A BRIEF OVERVIEW OF THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK RELATING TO FINANCIAL INVESTIGATIONS IN MACEDONIA

Gordana Lažetić-Bužarovska [*]

INTRODUCTION

Financial investigation is composed of three phases: i. tracking and identifying; ii. freezing; and iii. confiscation of illegally obtained gain as proceeds of crime. The first phase of tracking and identifying is undertaken simultaneously with initiating pre-investigative proceedings. Along with collecting evidence regarding the alleged criminal offence, there might appear some indications of the existence of illegal property gained by committing the offence. The crime must not be profitable so criminal legislation in a broader sense should give investigative authorities competences in relation to all the necessary actions of the above-mentioned three phases of financial investigation.

The European Court of Human Rights (ECtHR) has held that confiscation is designed to block unlawful activities regarding the movement of suspect capital and it is an effective and necessary weapon in the combat against organized crime and mafia-activities.[1]

The level of harmonization of criminal legislation is a significant prerequisite for successful international cooperation in criminal matters. The internationalization of criminal activity requires mutual trust and mutual recognition of decisions to enhance cooperation and overcome the fragmentation of domestic legislative systems.

Legislative opportunities should be followed by developing the institutional framework of certain authorities with powers to implement the legal provisions. The final goals of legislative concepts can be effectively achieved only with the existence of bodies empowered to participate in coordinated financial investigation. Coordination between different authorities and the avoidance of overlap are of major importance for successful financial investigation. Otherwise, only the formal part will be fulfilled but the substance of the legislation and concrete results will not be achieved.

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[*] Dr. Gordana Lažetić-Bužarovska, Professor, Iustinianus Primus Faculty of Law, SS. Cyril and Methodius University in Skopje, Macedonia.

[1] ECtHR: Case of Raimondo v. Italy, Judgment, 22 February 1994, §30.

The protection of the EU budget is of utmost importance due to the fact that a large percentage of it has been subject to fraud and corruption. Since it is constituted through the taxes paid by the citizens of the Community, evading the duties and levies that supply the EU budget, or using Community financing wrongfully, subsequently result in harm to the European taxpayer.[2]

1. LEGISLATIVE FRAMEWORK

A brief review of the legislative framework will encompass provisions from the Criminal Code (CC)[3], the Criminal Procedure Code (CPC)[4] and Law on international cooperation in criminal matters (LICCM),[5] regarding provisions and legislative solutions related to the protection of the EU budget, and the tracking, identifying, freezing and confiscation of proceeds of crime.

Protection of EU budget. There are several provisions in the CC which are important for the protection of the financial interests of the EU budget adjusted to PIF Convention requirements.[6] There is a criminal offence of *Fraud to the detriment of the funds of the European Community* (Art. 249-a, CC), with identical content regarding *modus operandi* as Art. 1 of the PIF Convention (use or presentation of false, inaccurate or incomplete statements or documents or failure to provide data unlawfully appropriated, maintain or cause detriment to the European Community, or funds managed by the European Community or managed on their behalf, or unlawfully reduce the funds of the European Union, the funds managed by the European Community or managed on their behalf, or use of the funds contrary to the approved purpose). It is a special type of fraud.[7] This offence is punishable with imprisonment from 6 months to 5 years for natural persons and with a fine for legal entities. However, there is also a fine for natural persons as a secondary penalty in line with Art. 34, §2 of CC, which stipulates that for criminal offences committed out of greed a fine can be imposed as a secondary penalty even when it is not prescribed by the CC for the particular offence.

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2 Guide to the Protection of the Financial Interests of the European Union, 2010, http://www. transparency.org.ro/proiecte/proiecte_incheiate/2010/proiect_3/Guide%20to%20the%20protection%20of%20EU%20financial%20interests.pdf.

3 Official Gazette, nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014 and 199/2014.

4 Official Gazette no. 150/2010.

5 Official Gazette no. 124/2010.

6 Convention on the protection of the European Communities' financial interests, (95/C 316/03), Official Journal of the European Communities, C 316/48, 27.11.1995.

7 В. Камбовски/Н. Тупанчески, Казнено право - посебен дел, 2011, 315.

