

CEPOL RESEARCH & SCIENCE CONFERENCE BUDAPEST 2017

“INNOVATION”

MOLECULA PT PROJECT

TAX, ECONOMIC AND FINANCIAL INVESTIGATION



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GUARDA NACIONAL REPUBLICANA



*“Money is innocent,  
Until proven guilty”*

# Summary

Transnational Organized Crime

Economic, Financial and Tax Crime

Economic, Financial and Tax Investigation

MOLECULA PT Project

Future considerations

Bibliography



# Organized crime

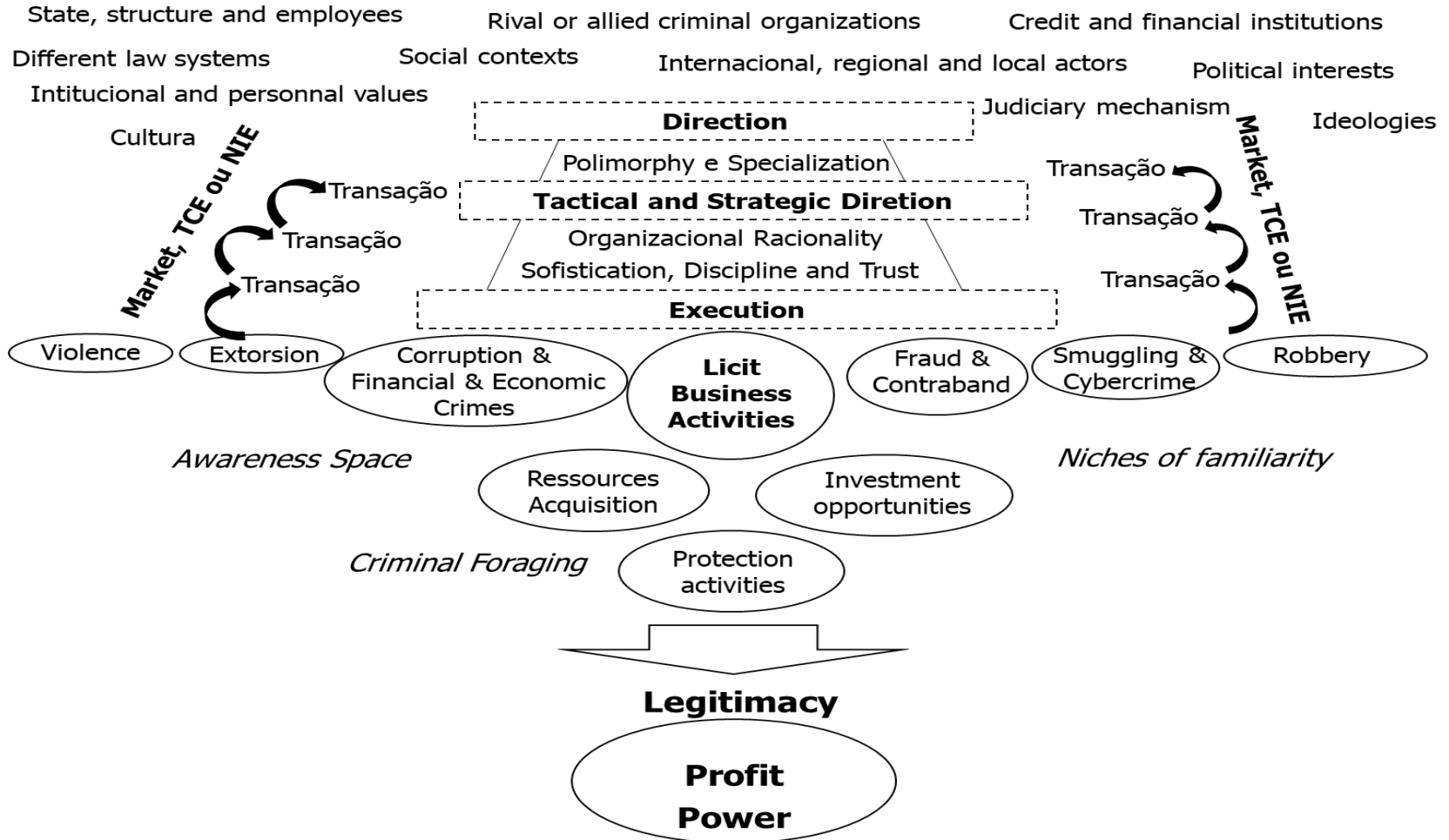
Network

Trust

“Everywhere and nowhere”

