identified with an indication of the cause-effect relations that led to such circumstances.

The definition of a financial investigation plan (strategy) must be based on the following factors:

By the nature of a predicate crime:

- purely criminal (trafficking in narcotic drugs, human beings, weapons);
- against property (robbery, theft, fraud);
- economic and officials' crimes (including tax evasion);
- separate approach may be distinguished for corruption crimes.

By the criminal proceeds volume (for example, up to UAH 1 million; UAH 1 to 10 million; UAH 10 to 100 million; more than UAH 100 million).

By the territorial location of perpetrators and crime scenes:

- regional (local) – within the region;
- interregional;
- transnational.

Based on these factors, the plan, scope, and direction of financial investigations should be determined, in particular in terms of obtaining information, financial (tax) control experts and other authorities involvement, international cooperation activities organization, and determining the following main tasks of a specific financial investigation:

- search for assets;
- identification of persons involved in financial transactions with criminal assets;
- establishing essential elements of unlawful acts.

It should be noted that indirect evidence of assets illegal nature also plays an import role in money laundering cases that in combination with impossibility of providing reliable and sufficient evidence by the defense to prove the legality of property's origin, is a signal of the existence of grounds for the court to convict for criminal proceeds legalization. The European Court of Human Rights agrees with this approach, according to which: an offence of money laundering shall be deemed committed where any legal origin of the funds can be excluded and without there any need to prove the predicate offence ("Zschüschen v Belgium" (23572/07), decision of May 2, 2017; "Timmermans v. Belgium" (12162/07), decision of May 2, 2017).

When planning each stage, the investigation plan shall be modified and elaborated as necessary. The financial investigation plan can be developed already during verification actions when signs of a crime become obvious. The initial factual information about the

crime and its circumstances in combination with the standard versions system's analysis allows predicting the main investigation directions and key issues to be clarified.³⁹

The plan (strategy) of investigation should be constantly adjusted depending on the results of the collected information analysis. At the same time, the investigation plan should aim at implementing measures to obtain more detailed information on the identification of assets for future confiscation.

4.3. Risk identification and assessment in financial investigations

The analysis of criminal proceedings, including financial investigation, makes it possible to state that key information used by criminals in the process of money laundering is usually presented in the form of various **banking, accounting, settlement, and founding documents**. In addition, they use a number of contracts to hide the criminal origin of their assets. These include, in particular, gift, loan, sale, leasing, pawnshop, and foreign trade agreements that indicate parties' relationship on export, import, exchange, and settlement transactions.

When analyzing information or verifying a crime report by tracking financial transactions and deals concluded with proceeds of crime, legalization (laundering) of such proceeds may be revealed. During the analysis of suspicious transactions and agreements with cash and property, particular attention should be paid to the risks identifying the constituent elements of a committed crime, including the one that generated respective proceeds, which offenders seek to legalize. Data on financial transactions and property agreements may be contained in a crime report, for example, if the victim's (legal entity or individual) representatives were tracing the movement of the stolen property through their business ties.

Information about contracts with property and financial transactions with money generated through illegal means can also be obtained when considering an acknowledgment of guilt, a report on the already committed crime or a crime to be committed, or from other sources. Sources of such inspections include investigative (search) activity results; materials of state financial control authorities and SFMS; files extracted from criminal proceedings, received from law enforcement agencies of foreign states, courts, media.⁴⁰

Besides, to identify actions aimed at legalizing (laundering) of criminal proceeds, it is necessary to pay attention to the following risky financial transactions:

39. Methodical recommendations "Actions of police officers in case of detection of economic crimes", Dnipro State University of Internal Affairs, Group of authors: O.M. Kubetska, O.V. Neklesa, Y.S. Paleshko, D.B. Sanakoiev.

40. R. Zhurbin. Uncovering legalization of proceeds from crime. Legality. 2006. No 12. P. 14–16.

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- acquisition of movable and immovable property with a view to its further alienation for payment or free of charge;
 - purchase of high-value goods;
 - concluding bogus (null) agreements on credits or various services (e.g., audit, legal, marketing, advertising, and other works and services that may be provided in any economic sector, including at inflated prices);
 - setting-up business entities with clear signs of fictitiousness or acquisition of bankrupt enterprises;
 - use of proxy intermediaries;
 - import, transfer, and forwarding money, securities, and other property to the territory of Ukraine and beyond it;
 - movement of money to offshore territories.

Violation of the rules of accounting, storage and recording of enterprise's accounting and reporting documents, economic unprofitability or uncertainty of conditions for financial and economic deals, or non-compliance of their execution with the laws of Ukraine are key signs of money laundering.

Circumstances to be established in the course of a financial investigation shall be identified based on the criteria indicating a presence/absence of risks of financial transactions related to criminal activities:

- evidence of a financial crime (including legalization (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction, drug trafficking, organized crime, fraud, and/or other offences);
- compliance with the rules of state registration of business entities;
- tax and other risks identified at the time when tax information was received in the manner established by the Tax Code of Ukraine, the risk of inefficient capital outflow outside Ukraine, other risks;
- financial or other transactions consisting in the performance of actions related to money and other property obtained from a publicly dangerous unlawful act and aimed at concealing or covering up the unlawful origin or possession of such property, rights to this property, sources of its origin, location, or movement;
- availability of new technologies in the field of financial activities that contribute to client anonymity;
- conducting atypical, complex, misleading/veiled financial transactions or other transactions;
- any unusual, new, modified, atypical schemes for conducting financial transactions or other deals where it is impossible to trace the obvious legitimate ultimate purpose;
- non-conformity of information on financial or business activities, as well as other information related to uncovering facts associated with a financial crime or activity connected to a financial crime that was received from external and internal sources, already existing in STS information files on financial transactions, in respect of which

there is information on the alleged association with the scheme of legalization (laundering) of criminal proceeds and other offences;

- inconsistencies between the principle of leveraging information and ensuring freedom of assets movement;
- inconsistencies between the monetary value of domestic and international financial transactions;
- unusual transportation of currency, financial instruments, precious metals, or stones etc.;
- financial transactions for purchase and sale of goods (payment for services), the cost of which is difficult or impossible to determine, including intellectual property objects, certain types of services that do not have a permanent market value, consulting, legal and audit services;
- real estate transactions, when their price differs from market price;
- availability of information on transactions used in illegal schemes used to form a negative VAT value, as well as on entities participating in such schemes;
- availability of information on taxpayers who claim VAT refunds using tax evasion schemes;
- availability of information on illicit manufacture and circulation of excisable goods;
- presence/absence of signs of fraudulent, intentional hidden bankruptcy or causing the entity to go bankrupt;
- compliance with tax obligations stipulated by the current legislation of business entities whose activity is related to the implementation of electronic vouchers of mobile communications providers, Internet service providers, software and self-service software complexes of online shops and non-bank payment systems;
- other criteria related to identifying circumstances to be determined in the course of a financial investigation that apply in the context of exercising the authority.⁴¹

When developing an investigation plan (strategy), it is important to focus on maintaining long-term confidentiality of such investigation. A comprehensive risk assessment should be an ongoing feature of all financial investigations, not only to ensure the prevention of asset dispersal and concealment but also guaranteeing the safety of documents, witnesses, investigators and safeguarding the reputation of law enforcement agencies. In particular, during the risks determination stage, it is possible to use indicators of suspicion of financial transactions in various money laundering schemes, which are described in the Resolution of NBU Board of 19.05.2020 No 65 “On approval of the Regulations on financial monitoring by banks” and documents of SFMS (typologies, recommendations), as well as international organizations surveys (FATF, Egmont).

41. Financial investigations in the field of combating the legalization of proceeds of crime in Ukraine [Text]: guidelines / [S. S. Cherniavskiy et al]. – Kyiv: National Academy of Internal Affairs, 2017. – 164 p.

4.4. Investigative (search) and other procedural actions as ways to obtain information for financial investigation

The financial investigation may use data obtained as a result of criminal proceedings implementation measures by investigators in the course of investigative activities, as well as properly legalized materials of operational-investigative measures prepared by other experts involved in financial investigations.

When conducting large-scale and complex financial investigations, it is important to assemble a **multidisciplinary or target team of experts**, including financial crime investigators, financial analysts, accounting and information technology experts, asset managers, and prosecutors, which is a pre-requisite for ensuring an effective investigation, transfer of criminal proceedings to court and confiscation. A strategic approach to intra- and inter-agency cooperation to ensure information exchange within departments and between them, as well as with foreign colleagues should be developed. If necessary, the relevant regulatory framework should also be developed and improved.

Multidisciplinary teams may include a variety of professionals, including financial crime investigators, financial analysts, accounting professionals, information technology professionals, asset managers, and prosecutors. Experts can be deployed or invited from other agencies, such as STS, PGO, or even from the private sector.

These professionals should know how to use the following methods of auditing cash desks, operating (turnover) cash desks, money storages, and vaults; operating rooms; accounting (including internal); currency exchange offices; active and passive transactions, services; automated information processing system; credit and deposit transactions; transactions with securities and statutory fund organization; currency transactions; human resources activities; legal service; internal audit service.

Besides, these professionals must have the experience and knowledge necessary to assess and analyze the following:

- bank financial reports (by examining financial indicators);
- asset and liability management strategies;
- liquidity and reserve management policies.

The efficiency of investigation of the legalization (laundering) of criminal proceeds depends on successful completion of the following tasks:

- identification of financial and other transactions aimed at legalization (laundering) of criminal proceeds;
- proving specific facts of legalization (laundering) of criminal proceeds;
- proving criminal source of assets;

- finding, seizing, confiscating criminal proceeds;
- identifying and proving previously unknown facts and episodes of criminal activities related to legalization (laundering) of criminal proceeds;
- expanding evidentiary basis by organizing and supporting entire investigation process.

These professionals should have the experience and knowledge necessary to analyze significant amounts of financial, banking, business, and accounting documentation, including non-cash money transfers, financial statements, customs, and tax records.

These teams must include investigators with experience in gathering business and financial intelligence information, identifying complex criminal schemes, tracking financial footprints, and using special measures such as undercover operations, telephone interceptions, access to computer files, and use of controlled delivery. Multidisciplinary teams should also include criminal investigators who have requisite knowledge and skills of traditional pre-trial investigation methods. Prosecutors should have similar knowledge and experience, too, in order to qualitatively present a case in court. Multidisciplinary teams should also include investigators (detectives, operatives) who specialize in criminal proceedings for offences (including of general criminal nature) that may be related to specific financial crimes. Prosecutors should also have similar knowledge and experience to ensure effective procedural guidance and case presentation in the court.⁴²

Upon creating a multidisciplinary group, it is crucial to establish effective interaction between team members and all agencies involved. A lack of information exchange system (including intelligence) within the unit or department often complicates complex financial investigations. The range of mechanisms that facilitate intra- and inter-agency cooperation include the following:

- introduction of information exchange system where all investigative units will have information on previous or ongoing investigations into the same individuals and/or organizations to avoid duplication, discuss conflicts and promote interagency awareness;
- defining rules and procedures that will facilitate information exchange within existing intra-and inter-agency cooperation forms. Such rules and procedures must facilitate information exchange at a strategic level;
- introduction of approach whereby intra- and inter-agency conflicts will be solved solely for the benefit of investigation;
- competent authorities should consider signing written agreements, such as a memorandum of understanding or similar agreements, to officially approve the cooperation process.

It is advisable to develop a strategy for optimizing interactions between public and private sectors, which will not be limited to notifications on operations.

42. Financial investigations in the field of combating the legalization of proceeds of crime in Ukraine [Text]: guidelines / [S. S. Cherniavskiy et al.]. – Kyiv: National Academy of Internal Affairs, 2017. – 164 p.

As a source of financial information, the private sector possessing useful information is concerned with protecting its reputation, has skills and knowledge enabling it to analyze and process information. Additionally, the private sector finds itself in a better situation than that of the law enforcement agencies. Ensuring adequate protection of information and the right to privacy should also be a part of legal information exchange to identify aspects that can assist law enforcement agencies in financial investigations more effectively.

Successful asset recovery requires a comprehensive action plan that will include several important steps and decisions. Competent authorities should collect and evaluate facts, study materials, form a team, identify key allies, contact foreign counterparts (provided there is an international component), take into account legal, practical, and operational details, and ensure effective criminal proceedings.⁴³

In addition to criminal confiscation, other actions, or even administrative procedures, require strategical evaluation.

Investigation of the legalization of criminal proceeds, as well as investigation of any crime committed by criminal organizations, involves appropriate investigative (search) actions or tactical operations as means to influence emerging situations. These include criminal intelligence and surveillance operations, such as searches, temporary access to things and documents, interference with private communication, interrogation of suspects, questioning witnesses, audits, forensic examinations. Moreover, the peculiar tactics in these investigative (search) actions is that, for the most part, the process of legalization investigation occurs alongside an investigation of a predicate crime. This requires an investigator to apply a comprehensive approach to both investigation organization in general and tactics of individual investigative (search) actions in particular.

It is also advisable to use covert criminal proceedings investigation methods and to favour informal channels for searching and obtaining information (internal and publicly accessible databases, cooperating with STS, SFMS, ARMA, Interpol, etc.).

For instance, sometimes, interrogation at the early stages of investigation may hinder criminal proceedings, induce persons to conceal or destroy evidence, move proceeds of crime (including to other jurisdictions), influence witnesses, increase conspiracy measures, otherwise obstruct the investigation. Therefore, when planning investigative actions, it is necessary to predict whether they are appropriate at a particular time and will not harm the investigation at other stages.

Covert investigative actions

Under this category of criminal proceedings, there is a need to conduct certain *covert investigative (search) actions* that involve, depending on the circumstances, interference in private communication, namely:

43. Financial investigations in the field of combating the legalization of proceeds of crime in Ukraine [Text]: guidelines / [S. S. Cherniavskiy et al.]. – Kyiv: National Academy of Internal Affairs, 2017. – 164 p.

- audio, video monitoring of an individual (Art. 260 CPC);
- detention, review and seizure of correspondence (Art. 261, 262 CPC);
- intercepting information from transport telecommunication networks (Art. 263 CPC);
- intercepting information from electronic information systems (Art. 264 of CPC);
- inspecting publicly inaccessible places, individual's home or any other possessions (Art. 267 CPC);
- surveillance of an individual, item or place (Art. 269 CPC);
- control over the commission of a crime (Art. 271 CPC);
- special assignment to expose criminal activities of the organized group or criminal organization (Art. 272 CPC).

The European Court of Human Rights, in cases of money laundering, as well as of other crimes, emphasizes the importance of proportionality of using CI(S)As to the circumstances of investigation and possibility of using other investigative actions that less restrict human rights. Thus, ECtHR in its judgement of January 15, 2015, in case *Dragojević v. Croatia* (68955/11), emphasized the importance of the detailed statement of reasons in CI(S)A orders (and therefore in notions for such orders), i.e. specific case facts and circumstances indicating reasonable suspicion of committing crime and that the investigation cannot be conducted in another, less "intrusive" manner. The European Court has directly linked these arguments to the admissibility of evidence.

Under par. 5 pt.1 Art. 267 CPC, for *audio and video monitoring of an individual*, it is possible to inspect publicly inaccessible places, accommodation, or other property of a person involved in the legalization (laundering) of criminal proceeds by secretly entering them, and then install technical means of audio and video monitoring of the individual.

Inspection of publicly inaccessible places, accommodation, or other property of a person is carried out based on the request of the investigator, agreed with the prosecutor, or the request of prosecutor to investigating judge to permit the inspection of publicly inaccessible places, accommodation, or other property of a person for technical audio and video surveillance means instalment and the investigator's request agreed with the prosecutor, or the prosecutor's request to investigating judge to permit audio or video surveillance of a person in specified places.

These covert investigative (search) actions can be carried out in:

- publicly inaccessible places that a person cannot access or where the person cannot legally stay without consent of the owner, user or their authorized persons (pt. 2 Art. 267 CPC);
- housing of a person, i.e. premises that are permanently or temporarily owned by a person, regardless of their purpose and legal status, and adapted for permanent or temporary residence of individuals, as well as all components of such premises (pt. 2 Art. 233 CPC);
- other property of a person, i.e. vehicle, land, garage, other buildings or premises of the household, office, business, industrial and other purpose owned by a person (pt. 2 Art. 233 CPC).

According to pt. 3 Art. 267 CPC, it is impossible to inspect premises specially designed for the detention of persons whose rights are restricted under the law (compulsory confinement premises).

The investigative or operational unit may carry out inspection of publicly inaccessible places, accommodation, or other property of a person upon its written order in accordance with Art. 41, 246 CPC. Based on its result, under Art. 104, 106, 252 CPC, a protocol is executed, which, along with annexes thereto, shall be forwarded to a prosecutor for further storage of items and documents obtained during the covert investigative (search) actions that the prosecutor intends to use in criminal proceedings no later than 24 hours from the moment when this action is terminated (Art. 252 CPC).

Correspondence detention actually consists in detention by communication institution of the correspondence of a person involved in the legalization (laundering) of criminal proceeds (letters of all kinds, parcels, mail containers, transfers, telegrams, other physical information media) without such person's knowledge.

The ground for correspondence detention is available reliable information indicating that a specific person's mail and telegraph correspondence to others or correspondence of other individuals to such person may contain information on the circumstances relevant to the pre-trial investigation or items and documents critical for the pre-trial investigation.

In the course of this covert investigative (search) action, an investigator may oblige a head of a respective institution to control and detain the person's correspondence, and, in the case of detention of correspondence containing information relevant for pre-trial investigation, to review and seize it pursuant to Art. 262 CPC and, if necessary, to copy it and to obtain samples from the relevant parcels.

The results of particular correspondence detention shall be recorded in the appropriate protocol, with a mandatory description of the correspondence and its storage method.

When a period specified in the order issued by investigating judge expires, correspondence detention is deemed cancelled, and the detained correspondence, which was seized, shall be forwarded to the addressee.

Detained correspondence (under Art. 261 CPC) shall be inspected by an investigator at a communication institution, which is charged with the functions of surveillance and seizure of such correspondence. The inspection shall be carried out by a representative of this institution and an expert (if needed).

Based on the inspection results, seizure or detention of correspondence, an investigator shall issue a protocol in accordance with the requirements of Art. 104-107, 252, 262 CPC. The protocol shall include the following information:

- inspected correspondence;
- seized, delivered to the addressee or temporarily detained correspondence;
- copies or samples of correspondence;
- results of other actions provided for in pt. 2 Art. 262 CPC.

Intercepting information from transport telecommunication networks is a form of interference with private communication, which is carried out by authorized operational and technical units of the National Police and security authorities based on the decision of investigating judge and consists in observation, selection and recording of the information contents transmitted by a person and is relevant for pre-trial investigation, as well as receiving, converting, and recording various types of signals transmitted by communication channels using appropriate technical means.

The concept and features of the transport telecommunication network are defined in the Law of Ukraine “On Telecommunications”. According to this Law, the transport telecommunication network is a network ensuring the transmission of symbols, signals, written texts, images, sounds, or messages of any kind between access telecommunication networks connected thereto; the access telecommunication network is a part of the telecommunication network between the telecommunication network endpoint and the nearest switching node (centre) inclusive; the telecommunication network endpoint is a point where the telecommunication network connects with terminal equipment; the terminal equipment is an equipment designed for connection with the telecommunication network endpoint to ensure access to telecommunication services (phone, cell phone, modem, etc.).

The transport telecommunication network is a major part of any telecommunications operator’s infrastructure, whether it is a traditional telephony operator, a cell carrier, a wireless or wired Internet provider.

The decision of investigating judge to permit intervention in private communication shall indicate signs that allow unique identification of the surveillance subject, transport telecommunication network, terminal equipment used to interfere with the private communication.

Having received the decision of an investigating judge to permit intercepting information from transport telecommunication networks, an investigator, in accordance with par. 2 pt. 2 Art. 40, Art. 41, pt. 6 Art. 246, pt. 4 Art. 263 CPC shall instruct operational and technical unit in writing to intercept information from such transport telecommunication networks.

Following the interception of information from transport telecommunications networks, the authorized operational and technical unit, which carried out the said covert investigative (search) action, shall issue a protocol in accordance with Art. 104-107, 252 and 265 CPC and submit it to the prosecutor within 24 hours after such covert investigative (search) action.

Managers and employees of telecommunication operators are obliged to facilitate actions aimed at intercepting information from transport telecommunication networks, take necessary measures to avoid disclosing the fact of such actions and information obtained, keep it unchanged (according to pt. 4 Art. 39 of the Law of Ukraine “On Telecommunications” and pt. 4 Art. 263 CPC).

Intercepting information from electronic information systems consists in finding, detecting and recording information contained in the electronic information system or parts thereof, access to the electronic information system or part thereof, as well as obtaining

such information without knowledge of its owner, possessor or keeper involved in the legalization (laundering) of criminal proceeds.

The specified covert investigative (search) action shall be carried out based on the investigating judge's decision, if there is information on the availability of data in the electronic information system or part thereof, and such data are relevant for a specific pre-trial investigation. However, access to it is restricted by its owner, possessor, or keeper or is related to overcoming the logical protection system. Moreover, preliminary inspections of publicly inaccessible places, accommodation, or any other property of a person is possible in compliance with the requirements of Art. 267 CPC.

If access to data is not restricted by its owner, possessor, or keeper or is not related to overcoming the logical protection system, there is no need to obtain the investigating judge's permission to intercept data from information systems or part thereof. In such circumstances, only a protocol for information intercepted from electronic information systems, with appropriate annexes thereto, shall be executed, and the action should be conducted in compliance with the requirements of Art. 104-107, 252 and 265 CPC.

The investigator's request for permission to intercept information from electronic information systems approved by the prosecutor shall include identifying features of the electronic information system along with data listed in pt. 2 Art. 248 CPC.

Based on the decision of investigating judge to permit interception of information from electronic information systems, under par. 2 pt. 2 Art. 40, Art. 41, pt. 6 Art. 246, pt. 4 Art. 263 CPC, an investigator shall give written instructions to the operational and technical unit to intercept information from electronic information systems.

Based on these actions results, the authorized officer from the operative and technical unit, who carried out the said covert investigative (search) action, shall issue a protocol in accordance with the requirements of Art. 104-107, 252, 265 CPC and submit it to the prosecutor within 24 hours of such covert investigative (search) action.

Surveillance as a covert investigative (search) action consists in covert (disguised) visual surveillance of actions taken by a person (or group of persons) with the purpose of finding, recording and verifying during the pre-trial investigation of a grave or particularly grave crime information on the person (persons) and his/her (their) behaviour or behaviour of people that such person(s) come in contact with, or a particular item or place in publicly accessible places, with or without video recording, photographing, or special surveillance equipment.

According to the analysis of intelligence and investigative practice, to obtain necessary results from the said action, specific professional skills accumulated in the units with investigative (search) powers during decades are required, which will provide them with the required information that is both evidentiary and indicative.

The specific nature (increased level of confidentiality) of existence and use of these units is also justified by the conditions of counteraction to criminal activity.

The proposed features of obtaining a permit and surveillance results (pt. 2 and 3 of Art. 269 CPC) relate to operational units with intelligence and investigative powers.

Voluntary informants

Informants, as a source of intelligence, remain one of the key tools for law enforcement authorities to obtain information, especially in combating activities of a money laundering network, which are very hard to get in. Voluntary information covers all cases where a particular person contacts relevant authorities and provides information that may assist in the investigation. These mainly include whistle-blowers, victims, or dissatisfied accomplices. Information provided in this way can be critical to a successful investigation, as it can provide insider information about criminal networks' activities and open up new avenues for investigation, which may result in additional evidence.

Although the information provided by such persons may be invaluable, it is important to treat it with some caution, especially when evaluating the motives of such an informant, as misleading or false information may compromise and disrupt the entire investigation.

By applying these tips to the case of a corrupt official, such intelligence can take the form of information obtained from a whistle-blower who works in the same government agency and has access to data. However, it is important to remember that when working with such sources of information, investigators shall verify the reliability of any information provided to exclude any likelihood that such information may disrupt the investigation.⁴⁴

Control over the commission of a crime

In the course of financial investigations, the following types of other covert investigative actions, which is the control over the commission of a crime, could be efficient: controlled delivery, controlled purchase, operational purchase, special investigative experiment, simulation of the crime scene. Only the prosecutor is authorized to take a decision permitting the conduct of control over the commission of a crime. One should bear in mind that in the course of this covert investigative action, there may be a need to conduct other CI(S)A, e.g. audio, video monitoring of an individual, intercepting information from transport telecommunication networks, etc. In such cases and other ones requiring temporary restriction of constitutional rights of a person, obtaining approval (i.e. decision) of the investigative judge is mandatory.

