

SPAI Steering Group

Washington, 29 April - 2 May 2002

**Financial investigations and
confiscation of proceeds from crime
in South-eastern Europe**

**Presentation by
Alexander Seger
Economic Crime Division
Council of Europe**

Questions to be discussed

**Financial investigations
and confiscation: the issue**

**Project PACO Proceeds:
Lessons learnt**

**Financial investigations and
confiscation of proceeds in
South-eastern Europe**

The way ahead





Financial investigations and confiscation: the issue

Monitoring and investigating suspicious transactions

*Money
laundering*

Crime

Proceeds

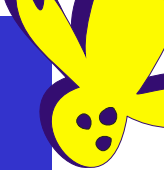
Criminal investigation

+

Financial investigation

The rationale

Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141)



Parties to this convention shall adopt...measures to enable them to:

- confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds (article 2)
- identify and trace property which is liable to confiscation, and to prevent any dealing in, transfer or disposal of such property (article 3)
- empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order - to carry out the actions referred to in Articles 2 and 3 (article 4, para 1)
- use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto (article 4, para 2).

Almost all countries in Europe have legal provisions on the confiscation of proceeds from crime

Confiscation systems

- In personam: a person must be convicted for a crime and then it must be proven on criminal criteria that specific property was proceeds from that crime
- In rem: property can be confiscated if it can be proven by civil criteria (balance of probability) that the property was the proceeds of crime or instrumentality to commit a crime.
- Mixed systems: once a person is convicted for a crime, property can be confiscated using civil criteria.



... But their practical application is limited



Core problem: Legal provisions on the confiscation of proceeds from crime are not sufficiently applied

Legislation not clear, insufficient

Lack of expertise within police, prosecution, judiciary and lack of inter-agency cooperation

Criminal investigations are not accompanied by financial investigations; criminal assets are not systematically targeted

Seizure and confiscation are risky

Philosophy on confiscation based on convictions and punishment rather than criminal assets

Procedures for freezing and seizure too slow, thus preventing subsequent confiscation

Duration of proceedings, risk of compensation claims

Confusion with the money laundering issue



The link between a crime and proceeds: the question of the reversal of the burden of proof*

Probably compatible
with human rights
convention if
refutable reversal of
burden of proof in
confiscation cases

Reversal of burden of proof
can be useful tool, but more
important:

- financial investigations
- resources, training,
specialisation of
investigators, prosecutors,
defence lawyers and judges

SPAI recommendations on financial investigations and confiscation of proceeds

SPAI Compact

- Implement Convention 141 and FATF recommendations
- Investigative capacities: focus on financial investigations

Country-specific recommendations for reform (April 2001):

- make confiscation and provisional measures regimes fully operational
- improve legislation
- specialised training

The PACO Proceeds project

Objective:
Enhance the application of
legal provisions on
confiscation of proceeds in
South-eastern Europe

- training/experience
exchange
- promoting financial
investigations and confiscation
- recommendations for legal
and institutional reform

In 2001:

Regional seminar Bucharest

**Study visit
Netherlands/Europol**

Study visit Germany

Regional seminar Zagreb





Netherlands

- New legislation in 1993:
 - ☐ targeting offenders accompanied by targeting proceeds
 - ☐ introducing criminal financial investigations
- Risks related to seizures limited
- Project financial investigations
- Specialised institutions
- Training
- Enforcement chain

Project approach

Germany

- Legislation for 35 years but not applied until mid-1990s / rediscovered in 1996
- Stuttgart (BW): project group confiscation established in 1997
 - 3 pillar-approach:
 - ☐ Training
 - ☐ confiscation specialists
 - ☐ central HQs office
 - Financial investigations for confiscation now integral part of criminal investigations

Financial investigations and confiscation of proceeds in South-eastern Europe

Confiscation systems

In all countries:

Convention 141:

- ratified by Albania, Bulgaria, Croatia, FYR Macedonia
- signed by Moldova and Romania
- all countries (except BiH) participate in PC-R-EV

