



World Bank MDTF/JSS Trade Based Money Laundering Training



Belgrade, September 09, 2009



Република Србија
РЕПУБЛИЧКО
ЈАВНО ТУЖИЛАШТВО
09. 09. 2009. год



EUROJUST
National Member
for Serbia



SOUTH EAST EUROPEAN
PROSECUTOR ADVISORY
GROUP
www.seepag.info

LEGAL FRAMEWORK FOR COMBATING TO TRADE CRIME

with the Emphasis on the Criminal Proceedings for Money Laundering

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National Contact Prosecutor for EUROJUST
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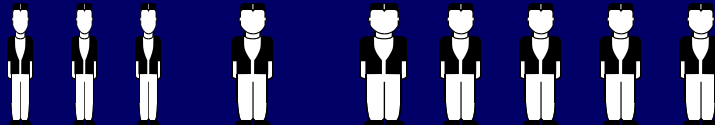
GLOBAL ASPECTS OF THE TRADE PROTECTION

IMPROVEMENT OF THE TECHNOLOGY

- Development of the Internet
- Development of the Micro-Chips

IMPROVEMENT OF THE ECONOMY

- Enormous investment in *Building Brand*
- New Management Strategy
- Global Management Strategy
- Goals of Protection – Global Prosperity





GLOBAL INSTITUTIONS FOR PROTECTION

- 
- **State Regulator -“Regulatory State”**
(Portals of E- Government
B2G,G2C,C2G,C2B...)
 - **Patent, TM, R, C, Geographical Origin...**
 - **Multilateral Conventions**
 - **International Organizations**
(WTO,WIPO...)
 - **Regional Cooperation (SECI...C...)**
- 



KNOWLEDGE MANAGEMENT and KNOWLEDGE DIPLOMACY

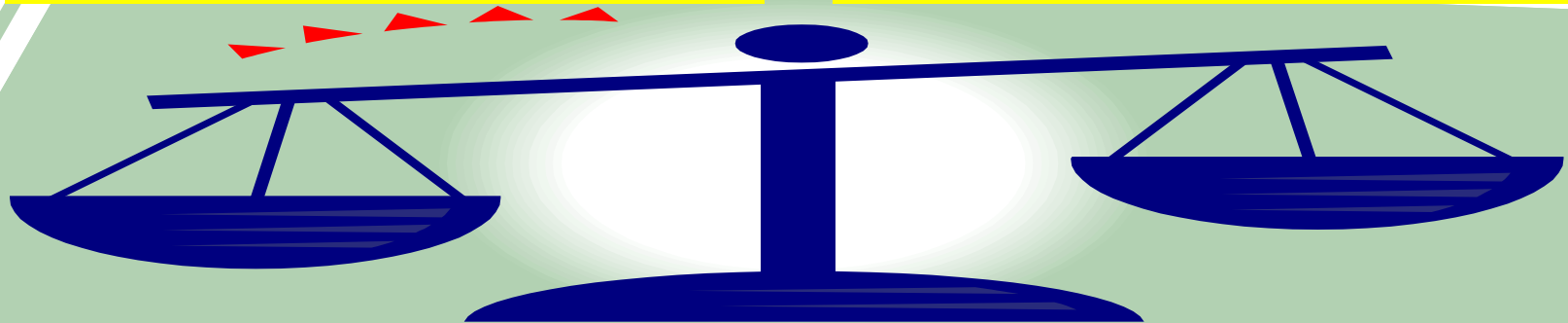
- Introduced in 90- ties
- NO COLD WAR, NO PROBLEMS NORTH-SOUTH
- KNOWLEDGE DIPLOMACY INHERITS INDUSTRIAL DIPLOMACY
- KNOWLEDGEMANAGEMENT INSTEAD OF MANAGEMENT OF THE PROCESSES
- KEY ELEMENTS
 - FURTHER ESTABLISHMENT OF THE LIBERALIZATION OF TRADE AND SERVICES
 - DEEP INCORPORATION OF THE STANDARDS FOR PRODUCTION AND SERVICES
 - GREAT LIBERALIZATION OF THE WORLD MARKET OF INFORMATION
 - ADAPTATION OF TRADE MARK AND COPYRIGHT IN THE POST DIGITAL (PD) AGE

ENLARGEMENT OF THE LEGAL CAPACITY OF THE CRIMINAL CODE AND WORLD ECONOMIC INTERESTS - GLOBAL LEGALITY AND LEGITIMACY

- **Global goal of protection: Fair use(Legitimate) of the economic values and goods**
- **Regulation: кр03 Licensing Processes**
- **Public interest of the state should be within the Global Legal Framework**
- **Legislation balance: Legal solutions**

