



SCREENING CHAPTER 04 FREE MOVEMENT OF CAPITAL

AGENDA ITEM III: MONEY LAUNDERING

**Country Session: The Republic of TURKEY
22 December 2005**



CONTENT

- **LEGAL BASIS**
- **PREVENTIVE MEASURES**
- **ORGANIZATION**
- **INTERNATIONAL COOPERATION**
- **STATISTICS**
- **NEW PROVISIONS OF DRAFT LAW**



LEGAL BASIS

- **TURKISH LEGISLATION**
- **LAUNDERING OF PROCEEDS OF CRIME**
- **SECURITY MEASURES**
- **CONFISCATION OF PROCEEDS OF CRIME**
- **SEARCH AND SEIZURE OF PROCEEDS OF CRIME**



TURKISH LEGISLATION

- **Law No. 5237 Turkish Criminal Code**
- **Law No. 5271 Criminal Procedure Code**
- **Law No. 4208 on Prevention of Money Laundering**
- **By-law Regarding Implementation of Law No. 4208**
- **By-law of Working Procedures of the Coordination Board for Combating Financial Crimes**
- **Financial Crimes Investigation Board General Communiqué No. 1**
- **Financial Crimes Investigation Board General Communiqué No. 2**
- **Financial Crimes Investigation Board General Communiqué No. 3**
- **Financial Crimes Investigation Board General Communiqué No. 4**



LAUNDERING OF PROCEEDS OF CRIME

Article 282 of Turkish Criminal Code

- ***“Predicate offence”*** ; as an offence of which minimum punishment is one year or more imprisonment.
- Transferring proceeds of crime to abroad or
- Subjects proceeds of crime to a series of transactions for the purposes of disguising illicit sources of them and misleading as if they have been derived from legitimate sources
- ***“Penalty”***; imprisonment from 2 years up to 5 years and to payment of a fine up to twenty thousand days.



LAUNDERING OF PROCEEDS OF CRIME (cont.)

Article 282 of Turkish Criminal Code

Aggravating Circumstances

- ***When committed by public servants or a person having specific professions, during the execution of their duties or businesses, the sentence to imprisonment shall be increased by half.***
- ***When committed in the context of the activities of a criminal organization designed for the purpose of committing offences, the sentence shall be increased by two fold.***
- ***With regard to committing this offence, for legal persons, security measures pertinent to them are taken (such as licence revocation).***



SECURITY MEASURES

- Penal sanctions shall not be imposed on legal entities (CC Art. 20).
- The permission of the corporate body shall be cancelled (CC Art. 60);
 - ✓ operates based on the licence given by a public authority
 - ✓ conviction for a deliberate offence in favor of legal entity
 - ✓ participation of its organs or representatives by abusing the power given to them.
- The confiscation provisions shall be applied.
- If the implementation of the provisions of the paragraphs above generate more serious results in comparison to the act perpetrated then the judge may not award to these measures.
- The provisions of this article shall only be applied for the situations for which the law set forth specifically.



CONFISCATION OF PROCEEDS OF CRIME

Article 55 of Turkish Criminal Code

The material benefits;

- ***derived from the commission of a crime or***
- ***constitutes the subject of the crime or***
- ***provided for the commission of the crime***

- ***economical earnings obtained by the deposition or conversion of***
them,

shall be confiscated.

When the property or material benefits can not be seized or submitted to the competent authorities, value of which corresponds to such proceeds shall be confiscated.



SEARCH AND SEIZURE OF PROCEEDS OF CRIME

- **Keeping and seizure of property and assets (CPC Art. 123).**
- **Seizure at the post office (CPC Art. 129).**
- **Search and seizure at lawyers' offices (CPC Art. 130).**
- **Appointment of curator for the company management (CPC Art. 133).**
- **Search of computers and computer programs and archives, copying and provisional seizure (CPC Art. 134).**
- ***Recording, interception and detecting of communications (CPC Art. 135).***
- ***Monitoring by technical devices (CPC Art. 140).***

- **Controlled delivery of dirty money is regulated in articles 10 and 11 of the Law No. 4208.**



PREVENTIVE MEASURES

➤ **LIABLE PARTIES**

➤ **OBLIGATIONS**



LIABLE PARTIES

- 1. Banks,**
- 2. Institutions, which issue credit cards, other than deposit banks,**
- 3. Money lenders, consumer finance and factoring companies,**
- 4. Insurance and reinsurance companies,**
- 5. Istanbul Stock Exchange Settlement and Custody Bank Inc.,**
- 6. Capital markets intermediaries and portfolio management companies,**
- 7. Investment Funds,**
- 8. Investment Companies,**
- 9. Precious metals exchange intermediaries,**
- 10. Precious metal, stone and jewellery dealers,**



LIABLE PARTIES (cont.)