The Macedonian CC also contains comprehensive provisions regarding *Money laundering and other proceeds from crime* (Art. 273, §§1-13, CC)[8] where the basic crime (punishable *modus operandi*: one who releases into circulation or in trade, receives, takes, replaces money or other property acquired by virtue of the offence or who knows that it has been obtained by virtue of a criminal act, or converts, changes, transfers or otherwise hides that such money or property originates from such a source or hides its location, movement or ownership; one who possesses or uses property or items which he knows have been obtained by committing the offence or forges documents, reports the facts or otherwise conceals that they originate from such a source, or hides their location, movement and ownership) is punishable with imprisonment of 1 to 10 years. The length of prison sentence is much longer for the more severe crimes: when the offence is committed in the banking, financial or other business sectors or by splitting the transaction to avoid the duty to report in cases defined by law, the sanction is imprisonment of at least 3 to 20 years, and if the perpetrator has committed the offence as a member of a group or other association that deals with money laundering, illegal acquisition of property or other proceeds from crime, or of foreign banks, financial institutions or persons, the sanction is imprisonment of at least 5 to 20 years. There is an obligatory provision (Art. 273, §13, CC) regarding the proceeds from crime that can be confiscated, and if confiscation is not possible from the offender other property can be confiscated corresponding to its value.

However, almost two decades later, the PIF Convention has becomes too narrow for various forms of fraud and corruption and related illegal activities on the revenue and expenditure side, both to the detriment of the EU budget and of taxpayers. Therefore, it has become necessary to replace the 1995 PIF Convention and its protocols with a new Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the EU's financial interests by means of criminal law.[9] This Directive, besides addressing well known forms of fraud and corruption, went further to address procurement related offences, to encompass VAT, to require mandatory minimum sentences, and to require minimum prescription (or statute of limitations) periods. There is an added significance to the proposed Directive in that Article 86 TFEU provides for the possible establishment of a European Public

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8 В. Камбовски/Н. Тупанчески, Казнено право - посебен дел, 2011, 354.

9 Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, COM(2012)363/2 was communicated by the EC to the Council on 12 July 2012, http://ec.europa.eu/anti_fraud/documents/pif-report/pif_proposal_en.pdf; Opinion of the Council Legal Service (CLS) on the Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law (12683/12 DROIPEN 107 JAI 535 GAF 15 FIN 547 CADREFIN 349 CODEC 1924), http://db.eurocrim.org/db/en/doc/1959.pdf.

Prosecutor's Office (EPPO), which would have responsibility for investigating and prosecuting offences against the Union's financial interests.[10]

The development of the legal basis for the protection of the financial interests of the EU budget and the fight against fraud to the EU financial interests in line with the Directive should determine amendments to current domestic criminal law provisions and their harmonization with the new requirements. The harmonization means neither unification nor translate-copy-paste of EU regulations, but a process which requires serious efforts to be made to incorporate requirements into different provisions in order to create a logical and effective framework for the protection of both the domestic and EU budgets from illegal activities.

Tracking, identifying and freezing. The CPC contains provisions regarding investigative measures for tracking and identifying the proceeds of crime, as well as for temporarily freezing the proceeds of crime during criminal proceedings.

Given the *tracking and identifying of the proceeds of crime* there are several special investigative measures as prescribed in Art. 252, CPC: 1) interception and recording of telephone and other electronic communications in a procedure established by a separate law; 2) surveillance and recording at home, indoors or in closed spaces that belong to the home or business premises designated as private or a vehicle and the entry into a building in order to create conditions for the monitoring of communications; 3) secret surveillance and recording of persons and objects with technical means outside the home or business premises designated as private; 4) secret access to computer systems; 5) automatically or otherwise, searching and comparing personal data; 6) access to telephone and other electronic communications; 7) simulated purchase of items; 8) simulated bribery; 9) controlled delivery and transport of persons and objects; 10) use of undercover agents for surveillance and gathering information or data; 11) opening a simulated bank account; 12) simulating the registration of legal entities or using existing legal entities for data collection.[11]

Special investigative measures may be ordered when it is likely that by other means of proof (*media probandi)* the necessary data and evidence cannot be obtained. Measures, from points 1 to 5, after a formal request from the public prosecutor, can be implemented by a judge issuing a written order for preliminary procedures. Measures, from points 6 to 12, can be implemented with a written order by the public prosecutor at the request of the judicial police. The order will only be issued when there are grounds for suspicion: i.

