

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 24/11/2014  
[PC-OC/DOCS2014/PC-OC(2014)13 rev.]  
<http://www.coe.int/tcj>

PC-OC(2014)13 rev.  
English only

**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**

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

## 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

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.*

## WORKSHOP 2

### INTERNATIONAL COOPERATION IN CONFISCATION AND SHARING OF CONFISCATED ASSETS

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.*