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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**

**(CDPC)**

**COMMITTEE OF EXPERTS**

**ON THE OPERATION OF EUROPEAN CONVENTIONS**

**ON CO-OPERATION IN CRIMINAL MATTERS**

**(PC-OC)**

**Special session on international co-operation as regards the seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing during the 67<sup>th</sup> meeting of the PC-OC plenary (19 November 2014)**

**Questions proposed by the moderators during the panel discussions and the workshops**

**Reports of the discussions by the Rapporteurs**

**Contribution by Mr Branislav BOHACIK (Slovak Republic)**

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## PANEL DISCUSSIONS IN THE PLENARY

**Moderator: Prof Barbara Vettori (Italy)**

**Panellists: M. Pascal Gossin (Switzerland), Mr Jack de Kluiver (USA), Ms Maria Kyrmizi (Cyprus), Mr Evert van der Steeg (Netherlands)**

### **1. Panel discussion on international co-operation as regards search, seizure and management of proceeds of crime**

What happens when another country asks your country for cooperation regarding search, seizure and management of proceeds of crime?

More in detail:

- how shall requests for cooperation be transmitted to your country (competent office/format/prerequisites)?
- how can you cooperate in identifying & locating the assets?
- how can you assist the requesting country with asset seizure?
- do you, in the meanwhile, manage the money/assets, so as to prevent deterioration/depreciation? if so, how? and who is doing it (is there any ad hoc/dedicated agency in charge of asset management)?

In responding these questions, please refer to relevant treaties/pieces of legislation, and, as much as possible, to concrete practices, using real cases to illustrate key problems and best practices.

### **2. Panel discussion on international co-operation as regards confiscation and sharing of confiscated assets**

What happens when another country asks your country for cooperation regarding confiscation?

More in detail:

- how shall requests for cooperation be transmitted to your country (competent office/format/prerequisites)?
- do you provide cooperation in relation to any confiscation order (e.g. object based, value based and non-conviction based) or not? In particular, what about foreign confiscation orders adopted outside criminal proceedings (civil confiscation)?
- shall the foreign confiscation order be recognised by your country, what happens next? Is there any asset asset sharing? if not, what alternative arrangements are made?

In responding these questions, please refer to relevant treaties/pieces of legislation, and, as much as possible, to concrete practices, using real cases to illustrate key problems and best practices.

Short biography of the moderator:

*Barbara Vettori (1976), MSc in Criminology and Criminal Justice (Cardiff University, 2004) and Ph.D. in Criminology (University of Trento, 2004), is Assistant Professor in Criminology at the Faculty of Political and Social Sciences, Università Cattolica del Sacro Cuore, Milan, where she teaches methodology for criminological research and statistics and techniques for crime data analysis. Member of the Department of Sociology of the same University.*

*She has 15 years of professional experience in the field of criminological research. In this time span, she took part as project manager in a variety of cross-border research and spoke at several international conferences. Her main research interests are organised and economic crime and the evaluation of related contrast policies, in particular, anti-money laundering regulation and confiscation legislation and, more recently, legislation on the disposal of confiscated assets and on criminal liability of legal entities. Since 2007 she has been member of the Informal Expert Group on Confiscation and Assets Recovery of the European Commission, DG Home Affairs and, since 2013, of the ARO Platform Subgroup on the Asset Management established by the same DG. She has also been member of the ARO Platform Subgroup on the Reuse of Confiscated Assets of the European Commission, as well as international expert for OSCE on confiscation and criminal liability of legal persons.*

*Her publications include the following: Vettori B., Kolarov T., Rusev A. (2014), Disposal of confiscated assets in the EU Member States: laws and practices, Center for the Study of Democracy: Sofia; Vettori B. (2010), "La confisca dei proventi illeciti in Europa tra efficacia e rispetto dei diritti umani" (Proceeds from crime confiscation in Europe between effectiveness and the protection of human rights), in N. Capus, J.-L. Bacher (edited by), Strafjustiz zwischen Anspruch und Wirklichkeit – Le système de justice pénale; ambitions et résultats, Bern: Stämpfli; Vettori B., Kambovski V., Misovski B. (2010), Implementing proceeds from crime confiscation in the aftermath of the 2009 reform in the Criminal Code, Skopje: OSCE; Vettori B. (2006), Tough on Criminal Wealth. Exploring the Practice of Proceeds from Crime Confiscation in the EU, Dordrecht: Springer.*

