



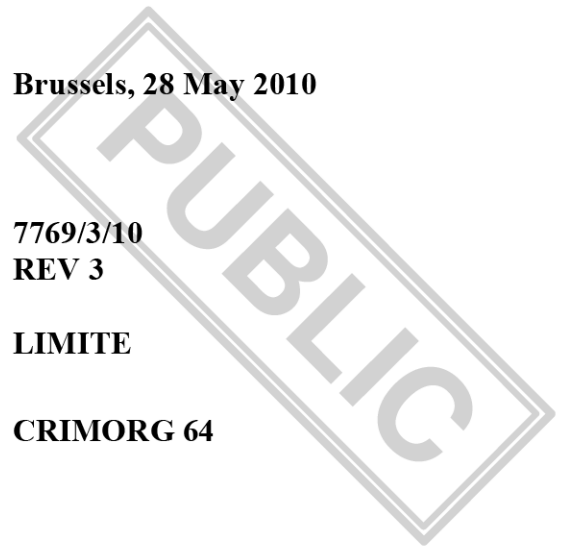
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 May 2010

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LIMITE

CRIMORG 64



NOTE

from:	Presidency
to:	COREPER/Council
No prev. doc.:	7769/2/10 REV 2 CRIMORG 64
Subject:	Council Conclusions on Confiscation and Asset Recovery

Further to the discussion at the MDG meetings on 12 March, 8 April and 5 May 2010 and at the CATS meeting of 18 May 2010 on the recommendations of the Alicante Seminar on Asset Recovery Offices, the Presidency has revised the draft Council conclusions set out in the Annex.

Draft Council Conclusions on Confiscation and Asset Recovery**THE COUNCIL OF THE EUROPEAN UNION:**

Noting that organised criminal groups operate without borders and increasingly acquire assets in other EU Member States and in third countries,

Taking into account the importance given in the Stockholm Programme to more effective identification, confiscation and re-use of criminal assets, to be achieved through cooperation between Asset Recovery Offices and between Asset Recovery Offices and other authorities involved,

Emphasising the increasing need for effective international law enforcement cooperation and mutual legal assistance on asset recovery,

Welcoming the progress achieved in implementing Council Decision 2007/845/JHA of 6 December 2007 on Asset Recovery Offices and in organising informal meetings of the designated Offices,

Noting the need to fully implement Council Decision 2007/845/JHA of 6 December 2007 and designate Asset Recovery Offices in all the Member States of the Union in order to trace criminal assets effectively,

Considering the implementation of the Convention on the Protection of the European Communities' financial interests and its protocols,

Noting the ongoing initiative to link the Asset Recovery Offices to Europol's SIENA network, which can provide for secure and swift information exchange between them,

Noting the difficulties expressed by some Member States in managing the assets seized before confiscation and preserving their value, pending judicial determination; noting that some Member States recently established national Asset Management Offices to that effect, and that others intend to do so,

Taking into account the provisions of the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime and on the financing of terrorism (CETS 198), which to date has been signed by 19 EU Member States and the European Union, and ratified by 11 Member States,

Taking into account the relevant provisions of the United Nations Convention against Corruption (Articles 52-59), which has been ratified by the European Union and 23 Member States,

Considering the provisions of Council Act of 16 October 2001 establishing the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union¹, which obliges Member States to provide each other with information on bank accounts in their jurisdictions,

Noting the ten strategic priorities highlighted in the Communication from the Commission to the European Parliament and the Council "Proceeds of organised crime - Ensuring that 'crime does not pay' "²,

¹ OJ C 326, 21.11.2001.

² COM(2008) 766 final.

Noting that the current EU legal framework in relation to freezing, seizure and confiscation of assets only applies to criminal proceedings; that the issuance of confiscation orders generally requires a criminal conviction; that some Member States apply also non-conviction-based systems to deprive criminals of illicit profits,

Noting the CARIN Steering Group's contribution to the Stockholm Programme¹, which identified difficulties in the tracing of bank accounts and the mutual recognition of freezing and confiscation orders based on non-conviction-based procedures; noting that the CARIN Network proposed to promote the creation of centralised bank account registers and the mutual recognition of non-conviction-based orders as best practices; noting the fact that some Member States already benefit from centralised registers of this kind;

Noting the Commission's implementation reports on Framework Decisions 2005/212/JHA on extended confiscation and 2003/577/JHA on the mutual recognition of freezing orders², which indicate that there are considerable delays in the transposition of these texts and that the national legislations implementing them show omissions or misinterpretations; that as a result the existing regime for extended confiscation is not fully effective,

Noting the OECD Financial Action Task Force (FATF) Best Practices Paper on Confiscation (FATF Recommendations 3 and 38) and the FATF Report on existing obstacles to confiscation,

Noting the ongoing survey in the Council of Europe Moneyval Committee on the enforcement of non-conviction based confiscation orders,

Taking into account the common practice of transferring criminal assets to a knowing third party with a view to avoid confiscation,

¹ Letter from the CARIN Steering Committee to the Swedish Presidency of 16 October 2009.

