



SCREENING CHAPTER 32 FINANCIAL CONTROL

AGENDA ITEM III: THE PROTECTION OF EU FINANCIAL INTERESTS

**Country Session: The Republic of TURKEY
30 June 2006**



CONTENT

1. Substantial Criminal Law.
2. Procedural Criminal Law
3. Administrative Investigation
4. Protection of the Euro Against Counterfeiting



1. SUBSTANTIAL CRIMINAL LAW



CONTENT

A- Offences and sanctions

B- Criminal liability of heads of businesses

C- Criminal liability of legal persons



A- Offences and Sanctions

Turkish criminal legislation contains various provisions for the protection of EU financial interests as defined in the 1995 Convention and Protocols.

Turkish Criminal Code (TCC) Law No. 5237 clearly defines certain offences with economic consequences such as fraud, bribery, forgery and money laundering.



i. Fraud:

In accordance with Article 157 of TCC, “any person who deceives another to his or others’ harm in order to obtain any benefit by means of deceptive acts shall be sentenced to one to five years of imprisonment and a judicial fine of up to 5.000 days.”

Aggravated fraud with a penalty of two to seven years of imprisonment is envisaged in Article 158.



ii. Bribery

Bribery with a penalty of four to twelve years of imprisonment is envisaged in Article 252 of the TCC.

- Article 252/1: receiving and giving bribe,
- Article 252/2: aggravated bribery with increased penalty,
- Article 252/3: definition of the bribery offence,
- Article 252/4: bribery in private sector,
- Article 252/5: bribery in international business transactions.



iii. Forgery

In Articles 204, 205, 206, 207 and 208 of Chapter IV of the TCC, titled “Offences Against Public Security”; creating or using an invoice or any other accounting document or record containing false or incomplete information, or unlawfully omitting to make a record of payments in order to commit, conceal or disguise the offences of fraud and corruption are subject to punishment.

Those who commit offences as defined in Articles mentioned above shall be sentenced to two to five years of imprisonment.



iv. Money laundering

In Article 282 of TCC, money laundering offence is penalised with an imprisonment for a term of two to five years and a fine up to 20.000 days;

“...to transfer the proceeds derived from the offence whose minimum imprisonment penalty is one year or more to abroad constitutes money laundering offence. In addition, to make such proceeds subject of any operations and transactions in order to disguise the illicit origin of them or to give an impression as if they were derived from legal sources is also money laundering offence. ”



v. Other relevant offences

Misuse of trust	(TCC Art.155) (6 months-7 years imprisonment)
Fraudulent bankruptcy	(TCC Art.161-162) (3-8 years imprisonment)
Misinformation about companies	(TCC Art.164) (6 months-3 years imprisonment)
Counterfeiting money	(TCC Art.197) (2-12 years imprisonment)
Corruption in tenders	(TCC Art.235) (5-12 years imprisonment)
Embezzlement	(TCC Art. 247) (5-12 years imprisonment)
Abuse of official power	(TCC Art.257) (1-3 years imprisonment)
Unjustly acquiring wealth	(Law No:3628 Art.13) (3-5 years imprisonment)
Smuggling	(Law No:4926 Art.3,4) (1-6 years imprisonment and fine)
Fraud offences in banks	(Law No:5411 Art.160) (6-12 years imprisonment)
Money laundering	(Law No:4208 Art.7) (2-5 years imprisonment)



When these offences are committed in an organised manner;

Pursuant to Article 220 of TCC, the establishment of an organization with the aim of committing offences is criminalized. According to the fourth paragraph in this Article, if these offences are committed during the activities of the organisation, additional punishment shall be imposed for the crimes in question.



B- Criminal liability of heads of businesses

In accordance with subparagraph (h) of the Article 158 of TCC; where fraud is committed by traders, heads of businesses (partnerships, corporations) or any persons acting on behalf of the businesses within their business functions or directors of cooperatives within cooperative activities, they shall be held criminally liable for aggravated fraud and sentenced to two to seven years of imprisonment and a judicial fine up to 5.000 days.

Besides, those found guilty of offences shall be disqualified from acting in a leading position in legal persons according to Article 53 of TCC.



B- Criminal liability of heads of businesses (cont'd)

Article 53:

“ As a legal consequence of the imprisonment conviction of a person on the grounds of having committed an intentional crime, the person is deprived of;

...

(d) being the administrator or inspector of the legal entities of foundations, associations, labor unions, companies, cooperatives and political parties...”



C- Criminal liability of legal persons

Legal persons can be held responsible for offences of corruption, fraud and money laundering.

