

THE ROLE OF FIUs IN ASSET RECOVERY

DOMESTIC AND INTERNATIONAL
ASPECTS

AIM

AML/CFT objectives:

- depriving criminal from illegal assets
- cut off terrorism from financial sources

REPRESSION

PREVENTION

CHALLENGE: effective recovery

PREVENTION

Essential: - early discovery
- timely intervention

Key position of FIU

- proximity with financial sector (trust relation – detection of suspicious activity)
- experience/expertise (STRs)
- intermediary & support LE

FRAMEWORK

LEGAL CONDITIONS

- SAR system
- *a priori* disclosure obligation
- immunity for disclosing entities
- direct freezing power FIU: tracing alone not enough
 - see art. 24.1 EU Dir. 2005/60/EC

EU DIRECTIVE 26/10/2005

Art. 24.1

“Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to ML or TF until they have completed the necessary action in accordance with Article 22(1)(a) (i.e. disclosure of STR to FIU). In conformity with the legislation of the MS, instructions may be given not to carry out the transaction.”

INTERNATIONAL COOPERATION

→ Cross-border phenomenon → efficient
FIU interaction

- real time information exchange
- possibility to freeze/stop transaction at request of counterpart FIU
- intermediary with LE authorities

FIU NETWORK

- Foreign FIU information / request
- Informal communication system (FIU-net, ESW) → speed

Challenges:

- different statute (police/admin.)
- different function
- inadequate legislation (freezing power, cooperative ability ...)

Egmont Group solutions

Postponement of suspicious transactions

The CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (Warsaw 16 May 2005)

- **Article 14 – Postponement of domestic suspicious transactions**

The FIUs or, if appropriate, other competent authorities or bodies should be able to postpone a domestic suspicious transaction.

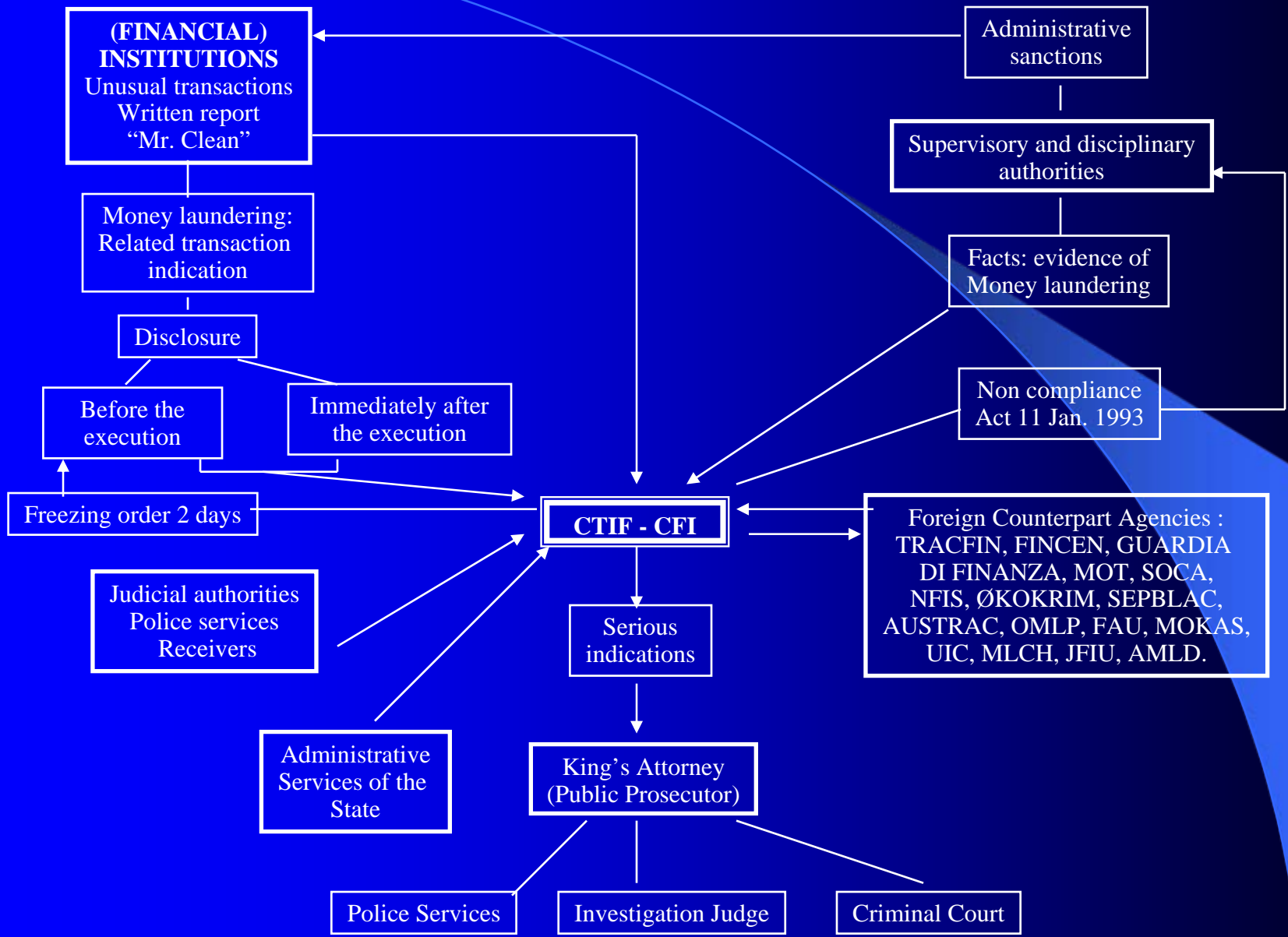
- **Article 47 – International cooperation for postponement of transactions**