- 11. Bureau de Change,**
- 12. Every kind of postal service and cargo companies including General Directorate of Postal,**
- 13. Financial leasing companies,**
- 14. Real estate agencies or persons intermediating buying and selling of real estate,**
- 15. Lottery hall managers,**
- 16. Ship, aircraft and vehicle including construction machines-dealers,**
- 17. Collectors of historical arts, antiques and art works as well as dealers or auctioneers,**
- 18. Sports clubs.**



OBLIGATIONS

- **Submitting Information and Documents**
- **Customer Identification**
- **Record Keeping**
- **Suspicious Transaction Report**
- **Assignment of Compliance Officer**
- **Internal Control**
- **Training**



SUBMITTING INFORMATION AND DOCUMENTS

Public administration, natural persons and legal entities are obligated to submit requested information and documents that would be requested by the MASAK and the investigators and to provide them with adequate support.



CUSTOMER IDENTIFICATION

- **Liabe Parties + General Directorate of National Lottery + Turkish Jockey Club**
- **Branch offices, Agents, Representatives, Commercial Deputies and similar units of liable parties in Turkey**
- **Shall identify their customers and the persons who carry out the transactions on behalf of the customers before they carry out the transactions.**
- ***Branches and agencies of liable parties whose head offices in Turkey may be subjected to CI in terms of transactions which have been carried out from or to Turkey.***



CUSTOMER IDENTIFICATION (cont.)

➤ *Transactions that exceed 12.000 YTL. or equivalent in foreign exchange (7.500 Euro):*

All kinds of purchase and sale, remittance, payment, storage, clearance barter, lending, borrowing, debt transfer, transfer of claims, renting, renting out, depositing into or withdrawing from current or deposit accounts, collecting checks and deeds, transactions pertaining to securities and transactions alike.

➤ *Transactions subject to CI regardless of monetary limit:*

Deposit box service, insurance, financial leasing, opening deposit account, opening profit/loss participation account, opening current account, opening repos account and any opening account transactions.



CUSTOMER IDENTIFICATION (cont.)

(Exemptions)

Liable parties are not required to make customer identification regarding transactions carried out with;

- **Central and local public administrations,**
- **State economic enterprises and**
- **Quasi public institutions established by law and**
- **Transactions carried out by banks among themselves.**



RECORD KEEPING

- **Obligation of keeping the documents related to the customer identification for 5 years, starting from the year following the last transaction date.**
- **According to the Turkish Commercial Law, all entrepreneurs under this Law are obliged to keep the records regarding their activities for 10 years.**



SUSPICIOUS TRANSACTION REPORT

- **Liabe Parties + General Directorate of National Lottery+ Turkish Jockey Club+ Directorate of Land Register+ Public Notaries**
- **If there is any information, suspicion or suspicious situation that money or convertible assets used in transactions carried out or attempted to be carried out in the name of or through the liable parties stemmed from illegal activities, liable parties shall immediately report to the MASAK after making customer identification.**
- **There is no monetary limitation for STR.**



PROHIBITION OF DISCLOSURE

Persons, institutions and establishments reporting the suspicious transactions to the MASAK or the employees executing and managing the transaction, as well as their legal representatives, shall not disclose to their customers.



ASSIGNMENT OF COMPLIANCE OFFICER

Banks are obliged to assign compliance officer at administrative level for the reports that they are required to make in accordance with the Turkish legislation.

INTERNAL CONTROL

Banks are obliged to carry out inspection in order to control the transactions' convenience to the provisions of Turkish legislation by their inspectors.

TRAINING

Banks are obliged to train their staff in accordance with the Turkish legislation.