If legal persons are involved in bribery and fraud offences, special security measures are imposed. (Articles 253 and 169 of TCC)

If legal persons are involved in money laundering offences, security measures are imposed. (Article 282/4 of TCC)

The security measures are defined in Article 60 of TCC.



2. PROCEDURAL CRIMINAL LAW



CONTENT

A- Jurisdiction

B- Ne bis in idem

C- Confiscation

D- Interim Measures

E- International Judicial Cooperation



A- Jurisdiction

Turkish courts have jurisdiction over all offences committed within the Turkish territory either by nationals or foreigners (Article 8 of TCC).

If a Turkish citizen or a foreigner commits bribery offences in a foreign country, Turkish Law shall be applied in accordance with sub-paragraph (h) of Article 13 of TCC.



B- Ne bis in idem

Article 9 of TCC: “A person who has been sentenced in a foreign country for an offence committed in Turkey shall be retried in Turkey”.

Article 12 of TCC: “A foreigner who has committed a crime against Turkey in another country, requiring minimum sentence of one year imprisonment according to Turkish law, he/she shall be sentenced, should the accused is in Turkey. Application of this rule is subject to the request of the Minister of Justice”.



B- Ne bis in idem (cont'd)

Article 12/4 of TCC: A foreigner who has been convicted of a crime against Turkey shall be retried in Turkey upon the request of the Minister of Justice, if the person is acquitted or the case is dropped.

Article 13/3 of TCC: Upon the request of the Minister of Justice, a foreigner shall be retried in Turkey for the offences such as international crimes and certain offences against the state, even if he/she had been acquitted or convicted by a foreign judgment.



C- Confiscation

Article 54: “Confiscation of Property”

...the property used in or allocated for commission of a deliberate offence or derived from a crime shall be confiscated provided that it doesn't belong to bona fide third parties. The property prepared to be used in the commission of a crime is confiscated in case it poses threat to public security, public health or public morals...”



C- Confiscation (cont'd)

Article 55: “Confiscation of Benefits”

1. Material benefits derived from or provided for the commission of constituting the subject of crime as well as economic profits arising from the exploitation or conversion thereof shall be confiscated. Giving a confiscation order in accordance with this paragraph requires that material benefits can not be returned to the victims of crime.
2. When the property or material benefits can not be seized or submitted to the competent authorities, an equivalent value of these assets shall be confiscated.”

Value based confiscation is possible under Articles 54/2 and 55/2 of TCC.



D- Interim measures

In accordance with the Article 123 of Criminal Procedural Code No. 5271, an object, deemed useful as a means of evidence or subject to property/asset confiscation, is kept secure.

According to the Article 127, law enforcement officials execute the seizure upon the order of the judge; the seizure may be executed by the written order of public prosecutor in cases where delay would be detrimental.



D- Interim measures (cont'd)

Interim measures aforementioned are applicable to all offences. On the grounds of the binding provisions of substantial criminal law, these measures can be applied in relation to proceeds such as corruption and fraud.



E- International judicial cooperation

The main sources of international judicial cooperation in criminal matters in Turkey are the bilateral agreements between Turkey and other countries and the multilateral agreements to which Turkey is a party. There is no specific law governing judicial cooperation in criminal matters.

In accordance with the Article 90 of the Constitution of Republic of Turkey, once an international agreement has been ratified, it becomes an internal part of the national legal system and can be directly enforced.



E- International judicial cooperation (cont'd)

Requests for mutual assistance concerning fraud and corruption can be made on the basis of existing treaties.

1959 European Convention on Mutual Legal Assistance in Criminal Matters to which Turkey is a party is the main international instrument implemented by Turkey in this field.

Turkey has recently ratified the United Nations Convention against Corruption which includes provisions on the international cooperation (Law No. 5506, adopted on 18 May 2006).



E- International judicial cooperation (cont'd)

Turkey is also a party to the;

- 1990 Council of Europe Convention on Search, Seizure and Confiscation of Proceeds from Crime,
- Council of Europe Civil and Criminal Law Conventions on Corruption,
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.



E- International judicial cooperation (cont'd)

Directorate General of International Law and Foreign Relations of the Ministry of Justice is the central authority for execution of all kinds of mutual assistance requests in criminal matters (Law No. 2992, Article 13/A).

In cases of the absence of a treaty with the concerned country, Turkey does not refrain from fulfilling the requests for mutual legal assistance and provides legal assistance in compliance with the principle of reciprocity.



E- International judicial cooperation (cont'd)

Extradition of Nationals:

In line with the Article 38 of the Constitution, the Article 18 of TCC and the Article 6 of the European Convention on Extradition, a Turkish national cannot be extradited to a foreign country for an offence committed (Except from the obligations arising under being a Party to the Rome Statute.)

