

(Acts adopted pursuant to Title VI of the Treaty on European Union)

JOINT ACTION

of 3 December 1998

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime

(98/699/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular, Article K.3(2)(b) thereof,

Having regard to the initiative of the United Kingdom,

Having regard to the action plan of the High Level Group on Organised Crime approved by the Amsterdam European Council on 16 and 17 June 1997, and in particular recommendation 26(b) on strengthening the tracing and seizure of the proceeds from crime,

Having examined the views of the European Parliament following the consultation conducted by the Presidency in accordance with Article K.6 of the Treaty on European Union,

Having regard to the Joint Actions of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level for international undertakings in the fight against organised crime ⁽¹⁾, and of 19 March 1998, establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone Programme) ⁽²⁾,

Considering the commitment of Member States of the principles of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990,

Having regard to the proposed Joint Action on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, and in particular to the offences covered by that Joint Action,

Considering the requirements of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering ⁽³⁾, and the 40 recommendations to combat money laundering of the Financial Action Task Force on Money

Laundering (FATF) as formulated in 1996, and in particular recommendation 4 thereof,

Having regard to the Joint Action of 17 December 1996 concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking ⁽⁴⁾,

Mindful of the common objective of improving coordination between law enforcement authorities,

Recalling the Joint Action on the creation of a European Judicial Network, adopted by the Council on 29 June 1998 ⁽⁵⁾,

Whereas the potential for disrupting criminal activity in the field of organised crime, by more effective cooperation between Member States in identifying, tracing, freezing or seizing, and confiscating the assets deriving from crime, is being improved;

Whereas mutually compatible practices are making cooperation at European level more efficient at identifying, tracing, freezing or seizing, and confiscating illegal assets;

Whereas recommendation No 16 of the abovementioned action plan to combat organised crime emphasised the need to accelerate procedures for judicial cooperation in matters relating to organised crime, while considerably reducing delay in transmission and responses to requests;

Considering the Member States' adherence to the 1959 European Convention on Mutual Assistance in Criminal Matters;

In the light of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and the 1998 United Nations General Assembly Special Session on Drugs;

⁽¹⁾ OJ L 344, 15. 12. 1997, p. 7.

⁽²⁾ OJ L 99, 31. 3. 1998, p. 8.

⁽³⁾ OJ L 166, 28. 6. 1991, p. 77.

⁽⁴⁾ OJ L 342, 31. 12. 1996, p. 6.

⁽⁵⁾ OJ L 191, 7. 7. 1998, p. 4.

Recognising the achievement of the 1996 Dublin Seminar on asset confiscation in identifying obstacles to effective cooperation;

On the understanding that the forms of cooperation laid down in this Joint Action are without prejudice to other forms of bilateral or multilateral cooperation,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. In order to enhance effective action against organised crime, Member States shall ensure that no reservations are made or upheld in respect of the following Articles of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (hereinafter referred to as 'the 1990 Convention'):

- (a) Article 2: in so far as the offence is punishable by deprivation of liberty or a detention order of a maximum of more than one year;
- (b) Article 6: in so far as serious offences are concerned. Such offences should in any event include offences which are punishable by deprivation of liberty or a detention order of a maximum of more than one year, or, as regards those States which have a minimum threshold for offences in their legal system, offences punishable by deprivation of liberty or a detention order of a minimum of more than six months.

Point (a) shall not affect reservations made with regard to the confiscation of proceeds from offences punishable under legislation on taxation.

2. Each Member State shall ensure that its legislation and procedures on the confiscation of the proceeds from crime shall also allow for the confiscation of property the value of which corresponds to such proceeds, both in purely domestic proceedings and in proceedings instituted at the request of another Member State, including requests for the enforcement of foreign confiscation orders. However, Member States may exclude the confiscation of property the value of which corresponds to the proceeds from crime in minor cases. The words 'property', 'proceeds', and 'confiscation' shall have the same meaning as in Article 1 of the 1990 Convention.

