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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Pierre de BOISSIEU, Secretary-General of the Council of the European
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Subject: Report from the Commission to the European Parliament and to the Council
based on Article 8 of the Council Decision 2007/845/JHA of 6 December 2007
concerning cooperation between Asset Recovery Offices of the Member States
in the field of tracing and identification of proceeds from, or other property
related to, crime

Delegations will find attached Commission document COM(2011) 176 final.

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
TO THE COUNCIL**

**based on Article 8 of the Council Decision 2007/845/JHA of 6 December 2007 concerning
cooperation between Asset Recovery Offices of the Member States in the field of tracing
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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL

based on Article 8 of the Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime

INTRODUCTION

1.1. Background

Council Decision 2007/845/JHA¹ (“the Decision”) obliges Member States to set up or designate national Asset Recovery Offices (“AROs”) as national central contact points which facilitate, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime. The Decision allows the AROs to exchange information and best practices, both upon request and spontaneously, regardless of their status (administrative, law enforcement or judicial authority). It requests AROs to exchange information under the conditions laid down in Framework Decision 2006/960/JHA² (“the Swedish Initiative”) and in compliance with the applicable data protection provisions.

The Decision is also intended to support the CARIN (Camden Assets Recovery Inter-Agency Network), a global network of practitioners and experts aimed at enhancing mutual knowledge about methods and techniques for cross-border identification, freezing, seizure and confiscation of illicitly acquired assets.

1.2. Notifications sent by Member States

Article 8.1 of the Decision requires Member States to transmit to the General Secretariat of the Council and to the Commission by 18 December 2008 the text of any provisions of their national law enabling them to comply with the obligations imposed on them under this Decision.

The Commission received notifications from the following 21 Member States: **AT, BE, BG, CY, CZ, DE, DK, EE, EL, FI, FR, HU, IE, LT, LU, LV, NL, PL, SK, SV** and **UK**.

ES did not send its notification to the Commission, but notified the General Secretariat of the Council.

No notification was received from **MT, IT, PT, RO** and **SI**.

Most of the notifications sent by the Member States simply indicate the details of their designated ARO or AROs (the Decision allows Member States to designate a second authority as ARO if they so wish) and, in some cases, a reference to the applicable national provisions. The notifications of **BE, EL** and **IE** also include the full text of the relevant national provisions.

¹ OJ L 332 of 18.12.2007, p. 103.

² OJ L 386 of 29.12.2006, p. 89.

1.3. Method and evaluation criteria

Article 8(3) of the Decision provides for the establishment of a Commission written report on the Member States' compliance with this Decision by 18 December 2010.

Only eight Member States sent their notification by the time of the original deadline set by the Decision. Moreover, most Member States' notifications covered only one aspect of the Decision, i.e. the implementation of the provisions on the designation of AROs (*Article 1*). The notifications sent did not mention the implementation of the provisions on cooperation between AROs (*Article 2*), exchange of information between AROs on request (*Article 3*) and spontaneously (*Article 4*), compliance with data protection rules (*Article 5*), and exchange of best practices between AROs (*Article 6*).

It was therefore necessary to combine the official notifications with other information if only in order to cover the implementation of the minimal legal provisions in the Decision.

Information on the implementation of these provisions, as well as on the Member States' progress in designating AROs, has been gathered at the meetings of the informal EU Asset Recovery Offices' Platform ("ARO Platform"). This platform has met regularly since the beginning of 2009 and includes the designated AROs in the Member States and the authorities involved in setting up an ARO or temporarily acting as an ARO.

In particular, at the ARO Platform meetings held in March and May 2010, the AROs indicated to the Commission their preference for an implementation report with a broader scope than the provisions of the Decision and which also covered aspects of the structure, powers and access to information of the designated AROs, the progress towards a secure information exchange system and the main challenges that AROs are facing.

The above information was gathered from a table providing basic information on designated AROs (ARO Matrix) and from the replies of the AROs to a short additional questionnaire distributed by the Commission (17 AROs replied to the questionnaire between September and November 2010). It was further supplemented by information from the proceedings of a pan-European Conference on Asset Recovery Offices held in Brussels on 6-7 December 2010.

