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

2006/0805(CNS) - 05/04/2006 - Legislative proposal

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

PROPOSED ACT : Council Decision.

CONTENT : This proposal comprises an initiative from the Austrian, Belgian and Finnish Delegations. The main motive for cross border organised crime is financial gain. This financial gain is a stimulus for committing further crime to achieve even more profit. Accordingly lawenforcement 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 should be noted that the Council has adopted a Framework Decision on Confiscation of Crime-Related

Proceeds, Instrumentalities and Property on 24 February 2005 and a Framework Decision on the execution in the European Union of orders freezing property or evidence on 22 July 20032, dealing with certain aspects of judicial cooperation in criminal matters in the field of the freezing and confiscation of the proceeds from, instrumentalities of, and other property related to, crime.

The main points of the proposal are as follows:

- Each Member State will designate a national Asset Recovery Office, charged with the facilitation of the tracing and identification of proceeds of crime and other crime related property which may become the object of an order made by a competent judicial authority for freezing or seizure in the course of criminal proceedings or for confiscation.

- 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.

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

- 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.

- Information or documents obtained under the Decision may be used in any proceedings aimed at the freezing, seizure or confiscation of proceeds of crime or other crime related property. The transmitting Asset Recovery Office may impose restrictions and conditions on the use of information. However, such restrictions may not relate to the use of information for the purpose of compensations to victims of the offence in respect of which the information has been obtained.

Finally, on data protection, the proposal provides that the use of information which has been exchanged under this Decision will be subject to the national data protection provisions of the receiving Member State, where the information and intelligence will 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 this 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.