

NEWSLETTER n. 6

April 2019

IMPROVING COOPERATION BETWEEN EU MEMBER STATES IN CONFISCATION PROCEDURES



Here, the link to the
Programme

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

As known, the whole project has the aim of investigating the implementation of the EU measures concerning confiscation in several Member States.

The meeting was structured in three parts: in the first session, the researchers focused on the European aspects of Criminal Confiscation; in the second session, the focus was given on the Belgian system in confiscation's matters; finally, in the third session, some preliminary cross-cutting conclusions were given.

YVES CARTUYVELS



The meeting was introduced by the speech of **Yves Cartuyvels** (University of Saint Louis and coordinator of the Brussels Unit)

In his introduction he remarked that financial gain is the main objective of cross-borders criminal organizations and networks, which exploit complex economic and legal structure to conceal the illegitimate nature of their assets. Therefore, neutralizing illegitimate property is crucial to tackle organized crime and confiscation of assets represents an effective tool to reach such an

objective.

However, confiscation laws and practices differ across the EU, the consequence being that the effectiveness of this instrument may be compromised. Criminal organizations may benefit from the existing differences between national laws.

The Project is thus important in order to find strategies to improve the effectiveness of criminal confiscation in cross-border cases.



1st

After these preliminary introductions, the first panel entitled **European aspects of criminal confiscation** – chaired by Professor **John Vervaele** (University of Utrecht) – started.



**MICHAEL-
FERNANDEZ
BERTIER**

The first speech of this session was given by **Michael-Fernandez Bertier** (University of Saint Louis). On the one hand, he introduced the European legislative framework concerning confiscation, focusing in particular on the directive 2014/42/EU,

as well as on the recent Regulation on mutual recognition. On the other hand, he focused on the case-law of the European Court of Human Rights, in so far as the Court has issued several judgement concerning national confiscation measures.



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

In his speech given in conference call, **Paulo Pinto de Albuquerque** (judge at the ECtHR) focused on the recent judgment issued by the Grand Chamber in the *G.I.E.M. v. Italy* case. The case regarded a type of unlawful land development confiscation issued by the Italian

judges in the absence of a previous conviction since the offence was time-barred. Moving from this judgment, Pinto de Albuquerque analyzed the relation between the Court and the national judges on confiscation matters.

**PAULO PINTO DE
ALBUQUERQUE**



**NICOLA
RECCHIA**

Nicola Recchia (Goethe University Frankfurt) introduced the debate on the *G.I.E.M. v. Italy* case, outlining the context and the case-law of the Court. Particularly, he mentioned the cases *Sud Fondi v. Italy* and *Varvara v. Italy*.

Moreover, he put the accent on the national judgement of 7th February 2019 n. 5936, issued by the Italian Court of Cassation after the ruling of the Grand Chamber. After this introduction, the debate with the speakers of the first panel started.





2nd

The second panel was chaired by Professor **Alessandro Bernardi** (University of Ferrara) and the speakers focused on the Belgian system, giving their contribution from a practical perspective.



CHRISTINE GUILLAIN

Christine Guillain (University of Saint Louis and coordinator of the Brussels Unit) focused on the Belgian system related to seizure and confiscation. She particularly analysed recent laws and cases from the national Constitutional Court.



Here, the link to the **SLIDES**

Damien Vandermeersch

Damien Vandermeersch focused on the recent proposal concerning the reformation of the Criminal Code which also involves the confiscation, which has to be discussed by the Parliament.

DAMIEN VANDERMEERSCH



Here, the link to the **SLIDES**

MICHAEL CARLIER



Here, the link to the **SLIDES**

Michael Carlier (Magistrat de liaison, Central Office for Seizure and Confiscation) explained the role of the Central Office for Seizure and Confiscation, its structure, organogram, mission. Particularly, the Office assists public prosecutors,

investigating judges and law enforcement officers in criminal investigations and legal proceedings in the field of seizure of assets, prosecution in view of the confiscation of assets, execution of final confiscation orders/decisions.





3rd

In the afternoon, the researcher of the Units presented the results of the research. The aim of this session – chaired by Professor **Florin Streteanu** – was that of analyzing the national reports from an horizontal perspective. However, the analysis took a vertical approach as well, in so far as the results were evaluated also in the light of European measures concerning confiscation.



DAN MOROSAN

Dan Morosan (University of Babeş-Bolyai) focused on substantial aspects of criminal confiscation in Europe. Starting from the analysis of the Directive 2014/42/UE concerning

the harmonization of confiscation, he analyzed the different types of confiscation, giving much attention to the non conviction based confiscation.



Here, the link to the *SLIDES*

Olivier Cahn (Association de Recherches Pénales Européennes) focused on the procedural aspects concerning the freezing of criminal assets in Europe.

He analysed the procedure for executing a freezing order and the aspects related to the mutual recognition of the decisions after the entry into force of the new Regulation.

OLIVER
CAHN



WOUTER DE
ZANGER

Wouter de Zanger (University of Utrecht) analyzed the procedural aspects related to confiscation. More precisely, he focused on the competent authorities engaged in the

confiscation proceeding, the rights and guarantees of the parties involved as well as the judicial mechanism against confiscation measures.



VERA WEYER

Vera Weyer (University of Bonn) focused on mutual recognition aspects. Particularly, she paid attention on the new Regulation (UE) 2018/1805, discussing on

whether it may represent an effective improvement in recognition of confiscation decisions within the European scenario.



Here, the link to the *SLIDES*

Thibaut Slingeneyer (University of Saint-Louis) analyzed the concrete management process of seizure of assets. More precisely, he focused on the

institutional aspects, the disposal methods, and the management of seizure assets in the context of mutual recognition.

THIBAUT
SLINGENEYER



Here, the link to the *SLIDES*



SAMUEL BOLIS

In the presentation of the Italian report, **Samuel Bolis** focuses on a comparative examination of the national legislation related to the management and administration of the

definitively confiscated assets. Particularly, he focused on the peculiarities related to the direct management of assets, their use for social purposes and the protection of third party rights.