An important condition for conducting covert investigative (search) actions allowing to obtain admissible evidence in accordance with CPC and court practice is avoiding situations with "inciting to commit a crime". The European Court of Human Rights has repeatedly acknowledged inciting to commit a crime (incitement) being a breach of the right to a fair trial (p.1 Art. 6 ECHR) (*Teixeira De Castro v. Portugal* (44/1997/828/1034), judgement of June 9, 1998; *Ramanauskas v. Lithuania* (74420/01), judgement of February 5, 2008, and others). In case *Ramanauskas v. Lithuania*, ECtHR defined incitement as "Police incitement to commit a crime shall be deemed in cases where it involves its employees or

44. *Tracing Illegal Assets - A Practitioner's Guide*. The International Centre for Asset Recovery, Basel Institute on Governance, The International Centre for Asset Recovery, 2015 (original, English language) / 2016 (translation into Ukrainian language).

intelligence services officers or persons acting by their instructions, who are not limited to merely passive investigation of criminal activity, but exert such an influence on the subject of investigation as to incite it to commit a crime, which would not otherwise have been committed, so that the fact of crime can be ascertained, i.e. obtain evidence and initiate criminal proceedings”.

Many offences that leave financial traces can be classified as serious in accordance with CC of Ukraine, which allows conducting CI(S)As in such proceedings. A serious offence includes the one provided for Art. 209 of the Criminal Code, which is legalization (laundering) of criminal proceeds. Given a rather long list of circumstances that may constitute such crime, including acquisition, possession, use, disposal of property in respect of which the factual circumstances indicate its criminal origin, including financial transactions, transactions with such property, or its movement, changing the form (transformation), or committing actions aimed at its concealment, its origin disguise, etc., a possible range of situations when a judge could find inciting (incitement) in actions of operatives or investigators is quite wide. Ukrainian scholars also emphasize that a prosecuting attorney should avoid inciting acts against persons subject to CI(S)As, as they breach p. 1 Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This should be taken into account, especially when controlling over the commission of a crime. As M.A. Pohoretskyi summarizes: “in the course of law enforcement agencies activities, it is necessary to distinguish a lawful control over the commission of a crime as an effective covert investigation tool from an incitement being illegal action”⁴⁵.

The procedure, tactics and methods of some covert investigative (search) actions, interactions between authorized operational units executing instructions from the investigator or prosecutor for their conduct, with individuals (units) involved in such operations, are regulated by a separate regulatory legal act of the authorities that include authorized operational units.

Special assignment to expose criminal activities of the organized group or criminal organization

Important facts about the circumstances of criminal activity, including in the financial sphere, can be obtained by infiltrating an undercover authorized person of the operational or investigative unit in an organized group or criminal organization to obtain items and documents, as well as other important information relevant to the investigation of crimes. Such assignment shall be performed based on the investigator’s order approved by a head of pre-trial investigation authority or the prosecutor’s order, without a need to obtain permission of investigative judge.

Given the principle of the immediacy of examination of evidence by the court, an issue of its obtaining procedure compliance with the requirements of the Law and, as a consequence,

45. M.A. Pohoretskyi. Using incitement in covert investigations: issue of legality / M. A. Pohoretskyi // Bulletin of criminal proceedings. - 2016. – No 1. - P. 33-42.

admissibility should be taken into account in advance by prosecutor, operatives, investigators and detectives. According to M.Y. Shumulo, “evidence” at the stage of the pre-trial proceedings will be relevant only for investigators and prosecutors. For the defence attorney and court, it will be only materials that are likely to be admitted as “evidence” by the court at the trial stage.⁴⁶

Investigative actions within financial investigation should be aimed at obtaining as soon as possible financial information containing banking secrecy for transactions related to the subject of the financial investigation.

4.5. Analysis of obtained results, their presentation, and relevant decision-making

The following can be ascertained based on the financial investigation and analysis of the information obtained:

- additional evidence, witnesses of crime;
- new circumstances of committed crime or identification of new crimes (if evidence of another crime is obtained in the course of financial investigation, this constitutes grounds for submitting relevant information to URPTI);
- all participants, suspects, OCGs, beneficiaries of criminal schemes;
- mechanisms and tools of crime;
- refutation of the circumstances indicating the commission of a crime.

The outcome of the financial investigation is the identification of constituent elements of crime, its participants, commitment chronology and the possibility of documenting it to collect evidence and determine their sufficiency, crime classification, damage assessment.

The financial investigation files provide information on financial transactions and deals that have been monitored and investigated and where the analysis lead to reasonable grounds to believe that a crime has been committed (including the legalization of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction, drug trafficking, organized crime, fraud and/or other offences), or publicly dangerous unlawful act that precedes or is associated with a financial crime, and are used as a source of evidence during the pre-trial investigation of crimes, and constitute the basis for entering information on committed criminal offence to the Unified Register of Pre-Trial Investigations (URPTI) and is not a subject to disclosure in accordance with CPC requirements.

46. M.Y. Shumylo. Concept of “evidence” in the Criminal Procedure Code of Ukraine: an attempt to critically reconsider the ideology of the normative model / M. Y. Shumylo // Bulletin of the Supreme Court of Ukraine. - 2013. – No 2. - P. 40-48.

Based on financial investigation results, investigators should make appropriate procedural decisions regarding additional measures used to conduct the financial investigation or secure obtained results with the help of other procedural methods.

Upon entry of data into URPTI, an investigator should conduct further investigative actions aimed at ascertainment of the following elements of circumstance in proof:

- information about time, place; information on the method of committing a crime, which will include a method of preparation, commission, direct commission and concealment of a crime (an essence of the method, in this case, is illegal laundering of criminal proceeds;
- information about tools (means); information about a subject matter of criminal offence (its quantitative and qualitative characteristics), what will be the property (funds), which criminally legalized being converted in cash or transferred on current accounts of any enterprises (through non-commodity transactions) or business activities to further conceal the traces of the crime. Such actions may be carried out by officials due to contractual relations with any commercial structures or by issuing illegal orders to subordinates to conduct illegal financial transactions with public funds.

In order to substantiate the circumstances of a criminal offence commitment, ascertain information on the execution of financial transactions with illegally obtained funds with the purpose of their withdrawal and converting in cash, an investigator should request the investigative judge to obtain provisional access to the following documents in possession of relevant information holder:

- any agreements concluded by an official of relevant enterprise, where an official who is a key figure of criminal proceedings works;
- copies of passports of founders and officials, minutes of the meeting of founders, order or another document on appointment to the position indicated in the statutory document of a person with the right to sign documents and authority to act on behalf of the enterprise and conduct financial transactions;
- payment documents that serve as a basis for funds crediting and debiting from accounts, checks, receipts, expenditure orders, contracts, etc., including documents for receipt of funds (including cash) for a certain period of time;
- information (register) on the movement of funds in bank accounts, namely: bank printout on paper and magnetic media (in Microsoft Excel format) on the movement of funds in bank accounts with a breakdown of incoming and outgoing payments, indicating the date, amount, purpose of payment, bank accounts, codes and names of counterparties, other documents that fully reflect conducting transactions.

In this category of crimes, searches and provisional access to items and documents belong to primary investigative actions (procedural decisions made by the investigator or prosecutor), since timely searches and provisional access to items and documents, as well as quality document handling, constitute the most important peculiarity of the investigation of the legalization (laundering) of criminal proceeds.⁴⁷

47. Methodical recommendations "Actions of police officers in case of detection of economic crimes",

The results of the financial investigation are used by investigators as a basis to form evidentiary record and sources of determining assets to cover damages caused to the state and other persons.

The analysis of information obtained through overt and covert investigative actions, cooperation with SFMS and ARMA, international cooperation through formal and informal communication channels will enable to identify assets (funds in personal accounts, securities, corporate rights, ownership rights to movable and immovable property, etc.). If a financial investigation indicates that such asset is linked to a crime, criminal proceedings shall be registered. The asset shall be **seized** in accordance with Art. 170 CPC in order to secure further **forfeiture** or **special confiscation**.

4.6. Using capacities of other government agencies in financial investigations

Smooth cooperation between public and law enforcement agencies authorized to conduct financial investigations is important.

National cooperation (between law enforcement and other executive authorities) in the fight against financial crimes, as well as ensuring a comprehensive, complete and fair financial investigation, is one of the key points.

It should be noted that during pre-trial investigation, it is advisable to contact SFMS, ARMA, STS or another authority requesting assistance in tracking movement of funds or property, conducting inspections or audits in order to assess damages to develop appropriate files, which can become the source data for further overt or covert investigative actions, requesting inspection and audit reports. It is also appropriate to use SFMS capacities to suspend expenditure transactions on accounts, which will facilitate the seizure of illegally obtained income and ensuring special confiscation.

4.6.1. State financial monitoring by SFMS (Ukraine's FIU) and cooperation with law enforcement, intelligence and other government agencies

To understand the potential capacities of SFMS that will be useful to law enforcement agencies, the following should be considered.

SFMS's authorities are regulated by the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of the Proceeds of Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" of December 6, 2019, No 361-IX.

SFMS has the following authorities in terms of financial transactions analysis:

- obtaining information on suspicious and threshold financial transactions, identified discrepancies in data on ultimate beneficial owners;
- broad authority to obtain additional information from financial institutions and non-financial intermediaries on request, as well as from foreign FIUs;
- possibility of suspending financial transactions;
- possibility of obtaining information (references, copies of documents), including restricted one, on request from public authorities, law enforcement agencies, courts, the National Bank of Ukraine, local authorities, business entities, enterprises, institutions and organizations;
- access, including automated, to information and reference systems, registers and data banks of public authorities (except for the National Bank of Ukraine) and other public information resources.

SFMS⁴⁸ collects information on suspicious financial transactions from public and private sectors and from other sources.

Primary financial monitoring entities are business entities and representatives of non-financial professions reporting⁴⁹ to SFMS that shall inform SFMS about any suspicious transactions.

48. FIU – international name is Financial Intelligence Unit (FIU), SFMS is an authority authorized by Ukraine to perform functions of a financial intelligence unit and is a national hub for obtaining and analyzing reports of suspicious transactions, other information related to money laundering, related predicate offences, terrorist financing and financing of proliferation of weapons of mass destruction.

49. Primary financial monitoring entities are as follows: 1) banks, insurers (reinsurers), insurance (reinsurance) brokers, credit unions, pawnshops and other financial institutions; 2) payment organizations, participants or members of payment systems; 3) commodity and other exchanges that conduct financial transactions with goods; 4) professional participants of stock market (securities market), except for persons engaged in organization of stock market trading; 5) postal operators, other institutions that provide services for funds transfer (postal transfer) and foreign exchange transactions; 6) branches of representative offices of foreign business entities that provide financial services in Ukraine; 7) specially defined primary financial monitoring entities (except for persons providing services within labor relations framework): a) auditing entities; b) accountants, business entities that provide accounting services; c) business entities that provide tax consulting; d) law firms, lawyers associations and lawyers who practice law individually; e) notaries; f) business entities that provide legal services; g) persons who provide services for establishment, operation or management of legal entities; h) business entities that provide intermediary services during real estate sale and purchase transactions, as well as business entities that provide consulting services related to real estate sale and purchase; i) business entities trading in cash for precious metals and precious stones and articles thereof; j) business entities providing services in the field of lotteries and/or gambling; 8) provider of services related to circulation of virtual assets; 9) other legal entities which by their legal status are not financial institutions, but provide separate financial services.

SFMS, in turn, performs additional collection and analysis of information and comparison of the obtained data against available information resources and using established algorithms and identified risks, as well as given information of law enforcement agencies draws appropriate conclusions on suspicions⁵⁰ about financial transactions and parties thereof.

It is fundamental that the subject of SFMS's analysis is financial aspects; that is why SFMS focuses on the suspicious nature of financial transactions and not possible crime perpetrators.

SFMS provides information on the results of financial investigations of suspicious transactions/activity to law enforcement (intelligence) agencies only in case of:

- suspicion (if there are sufficient grounds to believe that a financial transaction or a set of interrelated financial transactions may be related to the legalization (laundering) of criminal proceeds, terrorist financial or financing of proliferation of weapons of mass destruction;
- there are sufficient grounds to believe that a financial transaction or a client is related to the commission of a criminal offence that is not related to the legalization (laundering) of criminal proceeds or terrorist financing).

Under the above conditions, the analysis's results are executed as case referrals (additional case referrals) which are then sent to law enforcement agencies.

Law enforcement agency is entitled to apply to SFMS for obtaining case referrals (additional case referrals) in the framework of financial investigation or based on information received from foreign FIU. When sending a request for state financial monitoring to SFMS, an investigator should pay attention and reflect the following minimum information: description of the crime, financial data, details of financial institutions, specific financial transactions and data on parties thereof, and transactions dates. Requirements for the request are provided in Annex No2.

Advantages of cooperation with SFMS are as follows:

- prompt receipt of information and its accuracy;
- disclosure of financial picture of crime;
- identification of new data, potential witnesses, associates, suspects, accomplices, beneficiaries of crime;
- identification of account details and financial institutions involved in crime, which gives opportunity to properly address the court for disclosing bank secrecy;
- prompt receipt of information from abroad to formulate more accurate requests for international legal assistance, etc.

It is important to read the regulatory framework below before starting cooperation with SFMS!

50. The concept of "suspicion" is used in accordance with the Law on prevention and counteraction to the legalization (laundering) of proceeds, namely par. 46, pt.1, Art. 1 of the Law

Legal and regulatory framework for interaction between SFMS and law enforcement (intelligence) agencies in the field of state financial monitoring.

- The main regulatory legal act which regulates SFMS engagement in financial investigations is the Law of Ukraine **“On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction”**, which defines the basic concepts in this field.
- Interaction of SFMS with **SFS, NPU** and **SSU** is regulated by joint Order of the Ministry of Finance of Ukraine, Ministry of Internal Affairs of Ukraine and Security Service of Ukraine of **11.03.2019 No 103/162/384** “On approval of procedure of provision and consideration of case referrals” registered with the Ministry of Justice of Ukraine of 08.04.2019 No 368/33339; with **NABU** – by joint Order of the Ministry of Finance of Ukraine and National Anti-Corruption Bureau of Ukraine of **07.12.2016 No 1062/353** “On approval of procedure of interaction of State Financial Monitoring Service of Ukraine and National Anti-Corruption Bureau” registered with the Ministry of Justice of Ukraine of 28.12.2016 **No 1729/29859**; with **intelligence agencies** – by Order of the Ministry of Finance of Ukraine, Foreign Intelligence Service of Ukraine, Ministry of Defence of Ukraine, Ministry of Internal Affairs of Ukraine of December 1, 2015 **No 1112/426/678/1533** registered with the Ministry of Justice of Ukraine of 17.12.2015 No 1583/28028 (hereinafter – joint orders).
- Procedure for providing by public authorities (including Ukrainian prosecution authorities) and local authorities, state registrars of information on financial transactions and parties thereof to SFMS is regulated by the Resolution of the Cabinet of Ministers of Ukraine of 16.08.2015 No 708.
- In addition, SFMS interacts with law enforcement (intelligence) agencies on financial investigations in compliance with the following regulatory legal acts: Criminal Procedure Code of Ukraine, Criminal Code of Ukraine, Laws of Ukraine “On Operational-Investigative Activity”, “On Counter-Intelligence Activity”, international legislation, cooperation agreements, etc.

There are the following exclusive *forms* of SFMS cooperation with law enforcement (intelligence) agencies:

- provision of case referrals (additional case referrals) based on financial monitoring results by SFMS.

SFMS’ case referrals is information on financial transactions that have been subject to financial monitoring and following their analysis raised suspicious.

As a rule, case referrals are considered by law enforcement agency as a report of a criminal offence and may also constitute a basis for Ukrainian law enforcement and intelligence agencies to conduct operational-investigative and counter-intelligence activities. A decision on the existence of sufficient grounds to forward case referrals

to law enforcement agencies shall be made by SFMS's Expert Committee, which determines the existence of sufficient grounds to forward such case referrals to law enforcement (intelligence) agencies, as well as their authority (unit) where it is advisable to forward such CR (ACR).

CR (ACR) shall be forwarded to law enforcement agencies not later than on the fifth working day after the meeting of SFMS's Expert Committee on consideration of case referrals and additional case referrals prepared to be submitted to law enforcement and intelligence agencies, and if there are sufficient grounds to believe that a financial transaction may be related to terrorist financing – to SSU no later than on the next working day after the meeting of the Expert Committee.

Additional case referrals (ACR) is an integral part of the case referral (CR) and shall be provided to the authority (unit) that is charged with CR consideration.

Both case referrals and additional case referrals shall be submitted to a law enforcement agency as a hardcopy and in electronic form. As a rule, electronic media contains appendices that served as a basis for referrals preparation to consider and study in details the circumstances of a case by a law enforcement agency.

Only one copy of the case referral shall be forwarded to the law enforcement agency (its territorial unit). It is forbidden to submit several copies of the same case referral or its copy to units of one law enforcement agency, its territorial units, or to several law enforcement agencies, their territorial units.

In the case of criminal proceedings of a predicate crime, and/or legalization (laundering) of income, and/or terrorist financing through financial transactions, which are directly or indirectly related to transactions reflected in the case referral provided to another law enforcement agency, its territorial unit, investigative units of law enforcement agencies may obtain a copy of such case referral subject to their consent and upon the decision of SFMS's Expert Committee.

Copies of case referrals may be provided in accordance with the decision of the Expert Committee without the consent of other law enforcement agency, its territorial unit in case of criminal proceedings closure if there is a respective court decision or operational-investigative or counter-intelligence case is being closed on exonerative grounds. Sharing copies of case referral containing information provided by foreign financial intelligence unit that has authorized forwarding such information to a specific law enforcement agency with other law enforcement agency is not allowed without the consent of the foreign financial intelligence unit.

SFMS shall specify to a law enforcement agency the conditions identified by a foreign financial intelligence unit for the use of information from the case referral (additional case referral) containing information provided by the foreign financial intelligence unit.

Law enforcement (intelligence) agencies may obtain from SFMS information that is directly related to financial investigations, which constitutes a financial monitoring secret only in the form of case referrals (additional case referrals).

Case referrals are a source of circumstances that may indicate the commission of a criminal offence and provide the investigator or prosecutor with grounds to initiate a pre-trial investigation. Case referrals may also serve as a basis for Ukrainian law enforcement and intelligence agencies to conduct operational-investigative and counter-intelligence activities.

- informing SFMS on suspicious financial transactions by law enforcement (intelligence) agencies.

The law provides for an obligation of public authorities that carry out activities in the field of preventing and counteracting the legalization (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction, to provide SFMS with information on suspicious financial transactions and parties thereof identified while performing their functions, and an obligation of public authorities (except for the National Bank), local authorities and public registrars to provide SFMS with information (copies of documents) necessary to fulfil assigned tasks (Art. 16 and 26 of the Law).

In particular, information of law enforcement agencies shall contain data on current criminal proceeding (operational-investigative and counter-intelligence actions), all available information about suspicious financial transactions (time, entities, amounts etc.), nature of suspicions (which criminal offence is suspected). In addition, it is advisable (if there are no caveats) that such information should indicate the granted permission for SFMS to use this information when seeking assistance from foreign financial intelligence units.

The indicated information on the financial transaction shall contain the following data: date of financial transaction (refusals to execute it, its termination); the amount of financial transaction; scope of the financial transaction; grounds for suspicion; other information about the financial transaction (if any).

Information on financial transaction's parties shall include available identification data. If relevant documents on financial transaction or parties thereof are available, a public authority shall also submit copies of such documents, certified as required by law (Resolution of the Cabinet of Ministers of Ukraine of **16.09.2015 No 708**).

Peculiarities of the procedure for the provision of such information to SFS, SSU, NPU and NABU are detailed in Annex 1 to the aforementioned joint orders.

The said annex also indicates what is necessary to specify additionally for receiving information from the foreign financial intelligence unit.

If the information (request) is not compliant with the requirements, such request shall be returned without consideration.

- informing SFMS on status of case referrals (additional case referrals) consideration by law enforcement (intelligence) agencies;

Law enforcement (intelligence) agencies considering CR (ACR) are obliged to timely inform SFMS about the main results of such consideration, i.e. referrals registration, their status and investigation results.

In addition to the above, SFMS interactions with prosecution authorities include the exchange of information on the quality of case referrals' verification conducted by law enforcement agencies. SFMS may appeal against a decision of a law enforcement agency to appropriate prosecution authority or court.

SFMS also cooperates with prosecution authorities in criminal cases, court proceedings where CR (ACR) are used, and with the executive service of the Ministry of Justice of Ukraine in penalty enforcement matters.

- providing law enforcement/intelligence agencies with SFMS-developed typologies of suspicious financial transactions, in particular regarding new and complex money laundering techniques;
- holding working meetings, exchange of experience, statistical, reference, analytical files, methodical recommendations, etc.

Information protection requirements for financial investigations

Information on financial investigations shall be exchanged between SFMS and law enforcement (intelligence) agencies in compliance with the restrictions determined by national and international law, in particular:

Parts 11, 12 and 13 of Article 16 of the Law on prevention and counteraction to the legalization (laundering) of proceeds;

Model guidelines on the procedure of accounting, storage, use and destruction of documents and other psychical storage media containing official information approved by the Resolution of the Cabinet of Ministers of Ukraine of October 19, 2016 No 736;

Article 222 CPC (inadmissibility of disclosure of pre-trial investigation data);

Article 62 of the Law of Ukraine "On Banks and Banking" (bank secrecy disclosure order);

Information concerning state secrets approved by SSU Order of 12.08.2005 No 440, registered with the Ministry of Justice of Ukraine of 17.08.2005 No 902/11182;

Article 46 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (ratified by the Law of Ukraine of November 17, 2010, No 2698-VI);

information exchange principles between the Egmont Group of Financial Intelligence Units.

Thus, SFMS pursuant to the Law on prevention and counteraction to the legalization

(laundering) of proceeds shall ensure protection and secrecy of financial monitoring. SFMS is prohibited from disclosing and/or passing on any information that is financial monitoring secret, as well as informing about the fact of obtaining information on financial transaction and parties thereof, the fact of requesting financial transactions data, additional information, information related to the analysis of financial transactions subject to financial monitoring, persons engaged hereto, certificates and copies of documents, other information which may be related to suspicion of the legalization (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction, or about the decision or request taken (given) in accordance with the requirement of Article 23 or part 3 of Article 31 of this Law, and/or about having a response to such request, decision or order, except for the cases provided by this Law. If a specially authorized authority receives a request for such information, it shall return it to the relevant interested party without consideration unless the request is filed as a part of the verification of previously submitted case referrals and/or additional case referrals. If a specially authorized authority has additional information related to the previously submitted case referrals to law enforcement agencies, it may formulate and submit additional case referrals to the relevant law enforcement agency.

Any disclosure of financial monitoring secrets by employees of the specially authorized authority, as well as of fact of obtaining information on financial transaction and parties thereof, the fact of requesting, taking decision or giving order and/or having a response to such request, decision or order shall entail responsibility in accordance with the law or based on the court decision.

According to international practice, case referrals shall not be deemed as a source of evidence in criminal proceedings. Information contained therein has intelligence status and can only serve as a basis to initiate a pre-trial investigation, which involves investigative actions provided by law and obtaining judicial evidence in accordance with the procedure prescribed by CPC.

If the information provided in CR (ACR) is verified within the pre-trial investigation of criminal proceedings, pursuant to Art. 222 CPC, it may be disclosed only under written permission of the investigator or prosecutor and to the extent they deem possible.

According to the Law on prevention and counteraction to the legalization (laundering) of proceeds, an obligation to keep financial monitoring secrets confidential shall also extend to persons who have become aware of such information due to their professional or official activities. Persons breaching financial monitoring secrecy shall be liable in accordance with the procedure prescribed by law.

In particular, Article 209¹ CC stipulates criminal liability for any disclosure of financial monitoring secret or fact of information exchange on financial transaction and parties thereof between primary financial monitoring entities, state financial monitoring entities, other public authorities, as well as the fact of submitting (receiving) request, decision or order of the central executive authority implementing policy in the field of prevention and counteraction to the legalization (laundering) of criminal proceeds, terrorist financing and financing of proliferation of weapons of mass destruction, or providing (receiving) response

to such request, decision or order by a person who becomes aware of such information due to his/her professional or official activities.

In addition, Articles 231 and 232 CC stipulates criminal liability for unlawful use of information constituting commercial or banking secret, as well as for intentional disclosure of commercial or banking secret.

Law enforcement agency is prohibited from disclosing, passing on and using for any purpose (judicial, administrative, investigative actions, requests for international legal assistance, etc.) information **provided by foreign financial intelligence units**, which is contained in case referrals (additional case referrals), as well as the case referral (additional case referral) containing it without the consent of the foreign financial intelligence unit that provided such information.

If case referral (additional case referral) contains information provided by a foreign financial intelligence unit that authorized to forward this information to a specific law enforcement agency, it shall be forwarded to the specified law enforcement agency. Such information and case referral (additional case referral) containing it **shall not be forwarded to another law enforcement, public, the judicial authority or any third party without the consent of the financial intelligence unit that provided it.**

This also shall apply to the cases where a prosecutor decides to change the jurisdiction of criminal proceedings to another law enforcement agency. In this case, respective prior permission of a foreign FIU is required to reassign criminal proceedings, including case referrals containing information provided by the foreign FIU for further investigation to other law enforcement agency.

