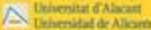


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<p><b>INVESTIGATION OF ASSETS RELATED TO PREDICATE OFFENCES</b> ISIDORO BLANCO, UNIVERSIDAD DE ALICANTE, SPAIN</p>	



# Investigation of assets related to predicate offences

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# Criminal policy issues

Criminal policy strategies in the fight against organized crime

**Crime doesn't pay**

Criminalization  
of money  
laundering

Support of  
forfeiture



The Al Capone  
strategy

Illicit wealth

- Why is it important to investigate predicate offences?
  - To determine if assets were generated that are for **forfeiture**.
  - To determine if crimes were committed, for instance **money laundering**.
    - to ensure the payment of so-called monetary responsibility, including civil responsibility *due to a criminal offense*, a fine, etc..

## LAVADO DE ACTIVOS

- It could be important to determine the **actual crime** that generated the assets as well as **who is responsible**.



- **Responsible**. If the author of the predicate offense can not be indicted for the subsequent laundering.
- No connected crimes.
- International cooperation will be refused.

- **Catalog System**: countries whose definition of the crime is a list of crimes and excludes others.
- For the purpose of **international cooperation**, if the offense from which the assets were generated is not a crime in the State with which cooperation is sought.
- Particularly important for **tax crime or financial crime**, which does not exist in all countries.

## FORFEITURE

- It is necessary to prove that the **assets** are the product of the crime.
- Need for a link with a **previous crime**. The **illicit origin** of the assets.
- They should be subject to **forfeiture** (criminal, civil, forfeiture).

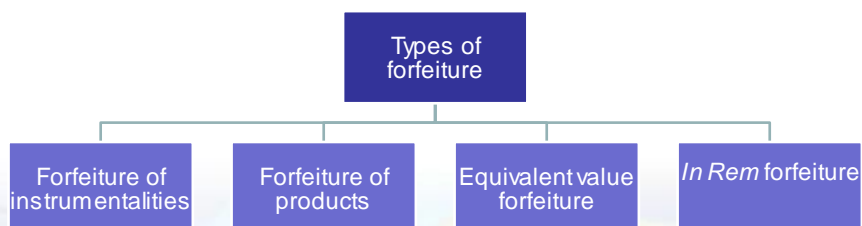
## FORFEITURE

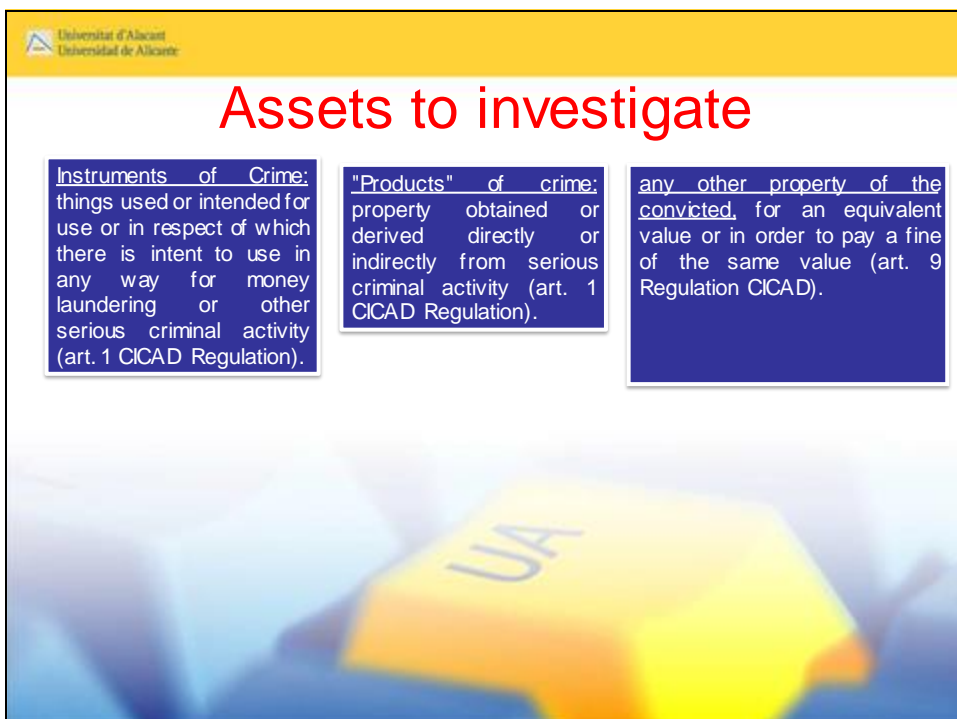
- “(...) the court or competent authority shall order that the property, proceeds or instrumentalities connected to such an offense be **forfeited** and disposed of in accordance with law (Article 9 Regulation CICAD)”.
- "**Forfeiture**" means the permanent deprivation of property by order of a court or other competent authority (art. 1 CICAD Regulation).

## FORFEITURE

- Problems in the application of the **forfeiture**:
  - The criminal trial is essentially aimed at punishing the crime.
  - The lack of resources to investigate the assets of those responsible, especially when it comes to cross-border investigations.
  - It does not intimidate criminals.