Specialization

Organizational Stability and Time Continuity



Favaro (2008), Hassemer (1998), FBI (2016), Garciullo (2011), Campana (2016), Carrington (2011), CEJ(2015), Bravo (2013), Arquilla e Ronfeldt (2001), Williams (2001), Wasserman e Faust (1994), Morselli e Guigere (2006), Block (1991), Inácio (2014), Morselli (2009), Von Lampe (2009), Varese (2010), Lupo (1996), Chin (2003), Logan(2009), Leal-Henriques e Simas Santos (2000), Figueiredo Dias (2003), Pinto de Albuquerque (2007) e Cavaleiro Ferreira (1987).

***“they are all linked to the mother crime – the money laundering. Without it, the crime economy couldn’t be global neither highly profitable.”***

(Hassemer, 1998, pp. 313 e 314)

Illegal  
Economy

Undercover  
Economy

CEJ(2015), Bravo (2013) e OCDE  
(2013)

***“it works by economy rules: organized crime organize and change these rules. Organized crime becomes frequently a power source form, instead a power pathology.”***

(Rodrigues, 1999, p. 7).



# Transnational Organized Crime

Criminal Organization

Criminal Organization

Criminal Organization

- Ressources acquisition
- Investment opportunities
- Protection activities

- "the group opens an outpost to search for input factors"
- "to search for opportunities to re-invest/launders gains"
- "to colonize new markets, such as new protection rackets"

Familiar, ethnic, fraternal or business links

*"awareness space"*

Brantingham e Brantingham, 1992

*"criminal foraging"*

Zaitch, 2002

*"niches of familiarity"*

Von Lampe, 2011

Financial and credit institutions

State structure and officials





# Financial and Economic Crimes

## Which crimes? Figueiredo Dias (1998), Historical evolution? Rui Pereira (2014)

- Lei n.º 36/94, de 29 de setembro – Medidas de Combate à Corrupção e Criminalidade Económica e Financeira (Catálogo do art.º 1, n.º 1, alíneas *a*) a *e*));
- Lei n.º 101/2001, de 25 de agosto – Admissibilidade de recurso à ações encobertas;
- Lei n.º 5/2002, de 11 de janeiro – Medidas de combate à criminalidade organizada e económico-financeira (Catálogo do art.º 1, n.º 1, alíneas *a*) a *o*)),
- Lei n.º 109/2009, de 15 de setembro – Lei do Cibercrime (Art.º 19, n.º 1, alínea *b*));

Financial and Economics Effects		Consequences seriousness		“Heavy artillery” of evidences gathering	
Improper Receipt of Advantage (art.º 372, CP, Ac. TRL 15NOV11,	Passive corruption (art.º 373, CP, Ac.	Active corruption (art.º 374, CP, Ac. TRL 28SET11, Ac. TRC 23MAI12, Ac. STJ 13MAI98, Ac. TRL 22MAI12	Peculation (art.º 375, CP, Ac. TRC 23JAN13, Ac. TRE 17MAR15)	Use Peculation (art.º 376, CP, Ac. TRL 19MAI15, Ac. TRP 20JUN12)	Fraud in obtaining or defrauding subsidy (art.º 36 e 37, do DL 28/84, de 20JAN, Ac. STJ de 23NOV05)
Economic Participation in Business (art.º 377, CP, Ac. TRC 28MAI14, Ac. TRL 25JUN15)	Harmful Administration (art.º 235, CP, Ac. TRC 28MAI14)				
	Traffic of Influences (art.º 335, CP, Ac. TRC 28SET11)	Money laundering (art.º 368-A, CP, Ac- TRL 18JUL13,	Currency counterfeiting and criculation (art.º 262, CP, Ac. TRL 30JUN11, Ac. TRP, 17SET14)		Market abuse or manipulation (art.º 379, do DL 486/99, de 13NOV, Ac. TC 17ABR02, Ac. TRL 28JUN01)
Terrorismo Financing (art.º 5-A, da Lei n.º 52/2003, de 22AGO)		Criminal association (art.º 299, CP)			

# Tax Crimes

## Lei n.º 15/2001, de 5 de junho – Tax Infraction General Law:

- Common tax crimes (art.ºs 87 a 91);
- Customs Crimes (art.ºs 92 a 102);
- Fiscal Crimes (art.ºs 103 a 105), e;
- Crimes against Social System (art.ºs 106 e 107).