Disclosure of information obtained from a foreign financial intelligence unit (FIU) may entail international sanctions, including Ukraine exclusion from the Egmont Group.

Suspension of financial transactions by SFMS as preventive measure to make impossible disposal of criminal assets.

One of the preventive measures to make impossible disposal of criminal assets is a suspension of financial transactions.

A decision to suspend financial transactions is the exclusive competence of primary financial monitoring entities and SFMS.

The Law on prevention and counteraction to the legalization (laundering) of proceeds defines a suspicion as an assumption based on results of available information analysis that may indicate that a financial transaction or parties thereof, their activities and sources of assets origin are related to the legalization (laundering) of criminal proceeds, or terrorist financing or associated with publicly dangerous unlawful act defined by the Criminal Code of Ukraine as a crime or which entails international sanctions (paragraph 46 of part of 1 Article 1 of this Law).

An assumption that there is a probability that a party to a financial transaction, its

financial transactions, its activity or sources of assets origin are related to the legalization (laundering) of criminal proceeds or terrorist financing or associated with other offence (in case of financial transactions suspension), shall be a sufficient ground for SFMS to decide to suspend the financial transactions.

The following entities shall have the authority to suspend financial transactions in accordance with the Law on prevention and counteraction to the legalization (laundering) of proceeds:

- primary financial monitoring entities, which carry out or ensure financial transactions have the right to suspend such transactions if they are suspicious and are obliged to suspend such transactions in case of suspicion that they possess essential elements of criminal offences stipulated by the Criminal Code of Ukraine. Such suspension of financial transactions shall be conducted without prior notice to the client for two working days from the date of suspension inclusive.

- SFMS may decide to further suspend financial transactions.

- SFMS in case of suspicion, may decide to suspend expenditure financial transactions for up to seven working days.

- upon relevant request of a foreign authorized authority, the special authorized authority has the right to order the primary financial monitoring entity to suspend or resume or ensure financial monitoring of the financial transaction(-s) of the person concerned

SFMS within the period of further suspension of relevant financial transactions or suspension of expenditure financial transactions conducts analytical work, collects, processes verifies and analyse necessary additional information, and if, based on verification results:

- » essential elements of the legalization (laundering) of criminal proceeds, or terrorist financing or other criminal offence are not confirmed, the special authorized authority shall immediately, but not later than on the next working day, cancel its decision on further suspension of relevant financial transactions or suspension of expenditure financial transactions and notify the primary financial monitoring entity;
- » there are motivated suspicions, the special authorized authority shall decide to continue the suspension of relevant financial transactions (expenditure financial transactions), prepare and submit appropriate case referral or additional case referral to law enforcement agencies authorized to decide in accordance with the Criminal Procedure Code of Ukraine, and on the day of making such decision shall notify respective primary financial monitoring entity about the expiration date of relevant financial transactions suspension. The period of suspension of relevant financial transactions shall be extended by the special authorized authority from the next working day after the submission of the respective case referral or additional case referral, provided that the total period of such suspension does not exceed 30 working days.

If the suspension is initiated by a primary financial monitoring entity, which suspended financial transactions on the account for 2 working days, SFMS may, if there are sufficient grounds, extend the period of such suspension to another 7 working days when the state financial monitoring shall be carried out and, if there are sufficient grounds, CR (ACR) shall be prepared and subsequently forwarded to law enforcement (intelligence) agency no later than on the seventh working day of such suspension. In this case, the suspension of financial transactions shall be extended to 21 working days (in sum, 2, 7 and 21 days make up 30 working days).

If the suspension of financial transactions is initiated by SFMS, the period of such suspension shall be extended to 23 working days (7 and 23 days make up 30 working days).

If the suspension of financial transactions is initiated by a foreign financial intelligence unit (hereinafter – FIU), the period of such suspension shall be determined by the foreign FIU.

Suspension of financial transactions is a temporary preventive measure to make impossible the disposal of funds having constituent elements similar to criminal. When SFMS decides to suspend and primary financial monitoring entities subsequently implement this decision, law enforcement agencies play an important role in identification and documentation of factual circumstances that would indicate the existence of sufficient grounds to believe that a criminal offence has been committed and the need to seize proceeds. Given the possibility of damage to business entities and individuals as a result of blocking their financial and economic activities, it is important for law enforcement agencies to promptly consider case referral and assess the information provided herein and other data collected by the law enforcement agency to substantiate the fact of a criminal offence.

The Law on prevention and counteraction to the legalization (laundering) proceeds provide for rapid provision of information by the law enforcement agency to SFMS to enable it to cancel the decision on suspension in the absence of the event of crime or action's corpus delicti to prevent obstruction of normal financial and business activities of business entities.

Suspension of financial transactions – informing SFMS by law enforcement agencies

Within the extension period of relevant financial transactions (expenditure financial transactions) suspension, law enforcement agencies shall conduct a pre-trial investigation and in case if:

it is ascertained that there is no event of criminal offence or there is no action's corpus delicti – shall immediately notify the specially authorized authority;

there are reasonable suspicions that a person has committed a criminal offence and relevant accounts have been seized in accordance with the procedure stipulated by the Criminal Procedure Code of Ukraine, - shall notify the specially authorized authority within two working days from the date of the court's ruling to seize the property, indicating its number and date.

On the day of receipt from the law enforcement agency of the information provided for paragraphs 5 and 6 of this Article, SFMS shall cancel its decision to continue the suspension of relevant financial transactions (expenditure financial transactions) and notify the respective primary financial monitoring entity.

In case of seizure of client's accounts in accordance with the procedure stipulated by the Criminal Procedure Code of Ukraine with the subsequent suspension of transactions therein pursuant to parts 1-3 or 9 of this Article, primary financial monitoring entity shall notify the specially authorized authority on the day of receipt of the court ruling to seize the property, indicating its number and date.

Freezing of assets related to terrorism and its financing, proliferation of weapons of mass destruction and its financing

In order to block assets of persons who may be engaged in terrorism and its financing, proliferation of weapons of mass destruction and its financing, law and international standards stipulate the possibility to freeze assets of persons concerned.

In accordance with Article 22 of the Law on prevention and counteraction to the legalization (laundering) of proceeds, primary financial monitoring entity shall immediately, without prior notice to the client (person), freeze assets related to terrorism and its financing, the proliferation of weapons of mass destruction and its financing.

On the day of taking the decision to freeze such assets, primary financial monitoring entity (official receiver (except for the Individuals Deposit Guarantee Fund), authorized official of the Individuals Deposit Guarantee Fund) shall freeze such assets and simultaneously notify about frozen assets SFMS and the Security Service of Ukraine in a manner prescribed by law.

In case of freezing assets, profitable financial transactions of clients included in the list of persons,² clients representing the persons included in the list of persons, clients directly or indirectly owned or ultimate beneficial owners of which are the persons included in the list of persons, shall be carried out. In this case, the primary financial monitoring entity on the day of the transaction, but not later than within 11 hours of the next working day from the date of the profitable transaction, shall notify SFMS and the Security Service of Ukraine of it and/or an attempt to carry out expenditure financial transactions and shall immediately, without prior notice to the client (person), freeze assets obtained as a result of such profitable transaction.

When assets are frozen, the primary financial monitoring entity (official receiver (except for the Individuals Deposit Guarantee Fund), authorized official of the Individuals Deposit Guarantee Fund) shall notify the client (person) in written of such freeze at his (her) written request.

Access to assets related to terrorism and its financing, proliferation of weapons of mass destruction and its financing shall be carried out in accordance with the procedure stipulated by law.

In turn, in accordance with Article 11-2 of the Law of Ukraine “On the Fight against Terrorism”, if entities directly engaged in fighting against terrorism and/or involved in fighting against terrorism identify assets related to terrorism and its financing, proliferation of weapons of mass destruction and its financing, they shall immediately notify the Security Service of Ukraine of assets identified.

Assets related to terrorism and its financing, proliferation of weapons of mass destruction and its financing shall be frozen by primary financial monitoring entities (official receivers (except for the Individuals Deposit Guarantee Fund), authorized officials of the Individuals Deposit Guarantee Fund) in accordance with the Law of Ukraine on prevention and counteraction to the legalization with mandatory notification of the Security Service of Ukraine.

The Security Service of Ukraine shall immediately verify primary financial monitoring entities clients’ applications who have the same or similar name as the persons included in the list of persons related to terrorist activities who are subject to international sanctions and whose assets have been frozen in accordance with the procedure stipulated by Article 11-1 of this Law. The Security Service of Ukraine shall immediately notify the respective primary financial monitoring entity (official receiver (except for the Individuals Deposit Guarantee Fund), authorized official of the Individuals Deposit Guarantee Fund) of the verification results.

Access to the assets related to terrorism and its financing, proliferation of weapons of mass destruction and its financing shall be carried out by a court decision in the event of exceptional conditions set out in relevant UN Security Council Resolutions, as well as to cover basic and extraordinary expenses, including for food, rent, mortgages, utilities, medicines and medical care services, taxes, insurance premiums, or solely for the purpose of payment for experts services at usual price and reimbursement of expenses related to the provision of legal services, payment of fees or payment in accordance with the law for the provision of services for current storage or maintenance of funds, other financial assets and economic resources.

In case there is a need to provide access to the assets related to terrorism and its financing, the proliferation of weapons of mass destruction and its financing to persons included to the sanctions lists of UN Security Council committees, the Head or Deputy Head of the Security Service of Ukraine shall apply to the Ministry of Foreign Affairs of Ukraine with a notion (notification) on the need to provide access to such assets.

The Ministry of Foreign Affairs of Ukraine, within three working days from the date of receipt of the specified notion (notification), shall apply to the corresponding UN Security Council Committee requesting permission to provide access to the assets related to terrorism and

its financing, the proliferation of weapons of mass destruction and its financing to cover basic and extraordinary expenses (to inform about exceptional conditions set out in UN Security Council Resolutions, to grant access to assets).

When the Ministry of Foreign Affairs of Ukraine receives a decision of the UN Security Council Committee, it shall immediately notify the Head or Deputy Head of the Security Service of Ukraine in written of such decision.

Information on the UN Security Council Committee's decision submitted in written by the Ministry of Foreign Affairs of Ukraine shall be sufficient ground for the Head or Deputy Head of the Security Service of Ukraine to apply to the court to grant access to such assets.

Using SFMS case referrals

Case referral is a product of the state financial monitoring conducted by SFMS, which contains information on suspicions of committing a crime.⁵¹

It worth noting that the information submitted in case referrals (additional case referrals) by SFMS to law enforcement agencies is information with restricted access having intelligence nature, and its use is regulated by national legislation and international standards. Such information cannot be used as evidence and requires appropriate procedures to become "legalized" and converted into evidence.

Submission of case referrals to pre-trial investigation authority and initiation of criminal proceedings by the later are associated with the fact that SFMS received information on financial transactions which may be related to suspicion of money laundering, terrorist financing or other predicate offence, i.e. commission of an act that may constitute the corpus delicti provided for in the Criminal Code of Ukraine. Therefore, case referrals may provide information on the following set of essential elements: object, subject, the mental element, psychological element of a specific publicly dangerous unlawful act, which can be classified as a crime. SFMS' information allows not only to identify the range of persons who may be related to particular acts but also helps to identify the perpetrators, as well as the crime scene, method, time, tools, damage, victims, causal link between the act and its effect.

SFMS' information enables to effectively plan investigative actions, apply measures to ensure criminal proceedings, including preventive measures. This allows to focus on the necessary direction of pre-trial investigation, substantiate circumstances to be proved in particular proceedings in accordance with Art. 91 CPC.

Given its legal status defined by the Law on prevention and counteraction to the legalization (laundering) of proceeds, SFMS' **case referrals** is a source of circumstances that may indicate the commission of a criminal offence and **provide investigator or prosecutor with grounds to initiate a pre-trial investigation**. At the same time, Art. 214 CPC lists the following sources of circumstances that oblige investigator to enter information into

51. Law on prevention and counteraction to the legalization, par. 16 pt. 1 Art. 1

URPTI: statement, notification of a criminal offence, independent identification of any source of circumstances that may indicate the commission of a criminal offence. Thus, in accordance with Art. 214 CPC, after entering information to the Unified Register of Pre-Trial Investigations, an investigator may implement a set of investigative actions and measures to ensure criminal proceedings against the entities specified in case referrals.

Pursuant to par.2 of Section IV of the Procedure for submitting and considering case referrals of 11.03.2019 No 103/162/384, a law enforcement agency or its unit which has received a case referral or additional case referral, not later than within five working days from the moment of its registration (a record) shall provide SFMS with information on the date and number of its registration, including in the Unified Register of Pre-Trial Investigations.

It should be emphasized that a significant part of case referrals may relate to already existing criminal proceedings. In this case, there may be no need to initiate new proceedings, and law enforcement agencies may use case referrals as a source of additional information for the purposes of pre-trial investigation.

In accordance with Art. 6 of the Law of Ukraine “On Operational-Investigative Activity” of 18.02.1992, case referrals are also a basis to conduct operational-investigative actions, and in accordance with p. 61 Art. 1 of the Law on prevention and counteraction to the legalization (laundering) of proceeds, to conduct counter-intelligence actions.

It should be borne in mind that according to p. 9 Art. 216 of CPC of Ukraine, in criminal proceedings concerning crimes provided by Articles 209 and 209-1 of the Criminal Code of Ukraine, a pre-trial investigation shall be conducted by an investigator of the authority that initiated the pre-trial investigation or the authority under whose jurisdiction is a predicate offence to the legalization (laundering) of criminal proceeds, except in cases when such offences are subject to the National Anti-Corruption Bureau of Ukraine jurisdiction under this Article.

4.6.2. Cooperation in course of financial investigations with the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and other Crimes (APMA)

One of the biggest problems to deal with when investigating asset recovery cases is obtaining evidence proving that assets are related to criminal activity (property confiscation) or that assets are income derived from a crime committed by a person (assets/property confiscation).

In the course of financial investigations, it is important to ensure cooperation with ARMA, which is a central executive authority with a special status authorized to develop and implement state policy in the field of finding and tracing of assets that may be seized in

criminal proceedings, as well as management of assets seized in criminal proceedings. ARMA was established as analogy of asset recovery and management institutions that are successfully operating in EU Member States under the European Union Council decision No 2007/845/JHA of December 6, 2007 and other EU legal acts.

Thus, in accordance with the law, in order to perform its functions in the field of finding and tracing of assets that may be seized in criminal proceedings, ARMA is empowered to:

- request, upon the decision of ARMA Head or Deputy Head, and obtain from public and local authorities free of charge and in accordance with the procedure established by law information necessary for the fulfilment of ARMA duties (requested entities shall immediately, but no later than within three working days of its receipt, provide relevant information);
- access to the Unified Register of Pre-Trial Investigations (in the manner and scope determined by the joint order of the Prosecutor General's Office of Ukraine and ARMA), automated information and reference systems, registers and databases that are being maintained (administrated) by public or local authorities; use public, including governmental communication means, special communication networks and other technical means (ARMA processes such information in compliance with the requirements of the legislation on personal data protection and maintaining secrecy protected by law). This provision does not apply to information and automated information and reference systems, registers and databases possessed by intelligence, counter-intelligence agencies, as well as by the central executive authority implementing state policy in the field of prevention and counteraction to the legalization (laundering) of criminal proceeds, terrorist financing and financing of proliferation of weapons of mass destruction;
- conclude interagency international agreements on cooperation with foreign authorities authorized to find, trace and manage asset derived from corruption and other crimes, participate in drafting international agreements on asset distribution and recovery to Ukraine;
- receive information from banks on accounts availability and status, accounts transactions owned by specific legal entity or individual, individual entrepreneur;
- receive, process information necessary to exercise ARMA powers concerning individuals and legal entities and exchange such information with foreign authorities, public authorities, local authorities, enterprises, institutions and organizations regardless of their ownership form, including banks, depository and financial institutions, private executors, auditors, notaries, appraisers, as well as experts, arbitration managers, members of liquidation commissions, official receivers, authorized officials of the Individuals Deposit Guarantee Fund (including copies of documents);
- maintain international cooperation based on reciprocity principle or under international treaties of Ukraine, if this facilitates finding and identification of assets by relevant foreign authorities.

Such preventive measure as property seizure is used in a large number of criminal proceedings. Pursuant to paragraph 2 Part 1 Article 170 CPC, an investigator or prosecutor shall take necessary steps to find and trace the property that can be seized in criminal proceedings, in particular by requesting the required information from ARMA, other public and local authorities, individuals and legal entities.

ARMA shall ensure execution of requests submitted by pre-trial investigation authorities, prosecution authorities and courts concerning asset finding and tracing and respond as soon as possible, but no later than within three working days from the date of its receipt, or a longer period specified therein. This period may be extended upon approval of pre-trial investigation authority, prosecution authority or court.

To enable ARMA to perform its functions of asset finding and tracing, ARMA, National Anti-Corruption Bureau of Ukraine, Prosecutor General's Office of Ukraine, Security Service of Ukraine, Ministry of Internal Affairs of Ukraine and Ministry of Finance of Ukraine adopted the Order of 20.10.2017 No 115/197-o/297/586/869/857 "On approval of the Procedure of cooperation when considering requests of pre-trial investigation authorities, prosecution authorities and executing foreign states requests concerning asset finding and tracing", registered with the Ministry of Justice of Ukraine on 02.11.2017 under No 1342/31210 (hereinafter – Procedure).

Therefore, the Procedure defines principles of interaction between ARMA and investigators, detectives, prosecutors, pre-trial investigation authorities, prosecution authorities in terms of the followings:

- execution by ARMA of requests of investigators, detectives, prosecutors, pre-trial investigation authorities, prosecution authorities concerning asset finding and tracing (funds, property, property and other rights) that may be seized in criminal proceedings;
- execution by pre-trial investigation authorities or prosecution authorities of ARMA's requests for information that ARMA may need to respond to a request of relevant foreign authority authorized by it to perform functions of the asset recovery institution;
- consideration by pre-trial investigation authorities or prosecution authorities of ARMA's information concerning constituent elements of offences identified when performing ARMA's functions and powers assigned by law, other issues related to exercising of ARMA's powers.

Thus, the Procedure stipulates that ARMA shall accept execution requests in terms of a specific criminal proceeding issued by an investigator, detective or prosecutor acting within the limits of their powers.

Pre-trial investigation authorities and prosecution authorities represented by its heads may also apply with a request to ARMA.

The request shall be made in written and issued using the form of a relevant pre-trial investigation authority or prosecution authority, indicating its registration number and

date of outgoing correspondence registration, as well as contain the signature of:

- investigator, detective or prosecutor, if it is issued by the investigator, detective or prosecutor respectively;
- head of pre-trial investigation authority, head of prosecution authority, if it is issued by the pre-trial investigation authority or prosecution authority respectively (request sample to ARMA is provided in Annex 8).

An extract from the Unified Register of Pre-Trial Investigations shall be attached to the request, certifying the existence of the criminal proceeding indicated in the request and the status of the requester, if it is an investigator, detective or prosecutor.

ARMA shall take measures to find and trace assets based on the request's content within the powers defined by the law and considering actual access to data sources available to third parties.

Based on the result of measures taken to find and trace assets, ARMA shall draft a response to the request.

The response shall contain the information ascertained by ARMA indicating the existence of assets that may be seized in the course of the criminal proceedings specified in the request, as well as their location or last known location. The scope of the response shall be determined by the request's content.

When drafting the response, ARMA shall take into account the requirements of relevant laws regarding the seizure of property in criminal proceedings, including the purpose of seizure and the purpose of proceeding support that can be achieved by seizing property in the specific criminal proceeding.

In addition, if based on the results of measures taken to find and trace assets, ARMA identifies constituent elements of offences not specified in the request, it shall send relevant conclusion to respective law enforcement agencies that will be obliged to consider it.

Prior to submit a request to ARMA, an investigator or prosecutor is advised to check the Unified State Register of Assets Seized in Criminal Proceedings in order to avoid cases of re-seizure of assets that have already been seized in other criminal proceedings.

In December 2019, ARMA launched the Unified State Register of Assets Seized in Criminal Proceedings in trial mode.

The legal basis for the development and maintenance of the Register is Article 25 of the Law of Ukraine "On the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes".

The Register contains the following information:

- assets seized in criminal proceedings or in case of recognition of unfounded assets and their recovery into state revenue; amounts of funds, description, characteristics and the estimated value of property, property and other assets;

authority whose investigator is investigating (-ed) respective offence, name and initials of the investigator (-s); the authority that filed a lawsuit to recognize assets unfounded and their recovery into state revenue; court (name of the court, surnames and initials of judges) that ruled or whose investigative judge made a decision on seizure and/or revocation of the seizure of relevant property or rights; prosecutor's office, whose prosecutor revoked the seizure of property, surname and initials of the prosecutor; court where relevant criminal proceedings or case of recognition of unfounded assets and their recovery into state revenue are (were) considered; number of a criminal proceeding in the Unified Register of Pre-Trial Investigations; identification data on a suspect, accused person;

- measures taken in a criminal proceeding or in case of recognition of unfounded assets and their recovery into state budget related to a seizure and management of assets, including funds received as a result of assets sale, as well as from their management (dividends, interest, etc.);
- court decision on forfeiture, special confiscation or recovery into state budget of assets in criminal proceeding or in case of recognition of unfounded assets and their recovery into state budget, its enforcement status and confiscated assets management, including funds received as a result of assets sale;
- decisions of foreign competent authorities on seizure and confiscation of assets in Ukraine, their enforcement status;
- decisions of Ukrainian competent authorities on seizure, confiscation or recovery into state budget of assets abroad, their enforcement status;
- international agreements on asset distribution and recovery to Ukraine.

The data of the Register is public, except for the following information: description, characteristics of assets (property), which make it possible to identify the location of assets (property), and/or a person who owns, uses, disposes of such assets (property); the identity of a suspect or accused person; data that are not subject to disclosure (publication) in the framework of international cooperation in accordance with international agreements of Ukraine.

The Register shall be developed and maintained to summarize and promptly exchange information on assets derived from criminal activity; it reflects data on assets seized in criminal proceedings, their management or sale, confiscation, funds received as a result of their sale, etc.

The system is designed to comprehensively overcome a set of these shortcomings and therefore has the following purposes:

1. to arrange the information on application of seizure of property as a measure to ensure criminal proceedings in a single complete database, to create possibility of systematization, analysis of information on seizure application – from its imposition to revocation;
2. to provide access to up-to-date information on assets seized in criminal proceedings to law enforcement agencies and courts, other specially authorized authorities,

including ARMA, to determine priorities when tracing assets that may be seized, which, in turn, will promote efficiency of law enforcement system;

3. to automate the process of obtaining, uploading, maintaining, updating and providing information on assets seized in criminal proceedings, as well as ensure the consolidation and rapid exchange of information on assets between pre-trial investigation authorities, prosecution authorities and courts in the course of crime investigations;
4. to transform the application of assets seizure as a measure to ensure criminal proceedings into transparent and clear tool that has a positive impact in the form of increasing public credibility of law enforcement and judicial systems, preventing corruption and promoting civil turnover.

In the trial piloting the Register is filled in test mode exclusively with information available in ARMA on the seized assets which were transferred to ARMA management.

Upon completion of integration with other registers and databases (Unified Register of Court Decisions, Automated Enforcement System, Unified Register of Pre-Trial Investigations), the Register will be filled with information on seized assets mainly in automated mode.

4.6.3. Cooperation of law enforcement agencies with tax and customs authorities

Assigning and conducting audits and inspections is essential in the course of pre-trial investigation in criminal proceedings allowing to study and analyse activities of a particular institution, enterprise or organization to verify the correctness and legality of its officials actions. Relevant findings confirm or deny possible violations of the law and in accordance with par. 4 pt. 2 Art. 99 CPC of Ukraine can be used as evidence.

Reports on inspections and audits issued by regulatory authorities can be an important source of factual data on criminal activities of relevant entities.

Audit (inspecting) is a documentary and factual inspection of a certain complex or individual aspects of financial and economic activities of the controlled institution, which shall ensure revealing of available facts of law violations, bringing to account responsible officials and materially responsible persons. Its results shall be specified in the report.

According to p. 2 Art. 93 of the Criminal Procedure Code of Ukraine (CPC), a prosecution attorney shall collect evidence by requesting and obtaining items, documents, information, expert reports, audit and inspection reports from public and local authorities, enterprises, institutions, organizations, officials and individuals, as well as by carrying out other procedural actions provided for by CPC of Ukraine. That is, an audit is one of the legitimate ways to collect evidence for the prosecution attorney stipulated by p. 2 Art. 93 of the Code.⁵²

52. Interaction between pre-trial investigation authorities and units of the State Audit Service of Ukraine

In criminal proceedings, a need for an audit is determined by criminal proceeding files. If, in the course of pre-trial investigation, the audit has already been conducted and an investigator concluded that additional evidence is required, he/she may request an additional audit. The need to conduct the audit may arise at different stages of investigation, but its assignment period is of particular importance since the audit is a lengthy process and, therefore, any delay causes the investigation to be extended.