Investment into the
Brand Production

Extraction for
knowledge transfer



MINISTERIAL MEETING

CEEC P

Meeting of the Ministers of justice and Ministers of interior
LOUTRAKI – GREECE



STABILITY PACT
REPRESENTATIVE SPEACH

20%

GNP OF S E E COUNTRIES
GOES INTO THE CORUPTION
AND
ORGANIZED CRIME

5% of GNP on
MONEY LAUNDERING

**IMPORTANCE OF NATIONAL STRATEGY FOR
COMBATING TO CORRUPTION
AND MONEY LAUNDERING**

WHAT IS THE EXTENSION OF THE LEGAL CAPACITY OF THE CRIMINAL CODE?

**ENLARGEMENT OF THE INCRIMINATION ZONE
ACCEPTANCE OF THE WORLD ETHICAL PRINCIPLES
GREATER SENSITIVITY TO INFRINGEMENTS**

- **CHAPTER 20. CRIMINAL OFFENCES AGAINST INTELLECTUAL PROPERTY**

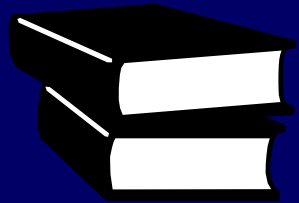
- **CHAPTER 22. OFFENCES AGAINST ECONOMIC INTERESTS**

- **CHAPTER 27. CRIMINAL OFFENCE AGAINST SECURITY OF COMPUTER DATA**

- **CHAPTER 33. OFFENCES AGAINST OFFICIAL DUTY**

OFFENCES AGAINST ECONOMIC INTERESTS

- Counterfeiting Money Art. 223.
- Forging Securities- Art. 224.
- Forgery and Misuse of Credit Cards- Art. 225 .
- Forging Value Tokens Art. 226 P
- Making, Acquiring and Giving to Another of Means for Counterfeiting Art. 227.
- Issuing of Uncovered Checks and Use of Uncovered Credit Cardsчл. Art. 228.
- Tax Evasion Art. 229.
- Smuggling Art. 360.
- Money Laundering Art. 231



Criminal Procedure Code

■ Abuse of Monopolistic Position Art.232

Criminal Code

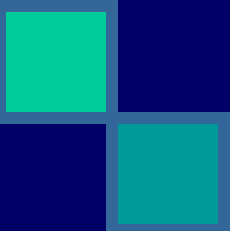



TYPICAL COMMERCIAL CRIMINAL OFFENCES

- **Tax Evasion чл. 229.**
- **Smuggling чл. 360.**
- **Money Laundering чл. 232**
- **Abuse of Monopolistic Position Art. 232**
- **Unauthorised Use of Another's Company Name Art. 233**



TAX EVASION BUDGET REGIME

- 
- with intent to fully or partially avoid payment of taxes
 - gives false information on legal income
 - fails to report lawful income,
 - **ANY OTHER WAY** conceals information relevant for determination of aforementioned obligations
 - 150 000 SRD
- 



SMUGGLING

CUSTOMS REGIME

- taking goods across the customs line evading customs control measures or who takes goods across the customs line evading customs control
- while armed, in a group or using force or threat,
- engages in sale, distribution or concealment of uncleared goods or organises a network of dealers or middlemen
- means, goods etc. shall be impounded 1-3



■ NAURU ?





MONEY LAUNDERING

- 
- PLACEMENT
 - LAYERING
 - INTEGRATION



CoE SELECT COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES (MONEYVAL)

- ***FIRST ROUND DETAILED ASSESSMENT***
- ***REPORT ON SERBIA IN 2004***
-
- ***ANTI-MONEY LAUNDERING AND
COMBATTING THE FINANCING OF
TERRORISM***
- ***40 +9 Recommendations*** Financial Action Task
Force (FATF). 1

Moneyval - Serbia

- Evaluation of Anti-Money Laundering Measures and Serbia voluntarily agreed to participate in a first round Detailed Assessment (Mutual Evaluation)
- according to the procedures agreed by the Moneyval Committee.
- Serbia was the third country to be evaluated by Moneyval according to the Joint Methodology of the IMF and the Financial Action Task Force (FATF). 1
- Key Elements of Joint Methodology

EVALUATION TEAM Overview of the measures to prevent Money Laundering and Financing of Terrorism

- Ministry of Finance,
- Central Bank,
- Customs Service,
- Office of the State Public Prosecutor,
- Ministry of Interior,
- Ministry of Justice
- Agency for the Prevention of Money Laundering (Serbian Financial Intelligence Units (FIU)).