**Tax Avoidance and Planning** – Art.ºs 61, 80, alínea c), 86, e 103, n.º 1, todos da CRP  
*Intra Legem e Extra Legem*  
 Ferreira (2009), CEJ (2013), Santos (2008), Ac. TCAS n.º 04255/10

**Tax Fraud or Evasion**  
*Contra Legem e In Fraudem Legem*  
 Ferreira (2009), CEJ (2013), Santos (2008), Pereira (2005), Ac. TCAS n.º 04255/10

Value Added Tax (VAT)	Colective Revenue Tax (IRC)	Singular Revenue Tax (IRS)	Excise goods (IEC)
Hiding		Simulation	
Tax Burglary (art.º 87, RGIT, Ac. TRP 21MAR13)	Criminal Association (art.º 89, RGIT)	Contraband (art.º 92, RGIT, Ac. STJ 6MAI10)	Fraudulent Introduction in Consumption (art.º 96, RGIT, Ac. STJ 6MAI10)
Simple and Qualified Tax Fraud (art.º 103 e art.º 104, ambos do RGIT, Ac. TRL de 18JUL13, Ac. TRE 08JAN13, Ac. TRP 09ABR14, Ac. TRP 18SET13)			



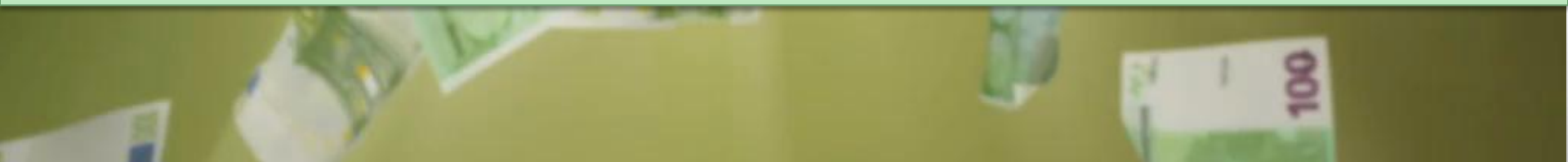


# *Tax, financial and economic investigation*

*“Given the increasing risk of penetration of the licit economy by serious and organised crime, financial investigation is an essential tool of a modern and effective response to criminal*

*“(…) only by attacking the illicit proprieties we will avoid some criminal activities spreading that threaten rule of law subsistence itself on EU”*  
(Correia, 2011, p. 37).

*information with a view of assisting in the prosecution of crime and in the deprivation of the proceeds and instrumentalities of crime; enable the concerned authorities to establish the existence of otherwise unknown crimes and assets; can be used as an instrument to reveal undiscovered predicate offences and to identify other people or companies”. (Guardia di Finanza, 2015, p. 3)*



# Tax, financial and economic investigation

*“these criminal forms, by the **evidence system complexity, infraction plurilocalization, Bank accounts access difficulties, dispersion responsibility of the criminal organization members, different accounting rules** and by the own **doctrinal doubts about white collar crime**, poses great difficulties on proof gathering and strong obstacles to the punishment effectiveness”.*  
Cláudia Cruz Santos (CEJ, 2015, p. 23)

Free evidences means principle on a accusatory criminal system

(art.º 127, do CPP)

## Indirect Evidences

*thema probandum* different facts (minor premise) & logic and experience rules (major premise) = judiciary syllogism by inductive method

Conso e Grevi (2009), De Michele (1992), Pinto (2011), Mittermayer (1959), Simões (2007), Ac. STJ 12SET07, Ac. TRC 9MAI12, Ac. TRC 20JUN12 e Ac. STJ 25JUN15