At the same time, Ukrainian legislation and case law are ambiguous where it comes to an investigator or prosecutor to decide whether to request control authorities conducting inspections and audits at the pre-trial investigation stage as a source of admissible evidence.

Lack of a proper criminal procedural regulation of the procedure for assignment of audits causes issues in their practical implementation.⁵³

On the one hand, in accordance with p. 2 Art. 93 CPC of Ukraine, a prosecution attorney, shall collect evidence by conducting overt and covert investigative (search) actions, requesting and obtaining items, documents, information, expert reports, **audit and inspection reports** from public and local authorities, enterprises, institutions, organizations, officials and individuals, as well as by conducting other procedural actions provided for by this Code.

In addition, pursuant to par. 4 pt. 2 Art. 99 CPC Ukraine, audit and inspection reports **are documents, i.e. procedural sources of evidence** in criminal proceedings in accordance with p. 2 Art. 84 CPC of Ukraine.

Legislation regulating the legal status of authorities conducting pre-trial investigation contains provisions that provide for an obligation of regulatory authorities to conduct inspections and audits at the request of law enforcement agency (par. 2 pt. 2 Art. 19-2 of the Law “On National Anti-Corruption Bureau of Ukraine”), or to engage qualified experts of institutions, organizations and financial authorities in such inspections, audits and examinations (par. 2 pt. 2 Art. 25 of the Law of Ukraine “On Security Service of Ukraine”).

In 2014, law-making authority excluded par. 4 from Art. 40 CPC of Ukraine, which gave an investigator the right to assign audits and inspections in the manner prescribed by law. Thus, the investigator was deprived of an effective and prompt mechanism for evidence collection. Instead, other legislative acts (Law of Ukraine “On Basic Principles of Exercising State Financial Control in Ukraine”) preserves provisions regulating audits and inspections conduct at the request of law enforcement agencies. A lack of systematic amendments thereto led to the situation when some issues of assigning audits are inconsistent, in particular in terms of the procedure for initiating such actions, used terminology, guarantees of rights and legitimate interests of enterprises, institutions and organizations. These shortcomings, i.e. a certain gap in the current legislative system, have adverse impact

during assignment and conducting of audits in criminal proceedings [Text]: guidelines / [A. A. Vozniuk, O. M. Bryskovska, A. P. Zapototskyi et al.]; under general editorship of Doctor of Law, prof. S. S. Cherniavskyi. – Kyiv: National Academy of Internal Affairs, 2018. – 40 p. – p. 4.

53. O.V. Kurman. Problematic issues in assigning audits in criminal proceedings under conditions of current legislation realities. *Comparative and analytical law*. 2016. No 3. P. 201–203.

on law enforcement practice for assigning and conducting audits in criminal proceedings.⁵⁴

Authorities of the Security Service of Ukraine, internal affairs, tax police, prosecution and their officials cannot directly participate in inspections conducted by regulatory authorities, neither conduct inspections of business entities on taxation.

It should be emphasized that pursuant to par. 2 pt. 3 Art. 87 CPC of Ukraine evidence shall be deemed inadmissible if it is obtained by pre-trial investigation authorities or prosecution authorities after criminal proceedings have started by exercising their powers, which are not provided by **this Code** to ensure pre-trial investigation of criminal offences.

Therefore, one can say that inspections and audits reports of regulatory authorities will usually **be admissible evidence**, provided that it is obtained as a result of functions performing by regulatory authorities, **regardless of pre-trial investigation, or even before it begins**.

This position is supported by the case law. In the decision of the panel of judges of the First Judicial Chamber of the Criminal Court of Cassation of the Supreme Court of March 6, 2018 in the case No 243/6674/17-k considering an issue of assigning inspection and audit by an investigating judge **at the request of investigator or prosecutor** after the aforementioned amendments to CPC took place the following is mentioned: “Therefore, a legislative authority not only **deprived** an investigator and prosecutor of **a power to ‘assign audits and inspections’**, but also stipulated that any **evidence** obtained as a result of such inspection or audit ‘not provided for by this Code’ shall be **inadmissible**. It is difficult to find more precise wording expressing the law making authority’s opinion than in this case”.

The Supreme Court also emphasized that “CPC provisions indicate that a law making authority defined the powers of each criminal proceedings party only by this Code and excluded any possibility to interpret such powers from the provisions of ‘other laws’”.⁵⁵

Thus, **in the course of pre-trial investigations**, investigators and prosecutors shall give preference to current investigative actions, means of ensuring criminal proceedings, other procedural actions, including provisional access to items and documents, examinations, engagement of experts, searches and CI(S)A, if necessary.

In accordance with the Resolution of CMU of March 6, 2019 No 227 “On approval of provisions on the State Tax Service of Ukraine and the State Customs Service of Ukraine”, the State Tax Service of Ukraine shall fulfil its tasks in the prescribed manner by interacting with other public authorities, auxiliary authorities and services established by the President of Ukraine, temporary consultative, advisory and other auxiliary authorities established by the Cabinet of Ministers of Ukraine, local authorities, associations of citizens, public unions, trade unions and employers’ organizations, relevant authorities of foreign states and international organizations, as well as enterprises, institutions and organizations.

54. O.V. Kurman. Problematic issues in assigning audits in criminal proceedings under conditions of current legislation realities. *Comparative and analytical law*. 2016. No 3. P. 201–203.

55. <http://reyestr.court.gov.ua/Review/72670536>

Pursuant to Article 558 of the Customs Code of Ukraine, customs authorities, when performing their tasks, shall interact, including by exchanging information, with law enforcement agencies in accordance with the procedure established by law.

If in the course of customs control and other actions carried out by the customs authorities in accordance with this Code and other legislative acts of Ukraine, constituent elements of offences that customs authorities, are not authorized to investigate are identified, customs authorities shall notify in written relevant law enforcement authorities.

Law enforcement agencies shall notify in written revenue authorities of identified violations of customs rules or smuggling.

Law enforcement agencies shall notify in written revenue authorities of any intelligence on possible cases of movement of goods, including personal vehicles, commercial vehicles performed in violation of the laws of Ukraine. If law enforcement agencies provide such intelligence, customs control and customs clearance shall be carried out upon the written decision of the head of customs authorities, that received such intelligence, or a person performing his/her duties, within the scope and in forms stipulated by the Customs Code.

According to Article 61 of the Tax Code of Ukraine, tax control is a system of measures applied by regulatory authorities and coordinated by the central executive authority, which ensures development and implementation of state financial policy aimed at controlling the correctness of calculations, completeness and timeliness of taxes and fees payment, as well as compliance with cash management regulation, settlement and cash transactions, patenting, licensing and other legislation, where control of its compliance rests with regulatory authorities. Tax control shall be exercised by authorities referred to in [Article 41](#) TCU within the limits of their powers provided for by this Code. Powers and functions of regulatory authorities are determined by the Tax Code of Ukraine, [Customs Code of Ukraine](#) and the laws of Ukraine.

Delineation of powers and functional duties of regulatory authorities is stipulated by the legislation of Ukraine.

4.6.4. Cooperation of law enforcement agencies with state financial control authorities

Another potential area of substantial evidence for prosecution attorney in the course of pre-trial investigation is cooperation with state financial control authorities.

Currently, a central executive authority whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Ministry of Finance of Ukraine and which implements the state policy in the field of state financial control is the State Audit Service of Ukraine.

According to Article 2 of the Law of Ukraine “On Basic Principles of Exercising State Financial

Control in Ukraine”, the main tasks of state financial control authority are as follows: exercise of state financial control over use and preservation of state financial resources, fixed assets and other assets, correct determination of the need for budget funds and commitments, efficient use of funds and property, status and reliability of accounting and financial reporting within ministries and other executive authorities, state funds, compulsory state social insurance funds, budgetary institutions and business entities of public sector economy, as well as enterprises, institutions and organizations that receive (received in the audited period) funds from budgets of all levels, state funds and compulsory state social insurance funds or use (used in the period under inspection) state or communal property (hereinafter – controlled entities), compliance with budget legislation, compliance with procurement legislation, activities of business entities regardless of ownership form, which are not attributed to the controlled entities by legislation, by the court decision in criminal proceedings.

State financial control is ensured by the state financial control authority by conducting state financial audit, inspections, procurement verification and monitoring.

Central executive authority authorized by the Cabinet of Ministers of Ukraine to implement state policy in the field of state financial control underwent a number of reorganizations (at first, it was the Main Control and Audit Department of Ukraine, later on – the State Control and Audit Service, State Financial Inspectorate, State Audit Service, Financial Control Office and again the State Audit Service).

Main powers of the State Audit Service of Ukraine are stipulated by the Resolution of the Cabinet of Ministers of Ukraine “On approval of Regulation on the State Audit Service of Ukraine” of February 3, 2016 No 43.

Interaction between law enforcement agencies and state financial control authorities (central office and its territorial units) is related, first of all, to consideration of requests of law enforcement agencies, assignment and conduct of subsequent audits, forwarding them audit files by the initiative of state financial control authorities, informing on identified law violations in the course of state financial audit (hereinafter – audit), feedback on results of submitted files consideration, allocation of state financial control authorities’ experts, and other issues arising when state financial control authorities and law enforcement agencies exercise assigned tasks.

SAS audit reports may be documents, admissible evidence that reflects a significant number of committed offence circumstances and may be requested by an investigator or prosecutor in accordance with p. 2 Art. 93 CPC of Ukraine.

Thus, the Procedure of interactions between state control and audit service authorities and prosecution authorities, internal affairs authorities and the Security Service of Ukraine, approved by a joint Order of the Main Control and Audit Department of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine and Prosecutor General’s Office of Ukraine of October 19, 2006 No 346/1025/685/53, and the Procedure of Inspecting by the State Audit Service, its interregional territorial units, approved by the Resolution of the Cabinet of Ministers of Ukraine of April 20, 2006 No 550, were developed for effective

regulation of interactions between state financial control authorities and law enforcement agencies, ensuring implementation of tasks and functions of the State Audit Service authorities, organization of random audits in criminal proceedings, inspections by engaging experts of state financial control authorities.

However, following the adoption of this joint Order, new versions of CPC of Ukraine (including concerning the powers of investigator and prosecutor), Laws of Ukraine “On the Public Prosecutor’s Office” of October 14, 2014 No 1697-VII, “On National Police” of July 2, 2015 No 580-VII came into force, and other laws have been adopted that facilitated the establishment of the National Anti-Corruption Bureau of Ukraine and the State Bureau of Investigation.

According to these legal acts, random onsite audits by the state financial control authorities which may involve or be initiated by pre-trial investigation authority shall be performed under the following circumstances:

- if the Cabinet of Ministers of Ukraine, prosecution authorities, revenue authorities, National Police, Security Service of Ukraine, National Anti-Corruption Bureau of Ukraine submit request to conduct audits in the controlled entities; the request shall contain facts indicating violations of the laws of Ukraine by the controlled entities subject to control over compliance thereto by state financial control authorities competence (par. 5 pt. 5 Art. 11 of the Law of 26.01.1993 No 2939-XII);
- in case where a higher state financial control authority in terms of accuracy control of conclusions of a lower state financial control authority verified audit reports issues by the lower state financial control authority, and found their non-compliance with the laws. In this case, random onsite audit may be initiated by the higher state financial control authority only when an official investigation is initiated against officials of the lower state financial control authority who conducted scheduled or random onsite audit of the specified controlled entity or in case they notified of suspicion of committing a criminal offence (par. 6 pr. 5 Art. 11 of the Law of 26.01.1993 No 2939-XII).

Actual grounds for an investigator to apply to a state financial control authority in order to request files of control activities may be as follows:

- availability of certain facts of illegal activity in criminal proceedings files confirming the need to verify primary documents of organization’s activities as a whole (provide that during this period there was no scheduled audit);
- substantiated request of the suspect to conduct an audit;
- ascertainment of the fact that suspect works in other organization on a similar position in the course of investigation;
- identification of criminal links of suspect with representatives of other enterprises or organizations in the course of investigation;
- notification of accounting expert on the impossibility to provide an expert report on specific issues without prior audit.

There may also be other actual grounds that have arisen in view of the need to clarify by means of audit the circumstances subject to investigation in criminal proceedings.

Peculiarities of conducting audits by a state financial control authority, which may be important for criminal proceedings.

The audit shall be conducted by means of documents verification that provides for control over statutory, financial, accounting (primary and consolidated) documents, statistical, financial and budgetary reports, economic agreements, administrative and other documents of the controlled entity related to planning and implementation of financial and business activities, accounting, drafting of financial statements. In case of accounting using electronic means of information storage and processing at the request of regulatory authority official, the head of the controlled entity shall ensure the provision of relevant documents in paper form. The head or deputy head of the controlled entity shall ensure the provision of the controlled entity's documents to regulatory authority officials. The actual audit shall involve control over availability of money, securities, controlled forms, current and non-current assets, other tangible and intangible assets by conducting inventory, inspection and control measurement of performed works, correct application of raw materials and materials usage rates, end products output and natural losses by organizing control launches into production, control examination of end products, and other similar actions with involvement of relevant experts of regulatory authority or other authorities, enterprises, institutions and organizations. Officials of regulatory authority have the right to request heads of the controlled entities to arrange and carry out an actual audit in the presence of the officials of regulatory authorities and with the involvement of materially responsible persons; if the scope of works performed is being inspected, then representatives of the business entity that performed works shall also be present.

The term of an audit, as well as its composition and number of officials of state financial control authority, shall be determined by the state financial control authority taking into account the scope of audit issues envisaged by the agenda.

Law enforcement agency usually requests the state financial control authority to provide audit files in the course of pre-trial investigation in the following criminal offences:

- crimes against property (Art. 190, 191 CC of Ukraine);
- crimes in the field of official and professional activities related to public services provision (Art. 364, 365, 366, 367 CC of Ukraine);
- crimes against the authority of public authorities, local authorities, associations of citizens and crimes against journalists (Art. 356, 358 CC of Ukraine);
- crimes against justice (Art. 382 CC of Ukraine).

4.7. Ways of collecting evidence, converting information into evidence

4.7.1. Typical procedural actions in finding evidence during financial investigations

The purpose of investigation from its outset shall be to convert relevant intelligence, information obtained in the course of pre-trial investigation taking into account analysis of financial relations into evidence admissible in court that can be used as a basis for conviction and recovery of illegally acquired assets.⁵⁶

Planning of primary investigative actions and tactical operations shall ensure implementation of tasks aimed at finding and preserving necessary documents and items that may have the value of material evidence or damages caused by stealing. Investigative and organizational actions taken in this regard are urgent and shall be conducted as priority ones.

Results of primary investigative actions provide a basis for detailing further investigation plan aimed at identifying and disclosing all episodes of crime, its accomplices.⁵⁷

Key investigative (search) actions and measures to ensure criminal proceedings in the course of investigation of this category of crime shall be as follows: provisional access to items and documents, inspection, search (inspecting premises) including of bank, “conversion centre”, etc., seizure of accounts of buffer and fictitious enterprises, questioning of witnesses, provisional access to items and documents, inspection, search (inspecting premises) of client companies (contractors), etc. The main purpose of these investigative (search) actions shall consist in obtaining documentary evidence of each financial or business transaction related to money laundering and completed on behalf of or with the participation of a buffer or fictitious company.

Prior to conduct these investigative (search) actions, it is necessary to elaborate a detailed plan which shall foresee simultaneous provisional access to items and documents, inspection, search (inspecting) both in bank and conversion centre premises.

In this category of crimes, *searches and provisional access to items and documents* belong

56. Tracing Illegal Assets - A Practitioner’s Guide. The International Centre for Asset Recovery, Basel Institute on Governance, The International Centre for Asset Recovery, 2015 (original, English language) / 2016 (translation into Ukrainian language).

57. Methodical recommendations “Actions of police officers in case of detection of economic crimes”, Dnipro State University of Internal Affairs, Group of authors: O.M. Kubetska, O.V. Neklesa, Y.S. Paleshko, D.B. Sanakoiev.

to primary investigative (search) actions and measures to ensure criminal proceedings, since timely searches and provisional access to items and documents, as well as quality document handling, constitute the most important peculiarity of the investigation of the legalization (laundering) of criminal proceeds.

The main task of searches at all stages of the investigation of crimes of the specified category is to identify and seize items and documents relevant to criminal proceedings.

To achieve objectives, preparation for the search is important. During such preparation, participants of this investigative (search) action shall get acquainted with the purpose of the search, appearance of objects being searched; and if these are documents, then they shall know their indicative content.

Objects of search in proceedings concerning the legalization (laundering) of criminal proceeds are as follows:

- places of employment and residence of suspects and their accomplices;
- other premises, vehicles belonging to specified individuals.

A prerequisite for an effective search is high-quality intelligence, which may include the following data:

- time of the appearance in premises of wanted objects;
- their location;
- their signs, packaging;
- time of movement.

During the search, the following is subject to detection and seizure:

- documents reflecting legislative and regulatory provisions regulating activities of public and non-public ownership organizations;
- statutory and other documents (charter, statutory agreement, minutes of shareholders' meetings, registration certificate, license to practice certain activity, etc.);
- accounting records (primary accounting records, gross book or balance sheet, journals, warrants, records, register, inventory records);
- insurance documents (insurance policy, insurance certificate, insurer's account);
- documents of state regulatory authorities;
- money and other property obtained from crime;
- documents confirming ownership of the property;
- items and documents that may contain traces of the legalization (laundering) of criminal proceeds or may be otherwise relevant to the proceedings (e.g., bank plastic cards, payment receipts);
- computers, external equipment, electronic storage media.

Provisional access to items and documents is quite often conducted in relevant institutions, organizations and enterprises to identify and record traces of the legalization considering

the need to access legally protected secrets, for example to confidential information, including that contain trade secrets, as well as information that may constitute bank secrecy, etc.

According to the recommendation of MONEYVAL experts, during investigations, law enforcement agencies shall widely apply the practice of appealing to the court with a claim of provisional access to items and documents without summoning a person and holding a closed court hearing resulted in secret decisions.⁵⁸ In this case, it is necessary to follow the provisions of Art. 163 CPC and state the circumstances in a request providing sufficient grounds to believe that there is a real threat of alteration or destruction of items or documents. Under such circumstances, the request may be considered by investigating judge or court without summoning a person who possesses them.

In addition, when investigators or prosecutors request provisional access to items, documents, secrets protected by law, they may request to restrict review access to relevant court permission for such measure to ensure criminal proceedings in the Unified Register of Court Decisions.

In accordance with pt. 4 Art. 4 of the Law of Ukraine “On Access to Court Decisions”, a restriction of the right to free use of official web portal of the judiciary shall be allowed to the extent necessary to protect the information that is subject to protection from disclosure by a court decision on the closed case hearing.

Therefore, if relevant circumstances are justified, access may be restricted for public review, which will allow investigators or prosecutors to avoid risks of information disclosure concerning respective court decision, and subsequently destruction or relocation of important documents, items and assets.

Another important tool in the course of the investigation is the suspension of financial transactions on the accounts of investigated perpetrators. In this case, it is important for the law enforcement agency to coordinate its actions with SFMS.

Objects of provisional access to items and documents and, accordingly, seizures include the following:

- banking institutions that opened accounts for legal entities and individuals involved in the legalization schemes and through which money was laundered. These are personal customer’s files, cash receipts, documents reflecting the movement of funds on accounts, for example, documents on transfers of funds from the Department of State Treasury to business entity’s account in case of VAT reimbursement from the budget or documents indicating transfers of funds to a fictitious business entity;
- state registrars, which registered business entities, issued corresponding licenses, permits, including for participation in privatization auctions and tenders. These are copies of passports of individual entrepreneurs and certificates of state registration of founders of legal entities, applications with annexes thereto;

58. MONEYVAL’s Fifth Round Mutual Evaluation Report (2017).

- authorities and individuals who registered relevant transactions with the property that was legalized (notaries, bureau of technical inventory, units of state automobile inspectorate);
- fiscal (tax) authorities of respective region (to seizure accounting documents and documents needed to obtain certain privileges, reimbursements);
- regional customs offices (to seizure documents confirming export and import transactions related to a specific commodity (product) and conducted by business entity);
- stock exchanges, investment companies, charitable foundations, and other commercial entities involved in the legalization of criminal proceeds to seizure documents reflecting nature and content of conducted financial and business transactions.

For instance, when conducting financial investigation of professional money laundering network (conversion centre), it is important to pay attention to the following items and documents that may be evidence:

- *information (register) on funds movement on bank accounts, in particular: bank printout on paper and magnetic media (in Microsoft Excel format) on funds movement on the specified bank accounts with detailed breakdown of incoming and outgoing payments, indicating date, amount, purpose of payment, bank accounts, codes and names of counterparties, other documents that fully reflect transactions;*
- *documents certifying receipt of cash at bank's cash desk;*
- *documents of registration (legal case), i.e. documents on opening (closing), servicing of accounts, certificates, orders, statements, powers of attorney, copies of passport, bank client's questionnaire, etc.;*
- *bank cards with samples of signatures and imprints of seals of persons authorized to dispose of accounts;*
- *applications, passports, registration number of individual taxpayer's account card who opened and used opened bank accounts; settlement and cash service agreements;*
- *bank account agreements, agreements on the use of "client - bank", "client – Internet - Bank", "Telephone banking" systems, including information on IP addresses from which the specified current accounts were managed using "Client-Bank" system; protocols of "Client - bank" system containing date and time of connection (including hours, minutes and seconds of connection), electronic user name, transactions names and IP address of client both in paper and electronic forms;*
- *primary documents provided to the bank when opening (further change of current data and use of accounts);*

- *payment orders and memorial orders certifying receipt and use of funds on accounts; applications for withdrawals of funds, cash disbursement orders, cashier's checks with control stamp for cash, orders, other documents for receipt of funds from accounts;*
- *deposit, credit cases on accounts with existing agreements, additional agreements, applications and orders, questionnaires, pledge agreements and other documents of the case; documents on securities transactions, namely: agreements on purchase of promissory note forms, registration of drawn and discharged promissory notes, agreements of purchase and sale of securities, acts of acceptance and transfer of securities, acts of fulfilled obligations, orders on deposit and withdrawal of securities, documents on opening securities accounts, other documents securities transactions on accounts; documents on funds movement on accounts in printed and electronic forms with mandatory clear indication of payment documents numbers, specific time and date of payment, amount of funds, full data of payer and recipient, including clients of other banks, indicating code, account number and Sort code of banking institution, purpose of payment indicating recipient and for what funds were transferred and for what funds were received; current accounts statements indicating dates and amounts of transfers, purpose of payment, account numbers and Sort code of agency banks, counterparties names and USREOU codes in paper and electronic forms;*
- *documents that serve as a basis to issue cash from current accounts;*
- *documents (printouts) from electronic registers or files containing/storing information and other contact or identification data of clients (telephone numbers, IP addresses, full names, etc., information exchange protocols, LOG-files) that were used to transfer data on current accounts and balance changes via "Client - bank" system;*
- *video and photo of a person who carried out the transaction of funds withdrawal, if available;*
- *other.*

Additionally, an investigator shall identify all accounts belonging to the subject of investigation and request an investigative judge for permission to seizure the following documents:

- *copies of passports of founders, final beneficial owners and officials, minutes of founders' meetings, order or another document on person's appointment to the position with the right to sign specified in charter and authorized to act on behalf of an enterprise and conduct financial transactions;*
- *other payment documents served as a basis for funds crediting and debiting from the specified account, checks, receipts, expenditure orders, agreements, etc., including documents to receive funds (including cash) for a certain period of time.*

In the context of financial investigations, a **document** is provided by law material form of receiving, storing, using and disseminating information by fixing it on paper, magnetic, film/video/photographic tape or on another medium. Documents are divided into primary (contain source information) and secondary (resulted of analytical, synthetic and other transformation of one or more documents). If documents served as means of committing a crime or preserved its traces, or were subject to criminal acts, they should serve as material evidence in such cases.

Thus, the documents determining economic structure, organizational and legal status of enterprise, as well as a state of financial control are as follows:

- enterprise registration certificate;
- enterprise charter;
- founding agreement;
- register of stakeholders;
- minutes of the general meeting of founders;
- minutes of management administrative authorities meetings (board, leadership);
- minutes of audit commissions' meetings (acts and inspection files);
- annual auditor's report;
- acts and other files of tax, banking and other regulatory authorities inspections;
- orders and directives of officials, etc.

Documents certifying implementation of a certain type of activity:

- licenses;
- patents;
- agreements on concluding certain contracts (purchase and sale, loans, on the provision of works, etc.);
- design and budget documents.

Book-keeping and accounting documents:

- primary accounting documents (invoices, consignments and other documents recording individual economic transactions);
- accounting accounts (each economic transaction has a double record, i.e. in assets of the first account and liabilities of the second account of enterprise, e.g. purchased equipment or facilities are indicated in assets of account "fixed assets" and in liabilities of account "authorized fund");
- balance sheet (main and summarized part of accounting, which reflects consolidated accounting data for a quarter, half-year, year).

