



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 December 2005

15628/05

LIMITE

CRIMORG 156

PUBLIC

COVER NOTE

from : Austrian, Belgian and Finnish Delegations

dated : 8 December 2005

Subject : Initiative of the Republic of Austria, Belgium and Finland with a view to the adoption of a Council Decision concerning arrangements for cooperation between Asset Recovery Offices of the Member States

Delegations will find attached an initiative from the Austrian, Belgian and Finnish Delegations.

COUNCIL DECISION 2005/ /JHA
of

concerning arrangements for cooperation between
Asset Recovery Offices of the Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30(1)(a) and (b) and 34(2)(c) thereof,

Having regard to the initiative of the Republic of (Austria) and (...),

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) The main motive for cross border organised crime is financial gain. This financial gain is a stimulus for committing further crime to achieve even more profit. In order to combat organized crime effectively, information that can lead to the tracing and seizure of proceeds from crime has to be exchanged rapidly between the Member States of the European Union.
- (2) Bearing in mind the Council Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property¹ and the Council Framework Decision on the execution in the European Union of orders freezing property or evidence².

¹ OJ L 68/49 of 24 February 2005

² OJ L 196/45 of 2 February 2003

- (3) It is necessary that close cooperation takes place between the relevant authorities of the Member States involved in depriving criminals of their illicit profits and that provision be made for direct communication between those authorities.
- (4) Member States must organise their Asset Recovery Offices in such a way as to ensure that information is exchanged within a reasonable space of time.
- (5) The Camden Assets Recovery Inter-Agency Network (CARIN) established in The Hague on 22-23 September 2004 already creates an informal network of practitioners and experts with the intention of improving mutual knowledge on methodologies and techniques in the area of cross-border identification, freezing, seizure and confiscation of the proceeds from crime. The Asset Recovery Offices created in application of this Decision should be the contact points of the CARIN network. Europol should support member states efforts towards the work of the CARIN network.
- (6) Referring to the Communication from the Commission⁽¹⁾ to the Council and the European Parliament – The Hague Programme: Ten Priorities for the next five years - and its proposal to strengthen tools to address financial aspects of organised crime inter alia by promoting the establishment of criminal asset intelligence units in EU Member States.
- (7) This Decision shall be implemented without prejudice to the Member States' obligations towards Europol, as they have been laid down in the Europol Convention.

¹ COM(2005) 184 final

HAS ADOPTED THIS DECISION:

Article 1

Designation and notification of Asset Recovery Offices

1. Each Member State shall set up or designate a national Asset Recovery Office mandated or being charged with the facilitation of tracing and identification of proceeds of crime with a view to their subsequent freezing, seizure or confiscation by the competent judicial authority.
2. Member States shall indicate the unit which is an Asset Recovery Office within the meaning of this Article. They shall notify this information to the General Secretariat of the Council in writing. The General Secretariat shall ensure that this notification is passed on to the Member States, and inform the Member States of any changes in these notifications.

Article 2

Obligation to cooperate

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1. Member States shall ensure that their Asset Recovery Offices co-operate in the widest possible degree, both in accordance with this Decision and with national law, including for purpose of exchanging best practices and relevant information with Asset Recovery Offices of other Member States. Such cooperation shall in particular relate to any fact which one Member State considers necessary to communicate to another Member State in order to achieve the goals of the Asset Recovery Office as set out in Article 1.
 2. To the widest extent possible under the national law of the requested Member State, cooperation shall also be granted with regard to proceedings that can lead to measures equivalent to confiscation, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Member State in relation to a criminal offence.

Article 3
Status of Asset Recovery Offices

Member States shall ensure that the performance of the functions of the Asset Recovery Offices under this Decision shall not be affected by their internal status, regardless of whether it forms part of an administrative, law enforcement or a judicial authority.