Basis facts



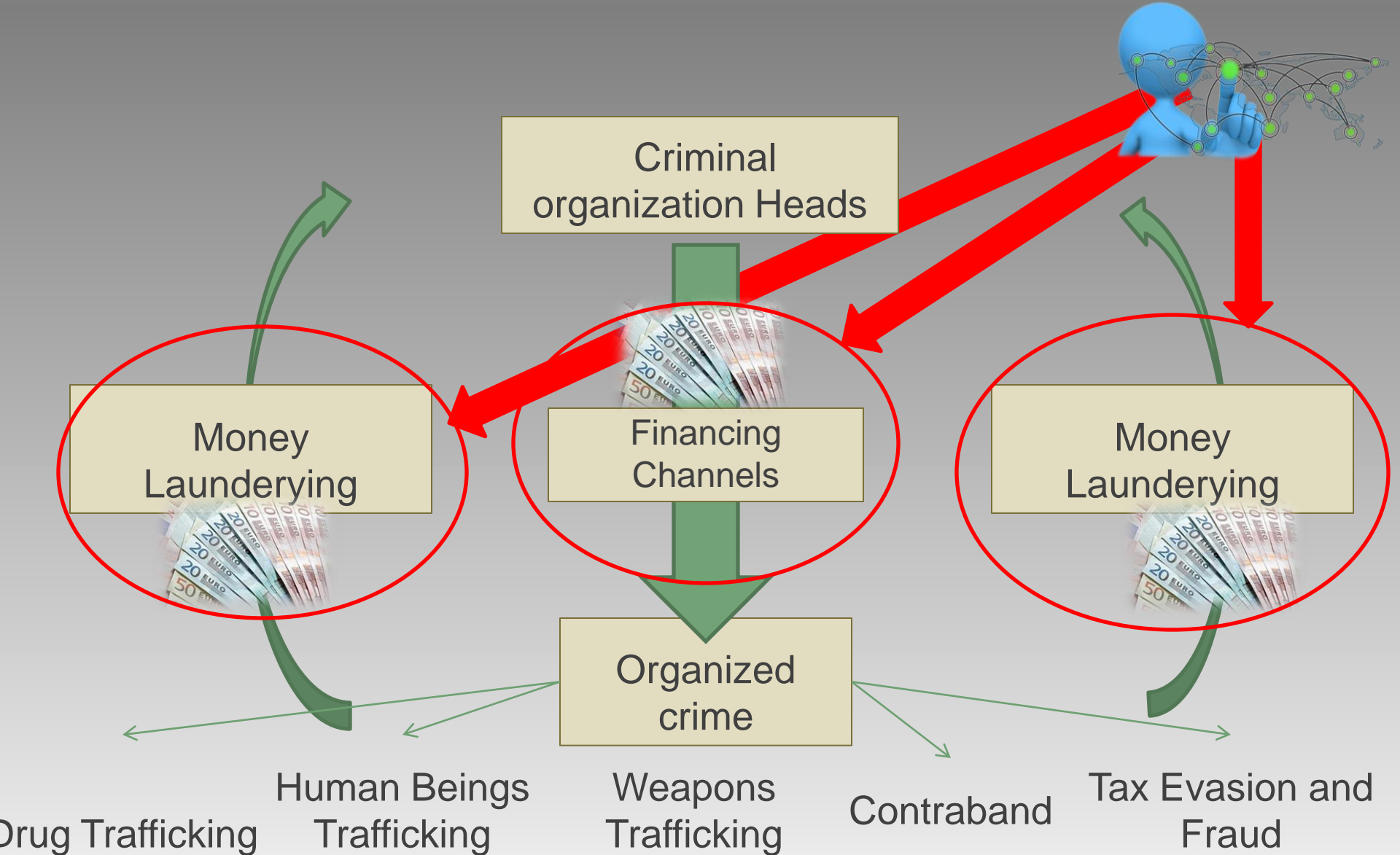
Facts demonstrated by direct, accusatory, plural, contemporary and interrelated evidences



Reasonable inference judgment with precise, direct nexus, according to rules of experience and life



Overcoming the Innocence Presumption Principle *in dúbio pro reo*



Tax, Financial and Economic Reconstruction

Capital Flows Analysis

Criminal elements identification

*Modus Operandi* reedification and constation

Criminal Profits Detection

Freezing measures

Confiscation measures

Asset Recovery

**EU Member States  
and EU Budget**

# MOLECULA PT PROJECT

*(Inspired on MOLECULA Italian Database Created by GdF)*

art.° 87, n.° 2, alinea a), TFEU

Portugal IC&DT Call for Scientific Project EU 2020 – 2017  
GNR. GdF (Col. Di Gregorio), CINAMIL/AM and DIT/EU

*Platform for automatic and intelligent detection of disproportions between declared and possessed assets*