3. Each Member State shall ensure that its legislation and procedures enable it to permit the identification and tracing of suspected proceeds from crime at the request of another Member State where there are reasonable grounds to suspect that a criminal offence has been committed. Such legislation and procedures shall enable assistance to be given at the earliest possible stages in an investigation,

and to that end, Member States will endeavour to restrict their use of the optional grounds for refusal in respect of other Member States under paragraphs 2 and 3 of Article 18 of the 1990 Convention.

Article 2

1. Within the framework of the functioning of the European Judicial Network, each Member State shall prepare a user-friendly guide, including information about where to obtain advice, setting out the assistance it can provide in identifying, tracing, freezing or seizing and confiscating instrumentalities and the proceeds from crime. The guide shall also include any important restrictions on such assistance and the information which requesting States should supply.

2. The General Secretariat of the Council of the European Union shall be sent the guides referred to in paragraph 1 and shall translate them into the official languages of the institutions of the European Community. The General Secretariat shall distribute the guides to Member States, the European Judicial Network and Europol.

3. Each Member State shall ensure that the guide referred to in paragraph 1 is kept up to date and that any changes are sent to the General Secretariat of the Council for translation and distribution in accordance with paragraph 2.

Article 3

Member States shall give the same priority to all requests from other Member States which relate to asset identification, tracing, freezing or seizing, and confiscation as is given to such measures in domestic proceedings.

Article 4

1. Member States shall encourage direct contact between investigators, investigating magistrates and prosecutors of Member States making appropriate use of available cooperation arrangements, to ensure that requests for assistance through formal channels are not made unnecessarily. When a formal request is necessary, the requesting State shall ensure that it is properly prepared and meets all the requirements of the requested State.

2. Where it is not possible to execute a request for assistance in the manner expected by the requesting State, the requested State shall endeavour to satisfy the request in some alternative way, after appropriate consultation with the requesting State, while fully respecting national legislation and international obligations.

3. Member States shall submit requests for assistance as soon as the precise nature of the assistance required is identified and, where a request is marked 'urgent' or a deadline is indicated, explain the reasons for the urgency or deadline.

Article 5

1. Member States shall, where it is not contrary to their law, take all necessary steps to minimise the risk of assets being dissipated. Those steps shall include such measures as may be necessary to ensure that assets which are the subject of a request from another Member State may be frozen or seized expeditiously so that a later confiscation request is not frustrated.

2. Where, in the course of fulfilling a request for legal assistance in one area of a Member State the need arises to pursue further enquiries in another area of that Member State, the Member State shall, where it is not contrary to its law, take all possible steps to enable the necessary assistance to be rendered without the need for preparation of a further letter of request.

3. Where the execution of a request leads to the need to pursue further enquiries on a related issue, and the requesting State issues a supplementary letter of request, the requested State shall, where it is not contrary to its law, take all possible steps to expedite the execution of such a supplementary request.

Article 6

1. Member States shall ensure that arrangements are in place to acquaint their judiciary with best practice in international cooperation in the identification, tracing, freezing or seizing, and confiscation of instrumentalities and the proceeds from crime.

2. Member States shall ensure that appropriate training, reflecting best practice, is provided to all investigators, investigating magistrates, prosecutors and other officials concerned with international cooperation in asset identification, tracing, freezing or seizing and confiscation matters.

3. The Presidency and interested Member States, in cooperation as appropriate with the European Judicial Network and Europol, shall as necessary arrange seminars for officials from Member States and other practitioners involved to promote and develop best practice and to encourage compatibility of procedures.

Article 7

The Council shall, before the end of 2000, review this Joint Action in the light of the results of the operation of the Joint Action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

Article 8

1. Subject to paragraph 2, Member States shall take all appropriate steps to implement this Joint Action as soon as it enters into force, and shall ensure that its contents are brought to the attention of their relevant national and local authorities.

2. Appropriate proposals for the implementation of Article 1 shall be submitted by Member States within three years of the entry into force of this Joint Action for consideration by the competent authorities with a view to their adoption.

Article 9

This Joint Action shall be published in the Official Journal and shall enter into force on the day of its publication.

Done at Brussels, 3 December 1998.

For the Council

The President

K. SCHLÖGL