The FIU should have the authority to postpone a suspicious transaction at the request of a foreign FIU.

BELGIAN APPROACH

AML Act

- Art. 23 §1: SAR before execution transaction
- Art. 23 §2: FIU can “oppose” (freeze) transaction for max. 2 working days → examination and report to PP
- Art. 22 §2: foreign FIU request = disclosure → CTIF-CFI can use all its powers



STATISTICS JUDICIAL FOLLOW-UP

- Statistics for files reported to the Public Prosecutor's Offices in the past five years (2006 to 2010)
 - Fines 4.585.925 EUR
 - Confiscations 8.570.890 EUR
- Number of freezing orders in 2010 60
- Total amount frozen in 2010 135.242.025 EUR
- Amount seized in 2010 116.461.649 EUR

Statistics “Human Trafficking”

Year	Number of files reported to the Public Prosecutor for trafficking in human beings	Number of freezing orders in files reported to the Public Prosecutor for trafficking in human beings	Amount frozen by CTIF-CFI (2 working days)
2008	67 files	No freezing orders	-
2009	60 files	1 freezing order	EUR 55 887,31
2010	53 files	1 freezing order	EUR 123 147,99

INTERACTION WITH DOMESTIC AUTHORITIES

FIU \Leftrightarrow COIV: - early warning
- reliable statistics

FIU \Leftrightarrow PP: - timely reporting
- adequate follow-up &
feedback

INDICATORS

- General: too many uncertainties and suspicions → gain time for further analysis
- Investigations/injunctions pending
- Large cash withdrawals announced
- Large money exchange operations
- Emptying of account
- Serious inconsistency with financial profile
- “Explosion” of dormant accounts (VAT carousels)
- Large money transfers → suspect destination or uncontrollable use (loss money trail)

CAVEAT

RISK CONSIDERATIONS

- Alerting suspect
- Position reporting entity :
 - negative/aggressive reactions
 - tipping off prohibition
- Damages if unsubstantiated → financial & reputational
- Interference with ongoing investigations or undercover operations

CASE EXAMPLES

Casus 1

Russian living in France – accounts in Belgian Bank

Large amounts from off-shores transiting over
Belgian account to another Russian in France

Balance (400.000 €) to be transferred to a Swiss
company (closing of account) → blocked by FIU

Info from counterpart FIU → relation with organised
crime

Intermediary/transit account – suspicion of shell
companies (no info to be found in registers)

Report to PP → funds seized

CASE EXAMPLES

Casus 2

Belgian under police investigation for forgery and ML → publicity in press → STR by bank holding accounts (immunity)

Suspect arrested → wife wanted to empty her own account

Freezing action by FIU → report to PP

Investigation: proceeds channelled through wife's account

CASE EXAMPLES

Casus 3

Director of company in Brussels → suspected of serious fraud → absconded

Request for information received from foreign FIU → reveals existence of bank and investment account (ca. 1,5 million USD)

Blocking of account at request of CTIF-CFI

Report to PP → money turned over to Belgian LE authorities

CASE EXAMPLES

Casus 4

Counterpart FIU information request on foreign citizen suspected of environmental crime → CTIF/CFI query with Belgian bank holding account → suspect wants to close and collect balance in cash