## WORKSHOP 1

# INTERNATIONAL COOPERATION IN SEARCH, SEIZURE AND MANAGEMENT OF PROCEEDS OF CRIME

### Questions prepared by the Moderators

Moderators: Mr. Declan O'Reilly (Ireland), Ms. Desislava Gotskova (Bulgaria)

Rapporteur: Ms Merja Norros (Finland)

### Part I – International cooperation in asset tracing and identification - 60 min

#### Introduction

Nowadays, financial/asset recovery investigations are considered an integral part of any comprehensive crime strategy because proceeds of crimes generating huge income and liquidity are usually converted into assets ranging from cash held in bank accounts to real estate, vehicles, livestock, artworks, company shares, businesses, collector's items, etc.

While the concept of the state taking proceeds from crime away from criminals has been, in some way, reflected in legal systems for many years, the encouragement and development of a large scale, internationally recognized effort to remove criminal assets from gangsters is a relatively recent phenomenon.

Unquestionably, pursuit of proceeds of crime is an area of international cooperation which is most impacted by the startling advances in technology and globalisation in our modern times. We live in an age where the transfer of millions of dollars, across national borders, can occur in an instant. Therefore, traditional domestic investigative techniques, let alone those used in the context of international cooperation, cannot adequately address asset tracing and gathering evidence of modern financial and economic interaction.

The challenge is to develop a system of cooperation amongst states which, at a practical level, will permit investigators to track the flow of funds in the electronic world of the future, as well as to trace and identify assets located in different jurisdictions.

#### Questions to be discussed:

1. Re: application of international instruments in practice  
In your practice, how often you deal with international asset tracing requests? Which main international instruments do you apply in these cases? Would you please identify the main obstacles (legal/practice) in executing asset tracing requests?  
  
Re: swift and efficient exchange of information
2. Would you please identify the main mechanisms through which your country can assist in the identification and tracing of criminal assets? Do you provide any informal investigative assistance to foster and speed up the exchange of information, e.g. through professional networks?
3. Is there a central Asset Recovery Office (ARO) in your country? Do you think that a specialized ARO would be a good model to follow?

4. Do you think there is a good practice example for a mechanism for swift exchange of information/execution of asset tracing requests which you would like to share with the rest of the participants?
5. Recommendations

## **Part II– International cooperation in seizure and management of assets – 60 min**

### Introduction

Efforts towards asset confiscation are of little value if, at the end of the day, no asset is available for confiscation. Given that assets can be hidden or moved out of reach in a short period of time and that an investigation and confiscation can take years (offering the target time to move or dissipate assets), it is critical that measures are taken early on to secure the assets than may become subject to confiscation. These measures are referred to as provisional measures, and they include seizure and restraint of assets.

Seizure involves taking physical possession of the targeted asset. Restraint orders are a form of mandatory injunction issued by a judge or a court that restrains any person from dealing with or disposing of the assets named in the order pending the determination of the confiscation proceedings.

Once assets have been secured through provisional measures, authorities need to ensure the safety and value of the assets until they are eventually confiscated (or released) – potentially, a period of years. These control mechanisms are sometimes capable of working effectively over assets without any need for ongoing supervision and management. For example, once an order to restrain or seize a bank account has been served to the bank, the bank can usually be relied on to ensure that the account is blocked effectively. Other assets may require more-targeted approaches to ongoing maintenance, control and management – assets such as luxury real estate, exotic or valuable livestock, luxury vehicles, etc. It is essential for any asset confiscation system to have both:

- The flexibility to control and manage such assets pending confiscation
- The ability to realize them and pay the proceeds to the state or other authorized recipients after confiscation.