2. EVALUATION

Article 1 – Asset Recovery Offices

The following AROs were designated according to Article 8.1 of the Decision:

Austria designated the Federal Criminal Police (*Bundeskriminalamt – Referat "Vermögensabhöpfung"*).

Belgium designated the *Organe Central pour la Saisie et la Confiscation* (Central Office for Seizure and Confiscation – COSC), established by the law of 26 March 2003.

Bulgaria designated two AROs, the Commission for Establishing Property from Criminal Activity (CEPACA, which subsequently changed its name to CEPAlA), and the Supreme Prosecutor's office.

Cyprus designated the Unit for Combating Money Laundering (MOKAS-FIU Cyprus).

The Czech Republic designated the Unit Combating Corruption and Financial Crimes (UOKFK), International Cooperation Department, and enacted Act no. 273/2008.

Denmark designated the State Prosecutor for Serious Economic Crime (*Statsadvokaten for Særlig Økonomisk Kriminalitet*)

Estonia designated the V Division, Investigation Department, Central Criminal Police

Finland designated the National Bureau of Investigation, Criminal Intelligence Division/Communications Centre

France designated the Central Directorate for Criminal Investigations (*Plateforme d'Identification des Avoirs Criminels - PIAC*). France recently designated another ARO, the Agency for the management and recovery of the assets seized and confiscated (AGRASC). The notification to the Commission is under way.

Germany designated two AROs, the Federal Criminal Police (*Bundeskriminalamt Referat SO 35 "Vermögensabschöpfung"*) and the Ministry of Justice (*Bundesamt für Justiz*)

Greece designated the Financial and Economic Crime Unit within the Ministry of Finance, according to law no. 3842/2010.

Hungary designated the National Investigation Office (*Nemzeti Nyomozó Iroda*).

Ireland designated the Criminal Assets Bureau, established by the Criminal Assets Bureau Act of 2005.

Latvia designated the Economic Police Department of the Central Criminal Police Department of the State Police.

Lithuania designated two AROs, the Criminal Police (*Lietuvos kriminalines policijos biuras*) and the General Prosecutor Office (*Lietuvos Respublikos generaline prokuratura*)

Luxembourg designated the *Parquet du Tribunal d'Arrondissement de Luxembourg, Section éco-fin*.

The Netherlands designated the Criminal Assets Deprivation Bureau Public Prosecution Service (*Bureau Ontnemingswetgeving Openbaar Ministerie - BOOM*).

Poland designated the Assets Recovery Unit, Criminal Bureau, General Headquarters of Police.

Slovakia designated the Financial Intelligence Unit of the Bureau of Combating Organised Crime of the Presidium of the Police Force.

Spain designated two AROs: the Intelligence Centre against Organised Crime (CICO) and the Anti-drugs Special Prosecution Office (*Fiscalia Especial Antidrogas*) at the Ministry Of Justice.

Sweden designated two AROs: the National Criminal Intelligence Police Service and the National Economic Crimes Bureau (*Ekobrottsmyndigheten*).

The **United Kingdom** designated two AROs: the Serious Organised Crime Agency (SOCA) for England, Wales and Northern Ireland and the Scottish Crime and Drug Enforcement Agency (SCDEA) for Scotland.

The remaining Member States provided the following information on their progress towards designation of an ARO:

Malta indicated that the National Fraud Squad will be designated as the National ARO.

Portugal indicated that a group appointed under the authority of the Minister of Justice has been given the task of establishing the structure of the future ARO.

Romania indicated that an ARO would be established under the responsibility of the Ministry of Justice. The ARO would be multidisciplinary and involve the law enforcement structures that have temporarily acted as the ARO. The relevant personnel, including the CARIN contact point, would be detached to the future ARO.

Slovenia indicated that consideration is being given to establishing an ARO under the responsibility of the Public Prosecution Office.

Italy indicated that consideration is being given to establishing an ARO under the responsibility of the Ministry of Interior. The relevant provisions for internal designation are being drafted.

