

SPAI Steering Group

Washington, 29 April - 2 May 2002

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

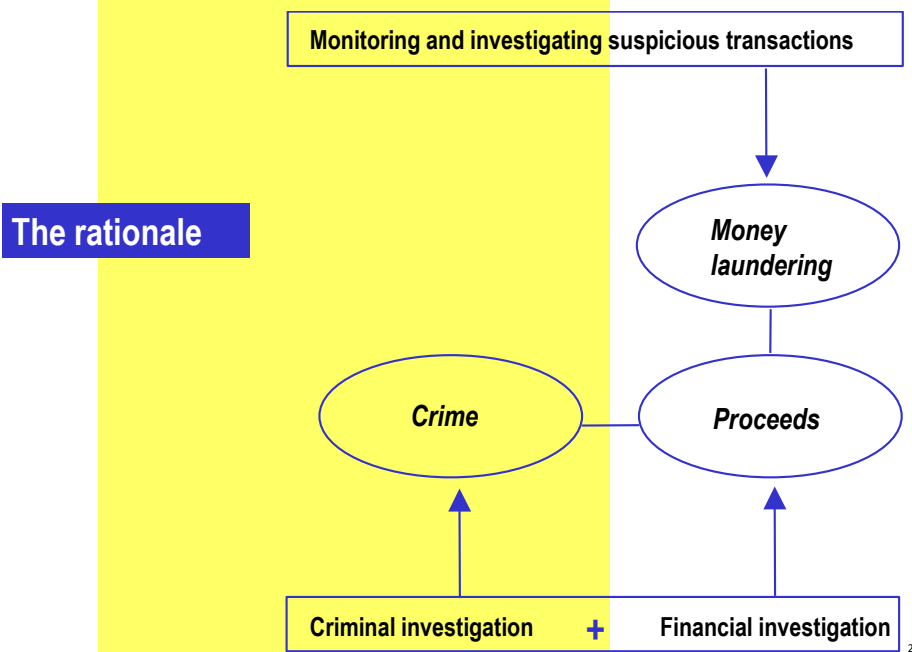
Alexander Seger, June 2004

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Financial investigations and confiscation: the issue



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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).

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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.

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... 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

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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

*see COE/Best practice survey no 2

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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

The PACO Proceeds project

In 2001:

Regional seminar Bucharest

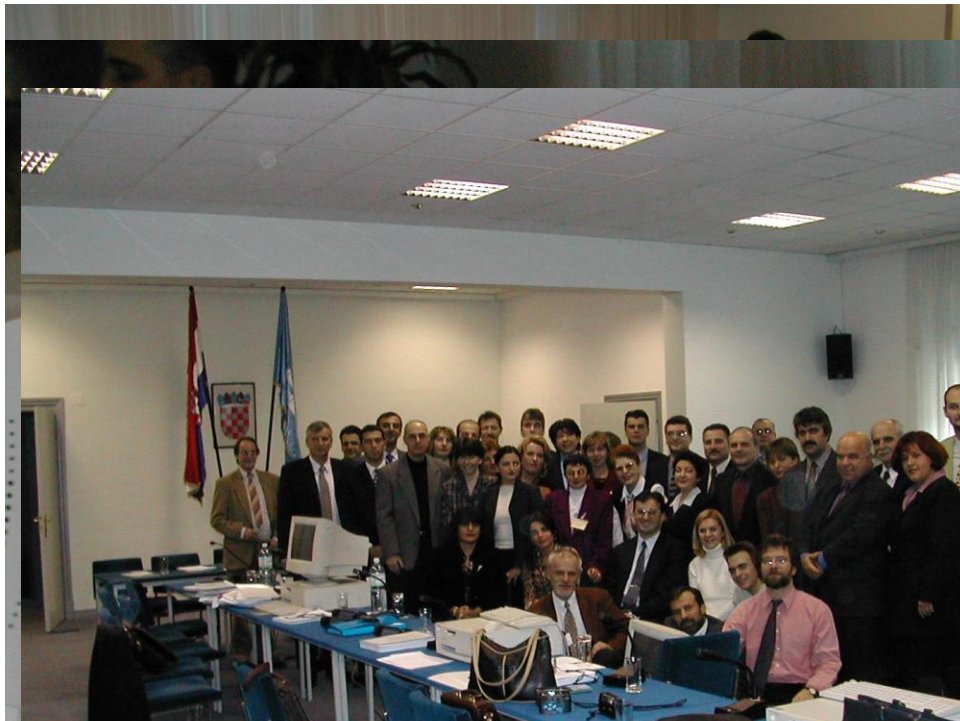
Study visit
Netherlands/Europol

Study visit Germany

Regional seminar Zagreb



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PACO Proceeds (2001): lessons learnt



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Financial investigations and confiscation of proceeds in South-eastern Europe

Convention 141:

- ratified by Albania, Croatia, FYR Macedonia, Serbia and Montenegro
- all countries participate in Moneyval

Legal provisions on confiscation

Conviction required before final confiscation

Third-party confiscation possible

Confiscation systems

In all countries:

Apply to all (serious) crimes

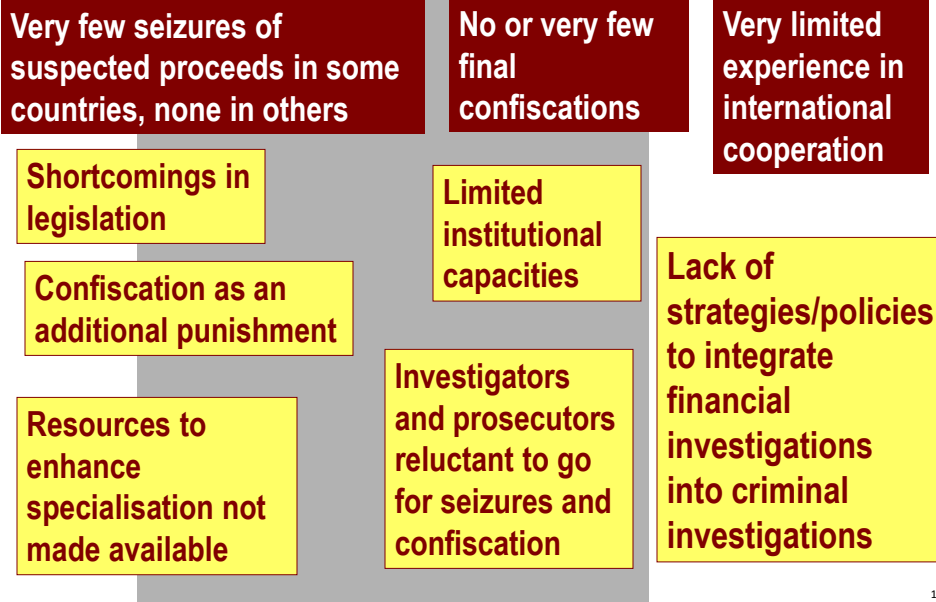
Reversal of burden of proof not possible

Value-based confiscation possible

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Problem: not effectively applied in practice



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The way ahead / Entry points

(Nov 2001)

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

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