ORGANIZATION

- **COORDINATION BOARD FOR COMBATING FINANCIAL CRIMES**
- **FINANCIAL CRIMES INVESTIGATION BOARD (*MASAK*)**



COORDINATION BOARD FOR COMBATING FINANCIAL CRIMES *(Article 4 of Law No. 4208)*

The Board shall be responsible for ;

- **Coordinating the activities regarding prevention of money laundering,**
- **Determining implementation policies concerning preventing money laundering,**
- **Evaluating draft legislations and proposals.**



MEMBERS OF COORDINATION BOARD

Undersecretary of Ministry of Finance (Chairman)

Heads or General Directors of the followings:

- **Inspectors Board of the Ministry of Finance**
- **Auditors Board of the Ministry of Finance**
- **MASAK**
- **Sworn-in Bank Auditors Board of BSRA**
- **Treasury Comptrollers Board of the Under secretariat of Treasury**
- **Capital Markets Board**
- **Revenue Administration**
- **Legislation Department of the Ministry of Justice**
- **Banking and Exchange Department of the Under secretariat of Treasury**
- **Economic Affairs Department of the Ministry of Foreign Affairs**
- **Anti-Smuggling and Organised Crimes Department of the Turkish National Police of the Ministry of Interior**



MEMBERS OF COORDINATION BOARD (cont.)

- **Legal Affairs Department of the Ministry of Finance**
- **Inspectors Board of Under secretariat of Customs**
- **Smuggling Intelligence Operation and Information Gathering Department of the Ministry of Interior**
- **One representative from the Prime Ministry, The Ministry of Health and The Central Bank of the Republic of Turkey, at least at the level of General Director**
- **The Co-ordination Board may also invite representatives from other public institutions and establishments when necessary (but they are not called as a member)**



MASAK

MASAK, as the financial intelligence unit of Turkey , established in accordance with the Law No. 4208 on Prevention of Money Laundering and started working on 17 February 1997.

Functions of MASAK are as below:

- **Data Collection and Analyzing**
- **Regulation and Co-ordination**
- **Administrative Investigation and Control of Liable Parties**