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[10] Department of justice and equality, http://www.justice.ie/en/JELR/Pages/SP13000304**.**

[11] Н. Матовски/Г. Лажетиќ-Бужаровска/Г. Калајџиев, Казнено процесно право, второ изменето и дополнето издание, Академик, Скопје, 2011, 263-269. Г. Лажетиќ-Бужаровска/Г. Калајџиев/Б. Мисоски/Д. Илиќ, Казнено процесно право, Скопје, 2015, 190.

of any criminal offence punishable with imprisonment of at least four years, while it is being prepared, or being perpetrated or committed by an organized group, gang or other criminal association; or ii. of several specified offences including: money laundering and other proceeds from crime; customs fraud; smuggling; abuse of an official position and authority; embezzlement; fraud within the service, and bribery.

The interests of criminal procedure require the confiscation of possessions, which impacts not only the personal freedom of the defendant, but also his other goods, as well as the goods of others and the freedom to dispose of certain items and objects.[12] Within the measures for finding and securing persons and objects (Chapter XVII, Art. 194-204, CPC) there is the option for the *freezing of the proceeds of crime as a temporary measure* that can be imposed during criminal proceedings until the final judgment.[13] Among the options are: temporarily ensuring and seizure of objects or property; temporary seizure of computer data (data stored in a computer and similar devices for automated or electronic data processing, devices for collection and transmission of data, data carriers and subscriber information held by the service provider); temporary seizure of letters, telegrams and other consignments; handling data that are bank secrets, property in a bank's safe deposit, monitoring of money transfers and transactions (if there is a reasonable suspicion that a certain person receives, stores, transmits or otherwise disposes of the proceeds of crime, and it is an important contribution to the investigation procedure of that crime under the law, or subject to forcible seizure); temporary suspension of enforcement of certain financial transactions (the judge may order the bank or other financial institution to monitor payment transactions, transactions of bills or other items of a person, and regularly report to the public prosecutor, or to order the financial institution or entity temporarily to terminate the execution of a particular financial transaction or operation, and temporarily to seize certain property). The object that pursuant to the Criminal Code should be seized or which may serve as evidence in criminal proceedings shall be temporarily seized and their safekeeping should be ensured either by keeping it in the public prosecutor's office or in any authority designated by a special law. A court order, upon a motion by the judicial police or the public prosecutor, is necessary for the temporary seizure of objects, computer data, letters, telegrams and other consignments and for measures related to financial transactions.

Confiscation of property and property gain. The CC contains provisions regarding confiscation of property and property gain as an additional measure to criminal sanction within the sanction system in a broader sense.[14] The leg-

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[12] Г. Лажетиќ-Бужаровска/Г. Калајџиев/Б. Мисоски/Д. Илиќ, Казнено процесно право, Скопје, 2015, 186.

[13] Б. Мисоски/Г. Лажетиќ-Бужаровска/Г. Калајџиев, Казнено процесно право, второ изменето и дополнето издание, Академик, Скопје, 2011, 254.

[14] В. Камбовски, Казнено право - општ дел, Култура, Скопје, 2004, 973-986.

islation of the existing CC provisions has evolved regarding the confiscation of property and property gain since 1997 when it was described first as "seizure"[15], and then (after CC amendments in 2004[16]) the term "confiscation" became the preferred legislative term.

The purpose of confiscation of property and property gain is that no one should keep direct and indirect proceeds obtained by crime. They should be confiscated by a court decision which has determined the crime under conditions provided by the CC. Regarding Art.122, §1(16), CC, the proceeds of crime means any property or benefit derived directly or indirectly from committing a punishable offence including proceeds held abroad, provided that at the time of commission the act was prescribed as an offence.

Decisions on the confiscation of property and property gain will be issued by the court pursuant to CPC provisions when there are factual or legal obstacles for conducting criminal proceedings against the offender. Under certain conditions determined by a ratified international treaty, the confiscated property and property gain can be returned to another state.

Since CC amendments in 2009[17] there is an option for the confiscation of indirectly obtained proceeds of crime from the offender where the offender has transformed or converted obtained proceeds of crime; or where the obtained proceeds of crime have been mixed, in whole or in part, with property acquired from legal sources, up to the assessed value of the obtained proceeds of crime; or income or any other benefits resulting from the benefits obtained from crime, from property into which the obtained proceeds of crime have been transformed or converted or from property that is mixed with the proceeds of crime, up to the assessed value of the proceeds of crime. There is also an option for direct and indirect confiscation of the proceeds of crime from third parties, when the proceeds of crime were realized on their behalf.