Money laundering is criminalized in Serbia by article 27, of the Money Laundering Act 2002 PROBLEMO OF THE DEFINITION OF PREDICAT CRIME

-
- *“They who contrary to the provisions of this Act deposit money (cash, foreign currency in cash and other financial assets) acquired through illegal activity (**grey economy, illicit traffic in arms, narcotic drugs and psychotropic substances and the like**) into the accounts held with banks and other financial organizations and institutions in the territory of the Federal Republic of Yugoslavia, or introduce in any other way such money (**for which they knew it was acquired by criminal act**) into legal financial flows with the aim to carry out permissible economic and financial activities, shall be sentenced to 6 months up to 5 years of imprisonment.*
-
- *If the amount of the deposited money specified in Paragraph 1 hereof exceeds YUD 1,000,000.00 the perpetrator shall be sentenced to 1 year up to 8 years of imprisonment.*

PROBLEM OF DEFINITION OF CRIMINAL RESPONSABILITY

- *If the amount of the deposited money specified in Paragraph 1 hereof exceeds YUD 1,000,000.00 the perpetrator shall be sentenced to 1 year up to 8 years of imprisonment.*
-
- *They who commit the act specified in Paragraphs 1 and 2 hereof, and might have known or were obliged to know that the money had been acquired by criminal act - shall be sentenced up to 3 years of imprisonment.*
-
- *The responsible person in the legal entity shall also be sanctioned by prescribed penalty for the act specified in Paragraphs 1 to 3 hereof, if they knew, ie if they might have known or were obliged to know that the money had been acquired by a criminal act.*
-
- *Money, i.e. the proceeds deriving from the offence described in Paragraph 1 hereof shall be confiscated.”*

Evaluation of Moneyval

- Article 27 not explicitly include or exclude those who have committed both the laundering and the predicate offence.
- *Question for Serbia: Is self-laundering covered?* T
- the money laundering offence is significantly restrictive
- limited both to a certain range of laundering activities

PROBLEMS OF DEFINITION

- As to the predicate offences, the law neither follows a “list approach” nor an “all crimes” one but a halfway house model, which defines the predicates first by the criterion of “illegal activity” (which could be said of any criminal offence) then inserts a list of certain offences, but finally opens this list with the term “and the like.”
- Pursuant to paragraph 3 of article 27, money laundering is a criminal offence even if committed by negligence



Other related crimes

- illegal disclosure or notification of information submitted to the FIU is sanctioned as a separate criminal offence
- or it is expressly declared as an “offence against economy”
- *Criminalisation of financing of terrorism*



MONEY LAUNDERING BY

CC

■ **PLACEMENT**

■ **LAYERING**


■ **INTEGRATION**

ПОЛАГАЊЕ

РАСЛОЈАВАЊЕ


СЈЕДИЊАВАЊЕ

- Whoever converts or transfers property while aware that such property originates from a criminal offence
 - intent to conceal or misrepresent the unlawful origin
 - conceals and misrepresents facts on the property while aware that such property originates from
 - responsible officer in a legal entity
- Whoever ... could have been aware or should have been aware that the property represents proceeds acquired by criminal offence



FIU

Directorate for M L

- Report on suspicious transactions
 - Aanalysis Files
 - Crime Reports
 - Investigaton
 - Problems on Predicste Crime
 - Confiscation
- 

ABUSE OF MONOPOLISTIC POSITION

FREE ACCESS TO THE MARKET

- **responsible person in legal entity**
- **abuse of monopolistic or dominant market position or by entering into monopolistic agreements**
- **cause market disruptions or brings that entity into a more favourable position in relation to others**
- **material gain for that entity or for another entity or causes damage to other business entities**
- **Up to 3, years of imprisonment**

UNAUTHORISED USE OF ANOTHER'S COMPANY NAME

INFRINGEMENT OF THE I P R

- with the intention to deceive buyers or users of services, uses
- company name
- geographic mark of origin
- tuĥim ŗigom
- hallmark or trademark
- special mark for goods
- incorporates particular features of these marks into his firm, his stamp or trademark or into his special mark for goods

OTHER CRIMINAL OFFENCES AGAINST THE ECONOMY

- **Misfeasance in Business Art.. 234.**
- **Causing Bankruptcy Art. 235.**
- **Causing False Bankruptcy Art. 236.**
- **Damaging Creditors Art 237.**
- **Abuse of Authority in Economy Art. 238**
- **Damaging Business Reputation and Credit Rating Art. 239.**
- **Disclosing a Business Secret Art. 240..**