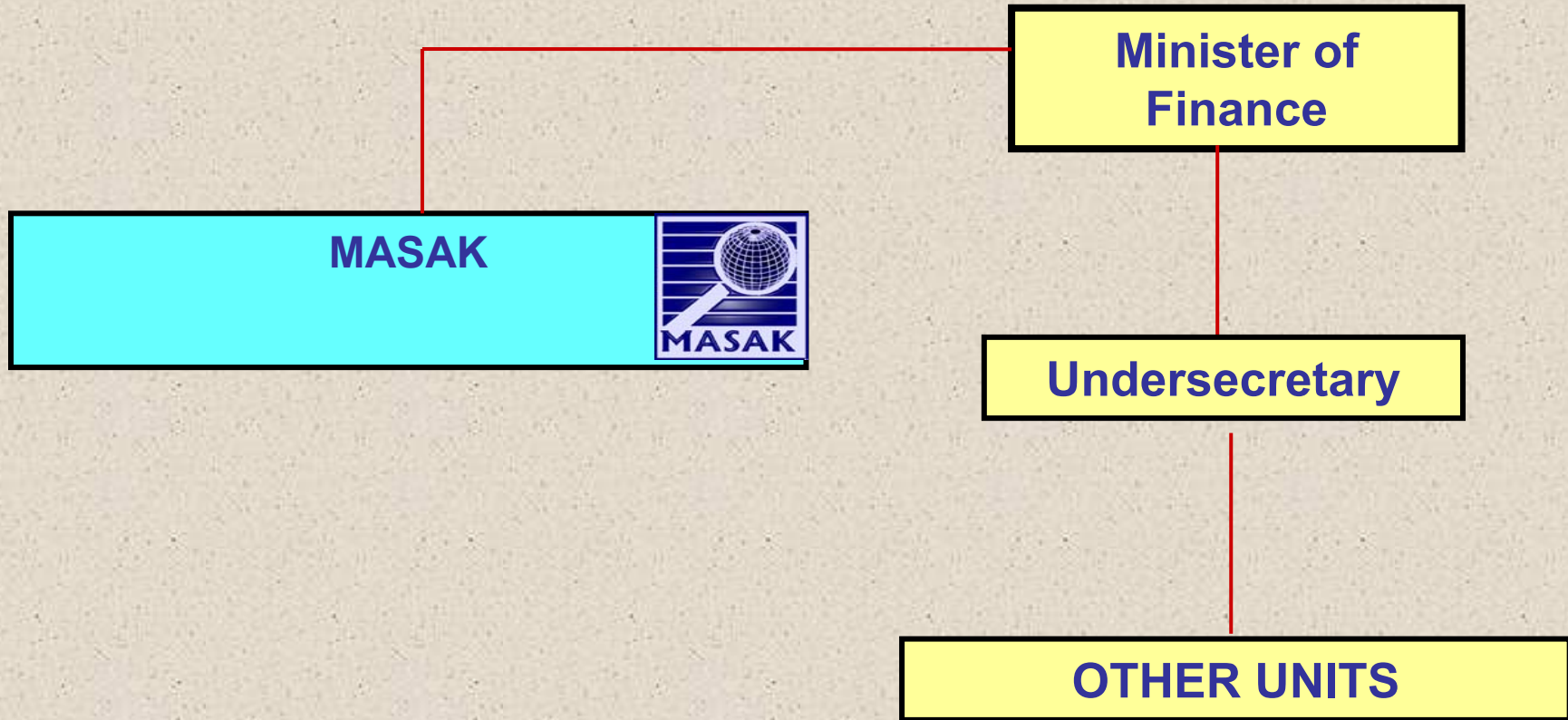


MASAK STAFF

President	1
Vice Presidents	2
Coordinators	3
AML Experts	50
Tax Auditors	7
IT Staff	8
Other Officials	61
TOTAL	132

