European Commission

PREVENTION AND FIGHT AGAINST ORGANISED CRIME

Confiscation

DG MIGRATION AND HOME AFFAIRS

Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Introduction

- The confiscation of criminal assets is an essential tool to fight organised crime which is prioritised at EU level.

- Organised crime is profit driven. Confiscation attacks the core motive behind organised crime.

- It prevents that criminal wealth be used to infiltrate the legal economy and corrupt legitimate society.

- It returns assets derived from crime to States and citizens.

- It makes it possible to attack the decision-makers (normally removed from day-to-day operations).

- Confiscation may have a deterrent effect by making known that criminals will not be allowed to enjoy their illicit wealth ("crime does not pay")

Key features of EU legislation on confiscation

- The EU legal framework only applies to criminal proceedings and the issuance of confiscation orders generally requires a criminal conviction.

- Some Member States and third countries apply also non-conviction based (NCB) procedures, which have proven to be very effective in targeting criminal assets.

- Directive 2014/42/EU introduces binding provisions at EU level on third party confiscation and covers some cases normally addressed by NCB confiscation procedures.

The current EU legislative framework

- *Framework Decision 2001/500/JHA on money laundering, asset freezing and confiscation*
- *Framework Decision 2003/577/JHA on the mutual recognition of freezing orders*
- *Framework Decision 2005/212/JHA on extended confiscation*
- *Framework Decision 2006/783/JHA on the mutual recognition of confiscation orders*
- *Council Decision 2007/845/JHA on Asset Recovery Offices*
- *Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime*

Framework Decision on Extended Confiscation (2005)

- Obligation to enable confiscation for offences providing deprivation of liberty for more than 1 year

- Aims at providing extended confiscation powers

- Minimum rules allowing confiscation for serious crimes (organised crime and terrorism) if offence generated financial gain

- Provides alternative criteria for extended confiscation (property derived from criminal activities; from similar criminal activities; value of property disproportionate to lawful income)

- Commission issued implementation report in 2007

Aim of Directive 2014/42/EU

- Facilitate the confiscation of the proceeds of crime, in particular:

- *attacking the financial incentive which drives most organised crime*
- *protecting the EU economy against infiltration by criminal groups*
- *returning assets to governments and citizens.*

- The Directive draws on international Conventions and best practice recommendations (notably the work of CARIN).

- It aims at simplifying existing rules and filling gaps which have benefited criminals.

Content of Directive 2014/42/EU Scope (Art. 3)

-The Directive does not apply to all crimes, but only to specific offences (eg drug trafficking, trafficking of persons, sexual exploitation of children, money laundering, corruption, organised crime, cybercrime), if such offences have been already harmonised at EU level

-In implementing the Directive, Member States are free to apply these provisions to other offences as well

- The Directive can apply also to future EU instruments criminalising other offences

Confiscation - (Art. 4)

Requires Member States to:

- **enable the confiscation of proceeds and instrumentalities after a final conviction**
- **enable the confiscation of property of equivalent value to the proceeds or instrumentalities**

Enables confiscation in case of flight and illness of a suspect, by using in absentia proceedings or other proceedings.

Non-conviction based confiscation

- No agreement was reached during the negotiations on introducing provisions on NCB confiscation.

- The cases of flight and illness are covered through in absentia or other procedures.

- The European Parliament and the Council asked the Commission to analyse the feasibility and possible benefits of introducing NCB confiscation. The Commission should deliver this analysis in 2018.

Extended confiscation (Art. 5)

- Extended confiscation applies to offences liable to give rise to an economic benefit and

- **punished with a custodial sentence of a maximum of at least four years**
- **to some offences punished with a lower penalty threshold (including corruption and cybercrime).**

*- A court must be **satisfied** that the property in question has derived from **criminal conduct**, on the basis of the circumstances of the case.*

Third party confiscation (Art. 6)

- Enables confiscation if the third party knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation, based on concrete facts and circumstances.

- These include that the transfer was carried out for free or for an amount significantly lower than market value.

-Third party confiscation cannot prejudice the rights of bona fide third parties.

Freezing (Art. 7)

- The Directive enables freezing measures that can be ordered by competent authorities other than courts (eg prosecutors)

- Such measures should include precautionary freezing measures (ordered by the police, or the FIU) in urgent cases

- It enables freezing measures also against third parties.

Safeguards (Art. 8)

- The Directive introduces safeguards at EU level (in line with the EU Charter on Fundamental Rights) aimed at ensuring

- *the respect of the presumption of innocence,*
- *the right to a fair trial,*
- *the existence of effective judicial remedies,*
- *the right to be informed on how to exercise them.*

Effective execution of confiscation orders (Art. 9)

- Asset tracing and freezing measures can be taken after the final conviction, in order to confiscate assets for the full amount of an unexecuted confiscation order

- This measure will allow the police and prosecutors to continue investigations on the assets of a convicted person when confiscation was ordered, but insufficient assets were confiscated.

- This provision should prevent assets successfully hidden by criminals from "resurfacing" years later.

Asset Management - (Art. 10)

- The Directive requires Member States to have in place adequate structures (such as centralised Asset Management Offices or equivalent structures) in order to properly manage assets frozen before confiscation

- The Directive requires Member States to grant to their agencies the powers to realise frozen assets which are liable to decline in value

- It also foresees non-binding provisions on the social reuse of confiscated assets.

Statistics (Art. 11)

The Directive requires Member States to regularly collect and send to the Commission annually at least:

- the data on freezing and confiscation orders (number of orders and value)
- the data on cross-border freezing and confiscation orders, if available at a central level

Transposition and reporting

- The Directive was adopted in April 2014. It should have been transposed by the Member States by 4 October 2016.

- By 4 October 2019 the Commission is due to submit to the European Parliament and the Council a report on the impact of national laws on confiscation and asset recovery, assorted if necessary with new proposals.

Notifications received by the Member States

- 24 Member States (AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK) notified transposing measures and stated that transposition is complete

- 2 Member States notified transposing measures and stated that transposition is partial (BG, RO)

- The United Kigdom and Denmark do not participate in this Directive.

Council Decision 2007/845/JHA

- Covers exchange of information and cooperation among Asset Recovery Offices (AROs) of the EU Member States

- Based on the successful experience of CARIN

- Obliges EU MS to set up or designate national AROs which will act as national contact points.

- Obliges AROs having different legal nature to exchange information and best practices and to cooperate.

- Provides a framework for a spontaneous exchange of information between AROs

- To be implemented by December 2008, Commission report issued April 2011

-Today all MS have operational AROs

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Council Decision 2007/845/JHA

- AROs should exchange information within the time limits foreseen in Framework Decision 2006/960/JHA:

- **Urgent + accessible database: 8 hours**
- **Non-urgent + accessible database: 1 week**
- **Non-urgent: 2 weeks**

- Request form should specify the reasons for the request, the nature of proceedings and the details on property targeted or sought

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THANK YOU FOR YOUR ATTENTION!

QUESTIONS?