CTIF/CFI freezes account → informs counterpart → MLA request from foreign judiciary to seize and transfer money within deadline

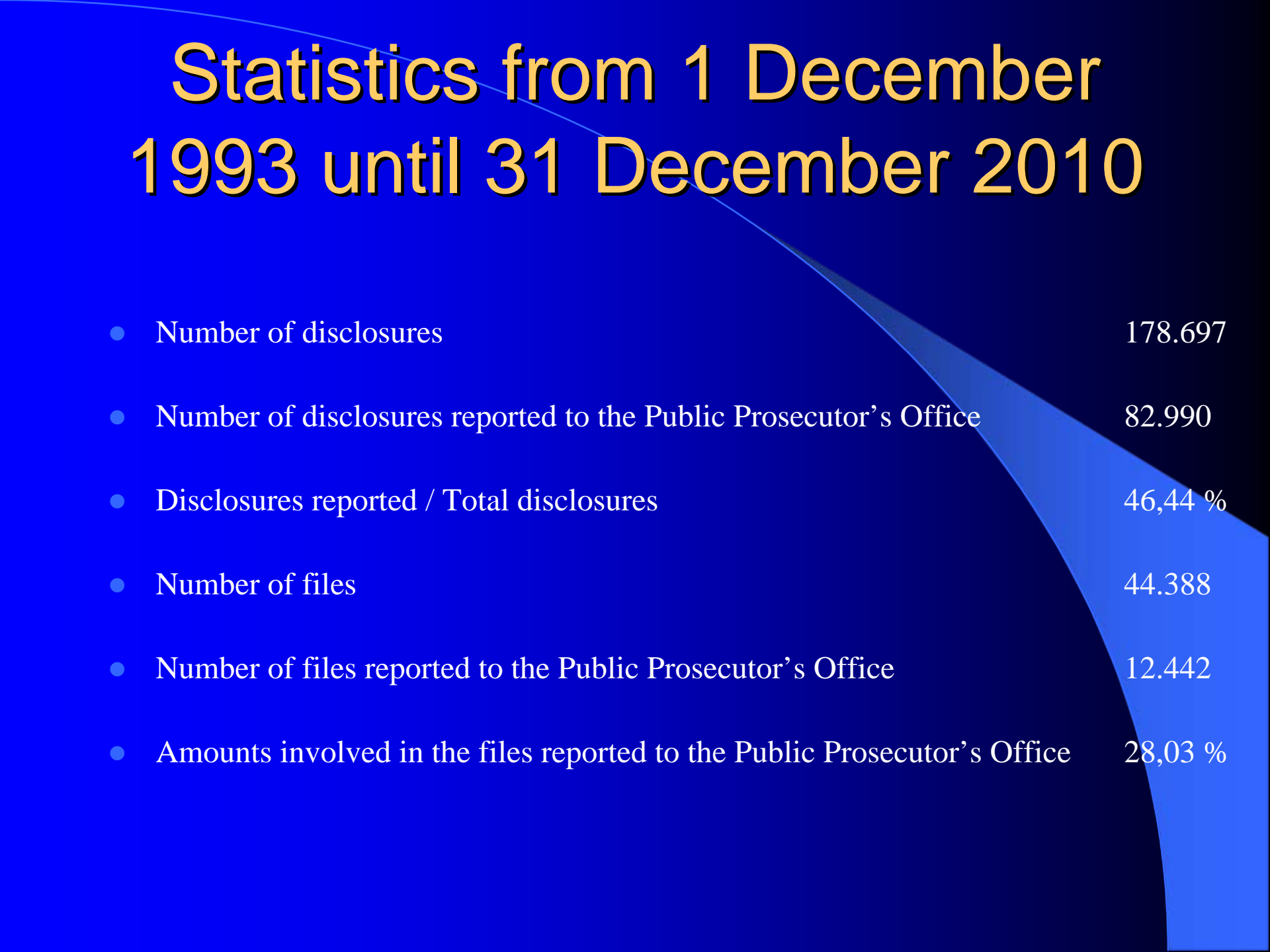
Follow-up: suspect convicted and assets forfeited