There are different asset management systems and regulations:

- Specialised Asset Management Office (AMO) – a specialised agency with responsibility to manage seized and restrained assets, hire qualified personnel, conduct pre-restraint planning and analysis, and coordinate post-confiscation realization or liquidation;
- Asset management unit with an existing agency – an unit dedicated solely to the duties of managing assets subject to confiscation is established within an existing governmental agency. Logically, this is often an agency with ready expertise in asset management
- Outsourcing asset management – In those countries where establishing an AMO or co-opting an existing agency is not an option, engage private, locally available property trustees

Questions to be discussed:

1. Are there any legal limitations to the types of freezing orders you could enforce (e.g., pecuniary, substitute value, non-conviction based, etc.) and/or to the court stages (final, non-appealable, etc.)?
2. What is the asset management system in your country?
3. Please, identify any legal/practical impediments for executing a foreign freezing order?
4. Is there a central Asset Management Office (AMO) in your country? Do you think that a specialized ARO would be a good model to follow?
5. Recommendations

Short biography of Ms Gotskova

*Ms Desislava Gotskova is a lawyer with experience in international cooperation in judicial and police matters, especially in financial and asset recovery investigations. She worked at the International Department of the Bulgarian Criminal Asset Commission since its establishment in 2006 where she was responsible for international cooperation of the Commission with partner agencies and institutions in other jurisdictions, as well as with international organisations such as Camden Asset Recovery Interagency Network (CARIN), Asset Recovery Offices (ARO) Platform, Interpol, Europol, Eurojust, UNODC, World Bank, etc. Ms Gotskova was a CARIN contact point for Bulgaria and a member of the CARIN Steering Group. She participated in the regular ARO Platform meetings since its establishment. From 2010 till 2013 she was seconded to the Europol Criminal Asset Bureau where she supported financial investigations and the CARIN Secretariat.*

*Currently, Ms Gotskova works for the Ministry of Justice as a chief expert.*

*Ms Gotskova holds a master degree in International and European Law from the University of Amsterdam and a master degree in Law from the University of Sofia.*

Short biography of Mr O'Reilly

*Declan O'Reilly was appointed Bureau Legal Officer of the Criminal Assets Bureau in 2012. He was admitted to the Roll of Solicitors for Ireland in 2002, for England & Wales in 2010, and previously worked with the Chief State Solicitor's Office where he was Head of Section of the CAB Section. He currently advises the Bureau on a wide range of matters including: proceeds of crime; tax; social welfare; and anti-money laundering. Declan is the judicial expert for Ireland of the Camden Assets Recovery Interagency Network, a network of 53 jurisdictions involved in criminal assets recovery, and recently chaired its AGM. He also represents Ireland at EU Asset Recovery Office meetings. He speaks frequently both nationally and internationally on the subject of recovering the proceeds of crime.*

## Report of the discussions by the rapporteur Ms Norros (Finland)

### I Assets Tracing

The workshop first discussed international cooperation in assets tracing. What is the role of the Central Authority? Do Central Authorities deal with requests regarding assets tracing? In other words, do the Central Authorities describe their role as “passive” or “active”?

- In general Central Authorities have a rather active role. They are, for instance, revising outgoing requests and monitoring execution of incoming requests.
- Regarding, in particular, assets tracing, the majority of experts defined the Central Authorities to have rather passive role in this respect. The reason is, they are not competent authorities in tracing. Instead, other authorities, such as police, are responsible for tracing. For example, the United Kingdom defined it has a rather passive role in assets recovery. Many Central Authorities explained they do not have executive powers, but concentrate more on quality control and passing requests to the competent authority in their country. Usually the police are the competent authority.
- However, some states (such as USA) told that their Central Authority plays an important role in assets tracing, especially regarding searching of bank accounts. Furthermore, Israel described it has “a small but active” Central Authority and that they work in close cooperation with prosecutors and courts. The Slovak Central Authority (General Prosecutor’s Office) noticed that it can execute requests itself.

The workshop discussed whether templates for requesting states are needed to prepare requests properly.

- Some member states (USA) have model forms or formats for requesting states.
- It is more common to have model requests for member states’ own use than for other states.
- UK referred to the website of the UKCA and useful instructions there.

The workshop discussed also, which types of properties are searched.

- The experts told that tables have been made in order to better understand how to trace different objects. These helpful tables have been prepared under special projects (CEART).

The participants of the workshop were asked how many experts are aware of AROs (assets recovery office). It appeared that more than 10 experts were familiar with AROs.<sup>1</sup> In fact, there are many networks in this field:

- CARIN = The Camden Asset Recovery Inter-Agency Network. CARIN is an informal grouping of contacts dedicated to improving cooperation in all aspects of tackling the proceeds of crime. The CARIN permanent secretariat is based in Europol headquarters.
- The Egmont Group. (In 1995 a group of Financial Intelligence Units (FIUs) met in Brussels and decided to establish an informal group for the enhancement of international cooperation.)
- The World Bank together with the United Nations Office on Drugs and Crimes has launched Stolen Assets StAR Initiative in 2007. It is intended to help developing nations recover stolen, embezzled or corruptly obtained state funds.

