

5516/98

LIMITE

CORDROGUE 9

CRIMORG 9

NOTE

from :Presidency

to ~~Horizontal Drugs Group~~

Subject :**Draft Joint Action concerning the arrangements for co-operation**
~~between Member States' law enforcement authorities in respect of the tracing,~~
freezing and confiscation of drug traffickers' proceeds

Background

1. Articles 2 and 6 of the Joint Action on the approximation of laws and practices of police, customs services and judicial authorities in the fight against drug addiction and illegal drug trafficking (12647/96 ENFOPOL 213) highlight the need to maximise the effectiveness of co-operation procedures within the EU.
2. Co-operation in asset tracing, freezing and confiscation was discussed during the Dublin seminar of November 1996 and several areas of concern were identified. The UK's experience since then has reinforced these concerns - very few requests for confiscation of drug traffickers' assets have been received in the UK from other Member States. Similarly, there have been few cases where the UK has initiated such action although requests for co-operation in asset tracing matters are more common. The UK Presidency is anxious to ensure that national procedures in Member States are consistent with the intentions of international agreements relating to asset tracing, freezing and confiscation in Member States and do not inhibit co-operation in the area of depriving drug traffickers of their assets.

3. The low level of confiscations does not, in the Presidency's view, result from any inherent weakness of legislation. Rather, it is the perception of investigators that the cross-border procedures are cumbersome and too seldom produce the required results in the appropriate form and within the time by which the investigation is constrained. Sometimes, this perception is borne out by facts. On other occasions, the international aspect of the procedures work well and quickly enough but it is national procedures and priorities which cause delays. Whatever the reason, effective use of the procedures is less than might be expected.

Proposal for a Joint Action

4. The UK Presidency proposals for a Joint Action were outlined orally at the meeting of the Horizontal Drugs Group on 13 January. A draft text is now annexed. The draft Joint Action seeks to build upon measures already in place and therefore concentrates on procedural aspects. It does not incorporate any suggestions for additional legislation in this area.

5. The proposal has been confined to drugs although, as some Member States commented at the recent Horizontal Drugs Group meeting, some of these measures are, of course, equally relevant to other forms of crime. But the Presidency is conscious that, for some Member States at least, there may be fewer obstacles to effective joint action against drug trafficking than would be the case if our proposals were extended, at this stage, to all organised crime. Some Member States have not yet ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. However, all have ratified the 1988 UN Convention on drugs and the need for effective procedures is such that it seems sensible to seek to make progress in an area where there should be no major difficulty in reaching agreement. In addition, a drugs-specific Joint Action would, in the Presidency's view, be one practical way of taking further forward implementation of the Joint Action on the approximation of drugs laws and practices.

Handling issues

6. That said, in presenting these drugs-specific proposals to the Horizontal Drugs Group, the Presidency does, of course, recognise the important and leading role of the Multi-Disciplinary Group on Organised Crime in addressing the wider issues relating to asset confiscation and approximation of laws and practices. In the light of views expressed by some Member States at the Horizontal Drugs Group on 13 January, we thought it appropriate urgently to seek endorsement of the proposals being carried forward in this way from the Multi-Disciplinary Group, at its meeting on 6-7 February. This would be on the basis that the drugs-specific Joint Action would complement the Multi-Disciplinary Group's wider-ranging work in the field of asset confiscation. It would be for the Multi-Disciplinary Group to consider the extent to which it might draw subsequently on the proposals in the Joint Action as a prototype for possible application in the all-crimes context.
7. The Presidency will report on the outcome of the Multi-Disciplinary Group's discussion at the next Horizontal Drugs Group meeting on 11 February, with a view to detailed discussion then on the text of the draft Joint Action. Subject, of course, to the progress of discussions in the Horizontal Drugs Group, and recognising the need for early submission of the proposals to the European Parliament, we would hope to be in a position to seek formal approval of the Joint Action by the Justice and Home Affairs Council on 28/29 May. Not least in light of the United Nations General Assembly Special Session on Drugs in June, this would represent a further and timely demonstration of the European Union's continuing commitment to practical measures to combat drug trafficking.