Legal provisions on confiscation

Apply to all (serious) crimes

Conviction required before final confiscation

Reversal of burden of proof not possible

Third-party confiscation possible

Value-based confiscation possible

Problem: not effectively applied in practice

Very few seizures of suspected proceeds in some countries, none in others

No or very few final confiscations

Very limited experience in international cooperation

Shortcomings in legislation

Confiscation as an additional punishment

Resources to enhance specialisation not made available

Limited institutional capacities

Investigators and prosecutors reluctant to go for seizures and confiscation

Lack of strategies/policies to integrate financial investigations into criminal investigations

Albania

Policies and legislation

- clarify concepts in legislation

Organisation and institutional capacities

- make financial investigations integral part of criminal investigations
- create specialised structures in different institutions
- develop guidelines for financial investigations and confiscation

Training

- training courses and sensitisation for judges, prosecutors, police, financial and fiscal experts
- training of judges in financial expertise
- joint training as a tool to enhance interagency cooperation



Policies and legislation

- implement existing strategies against corruption and money laundering
- sign and ratify Convention 141
- improve CPCs

Organisation and institutional capacities

- accompany criminal investigations by financial investigations
- Establish office for the fight against corruption and organised crime
- Establish FIU
- Multi-disciplinary approaches and interagency cooperation

Training

- Develop training strategy: basic training and specialised training in financial investigations
- joint training to promote interagency cooperation
- training for judges

Organisation and institutional capacities

- Promote financial investigations through a project approach
- develop a set of cooperation measures to ensure multi-disciplinary approaches and inter-agency cooperation in financial investigations

Policies and legislation

- Improve legislation and amend CC and CPC to ensure full compliance with ETS 141

Training

- specialised training for multi-disciplinary task forces
- comprehensive training in all aspects related to financial investigations and confiscation

Croatia

Policies and legislation

- clarify legal provisions to make them more effective

Organisation and institutional capacities

- establish investigative judges and prosecutors specialised in financial investigations and mutual legal assistance
- establish departments on economic crime, including financial experts, at courts and prosecution offices
- competent authorities dealing with organised crime, corruption and money laundering should speed up their procedures
- law enforcement and criminal justice officers must persist in applying legal provisions on temporary measures and confiscation

Training

- financial investigations should become part of all training programmes for law enforcement officers
- assign leading role in the promotion of financial investigations and relevant training

Policies and legislation

- ratify ETS 141
- pass money laundering law
- obligations to report suspicious transactions
- legal basis for SIMS
- change law for compensation for damage incurred by law enforcement officials

Organisation and institutional capacities

- promote financial investigations through project approach (integrate them into criminal investigations)
- promote multi-disciplinary teams

Training

- organise multi-disciplinary seminar for decision makers
- organise special training for law enforcement officers, judges and prosecutors

Preliminary recommendations

Organisation and institutional capacities

- establish specialised units within MoInterior, Customs, Prosecution, MoFinance
- Make criminal procedures more efficient

Training

- organise special training for law enforcement officers, judges and prosecutors



Policies and legislation

- ratify ETS 141
- improve money laundering legislation
- new regulations on SIMS
- enhance legal provisions on confiscation

Organisation and institutional capacities

- consolidate specialised financial investigation units in police and prosecution
- electronic databases on financial and economic crime
- on-line communication systems for financial investigations
- focus on international cooperation

Training

- develop national training programme on confiscation for judges, prosecutors and law enforcement officers
- joint training to promote multi-disciplinary approaches

"The Former Yugoslav

Republic of Macedonia"



Policies and legislation

- Establish working group to elaborate proposal on a financial investigations/ confiscation project
- improve legal basis for financial investigations as an integral part of criminal investigations
- bring legislation in line with European standards

Organisation and institutional capacities

- establish project group to initiate use of legal provisions on confiscation
- enhance inter-agency cooperation in particular during the preliminary proceedings
- create financial police


Training

- train trainers
- develop materials for training and self-studies
- 3-level training for judges and prosecutors and for training for customs, financial police and police
- joint training to promote cooperation

The way ahead / Entry points

1. Two-day round table/seminars for decision makers to reach agreement on strategic approach to financial investigations and confiscation

2. Establish project integrated financial investigations for confiscation



3. Project group to review legislation to determine possibilities to use existing legislation and needs for amendments

4. Training programmes to enhance specialisation and provide know how

**Action by governments
in South-eastern Europe
+
international support**

PACO Proceeds II*

- support decision maker seminars
- assist in drafting of projects financial investigation
- support specialised training

****subject to funding***