In a case where the request for extradition of a person involved in an offence is refused solely on the grounds that a Turkish national cannot be extradited to a foreign country, according to the Article 6 of the European Convention on Extradition. The issue is then handled by relevant judicial authorities for necessary investigation.



3. ADMINISTRATIVE INVESTIGATION



CONTENT

- A- Administrative Investigation and Inspectorates
- B- Investigative Powers of Inspectors
- C- Independence and Standards
- D- Cooperation and Coordination



The structure of the fight against corruption consists of;

- Law Enforcement Authorities

- Prosecutors
- Ministry of Interior
 - Turkish Police
 - Gendarmerie
 - Coast Guard
- Ministry of Finance (Financial Crimes Investigation Board)
- Customs

- Inspection bodies



A- Administrative Investigation and Inspectorates

- Prime Minister's Office, all line ministries and major agencies have inspectorates
- Inspectorates are directly attached to the minister of the agency (Prime Minister at the PM's Office)
- Recruitment of inspectors is merit-based
- There is a rigorous three-year training period for newly-hired inspectors
- Misuse of public expenditures and revenues falls into the purview of the investigation scope of the inspection system

B- Investigative Powers of Inspectors

- Inspectors carry out disciplinary and preliminary criminal investigations, and play a crucial role in deterrence of fraud and irregularities
- Inspectors are able to use some powers and procedures set forth in the Criminal Procedure Law
- During the investigation, an inspector can;
 - Request information from all persons, institutions and foundations,
 - Obtain and analyze all relevant documents,
 - Hire experts for technical issues,
 - Suspend a civil servant from office temporarily,
 - Also in specific cases; access to bank accounts and issue a request to court for freezing bank accounts
- Corruption offences are directly reported to public prosecutors



C- Independence and Standards

- Inspectors have professional independence through a presidential appointment decree cosigned by the Prime Minister and related Minister
- Dismissal from the office is subject to strict conditions, and an individual inspector cannot be appointed to an other position without consent
- Defined standards of inspection: “professional quality”, “effective implementation”, and “dependancy”. (Prime Ministerial Circular No: 1993/12)
- The Prime Ministry Inspection Board is in charge of setting principles of the inspection system, and reviews by-laws of inspectorates and amendments to them



D- Cooperation and Coordination

- Inspectors collaborate closely with other relevant national authorities such as public prosecutors and other law enforcement bodies.
- Exchange of information with regard to investigations is performed through bilateral and multilateral agreements.
- Specialised ad hoc investigation teams may be formed from relevant inspectorates for multi-disciplinary investigations.
- Considering their role and powers in fraud investigations, inspection bodies have capacity to cooperate with OLAF in protecting the EU's financial interests.
- The technical studies in regard to creating or designating a body responsible for the protection of EU financial interests are underway. Implementation is planned to be completed in 2008.



4.PROTECTION OF THE EURO AGAINST COUNTERFEITING (non-penal aspects)



CONTENT

A- Definition and Legal Aspects of Currency Counterfeiting

B- Institutions

C- Procedures

D- Other Activities

E- International Cooperation

A- DEFINITION AND LEGAL ASPECTS

- The term “counterfeiting” can be defined as producing imitations of coins and banknotes in particular, or making alterations to genuine currencies for the purpose of raising their denominational values.
- The Turkish Criminal Code, Law No.5237, includes:
 - Article 197 “Counterfeiting Money”
 - Article 200 “Tools for Manufacturing Money and Revenue Stamps”
 - Article 278 “Failing to Report Crime”
 - Article 279 “Failure of Public Officer to Report Crime”
 - Article 281 “Destruction, Concealment or Alteration of Crime Evidences”



B- INSTITUTIONS

-Law Enforcement Agencies

- Directorate General of Turkish National Police
(Currency Counterfeiting Units)
- General Command of Gendarmerie
(Currency Counterfeiting Units)
- Coast Guard Command
- Directorate General of Customs Enforcement

- The Central Bank of the Republic of Turkey (CBRT)

- General Directorate of Mint and Stamp Print House of the
Undersecretariat of Treasury



i. The Central Bank of The Republic of Turkey (CBRT)

- Legal authority to issue banknotes
- Technical necessity
 - Analysis of counterfeiting methods, development and implementation of anti-counterfeiting measures
- General Directorate of Banknote Printing Plant of CBRT prints:
 - Banknotes
 - Treasury Bills
 - Bonds
 - Lottery Tickets
 - Cheques
 - Other Valuable Papers

ii. Legal Framework for Banknote Counterfeiting

1. Criminal Procedural Code No. 5271 (Article 73)

- Issuing an expertise report for national and foreign banknotes is assigned only to CBRT (Printing Works/Branches)