It was proposed to add corresponding links to the PC-OC website.

The experts discussed about providing spontaneous information in relation to assets tracing. Some member states have received spontaneous information and forwarded it to competent authorities for necessary measures.

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<sup>1</sup> Rapporteur’s remark: it could be a useful home exercise that PC-OC experts would find ARO and other contacts in their own country.

## II Assets Management

Secondly, the workshop discussed assets management. Approximately 8-9 member states (e.g. Italy) informed that they have special agencies for this function. Moreover, it is possible to outsource the assets management. One state (Israel) informed that they move the seized funds to a custodian for management purposes.

The following questions were debated:

- How to deal with difficult objects, such as race horses or other animals? Attention should be paid also to immovable property and use specialists in this field, if possible. One should also learn from one's mistakes. It is important to thoroughly consider the risks beforehand.
- Ireland emphasized some good points of non-conviction based confiscation. Is possible to handle both criminal case and non-conviction based forfeiture in parallel.
- A separate issue is liability for damages.

In sum: Freezing and confiscation are relatively difficult subjects in judicial cooperation, but the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) form a solid basis for cooperation. In this context, attention should be paid to specific terms in the Convention, to understand the difference between object/value based cooperation, to apply the convention widely as well as to make use of all possible networks. International cooperation and creating best practice is of utmost importance.

## WORKSHOP 2

# INTERNATIONAL COOPERATION IN CONFISCATION AND SHARING OF CONFISCATED ASSETS

### Questions prepared by the Moderators

Moderators: Mr Nico Geysen (Belgium), Ms Silvija Panovic (CoE, Serbia)

Rapporteur: Ms Wietske Dijkstra (Netherlands)

Overall aim/s of the WS 2:

At the end of the WS 2 an overview of the existing situation with the clear understanding of the time needed (a swift or time-consuming exercise) and efficiency (smooth or difficult and effort consuming) of the process should be available.

This overview should enable identifying main gaps and/or obstacles for the effective and efficient rendering of assistance regarding enforcement of confiscation order and should contribute to the foreseeability of the confiscation order/s outcome.

In addition, future steps aiming at improving the international co-operation in confiscation and sharing of confiscated assets should be agreed upon.

Questions that will be asked:

1/ Is your jurisdiction able to execute confiscation orders on request of other jurisdictions and how does it work in practise concerning:

- a) OBJECT confiscation (foreseen in ETS 141 and ETS 198)
- b) VALUE confiscation (foreseen in ETS 141 and ETS 198)
- c) EXTENDED confiscation
- d) non conviction based confiscation

Please list the requirements for and authorities to enforce confiscation order with the specific focus on modality of enforcement – direct/indirect and legal basis – the CoE convention, bilateral agreement, etc.

For 1/ it is expected to get the detailed information on different systems of confiscation, including requirements of implementation specific for each of the confiscation modalities listed under a) – d). That will contribute to the clarity and predictability of the confiscation orders outcome in each of the cases – a), b), c) or d). It is expected that most of the jurisdictions will have possibilities a/ and b/ in more or less the same way, while for c/ and d/ cooperation might not be available or only under very specific circumstances requiring determination of future measures/solutions.

2/ When the confiscation order is executed in your jurisdiction, what will happen with the confiscated assets? Do the following possibilities exist and how is it done in practise?

- a) Assets stay in own jurisdiction
- b) Asset sharing

c) Compensation of victims

For 2/ it is expected that participants will be able to provide detailed information (legislation / jurisprudence) on which of the options is used (one or more) and under which conditions.

3/ What will happen with the assets that are confiscated on request of another jurisdiction? Transfer to Finance department, special fund,...

For 3/ we expect participants to provide us with success stories on how confiscated assets were used not only for the State budget but also on social re-use and special funds.