## Forfeiture





## Equivalent value forfeiture

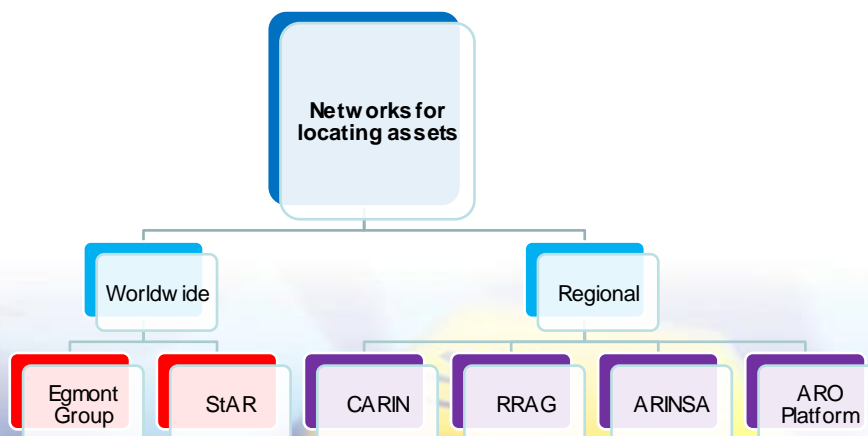
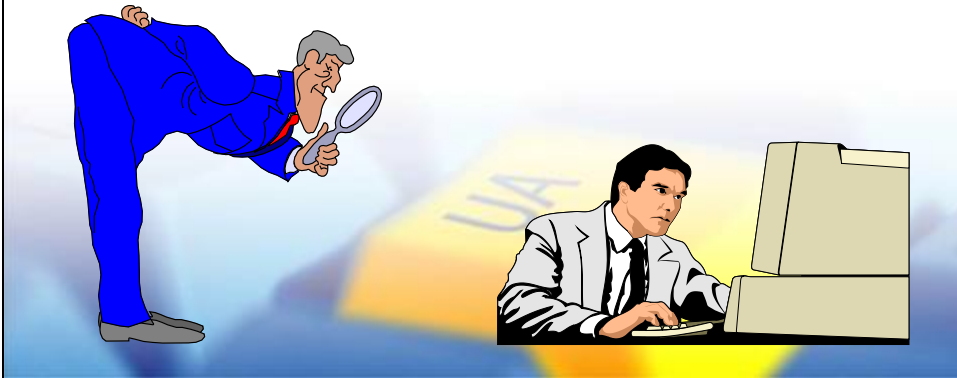
- Unlike the confiscation of objects based on the relationship between the asset and crime, forfeiture of the value of proceeds of crime may **target goods that are not connected in any way with the crime**, whether acquired by illegal means or legally.
- It is not necessary to determine the specific property obtained by crime, but to **determine the value** and seize any available assets belonging to the offender.
- Once the value to seize is determined, the **origin of the targeted property is irrelevant**.
- It allows us to investigate **all the assets** of the alleged offender.

## Internacional investigation: informal

- Before starting a process of mutual legal assistance and the formal submission of an application, the possibility that the goals can be achieved through **informal cooperation** should be explored.
- Considerations to take into account:
  - It should be clear that the **information** can be **legally obtained respecting the law of the requesting State**, and there must be no reason to believe that this information will be thrown out in court;
  - That the information can be obtained legally in the **State that received the request**;
  - The **State that received the request does not object**.

## Informal investigation

There are **networks of professionals** for the locating of assets: in particular, asset recovery agencies.






## ARO platform


- Informal platform for Asset Recovery Agency of the **European Union**
- It meets on a regular basis since the beginning of 2009 and includes the designated ARO of the Member States.

## European Union

- Multiple information exchange mechanisms:
  - Information exchange between police.
  - Liaison officers.
  - Joint Investigation Teams.
  - Europol.