Documents of statistical accounting and reporting (reflect quantitative characteristics of individual aspects of enterprise's activity for a certain period of time). A commercial entity (company) can have several reporting options for the year. Operational accounting and reporting documents. Automated workplace (AW) documents of the accountant,

economist, planner or analyst. These may contain a variety of information in the form of credentials, planned indicators, rates and standards, company reporting, etc. Also, there could be “draft accounting” in the form of notebooks, magnetic media, seals, stamps, computer equipment and other documents.

Banking documents:

- current account payment orders journal;
- current account receipts journal;
- current account statement;
- applications for opening current, foreign currency accounts;
- card with samples of signatures and imprint of seal;
- payment orders;
- documents reflecting obtaining a bank loan, etc.

Cash documents:

- agreement on the full individual liability of cashier;
- cash book;
- income and expenditure cash documents journal;
- used cash funds journal;
- income and expenditure cash orders, checks;
- acts of checking the availability of funds and tangible assets in cashier’s office, etc.
- Forged (falsified) documents:
- statutory, banking, accounting and other documents that were used in the commission of crime.

Working records of officials and employees whose content is relevant to criminal case:

- reports, workbooks, calendars, notebooks, etc.

Magnetic media:

- dictaphone recording of the meeting, gathering, etc.; photo, film, video-documents that reflect certain facts of enterprise’ activity.

Electronic copies of written documents and other electronic information (software) contained in media.

Typical trace picture of the legalization (laundering) of proceeds is often not quite associated with traditional traces in criminology, because carriers of evidence information (content and traces of forgery) in such crimes are documents. Such traces in documents are much more difficult to identify due to the fact that essential elements of these crimes are too similar to economic miscalculations.

Traces of the legalization of proceeds usually consist structurally of a certain list of components that are interrelated with other natures of offences. Businesses that carry out

non-commodity transactions (conversion centres) usually have a large number of signed and stamped documents, for example:

- documents certifying the performance of a certain type of activity (agreements on concluding certain contracts (purchase and sale, loan, the performance of works, etc.);
- accounting and reporting documents (primary accounting documents (invoices, consignments and other that record individual economic transactions)); accounting accounts; balance sheet (main and consolidated part of accounting);
- statistical accounting and reporting documents (reflect quantitative characteristics of individual aspects of enterprise' activity for a certain period of time);
- operational accounting and reporting documents;
- automated workplace documents;
- draft accounting;
- banking documents;
- cash documents;
- working records of officials and employees, the content of which is relevant to the criminal case;
- magnetic media.

Storage of any purchased goods requires the availability of premises for storage of certain types of goods, technical capabilities for unloading, assembly, packaging, and if necessary specific temperature regime, etc. The absence of the specified stuff or rented storage premises without signs of storage of goods or mismatch of size to the scope of purchases is also a complex trace picture component.⁵⁹

Interrogation rather than informative investigative (search) action at different stages of the legalization investigation shall be carried out to obtain the testimony of individuals who directly legalized funds, as well as of a wide range of witnesses:

- individuals who participated in the commission of predicate crime but are not accomplices in the legalization of criminal proceeds;
- individuals who, although carried out legalization transactions, were not aware of criminal origin of property or funds involved in financial or civil transactions;
- individuals who are aware of any information on circumstances and the subject of legalization.

Since this type of crime is committed mainly by criminal organizations, it is essential to study the suspect's personality before interrogating him/her. Prior to resolving tactical objectives during the interrogation of alleged criminal group organizer, active and less active members of organized criminal activities, traits characterizing an individual (age,

59. Methodical recommendations "Actions of police officers in case of detection of economic crimes", Dnipro State University of Internal Affairs, Group of authors: O.M. Kubetska, O.V. Neklesa, Y.S. Paleshko, D.B. Sanakoiev.

education, position, rank within criminal organization, share of total criminal proceeds) shall be identified. It should be borne in mind that a governing core, i.e. criminal group organizers, are people who have authority in the community due to their official positions, perceived sponsorship, etc.

During suspect interrogation, it is necessary to clarify circumstances related to the legalization of criminal proceeds linked with the creation of a criminal group, the number of members and functions performed by each of them. During interrogation, an investigator shall ascertain the following circumstances:

- composition of criminal organization, its functional roles; initiator of criminal organization and its leader; members belonging to criminal organization management;
- time of criminal organization being operating; when each member joined criminal group and how long he or she was part of the group; how members of criminal group were linked; whether a specific plan for protection from exposure was developed and who developed it, what did this plan consist in; whether there was a connection with corrupt officials from authorities and its management and what was it specifically;
- who developed a criminal technology for the legalization (laundering) of criminal proceeds; who selected a criminal offence object, who developed a crime plan and took preparatory steps, including who distributed roles, taught techniques of committing a crime and methods to conceal it; who developed a general strategy for being investigated, in case of revealing unlawful activity, who received advice and what were these pieces of advice; who distributed criminal proceeds and how they were legalized (laundered);
- what exactly was the plan for crime preparation and its method; how and who studied the crime scene; whether the existing situation or corrupt officials created favourable conditions for a criminal act; what obstacles were identified during preparation for the crime and how they were overcome;
- what are the established relationships in a criminal organization, whether there are conflicts between group members.

According to Article 131 CPC, *seizure of property* is one of the measures to ensure criminal proceedings used to achieve efficiency of these proceedings.

Pursuant to provisions of Articles 170, 171 CPC, a prosecutor or investigator, upon prosecutor's approval, shall have the right to request an investigative judge or court to grant seizure of property, and in order to ensure civil lawsuit, this right shall also be entitled to a civil plaintiff.

The seizure may be imposed in accordance with the procedure stipulated by CPC on movable or immovable property, money in any currency or in non-cash form, including funds and valuables held in bank accounts or kept by banks or other financial institutions, expenditure transactions, securities, property and corporate rights subjected to be seized by a ruling or decision of an investigative judge or court.

Property may not be seized if it is owned by a bona fide purchaser, except for the seizure of property to ensure the preservation of physical evidence.

Value of the property to be seized to ensure civil lawsuit or recovery of received unlawful gain shall commensurate with the amount of damage caused by a criminal offence or specified in a civil lawsuit, amount of the unlawful gain received by a legal entity.

The objective of property seizure is to prevent the possibility to conceal, damage, spoil, lose, destroy, use, transform, move, transfer and alienate it.

Property seizure shall be allowed to ensure the following:

- preservation of physical evidence (seizure is imposed on property of any individual or legal entity if there are sufficient grounds to believe that it meets the criteria set out in Article 98 of this Code);
- special confiscation (property of the suspect, accused, convicted person or third party shall be seized upon the existence of reasonable grounds to believe that it will be subject to special confiscation in cases stipulated by the Criminal Code of Ukraine. A property belonging to a third party shall be seized if it was acquired free of charge or at a price that is higher or lower than the market value, and an individual knew or should have known that such property corresponds to any of the criteria stipulated by paragraphs 1-4 part 1 Article 962 CC);
- forfeiture of property as a type of penalty or a legal measure against the legal entity (property of suspect, accused, convicted person or legal entity being party to criminal proceedings shall be seized, if there are sufficient grounds to believe that the court may in cases provided for by the Criminal Code of Ukraine impose a penalty in the form of confiscation of property or apply a legal measure in the form of property confiscation to a legal entity);
- reimbursement of damage caused as a result of a criminal offence (civil lawsuit), or recovery from legal entity of unlawful gain (property of suspect, accused, convicted person, the individual or legal entity shall be seized, who/that, by virtue of law, bears civil liability for damage caused by actions (omission) of a suspect, accused, the convicted person or a person who lack criminal capacity and committed a socially dangerous act, as well as a legal entity in respect of which the proceedings are being carried out, provided that there is a reasonable amount of the civil lawsuit in the criminal proceedings, as well as a reasonable size of illegal gains obtained by the legal entity being a party to the proceedings).

On 31.10.2019, the Civil Procedure Code was supplemented by Chapter 12 of Section III “Peculiarities of Claim Proceedings in Cases of Recognition of Unfounded Assets and their Recovery into State Revenue”.

Such amendments provide the Special Anti-Corruption Prosecutor’s Office and the Prosecutor General’s Office prosecutors, upon authorization of the Prosecutor General, with powers to file a lawsuit to recognize unfounded assets and recover them into state revenue to the High Anti-Corruption Court of Ukraine.

There are the following conditions for filing such lawsuit:

The lawsuit can be filed if:

1. assets acquired after 28.11.2019;
2. difference between assets value and legitimate income of defendant by 500 and more times exceeds the subsistence minimum for able-bodied persons as of the day this law entered into force (as of 28.11.2019 — from UAH 1 003 500), but does not exceed limits established by Art. 368-5 CC (illegal enrichment), namely UAH 6 292 000);
3. difference between assets value and legitimate income of defendant by 500 and more times exceeds the subsistence minimum for able-bodied persons and criminal proceedings under Art. 368-5 CC with such assets being an object of offence are closed on the basis of para. 3, 4, 5, 8, 10 pt. 1 Art. 284 of the Criminal Procedure Code, and the deadline for appealing the decision on proceedings closing expired.

Criminal proceedings in such cases may be completed due to the absence of evidence if a person fails to prove the legality of assets in civil proceedings.

4.7.2. Specifics of using documents containing bank secrecy as evidence; legal status of SFMS's case referrals

In accordance with Article 86 of CPC of Ukraine, evidence shall be deemed admissible if it is obtained in accordance with the procedure stipulated by this Code. Inadmissible evidence cannot be used in making procedural decisions neither referred to by the court when making a court decision.

In accordance with Article 87 of CPC of Ukraine, evidence shall be deemed inadmissible if it is obtained as a result of a significant breach of human rights and freedoms guaranteed by the Constitution and Laws of Ukraine, international treaties approved by the Verkhovna Rada of Ukraine, as well as any other evidence obtained through information received as a result of a significant breach of human rights and freedoms. In particular, a court shall recognize the procedural actions that require prior court permission that were carried without such permission as significant breaches of human rights and fundamental freedoms.

It should be noted that evidence obtained by means not following ECHR may be rendered inadmissible in criminal proceedings or subject to appeal in the European Court with the possibility of convictions being overturned and compensation being awarded.

In financial investigations, the most demanded information is the one owned by banking institutions.

The exhaustive list of ways to disclose information constituting banking secrecy is provided by Article 62 of the Law of Ukraine "On Banks and Banking". Therefore, the information

contained in case referral constituting banking secrecy cannot be used in criminal proceedings as evidence.

Such information may be disclosed to law enforcement agencies on the basis of the following paragraphs of Article 62 of the Law of Ukraine “On Banks and Banking”:

- by a court decision;
- by written request of prosecution authorities of Ukraine, Security Service of Ukraine, State Bureau of Investigation, National Police, National Anti-Corruption Bureau of Ukraine, Antimonopoly Committee of Ukraine in respect of accounts transactions of a specific legal entity or individual who is a business entity for a specific period of time;
- by written request of prosecution authorities of Ukraine, State Bureau of Investigations, National Anti-Corruption Bureau of Ukraine within their competence in cases of identification of unfounded assets and collection of evidence of their unfounded nature in respect of accounts transactions of a specific legal entity or individual who is business entity or individual for a specific period of time with counterparties indication;
- by written request of the National Anti-Corruption Bureau of Ukraine within its competence, including in cases of identification of unfounded assets and collection of evidence of their unfounded nature in respect of accounts, deposits, transactions, accounts transactions or without opening accounts of specific legal entity or individual who is business entity or individual for a specific period of time with counterparties indication;
- by written request of central executive authority implementing state tax policy in respect of bank accounts availability.

The request of relevant law enforcement agency to obtain information containing banking secrecy shall:

1. be issued on a prescribed form or sent electronically;
2. be submitted having a signature of a head (deputy head), seal, or be certified by the authorized electronic signature of a head (deputy head);
3. contain grounds provided for by this Law for obtaining this information;
4. contain references to legal provisions, according to which a law enforcement agency has the right to obtain such information.

It should be emphasized that in accordance with Article 62 of the Law of Ukraine “On Banks and Banking”, information on legal entities and individuals containing banking secrecy shall be disclosed by **banks**. That is, disclosure of banking secrecy not by a banking institution or without support of a banking institution may be assessed by the court as obtaining evidence by a law enforcement agency in violation of the procedure for obtaining such evidence. As a result, such evidence may be declared inadmissible.

There are certain peculiarities of converting SFMS’ information into evidence.

SFMS is not empowered to ascertain and prove facts of commission of a crime or certain persons participating in any illegal activity.

Law enforcement agencies and prosecution authorities endowed by law with obligation to prove in criminal proceedings the events and circumstance of crime which are the basis to apply criminal law measures to investigation subject and empowered to make decision based on results of pre-trial investigation to close the criminal proceedings or submit notice of suspicion and sending indictment to the court (Articles 92, 22 of the Criminal Procedure Code of Ukraine). Decision on existence of event and corpus delicti of crime is attributed to exclusive jurisdiction of local (district, city, district in cities, city district) courts (Article 368 of CPC of Ukraine).

Therefore, SFMS' analytical work, suspension of financial transactions and preparation of relevant case referrals precede investigative actions by law enforcement agencies that ascertain a fact of crime and possible notification of suspicion.

According to the Law on prevention and counteraction to the legalization (laundering) of proceeds, case referrals are information on financial transactions that have been subject to financial monitoring and, following their analysis, raised SFMS suspicious of a criminal offence.

Thus, case referral is based on information that contains professional, banking and financial monitoring secrecy, as well as information of foreign financial intelligence units, circulation of which is regulated by international law. Information on financial transactions and information of foreign financial intelligence units, reflected in a case referral, contain data with limited access, and their dissemination is carried out in accordance with Ukrainian and international legislation.

According to the Financial Action Task Force (TAFT) Recommendation 29, rules governing the security and confidentiality of such information shall be in place. The financial intelligence unit (hereinafter – FIU) should be functionally independent and autonomous, which means that FIU should have the authority and capacity to freely perform its functions, including autonomous decision-making on the transfer of specific information.

In accordance with para. 7, 8 Art. 46 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and on the Financing of Terrorism (ratified by the Law of Ukraine of November 17, 2010, No 2698-vi), information or documents obtained in the framework of cooperation between financial intelligence units shall be used for intelligence purposes. Information supplied by a counterpart FIU shall not be disseminated to a third party nor be used by the receiving FIU for purposes other than analysis without the prior consent of the supplying FIU. The receiving FIU shall comply with any such restrictions and condition imposed on the use of submitted information. According to par. 10 of this article, FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.

In particular, within the Egmont Group, information may be submitted by FIU with the following reservations:

-
- information is provided only for criminal investigation and shall not be used for administrative, judicial or fiscal purposes;
 - information cannot be used as evidence in court or in prosecution;
 - for further actions using this information, it is necessary to obtain the written consent of FIU;
 - information may not be disclosed to third parties;
 - evidence can only be obtained within the framework of international legal assistance.

Transfer of information to third parties without FIU's permission shall be deemed as a breach of Article 3 of the relevant Agreement and Charter of the Egmont Group, of which Ukraine is a member.

In view of the above, SFMS' case referrals cannot be used in court as evidence, as the information used to prepare suspicion to obtain the status of admissible evidence requires its obtaining in accordance with the following procedure established for such information: prior permission of the court to conduct procedural actions, in particular, to disclose banking secrecy and obtain the permission of a foreign FIU to use its submitted information as evidence in court.

To "legalize" information of a foreign FIU from case referral as evidence, it is necessary to:

- apply to SFMS to send the relevant request to the foreign FIU asking for such permission;
- in case of granted permission, to apply to SFMS for permission to issue a copy of this part of case referral, which contains information of the foreign FIU;
- in case of refusal of such FIU to obtain such information through the channels of international legal assistance, without referring to FIU's information.

It is worth noting how the Law of Ukraine "On Prevention and Counteraction to the Legalization (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" of 06.12.2019 regulated **the use of information** obtained by SFMS from **foreign law enforcement agencies**. In accordance with par. 2 pt. 2 Art. 31 of the Law, if a specially authorized authority (SFMS) receives a request from a relevant foreign authority to transfer information containing financial monitoring secret, the foreign law enforcement agency shall be provided with such information only for the investigation of the legalization (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction or cases related to the commitment of publicly dangerous unlawful act resulted in criminal proceeds. However, such information **may not be provided** by specially authorized authority (SFMS) to the relevant foreign authority to be used **as evidence** or to be attached to criminal proceedings files.

Therefore, SFMS' information, including information of law enforcement agencies, cannot be used as evidence in foreign jurisdictions.

At the same time, law enforcement agencies have the right to apply to Ukrainian FIU, requesting to obtain relevant information and permission from abroad.

SFMS has the right on the initiative of the law enforcement agency to apply to a foreign financial intelligence unit with the request to allow the use of its information as evidence in a criminal proceeding. If the foreign FIU grants a permit under the law of its country, this information can be used as evidence. In this case, an investigator has the right to inspect case referral by issuing an inspection report, but only that part of the case referral contains information from the foreign FIU. In this respect, the investigator, upon receiving relevant permission of SFMS, has the right to make a copy of the part of the case referral containing information of the foreign FIU and to attach it to the inspection report.

It is clear that such report can be used by the investigator as evidence when applying to the court with notions, including notions under Art. 160 of CPC of Ukraine.

How can an investigator legalize the information contained in SFMS' case referral? The reasonable practice of law enforcement agencies is when an investigator or operative having received a case referral analyses it and issues a reference file or report. At the same time, law enforcement officers can already use the information from case referral as a source of information for further collection of additional data from other sources (in particular, the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, other public registers, open Internet resources, etc.) and from law enforcement agency information databases. The obtained information is attached to the reference file or report. The specified reference file or report with attachments can be used when registering information in URPTI, applying to the court with the notion, and requesting the court for provisional access to items and documents containing banking secrecy. Through court decisions and disclosure of bank secrecy by banks, it is possible to legalize information contained in case referral and, as a result, to obtain admissible evidence.

Case referrals or their copies or parts cannot be attached to notions submitted to the court, as this would violate the procedure for working with documents marked as "For official use only".

5. INTERNATIONAL COOPERATION IN FINANCIAL INVESTIGATIONS

Financial investigations often go beyond national borders, so it is crucial to ensure that the competent authority makes timely use of formal and informal international cooperation capacities in the course of the investigation.

Establishing contacts at the initial stage will enable investigators to learn peculiarities of the foreign legal system, issues of obtaining additional information and formulating a general investigation plan.

International cooperation is an important element of financial investigations. Therefore, the use of existing mechanisms for establishing such cooperation shall be as efficient and prompt as possible, given the volatility inherent in electronic evidence and traces of criminal activity in a virtual environment. In particular, this refers to the following:

- cooperation through international networks established to find criminal proceeds, including the Camden Asset Recovery Inter-Agency Network (CARIN), Stolen Asset Recovery Initiative (StAR), which is the result of a partnership between the World Bank and UN Office on Drugs and Crime, and specialized asset recovery network (Global Focal Point Network on Asset Recovery, which is a joint initiative of StAR and Interpol);
- use of cooperation mechanisms between police authorities (24/7 contact centres, G8 – network of Information Crime Investigation Units and Interpol National Offices) to obtain intelligence, fulfil requests for information retention, etc. to minimize bureaucratic overload within standard mutual legal assistance procedure;
- establishing contacts with similar foreign agencies through SFMS by submitting requests via Egmont Secure Web channel;
- use of formal information exchange procedures with the Central Authority (prosecutor's office) – a mechanism for exchanging request within the framework of mutual legal assistance.

The Preamble to the Association Agreement between the European Union, the European Atomic Energy Community and its Member State, of the one part, and Ukraine, of the other part,⁶⁰ ratified by our state on September 16, 2014, states the desire of moving the reform

60. On Association between Ukraine, of the one part, and European Union, European Atomic Energy Community and its Member States, of the other part: Agreement of June 27, 2014 [Electronic resource] / European Union; Ukraine // Official site of the Verkhovna Rada of Ukraine. – Available at: http://zakon4.rada.gov.ua/laws/show/984_011.

and legislation approximation process forward in Ukraine, thus contributing to the gradual economic integration and deepening of a political association, and the commitment to combating organized crime and money legalization (laundering).

Paragraph “e” pt. 2 Art. 1 of the Agreement defines one of the aims of the association, i.e. to enhance cooperation in the field of justice, freedom and security with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms. The context of this aim achievement presupposes that a new model of financial investigations should be formed in Ukraine. Financial investigations are an effective factor in countering such socially dangerous phenomena as corruption and organized crime, legalization of criminal proceeds, terrorist financing, etc.

5.1. Formal cooperation channels

Financial investigation is a complex and labour intensive process that often goes outside country borders since evidence and assets are not always found solely in the territory of the state conducting the investigation, criminal prosecution, or criminal proceedings. As a result, a state will usually require the assistance of other states in the search for offenders, witnesses, evidence and, in particular, assets. Stolen assets are usually quickly transferred abroad with the aim of using them in jurisdictions that inaccessible to investigators. Hence the particular importance of international cooperation in finding, locating, and seizing stolen assets, countering ML, terrorist financing, etc.

Public authorities in different countries have developed a number of processes used to request and obtain information, evidence and seize assets in cross-border investigations and prosecutions. This process usually starts with the mutual exchange of information between law enforcement agencies or through FIUs, followed by what is called a request for international legal assistance. Mutual information exchange through unofficial channels shall be used to inform and forward a subsequent **request for ILA**. The request for ILA is sent from one state (requestor) to another state (recipient), which in turn may also make an ILA request for the requesting state. Thus, there are certain legal and practical requirements in this area that are covered in this section.

ILA plays an important role in a number of procedures: for example, ILA is used in the course of the investigation, prosecution or criminal proceedings to identify and seize assets related to proceeds of crime with a view to their final confiscation and recovery upon conviction. The main difference between formal and informal means of information collection is that ILA provided in an official manner, usually allows the use of data, extracts and supporting documents received from the recipient state as admissible evidence in courts of the requestor state and vice versa.

One of the major problems that the requestor state faces with respect to stolen assets outside its jurisdiction is the affiliation of such assets with a crime that has occurred within its jurisdiction. It is not enough to prove that a predicate crime took place: there must also

be a link between the predicate crime and assets located abroad. At this initial stage, it is not necessary to establish such a link by supporting it with evidence to request ILA. The hypotheses of the investigation, requestor state's suspicions, or persuasion that link assets to the crime are usually sufficient to allow the receiving state to respond.

It should also be considered that requests for ILA depend on the time of their submission, and their effectiveness (in particular, when there is a need for prompt steps to freeze stolen assets) largely depends on the level of trust and cooperation established in the framework of informal information exchange.⁶¹

Goals and objectives

In the framework of ILA, the requestor state seeks that the receiving state does the following: (i) satisfy the requirements for the provision of evidence in connection with the investigation, prosecution or proceedings conducted by the requestor state; or (ii) took precautionary measures concerning assets that are considered to be proceeds of crime and are stored in the receiving state and for which there is a risk of diffusion. The ultimate purpose of the ILA request consists of a decision of the receiving state to enforce the requestor's state court order on property confiscation to subsequently recover confiscated assets. Thus, ILA requests are necessary to obtain evidence or protect assets (this can be done in one or in separate ILA requests, depending on the case investigation plan) and to decide on the execution of the confiscation order.

ILA may be issued by the requestor state at any stage of the proceedings, i.e. investigation, prosecution, or trial. ILA request is based on mutual coordination, cooperation and communication. Therefore, requests should contain sufficient information obtained from the investigation in the requestor state's territory to enable the authorities of the receiving state to better understand facts and context of what is to be found and to link them to assets in respect of which the request for seizure was issued, thereby allowing the receiving state to act on behalf of the requestor state.

ILA allows obtaining evidence or trace assets found in another country. In addition, such assets can be identified, retained, qualified, safeguarded, confiscated, or legally returned to the requestor state. Steps taken by the receiving state on behalf of the requestor state through ILA request shall be legal, and their results in the territory of the receiving state shall be used exclusively in the judicial proceedings conducted by the authorities of the requestor state as specified in the ILA request.

ILA is necessary because the requestor state cannot conduct its activities in the territory of the receiving state and, thus, the former requires prior permission from the latter for this. When requesting ILA, the requestor state shall also comply with the legal and constitutional requirements of the receiving state. Therefore, ILA becomes the process used to file a request and the method whereby the requestor state receives the authority to present

61. Tracing Illegal Assets – A Practitioner's Guide. The International Centre for Assets Recovery, Basel Institute on Governance, The International Centre for Assets Recovery, 2015 (original, English) / 2016 (translation in Ukrainian).

evidence or take enforcement measures on behalf of the requestor state. Thus, ILA meets both legal requirements of the receiving state and confirms that measures taken with its assistance remain in force in courts of the requestor state.⁶²

Interaction areas:

1. Sending special requests to obtain tax information from foreign competent authorities.

STS of Ukraine units may obtain tax information under the Convention on Mutual Administrative Assistance in Tax Matters, signed by the Council of Europe Member States and OECD member countries.