Along with the CC provisions, there are CPC provisions regarding the procedure for the seizure of objects and the confiscation of property and property gain (Art. 529 – 541, CPC). Confiscation can be ordered after collecting sufficient circumstantial evidence concerning the unlawful origin of the property and property gain. The public prosecutor is obliged during the procedure to collect evidence and to inspect circumstances which are important for determining the scope and amount of property and property gain and, if necessary, to propose temporary measures for freezing the proceeds of crime while criminal proceedings are pending.

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15 Ѓ. Марјановиќ, Македонско кривично право - општ дел, Просветно дело, Скопје, 1998, стр. 374.

16 Official Gazette no. 19/2004.

17 Official Gazette no. 114/2009.

Extended confiscation has been a legislative solution since 2009.[18] There are several prerequisites such as: i. a criminal offence committed within a criminal association; the offence should be punishable with a prison sentence of at least four years; ii. a criminal offence related to terrorism punishable by imprisonment of at least 5 years; iii. a criminal offence related to money laundering punishable by imprisonment of at least 4 years; iv. the subject of confiscation could be a property acquired in the period prior to the judgment, which the court shall determine from the circumstances of the case, but no longer than five years before committing the offence; v. when after observing all the circumstances the court is convinced that the property exceeds the statutory income of the offender and originates from such a criminal offence. Extended confiscation can be enforced in relation to property of third parties if the proceeds of crime were realized on their behalf. Extended confiscation can be enforced against members of the offender's family when assets are transferred to them and it is evident that they haven't give any consideration corresponding to its value, or against third parties unless they can prove an exchange of consideration corresponding to the value of the assets.

Regarding the CPC provisions, the court may impose extended confiscation under conditions stipulated in the CC, if the accused within one year from the date of commencement of the main hearing is unable to prove that the property or proceeds have been legally acquired. This obligation of the accused to prove the legality of his property should not be understood as transferring the burden of proof on to the defendant. Moreover, this is in line with with international instruments regulating these matters. Namely, the Vienna Convention (Art. 5, §7) stipulates that the domestic legislator may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of domestic law and with the nature of the judicial and other proceedings.[19] There is a similar provision in the Palermo Convention (Art.12, §7) regarding confiscation and seizure, such that the domestic legislator may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.[20] In the Macedonian CPC, the burden of proof (*onus probandi*) is linked to proof of guilt beyond a reasonable doubt as an obligation of the public prosecutor. However, since non-enforcement of extended confiscation over his property is in the defendant's interests, he has the opportunity to provide evidence regard-

[18] Н. Тупанчески, Кривичен законик – интегрален текст, Скопје, 2015.

[19] UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), 1988, https://www.unodc.org/pdf/convention_1988_en.pdf.

[20] UN Convention Against Transnational Organized Crime, 2000.

ing the legality of his property.[21] The ECtHR has developed standards under which the reversal of the burden of proof is in line with ECHR.[22] In Philips v. UK, the ECtHR held that the purpose of reversal of burden of proof was not applied in order to facilitate finding the applicant guilty of an offence[23] but to enable the national court to assess the amount at which the confiscation order should properly be fixed, and there was no violation of either the right to fair trial or of the presumption of innocence.[24]

The CPC enables the defense (Art. 311, CPC) to refer to the court if state bodies, bodies of local self-government, legal entities and natural persons empowered with public authority and other legal entities, did not proceed upon the request of the defense and within a deadline of 30 days did not submit required documents, files and/or information which are important data for the defense to prove circumstances important for the defense case. In such cases the court should issue a written order to the particular body to submit the necessary documents, files and/or information. If within a period shorter than one year from the date of the commencement of the main hearing, the court has pronounced a first instance verdict, the court should impose the extended confiscation with a supplementary judgment. This judgment may be appealed in accordance with general CPC provisions regarding appeal of judgments.

There is a *separate procedure for the seizure of objects and the confiscation of property and property gain* regulated by the CPC (Art. 540).[25] This procedure, upon a motion by the public prosecutor, is for when there are factual or legal obstacles for conducting criminal proceedings against the perpetrator of a crime. The substance of this procedure relates only to evidence related to the illegally obtained property or proceeds of crime that should be confiscated. The public prosecutor is obliged to provide and propose evidence. The court can impose the confiscation of property or proceeds of crime when the public prosecutor has collected and presented enough evidence to prove that the property or proceeds have been illegally obtained by committing a criminal offence.