So far, seven Member States (**BG, DE, ES, FR, LT, SV, UK**) have taken advantage of the possibility offered by Article 1(2) to designate two AROs. Therefore there are currently 28 designated AROs in the EU.

The AROs designated so far are primarily established within the law enforcement services. The remainder are divided almost equally between judicial AROs and AROs having a multidisciplinary structure.

As the Decision is also seeking to establish formal structures to support the activities of the CARIN Network, it is important to note that almost all the designated AROs include the CARIN contact point(s)³.

Article 2 – Cooperation between Asset Recovery Offices

This Article requires Member States to ensure that AROs cooperate with each other in facilitating the tracing and identification of proceeds of crime and other crime related assets by exchanging information and best practices, both upon request and spontaneously. The exchange of information and best practices between AROs should take place regardless of their status (administrative, law enforcement or judicial authority).

During the discussions in the ARO Platform meetings, AROs have generally expressed satisfaction with the degree of cooperation and exchange of best practices with other AROs.

³ CARIN foresees two operational contact points (one law enforcement, one judicial) per country. It is supported by the Commission and by Europol (hosting its permanent Secretariat) and includes experts from over 50 countries and jurisdictions, including 26 EU Member States.

There were no reports of any ARO being refused cooperation by another ARO on the grounds of its status.

It can therefore be concluded that the provisions of this Article are being generally implemented.

Article 3 - Exchange of information between Asset Recovery Offices on request

This Article explains that the requests for information sent between AROs are regulated by the Swedish Initiative and its implementing rules. The Swedish Initiative introduced time limits to reply to requests for exchange of information between law enforcement services within the framework of a criminal investigation or criminal intelligence operation, as follows:

Eight hours for urgent requests for information and intelligence regarding serious offences⁴ when the requested information or intelligence is held in a database that is directly accessible by a law enforcement authority

One week for non-urgent requests for information and intelligence regarding serious offences when the requested information or intelligence is held in a database that is directly accessible by a law enforcement authority.

Two weeks in all other cases (database not directly accessible and/or request not related to a serious crime).

These stringent time limits are applicable provided that the requesting authority includes a number of items of information in the Swedish Initiative request form (subject of and reasons for the request, nature of the proceedings, details concerning the property targeted or sought and concerning persons presumed to be involved) as precisely as possible. Moreover, in all the above cases there is the possibility of postponement.

The designated AROs indicated that they are generally able to meet the above deadlines. In particular, **AT, CZ, DE, ES** (one ARO), **HU, LT** and **NL** replied affirmatively. **BE** and **ES** (the other ARO) can meet them most of the time; in **CY** it depends on the type of information requested. **LV** may not be able to meet the 8-hour time limit (this ARO does not work 24/7), while **IE** indicated that they cannot always meet the deadlines as the quality of the information supplied by other AROs often requires further checks.

Article 3(2) of the Decision makes reference to the information exchange form annexed to the Swedish Initiative and refers to it as a mandatory element. During the discussions in the ARO Platform on this point, the Council Secretariat reported that, under the implementing guidelines of the Swedish Initiative, Member States agreed that the form should not be considered as mandatory.

Nevertheless, most AROs (at least those in **AT, BE, BG, CY, CZ, DE, EE, ES, HU, IE, LT, LV, NL**) actually use the Swedish Initiative form when sending requests to other AROs, although sometimes in conjunction with other tools⁵.

⁴ Such as the offences covered by Article 2(2) of Framework Decision 2002/584/JHA on the European Arrest Warrant.

AROs send information requests to other AROs, but many of them also use other channels, such as CARIN (BE, DE, ES, NL), the Interpol liaison officers (AT, CZ, DE, ES), Europol (CZ, ES), the liaison officers network of national law enforcement agencies (AT, CZ, DE, ES, HU, NL), their national Financial Intelligence Unit (EL, LT) or the liaison officers of the Southeast European Cooperative Initiative (HU). The majority of AROs (at least those in AT, BE, CY, CZ, DE, EE, ES, HU, IE, LV, NL) keep statistics on their exchanges of information with other AROs. However, there are substantial differences between the categories and indicators used. The possible introduction of a more secure system to exchange information would facilitate the collection of data for statistical purposes.