If there is a need to obtain tax information from foreign authorities to verify legitimacy of business entity activities, STS of Ukraine may obtain data from tax authorities of countries across the world that Ukraine has concluded double taxation avoidance agreements with.

A special request to obtain or provide information from abroad is a request for information that can be provided as a result of taxpayer's verification or pre-trial investigation of tax evasion and other violations of legislation falling within the competence of the State Tax Service of Ukraine, which is sent to a foreign partner or by a foreign partner to the State Tax Service of Ukraine.

Special requests are performed only subject to international treaties of Ukraine, which provide for tax information exchange.

The need to obtain certain information should be based on the fact that case file facts give reason to believe that a taxpayer was operating under a scheme that would conceal the income earned.

A special request is made if:

- facts show that the required information is outside Ukraine, and verification of economic entities or pre-trial investigations resulted in the need to confirm the accuracy of such information, regardless of criminal proceedings against persons, or facts of foreign economic transactions, in particular in case of ascertainment of overdue accounts receivables from a non-resident to a resident;
- the discrepancy between the quantitative or other indicators of customs declaration and goods actually monetized (imported) or shipped (exported) was ascertained;
- facts indicating transfer of criminal proceeds outside Ukraine for their subsequent legalization (laundering);
- there is a need to obtain information on pricing control.

A checklist of questions to prepare a request for international legal assistance and a sample of such request are provided in Annexes 4 and 5 to this Manual.

62. Tracing Illegal Assets – A Practitioner's Guide. The International Centre for Assets Recovery, Basel Institute on Governance, The International Centre for Assets Recovery, 2015 (original, English) / 2016 (translation in Ukrainian).

5.2. Informal cooperation channels

To recover proceeds of crime that are in the territory of another country or were transited through it, it is important to have the capacities to find these assets or help another country identify them.

The first step available to a foreign jurisdiction to identify assets located in another country may be to request informal assistance in the investigation.

Preliminary establishment of close contact may help to clarify the specifics of a foreign country's legal system and issues that may arise when working out versions and formulating a plan. It also gives a foreign country the opportunity to prepare for cooperation.

Establishing personal relationships with foreign colleagues is the key to success in asset recovery. A phone call, an email, a video conference, or a personal meeting can help move the case developments forward.

Such communication is important at all stages, i.e. when receiving information and data, making strategic decisions, requesting mutual legal assistance, or monitoring request execution.

In this way, delays can be minimized, especially by eliminating misunderstandings caused by differences in terminology and legal customs. Personal relationships also help demonstrate a serious approach, interest in the workflow, foster trust between parties and encourage increased attention to the case.

In the early stages of the case, a personal meeting with a representative of the financial investigation authority and the expert of countries involved in the investigation facilitates information exchange. Such meetings also help build trust between colleagues from different countries, help evaluate plans and study the requirements for requesting mutual legal assistance.

Within the framework of international cooperation, personal contacts can be used:

contacts established during investigations of previous cases, meetings, conferences, etc. Personal contacts, social networks, and international organizations (such as the World Bank or UN Office on Drugs and Crime) may be used to make recommendations based on personal relationships. To establish contact, attention should be paid to peers from similar structures in foreign states, including:

- law enforcement agencies (such as police and organizations dealing with the fight against corruption, customs and tax controls, and enforcement of laws on combating drug trafficking);
- financial intelligence units;
- regulatory authorities (in the field of banking and securities markets);
- prosecutors' offices;
- investigative judges/investigators;

- foreign lawyers (some states invite a lawyer familiar with the procedures and requirements of a foreign country).

The activities of liaison officers and regional law enforcement attaches are important. Embassies or consulates of many countries have consultants dealing with international cooperation with foreign countries. These consultants know the laws and procedures of both their state and the state where they are employed. This knowledge can help practitioners avoid pitfalls while working with different legal systems. Their functions may vary, but they usually involve establishing contacts with partners, providing information, assisting in the preparation of a request for mutual legal assistance (review of a previous version of the document) and monitoring its implementation.

It is possible to contact a foreign embassy in your country, consulate, or foreign ministry to find out if they have such a consultant. A request for mutual legal assistance shall be sent as soon as the need for international cooperation is established. However, some important information can be obtained more quickly and easily through direct contacts with colleagues in law enforcement and financial intelligence units or with a law enforcement attaché working locally or regionally. Such assistance may help identify assets more quickly and clarify what support will be needed in the future.

Such contacts also give an opportunity to learn about procedures and features of the foreign country legal system and determine the most optimal plans. Informal contacts often require the permission of the central government so as not to violate the protocol of communication with another state, to comply with laws and regulations on international assistance.

The best option is a step-by-step process where information or evidence obtained from one request is used to support the next one. For example, unofficial assistance can provide bank account information that will provide the necessary grounds and information to request mutual legal assistance and seize bank documents. The activities uncovered using these documents will help trace assets and identify additional accounts that should be frozen or seized. This will assist in the gathering of evidence necessary for interim measures, urgent means (through informal assistance, if possible) or through a request for mutual legal assistance.

The accumulated information and evidence will ultimately provide the basis for a decision on the confiscation within the state and its enforcement. Unofficial assistance facilitates faster receipt of information, which plays a role in the preliminary assessment of facts and development of further measures.

Since it is not possible to immediately determine the extent of informal cooperation means, they will usually include non-coercive investigative measures such as gathering publicly available information, conducting visual surveillance, and obtaining information from financial intelligence units. This may additionally cover cases of spontaneous disclosure (Article 46 (4) of the United Nations Convention against Corruption).⁶³

63. Tracing Illegal Assets – A Practitioner’s Guide. The International Centre for Assets Recovery, Basel

An important area of informal cooperation in the field of financial investigations is the ***international cooperation of SFMS*** that regularly ensures interaction and information exchange with competent authorities of foreign states and international organizations, especially on complex transnational schemes. In particular, it regularly actively cooperates with the Egmont Group of Financial Intelligence Units, which integrates FIUs from 161 countries into a single global secure network.

Exchange of information with FIUs of foreign countries takes place through the secure website of the Egmont Group based on principles of mutual trust; provision of the most extensive information; rapid response; use of the most effective means; security and privacy.

Requests exchanged by FIUs shall be accompanied by a summary of relevant facts. The request shall specify how the requested information will be used.

Information obtained from exchanges between FIUs shall be used solely for the purposes that such information is requested for and under conditions specified by FIU which provides it. To disseminate information to other authorities or third parties, or for any use of this information for administrative, investigative, prosecutorial, and judicial purposes, SFMS shall send a request for appropriate permission to the foreign FIU which provided it. FIUs shall take all necessary measures, including security measures, to make information transmitted to third parties inaccessible.

Usually, information received from foreign FIU is intelligence and cannot be used in official proceedings (criminal civil, administrative, judicial) without the appropriate permission of such FIU.

If there is no such permission, this information shall be requested in the framework of international legal assistance in criminal proceedings to be used as evidence after agreeing on the possibility of using the information obtained from foreign FIU for requests within ILA.

Therefore, cooperation between SFMS and foreign FIUs in international terms belongs to the category of informal cooperation.

Advantages of using FIU channels to obtain intelligence from abroad consist in the speed, avoidance of disclosure and strict confidentiality, wide access to information both from abroad and in Ukraine.

The aforementioned, just like gathering as much data as possible in the context of covert investigative operation, is crucial for financial investigations, especially in high-profile cases.

Both in Ukraine and abroad, there are uniform rules based on international standards for information non-disclosure by the entities of primary and state financial monitoring.

If SFMS' files are verified by law enforcement agencies in the framework of criminal proceedings, international cooperation in financial investigations can be carried out through PGO, NABU and the Ministry of Justice of Ukraine within the framework of international

Institute on Governance, The International Centre for Assets Recovery, 2015 (original, English) / 2016 (translation in Ukrainian).

legal assistance provided for by CPC of Ukraine for the so-called “legalization” of previously obtained intelligence information and its subsequent official use in criminal proceedings.

In addition, international cooperation may involve the Interpol National Central Bureau within MIA of Ukraine, ARMA through the Camden Asset Recovery Inter-Agency Network (CARIN), the World Bank’s Stolen Asset Recovery Initiative (StAR) that are also related to informal cooperation channels.

Annexes provide an indicative list of issues that need to be addressed by law enforcement agencies when requesting SFMS to get involved in a financial investigation.

The structure of the request of law enforcement authority to SFMS to monitor financial transactions is described in Annex 2 to this Manual.

5.3. Organisations facilitating complex financial investigations

Organizations such as Interpol, Europol, Eurojust, the World Bank’s StAR Initiative, Camden Asset Recovery Inter-Agency Network (CARIN), and the International Anti-Corruption Centre (IACCC) facilitate complex financial investigations.

1. Interpol (French: *Organisation Internationale de Police Criminelle, OIPC*, English: *International Criminal Police Organization, ICPO*) is an organization involved in searching for a specific entity, a person, and facilitates police searches. It was established as the *International Criminal Police Commission* in 1923, and the current title has been used since 1956. It consists of 190 member states. By its size, it is considered the second largest international intergovernmental organization after the UN. Its headquarters are located in Lyon, France.⁶⁴

Interpol staff cannot carry out police functions (the right to arrest or carry and use their own or service weapons) in the territory of any member countries. They only deal with the coordination of forces to make it much easier for law enforcement officers from other countries to deal with such matters as the particularities of national justice, legislation, and the language barrier.⁶⁵ In fact, the main function of Interpol is to create and maintain a variety of databases that can be used by law enforcement agencies in its member states (for example, databases of counterfeiters, drug cartel members, stolen cars, stolen artworks, etc.).

Under the Regulation on the Interpol National Central Bureau, approved by the Resolution of the Cabinet of Ministers of Ukraine of March 25, 1993, No. 220, interactions between

64. *Multimedia guidance manual “Judicial and law enforcement authorities”*. – Electronic resource. – Available at: https://arm.naiu.kiev.ua/books/spou_2019/info/lec10.html

65. *Multimedia guidance manual “Judicial and law enforcement authorities”*. – Electronic resource. – Available at: https://arm.naiu.kiev.ua/books/spou_2019/info/lec10.html

Ukrainian law enforcement agencies and competent authorities of foreign states on addressing issues of combating transnational crimes or crimes that occur outside the state shall be conducted only through the Interpol National Central Bureau. The National Police acts as the Interpol's National Central Bureau (NCB). NCB ensures cooperation between law enforcement agencies of Ukraine and foreign countries both in general and in specific fields of combating crime and provides opportunities to:

1.3.1. Prepare and submit initiative requests abroad;

1.3.2. Prepare and send responses to requests of foreign law enforcement agencies;

1.3.3. Exchange intelligence, including reference and criminalistic information on preparation and commission of crimes and persons involved thereto, as well as archival and, in some cases, procedural information;

1.3.4. Exchange experience, legislative and other regulative acts, training and methodological literature on law enforcement activities;

1.3.5. Exchange scientific, technical and other information on combating crime.

When conducting operational and investigative activities related to uncovering crimes in the field of economics and finances, the following information can be obtained through NCB from the General Secretariate or Interpol NCB in foreign countries:

- official names of commercial entities (companies, joint ventures, etc.) and other legal entities being business entities located abroad;
- date of their registration with relevant state authorities, their legal address, telephone numbers, and other telecommunication means;
- surnames and names of managers of such entities;
- their main activities;
- size of their authorized capital;
- data on suspension of activities;
- criminal data about their managers and employees.

In some countries, it is possible to obtain information about agreements concluded between foreign companies and Ukrainian legal entities and individuals or with their involvement and consequences of their implementation.

Information on opening by individuals, including citizens of Ukraine and legal entities, of financial accounts in foreign banks, as well as about the movement of funds on them, on conclusion of agreements between Ukrainian and foreign legal entities, usually constitutes a bank or commercial secret and can be disclosed to foreign law enforcement agencies only after consideration of an official request from the Prosecutor General's Office of Ukraine by the supreme justice authority (prosecutor's office) of the requestor state within the procedure of legal assistance in the criminal case.

2. European Police Office or Europol is an information and coordination agency committed to ensure cooperation between the police authorities of the European Union (EU) Member States in the fight against crime, in particular, organized crime, terrorism, corruption, fraud, drug business, illicit trafficking in weapons, money laundering, crimes

against children, illegal migration, etc. Its establishment was envisaged by Maastricht Treaty, 1992 (Sect. VI) and the Treaty of Amsterdam on European Union, 1997 (Sect. VI) to exchange information, coordinate activities of police and justice authorities of EU countries in this field. Europol is the only centre with three powerful databases containing information on crimes and criminal activities across the EU. The data are provided only to competent authorities, their officials and officers who require such information by the nature of their service. The Headquarters are located in Hague (Netherlands).⁶⁶

Priority areas for Europol research include crimes against individual, financial and cybercrimes. Europol's activities are limited to organized crime structures involving two or more EU countries. Europol assists the Member States in exchanging information; undertakes an operational analysis of measures taken by the Member States; prepares strategic reports (in particular, formulates threats) and research crimes; performs examinations and provides technical support for investigations and operations within EU; facilitates harmonization of investigative procedures in the Member States.

In accordance with the Agreement on Operational and Strategic Co-operation between Ukraine and the European Police Office, the Department of Cooperation with Europol of the National Police of Ukraine has been designated as the National Contact Point for Ukraine, which acts as the central contact point between other competent authorities of Ukraine and Europol.

3. Eurojust is a European agency that cooperates with judicial and police authorities of the EU Member States.

Eurojust shall encourage and coordinate investigations and prosecutions between competent authorities in the Member States and shall enhance cooperation between competent authorities of the Member States, in particular by facilitating the enforcement of requests for international mutual legal assistance and extradition.⁶⁷

Eurojust's competence covers the following types of crimes and offences: terrorism, drug trafficking, personal data trafficking, counterfeiting, money laundering, computer crimes, crimes against property or public goods, including fraud and corruption, crimes affecting the financial interests of EU, environmental crimes and involvement in a criminal organization. Also, Eurojust can assist the EU Member States in the investigation of other crimes.⁶⁸ Eurojust assists the competent authorities in coordinating investigations and litigation.

Eurojust cooperates with 24 non-EU countries: Albania, Argentina, Bosnia and Herzegovina, Egypt, Canada, North Macedonia, Iceland, Israel, Japan, Korea, Liechtenstein, Moldova, Mongolia, Montenegro, Norway, Russian Federation, Serbia, Singapore, Switzerland, Thailand, Turkey, Ukraine and USA.⁶⁹

66. European Police Office // *Yurydychna Entsyklopediia*: [in 6 volumes] / editorial board. Y. S. Shemshuchenko (publishing editor) [et al.] — K.: Ukrainska entsyklopedii n.a. M. P. Bazhan, 1998. — Vol. 2 : D — Y. — 744 p.

67. <https://uk.wikipedia.org/wiki/Євроюст>

68. [Eurojust Decision Art. 4](#) . — Electronic source. Available at: <https://eur-lex.europa.eu/>

69. <https://uk.wikipedia.org/wiki/Євроюст>

Ukraine has its own liaison officer at Eurojust and may exchange information, including personal data.

The information obtained by Eurojust's joint investigative teams is considered to be obtained officially and may be used in criminal proceedings and in court. In priority, important and complex cases involving many jurisdictions, it is advisable to contact the organization to coordinate joint activities and exchange information more effectively at the transnational level.

4. StAR is a partnership initiative of the World Bank Group and the United Nations Office on Drugs and Crime that supports international efforts to end the concealment of assets obtained from corruption-related offences.

StAR Initiative:

- works with developing countries and financial centres to prevent the laundering of proceeds from corruption crimes and timely recovery of stolen assets;
- assists countries in developing regulatory frameworks, building institutional knowledge and skills needed to recover assets, and works with partners worldwide to develop effective tools to prevent asset theft;
- by cooperating with all relevant institutions, including financial centres and anti-corruption agencies, provides states with technical and legal assistance in identifying, recovering and confiscating criminal proceeds, and facilitates strengthening of international cooperation in this field;
- makes innovations in the global fight against corruption by developing strategies and methods for identifying assets obtained from corruption offences, cooperating with multiple international institutions, such as the United Nations Office on Drugs and Crime, G8, G20, Organization for Economic Co-operation and Development (OECD) and Financial Action Task Force (FATF).⁷⁰

5. Camden Asset Recovery Interagency Network (CARIN) is an informal network of law enforcement representatives and court practitioners, experts in the area of asset finding, tracing, freezing, seizure and confiscation. Each Member State is represented in the network by a law enforcement officer and a judicial expert (prosecutor, investigator, etc.), depending on the state's legal system.

The purpose of CARIN is to increase the efficiency of Member States' efforts in their activities aimed at depriving offenders of illicit income.

Today, CARIN consists of 54 registered Member States in foreign jurisdictions, including 28 EU Member States and nine international organizations.

Key tasks:

- create contact point network;
- become a centre of best practices in all aspects of combating the proceeds of crime;

70. Stolen Asset Recovery Initiative (StAR). Electronic source. Available at: <https://arma.gov.ua/star>

- facilitate exchange of information and best practices;
- advise authorities, such as the European Commission and the Council of the European Union on all aspects of combating proceeds of crime;
- act as an advisory group for other relevant authorities;
- facilitate organization of training sessions on combating the proceeds of crime;
- encourage network members to establish national asset recovery agencies.⁷¹

6. The International Anti-Corruption Centre (IACCC) brings together law enforcement experts from various institutions around the world to tackle major corruption allegations.

Major corruption increases poverty and inequality, undermines good business and threatens the integrity of financial markets. It may include corruption actions of politically exposed individuals who can attract huge amounts of assets and threaten political stability and sustainable development.

Actions that may fall into this category include bribery by public servants, embezzlement, abuse of authority, laundering of criminal proceeds.

Preconditions for IACCC establishment.

During the 2016 Anti-Corruption Summit, UK pledged to create and host IACCC. IACCC was officially launched in July 2017 and will be hosted by the National Crime Agency in London until 2021, whereafter it is expected to move to another participating country.

Law enforcement agencies that are IACCC participants:

- Australian Federal Police
- Serious Fraud Office in New Zealand
- New Zealand Police
- Royal Canadian Mounted Police
- Corrupt Practices Investigation Bureau of the Republic of Singapore
- United Kingdom National Crime Agency
- US Federal Bureau of Investigation
- US Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Homeland Security Investigation (HSI)

In 2019, Interpol will send a representative to IACCC for regular support.

Switzerland and Germany have participated in the development and establishment of IACCC and will remain its observers, taking part in meetings of IACC's Board of Directors as required.

Non-participating law enforcement authorities can bring major corruption cases to the IACCC.⁷²

71. Camden Assets Recovery Inter-Agency Network. Electronic source. Available at: <https://arma.gov.ua/carin>

72. International Anti-Corruption Coordination Centre. Electronic resource. Available at: <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/bribery-corruption-and-sanctions->

6. INVESTIGATIVE SITUATIONS AND BASIC CRIMINAL PROCEDURAL FINANCIAL INVESTIGATIONS DOCUMENTS

6.1. General provisions

From a forensic perspective, separating money or other property from criminal sources and making them look legitimate can be seen as a sign of a completed legalization mechanism. From this viewpoint, it is advisable to distinguish the following investigative situations depending on the legalization completion extent:

- legalization is complete;
- legalization was revealed at one of its stages.

Investigative situations depending on the legalization completion extent

1. *Legalization is complete*

Complex, confusing, and in some cases, even inaccessible to the verification mechanism of generating proceeds (property) being legalized.

Absence of primary documents, for example, those confirming the conclusion of an agreement.

Availability of forged documents or confusing nature of accounting.

2. *Legalization is revealed at one of its stages*

Availability of significantly fewer signs of its concealment

This situation allows documenting the mechanism of legalization, identify sources of criminal proceeds origin, putting forward versions concerning the method and subject of legalization.

A characteristic feature of the completed form of legalization is a complex, confusing, and in some cases, inaccessible to the verification mechanism of generating criminal assets (property) being legalized. This situation is characterized by traces of legalization

[evasion/international-anti-corruption-centre](#)

concealment, for example, absence of primary documents, such as those confirming the conclusion of an agreement or vice versa, presence of forged documents or the confusing nature of accounting. In general, modern accounting at enterprises with income obtained from illegal activities is characterized by contradiction, fragmentation, accounting in synthetic, and not analytical form, which complicates the analysis of fixed and current assets. In such cases, there is a need for full or partial restoration of business activities of the company and its supporting accounting with the involvement of qualified experts, i.e. accountants or economists. The main attention should be paid to finding the company's counterparties by organizing seizure of documents from banking institutions, conducting counter-inspections since it is highly probable that the legalization was carried out with the use of fictitious companies or false name individuals.

If legalization is revealed at one of its stages, then its characteristic is to have much fewer signs of concealment, which allows documenting the mechanism of legalization, identifying sources of criminal proceeds origin, putting forward versions about the legalization method and subject.⁷³

It is advisable to identify typical situations, each of which corresponds to a certain scope and content of information contained in verification files at the stage of criminal proceedings opening by law enforcement agency:

- verification files contain all necessary information about the fact and method of legalization, as well as the person(s) who conducted it;
- fact of legalization is ascertained, there is information on the person who conducted it, but the method of legalization is not identified;
- fact and method of legalization are identified, but there is no information on the person(s) being direct perpetrators of the crime (legalizer).

The following are typical investigative situations in the context of scope and content of information and corresponding agenda for each of them.

As a result of determining the investigative situation, law enforcement and judicial authorities prepare and adopt relevant documents providing an opportunity to clarify the circumstances of the crime and to gather evidence in criminal proceedings.

Major criminal procedural documents may include:

Resolution is a procedural document where decisions of the investigator and prosecutor taken during the criminal proceedings are justified and laid down (Art. 110 CPC). The resolution is issued in cases provided for by CPC and when the investigator or prosecutor considers it necessary. The resolution of the investigator or prosecutor, adopted within the limits of their competence under the law, shall be obligatory for individuals and legal entities whose rights, freedoms and interests it concerns.

73. Guidelines for law enforcement agencies in the field of prevention and counteraction to the legalization (laundering) of criminal proceeds or terrorist financing http://www.sdfm.gov.ua/content/file/Site_docs/2012/25.07.2012/pravoohr_met_rekom.pdf

Protocol is a procedural document that enshrines information on procedural actions, their content and consequences (Articles 104-106 CPC). The protocol is one of the means to record procedural actions during criminal proceedings (along with the court book and the media where procedural actions are recorded through the use of technical means). The protocol shall be issued in the cases provided for by CPC. When necessary, a person conducting a procedural action shall attach an annex to the protocol.

Motion is a procedural document whereby the parties to a criminal proceeding officially apply for a procedural action or a procedural decision.

CPC sets out mandatory requirements for the content of such motions:

- motion for ensuring compulsory attendance;
- motion for a monetary charge;
- motion for a temporary restriction on the exercise of a special right;
- motion for removal from office;
- motion for provisional access to items and documents;
- motion for property seizure;
- motion for preventive measures;
- motion for a permit to detain for ensuring compulsory attendance;
- motion of investigator or prosecutor for a change of preventive measure;
- motion of suspect or accused for a change of preventive measure;
- motion for a search;
- motion of defence attorney for expert involvement;
- motion for granting permission to conduct covert investigative (search) action;
- motion of prosecutor for release from criminal liability;
- motion for compulsory medical measures of medical or educational nature.

Ruling is a procedural document where court decisions are motivated and formulated, except for those formulated in the sentence. In pre-trial proceedings, rulings are issued by investigating judges within the scope of their judicial control function. A court ruling that has entered into force shall be binding and subject to unconditional enforcement throughout Ukraine.

CPC specifies **the requirements** for the content of the following investigative judge's rulings:

- on temporary restriction to exercise of special right;
- on removal from office;
- on provisional access to items and documents;
- on property seizure;
- on permission for detention for compulsory attendance;
- on application of preventive measures;
- on permission to search of individual's home or other possession;
- on permission to conduct covert investigative (search) action.

Indictment is one of the summary procedural documents of pre-trial investigation, which sets out and motivates findings of investigator or prosecutor in criminal proceedings, reveals nature and content of the prosecution, as well as other details established by CPC (Art. 291 CPC). The indictment is issued by the investigator, whereafter it is approved by the prosecutor (it may also be prepared by the prosecutor). The receipt of the indictment by the court is the basis to appoint a preliminary court hearing.

Sentence is the final procedural document of the trial stage where the court decides on accusations on the merits, i.e. decides on the presence or absence of the act that the person is accused of, components of a criminal offence in such act, the guilt of the person in committing this act, and other issues identified in Art. 368 CPC. The court passes sentence in the name of Ukraine immediately after the trial ends (pt. 1 Art. 371 CPC). Just like a ruling, a sentence that took effect shall be legally binding and subject to unconditional enforcement throughout Ukraine.