CORRUPTIVE CRIMINAL OFFENCES AGAINST OFFICIAL DUTY

- **Abuse of Office Art.. 359.**
- **Violation of Law by a Judge, Public Prosecutor or his Deputy Artl. 360.**
- **Dereliction of Duty Art.. 361.**
- **Unlawful Collection and Payment Art. 363.**
- **Fraud in Service Artl. 363.**
- **Embezzlement Art. 364**
- **Unauthorised Use Arti . 365**
- **Unlawful Mediation Art. 366.**
- **Soliciting and Accepting Bribes Art . 367.**
- **Revealing of Official Secret Art . 368.**

ABUSE OF OFFICE

blanco

definition of infringementt (origin of socialist legislation)

- An official who by abuse of office or authority
- by exceeding the limits of his official authority
- by dereliction of duty acquires
- acquires for himself or another any benefit
- causes damages to a third party or seriously violates the rights of another
- 450 000 SRD
- 1 500 000 SRD

SOLICITING AND ACCEPTING BRIBES

MAIN OFFENCE OF CORUPTION

- **Official Person** who solicits or accepts a gift or other benefit, or promise of a gift or other benefit for himself or another
- **REAL**
- **ACTIVE** - to perform an official act within his competence that should not be performed, or
- **PASSIVE** - not to perform an official act that should be performed
- **VIRTUAL**
- **ACTIVE** – to perform an official act within his competence that he is obliged to perform or
- **PASSIVE** - not to perform an official act that should not be performed

SOME PROPOSALS FOR EXTENDING THE CAPACITY

- **ILLEGAL TRADE WITH FORGED UNLICENSED PRODUCTS**
- **ILLEGAL TRADE WITH ORIGINAL T M PROLIFERATED**
- **SMUGGLING OF UNAUTHORIZED RECORDING**
- **UNAUTHORIZED DESCRAMBLING**
- **UNAUTHORIZED NETWORK SERVICING**
- **UNAUTHORIZED TELEPHONE SERVICING**
- **INFRINGEMENT OF THE PROHIBITION OF TRADE WITH THE SURVEILLANCE EQUIPMENT**



QUESTIONS?

- 
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PROSECUTORIAL NETWORKS FOR COOPERATION

SEEPAG, Belgrade, December 2004.



MEMORANDUM OF PROSECUTORS OF WESTERN BALKAN

CARDS Regional Round Table, Skopje, February 2005

South East European Prosecutor Advisory
Group

PROSECO Project for SEE


1/12/2010



SEEPAG

FIRST TRACK OF COOPERATION

speeding ongoing investigations and operations

- 1) assisting police in the operational matters
 - 2) facilitating the exchange of the data and evidences
- 

SECOND TRACK OF COOPERATION

helping in improvement and harmonization of the national legislation

GOALS

Prosecutorial Focal Points PFP

organizing the MLA through direct contacts of the
Law Enforcement Agencies

- Receiving requests and crime reports
- Case Monitoring
- Consulting
- Information and data exchange
- Involving into the special operations
- **Constant on-line communication**

PROSECO PROJECT

Harmonization of the prosecutorial networks in combating to organized crime

- Developments:
 - Establishment of PROSECO for SEE Contact Points
 - Coordination of the **Contact Prosecutors** from the Memorandum of Cooperation from CARDS Regional from Skopje, 2005
 - Coordination of the **Prosecutorial Focal Points** through Secretariat of the SEEPAG in SECI Center

SOME EXPERIENCE- SEEPAG SECI Center for Combating Transborder Crime

Witness hearing Moldova - Macedonia
for the first time in SEE Region

Operations of large scale “Mirage” “Safe Heaven”

Operation “BUS”

BALATON Lake Coordination (police & prosecutors of
Serbia, Romania and Hungary)

Operation “ALIBABA”

Operation “JOCKER”

CLASSIC INSTRUMENTS of M L A

- European Convention on Mutual Assistance in Criminal Matters (1959)
- First Additional Protocol (1978)
- Second Additional Protocol (2001)
- European Convention on Extradition (1957)
- Additional Protocol on Extradition (1975)
- Palermo Trans-national Organised Crime Protocol
- Bi-lateral and Regional Treaties
- National Criminal Codes and Acts of Proceedings
- Prosecutor Office Program of Activities



■ What is New?

