

13007/3/98
REV 3

LIMITE

CRIMORG 178

OUTCOME OF PROCEEDINGS

from : Multidisciplinary Working Party on Organized Crime

to : K.4 Committee

No. prev. doc.: 13007/2/98 CRIMORG 178 REV 2

Subject: Draft Joint Action on asset sharing

The MDG discussed at its meeting on 4-5 February 1999 the draft Joint Action on asset sharing. The appended draft includes suggestions made by delegations and drafting proposals by the Presidency to take account of suggestions made. Germany and Sweden entered parliamentary scrutiny reservations.

The K.4 Committee is invited to solve the remaining question relating to Article 2, 2nd indent, verify that the solution regarding Article 6 stands and to decide to consult the European Parliament on this Joint Action. The Presidency draws the attention to delegations on the question of the form of this document, which may have to be examined, inter alia, in the light of the probable entry into force of the Treaty of Amsterdam.

JOINT ACTION

of XX.XX.XXXX,

**adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the
sharing of assets, confiscated following international cooperation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article K.3 (2) (b) of the Treaty on European Union,

Having regard to the initiative of the Republic of Austria;

Having regard to the Action Plan to combat organised crime, approved by the Amsterdam European Council on 16-17 June 1997¹, and in particular Recommendation no. 26 (d) thereof;

Taking into account Article 15 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990, hereinafter referred to as "the 1990 Convention";

Noting Article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature at Vienna from 20 December 1988 ;

Desiring to further encourage international cooperation by making practical improvements regarding the sharing of assets, confiscated following international cooperation;

Stressing that these practical improvements regarding the sharing of assets shall not lead to impediments or obstacles to international cooperation in cases where sharing of assets is not considered or not feasible,

HAS ADOPTED THIS JOINT ACTION:

¹ Brussels, 21 April 1997, OJ C 251/1.

Article 1

Framework

1. This Joint Action establishes a framework for the sharing of assets, or their value, confiscated following international cooperation in criminal matters.
2. The Member States agree that the provisions laid down in this Joint Action may be used as a reference if they decide to conclude bilateral agreements or arrangements concerning the sharing of assets, or their value. If there are no such agreements or arrangements, the provisions of this Joint Action shall be used as a reference on a case-by-case basis.
3. If a Member State has concluded bilateral agreements or arrangements on the basis of this Joint Action, it will notify the General Secretariat of the Council of this fact. The General Secretariat shall immediately notify the other Member States and the Commission of such a notification.
4. If a Member State has decided to use this Joint Action as a framework for sharing assets or their value, it shall ensure that it may do so in respect of all offences within the scope of the Joint Action, adopted by the Council on 3 December 1998, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime.²

Article 2

Definitions

For the purposes of this Joint Action,

- "confiscation" shall mean a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of assets or their value;

² O.J.

- "international cooperation" shall mean any assistance, including intelligence and operational assistance, which has been given to a Member State by another Member State which has led to, contributed to or facilitated, the confiscation of assets or their value³.

Article 3

Sharing of assets or their value

1. Member States, having decided to use this Joint Action as a framework for sharing of assets or its value, shall pursuant to article 1 and in accordance with the basic principles of their national law, have legislative or administrative measures in place to be able - subject to an agreement on a case-by-case basis - to share confiscated assets or their value with other Member States following international cooperation.
2. In deciding, pursuant to its discretion, the amount of the confiscated assets or value to be shared, a Member State may take into consideration the contribution of the other Member State.

³ Reservation by the Portuguese delegation which proposes that the paragraph should read:
"...assistance, given to a Member State by another Member State that allowed, contributed to or facilitated the criminal investigation that led to the confiscation of assets or their value."

Article 4

Share

1. Member States, having decided to use this Joint Action as a framework for sharing of assets or their value, shall provide for the possibility of having an adequate amount of confiscated assets or their value to be shared. The proportion of assets or their value subject to transfer to another Member State may reflect the extent of assistance of this Member State, which led to, contributed to, or facilitated, the confiscation of the assets or their value.
2. The Member States may have provisions in place to cover the costs relating to the confiscation proceedings, before determining the assets or the value to be shared.
3. The Member States shall have discretion as to the expenditure of the assets or the value received by way of asset sharing. The payment of any funds shall not be made conditional on transferring them to any State, government, organization, or individual.

Article 5

Request to share assets

1. A Member State may bring any cooperation that has led to, contributed to or facilitated, the confiscation of assets or their value to the attention of the assisted Member State.
2. Member States shall endeavour to provide in legislation or in administrative regulations for guidelines in respect of the circumstances and conditions which enable a Member State to request a share of the assets or their value confiscated from another Member State.

3. In a request to share assets or their value , the Member States may indicate these circumstances and conditions in order to provide the other Member State with sufficient evidence to determine the basis for the request.

Article 6

Procedure

1. The Member States shall, in so far as they have made a notification under Article 1, paragraph 3, ensure that any bilateral agreements or arrangements specify⁴ the authority or authorities, responsible for transmitting and receiving requests to share assets or their value, as well as any other official correspondence relating to this issue.
2. The Member States shall provide for internal procedures, which enable them, as appropriate, to speedily respond to requests to share assets or their value.

Article 7

Third party rights

1. Transfer of assets shall only take place once the decision on the confiscation of assets or their value has become final.
2. *Bona fide* third party rights shall be protected by Member States which use this Joint Action as a reference for sharing assets or their value. Should any such rights become affected by asset sharing, the Member States shall consult with a view to protecting such rights.

⁴ Proposal made by the Presidency to take into account a reservation by Spain.

Article 8

Relations with non-Member States

1. When implementing this Joint Action, the Member States shall examine the possibilities of applying the principles contained herein also in relation to non-Member States, and in particular with applicant States to the European Union which have ratified the 1990 Convention.
2. The Member States may provide that the sharing of confiscated assets or their value with non-Member States requires reciprocity.

Article 9

Relation to the 1990 Convention

1. The Member States agree, in so far as they have made a notification under article 1, paragraph 3, to use this Joint Action in their mutual relations as the framework for the application of article 15 of the 1990 Convention.
2. The Member States that have made a notification under article 1, paragraph 3, shall seek to initiate negotiations, under the auspices of the Council of Europe, a Protocol to the 1990 Convention. As far as possible, that Protocol should seek to reflect principles laid down in the present Joint Action.
3. When all Member States have ratified any such Protocol, the present Joint Action shall cease to apply.

Article 10

Review of implementation

1. The Member States shall notify to the General Secretariat of the Council any legislation and other measures put into place to implement this Joint Action, including the authorities under article 6⁵, and any changes concerning the designation.
2. The General Secretariat of the Council shall immediately inform all Member States and the Commission of any such notification.
3. The Council shall review the implementation of this Joint Action three years after its entry into force on the basis of reports of the Member States, with a view to:
 - the number of Member States that have put measures as described in this Joint Action in place;
 - the practical experiences of those Member States with a view to possible further action.
4. In the context of reviewing the application of the Joint Action, the Council shall in particular examine the existence of any model agreements on asset sharing and the possibility of including any provisions contained in such agreements in this Joint Action.

Article 11

Publication and entry into force

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

⁵ See footnote relating to Article 6, paragraph 1.