Other criminal procedural documents include notices, statements, orders, instructions, commitments, etc.

The following procedural documents are used during the execution of a conclusion on the analytical investigation of financial and economic activities for constituent elements of offences related to the legalization (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons mass destruction, and/or other offences:

- resolution on expert involvement in criminal proceedings;
- ruling on provisional access to items and documents;
- interrogation and searches protocols.

6.2. Typical investigative situations depending on the degree of validity and volume of evidence collected of the predicate offence and money laundering

- investigation of a predicate crime is only at an early stage;
 - » Please note! Obtaining explanations from authorized persons of the primary and state financial monitoring entities, coordinating the activities of operational and investigative units.
- criminal case on the grounds of legalization is initiated when the investigation of a predicate crime is in its final stage;

» It is advisable to combine criminal cases and proceed with them together.

- criminal case on the grounds of legalization is initiated when a sentence on a predicate crime took effect.

» Constituent information on a predicate offence, perpetrators, proceeds resulting from the crime has the most complete form and is determined by the court sentence which has come into force.

- criminal case on the grounds of legalization is initiated in respect of persons who may be involved in money laundering if there are no proceedings for a predicate offence (autonomous laundering).

6.3. Legalisation (laundering) of criminal proceeds. A matter of practical investigation

In the course of investigation of the legalization (laundering) of criminal proceeds, ideally, the following circumstances shall be clarified in each criminal case:

1. The fact of legalization, i.e. the commission of at least one of the actions provided for in the disposition of Art. 209 CC of Ukraine.

2. The subject of legalization.

» Nature (physical nature) of the subject of legalization (funds, securities, property rights, other property)

» Size, value, time of receipt, location of property or funds being legalized

3. Source of funds or other property being legalized.

» Nature of criminal offence resulted in obtained criminal proceeds being legalized

» Presence (absence) within criminal offence resulted in obtaining of criminal proceeds of initiated criminal case, indictment, court resolution or ruling on release from criminal liability (due to expiration of limitation period, application of amnesty), on the closure of criminal case on non-rehabilitative grounds

- » Existence of causal link between the primary (substantive, predicate) offence and the legalization

- » Channels of criminal capital inflow

4. The method (technological scheme) of legalization.

- » Size, rate, frequency of each financial transaction separately and in aggregate

- » Nature of concluded deals; venue, time, parties and terms

- » Where, when, by whom, and what specific financial transactions related to legalization were conducted; which bank accounts were used for this purpose; where there any transfers of funds abroad

- » Where, when, in what manner and under what conditions the property was transferred for legalization

- » Procedure for registering financial transactions and their reflection in the original reporting and accounting documents

- » “Traces” left in documents regarding specific actions of legalization entities

5. Situation (time, place) of legalization.

- » Time of each financial transaction or conclusion of transaction for legalization of criminal proceeds; when such criminal acts were committed

- » Time of accrual of property rights to movable and immovable property, acquisition of corporate rights and other property rights which was the subject of legalization

- » Location of the entity involved in the legalization

6. Subject of legalization.

- » List of persons involved in the legalization, each subject’s role, the motive of their behaviour, engagement in criminal offence resulted in obtaining of criminal proceeds

- » Age, sex, level of education, professional, business and moral traits of persons who directly carried out legalization

-
- » Sources and level of awareness (understanding) of a person who concluded any deals or conducted financial transactions on the circumstances of the criminal way of obtaining funds or property being legalized; time of obtaining such information (before or after legalization)
 - » Information on the owner of property, funds or other property rights being legalized; nature of his/her relationship with the direct legalizer
 - » Presence of specific purpose in the subject's actions, i.e. providing a legitimate appearance (legitimate origin) to funds or other property obtained through crime
 - » Scope of officials' powers to conduct financial transactions or concluding deals
 - » Legal capacity of the person who concluded deals or conducted financial transactions with criminal funds
 - » Circle of persons suspected of committing legalization, availability of the "legalizer-corruptor" link
 - » Circumstances affecting the degree and nature of responsibility of each of the accomplices

7. Circumstances of legalization.

- » Situation prevailing in a particular enterprise (company, institution, establishment), in activities of IE or individual who were involved in legalization
- » Content of regulations managing activities of an enterprise as a whole, and its individual officials
- » State of control over suspicious financial transactions, conduct of primary financial monitoring
- » Legal status of a person involved in legalization; if it is a fictitious enterprise, then in whose name it is registered
- » Compliance with internal security and control rules of financial institutions
- » Document management, procedure of documents registration and compliance with current legislation
- » List of business entities having contractual relationship with an enterprise (institution) involved in legalization

8. Consequences of legalization.

- » Damage caused, primarily amount of legalized assets or value of other legalized property
- » Area (directions) of use of legalized funds or other property, i.e. ultimate result of legalization
- » Location of legalized funds or property (if located abroad, the possibility of their recovery to Ukraine)

9. Circumstances excluding crime and punishment.

- » Physical or mental coercion by the owner of criminally obtained property or funds against the legalizer, i.e. absence of constituent elements (Art. 40 CC)
- » Exercise of a lawful order or instruction (Art. 41 CC)

10. Circumstances mitigating or aggravating liability.

11. Reasons and conditions that contributed to legalization.

There are some difficulties in the course of the investigation of cases related to the laundering of criminal proceeds since the following provisions must be proven:

money laundering was carried out to reach a specific purpose, that is to conceal or disguise the illicit origin of proceeds or their use;

the suspect knew and could not have been unaware of the criminal nature of the property's origin.

Skilful and correct application of operational-investigative tools and methods is of particular importance for resolving assigned tasks. Investigators and operatives shall work closely already at the stage of criminal proceedings initiation, and it is advisable to use the following measures:

1. joint analysis of materials obtained in the course of operational-investigative activities and determining the procedure for their use in the investigation;
2. identifying sources of evidence needed to investigate the case;
3. determining issues to be investigated by operational-investigative means, which may include:
 - search for suspects hiding from the investigation;
 - search for witnesses and collection of necessary testimonies;
 - studying identities of the suspect and other subjects of a criminal proceeding;
 - overcoming counteraction to the investigation by concerned persons.

1. Materials contain all the required information on the fact and method of legalization, as well as about the person(s) who committed it. It is the most favourable in terms of information and organization.

- 1.1. Detention of the suspect
- 1.2. Conducting a search of the suspect's place of residence and employment
- 1.3. Seizure of all documents containing traces of legalization
- 1.4. Assigning documentary audits
- 1.5. Questioning of witnesses
- 1.6. Conducting expert examinations

2. No information on the legalization method. In this case, the main efforts consist in obtaining information about the legalization method

- 2.1. Investigation of the movement of funds or other property from the moment of their criminal acquisition and until the conduct of legalization transaction
- 2.2. Identifying the source of criminal proceeds origin and their location after legalization
- 2.3. Identifying individuals who were engaged in legalization transactions
- 2.4. Seizing primary documents related to legalization

3. The fact and method of legalization are identified, but there is no information on the person(s) being direct perpetrators of the crime (legalizer). The main task is to identify the person who directly conducted the legalization (laundering) of criminal proceeds. A criminal case shall be initiated upon uncovering signs of legalization, but not in relation to a specific entity.

It is advisable for an investigator to start investigative actions with a detailed study of the criminal case files **related to a criminal offence that resulted in obtaining criminal proceeds** for the purpose of identifying subjects of this crime, a range of their acquaintances, so as to use the established links to find individuals who could have carried out transactions directly related to the legalization of "dirty" money or property. To do this, the investigator shall, first of all, interrogate individuals involved in the predicate crime, as well as question witnesses, give instructions concerning corresponding operational-investigative actions aimed at identifying persons who could be potential legalizers.

These investigative situations are the most generalized by their nature. At the same time, each of them can take on a much more differentiated appearance depending on the scope of information regarding the selected structural components. Thus, the content of typical investigative situations is influenced by the nature and specificity of source information

regarding the identity of the legalization subject; depending on this criterion, they can be divided into several types:

Typical investigative situations in the context of the nature and specifics of source information concerning the identity of the legalization subject:

Depending on the affiliation of the legalization subject with the predicate crime

- Criminal proceeds were legalized by a person who committed **the criminal offence resulted in obtaining of criminal proceeds** (self-laundering)
- Criminal proceeds were legalized by a person who was an accomplice in **the criminal offence resulted in obtaining of criminal proceeds**
- Criminal proceeds were legalized by a person who was not an accomplice in **the criminal offence resulted in obtaining of criminal proceeds**

Depending on person's role in the legalization mechanism

- The mechanism of legalization uses an enterprise where the legalization subject holds an official office (director, chief accountant)
- The mechanism of legalization uses a fictitious company or a false name individual
- The mechanism of legalization uses persons for whom legalization is a professional activity (lawyers, brokers, accountants)

Depending on awareness of the legalization subject

- The legalization subject possesses professional knowledge and skills in economics and management
- The subject of legalization uses a person with knowledge in economics and management fields as a consultant (accomplice).

Depending on procedural consequences at the stage of materials verification of the legalization (laundering) of criminal proceeds

- Materials contain necessary information on the circumstances of the crime, but they are not enough to initiate a criminal case, which requires further investigation
- Materials do not contain the necessary information on the circumstances of the crime. And they cannot be supplemented during additional inspections or pre-trial investigations.
- Materials testify the absence of a crime

7. CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON MONEY LAUNDERING

Today, the case-law of ECtHR is of great importance in the field of financial investigations and will be even more important for legal systems that face difficulties in legal regulation and law enforcement at national level. Taking into account the provisions of Art. 17 of the Law “On Implementation of Decisions and Application of Case-Law of the European Court of Human Rights”, according to which the courts apply the ECtHR case-law as a source of law, it will help to resolve problematic issues and collisions, which unfortunately are typical features of law-making outcomes in our country. As summarized by S.V. Prylutskyi regarding general properties of justice, it “completes the law by clarifying, supplementing or correcting it, i.e. it clarifies the law by identifying and working out possible alternatives of its interpretation and selects the most successful among them”.⁷⁴

Decision	Balsamo v. San Marino (No 20319/17 and № 21414/17), decision of October 8, 2019
Electronic link	http://hudoc.echr.coe.int/rus?i=001-186745
Comment	<p>A person and his two daughters, who became the applicants, were convicted by a national court of money laundering (about 2 million euros). The court of appeal later acquitted the daughters due to their age and doubt as to the applicants' understanding of details of the father's criminal activities at the time of the trial. However, assets that amounted to a total of about EUR 1,9 million possessed by the daughters were confiscated.</p> <p>The applicants appealed to ECtHR due to infringement of their property rights in accordance with Art. 1 of Protocol No. 1 (protection</p>

74. S.V. Prylutskyi. Judicial policy and court policy: theoretical and legal problems of correlation / S. V. Prylutskyi // Bulletin of Bar Academy of Ukraine. - 2015. - Vol. 12, No 2. - P. 17-25.

of property) to the Convention for the Protection of Human Rights and Fundamental Freedoms. ECtHR rejected the allegations of infringement of property rights in connection with an illegal origin of the funds, conviction of their father and the applicants' failure to prove the lawful origin of the money. ECtHR agreed with the preventive nature of confiscation, which performed preventive functions regarding the use of these funds in criminal activities. In addition, ECtHR noted that if the applicants had used these funds, they could have been accused of money laundering.

Therefore, the European Court noted that Art. 6 § 2 (presumption of innocence), Art. 7 § 1 (no punishment without law) of the Convention for the Protection of Human Rights and Fundamental Freedoms shall not be applied in this case, while Art.1 pf Protocol No.1 to the Convention (peaceful enjoyment of possession) was not violated.

Decision	Timmermans v. Belgium (12162/07), decision of May 2, 2017
Electronic link	http://hudoc.echr.coe.int/eng?i=001-174208 (decision in French)
Comment	<p>Between the 13th of February 1995 and the 6th of November 1996, the applicant worked as a stockbroker without first obtaining the permits required for the activity. During this period, he conducted foreign exchange transactions totalling more than 500 million Belgian francs (BEF), which is equivalent to more than 12 million euros (EUR). The Belgian authorities stated that the applicant might have known that he had carried out exchange transactions on behalf of M.H., who was to be held accountable before the Belgian court for money laundering from drug trafficking.</p> <p>On June 17, 2004, a national court convicted the applicant of concluding agreements in respect of property obtained by criminal means.</p> <p>The European Court noted that in money laundering cases, it is difficult to prove the defendant's understanding of the illegal origin of money, while in accordance with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from</p>

	<p>Crime and on the Financing of Terrorism, a neglected attitude of the accused person to the origin of the property from crime shall constitute a crime. In addition, ECtHR noted that a conviction for money laundering is possible without the exact classification of the predicate acts resulted in funds obtaining.</p> <p>ECtHR ruled that the complaint was clearly unfounded and should be declared inadmissible.</p>
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Decision	Michaud v. France (12323/11), decision of December 6, 2012
Electronic link	https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-126862&filename=CASE%20OF%20MICHAUD%20v.%20FRANCE%20-%20%5BUkrainian%20Translation%5D%20by%20the%20COE%20Human%20Rights%20Trust%20Fund.pdf&logEvent=False
Comment	<p>A French lawyer appealed his obligation under French law to report suspicions of possible money laundering by his clients to the financial intelligence unit “Tracfin”. ECtHR noted that the obligation for lawyers to report to public authorities information about other persons which became known in the process of communicating with them, has signs of interference with the lawyers’ right to respect for correspondence and private life provided by Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms since it includes the protection of professional secrecy of lawyers.</p> <p>At the same time, the European Court considers that the obligation to report suspicions as applied in France and in view of the legitimated aim pursued and its particular importance in a democratic society does not constitute a disproportionate interference with the professional secrecy of lawyers.</p> <p>As a result, the court ruled that there was no violation of Article 8 of the Convention due to the legitimacy of the pursued aim and the general interest.</p>

Decision	Zschüschen v. Belgium (23572/07) Decision of May 2, 2017
Electronic link	http://hudoc.echr.coe.int/eng?i=001-174209 (decision in French)
Comment	<p>The applicant was convicted of money laundering by a national court. He did not provide convincing explanations as to the origin of certain payments in his bank account. According to national practice, an offence of money laundering shall be deemed committed where any legal origin of the funds can be excluded and without there any need to prove the predicate offence.</p> <p>The European Court did not find in this case the violation of p.1 and p.2 Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (right to a fair trial and presumption of innocence). ECtHR referred to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, according to which it is sufficient for the money launderer to suspect or that he/she should have realized that the funds are the proceeds from crime. The Convention explicitly provides for the possibility of conviction for money laundering without proving a predicate act.</p> <p>For the national court, the person's guilt was largely substantiated by indirect evidence, as well as by refusal to provide explanations regarding relevant funds.</p>
Decision	Adamov v. Switzerland (3052/06) Decision of June 21, 2011
Electronic link	http://hudoc.echr.coe.int/eng?i=001-105336
Comment	<p>In the United States, the Russian Minister (Adamov) was accused of misappropriation of funds provided by Americans to RF. His daughter, who lived in Switzerland, was accused of money laundered received from him. The applicant came to Switzerland to visit his daughter, but a Swiss investigative judge sent him a summons to testify.</p> <p>As a result, the applicant was detained. The defence referred to a</p>

	<p>violation of the guarantees of immunity, as Adamov had to testify to the investigator and should have enjoyed immunity from detention in accordance with the provisions regulating extradition and international legal assistance.</p> <p>ECtHR agreed that the applicant had arrived freely in Switzerland on private business and not at all to testify in accordance with the provisions on international legal assistance. According to ECtHR, the applicant had to consider risks of such relocation, and Switzerland did not violate the principles of good faith and Art. 5 of the Convention (right to liberty and security).</p>
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Decision	Aboufadda v. France (28457/10), decision of November 4, 2014
Electronic link	https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-148499%22]} (decision in French)
Comment	<p>In March 2005, the applicants (Moroccan nationals) bought a house for EUR 246 120. Gendarmerie, when investigating trafficking in cannabis, revealed that the applicant's son A. sold large amounts of it from the Netherlands. Financial checks were conducted into his assets and those of his entourage in order to establish whether the money laundering had been committed. A national court found the applicants guilty of failing to prove their assets and lifestyle and sentenced them to probation and confiscation of property.</p> <p>The applicants informed that their earnings were in line with their lifestyle, in particular through savings, sale of land in Morocco, inheritance, allowances, money paid by their daughter, etc.</p> <p>National authorities' representatives informed about a significant excess of income by the applicants, as evidenced by numerous cash expenditures (confirmed by checks), a fleet of 9 cars, house repairs in the amount of 59 897,47 euros. Government's representatives also referred to wiretapping files indicating the applicants' awareness of drug trafficking by their son who lived with them in the house.</p> <p>The applicants complained about violation of Art. 1 of Protocol No. 1 (protection of property) and Art. 8 (right to respect for private and family life) of the Convention due to the confiscation of their home.</p>

ECtHR noted that any violation of the right to the peaceful enjoyment of possessions should lead to “fair proportion” between the requirements of the general interest of society and the requirements of the protection of fundamental human rights. In addition, ECtHR emphasized that this measure (confiscation) was aimed at fighting against drug trafficking and its prevention by deterring concealment and money laundering; it was stated that it was undoubtedly a general-interest aim. The Court noted the preventive nature of awareness that the persons concerned benefit from the criminal property when they cannot prove the legality of its origin. The Court stated that the Convention does not preclude a presumption of fact or law. It also reiterated that the confiscation of assets obtained from the proceeds of crime had assumed a significant role both in the legal systems of several Member States and internationally. ECtHR concluded that the application for violation of Art.1 of Protocol No.1 of the Convention was ill-founded.

With regard to violation of the right to respect for private and family life, ECtHR recalled that interference shall be considered “necessary in a democratic society” to pursue a legitimate aim if it satisfies “urgent social need”, remains proportionate, pursues a legitimate aim, and if the reasons given by the national authorities to justify it are “relevant and sufficient”. As a result, this part of the application was concluded ill-founded, while the entire application was rejected.

Annex 1. What information can be obtained from relevant competent authorities

1.1. Information available to the executive service

Where to search	What can be found
Official (open) data	Amounts of debts of individuals and legal entities and names of debtors
Organization of sales by the executive service	Data on the sale of expensive property in the framework of enforcement of court decisions (to cover court-imposed penalties, such as vehicles, boats, real estate)
Property investigations	Information on property and assets, as well as data collected through contacts with debtors. Required information may be provided after a confidentiality check. History of previous debts and their payments (in limited amounts) Supervision of compliance with the ban on doing business. Debt rehabilitation and supervision of the trustee of the bankrupt's estate. It contains information on the rehabilitation's initiator, legal entity subject to bankruptcy procedure, and about work and powers of bankruptcy trustee.

1.2. Information available to the fiscal service in the field of tax assessment

The tax (fiscal) service stores the information it needs for taxation (accrual of taxes) of companies/enterprises and individuals and supports investigative activities of the authorities fighting crimes and offences in the tax sphere. Requested data may be provided after verification of compliance with the provisions on confidentiality:

Tax data	Current and completed
Seisin	
Data on tax payments and refunds, payment history, as well as possible tax arrears and/or overpayments	
Form of taxation	
VAT, tax arrears	
Employer registration data	
Data (regarding) audits and inspections (court) decisions on tax payments	
Competitive processes, current and completed, bankruptcy's estate trustees	
Data on planned and already conducted audits and inspections	
Other investigations conducted by the Tax Service	

1.3. What information can be obtained from the Customs Service

The main activities of the Customs Service take place in two sectors. i.e. Effective Trade and Fighting against Crime. The “Effective Trade” sector accumulates information on export-import transactions of companies and individuals. Databases contain information on shippers, consignees, freight forwarders, cost of goods, their weight, article, country of origin/shipment/destination, places of storage, etc. Annex. Questions to be asked in connection to investigations initiated solely to establish financial assets.⁷⁵

75. Guidance Manual on Financial Investigations. Joint Interagency Project in the Field of Fighting against Benefits of Illegal Activities. – 2017.

1.4. Information that can be obtained from the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crime (ARMA).

The National Agency has access to the Unified Register of Pre-Trial Investigations (in accordance with the procedure and to the extent determined by the Joint Order of the Prosecutor General's Office of Ukraine and the National Agency), automated information and reference systems, registers and data banks held (administered) by public authorities or local authorities; uses state, including governmental, communication means, special communication networks and other technical means.

The National Agency interacts with pre-trial investigation authorities, prosecution authorities and courts by:

- 1.** executing requests of the investigator, detective, prosecutor, investigative judge or court on asset finding, tracing, assessment and management, as well as on executing decisions of foreign competent authorities on asset seizure and confiscation;
- 2.** assisting in the search for owned premises, asset storage sites that have been seized in criminal proceedings and are not managed by the National Agency;
- 3.** providing clarifications, guidance and advice on issues related to asset finding, tracing, assessment and management.

The National Agency also interacts with the National Bank of Ukraine, State Property Fund of Ukraine, Ministry of Justice of Ukraine, National Agency on Corruption Prevention, state fiscal service authorities, SFMS and other public authorities.

The National Agency shall ensure the execution of requests submitted by pre-trial investigation authorities, prosecution authorities and courts on asset finding and tracing and shall respond as soon as possible, but not later than within three working days from the date of the request's receipt, or within another longer period specified therein. This period may be extended upon approval of pre-trial investigation authority, prosecution authority and court.

Annex 2. Form of request to SFMS by the law enforcement agency for monitoring of financial transactions and of application to the financial intelligence unit of a foreign state (foreign FIU)

No	Content
1	Request type (1-initial, 2-additional)
2	Initial request number and date (if available)
3	Number of criminal proceeding or operational-investigative (counter-intelligence) case
4	Date of registration in the Unified Register of Pre-Trial Investigations (if available)
5	Legal assessment of criminal offence(s)
6	Pre-trial investigation authority (operational unit).
7	Type of suspicion: (1-money laundering, 2-terrorit financing, 3-financial transactions involving a sanctioned person (international or domestic), 4-proliferation of weapons of mass destruction, 5-other criminal offence)
8	Summary of circumstances that may be indicative of a criminal offence (date, time, place, method, tools, means, data of suspects, etc.)
9	Participants in suspicious financial transactions (at least 2 individuals)
9.1	Type of suspicious financial transaction participant (1-core participants, 2-counterparty, 3-representative of the core participant)
9.1.1	Participant 1
9.1.2	Participant 2
9.2	For an individual – surname, name, patronymic (if any) in Ukrainian and/or English, for a legal entity – full name

9.2.1	Participant 1
9.2.2	Participant 2
9.3.	For a resident individual – taxpayer’s registration card (or passport series and number for individuals who, due to their religious beliefs, refuse to accept the taxpayer’s registration number and have informed relevant public authority). For a non-resident individual – passport series and number. For a resident legal entity – USREOU code. For a non-resident legal entity – a country of registration and identification data.
9.3.1	Participant 1
9.3.2	Participant 2
10	Date of financial transaction
11	Amount of financial transaction
12	Type of currency of financial transaction
13	Equivalent of financial transaction amount (UAH, million) at the time of the transaction
14	Content of financial transaction (1-crediting, 2-transfer, 3-deposit, 4-withdrawal)
15	Purpose of suspicious financial transaction
16	Name of financial institution (bank)
17	Bank code (MFO/sort code - BIC), SWIFT code
18	Country of financial institution (bank) registration
19	Bank account number used to conduct financial transaction
20	Justification of the need to suspend (further suspend) financial transactions
21	Information for addressing to foreign financial intelligence unit (provided in addition to the above):
21.1	Name of the country whose FIU is to be addressed
21.2	Description of requested information (questions)
21.3	Purpose of using the requested information
21.4	Application of seizure, forfeiture, or confiscation of property
21.5	Countries involved in investigation
21.6	Permission to transfer information to foreign FIU
21.7	Link to the foreign country (registration location, bank location where the account was opened, assets location, etc.)

Annex 3. Sample request to SFMS from law enforcement agency for monitoring of financial transactions and of application to a foreign FIU

Law enforcement agency (name of the law enforcement agency, territorial directorate, unit) is investigating the criminal proceeding No000000000000000000 of 00.00.2020 on the grounds of a criminal offence provided for in pt. 3 Art. 191, pt. 3 Art. 209 CC of Ukraine.

In 2018 and 2019, a state-owned enterprise conducted open tender procedures for procurement of items under article DK 000:2000:00000000-0 – “Services for access to the use of textbooks, educational methodological manuals” for pupils of educational institutions. As a result, the enterprise concluded contracts No00 of 00.00.2020 in the amount of UAH 12,000,000 (the contract amount is reduced to UAH 6,000,000 by the additional contract taking into account the actual amount of expenses) and №00 of 00.00.2019 in the amount of UAH 10,000,000 with the tender’s winner PE “A”.