2. By-Law on Counterfeit Monitoring System (CMS) (O.G. 9 August 2005, No. 25901)

- Defines the users, procedures and fundamentals as regards evaluation and tracing counterfeit banknotes within the CMS.
- At the end of legal procedure, counterfeit banknotes are collected/destroyed by CBRT.



iii. General Directorate of Mint and Stamp Print House of the Undersecretariat of Treasury

- Legal authority to issue coins
- Technical necessity
 - Analysis of counterfeiting methods, development and implementation of anti-counterfeiting measures
- General Directorate of Mint and Stamp Print House
 - Minting of circulating and commemorative coins
 - The analysis of precious metals and setting the rules of trading precious metals
 - Production of all kinds of official seals, medals orders, badges and medallions
 - Printing tax and revenue stamps, ID cards, passports and other security and valuable documents

iv. Legal Framework for Coin Counterfeiting

1. Criminal Procedural Code No. 5271 (Article 73)

- Issuing an expertise report for national and foreign coins is assigned only to General Directorate of Mint and Stamp Print House.

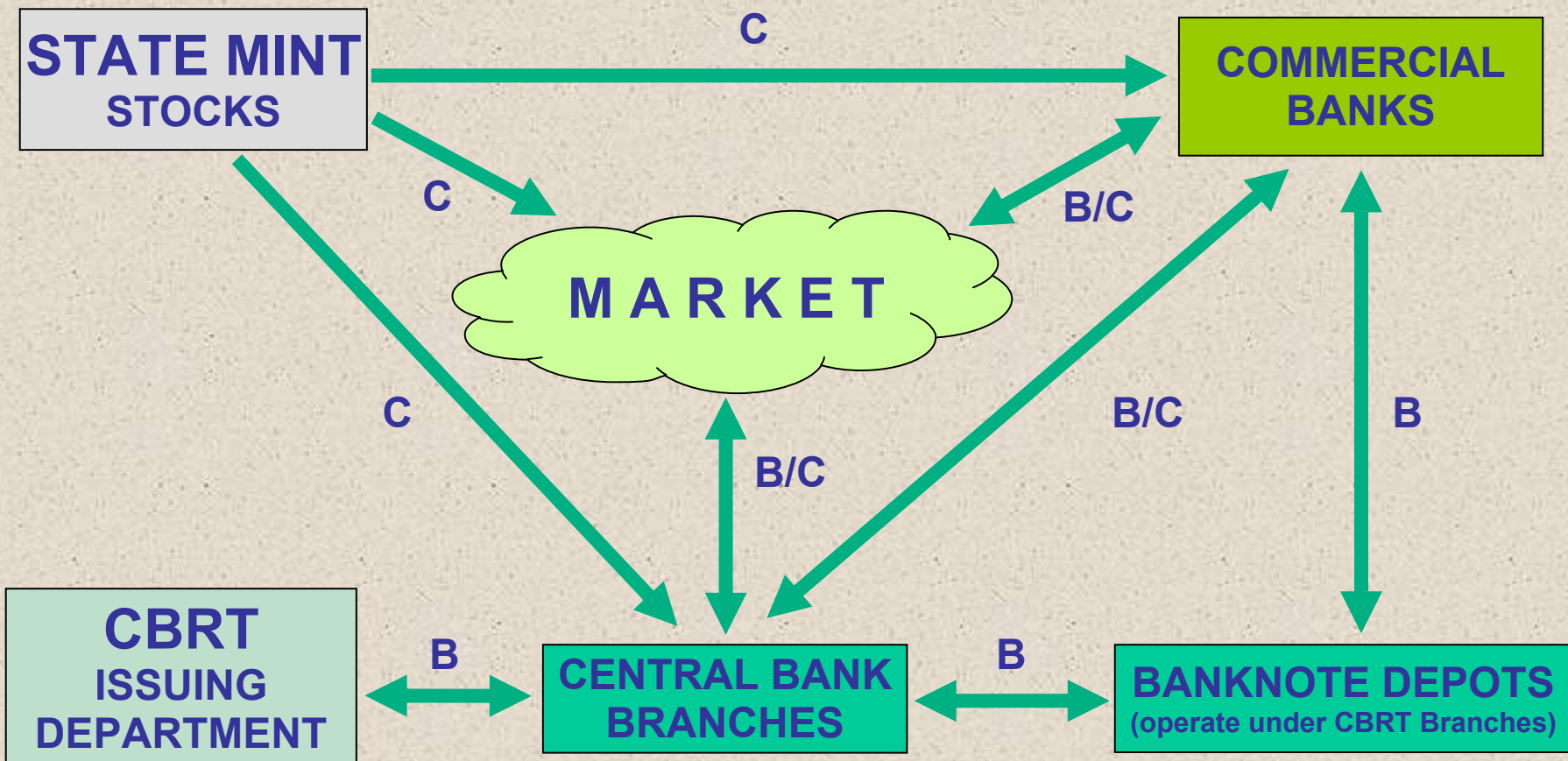
2. By-Law on Coins and Sikkes (O.G. 9 May 2006, No. 26163)

