Fight against cross border organised crime: national Asset Recovery Office, tracing and identification of proceeds of crime. Initiative Austria, Belgium, Finland

2006/0805(CNS) - 06/12/2007 - Final act

PURPOSE : to establish rules for cooperation between Asset Recovery Offices of the Member States with regard to tracing and identification of proceeds from, or other property related to, crime.

LEGISLATIVE ACT : Council Decision 2007/845/JHAconcerning 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.

CONTENT : The Council adopted this Decision concerning arrangements for cooperation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from crime. Since the main motive for cross-border organised crime is financial gain, law enforcement services should have the necessary skills to investigate financial trails of criminal activity. In order to combat organised crime effectively, information that can lead to the tracing and seizure of proceeds from crime and other property belonging to criminals has to be exchanged rapidly between the Member States of the EU. It is therefore necessary that close cooperation takes place between the relevant authorities of the Member States involved in the tracing of illicit proceeds and other property that may become liable to confiscation and that provision be made for direct communication between them.

To that end, this Decision will allow Member States to put in place national asset recovery offices with competences in these fields and will ensure that these offices can rapidly exchange information.

The main points are as follows:

-each Member State will set up or designate a national Asset Recovery Office, for the purposes of the facilitation of the tracing and identification of proceeds of crime and other crime related property which may become the object of a freezing, seizure or confiscation order made by a competent judicial authority in the course of criminal or, as far as possible under the national law of the Member State concerned, civil proceedings.

A Member State may, in conformity with its national law, set up two Asset Recovery Offices. Where a Member State has more than two authorities charged with the facilitation of the tracing and identification of proceeds of crime, it shall nominate a maximum of two of its Asset Recovery Offices as contact point (s);

-Member States must ensure that their Asset Recovery Offices co-operate with each other by exchanging information and best practices, both upon request and spontaneously. Member States must ensure that this cooperation is not hampered by the status of the Asset Recovery Offices under national law, regardless of whether they form part of an administrative, law enforcement or a judicial authority;

-an Asset Recovery Office may make a request for information and use the procedures provided for under the Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities. The grounds of refusal of that Framework Decision shall apply;

-the requesting Asset Recovery Office must specify the object of and the reasons for the request. It must also provide details on property targeted or sought (bank accounts, real estate, cars, yachts and other high value items) and/or the natural or legal persons presumed to be involved (e.g. names, addresses, dates and places of birth, date of registration, shareholders, headquarters). Such details shall be as precise as possible;

-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 the Decision;

-Member States will ensure that the Asset Recovery Offices exchange best practices concerning ways to improve the effectiveness of Member States' efforts in tracing and identifying proceeds from, and other property related to, crime which may become the object of a freezing, seizure or confiscation order by a competent judicial authority;

-on data protection, the Decision provides that each Member State must ensure that the established rules on data protection are applied also within the procedure on exchange of information provided for by the Decision. The use of information which has been exchanged directly or bilaterally under the Decision shall be subject to the national data protection provisions of the receiving Member State, where the information shall be subject to the same data protection rules as if they had been gathered in the receiving Member State. The personal data processed in the context of the application of the 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 the Decision;

-lastly, by 18 December 2010 the Council shall assess Member States' compliance with this Decision on the basis of a report made by the Commission.

APPLICATION : 18/12/2007.

IMPLEMENTATION : Member States shall ensure that they are able to cooperate fully in accordance with the provisions of the Decision by 18 December 2008.