## European Union (I)

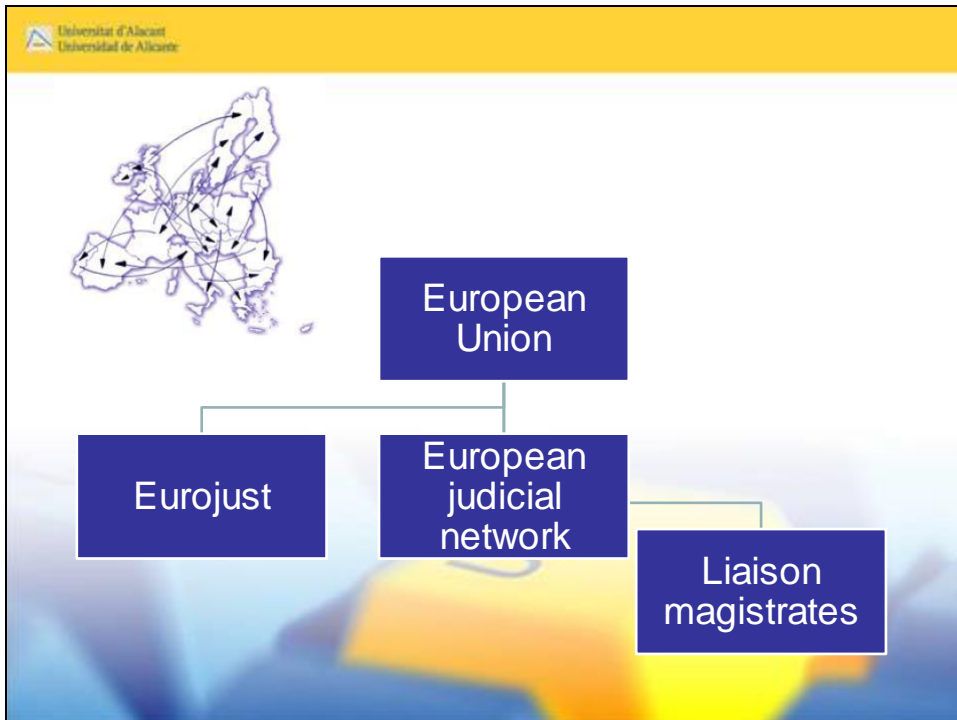
- **Council Decision 2007/845/JHA** of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime
- Article 1 of the Decision **obligates** States to **establish or designate a national asset recovery agency**
- Aim  Intended to facilitate the tracing and identification of proceeds of crime
- Each Member State may establish or designate a maximum of two asset recovery agencies.

- **Objective** (art. 2)
  - 
  - that asset recovery agencies cooperate with each other,
    - exchanging information and
    - best practices to improve efficiency in locating and identifying assets related to the offense (art. 6).
  - Information sharing can be done either at the request of an agency or spontaneously.

- a) The ARO of a State may request information from an ARO of another State.
  - The requesting ARO must specify the **object and the reason** of the request and the nature of the actions.
  - It is to **provide information on the property** subject to the request or sought (bank accounts, real estate, cars, yachts and other high value items) and natural or legal persons who are presumed to be involved (ej. names, addresses, dates and places of birth, date of registration, shareholders, headquarters). Such data must be **as accurate as possible** (art. 3).
- b) The **spontaneous exchange** refers to any information they consider necessary for the performance of the functions of another ARO and the achievement of its objectives (art. 4).

## Formal Investigation

- Procedure of sending a **letter rogatory or letter of request**.
- General obligation:
- States should take measures for the **identification, tracing** of criminal assets.



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## FREEZING / PREVENTATIVE SEIZURE

- Once located criminal assets must be **preventively seized** by the competent authority.
- The freezing, seizing, blocking or freezing of assets constitutes an **cautionary measure** based on the existence of a conviction.
- **Objective**: To prevent or impede traffic, transmission or disposal of assets.
- "Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property under a warrant issued by a court or competent authority (art. 1 CICAD Model Regulations).

## FREEZING / PREVENTATIVE SEIZURE

- Preventative freezing:
  - Movable assets: Material seizure
  - Cash: asset freezing and bank accounts
  - Real estate: notice of preventative freezing and ban from access.
- **There are many types of legal goods that are seized / confiscated** in the course of the judicial process.

## INTERNACIONAL COOPERATION SEIZURE / FORFEITURE

- It may occur that a **foreign judicial authority** issue a **freezing order** within a criminal procedure and request that it be executed in another State.
- **Objective:** To safeguard the objects, documents or data that can be seized or may be used as evidence, thus preventing its disappearance or transformation.
- It is advisable that this resolution be carried out in the State.

## INTERNACIONAL COOPERATION SEIZURE / FORFEITURE

- In **Europe: Council Framework Decision** 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence [Official Journal L 195, 2.8.2003].
- **Taking into consideration the urgency** of the locating and seizure of property to prevent its demise.
- **Recognition without further formality**, if there are no grounds for non-recognition and **subsequent and immediate implementation** of the necessary measures for the intervention of the goods.
- The executing authority shall not only take measures immediately but also **communicate its decision on the recognition and enforcement** in the shortest possible time and whenever feasible within 24 hours of receipt.

## INTERNACIONAL COOPERATION SEIZURE / FORFEITURE

- The foreign authority must respond to the request accompanying the freezing and where the issuing authority indicates what to do with these goods, in general, **keep them in custody** or temporary **transmit** them to the issuing authority.
  - **Preservation:** given the provisional measures, essentially a seizure of goods to be forfeited, the practice will be the **application of conservation** of the property in the executing State.
  - To prevent that these measures have an excessive duration **generating high maintenance costs** for the executing State, it would be desirable to allow the executing State, after consulting the issuing State, to **impose conditions to limit the duration of the seizure.**

## INTERNACIONAL COOPERATION SEIZURE / FORFEITURE

- **Disposal:** in Spain can not be carried out without first obtaining the **permission** of the foreign judicial authority.
- The **product**, after deducting the expenses of any nature that have been incurred, is credited to the appropriation account of the court and will be available to the foreign authority, a fact which will be communicated promptly.

## CONCLUSION



**Thank you**  
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