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

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The Commission presents a report on Member States' compliance with Council Decision 2007/845/JHA which requires Member States to set up national Asset Recovery Offices ("AROs") to facilitate, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime. The Decision allows the AROs to exchange information and best practices, and requests AROs to exchange information under the conditions laid down in Framework Decision 2006/960/JHA ("the Swedish Initiative").

The report discusses Member States' implementation of each of the provisions. As the core provisions of the Decision relate to the establishment or designation of the AROs and to their exchange of information, the degree of implementation of the Decision in Member States can be considered as **moderately satisfactory**. Twenty-two Member States have AROs in place and notified the Commission by the end of 2010, two years after the deadline set by the Decision. Five Member States have not yet designated their ARO. As any network is only as strong as its weakest link, this may substantively hamper the Member States' capacity to trace illicitly acquired assets across the EU. The Commission expects all those Member States which have not yet implemented this Decision to do so without delay.

The report notes also that AROs consider that **access to financial information** (notably to bank account information) is the most important challenge they face. Their second most relevant concern is the **lack of a secure system to exchange information**. Other recurrent challenges mentioned by the AROs are the following:

- financial investigators receive little specialized training and, more generally, that they lack resources;
- the differences in the national legislation on what information can be accessed by AROs;
- AROs limited links with the authorities in charge of asset management;
- the lack of an evaluation system for the AROs;
- the data protection or bank secrecy provisions and
- the fact that registers of bank accounts do not exist in all Member States.

Information exchange: currently, sensitive information is often exchanged via e-mail, which may pose a certain security risk. In its Communication on the Proceeds of Organised Crime, the Commission encourages Europol to play a co-ordinating role between national Asset Recovery Offices. In this connection the Europol Criminal Assets Bureau proposed to explore the possibility of using the Europol Secure Information Exchange Network Application (SIENA) system for the purpose of bilateral information exchange between AROs. The proposal was well received by the ARO Platform, where the following points were established:

- SIENA is already operational, providing a technical solution for the exchange of law enforcement information, within a sound legal basis using the highest security standards;
- SIENA could represent a cost–effective solution, as it builds upon an existing network; therefore financial support for the creation of a new network is not required;

- if SIENA were chosen for information exchange between AROs, it would need to provide for direct bilateral exchange between AROs. Member States would need to nominate their AROs as competent authorities within SIENA and the Swedish Initiative. They would also need to technically link their AROs to their Europol National Units.

The pilot phase which ran in 2010 is currently under assessment and if successful in 2011, the first AROs could officially link to SIENA. Efforts to link AROs to SIENA will continue, with the aim of connecting the majority of AROs.

The report goes on to note that the Commission Communication "An Internal Security Strategy in action" calls on Member States to establish, by 2014, AROs that are equipped with the necessary resources and the ability to exchange information, and it states that by 2013 **the Commission will develop common indicators** against which Member States should evaluate the performance of the AROs. Initial proposals on effectiveness indicators that could apply to AROs were put forward in December 2010. It was also proposed to assess the effectiveness of AROs (through compliance with the indicators) by way of informal visits by peer experts, followed by discussions in the ARO Platform.

At the same time, **amendments to the existing legal framework on confiscation are being envisaged**. The Commission has announced in the above Communication its intention to propose legislation in 2011 to strengthen the EU legal framework on confiscation. The new legislation offers the Commission, the European Parliament and the Council a window of opportunity to introduce new provisions aimed at enhancing the powers of the AROs or their capacity to access information, as appropriate.

The Commission invites all Member States to consider this report and to provide all further relevant information to the Commission and to the Council Secretariat, in accordance with the Decision.