² COM(2007) 805 and COM(2008) 885 respectively.

Noting the findings and recommendations of the Seminar on Asset Recovery Offices in the EU (7139/10), held in Alicante from 10 to 12 February 2010 as part of the CEART Project,

Taking into account the ongoing mutual evaluation process conducted by the Multidisciplinary Group on Organised Crime, which will produce a comprehensive picture of financial investigation tools available to the EU's Member States and of implementation of relevant EU legal acts and will identify best practices as well as gaps and weaknesses to be addressed at both national and EU level,

HEREBY

Considers it important and timely to outline the main points of a concerted strategy to deprive organised criminal groups of the proceeds of crime, and

Emphasises that attention should be focused not only on the investigation phase leading to the tracing, identification and securing of assets, but also to the subsequent phases of the confiscation and asset recovery process (judicial, execution and disposal phase).

To that end, it **invites Member States to:**

- 1) Notify their designated national Asset Recovery Office or Offices (if they have not already done so) as a matter of priority,
- 2) Ensure that national Asset Recovery Offices are equipped with the necessary resources and powers and provided with adequate training to carry out their tasks effectively,

- 3) Promote that national Asset Recovery Offices in accordance with national law, have quick access to all relevant information on assets, including information on financial products, such as account numbers, credit institutions, account openings/closings, beginning and ending of third party authorisations to draw and possibly differing beneficial owners,
- 4) Ensure that one of the existing secure communication channels (e.g. SIENA) is expediently used for exchanges of operational information between Asset Recovery Offices,
- 5) Consider ways to ensure preservation of assets for confiscation, and establishing Asset Management Offices, in those Members States with object-based systems, where appropriate, with the aim of preserving assets for confiscation and ensuring that these Offices cooperate effectively with Asset Recovery Offices,
- 6) Consider best practices on the reuse, in accordance with national law, of confiscated assets for prevention and law-enforcement purposes, ensuring that organised criminal groups cannot re-acquire their assets through front men,
- 7) Consider strengthening national legal provisions to make it possible to trace, secure and confiscate proceeds of crime which have been transferred to a knowing third party in order to avoid confiscation,
- 8) Consider establishing a legal framework for tracing, securing and confiscating of assets even after a final conviction for an offence,
- 9) Enhance their capacity to conduct financial investigations by providing quality training courses for financial investigators, such as CEPOL courses, possibly based on a common training model that reflects, in particular, laws and measures implementing the European legal framework,
- 10) Foster financial investigations by making full use of existing cooperation tools within the framework of Europol, Eurojust and OLAF,

11) Promote application of financial investigations as well as assets-related measures, such as freezing, seizure and confiscation.

It also invites the Commission and the Member States to:

- 1) Consider, based on further studies, ways to acknowledge non-conviction-based confiscation systems¹ in those Member States which do not have such systems in place, and in particular to examine, within the framework of mutual recognition, ways to enforce non-conviction-based confiscation orders in those Member States,
- 2) Carry out a comprehensive study under what particular circumstances assistance can be provided to jurisdictions using non-conviction-based confiscation systems,
- 3) Consider collecting a comparable minimum set of appropriate statistical data on the activities of Asset Recovery Offices and, where possible, on judicial and asset disposal activities,
- 4) Consider the establishment of a basic statistical methodology concerning criminal assets, especially their freezing, seizure and confiscation,
- 5) Look to increase the application of the current legislation and an where necessary consider possible legislative amendments in order to achieve more effective regimes for third-party confiscation and extended confiscation, including timely tracing and securing of the assets.
- 6) Strengthen mutual trust and understanding among Member States, fostering dialogue, exchange of good practices and the explaining of differences between jurisdictions to practitioners involved.

¹ As provided for by the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime and on the financing of terrorism.