- By-Law defines; rules and procedures applicable for examining and evaluation of counterfeited coins and sikkes.
- At the end of legal procedure, counterfeit coins and sikkes are collected/destroyed by the State Mint.



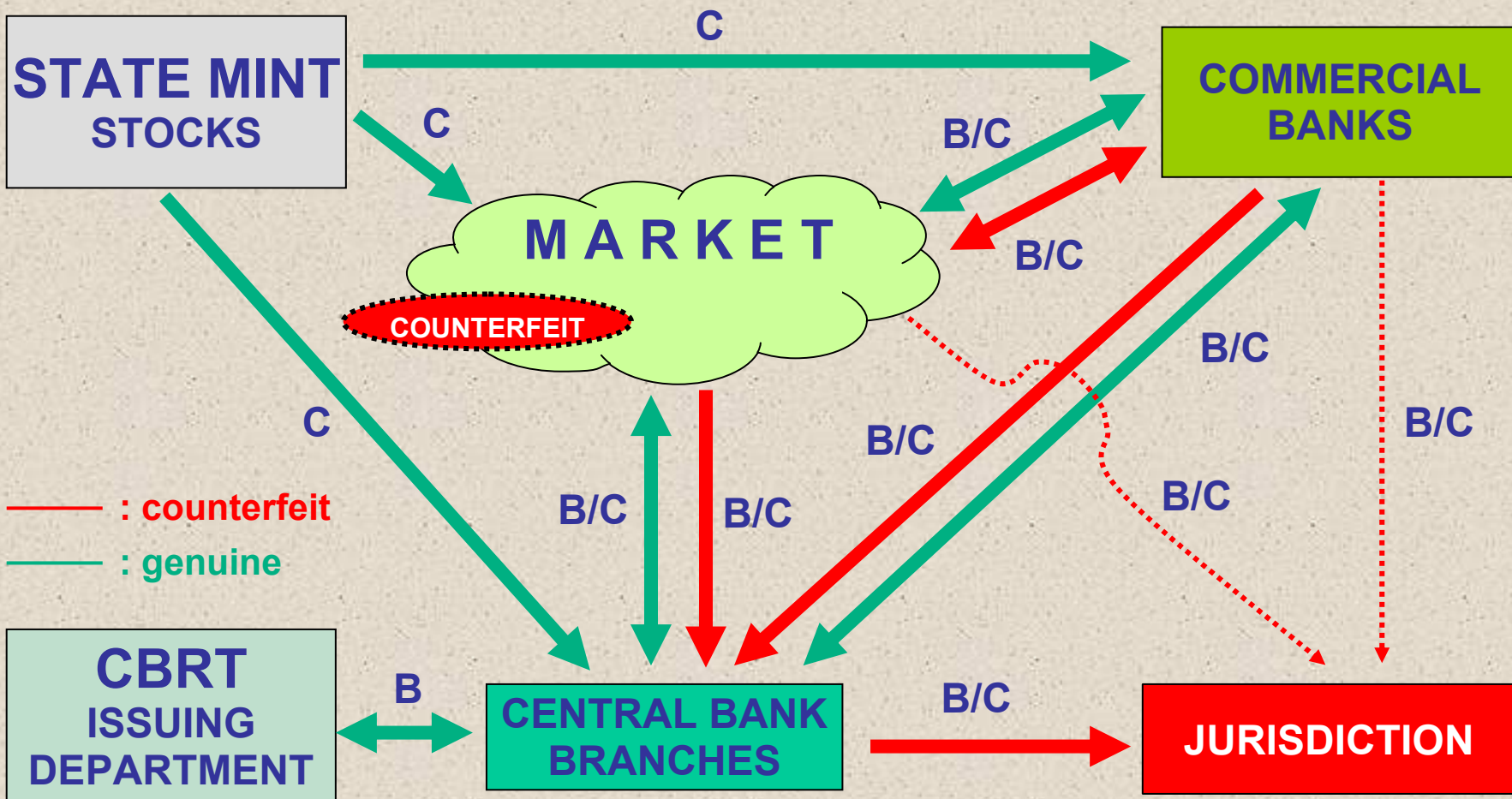
C- PROCEDURES

i. YTL/YKr Banknote/Coin Circulation