Short biography of Ms Silvija Panovic-Djuric

*Acquired LLM degree in criminal law in 1988 and subsequently employed as Teaching Assistant for Criminal and Criminal Procedure Law at the Belgrade Law Faculty. Professional experience closely linked with human rights and rule of law issues through research, teaching and project designing/implementation. Worked with numerous NGOs teaching about international criminal law (ICC, ICTY) and human rights. Target group varied from police officers, prosecutors, judges to students and journalist. Published two books and numerous articles. For the last 10 years works for the CoE.*

## **Report of the discussions by the rapporteur Ms Dijkstra (Netherlands)**

One of the conclusions was that there appear to be enough instruments to execute prejudgement seizure and confiscation judgements. But are they being used correctly? Each country has its own system for seizure and confiscation.

The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) mentions both value confiscation and object confiscation. The key principle is that these systems - which are different from each other - must be respected when it comes to search and seizure and taking over each other's criminal judgements. However this leads to many practical problems, not least because different countries interpret value and object confiscation differently. The national differences include the link between the criminal offence and the objects or value being confiscated and the link between suspect/(convicted) person and the asset. In an ideal world it would be possible to effect value and object confiscation (search and seizure) in all cases, both in the prejudgement and execution phases.

Other forms of confiscation, such as Non Conviction Based Confiscation (NCBC) and extended confiscation (including the reversal of burden of proof) are also treated differently in the various countries. There is a need to look beyond the terms that are used and to gain an actual insight into the different systems used by the countries in order to bring about mutual understanding of each other's systems. It should be noted that NCBC/civil forfeiture is not (by definition) contrary to the ECHR. Ideally, extended execution would also form a basis for seizing criminal assets. But in practice we need to focus step by step and look for solutions to the problems that might be encountered.

It was notable that none of the PC-OC members appeared to have much experience with confiscation. There seems to be a lack of knowledge of each other's systems. The search, seizure and taking over the confiscation order is often viewed and treated separately from other legal assistance such as extradition and Mutual Legal Assistance (MLA). Training courses in the individual countries could go some way to closing the knowledge gap. Awareness could be achieved and best practices exchanged.

When search and seizure proves fruitless, states can and/or do not proceed with confiscation. It is therefore of great importance that in this case, too, a closer look is taken at the systems behind the definitions and that states set out to cooperate as fully as possible within the constraints of their own legislation. The use of formal and informal networks is very useful. If those involved know each other, they are willing to move up a gear and to work together more creatively. A meeting held before taking action at which each other's possibilities are considered often pays off. In cases where, for example, it must be concluded that it is not possible to take over a (future) criminal judgement owing to legal obstacles, it can be decided to open a money laundering investigation in the 'requested' state. People will be more willing to do this if they know each other. CARIN is a very valuable network (<https://www.europol.europa.eu/content/camden-asset-recovery-inter-agency-network-carin-leaflet> ), and so are the AROs (Asset Recovery Offices, which can be used to gain information and contact persons).

There is a pressing need for the PC-OC to place information about confiscation, search and seizure and asset sharing on the website, including a link to the CARIN NETWORK, the contact persons in particular. It is important to keep this information up-to-date. As for measures at PC-OC level: European Court decisions could be published on the PC-OC website, for example.

Asset sharing: one thing all countries have in common is that compensation for victims is considered very important, but here too difficulties can arise. The same applies to asset sharing as to confiscation. The available options must be considered. Direct contact and knowledge are an indispensable aspect of this.

The PC-OC could play an effective role here by clarifying the legislation in the various areas among the parties, how it works in practice, exchanging best practices and making a link to the CARIN contact persons and the AROs so that these experts can be deployed where necessary.

## **CONTRIBUTION by Mr Branislav BOHACIK (Slovak Republic)**

The Slovak Republic has the experience, as a Requested State, with requests for legal assistance based on 1959 Convention and its Additional Protocol, aiming at seizure/freezing of the proceeds of crimes (in particular money on the bank accounts). It seems that 1959 Convention does not provide the sufficient legal basis for such a cooperation. Therefore the Slovak Republic wishes to discuss the following issues:

### **I. Application of the European Convention on Mutual Assistance in Criminal Matters**

#### **a) To what extent, if any, the European Convention on Mutual Assistance in Criminal Matters (Strasbourg 20 April 1959) and its two Additional Protocols may be applied for the purposes of seizure of the proceeds of crimes (in particular money on the bank account)?**

The aim of the European Convention on Mutual Assistance in Criminal Matters is in particular the cross-border obtaining evidence and things necessary for criminal proceedings. The Explanatory Report highlights the broad scope of cooperation covered by Article 1 para 1. Article 3 para 1 of the said Convention provides for the purposes of the letters rogatory, which is the „procuring evidence or transmitting articles to be produced in evidence, records or documents“. In addition to this, Article 6 para 2 of the Convention presupposes that property (in the French version „objet“) will be returned to the requested state. The Explanatory Report provides an important clarification, that the word „property /objet“ refers to the evidence in Article 3 para 1. It also states that „the requesting Party may not dispose of such property even in a case, where under its own legislation it is obliged to decide the question of its ownership.

