


Procedure file

Basic information		
CNS - Consultation procedure Decision	2006/0805(CNS)	Procedure completed
Fight against cross border organised crime: national Asset Recovery Office, tracing and identification of proceeds of crime. Initiative Austria, Belgium, Finland		
Subject 7.30.30 Action to combat crime 7.40.04 Judicial cooperation in criminal matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		27/04/2006
		PPE-DE BREJC Mihael	
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2838	06/12/2007
	Environment	2740	27/06/2006
	Justice and Home Affairs (JHA)	2732	01/06/2006
European Commission	Commission DG	Commissioner	
	Justice and Consumers	FRATTINI Franco	

Key events			
05/04/2006	Legislative proposal published	07259/2006	Summary
26/04/2006	Committee referral announced in Parliament		
01/06/2006	Debate in Council	2732	Summary
27/06/2006	Debate in Council	2740	Summary
06/11/2006	Vote in committee		
09/11/2006	Committee report tabled for plenary, 1st reading/single reading	A6-0388/2006	
12/12/2006	Results of vote in Parliament		
12/12/2006	Decision by Parliament	T6-0541/2006	Summary
06/12/2007	Act adopted by Council after consultation of Parliament		

06/12/2007	End of procedure in Parliament		
18/12/2007	Final act published in Official Journal		

Technical information

Procedure reference	2006/0805(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on the European Union (after Amsterdam) M 034-p2c; Treaty on the European Union (after Amsterdam) M 030-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/35795

Documentation gateway

Legislative proposal		07259/2006	05/04/2006	CSL	Summary
Committee draft report		PE378.724	20/09/2006	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0388/2006	09/11/2006	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0541/2006	12/12/2006	EP	Summary
Commission response to text adopted in plenary		SP(2007)0303	24/01/2007	EC	
Follow-up document		COM(2011)0176	12/04/2011	EC	Summary

Additional information

European Commission	EUR-Lex
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Final act

[Decision 2007/845](#)
[OJ L 332 18.12.2007, p. 0103](#) Summary

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

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.

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

Pending the lifting of a reservation by the Irish delegation, the Council broadly agreed on a draft Decision concerning arrangements for cooperation between asset recovery offices of the Member States.

The Council preparatory bodies will be responsible for finalising the text of the Decision, with a view to its adoption at a forthcoming Council meeting.

It should be noted that 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, law enforcement services should have the necessary skills to investigate and analyse 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 European Union. 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 those authorities.

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.

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

Pending the opinion of the European Parliament, the Council reached a general approach on the draft Council decision on arrangements for cooperation between the asset recovery offices of the Member States.

It should be noted that 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 law enforcement services should have the necessary skills to investigate and analyse 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 those authorities.

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

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

The European Parliament adopted a resolution drafted by Mihael Brejc (EPP-ED, Slovenia) and made some amendments to the Belgian, Austrian and Finnish initiative concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and

identification of proceeds from crime:

- a Member State may set up or designate two Asset Recovery Offices. Where a Member State has more than two units having the same powers, charged with facilitating the tracing and identification of proceeds of crime, no more than two units may be designated as national contact points. This amendment is intended to make it clear that there is no need to set up a new national contact point if a Member State already has asset recovery units which would be given that competence. If that competence is to be allocated to such units, only two of them can be designated national contact points.

- Parliament deleted Article 5 on the use of information or documents obtained under the Decision, since it felt that the substance of it was already included in other Articles of this Council Framework Decision.

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

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/JHA concerning 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.

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

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.