Notwithstanding the relative lack of comparable data, the discussions in the ARO Platform have shown that, since the adoption of the Decision, the number of requests made by AROs to other AROs has increased substantially and the quality of the replies has generally improved.

The opinions of the AROs on the quality of the replies they received vary considerably. According to some (AT, CZ) the information received was very good, for others (BE, EE, LV) it was good, for others (DE, ES, HU, IE, LT) it was fairly basic (although sufficient to start an investigation).

Many AROs underlined in their contributions, and at the ARO Platform meetings, the importance of providing better information when sending a request.

As the time limits in the Swedish initiative are observed in general, its form is widely used and the quality of the replies is at least sufficient, it can be considered that the provisions of this Article are being implemented.

Article 4 – Spontaneous exchange of information between Asset Recovery Offices

This Article provides for an ARO to send information to another ARO without a prior request.

The discussions with ARO practitioners indicate that there are some cases of spontaneous exchange (for example between BE and NL), but no statistics have been provided on their frequency. The available information does not shed enough light on the implementation of this Article.

Article 5 – Data protection

The data gathered do not point to any violations of the applicable data protection provisions, having regard to Framework Decision 2008⁶.

Notwithstanding the differences in national data protection laws and practices, the system envisaged (the applicable data protection provisions are those of the receiving ARO) does not seem to significantly affect the possibility of sending or receiving information. In fact, most

⁵ Such as email for simple requests or the form used by the CARIN contact points to exchange information.

⁶ Having regard to the provisions in the Decision on the use of the data by the receiving Member State, the applicable rules should be those of Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350 of 30.12.2008, p. 60. There is no such reference because the Framework Decision was adopted one year after the adoption of the Decision.

of the AROs indicated that the existing rules on data protection do not impact on the exchange of information with other AROs.

Article 6 - Exchange of best practices

According to this Article, AROs should exchange best practices on how to improve the effectiveness of their asset tracing efforts.

Several examples of best practice have been identified by the AROs based on their experience with other AROs. Many of them relate to the application of the CARIN recommendations (which themselves established best practices). Some relate to cooperation on asset tracing in specific bilateral cases and some also cover operational activities not related to the tracing of assets (e.g. further law enforcement support after the assets have been identified). Feedback from the cooperation between AROs is generally positive. Some of these practices are regularly exchanged at the meetings of the EU informal ARO Platform.

Article 7 - Relationship to existing arrangements for cooperation

This provision does not require transposition.

3. MAIN CHALLENGES FOR THE AROs

In order to understand the main challenges that AROs face, the following features of the designated ARO should be kept in mind:

- The majority of the AROs have relatively little personnel. Only six out of 28 designated AROs have 10 or more staff members.
- The key function of the AROs is to trace and identify assets on their national territory. However, most AROs do not have access (direct or indirect) to all relevant databases that would allow them to perform their task more effectively.
- While all AROs have access to company registers, centralised land registers do not exist in all Member States. Only one ARO has access to a national register of bank accounts, which is found in only five countries.
- AROs exchange sensitive information (e.g. bank account numbers) by e-mail or fax and do not benefit from the support of a fully secure information exchange system.
- Only some AROs are central contact points at national level for the requests of mutual legal assistance related to asset recovery sent by the authorities of other Member States.
- Only a few AROs are involved in the management of frozen assets.
- About half of the AROs do not have access to judicial statistics on freezing and confiscation.

AROs consider that access to financial information (notably to bank account information) is the most important challenge they face. Their second most relevant concern is the lack of a

secure system to exchange information. Other recurrent challenges mentioned by the AROs are that financial investigators receive little specialized training and, more generally, that they lack resources.

Other challenges mentioned by the AROs include the differences in the national legislation on what information can be accessed by AROs, their limited links with the authorities in charge of asset management, the lack of an evaluation system for the AROs, the data protection or bank secrecy provisions and the fact that registers of bank accounts do not exist in all Member States.

Towards a secure exchange of information system for the AROs

The Decision does not specify the channels for the operational cooperation between the AROs. A key issue identified in the ARO Platform is the need for a more secure means for the exchange of operational information between AROs. Currently, sensitive information is often exchanged via e-mail, which may pose a certain security risk.

