



Seminar 5: Asset recovery within the European Union: Council Framework Decisions of 2003, 2005 and 2006 and new developments in this area

Copenhagen (DK), 24-25 October 2012

Specific Grant Agreement JUST/2010/JPEN/AG/FPA/001
Framework Partnership Agreement JLS/2007/JPEN-FPA/017

Improving Judicial Cooperation in Criminal Matters in the area of Freedom, Security and Justice, Institutional Processes and Topical Areas

Seminar Venue

First Hotel Kong Frederik, Vester Voldgade 25, in 1552 Copenhagen

Trainers' Note

Target group: Judges, lawyers and defence lawyers working with law enforcement (police, customs and other national forces) dealing with asset forfeiture from France, Denmark, and other neighbouring countries.

Description: The actions of identifying, locating, freezing, seizing and confiscating criminal related assets have received increasing international, European and national focus over recent years from both legislators and practitioners. European tools have been adopted to facilitate the different stages of this process and structures have been established with the responsibility at national level to facilitate international requests and the exchange of intelligence and assistance in this specific field. Availability of information and legislation is nevertheless still very different from one Member state to the other. Additionally, the authorities in charge, their powers and the relevant databases are also varied and structured differently from one country to the other. A closer look at practical issues in this area is necessary in order to understand the possibilities offered (and to be able to use them!) by different legal systems and European instruments in the field of asset forfeiture.

Method: Presentations complimented by discussions

Objectives: The objective of this seminar is twofold: first, to help practitioners understand and use the variety of possibilities existing across different member states to restrain the proceeds from crime and identify good practice. Secondly, to enhance communication and cooperation in this field between judicial and law enforcement authorities.

To have a general landscape on international and European instruments related to asset recovery, participants are directed to consult:

- Overview of the International and European Legislation relating to Asset Recovery (slides).

For the most widely used **international** instruments on asset recovery, participants are invited to review:

- European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20.IV.1959,
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 17.III.1978,
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 8.XI.2001,
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 8.XI.1990,
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw, 16.V.2005,
- United Nations Convention against Transnational Organized Crime and the Protocols Thereto, United Nations 2000.

For the most widely used **European Union** instruments on asset recovery participants' attention is drawn to the following legal acts:

- Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence,
- Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property,
- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties,
- Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders,

National regulatory frameworks have also evolved in the area of asset recovery, partially in response to the development of EU legislation. Experiences, regulatory choices, institutions and procedures of national legal systems will be discussed in parallel with practical results, gaps and shortcomings of the national implementation of EU legislation in the area asset recovery. In this regard participants may also wish to make recourse to:

- National responses to asset recovery – institutions, procedures and experiences (slides).



Given the fragmented nature of the current EU regime on asset recovery topped with insufficient implementation, it has been the long standing policy of the EU to introduce comprehensive legislation in this field. In order to appreciate the regulatory objectives of the EU and its recently tabled legislative proposal participants are invited to consult the following:

- Communication from the Commission to the European Parliament and the Council, Proceeds of organised crime Ensuring that "crime does not pay" Brussels, 20.11.2008 COM(2008) 766 final,
- Gaps and shortcomings of the current EU regulatory framework (slides),
- New directions in EU legislation (slides),
- Proposal for a Directive of the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union {SWD(2012) 31 final} {SWD(2012) 32 final} Brussels, 12.3.2012 COM(2012) 85 final 2012/0036 (COD)

For a complete overview of how asset recovery is facilitated by inter-agency cooperation through the EU National Asset Recovery Offices, what roles does Europol play in asset recovery related to cross border criminal cases and what is the CARIN Network participants are directed to the following materials:

- The Camden Asset Recovery Inter-Agency Network (CARIN), EU National Asset Recovery Offices (AROs) and Europol's Role in Asset Recovery (slides),
- Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime,
- Notifications received on Council Decision 2007/845/JHA Brussels, 20 October 2011.
- Table of national Asset Recovery Offices

For a better understanding of the practical issues and difficulties of asset recovery may want to have recourse to the following document:

- Workshop: practical issues relating to identification, tracing, freezing and confiscation of assets (slides)