Article 4
Exchange of Information between Asset Recovery Agencies

1. An Asset Recovery Office may make a request for information for a purpose stated in Article 1.
2. Each request made under this Decision shall be accompanied by a brief written statement of the relevant facts known to the requesting Asset Recovery Agency. The Asset Recovery Office shall specify in the request the object thereof and the reasons therefore, the nature of the proceedings and indications as exact as possible on property targeted or sought (bank accounts, real estate, cars, yachts and other high value items) and/or the natural or legal persons presumably being involved (e.g. names, addresses, dates and places of birth, date of registration, shareholders, headquarters).

When a request is made in accordance with this Decision, the requested Asset Recovery Office shall to the extent necessary to satisfy the purposes of the request and in accordance with the purposes stated in Article 1 of the Decision facilitate the transmission of all relevant information to the requesting Office unless a formal request for assistance is necessary for its execution under applicable agreements, arrangements or instruments of the European Union on mutual legal assistance or mutual recognition of decisions regarding criminal matters.

3. The requested State may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State, or, in exceptional circumstances, where divulgence of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State concerned or would otherwise not be in accordance with fundamental principles of national law. Any such refusal shall be appropriately explained to the Asset Recovery Office requesting the information.

Article 5

Spontaneous exchange of Information between Asset Recovery Offices

1. Asset Recovery Offices may, within the limits of the applicable national law and without a request to that effect, exchange information which they consider necessary for the execution of the tasks of another Asset Recovery Office in pursuance of the purposes of this Decision as stated in Article 1.
2. The provisions of this Decision relating to the exchange of information shall apply as appropriate in relation to information forwarded under this Article.

Article 6

Use of information received under this Decision

1. Information or documents obtained under this Decision may only be used for the purposes laid down in Article 1.
2. When transmitting information or documents pursuant to this Decision, the transmitting Asset Recovery Office may impose restrictions and conditions on the use of information. The receiving Asset Recovery Office shall comply with any such restrictions and conditions.

3. Where a Member State wishes to use transmitted information or documents for criminal investigations or prosecutions, it has to obtain, through mutual legal assistance, prior consent from the competent judicial authority of the Member State that provided the information or documents. The transmitting Member State may approve such use according to its national law and by imposing conditions referred to in paragraph 2. Any refusal to grant consent shall be appropriately explained.

Article 7

Data protection

1. Each Member State shall ensure that the established rules on data protection provided for when using the communication channels via all existing channels for law enforcement cooperation and judicial cooperation are applied also within the procedure on exchange of information provided for by this Decision.
2. The use of information which has been exchanged directly or bilaterally under this Decision shall be subject to the national data protection provisions of the receiving Member State. The personal data processed in the context of the implementation of this Decision will be protected in accordance with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, and, for those Member States which have ratified it, the Additional Protocol of 8 November 2001 to that Convention, regarding Supervisory Authorities and Transborder Data Flows. The principles of Recommendation No. R(87) 15 of the Council of Europe Regulating the Use of Personal Data in the Police Sector should also be taken into account when law enforcement authorities handle personal data obtained under this Decision.

Article 8

Relationship to existing arrangements for co-operation

The present Decision is without prejudice to the obligations resulting from instruments of the European Union on mutual legal assistance or mutual recognition of decisions regarding criminal matters and from bilateral or multilateral agreements or arrangements between the Member States and third countries on mutual legal assistance.

Article 9

Exchange of best practices

1. Member States shall ensure that the Asset Recovery Offices set up or designated in accordance with Article 1 shall exchange best practices concerning ways to improve the effectiveness of Member States' efforts in depriving criminals of their illicit profits, in particular regarding the identification and tracing of proceeds from crime in order to facilitate their subsequent freezing, seizure or confiscation by the competent judicial authority.

Article 10

Taking effect

1. This Decision shall take effect on the date of its adoption.
2. The Member States shall ensure that they are able to co-operate fully in accordance with the provisions of this Decision at the latest one year after this Decisions takes effect.

3. The Council will assess Member States' compliance this Decision within five years after the date on which it takes effect on the basis of a report made by the Commission. To that effect, the Commission may ask the member States to provide appropriate information.

Done at Brussels,

For the Council
The President