ii. Counterfeit Banknote/Coin Circulation



iii. Counterfeit Banknote/Coin Detection and Seizure

COUNTERFEIT BANKNOTES/COINS

**TURKISH
NATIONAL
POLICE**

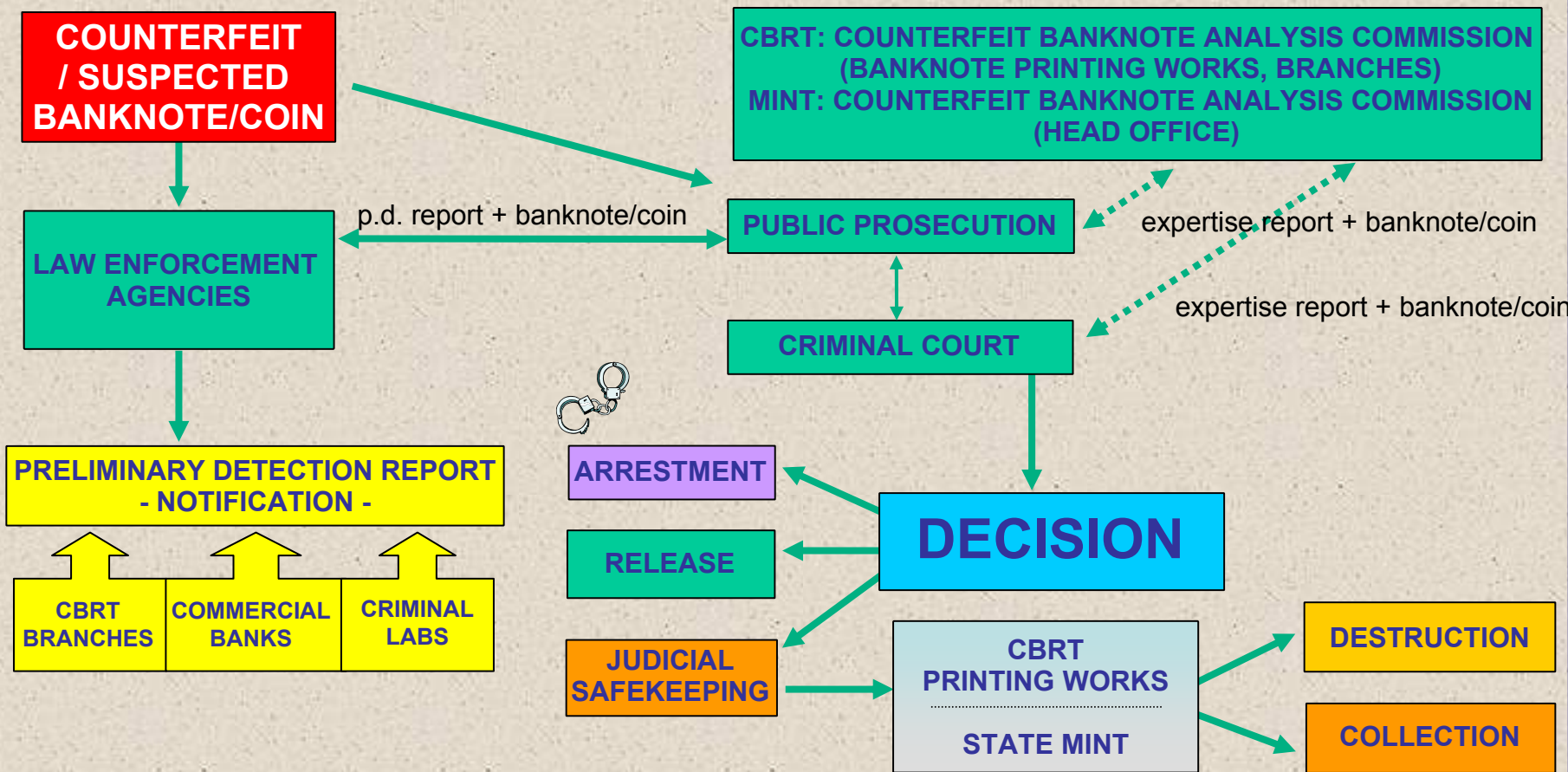
**CENTRAL BANK
BRANCHES**

**COMMERCIAL
BANKS**

GENDARMERIE



iv. Counterfeit Banknote/Coin Detection And Seizure (Flow Chart)