DRAFT JOINT ACTION

of.....

adopted by the Council on the basis of Article K3 of the Treaty on European Union concerning arrangements for co-operation between Member States law enforcement authorities in respect of the tracing, freezing and confiscation of drug traffickers' proceeds

THE COUNCIL OF THE EUROPEAN UNION,

HAVING REGARD to Articles K.3(2)(b), K.1(7), K.1(8) and K.1(9) of the Treaty of the European Union;

HAVING REGARD to the importance placed by successive European Councils on countering trafficking in illicit drugs;

HAVING REGARD to the Joint Action on the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking;

MINDFUL of the common objective of improving co-ordination between law enforcement authorities;

MINDFUL of the principles before the Council in the Joint Action on mutual legal assistance;

CONSIDERING the potential for disrupting the activities of drug traffickers by confiscation of their proceeds;

CONSIDERING that mutually compatible practices would enhance European co-operation in asset confiscation;

CONSIDERING the commitment of Member States to the principles of the Strasbourg Convention 1990 and the requirements of the EC Money Laundering Directive 91/308;

CONSIDERING Member States' adherence to the 1959 European Convention on Mutual Assistance in Criminal Matters;

IN THE LIGHT OF the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and the 1998 United Nations General Assembly Special Session on Drugs;

RECOGNIZING the achievement of the 1996 Dublin Seminar on asset confiscation in identifying obstacles to effective co-operation;

ON THE UNDERSTANDING that the forms of co-operation laid down in this joint action should not detract from other forms of bilateral or multilateral co-operation;

WITHOUT PREJUDICE to the powers of the European Community,

HAS ADOPTED THIS JOINT ACTION:

ARTICLE 1

All European Union Member States shall ensure the ratification of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and bring all the necessary implementing legislation into force by 31 December 1998.

ARTICLE 2

2.1 Each Member State shall deposit with the General Secretariat of the Council of the European Union a statement of the key information required by their jurisdiction from Member States making requests to that jurisdiction relating to the tracing, freezing and confiscation of drug traffickers' assets, so as to assist the execution of such requests.

2.2 Member States shall deposit with the General Secretariat of the Council of the European Union details of contact points from which any guidance in respect of national requirements regarding asset tracing, freezing and confiscation can be sought by other Member States; and shall undertake to notify the General Secretariat of any changes to such information.

ARTICLE 3

Member States shall give the maximum priority to all requests from other Member States which relate to the tracing, freezing and confiscation of drug traffickers' assets.

ARTICLE 4

4.1 Where national legislation permits, Member States shall make appropriate use of investigative co-operation arrangements and direct agency-to-agency and inter-agency contact to ensure that requests for legal assistance are made only where necessary and, when that is the case, shall ensure that such requests are properly prepared and meet all the requirements of the receiving Member State.

4.2 Member States shall ensure that requests for legal assistance include any information relevant to the urgency of the request, including details of any statutory time limits affecting the request or the holding of a suspect in custody; and the receiving Member State shall take such information into account, expediting its response to the request where possible and appropriate.

ARTICLE 5

5.1 Without prejudice to the provisions of national legislation, Member States shall maintain the confidentiality of requests made to them and shall take all necessary steps to minimise the risks of drugs assets being dissipated.

5.2 Where an initial investigation leads to the need to pursue further enquiries across the internal administrative boundaries of a Member State, that Member State shall, where its national legislation permits, take all possible steps to enable the necessary assistance to be rendered without the need for preparation of a further Commission Rogatoire or letter of request.

ARTICLE 6

6.1 Member States shall ensure that arrangements are in place to acquaint members of their judiciaries with best practice in international co-operation in the tracing, freezing and confiscation of drug traffickers' assets.

6.2 Member States shall ensure that appropriate training, reflecting best practice, is provided to all investigators and other officials concerned with international co-operation in asset tracing, freezing and confiscation matters.

6.3 The Presidency, in conjunction with Europol, shall as necessary arrange seminars for officials from Member States to promote and develop best practice and to maximise the compatibility of procedures.

ARTICLE 7

The Presidency shall report to the Council each year on progress made in the implementation of this Joint Action.

ARTICLE 8

This Joint Action shall be published in the Official Journal and shall enter into force on the date of its publication. The Governments of the Member States undertake to take all appropriate steps to implement the Joint Action as soon as it enters into force, ensuring in particular that its contents are brought to the attention of the relevant parts of their respective judicial systems.

Done at Brussels

For the Council

The President