In its Communication on the Proceeds of Organised Crime⁷, the Commission encourages Europol to play a co-ordinating role between national Asset Recovery Offices. In this connection the Europol Criminal Assets Bureau (ECAB)⁸ proposed to explore the possibility of using the Europol SIENA system⁹ for the purpose of bilateral information exchange between AROs. The proposal was well received by the ARO Platform, where the following points were established:

- There is a clear need to establish a secure channel for direct information exchange between AROs;
- SIENA is already operational, providing a technical solution for the exchange of law enforcement information, within a sound legal basis using the highest security standards;
- SIENA could represent a cost-effective solution, as it builds upon an existing network; therefore financial support for the creation of a new network is not required;
- If SIENA were chosen for information exchange between AROs, it would need to provide for direct bilateral exchange between AROs. Member States would need to nominate their AROs as competent authorities within SIENA and the Swedish Initiative. They would also need to technically link their AROs to their Europol National Units¹⁰.

⁷ COM (2008) 766 final of 20.11.2008.

⁸ ECAB assists financial investigators in tracing criminal proceeds in other countries. In 2007 it supported 133 investigations.

⁹ The Secure Information Exchange Network Application (SIENA) is a new generation communication tool

designed to enable swift, secure and user-friendly exchange of operational and strategic crime related information and intelligence between the Member States, Europol and Third Parties with whom Europol has a cooperation agreement.

¹⁰ Which are national central contact points to exchange information with Europol.

In September 2009, Europol decided to run a pilot phase in which interested AROs could participate. AROs from 11 countries (**BG, DK, EE, ES, FR, HU, NL PL, SK, SV and UK**) agreed to test SIENA for the information exchange between AROs.

In July 2010, eight ARO staff members (from BG, DK, EE, HU, NL, PL and UK) received SIENA training at the Europol Headquarters. The Pilot Phase started in July and ran until the end of September 2010. This pilot is currently under assessment.

If successful in 2011, the first AROs could officially link to SIENA. Efforts to link AROs to SIENA will continue, with the aim of connecting the majority of AROs.

4. CONCLUSIONS

As the core provisions of the Decision relate to the establishment or designation of the AROs and to their exchange of information, the degree of implementation of the Decision in the Member States can be considered as moderately satisfactory. Twenty-two Member States have AROs in place and notified the Commission (at least informally) by the end December 2010, two years after the deadline set by the Decision.

The Commission Communication "An Internal Security Strategy in action"¹¹ calls on Member States to establish, by 2014, AROs that are equipped with the necessary resources, powers and training, and the ability to exchange information, and it states that by 2013 the Commission will develop common indicators against which Member States should evaluate the performance of the AROs.

Initial proposals on effectiveness indicators that could apply to AROs were put forward at the pan-European Conference on AROs in December 2010. It was also proposed to regularly assess the effectiveness of AROs (through compliance with the indicators) by way of informal visits by peer experts, followed by discussions in the ARO Platform.

At the same time, amendments to the existing legal framework on confiscation are being envisaged. In the Communication "An Internal Security Strategy in action" the Commission announced its intention to propose legislation in 2011 to strengthen the EU legal framework on confiscation¹². This Decision, which establishes the legal framework for the exchange of information between AROs, does not seem to present any relevant shortcomings. However, the new legislation offers the Commission, the European Parliament and the Council a window of opportunity to introduce new provisions aimed at enhancing the powers of the AROs or their capacity to access information, as appropriate.

The Commission invites all Member States to consider this Report and to provide all further relevant information to the Commission and to the Council Secretariat, in accordance with Article 8 of the Decision.

¹¹ COM (2010) 673 of 22.11.2010.

¹² In particular in order to allow more third-party confiscation and extended confiscation and to facilitate mutual recognition of non-conviction-based confiscation orders between Member States.

Five Member States have not yet designated their ARO. As any network is only as strong as its weakest link, this may substantively hamper the Member States' capacity to trace illicitly acquired assets across the European Union. The Commission expects all those Member States which have not yet implemented this Decision to do so without delay.