*“Closer police and judicial cooperation in criminal matters must go hand in hand with respect for fundamental rights, in particular the right to respect for privacy and to protection of personal data, to be guaranteed by special data protection arrangements, which should be tailored to the specific nature of different forms of data exchange”.*

(European Council, 17th Point, Decision 2008/615/JHA)





# *MOLECULA PT PROJECT*

Establishment of an intelligent and automated platform to compute reports of strong disproportionality based on correlations between several pre-existing databases managed by the competent national authorities about singular individuals and companies located in portuguese territory



Emission of **incongruity reports based on disproportions or disparities**

Associated to a relationship chart or graphic, based on *Analyst's Notebook*, in order to **show the links web of the individual or society sinalized by MOLECULA**

**A platform that in a systematic, continuous and intelligent way is able to interrelate the data of the ATOMs involved** and guaranteeing the following basic principles:

**Security – Privacy – Equality – Integrity - No repudiation**







Tax and Customs Database



EU Databases



Notary and Registry Database



Open Source Information



SEGURANÇA SOCIAL  
Social System Database



BANCO DE PORTUGAL

Portuguese central bank database



Security forces and services Databases



Casinos



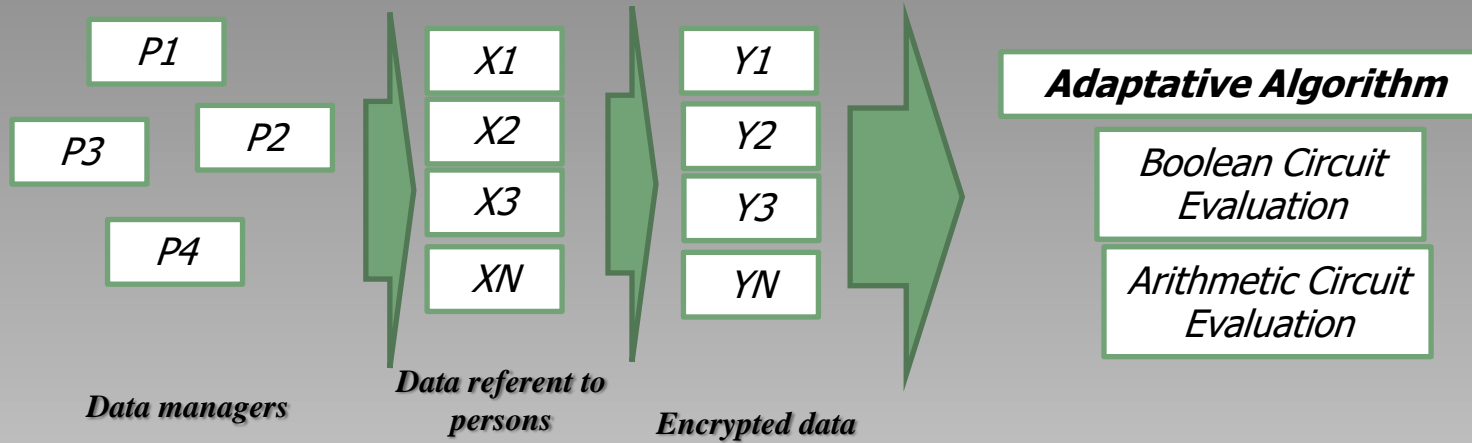
Financial and Credit Institutions



Judiciary Databases

# MOLECULA PT PROJECT

## Secure Multi-Party Computation (MPC)



**Function  $f(x1, ?, xn) = y(y1, ?, yn)$  - ciphertext**

## Fully Homomorphic Encryption

**Allows computations over encrypted data, without the need of decryption**

Shamir, 1979; Yao, 1982; Bogdanov, 2007; Damgard et al., 2013; Zhang et al., 2016; Gentry, 2009

# MOLECULA PT PROJECT

Data permanently updated

*Legal and declared assets, incomes and activity flows on last 5 years*

*Real assets, incomes and activity flows on last 5 years*

*Connected with police and judiciary information and OSINT*

*Disproportion Coefficient above Alarm Limit*

*Coded in a Coefficient by Category*

*Coded in a Coefficient by Category*

*Disproportion Report (DR) and Links Chart*

*Disproportion Coefficient under Alarm Limit*

*Presented to Portuguese Prosecutor's Office*

*Permanent Update and Monitorization*



# MOLECULA PROJECT

## ***Disproportion Report (DR) and Links Chart***

***a clear mirror of a conduct subsumable to a certain criminal disposition on criminal law in force in the Portuguese legal system, punishable with imprisonment***



