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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the initiative by the Republic of Austria, the Kingdom of Belgium and the Republic of Finland with a view to the adoption of a Council Decision 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
(7259/2006 – C6-0122/2006 – 2006/0805(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Mihael Brejc

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative by the Republic of Austria, the Kingdom of Belgium and the Republic of Finland with a view to the adoption of a Council Decision 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 (7259/2006 – C6-0122/2006 – 2006/0805(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the initiative by the Republic of Austria, the Kingdom of Belgium and the Republic of Finland (7259/2006),

– having regard to Article 34(2)(c) of the EU Treaty,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0122/2006),

– having regard to Rules 93 and 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),

1. Approves the initiative by the Republic of Austria, the Kingdom of Belgium and the Republic of Finland as amended;

2. Calls on the Council to amend the text accordingly;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Calls on the Council to consult Parliament if it intends to amend the initiative by the Republic of Austria, the Kingdom of Belgium and the Republic of Finland substantially;

5. Instructs its President to forward its position to the Council and Commission, and the governments of the Republic of Austria, the Kingdom of Belgium and the Republic of Finland.

Text proposed by the Republic of Austria, the Kingdom of Belgium and the Republic of Finland	Amendments by Parliament

Amendment 1
Article 1, paragraph 1 a (new)

	1a. Without prejudice to paragraph 1, a Member State may, within the limits of national law, set up or designate two Asset Recovery Offices. Where a Member State has more than two units charged with the facilitation of the tracing and identification of proceeds of crime, only two units may be designated national contact points.

Justification

The proposed amendment makes 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.

Amendment 2
Article 1, paragraph 2

2. Each Member State shall indicate the unit which is a national Asset Recovery Office within the meaning of this Article. Member States shall notify this information and any subsequent changes to the General Secretariat of the Council in writing. That shall not preclude other units which are charged with the facilitation of the tracing and identification of proceeds of crime from exchanging information under Articles 3 and 4.	2. Each Member State shall indicate the unit which is a national Asset Recovery Office within the meaning of this Article. Member States shall notify this information and any subsequent changes to the General Secretariat of the Council in writing. That shall not preclude other units which are charged with the facilitation of the tracing and identification of proceeds of crime from exchanging information under Articles 3 and 4 ***with the Asset Recovery Office of another Member State***.

Justification

The proposed amendment specifies more clearly the need for exchange of information between offices charged with facilitating the tracing and identification of assets.

Amendment 3
Article 3, paragraph 1

1. An Asset Recovery Office may make a request for information for a purpose stated in Article 1. To that end it shall use the procedures provided for under the	1. An Asset Recovery Office ***or a unit in a Member State charged with the facilitation of the tracing and identification of assets*** may make a request

Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The grounds of refusal of that Framework Decision shall apply.	for information for a purpose stated in Article 1. To that end it shall use the procedures provided for under the Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The grounds of refusal of that Framework Decision shall apply.

Justification

Consistent with the amendment to Article 1, this amendment supplements Article 3 to include not only the specified national contact point but also another unit with the same powers.

Amendment 4
Article 4, paragraph 1

1. 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 this Decision as stated in Article 1.	1. Asset Recovery Offices ***or units in a Member State charged with the facilitation of the tracing and identification of assets*** 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 this Decision as stated in Article 1.

Justification

Consistent with the amendment to Article 1, this amendment supplements Article 4 to include not only the specified national contact points but also other units with the same powers.

Amendment 5
Article 5

1. Information or documents obtained under this Decision may be used in any proceedings aimed at the freezing, seizure or confiscation of proceeds of crime or other crime related property.	***deleted***
2. When transmitting information pursuant to this Decision, the transmitting	

Asset Recovery Office may impose restrictions and conditions on the use of information. The receiving Asset Recovery Office shall comply with any such restrictions and conditions. Such restrictions and conditions 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.

Justification

This amendment proposes that Article 5 should be deleted because the substance of it is already included in other Articles of this Council Framework Decision.

EXPLANATORY STATEMENT

Introduction

On 24 February 2005 the Council adopted a Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property. In its Communication (COM(2005) 184 final) to the Council and the European Parliament on the Hague Programme: Ten Priorities for the Next Five Years, the Commission recommended strengthening the tools for combating organised crime in EU Member States. The Commission advocates setting up Asset Recovery Offices in the Member States and ensuring that these offices can exchange information rapidly. Huge sums of money can be obtained through organised crime, which flourishes if the bodies charged with fighting it are unable to seize and recover the proceeds of crime. Consequently, there is a need to set up national Asset Recovery Offices and to make it possible for them to exchange information directly.

Substance of the proposal

The purpose of the Council Framework Decision is to ensure that each Member State sets up or designates a national office for recovering the proceeds of crime and to establish successful coordination between the offices without such cooperation interfering with the internal status of an office within a Member State. The Council Framework Decision stresses that the proposal is intended solely to achieve more effective international cooperation between the offices, and leaves it up to the Member States to decide the structure of their Asset Recovery Offices and the method of searching for information within the country. Convictions are often handed down in one country when the proceeds of the crime concerned are located in another. Therefore, setting up or designating Asset Recovery Offices should ensure faster and more efficient exchange of information, which would help to secure the necessary technical basis for investigating and analysing the financial trails of criminal activity. Cooperation between the Asset Recovery Offices will take place on the basis of the Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. An Asset Recovery Office must specify, when requesting information from the offices of other Member States, the object of the request and the reasons for it. The personal data processed in the context of the application of this Decision must 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.

Position of the rapporteur

The rapporteur believes that the proposed Council Framework Decision on setting up or designating Asset Recovery Offices marks an important step towards bringing organised crime under control. Member States should ensure that Asset Recovery Offices exchange all the useful information at their disposal, which will facilitate the tracing and identification of

proceeds from crime and other assets which are liable to seizure.

The main changes proposed by the rapporteur are as follows:

- it is not sufficiently clear in the proposed Council Framework Decision whether it is necessary to set up a national contact point if a Member State already has units charged with facilitating the tracing and identification of the proceeds of crime. The rapporteur believes these units could be given this competence, and where two such units exist in a Member State both of them could be given this competence;
- consistent with the amendment to Article 1, Articles 3 and 4 are amended accordingly to include not only the specified national contact point but also another unit with the same powers;
- the deletion of Article 5, as the substance of this Article is already included in other Articles of the Council Framework Decision.

The rapporteur believes that this Council Framework Decision will help to make the fight against organised crime more effective.