NEW M L A PRINCIPLES

- Main goal – to obtain conditions for cooperation
- Cooperation in informal way
- Constant regard to the to the weak points of trans-border crime
- Speeding up M L A and extradition
- Use of special investigative techniques, tactics and method
- Priority to the direct contact of the Law Enforcement Agencies
- Developing the assessment in case of failure of the special operations

Revolution in M L A

■ 2000 EU ConvLA

Additional Protocols

Framework Decisions

General Guidelines

Joint Actions

■ **DIRECT MEANS OF COOPERATION IN EXTRADITION**

■ No Requesting State, but Issuing State

■ No State of the Request , but State of Issue

■ **EUROPEAN JUDICIAL WARRANT**

■ No extradition, but SURRENDER to the Issuing State

From 2005

EUROPEAN JUDGMENT ORDER

■ **From June 2006 EUROPEAN ATLAS of institutions for direct MLA**

■ **EUROPEAN EVIDENCE WARRANT (in project)**

■ **GREEN CARD OF THE PRESUMPTION OF INNOCENCE**



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EUROJUST LEGAL GROUNDS

2002/187/JHA EU DECISION, MODIFIED BY
DECISION 2003/659/JHA



SCOPE:

COMBATING SERIOUS
TRANSNATIONAL CRIME
(CRIMES FORESEEN IN
EUROPOL CONVENTION
1995)

HOW EUROJUST WORKS

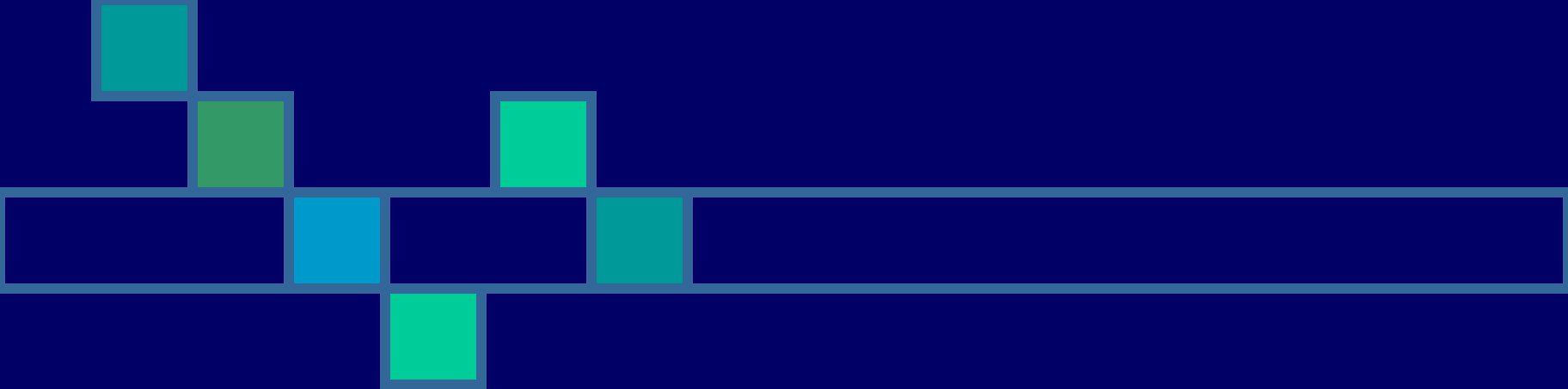


- Requests from the national authorities (CMS; level I-II meetings)
- Added value: (MLA available non stop; contact points in 3rd countries; larger view over the criminal phenomenon; logistic support; promoting the practitioners' point of view before the decisional bodies of EU)
- Organization of operational meetings for practitioners in MS (level III meetings)
- Team meetings
- Tactical/Strategic meetings



SCOPE:

COMBATING SERIOUS
TRANSNATIONAL CRIME
(CRIMES FORESEEN IN
EUROPOL CONVENTION
1995)



Europol and Eurojust AWF developments



Liaison Magistrates and EUROJUST Contact
Points




RECENT DEVELOPMENTS

- CHANGES TO EUROPOL CONVENTION
 - AWFs AND EUROJUST ASSOCIATION
 - OCTA (Organised Crime Threat Assessment)
 - SECURE COMMUNICATION
 - JITs
- 



EUROPOL CONVENTION CHANGE

- March and April 2007
 - 3 protocols in force
 - Amend the Europol Convention
 - MONEY LAUNDERING
 - JIT ' S
 - DANISH permits **association** of Eurojust with AWFs
- 



ILECUS

**International Law Enforcement
Coordination Units**

**Jedinica za koordinaciju međunarodne
saradnje
u sprovođenju zakona**



Responsible for Implementation Austria – Federal Criminal Police & Partners from Slovenia i Romania.

In the course of implementation:

- EUROPOL;**
- INTERPOL;**
- BKA – Germany;**
- EUROJUST;**
- FRONTEX;**
- OLAF;**
- SECI Centar – Bucharest**
- Regional Co/operation Center – Sarajevo**



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