*Obtained by a predefined algorithm, with correction mechanisms, on evolution for intelligent massive analysis*

*First moment when all data that originated the alert are available /readable to an entity*

*Predefined formulaire with all data related by algorithm above mentioned: precise, updated, trustable and confirmed data*

**clairvoyance**

**effectiveness**

**efficiency**

**economy**





# MOLECULA PROJECT

*Disproportion Report (DR)*

*Portuguese Prosecutor's  
Office Analysis and  
Decision  
Potentially EPPO?*



*Disproportion  
Justification*

*Filing*

*MOLECULA Archive*

*Sufficient Evidences  
on Criminal Infraction*

*Reasonable  
doubts about  
disproportion  
justification*

*Investigation Decision*

*Investigative Portuguese  
Agencies/JIT/Eurojust*



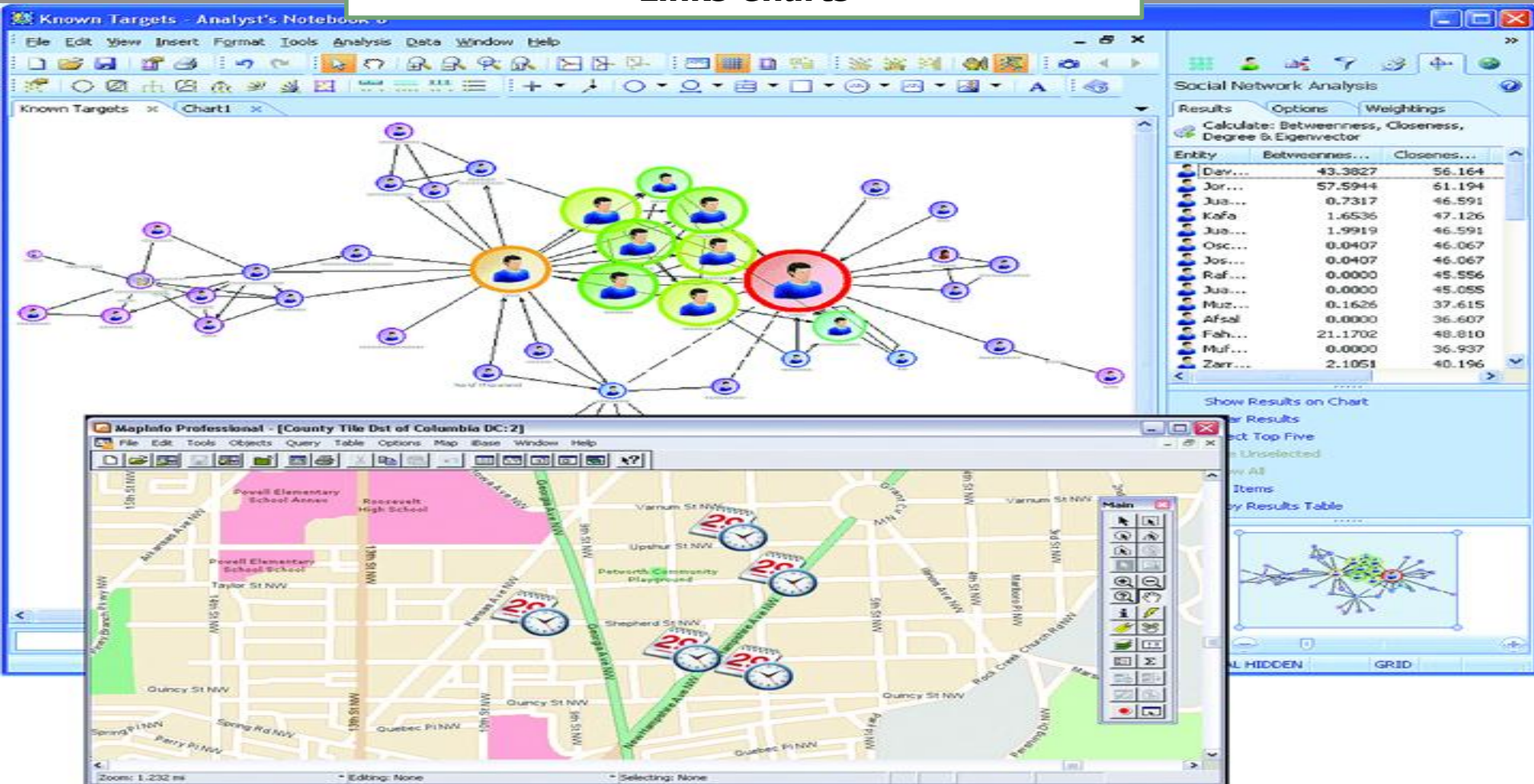
*Priority Supervision on MOLECULA Platform*