Enforcement of confiscation of property and property gain. Confiscation of property and property gain has to be enforced within 30 days after the final verdict. An enforcement order is issued by the court which rendered the first instance judgment. The enforcement is carried out over the property and prop-

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21 Н. Матовски/Г. Лажетиќ-Бужаровска/Г. Калајџиев, Казнено процесно право, второ изменето и дополнето издание, Академик, Скопје, 2011, 188.

22 R. Golobinek, Financial investigations and confiscation of proceeds from crime, Training manual for law enforcement and judiciary, Council of Europe, 2006, p. 22-23;

23 ECtHR: Case of Philips v. UK, 05.07.2001, §41.

24 ECtHR: Case of Philips v. UK, 05.07.2001, §34.

25 Г. Калаццциев/Г. Лажетиќ-Бужаровска, Закон за кривичната постапка, Академик, Скопје, 2011.

erty gain determined by the court decision, and if the enforcement is partially or fully not possible, the enforcement applies to the remaining property of the person against whom the confiscation measure was ordered.

Agency for confiscated property.[26] This is a legal entity established by law in 2008 for managing confiscated property, property gain and seized items in criminal procedings[27]. The Agency is empowered to manage the seized items, confiscated property and property gain as follows: with the consent of the court, it manages temporarily confiscated property and property gain and items temporarily seized in criminal proceedings; it manages permanently seized items in criminal and administrative proceedings pursuant to law, unless the objects have been seized in tax procedings.

Regarding the enforcement of confiscation measures, the Agency is obliged to implement the procedure for the execution of the confiscation of property and property gain.

The Agency's competences include taking all necessary measures for fulfilling the following tasks: to protect and store the seized property; to assess the value of the seized property; to keep a record of the entire seized property; to sell the seized property; as well as to prepare statistical, financial and other reports about the seized property.

At the request of a competent court, the Agency should submit a report about all measures taken regarding a particular case.

The LICCM regulates different means of *mutual legal assistance* among which are: submission of spontaneous information; controlled deliveries; undercover agents; JIT's; temporary securing of items, property and assets; temporary freezing, seizure and retention of funds, bank accounts, financial transactions and proceeds of crime as well as confiscation of property and property gain. This law is fully harmonized with all the Council of Europe's conventions regarding international cooperation and related issues so that it enhances international cooperation in the implementation of the above-mentioned means of mutual legal assistance.

2. INSTITUTIONAL FRAMEWORK

Institutional support is absolutely essential for the successful implementation of the current legislation and financial investigations. There are several bodies competent for different issues that can improve, accelerate and enable the implementation of financial investigations, among which are: police within the Ministry of Interior, the Financial police, the Directorate for Financial

[26] http://www.odzemenimot.gov.mk/.

[27] Official Gazette nos. 98/2008, 145/2010, 104/2013, 187/2013, 43/2014 and 160/2014.

Intelligence, the Public Revenue Office and the Customs administration. Regarding the protection of EU funds there are other units such as: the Sector for Financial Inspection in the Public Sector, the Public Internal Financial Control and the IPA Audit Body.

The Financial police[28] was established in 2003 and since 2007 has been a legal entity within the Ministry of Finance.[29] It has become a body with special investigative powers under the CPC from 2010. The purpose of its establishment is to protect the financial interests of Macedonia through the detection and criminal investigation of money laundering and other proceeds of crime, trafficking, smuggling, tax evasion, and other crimes concerning illegal property of significant value, as well as to provide protection of EU financial interests through the detection and investigation of criminal offences related to the use of funds from EU programmes. Through the Ministry of the Interior, the Financial police cooperates with international police organizations - INTERPOL and EUROPOL, and participates in the National Bureau for international police cooperation and other mechanisms for cooperation with the police of other countries. The Financial police directly cooperates with OLAF.