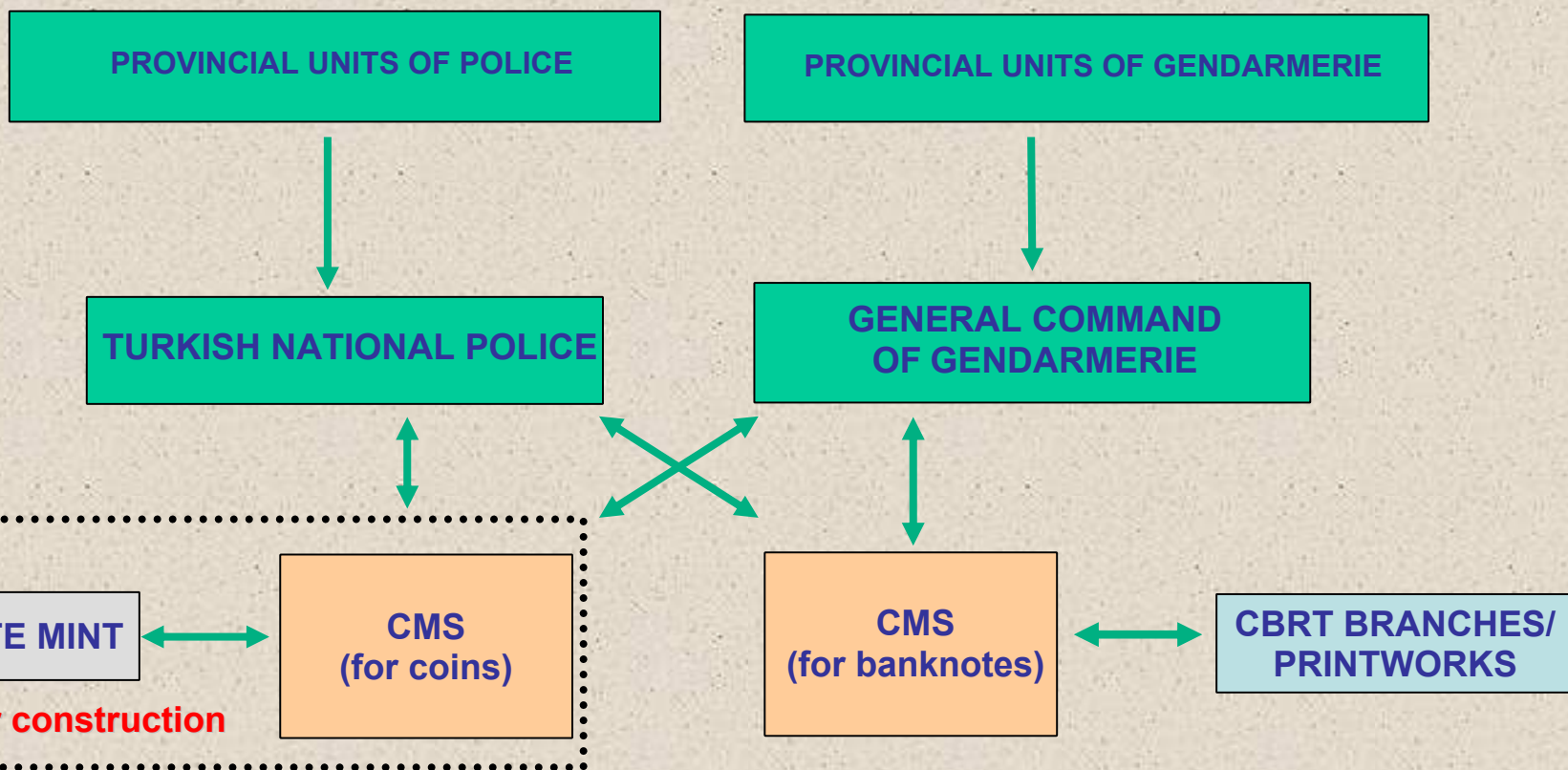


v. CMS for Banknotes

- Started gathering counterfeiting information on 1 January 2006 within CMS.
- System users;
 - General Command of Gendarmerie
 - Directorate General of Turkish National Police
 - CBRT



vi. CMS (Banknotes/Coins) (Data Flow)





vii. Counterfeit Analysis Centres

COUNTERFEIT ANALYSIS COMMISSIONS

CBRT PRINT WORKS

- Designer
- Printer
- Chemical Engineer

STATE MINT

- Engineer (Metallurgy/Chemistry)
- Minting Dept. Specialist
- Die Casting Dept. Specialist



viii. Functions of Counterfeit Analysis Centres in CBRT Print Works/State Mint

- Evaluation of counterfeit data
- Cooperation with related institutions
- R&D works for existing and future banknotes/coins
- Preparation of documents (posters, leaflets, books, CDs, etc.)
- Preparation of web site for information and training
- Training of staff for;
 - CBRT Branches,
 - State Mint,
 - Other related institutions



D- OTHER ACTIVITIES

- Detection of counterfeits through Banknote Sorting Machines and Processing Systems
- Training of cashiers, law enforcement officials and professionals
 - e-education, website, books, banknote catalogues, CDs
 - Seminars and workshops (i.e. at ECB headquarters)
- Sharing of information with the public (posters, leaflets, seminars on demand etc.)