Pre-investigation check ascertained that on 00.00.2010 PE “S” received funds in the amount of _____ UAH (VAT excluded) to its account No 26000000000000000000 opened in PJSC CB “B1” from LLC “A” under contract No44 of 12.04.2018, which on the same day were transferred to the account of PE “S” No UA2600000000000000 in PJSC “B2”. Subsequently, on 00.00.2019 funds in the amount of UAH 6,000,000 were transferred to the account of PE “C” No 2600000000000000 in PJSC CB “B1” and:

- on 00.00.2019 in the amount of UAH 600,000 (VAT excluded) were transferred to the account of LLC “V” No260000000000000000 in PJSC CB “B1” as a refund of interest-free financial assistance
- on 26.05.2018 in the amount of UAH 5,000,0000 (VAT excluded) were transferred to the account of LLC “G” No 2600000000 in PJSC CB “B1” as a payment for programming services.

In turn, the funds in the amount of UAH 5,000,000 of LLC “G” were transferred on 00.00.2018 to the account No 29000000 in PJSC CB “B1” to conduct currency exchange transaction (purchase of US dollars) according to the application NoVATVIAYFIUM, and on 28.05.2018 the purchased foreign currency in the amount of USD 200,000 were transferred from the account of LLC “G” No 2600000000000000 in PJSC CB “B1” to the account “K INK.” No 15000000 in _____ name of foreign bank _____ (country of service:

.....
_____) as payment for the supply of software products under contract No 00/00 of 00.00.2018.

In addition, on 00.00.2019 the funds in the amount of UAH 10,000,000 (VAT excluded) were transferred from LLC "D" to the account of PE "S" No 2600000000000000 in PJSC CB "B1" under contract No 0000 of 00.00.2019 and:

- on 11.07.2019 in the amount of UAH 168,000 (VAT excluded) were transferred to the account of LLC "V" № 2600000000 in PJSC CB "B1" as repayable interest-free financial assistance under contract No _____ -- of _____ ---;
- on 11.07.2019 in the amount of UAH _____ (VAT excluded) were transferred to the account of LLC "V" No 2600- _____ - in PJSC "CB 'B1'" as repayable interest-free assistance under contract No _____ - of _____ --;
- on 11.07.2019 in the amount of UAH - _____ (VAT excluded) were transferred to the account of LLC "G" No 2600 _____ - in PJSC CB "B1" в payment for services under contract No _____ of _____;
- on 11.07.2019 in the amount of UAH _____ (VAT excluded) were transferred to the account of LL "g" No 26009000013 in PJSC CB "B1" as payment for services under contract No 018 of 15.02.2018;
- on 11.07.2019 in the amount of UAH _____ (VAT excluded) were transferred to the account of LLC "G" No 2600 _____ in PJSC CB "B1" as payment under dealer contract No 00 of 00.00.2019.

In turn, the funds in the amounts of UAH 0,000,000 and 1,000,000 were transferred on _____ 2019 accordingly by LLC "G" to the account No 2900000000 in PJSC CB "B1" to conduct currency exchange transaction (purchase of US dollars) according to the application No1 and No2, and on 00.00.2019 and 00.00.2019 the funds in the amounts of USD 000,000 and 00,000 were transferred accordingly to the account "K INK." No 15000000 in _____ name of foreign bank _____ (country of service: _____), as payment for supply of software products under contract No 0000 of 00.00.2018. Other funds were spent on current needs, including the provision of interest-free financial assistance to LLC "V".

The related financial transactions between LLC "G", PE "S", LLC "V" and "K INK." give sufficient grounds to suspect these transactions, as well as those involved in the activities of these business entities, are related to the commission of the investigated crime provided by pt. 3 Art. 191 CC of Ukraine, as well as related to legalization (laundering) of criminal proceeds (as a result of the investigated crime).

The current pre-trial investigation (searches results; results of covert investigative (search) actions; data requested from PE "4444"; movement of funds on the accounts of LLC "G", PE "S", etc.) ascertained the connection of individual 1, individual 2, individual 3, individual 4, individual 5, LLC "G", PE "S", LLC "V" and "K INK.". Evidence collected at this stage of the investigation provides sufficient grounds to believe that during 2018-2019, officials of

the public enterprise “K” abusing powers and their official positions and acting by prior agreement between themselves and officials of law enforcement agencies ensured the involvement of pre-agreed bidder in the tender, namely PE “S” with its main supplier LLC “G”, as well as the so-called “technical participants” LLC “D” and LLC “E”.

This provided the perpetrators with the possibility to overestimate the value of procurement items by a predetermined amount, which was appropriated by transferring it to the accounts of controlled business entities with its subsequent transfer to uncontrolled currency and sharing among all participants in the illegal scheme.

Given the above, in accordance with pt. 3 Art. 16 of the Law of Ukraine “On Prevention and Counteraction to the Legalization (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction”, guided by p. 6 Section II of the Procedure of providing case referrals (additional case referrals) by SFMS to law enforcement agency (name of law enforcement agency, territorial directorate, unit) and receiving on information on the course of their consideration by SFMS, approved by Joint Order of _____ and the Ministry of Finance of Ukraine No _____-- of _____ and registered with the Ministry of Justice _____ under No _____ (hereinafter - Order), I hereby request to monitor financial transactions regarding further use of the funds of LLC “G” (USREOU), PE “S” (USREOU), LLC “V” (USREOU) and “K INK.” (address of the founder, ultimate beneficial owner, address of the beneficial owner, information on indirect ownership).

We also request to conduct financial monitoring of financial transactions conducted by individual 1 (year of birth, RNOKPPFO), individual 2 (year of birth, RNOKPPFO), individual 3 (year of birth, RNOKPPFO), individual 4 (year of birth, RNOKPPFO), individual 5 (year of birth, RNOKPPFO), and if there are sufficient grounds, to prepare and send case referral to LEA.

In addition, if there are grounds, we ask to contact to financial intelligence unit (name of country) to obtain the following information about the company “K INK.”:

registration date in (name of country) (upon registration);

actual location of the company at the specified address in (name of country);

date of company registration;

size of the authorized capital of the company;

information on director, founders of the company and persons authorized to act on behalf of the company or manage accounts;

information on main activities of the company;

information on links (commercial, founding, etc.) of this company with individuals and legal entities in Ukraine;

the company’s financial reputation (including involvement in money laundering and terrorist financing);

information on suspicious financial transactions of the company;

whether this company is known to law enforcement agencies and/or financial intelligence unit (hereinafter – FIU) (name of country);

whether there is information available to law enforcement agencies and/or FIU (name of country) regarding suspicious financial transactions conducted by the company (if so, please provide it);

any other information that may be useful for the investigation.

We grant permission to transfer the information set forth in this letter to the foreign FIU.

Information that will be obtained from the foreign FIU will be used exclusively for the purpose of investigating cases on legalization (laundering) proceeds from crime, terrorist financing or financing of proliferation of weapons of mass destruction or in cases related to the commission of publicly dangerous unlawful act resulted in obtaining criminal proceeds in compliance with the restrictions imposed by the foreign FIU.

Annex 4. Checklist of questions for requesting International Legal Assistance⁷⁶

I. Preparing to submit a request for ILA

1. Has a competent authority been established for request fulfilment?
2. Has a mutual exchange of relevant intelligence data been organized?
3. Has the first contact with the receiving state been established in your case?
4. Have any criminal offences been ascertained in the investigation?
5. Has your organization (or central authority) conducted the screening for compliance of the crimes involved in the investigation with the requirements of the receiving state for dual jurisdiction?
6. Have you determined what kind of assistance you need from the receiving state?
7. Is it possible to obtain such assistance from open sources?
8. If so, consider using intelligence channels or informal communication channels.
9. How will you get information, i.e. officially or unofficially?
10. If information may be obtained unofficially, consider the possibility of using the intelligence channels or informal communication channels.
11. Has your organization (or central authority) established legal grounds for requesting ILA?

II. Drafting a request for ILA

1. Have you identified the person involved in the investigation completely and clearly?
2. Have you indicated all the proceedings relating to the ILA request and their current status?
3. Have you identified all relevant criminal offences with a view to verify their compliance with double jurisdiction requirement in the receiving state?

76. Tracing Illegal Assets – A Practitioner’s Guide. The International Centre for Asset Recovery, Basel Institute on Governance, The International Centre for Asset Recovery, 2015 (original, English) / 2016 (translation into Ukrainian).

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4. Have you listed all important criminal offences in your ILA request?
 5. Have you included a detailed description of all relevant crimes in your ILA request?
 6. Have you identified the object of the ILA request?
 7. Has your organization (or central authority) discussed the subject of the ILA request with the receiving state and verified the requirements? Find out what are the evidentiary standards for these crimes in the receiving state. Also, make sure that the descriptive part of the request contains all the elements of crime in accordance with the law of the receiving state.
 8. Have you provided the receiving state with all relevant facts in your request?
 9. Do you have a clear, straightforward and easy to understand descriptive section where you indicated the connection between persons under investigation and relevant facts that you have provided?
 10. Have you prepared a clear, straightforward, and easy to understand the text of the descriptive section and indicated the link between relevant facts and criminal offences?
 11. Have you prepared a clear, straightforward, and easy to understand the text of the descriptive part and provided the link between the facts and the object of the ILA request?
 12. In ILA request, the request object must be provided in the context. It may vary within the objectives defined in paragraph 2.5. For example, if the request object is the seizure of a bank account, the descriptive part of the request shall illustrate how such bank account is related to the facts of the case and to person(s) alleged to have committed the crime.
 13. Have you provided clarification to the receiving state on the importance of the ILA request object?

III. Submitting a request for ILA

1. Have you checked legal grounds for submitting your ILA request?
2. Have you determined the method for your ILA request submission?
3. Has ILA request been translated (if needed) (by your organization or central authority) into the official language of the receiving state?
4. If the request is confidential, have you clearly stated this fact in your ILA request and explained the reasons for such confidentiality?
5. If the request is urgent, has your organization or central authority contacted the receiving state on that matter before sending the request?
6. If the request is urgent and if there is an appropriate arrangement, has your organization or central authority forwarded a copy of ILA request in advance?

Annex 5. Sample request for International Legal Assistance⁷⁷

<p>Legal grounds for the request:</p>	<p>Indicate all legal grounds for the request, such as the UN Convention against Corruption, a bilateral agreement, national law of the requestor country, the agreement on mutual data exchange. <i>For example, this request was made in accordance with UN Convention against Corruption, ratified (specify the name of the requestor state) under the Law/Regulation/By-Law No...</i></p>
<p>Requesting authority:</p>	<p>Specify details of the requesting authority. The requesting authority shall provide its name and contact information in the particular e-mail address and telephone number. Specify also details on the role and tasks of the requesting authority in such a way that it is clear to the receiving state that it has the authority to make ILA requests. It must be clearly stated that the requesting authority in the requestor state has the right to investigate or prosecute, or both, from the point of view of the national law.</p>
<p>Recipient (public authority):</p>	<p>Indicate the name of the central authority of the requesting state. If the previous contact has already occurred with the relevant authority, it is advisable to indicate the name and contact details of such authority. For example, the Federal Department of Justice and Police of Switzerland is the central authority for ILA requests.</p>
<p>Details (of the case):</p>	<p>Specify details of the case in the requestor’s nomenclature, such as the case number or name of the operation/surname, name and patronymic of the main suspect. For example, ILA request in the case XYZ.</p>

77. Tracing Illegal Assets – A Practitioner’s Guide. The International Centre for Asset Recovery, Basel Institute on Governance, The International Centre for Asset Recovery, 2015 (original, English) / 2016 (translation into Ukrainian).

<p>Proceedings:</p>	<p>Provide a brief description of the ILA request. The summary shall have the form of a brief annotation that will allow the reader to quickly determine the purpose of the request and set priorities. This summary shall include the following data:</p> <p>indicate (i) case number; (ii) stage of the proceedings in the case (investigation, prosecution or trial); (iii) details of a person against whom the case is brought; and (iv) criminal offences.</p> <p>For example, criminal investigation No. 123, initiated (specify authority's name), against (indicate the full name of the person(s) regarding the possibility of his/her/their criminal activities (names of offences).</p>
<p>Criminal offences:</p>	<p>Indicate all criminal offences that are being investigated or prosecuted that are directly related to ILA request. A full description of the criminal offence shall be provided at the end of the ILA request or in the annex thereto.</p>
<p>Persons under investigation:</p>	<p>Indicate (i) surname, name and patronymic and alias of the person(s) being investigated or prosecuted, as well as his/her/their international identification data; (ii) date of birth; (iii) surname, name and patronymic of parents; (iv) passport(s) number and expiry date; and (v) any known address(es).</p>
<p>Facts:</p>	<p>It is the most important part of the ILA request. ILA request shall state the relevant circumstances of the case and how they relate to the receiving state.</p> <p>Facts shall include information about the link between the person(s) being investigated, prosecuted or tried, and facts of the case and the evidence presented; a criminal offence of which the person(s) has been charged, assets identified in the course of investigation or prosecution, links of such assets with the facts of the case, as well as information on the assistance being requested using ILA procedure.</p> <p>Facts shall be set forth in short, straightforward, clear and simple sentences. Remember: the receiving state may have its own national language (translation of the request is required), and its representatives are not experts in the national law of your country.</p> <p>For example: On XXXX (date), XXXX (information on the authority that initiated the criminal investigation) initiated an investigation of the case of the company X; further, among other things, provide a clear reference to the activities of persons A and B. Obviously, at first glance, the case refers to commission of the following crimes, namely:</p> <ol style="list-style-type: none"> 1. XXXX 2. XXXX <p>The criminal case was initiated against officials and/or shareholders of the company, namely:</p> <ol style="list-style-type: none"> 1. XXXX 2. XXXX

Description of criminal proceedings:	Specify titles of all articles of the law mentioned above in sections “Criminal Offenses” and “Facts”. Information concerning “criminal offences” shall include the name of the crime, its description and corresponding sentence. A description of crimes may also be attached to the ILA request.
Description of assistance needed:	Indicate what you need to obtain from the recipient authority and how you would like to do it. Try to provide as many details as possible. This item must be well-coordinated with the receiving state before sending the request.
Purpose of the request:	Indicate how the assistance provided will be useful in investigating or prosecuting in the territory of the requestor state.
Required procedures:	<p>Indicate if there are any procedures to be followed, such as confidentiality or urgency.</p> <p>For example, the Agreement on mutual data exchange: the Government of XXX (name of the requestor state) confirms that if the Government of XXXX (the name of the receiving state) responds to this request, then XXXX (name of the requestor state) will respond to future requests from the Government XXXX (name of the receiving state) for the provision of legal assistance in criminal matters.</p> <p>Specialization: the Government of XXXX (name of the requestor state) undertakes that any evidence and/or information provided by the Government of XXXX (name of the receiving state) and transmitted by XXXX (name of the requestor state) will not be used to investigate and prosecute any crimes other than those specified in this request without prior permission.</p> <p>Confidentiality: if the request data are confidential, this shall be indicated in the request; for example, if there is an anticipation that the suspect may destroy evidence or “scatter” assets, then this shall be brought to the attention of the receiving state.</p>
	Signature of the requesting authority representative.
	Place and date of registration

Annex 6. Sample of financial investigation documentation (based on international experience)⁷⁸

Financial investigation

No. XXXX-XXXX-XX,

Name, surname, patronymic

Individual tax number

Introduction

Circumstances

As a part of a preliminary investigation on suspicion of in the case **No. XXXX-XXXX-XX**.

The head of the investigation demanded an investigation into the property (*according to foreign practice, this investigation is aimed at investigating the property and its origin*) in relation to NN, 19XX-xx-xx-xxxx.

For the purpose of finding assets and determining the financial position of NN in order to determine the suspect's solvency in the light of possible future forfeiture and recovery of claims for compensation/damages.

Note: a brief description of the reasons for the financial investigation shall be provided here. The purpose may be different than the one indicated above. If the primary purpose is property investigations (asset search and analysis), the following text may be added:

The main purpose of property investigation is, to the extent possible, to determine the likelihood of the property discovered in possession of the suspect having unlawful origin (*i.e. demonstration of a clearly higher likelihood of the unlawful origin of the uncovered property*).

Investigation results

Note: a brief description of the investigation results should be provided here. Example: the investigation revealed that assets in the amount of XX were clearly more likely to have unlawful origins.

78. Guidance Manual on Financial Investigations. Joint Interagency Project in the Field of Fighting against Benefits of Illegal Activities. – 2017.

Below is a collection of data that could be gathered during NN investigation.

The financial investigation was conducted for the 20XX tax year, including/inclusive up to 20XX.

Information collected:

Data on accounts and their transactions for the period from xx-xx to xx-xx, credit cards, participation in the corporate activity (as part of the management of legal entities) and possible powers/positions obtained from major banks and financial institutions involved in business lending;

Information on taxation for the last 10 years and copies of tax declarations, as well as data of audits and inspections conducted by the Tax Service over the last 3 years;

Information on current and previous powers (positions) in the management of legal entities, obtained from the Register of Companies and Enterprises;

Balance of arrears/debt claims forwarded for enforcement to the Bailiffs Service;

Real estate ownership data;

Vehicles ownership data.

Note: above is a standard set of data, which, as a rule, is indicated in the lists of collected information. If more information is collected, it shall also be included in the list.

Data from the Population Register;

NN is registered at the address:

Previous addresses according to the Population Register;

NN is married and has two children;

Parents, siblings:

Assets;

Bank accounts

NN has the following bank accounts:

The extract was obtained for the period from xx-xx-xxx to xx-xx-xxxx.

The account balance as of xx-xx-xxxx is xxx.

Note: indicate here what account, for example, savings account, salary account, etc. was used and what it was used for.

It is also advisable to highlight specific deals/transactions conducted through the account that may be of interest to the investigation.

Real estate property owned

According to the State Register of Property Rights to Real Estate Property/land cadaster /

other databases, NN owns the following real estate objects:

Note: indicate here when the property was purchased, at what price, availability of mortgage agreements, etc.

Ownership of real estate in the past

Note: it may be interesting to find out what property the suspect used to own, for example, on suspicion of registering it in the names of false name individuals (i.e. when someone lives in the house that used to belong to that person but is now owned by another individual).

Vehicles owned;

According to the Register of Motor Vehicles, NN owns the following vehicles:

Note: indicate here when the vehicle was purchased and whether it was purchased on credit.

Ownership of vehicles in the past;

Note: just like in the real estate case above, information about ownership of vehicles can clarify possible concealment of property rights through the registration of property in the name of other people (bogus owners).

Participation in the management of companies;

NN is a board member of the following companies:

Note: it is recommended to indicate here when the suspect has taken over the authority and what activities the company is engaged in.

History of participation in management of companies/enterprises:

Note: sometimes it is important to find out if the suspect has been involved in running a business before and which one.

Other assets;

Seized money;

Other seized assets;

Recent assets;

Debts;

Executive service;

NN as of xx-xx-xxx has no arrears/debt requirements transferred to the executive service for enforcement procedures.

Banks and financial institutions;

NN has the following debts / outstanding credits at the bank;

Tax declaration data;

20xx fiscal year.

Income from earnings and other employment-related income for xxx tax year constituted xxx. Money was received from AB company (xxx) and the Social Insurance Fund (xxx). Rental costs (for interest payment) constituted xxx, income from rent amounted to xxx. The final tax amounted to xxxx.

20xx fiscal year.

Income from earnings and other employment-related income for xxx tax year constituted xxx. Money was received from AB company (xxx) and the Social Insurance Fund (xxx). Rental expenses (interest payment) constituted xxx, rental income - xxx. The final tax amounted to xxxx xx.

20xx fiscal year.

Income from earnings and other employment-related income for xxx tax year constituted xxx. Money was received from AB company (xxx) and the Social Insurance Fund (xxx). Rental expenses (interest payment) constituted xxx, rental income - xxx. The final tax amounted to xxxx xxx.

Fiscal year	Established income from employment	Business operations income	Income from investments	Losses on investments	Final tax
20XX					
20XX					
20XX					
20XX					
20XX					
20XX					
20XX					
20XX					
20XX					
20XX					
20XX					

In most cases, at this stage, the financial investigation is considered completed. But if the investigation reveals that the person accused of the illegal act, for which punishment is foreseen, in particular in the form of confiscation, possesses assets which he/she could not afford in all reasonable calculations, the need appears to check the suspect’s financial capacity to purchase such assets. If the suspect has little or no legal income, then the financial insolvency is quite obvious in most cases, therefore, no further investigation is

needed. However, if the suspect has legal income that is sufficient in itself to acquire the assets in question, a more thorough analysis of the suspect's financial capacity will be required. Such an analysis can be made using **the method of current money calculation**. It consists in checking the existence of a surplus or deficit in a person's economic life, based on his/her known legitimate income and known expenses. Financial capacity (the possibility of acquiring additional assets) arises only when there is a surplus, that is, when there is free money after payment of bills and other current expenses. If, however, the deficit results from payments, it is clear that the acquisition of assets had to be financed at a cost other than legitimate income.

Conclusion.

Note: considering the results of the above-mentioned investigation, there is a need to provide here a description of conclusions reached. For example:

Example of confiscation report text:

According to the investigation results, NN had no taxable income for 20XX.

During interrogation, NN stated the following: ...

According to the investigation, under these financial and economic conditions, NN was unable to finance the purchase of xxxx at the expense of his/her legal income.

Therefore, the investigation revealed that xxxx property is most likely (*with a high probability*) originating from unlawful activity.

An example of the text of the report on confiscation of criminal proceeds (to expand the text and explain why and how the following conclusions were drawn):

As the investigation showed, NN earned at least xxx xxx from the sale.

Criminal proceeds can be estimated at xxx xxx.

Annexes.

Note: all annexes to the report based on the investigation results shall be mentioned here.

Annex 7. Auxiliary form for calculating current monetary funds

Calculation of current monetary funds is a calculation of all income, expenses and changes in financial and economic situation of the suspect, which allows seeing how much money the person had available to cover ordinary living expenses.

Form for calculating current monetary funds

Income	Amount	Standard income per year	Amount
Place of employment 1		Private car, 1 unit	
Passive investment income (from interests/dividends)		Assistance for 1 child	
Social assistance		Assistance for 2 children	
Assistance for children		Assistance for 3 children	
Assistance for housing		Assistance for 4 children	
Debt growth/Asset decline		Apartment for 1 adult	
Payments from tax account		Apartment for 2 adults	
Other income and revenue		Own real estate	
Total income		Cost for living for 1 adult	
		Cost for living for 2 adults	
EXPENSES		Living expenses, 1 child under 6 years of age inclusive	
Withheld taxes		Living expenses, 1 child under 7 years of age inclusive	
Payments to pension insurance			
Payments to tax account / to executive service			
Expenses on vehicle			
Accommodation expenses			
Current living expenses, adults			
Current living expenses, children			

Asset growth / Debt reduction			
Other expenses			
Total expenses			
Surplus / Shortage			
Husband/wife/partner balance of revenues and expenses			
TOTAL Surplus / Shortage			

Annex 8. Sample application to ARMA

National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and other Crimes

Borysa Hrinchenka, str. 1, Kyiv, 01001

APPLICATION

1. Title or surname, name and patronymic of the applicant with indication of its/his/her actual contact data (telephone and electronic communication), address for correspondence.
2. Name of the pre-trial investigation authority, prosecution authority where the applicant works (for applying by investigators, detectives or prosecutors).
3. Surname, name and patronymic of investigator(s), detective(s) or prosecutor(s) conducting pre-trial investigation or prosecution indicating his/her/their actual contact data (telephone and electronic communication) (for applying by pre-trial investigation authorities or prosecution authorities).
4. **Number of criminal proceedings in the Unified Register of Pre-Trial Investigations, which shall be ensured by the applicant in accordance with Article 170 of the Criminal Procedure Code of Ukraine by taking measures in terms of finding and tracing assets that may be seized by submitting the application.**
5. **Information available in criminal proceedings as of the date of submitting application on persons who directly or indirectly own assets that may be seized to secure these criminal proceedings, as well as on relatives of such persons and/or third parties who may be linked to such persons.**
6. **A brief description of a plot of the criminal proceedings and legal qualification of criminal offence with an indication of the article (part of the article) of the Criminal Code of Ukraine.**
7. **Setting a task to the National Agency on finding and tracing of assets that may be seized in criminal proceedings and its links to actual circumstances of criminal proceedings that may indicate the commission of a crime.**
8. **Measure to seize property taken in criminal proceedings (as of the date of**

application) as a measure to ensure such proceedings, including a complete list and description (identification features) of seized property, available information on the existence and location of the property that may be seized in such criminal proceedings, with substantiation of such information (assumptions), list of automated informational and reference systems, registers and databases where information on assets has been searched as of the date of the application submission.

It is necessary to obtain information from relevant automated informational and reference systems, registers and databases, etc., containing information about ***specified individuals and legal entities owning the property*** and assets (movable, immovable property, land, vehicles, corporate rights, bank accounts, etc.).

9. Objectively justified period for the National Agency to ensure execution of the application and provide a response taking into account Article 17 of the Law.

As soon as possible, but not later than within ten working days from the date of its receipt.

10. Other information that may facilitate the National Agency in execution of the application (if any).

Annex: extract from URPTI