The Directorate for Financial Intelligence[30] has had several different names since its establishment in 2002 (Directorate for Prevention of Money Laundering; Directorate for prevention of money laundering and terrorist financing). Pursuant to the Law on Prevention of Money Laundering and Financing of Terrorism,[31] the Directorate for Financial Intelligence is a legal entity within the Ministry of Finance, as a body with special investigative powers under the CPC from 2010. It is a member of the EGMOND group that acts according to the Financial Action Task Force (FATF) Recommendations and the Third anti-money laundering Directive (Directive 2005/60/EC). It is empowered to undertake measures and actions for detecting and preventing money laundering, associated offences and the financing of terrorist acts, among which are: to collect, process, analyze, store and deliver data in order to prevent money laundering and terrorist financing; to provide financial, administrative and other data; to inform the public prosecutor of a reasonable suspicion that a crime has been committed and request temporary measures. The Directorate is provided with data both by domestic financial institutions and financial institutions from EU member states, as well as a legal entity whose shares are traded in the capital markets in EU Member States.

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28 http://www.finpol.gov.mk/.

29 Law on financial police, Official Gazette nos. 12/2014, 43/2014 and 33/2015.

30 http://www.ufr.gov.mk/.

31 Official Gazette no. 130/2014.

The Public Revenue Office[32] is a legal entity within the Ministry of Finance that can help during financial investigation due to: enforced inspection supervision; keeping tax records; monitoring and analysis of tax revenues; mutual legal assistance in tax matters etc. The tax inspectors are empowered to seize objects and documents that could be used as evidence in criminal proceedings; to seize goods released on the market for which tax hasn't been paid or has not been properly registered; to temporarily prohibit activities by the temporary closure of facilities, equipment or premises where business activities are being performed.[33]

The Customs administration[34] was established in 2004[35] as a legal entity within the Ministry of Finance. It carries out matters within its competence in accordance with the law on customs administration, Customs law, Customs tariff law, Excise duty law, Tax procedure law, the law on customs measures for the protection of intellectual property, as well as in accordance with other laws that regulate the import, export and transit of goods, and execution of other activities that are under its competence and are entrusted pursuant to other laws. The Custom administration can undertake measures and activities aimed at detecting and investigating criminal offences, the detection and capture of their perpetrators and providing evidence either *ex officio* or by the order of the public prosecutor. Within the competences of the Customs administration are the criminal offences of money laundering and other proceeds of crime, smuggling, customs fraud and tax evasion, but only where they are related to the import, export and transit of goods across the border. Macedonia is a member of the Customs Enforcement Network (CEN).

The public internal financial control[36] was established for the successful and transparent management of national and EU funds by the intensification of measures on the strengthening of internal financial control in the public sector. Establishing this process was started in 2000 based upon principles of decentralized responsibility of the management and establishing functionally independent internal audit systems, so there are certified internal auditors in all bodies and legal entities within the public sector.[37] There is a Central unit for the harmonization of the system of public internal financial control within the Ministry of Finance, and the Minister of Finance coordinates the development, establishment, conduct and the holding of the system of Public

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32 www.ujp.gov.mk/.

33 Law on public revenue office public revenue office, Official Gazette nos. 43/2014 and 61/2015.

34 http://www.customs.gov.mk/en.

35 Law on customs administration, Official Gazette nos. 46/2004; 81/2005; 107/2007; 103/2008; 64/2009; 105/2009; 48/2010; 158/2010; 53/2011; 113/2012; 43/2014; 167/2014; 33/2015 and 61/2015.

36 http://www.finance.gov.mk/en/node/864.

37 Law on public internal financial control, Official Gazette nos. 90/2009 and 188/2013.

internal financial control. The purpose of financial management and control is to improve financial management in order to achieve the following objectives: proper recording of financial transactions; timely financial reporting and monitoring of business results; protection of property and other resources against losses caused by mismanagement, unjustified spending and use, irregularities and abuse; financial control *ex ante* and *ex post*; procedures for complete, correct, accurate and up to date accounting records of all transactions; rules for documentation of all transactions and activities etc. Regarding EU funds, there is an obligation for all entities and bodies who are beneficiaries of EU funds both to adhere to the rules from the law on public internal financial control and to consider and apply special conditions for financial management, internal controls and internal audit, established by the European Commission. All beneficiaries of EU funds should enable the officials from the Ministry of Finance, inspectors from the European Commission and the European Court of Auditors, free access to all documentation, offices, funds and staff, taking into account the rules for safety and good behaviour.