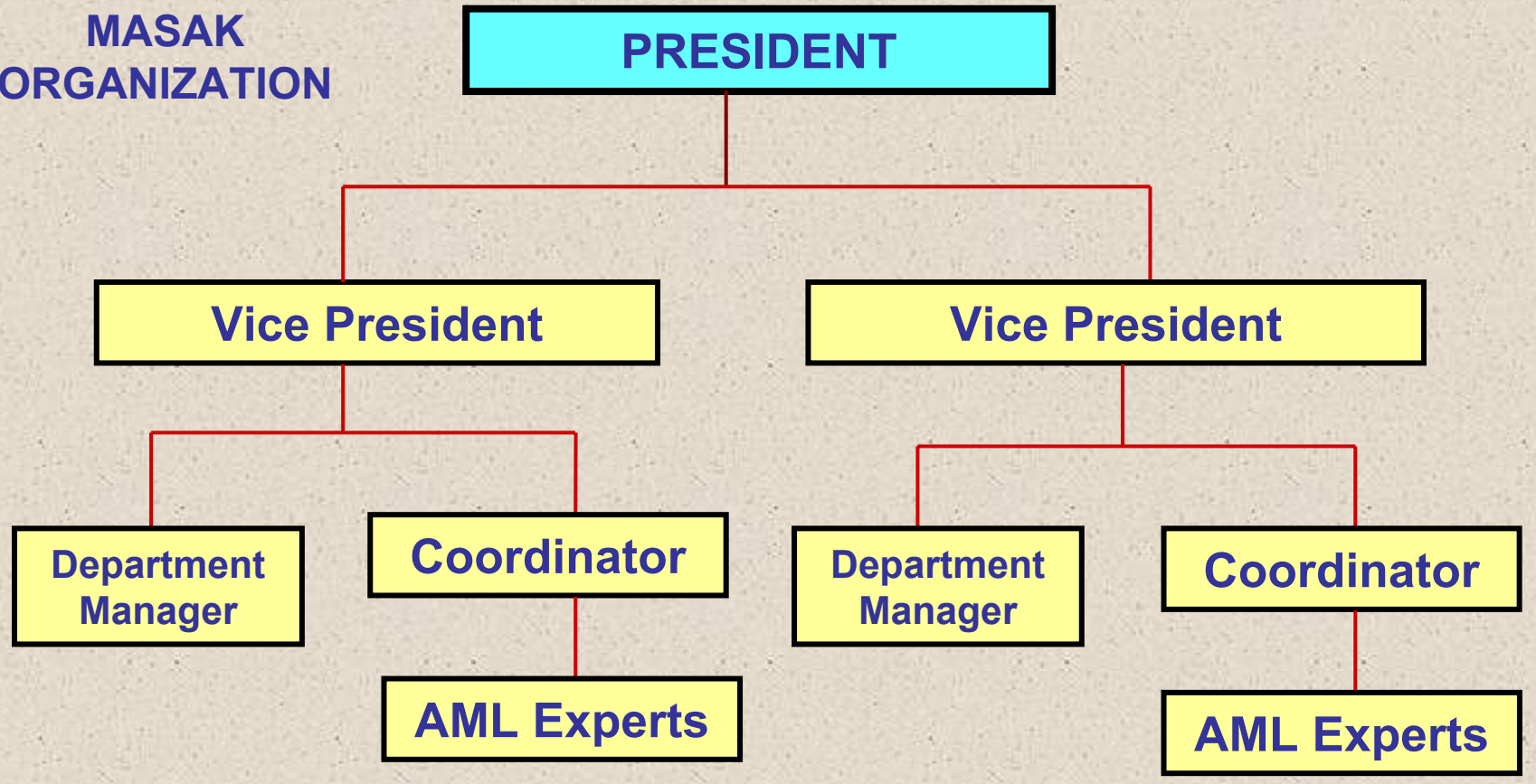


MASAK POSITION IN MINISTRY



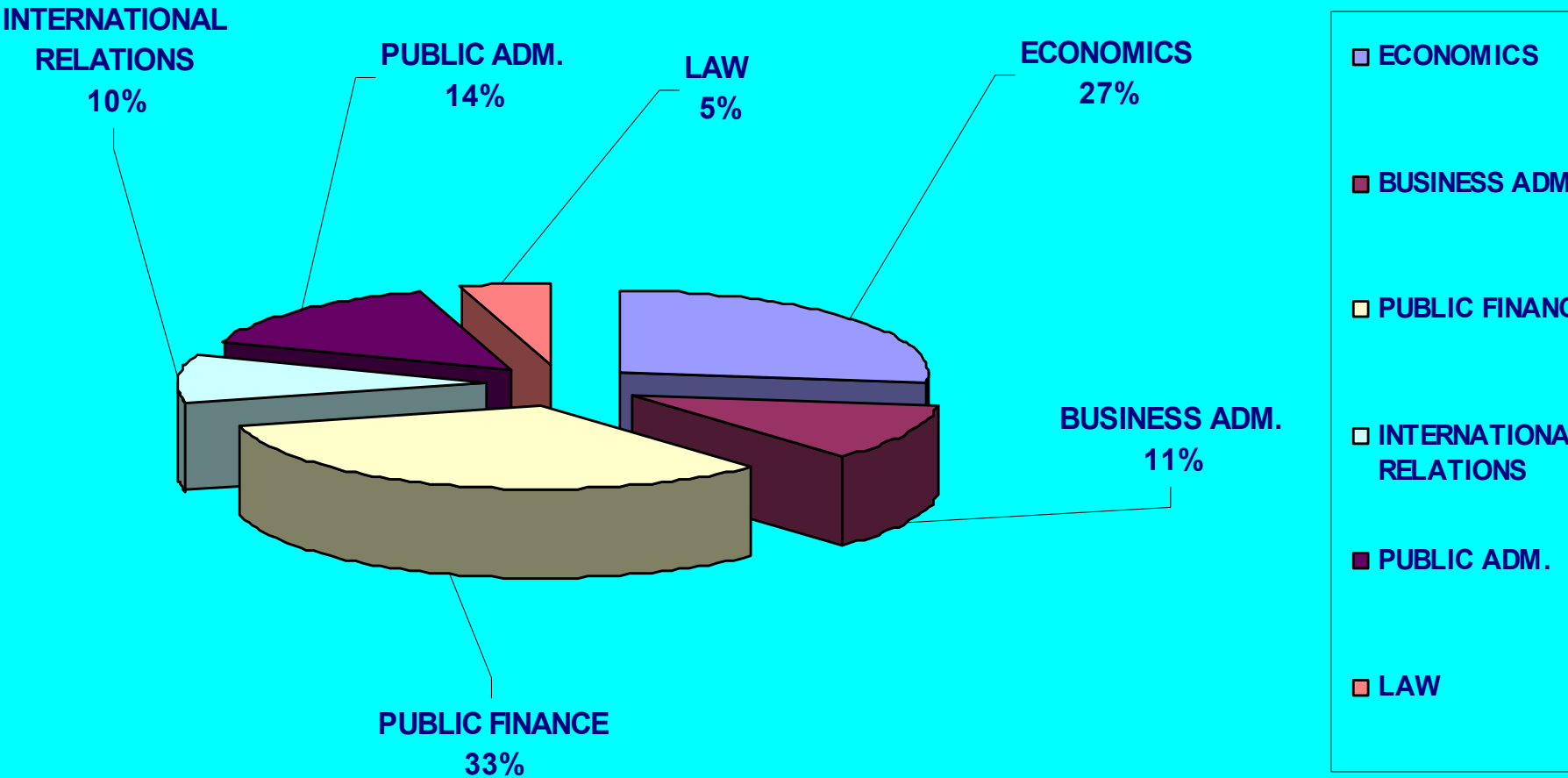


**MASAK
ORGANIZATION**

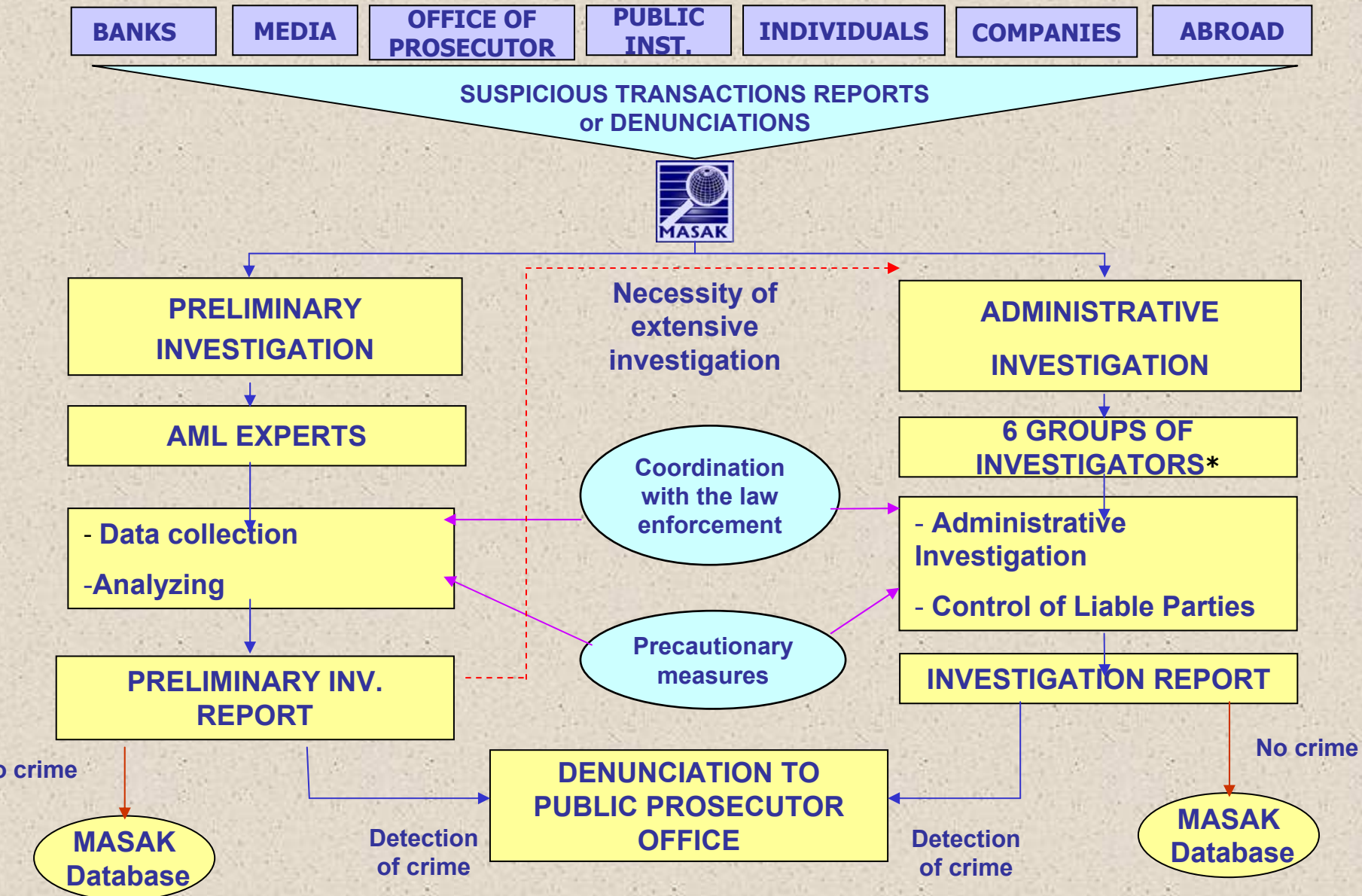




Backgrounds of AML Experts



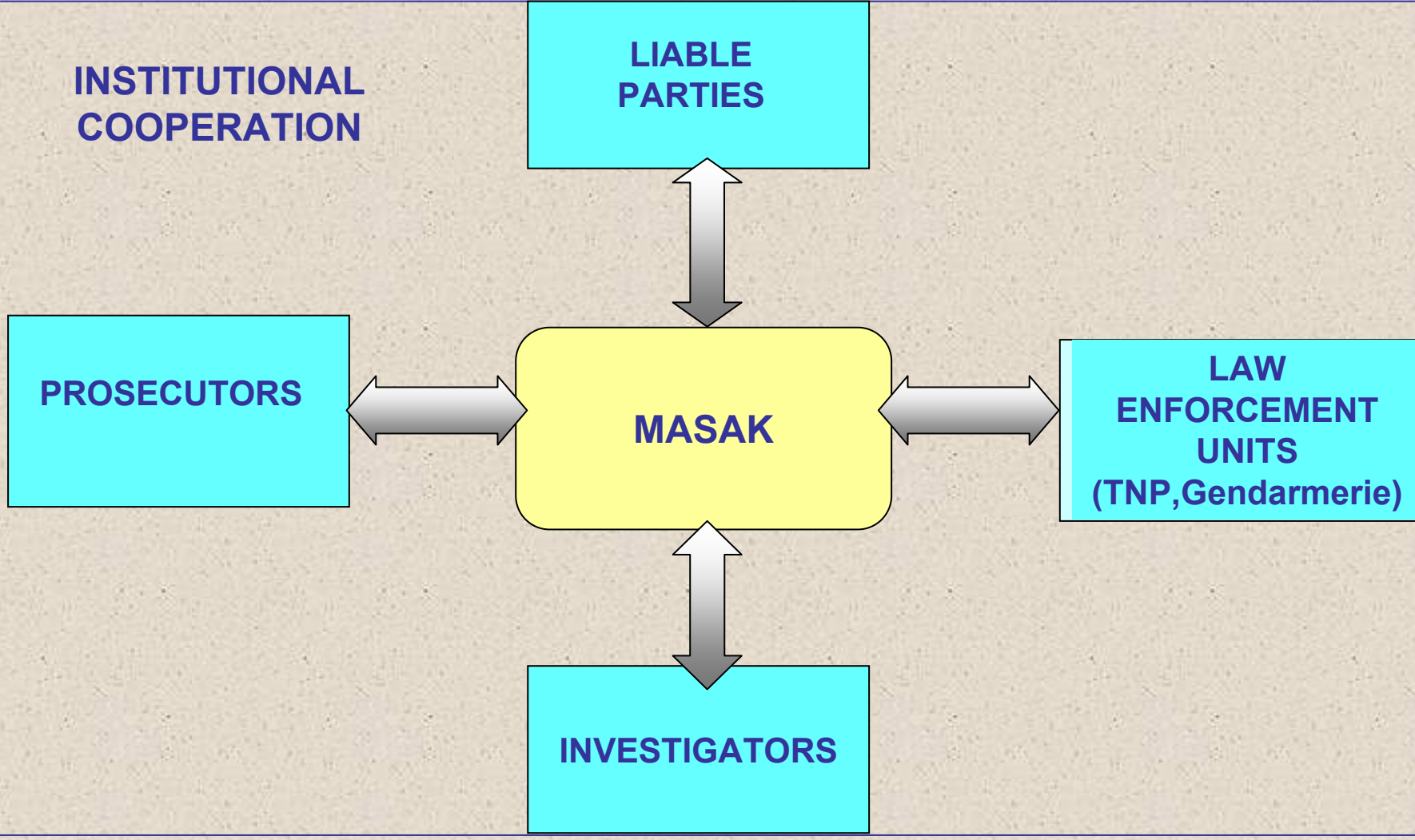
MASAK WORK FLOW



* The Ministry of Finance Inspectors, Auditors, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury Comptrollers, Capital Markets Board Experts



**INSTITUTIONAL
COOPERATION**





EU FUNDED PROJECT I

- **MASAK**, as the financial intelligence unit of Turkey, is carrying out a project supported financially by E.U. to develop a database.
- The main purposes of the project are “*strengthening the data collection and analyzing capacity of MASAK*” and “*development of an efficient legal, institutional and technical framework for combating money laundering in line with the EU legislation and practice.*”
- The project consists of 3 main components; a Twinning Project and two procurement contracts (*Service Contract for Technical assistance and Supply Contract for Investment*).
- The investment component will be completed in March 2006 and Twinning part in June 2006.