E- INTERNATIONAL COOPERATION

i. Interpol Ankara;

- Represents all Turkish Authorities within Interpol Organization.
- Deals with all kinds of international crimes **including currency counterfeiting** and ensures cooperation with law enforcement agencies of Turkey and those of the member states.
- Takes measures to arrest criminals wanted at international level by Turkish Judicial Authorities and finalizes the extradition procedure.



i. Interpol Ankara (cont'd) ;

- Sends requests to the General Secretariat of Interpol to issue all sorts of Interpol notices.
- Submits all kinds of information and documents, received from General Secretariat of Interpol and Interpol member countries, to the relevant Turkish Authorities.
- Informs Turkish Authorities on new types of international crimes and takes preventive measures for their negative effects.
- Works on harmonising the Turkish legislation with EU Acquis related with Europol and Sirene.



ii. Europol Membership Activities

Council Decision No.2000/C106/01 dated 27 March 2000,

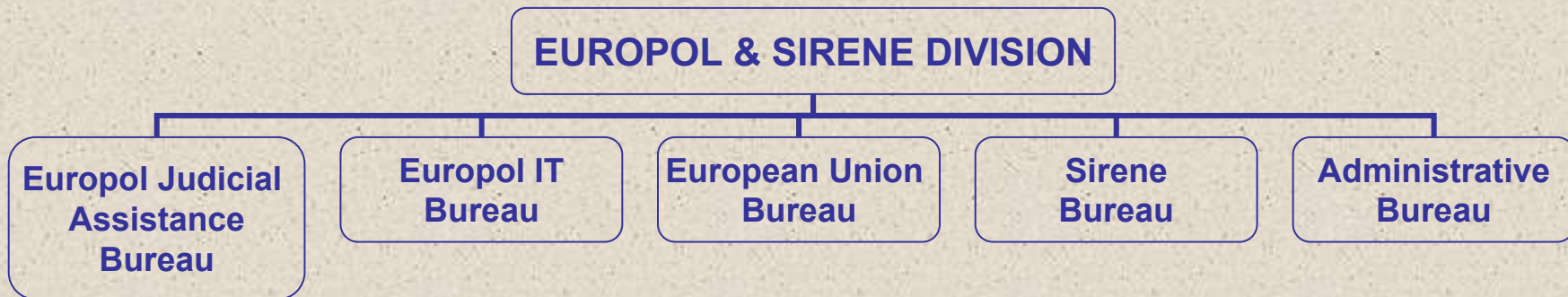
- Participation to the initial seminar organized by Europol in 2000 and Europol Assessment Visit to Turkey in 2002.
- The agreement at technical and strategic level was signed on 18 May 2004 and entered into force on 28 July 2004.



iii. Europol National Contact Point (ENCP)

A new unit was established under the responsibility of Interpol Department as the Europol National Contact Point in 2001 and the By-Law concerning this unit came into force on 27 May 2002.

It was transformed to Europol&Sirene Division under the responsibility of Interpol-Europol-Sirene Department in 2003.





iv. National Bureau of Turkey (NBT)

- Interpol Department was assigned as the National Bureau by the Ministry of Interior on 6 January 2004, in line with the EU practices and with the contribution of all law enforcement agencies, to ensure communication, exchange of information and cooperation between Europol, Schengen, Interpol and other law enforcement bodies within the EU.
- Appointment of liaison officers from the other law enforcement agencies to the Turkish National Bureau (Interpol-Europol-Sirene Department) was approved on 2 March 2004.
- Interpol Department was renamed as Interpol-Europol-Sirene Department as of 11 February 2005.



v. Strengthening the Institutional Capacity

MATRA Project

NBT has been carrying out a joint project with the Netherlands in line with EU requirements to enhance its capacity.

-Project Title: Strengthening the National Bureau of Turkey in relation to Europol, Sirene and Interpol activities.

-Project Purpose: Strengthening the National Bureau of Turkey (NBT) to enable it to perform its law enforcement duties in line with EU requirements.

-Implementation Schedule: April 2005– March 2007

-Project Counterpart : Ministry of Interior

-Project Beneficiary: Directorate General of Turkish National Police



THANK YOU FOR YOUR ATTENTION