*MOLECULA Platform*



# MOLECULA PROJECT

## Links Charts





# Future considerations

Procedure Domain	Substantive Domain	Policial Domain
- mutual admissibility of evidence	- minimum rules concerning the definition of criminal offences and sanctions  <i>"(...) in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis"</i>  <i>terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime</i>	- the collection, storage, processing, analysis and exchange of relevant information
- the rights of individuals in criminal procedure		
- the rights of victims of crime		Art.º 87, n.º 1 e n.º 2, alíneas a) e c), do TFUE
- any other specific aspects of criminal procedure		Art.º 83, n.º 1 e n.º 2, do TFUE
Art.º 82, n.º 2, alíneas a) a d), do TFUE		



# Future considerations

## Institutional and criminal procedure domain

### Eurojust

- the initiation of criminal investigations, as well as proposing the initiation of prosecutions (...) particularly those relating to offences against the financial interests of the Union;
- the coordination of investigations and prosecutions referred to in point (a)
- the strengthening of judicial cooperation;

Art.º 85, n.º 1, alíneas a) e c), do TFUE

*“It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.” (art.º 86, n.º 2, TFUE).*

Art.º 86, n.º 1 e n.º 2, do TFUE

### EU Public Prosecutor’s Office

*“(…) the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor’s Office from Eurojust!”.*

investigating

prosecuting

bringing to judgment

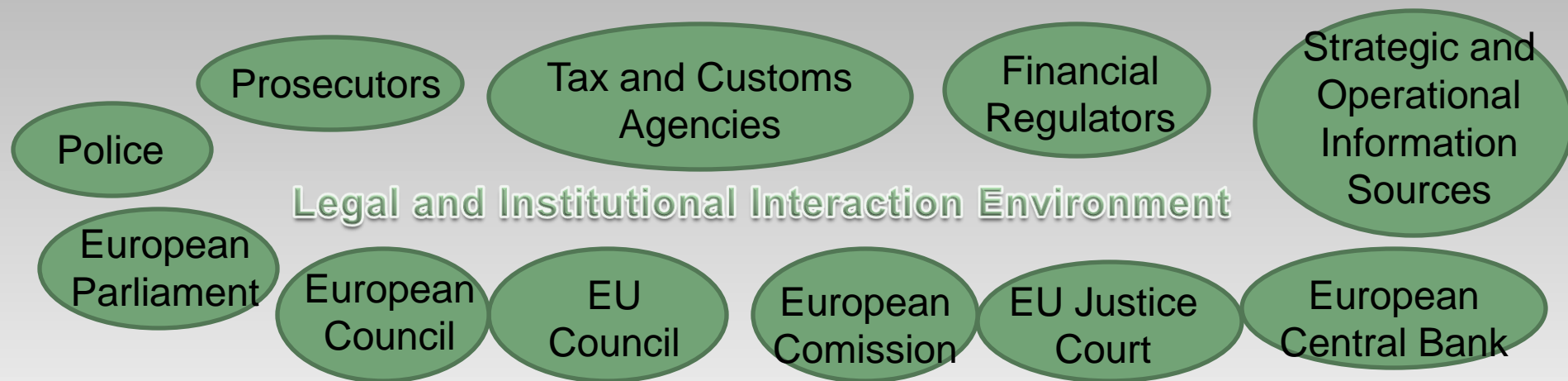
**Offences against the Union's financial interests**