Statistics from 1 January 2010 until 31 December 2010

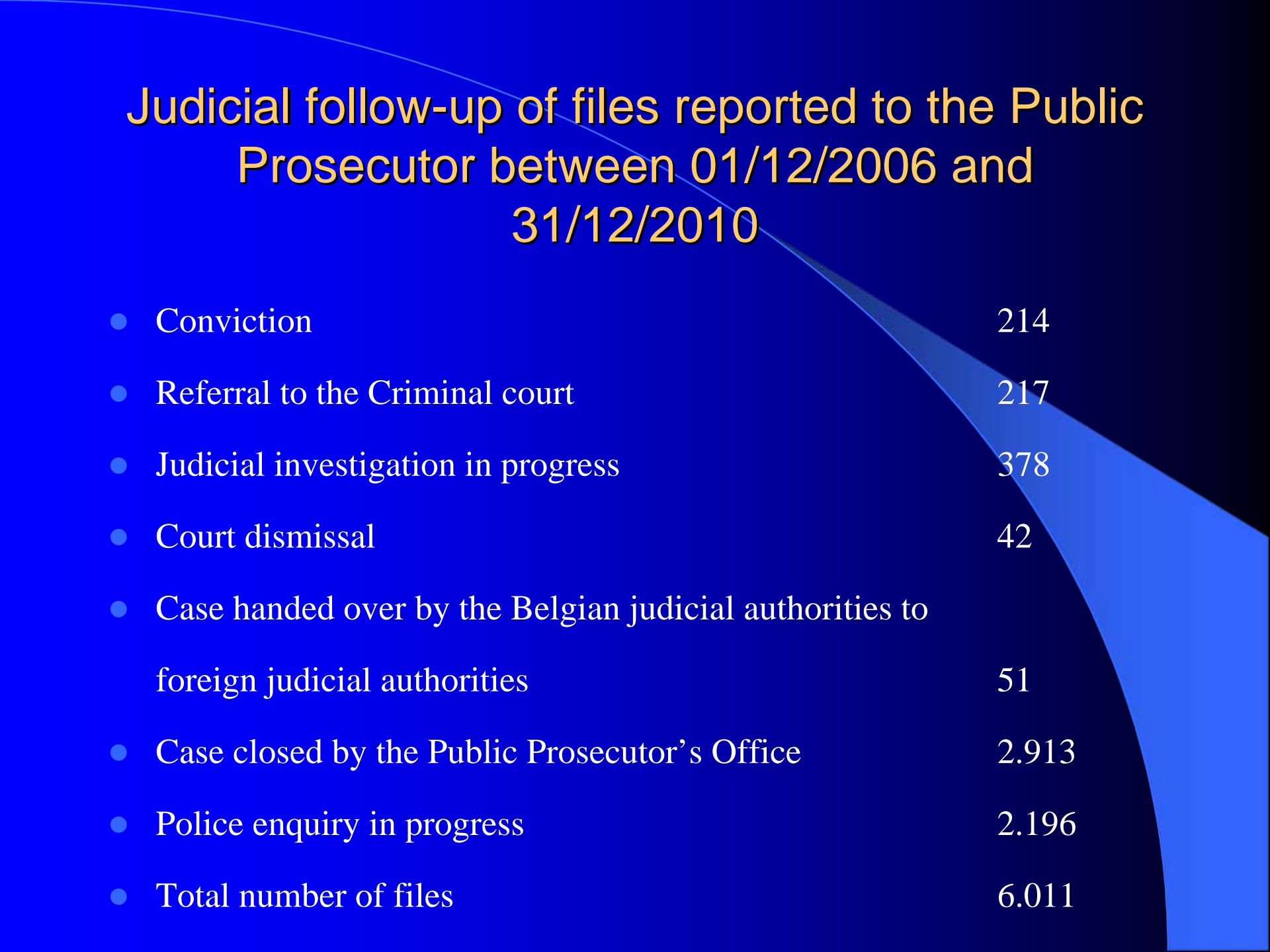
● Number of disclosures received	18.673
● Number of new files	4.928
● Number of files reported to the Public Prosecutor's Office	1.259
● Amounts involved in the files reported to the Public Prosecutor's Office	594,93 *
● Number of freezing orders	60
● Total amount of freezing orders	135,84 *
● Number of closed files	3.796
● Number of open files on 31 December 2010	2.662

* Amounts in million EUR

Statistics from 1 December 1993 until 31 December 2010



Judicial follow-up of files reported to the Public Prosecutor between 01/12/2006 and 31/12/2010



● Conviction	214
● Referral to the Criminal court	217
● Judicial investigation in progress	378
● Court dismissal	42
● Case handed over by the Belgian judicial authorities to foreign judicial authorities	51
● Case closed by the Public Prosecutor's Office	2.913
● Police enquiry in progress	2.196
● Total number of files	6.011