EU FUNDED PROJECT II

- **Anti-Smuggling and Organized Crime Department of the TNP, as the main Law Enforcement Unit responsible for fighting with most of the predicate offences and investigation of laundering crimes, implementing a Twinning Project called as “*Strengthening the struggle against money laundering, financial sources of crime and the financing of terrorism*”. Participants from Min. of Justice, MASAK, Gendarmerie and Customs are benefited at the training activities.**
- **The overall objective of the project is “*To strengthen the capacity of the anti-money laundering institutional system in Republic of Turkey in line with the EU Acquis and practices in its Member States*”.**
- **The project started in April 2005 and will end in Spring 2007 and consists of 4 main components:**
 - **Harmonisation of legislation with the Acquis, policy development, strengthening the combating capacity, national and international cooperation.**



INTERNATIONAL COOPERATION

- **Turkey became a member of FATF in September 1991.**
- **Vienna Convention was ratified in 1995.**
- **The Law No. 4208 on Money Laundering was enacted in November 1996.**
- **MASAK was established in February 1997.**
- **MASAK became a member of the EGMONT group in June 1998.**
- **Strasbourg Convention was ratified in June 2004.**



STATISTICS



Source of Suspicious Transactions Reports

Source of STR	1997-2000	2001	2002	2003	2004	2005	TOTAL
Banks	188	77	193	180	289	296	1223
Capital market intermediaries		1			1	1	3
Bureau de Change	29	23					52
Customs	369						369
Insurance Companies	1		1				2
TOTAL	587	101	194	180	290	297	1649



Source of Denunciations

Source of Denunciations	1997-2000	2001	2002	2003	2004	2005	TOTAL
Public Prosecutors	267	136	168	171	218	162	1122
Public Institutions	210	113	105	103	127	137	795
Banks	6	1	4	7	30	17	65
Press	12	1	1	1	4	7	26
Real Person/ Company	42	75	112	94	98	118	539
Abroad	11	8	3	4	6	4	36
TOTAL	548	334	393	380	483	445	2583



Denunciations to Prosecutors

Denunciations to Prosecutors	1997-2000	2001	2002	2003	2004	2005	TOTAL
Money Laundering	49	27	25	33	48	43	225
Infringements of Obligations	2	2	8	5	4	6	27
TOTAL	51	29	33	38	52	49	252



Number of Court Cases (1997-2005)

Money Laundering	Court of First Instance	Court of Cassation
File Court Case	180	31
Finalised Court Case	37	5
-Dismissal	33	5
-Conviction	4	
Ongoing Court Case	143	26
Infringements of Obligations	Court of First Instance	Court of Cassation
File Court Case	17	7
Finalised Court Case	9	
-Dismissal	4	
-Conviction	5	
Ongoing Court Case	8	7



International Information Exchange (01.01.2004-12.09.2005)

Information Requests	Number Of Requests	Number of Responses given to Incoming/Outgoing Requests
Incoming Request	187	177
Outgoing Request	64	45



NEW PROVISIONS OF DRAFT LAW



NEW PROVISIONS OF DRAFT LAW

- **A lot of issues regulated earlier by the Council of Ministers' Decision upon the authorization of Law No. 4208 will be regulated by law (for example all liabilities will be regulated in the law).**
- **Real and legal persons who report suspicious transactions in good faith are protected from legal and penal allegations.**
- **Terrorist financing is regulated as a separate offence.**
- **MASAK is explicitly authorized to receive and analyze STRs regarding terrorist financing.**



NEW PROVISIONS OF DRAFT LAW (cont.)

- **Travellers who carry Turkish currency, foreign currency or documents used in payment to or from abroad are subject to the liability of making exact and correct disclosures regarding these on the request of Customs Administration.**
- **The organizational structure of MASAK is strengthened by establishing specialized departments.**
- **MASAK Chairman is authorized to sign MoU.**