**Serious crime having a cross-border dimension**

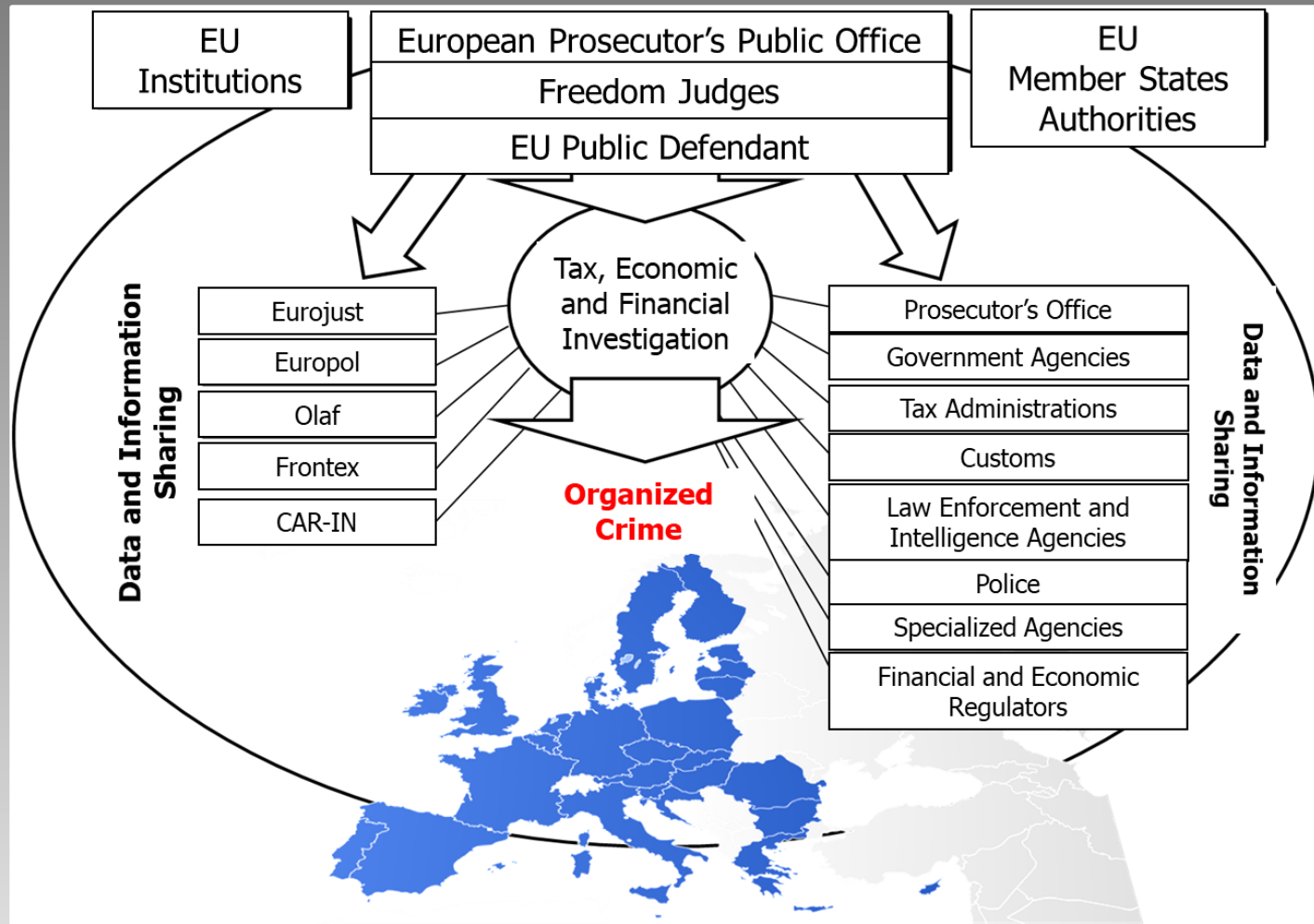
# Future considerations

*“(...) a change in the structural environment in which actors interact.” (Trauner e Servent, 2015, p. 19)*

*“(...) institutional change is significant as it might contribute to rendering the roles and patterns of behaviour of specific actors dysfunctional under new structural conditions.” Clemens e Cook (1999, p. 449)*



# Future Considerations



***“(...) a giant blue spider-web across the world, full of intricate entanglements and fine embroidery” (Bayer, 2010)***

Vermeulen *et. al* (2012), Boer (2015), Boer (2016), Mayer (2012), Block (2011), Borchardt (2011), Long (2011), Trauner (2012), UE (2013), OCDE (2012), FATF (2011), Piris (2010), Bayer (2010), Delmas-Marty (1997), White (1997), Kerchove & Weyembergh (2002), Triunfante (2011), Lavenex (2007), Leon (2007), Huysmans (2000), Kaunert (2010).

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