The Sector for financial inspection in the public sector[38] has been functioning since 2013 within the Ministry of Finance. The objective is the protection of the financial interests of entities in the public sector of seriously bad financial management, fraud and corruption and *ex post* actions to control the regularity of the transactions and other activities in the area of financial management and control. The grounds for conducting financial inspection are: registration and evidence of violations of procedures for financial management and control; report of internal audit, the State Audit Office, the Government of the Republic of Macedonia, the Public Prosecutor's Office as well as requests from OLAF. The chief Inspector shall check requirements, information or charges, issue an authorization for initiating financial inspection and cooperate and exchange information with other public sector entities and OLAF as well.

The IPA Audit Body[39] was established in 2007 by the Decision of the Government of the Republic of Macedonia upon Council Regulation (EC) No. 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) for candidate countries and potential EU member states. It functions within the State Audit Office[40] as a functionally independent audit of pre-accession funds of the EU to the Republic of Macedonia, to audit the position and manage pre-accession funds of the EU in Macedonia. Since 2010 there is a special law for the revision of the Instrument for Pre-Accession Assistance (IPA).[41] Within its jurisdiction is checking the effective functioning of the management and control of the IPA and verification of the reliability of

[38] Law on financial inspection in the public sector, Official Gazette nos. 82/2013 and 43/2014.

[39] http://www.aaipa.mk/index.php?lang=en.

[40] Amendments of the Law on State Audit Office, Official Gazette no. 133/2007.

[41] Official Gazette, no. 66/2010 and 43/2014.

accounting information provided by the European Commission received from the competent institutions in the Republic of Macedonia with regard to the decentralized management of EU funds. There are four types of IPA auditing: 1) review of the IPA system (system audit); 2) review of projects/programmes; 3) financial audit and 4) review of information technology (IT audit). IPA auditors have free access to business premises and property, the right of access to documents, forms and other documents, electronic data and information systems, as well as the right to demand explanations from representatives of the audited entity on all issues that are of importance for conducting an audit. If the IPA auditor while performing the audit found that there was a reasonable suspicion of irregularity or criminal offence, he should immediately inform the competent authorities, in accordance with the bilateral agreements and regulations of OLAF.

3. CONCLUDING REMARKS

There is no doubt that financial investigation is conducted in parallel with criminal investigation although they have different purposes. Financial investigation is aimed at discovering and identifying the property so that it can be confiscated later on. The goal of criminal investigation is directed towards discovering evidence regarding the offence and the perpetrator. They have to start at the same time, but in some cases financial investigation can start even earlier than criminal investigation, depending on the nature of the criminal offence. There may be different outcomes from both investigations. For example, confiscation can be ordered at the same time as the final judgment or with an additional judgment, but it is possible to undertake financial investigation and to determine confiscation even without starting or finishing the criminal investigation – due to factual or legal obstacles for conducting criminal proceedings. The conclusion is that the crime must not be profitable no matter the current obstacles related to conducting or completing criminal proceedings.

From what has been presented in this paper, it is more than clear that Macedonia, as an EU candidate state, has fulfilled its obligations regarding legislative solutions for the protection of EU budget funds from frauds commit by its beneficiaries, as well as regarding the confiscation of property and property gain, the proceeds of crime and illegally obtained property gain and extended confiscation. However, confiscation and extended confiscation are not very often ordered in court decisions due to the following: issues related to the identification of proceeds of crime, lack of complementary standards in other fields like banking, finance, trade, real estate etc.[42] There are, also, pre-

[42] д-р Барбара Ветори, Академик д-р Владо Камбовски, м-р Бобан Мисоски, Спроведување конфискација на приноси од кривични дела по реформите на Кривичниот законик од 2009-та година, Прирачник за практичари, ОБСЕ, Скопје, 2010.

conditions that should be fulfilled during criminal proceedings related to the necessity to determine the amount of illegally obtained gain as a first step, then undertaking activities to discover the location of the property and determine necessary temporary measures for securing the property, and with the final verdict to impose confiscation as an additional measure. It is quite obvious that current legislative provisions are not sufficient for the successful implementation of confiscation because of unresolved legal and factual questions regarding ownership in the broad sense, the land registry regime, the cadastral regime, the exitence of encumbrances like mortgages etc.

The institutional framework consisting of a whole network of entities and bodies, which are empowered with competences regarding financial investigations, is very important as a precondition for the successful protection of domestic and EU budgets. Nevertheless, the existence of the network is not enough. The coordination between different entities and bodies, between their activities and the measures they have taken, is also crucial to avoid the overlapping of their activities. The role of the public prosecution office should be to coordinate their activities within the scope of financial investigation.