

IAP 9TH EUROPEAN REGIONAL CONFERENCE

THE HAGUE, MARCH 2009

WORKSHOP – CASE STUDIES

NOTE OF DISCUSSIONS OF GROUP 2

Q.1

Bermuda – can provisionally freeze assets for 48 hours on the basis of a draft request – a restraint order can be prepared and ready to go to court by the time the formal request arrives.

E&W and Scotland – if a request for consent to transact is made, the 30 day period is triggered which enables enquiries to be made into the suspicious transaction and if there is enough to justify restraint, an order can go to court by the end of that period.

Greece – the police can seize property.

Where there is suspicion of organised crime, a committee based in Athens has jurisdiction over the whole country. The prosecutor can then write to the bank to say that accounts have to be frozen. This would not have to be followed up with a formal request for a court order.

Netherlands –for freezing assets a court order is required. The investigating judge decides. There needs to be a criminal act for which a fine can be imposed. There must be a written application. It would be possible to treat the situation as a criminal act of laundering and the police can act to seize evidence of the crime and can freeze money in the bank account. The public prosecutor would then have to ask for a decision in the court and would investigate and prosecute the money laundering in the Netherlands.

Q.2

Norway – can freeze property in Norway but if they then found that there was additional property in another country, e.g. Finland, they would refer this back to the requesting country who would have to make a further request in the other country.

Estonia – can freeze property only in their own country.

Bermuda – the courts would not enforce an order in a 3rd jurisdiction on behalf of another country. If the request disclosed a crime in Bermuda, they could get their own restraint for assets held locally and outwith the jurisdiction.

E&W & Scotland – If the Bank has control over the bank accounts abroad it has a duty to restrain the accounts.

On the question of control e.g. an investment fund controlled by a bank in one jurisdiction and has funds in another jurisdiction. May be able to restrain in one country and have effect on funds held in another jurisdiction under the control of that bank.

Other types of property – e.g. a ship registered in Norway can be restrained by Norway even though the ship is not in their waters at the time.

Netherlands gave an example of a firm based in Netherlands that owned property in Italy – they had to go to Italy to make request to freeze the assets.

Q.3

E&W – give full and frank disclosure of all information, including information that undermines the application.

Bermuda – full and frank disclosure and may have to ask for more information from requesting country if the information is not enough.

Scotland – the information given to the court and contained in the application is fairly brief and general.

Q.4

Netherlands – the person affected can make an official complaint to the court. He has to show an interest – that he has been affected by the order. It is done at a public hearing.

Greece – the defendant may challenge the order through his lawyer. He can ask the court to vary or discharge the order. The court will decide rather than the prosecutor. For organised crime – the committee will decide.

Norway – the defendant could challenge the order on the basis that the proceedings in the other country are unfair.

Q.5

Bermuda – if evidence is produced to challenge the restraint they can use this for the criminal case.

E&W – cannot use the material produced in criminal proceedings

Scotland – may be able to use this evidence, depends on the individual circumstances of the case. Most likely would use the information to direct further investigation to obtain the evidence by other means.

Q.6 not discussed by the group