

NEWSLETTER n. 1

March 2018

IMPROVING COOPERATION BETWEEN EU MEMBER STATES

IN CONFISCATION PROCEDURES

The first meeting of the research project *ConfiscEU* took place in Utrecht, where outstanding researchers gave their contribution to the analysis of the confiscation regime of criminal assets within the EU.

The whole project has the aim of investigating the implementation of the EU measures concerning confiscation in several Member States. It is clear that such an analysis is possible only after a correct understanding of the European regime on confiscation.

Therefore, the aspects covered in this first meeting mainly focused on such a regime, in order to give an overview of its main features, as well as the main problematic issues that it raises. In other words, this first conference has represented the first necessary preparatory step for the further analysis of the impact of the EU confiscation regime on national legal systems.



[Here, the link to the Programme](#)

ALESSANDRO BERNARDI



The meeting was introduced by the speech of **Alessandro Bernardi**, *Professor of the University of Ferrara and coordinator of the research project*. In his **Introduction to the ConfiscEU project**, Professor Bernardi explained its aim and nature: a comparative research focused on the juridical and practical-applicative aspects concerning confiscation.

After a brief historical and comparative analysis of the confiscation, he focused on both the harmonisation and the transnational cooperation in this field.

More precisely, on the one hand, he designated the *current system* governing confiscation while, on the other, he briefly described the *further possible steps* that the European Union and the Member States could undertake in order to improve both the efficiency and the respect of fundamental rights in combating profit-driven crimes.

INGRID BREIT



The keynote speech was given by **Ingrid Breit**, *member of the EU Commission*. The EU action on asset recovery: from Directive 2014/42 to a new mutual recognition focused on the cornerstones on which confiscation should be based: the establishment of common minimum rules on the one hand, the judicial cooperation between Member States on the other.

To this extent, firstly, she analysed Directive 2014/42/EU, pointing out the main novelties introduced by this act; secondly, she focused on the Proposal for a new Regulation on mutual recognition of freezing and confiscation orders and updated the public on the state of the discussion in the Council on this proposal.



Here, the link to the [SLIDES](#)



1st

After these preliminary introductions, the first panel, entitled **Towards a common EU approach to confiscation: problems and challenges** and chaired by Michele Simonato, started.

The first speech of this session should have been given by **Ciro Grandi, Professor at the University of Ferrara**, who was unable to take part in the meeting. The topic that he should have analysed concerns a specific type of asset recovery: the non-conviction based confiscation (NCBC).

After a short overview of the international measures and the models already known in the EU

area, the focus of his work is on the NCBC system laid down in Directive 2014/42/EU and the failures of this regime, in terms of limited impact on the national legislations and in terms of lack of efficiency. Moreover, the last part of his work concerns the mutual recognitions of NCBC orders in the light of the new Proposal of Regulation.

CIRO GRANDI



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DANIEL NITU

Daniel Nitu, senior lecturer at the University Babes-Bolyai of Cluj-Napoca, gave the second speech of the session. On the one hand, he focused on the harmonization of extended confiscation, with regard to the novelties introduced by Directive 2014/42/EU, which replaced the previous *three-models* system laid down by

Framework Decision 2005/212/JHA with a new *single model*; on the other, he analysed third party confiscation, giving particular space to the problematic aspects that this type of confiscation raises. Finally, he concluded offering two case studies concerning Germany and Romania.



Here, the link to the [SLIDES](#)



The third speech was offered by **Michael Fernandez-Bertier**, *lecturer and Phd candidate at the University of Saint-Louis-Brussels*, who touched upon one of the most sensitive issues concerning fundamental rights in confiscation proceedings.

In this speech, Bertier focused on three fundamental rights: the presumption of innocence, the right to a fair trial and on the right to property, with specific regard to the case law of the European Court of Human Rights.

It goes without saying that there is a persistent tension between confiscation – and the need of efficiency in confiscating criminal assets – and the *respect of fundamental rights*.

**MICHAEL
FERNANDEZ-BERTIER**



Here, the link to the [SLIDES](#)



VERA WEYER

Vera Weyer, *research assistant at the University of Bonn*, concluded this session, talking about mutual recognition of confiscation orders. The regulation of confiscation of criminal assets in the national legal frameworks is extremely variegate. The differences concern the legal nature, the confiscation schemes and the standards of proof required in order to confiscate criminal assets.

The lack of harmonization may represent, in her opinion, an obstacle to the mutual recognition of confiscation orders. Therefore, the European legislator has regulated mutual recognition of such orders between the Member States, adopting Framework Decision 2006/783/JHA, whose main shortcomings – its limited scope of application and the provision of extended grounds for refusal – are intended to be overtaken by the Proposal of a new Regulation.



Here, the link to the [SLIDES](#)





2nd

The second panel was chaired by Professor John Vervaele. In *Cooperation in confiscation proceedings: obstacles and best practices*, the speakers gave their contribution from a more practical perspective.

Paul Noterboom, Senior public prosecutor in Rotterdam, discussed about the practical difficulties and obstacles that can be faced in tracing and freezing criminal assets across borders. Such obstacles may be overtaken, at least partially,

following three basic guidelines: focus on the need of the requesting party, interpret the law of the executing State to fulfill that need, execute the request in accordance. Proposal of Regulation.

PAUL
NOTERBOOM



Here, the link to the [SLIDES](#)



MARCELLA
VAN BERKEL

The second speech of the session was offered by **Marcella Van Berkel, Europol Specialist in the field of Asset Recovery**, who explained how Europol is involved in the confiscation of criminal assets. Particularly, the focus was on the structure and the organization of the European

Criminal Asset Bureau, composed by several organisms with different functions: from identification, tracing, freezing, seizure and confiscation of assets to support investigation of Europol Member States, the ECAB covers several roles in the confiscation proceedings of criminal assets.



Here, the link to the [SLIDES](#)



Frank Cassidy, member of Eurojust from Ireland, focused on the role and the experience of Eurojust in confiscation matters. He mainly underlined the problems in this field, with particular regard to the practical difficulties related to confiscation. Then, focusing on

the paths that could be undertaken in order to solve such problems, he analysed the proposal of regulation, highlighting both its positive and critical aspects and giving an overview on the issues discussed within the Council.

FRANK CASSIDY



Here, the link to the [SLIDES](#)



THOM DIEBEN

Thom Dieben, defence lawyer in Amsterdam with a long-standing commitment in judicial cooperation in criminal matters, has brought in this panel the fundamental perspective of the defence. He highlighted, also on the basis of its experience in European Arrest Warrant matters, the main practical problems that an accused has to

face in confiscation proceedings: the unreasonable length of the proceedings and the incapacity of the States to restore the accused who was the addressee of an illicit seizure order. Finally, he pointed out that giving support to the accused in the research of a defence lawyer in the executing State is particularly important, as it is in the field of EAW