With regards to Article 6 para 1 the Explanatory Report makes a reference to Article 20 of the European Convention on Extradition.

Additional Protocol to the 1959 Convention changed the rules in order to the refusals for the fiscal offences. However, we are of the opinion that it should be interpreted within the meaning of the mother Convention. Therefore it should be applied in relation to property (objet) within its meaning provided in Article 3 para 1 of the 1959 Convention (including Article 6 of the 1959 Convention).

We believe that 1959 Convention cannot be used for the purposes of seizure/freezing of proceeds of crimes (in particular money on bank accounts).

#### **b) In case of a positive answer to question a):**

##### **i) What kind of guarantees exist for subsequent confiscation and the responsibility of the states concerned for any damages?**

It is important to have a clear understanding of the subsequent measures. The 1959 Convention does not provide for any further measures after the seizure (the aim of which is, according to the Explanatory memorandum, production of evidence). There is even no provision allowing to ask for guarantees that the future confiscation of proceeds is expected. Finally, no provision of 1959 Convention regulates the confiscation. If some states believe that 1959 Convention could provide legal basis for seizure/freezing with a view to confiscation, how do they consider the issue of damages?

##### **ii) Is it possible to apply 1959 Convention to seizure/freezing of money on the bank account (in particular with a view to confiscation)?**

We have no difficulties with cash, which may be used as evidence without any doubts. However, money on bank account may have different legal status in the Parties to the Convention. It is clear that

drafters of the 1959 Convention could not have had an idea about the possible development in technologies and the existence of „virtual“ money.

We also believe that such the development was one of the reasons for the adoption of modern legal instruments on money laundering and financing of terrorism either within the United Nations or the Council of Europe. The modern Council of Europe instruments contain provisions on international cooperation in criminal matters, in particular on seizure or freezing with a view to confiscation and confiscation itself.

In some states money on the bank account is considered a claim, not a thing (objet) in a legal term.

We believe that 1959 Convention cannot be applied for the purposes of seizure/freezing money on the bank account.

## **II. Application of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg 8 November 1990) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism**

**(Warsaw 16 May 2005)**

Basically the following issues arise in relation to the application of provisions on international co-operation:

### **a) Dual Criminality, Seizure/Freezing and Confiscation**

The Warsaw Convention (Article 28 para 1 lit g) as well as Strasbourg Convention (Article 18 para 1 lit e) contain the obligation to take provisional measures, such as freezing or seizure to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request. For provisional measures, dual criminality is considered in abstracto. However, for the purposes of confiscation, dual criminality is considered in concreto.

In practice, the time between provisional measures and final measures may take years. It seems that there is a gap between provisional measures and confiscation. What decision should be taken in the Requested State on the request for freezing/seizure of e.g. bank account, where it is clear at the time of the execution of a request, that no confiscation is possible (e.g. due to an absence of dual criminality in abstracto)? Should a request be refused? If not, who should be responsible for possible damages? (For instance, the freezing/seizure of money for a few years may cause a bankruptcy).

### **b) Grounds for refusal – fiscal excuse (Article 18 para 1 lit d), Article 28 para 1 lit d)**

The fiscal nature of the offence is covered by the dual criminality issue, as well as the separate provisions in both Conventions. The fiscal nature of the offence is the ground for refusal itself, which may be applied to the request for provisional measures.

Under the so called fast-track procedure the tax offences will be added to the list of crimes under Warsaw Convention. However, Article 28 para 1 lit d) and g) is not covered by the fast track procedure and therefore, will remain unchanged. Would it be possible to apply such grounds for refusal to provisional measures in tax crimes? Grounds for refusals are the „may“ provision, which provide the Parties with the possibility to apply it. Would this possibility remain unchanged after the addition to the list of offences is adopted?