

**Seminar "Mutual recognition of judicial decisions and confiscation" - Siracusa,
Italy 22-23 September 2014**

Olivier Tell's opening speech

Sir,

Dear Madam Caterina Chinnini,

Mr Prosecutor general,

Ladies and gentlemen,

It is a real honor and a pleasure for me to address you on behalf of the European Commission on the occasion of this conference.

It is never an easy task to introduce a seminar that gathers so many experts. This is even more difficult in a city with 3000 years of history. It is actually quite humbling standing here in the city of Archimedes, one of the most genius spirits of Humankind.

Thank you, Sir, for having us in a place so full of history and so magnificent.

Being in Sicilia also reminds me that more than 20 years ago, on the road close to Palermo, perished my colleagues Judge Giovanni Falcone (23.05.1992) and Paolo Borsellino (19.07.1992). They embody the fight against organized crime. They should not have died in vain.

Being here also reminds me that the 2000 UN Convention on transnational organised crime was signed in Palermo.

It is therefore obvious that we are at the right place to discuss during two days how we can strengthen the recovery of criminal assets.

We have to ensure that crime does not pay. But it does and generates huge and indecent profits. This is not just only about breaking the law. This is also ultimately a threat against democracy.

Since 2008, we have faced a tremendous economic crisis. People are still striving to recover jobs and prosperity. Whilst Member States are reducing spending, consolidating their budgets and combatting tax evasion and fraud, more needs to be done to tackle the ill-gotten wealth amassed by criminal organizations.

In this context, we cannot accept the increasing penetration of criminal wealth into the licit economy of the Union. One of the most important ways of doing this is to ensure that states have strong procedures in place to identify, freeze, seize and confiscate illegally acquired funds and property.

However, the current tools to confiscate these assets are inadequate.

The overall amount recovered from organised crime is modest, especially if compared to the estimated revenues of organised criminal groups.

Criminals must have no safe havens: if criminals can continue investing the proceeds of their crimes into legal assets in just one Member State, the fight against organised crime in Europe as a whole will be undermined.

Therefore both the European Union and the Member States share responsibility in this area.

So far, what has been achieved by the EU?

Several legislative instruments have been adopted.

We have harmonised the definitions of offenses and sanctions. The Directive adopted in April this year on freezing and confiscation (2014/42/EU) will help to facilitate and modernize confiscation across the EU and will need to be thoroughly implemented by the Member States.

The EU also has older instruments dealing with mutual recognition of freezing or confiscation orders, which have not been implemented by all Member States and, if they have, in a patchy way.

But more importantly, those instruments are not used by practitioners on a day-to-day basis. This explains why the level of transnational confiscation remains too low.

We all know that financial investigations targeting freezing and confiscation of criminal assets are long, complex and require huge financial and human resources.

But I am convinced, and surely you are too, that it is worth it.

I believe there are two priorities ahead of us:

Firstly, practitioners have to apply **existing instruments** whatever are their defects. These instruments have been adopted by the Council with a view to make them workable. Practitioners have to develop their practices in order to overcome difficulties, with the assistance of Euojust and the European Judicial Network.

It is important to remember in this context that all instruments adopted under the former so-called "third pillar" will come under the common EU-law regime as of 1st December this year. This means that the Commission will be empowered to enforce their implementation and the two existing framework decisions will come under the jurisdiction of the European Court of Justice.

The Commission will therefore work closely with the Member States to overcome the difficulties of their implementation. It is through more frequent application of these instruments that we will better identify the challenges of the matter for the future. Despite their imperfections, it is not because of any plans for new initiatives that we should stop implementing and applying the existing tools during the next years.

However, we can learn from the past and look for more efficient instruments. We have to develop new ideas which may result in **new instruments and new mechanisms**. This view is shared by the **Council and the European Parliament** which gave the Commission political green light to take further action on mutual recognition [joint declaration following the adoption of the Directive (2014/41/EU)]. The Crime Committee

of the European Parliament – under the leadership of Hon. MEP Sonia Alfano - also called for new legislation in this area.

I also note that the Alfano report implicitly refers to the Italian anti-mafia legislation by considering preventive models of confiscation following a court decision.

Finally, I remind you about the **new context in which mutual recognition now evolves**, justifying a more ambitious approach than under the former 3rd pillar: over the last years, we have set up an impressive number of common minimum standards to strengthen procedural safeguards; other steps are to come. There should therefore be a never reached level of mutual trust, which is the base of mutual recognition.

One of the main challenges of any new initiative in this area is to **overcome differences between national judicial or legal systems**. When it comes to confiscation, it should overcome practical issues regarding the recognition and execution of *in rem* confiscation, the so-called non-conviction based confiscation.

We also have identified many other needs which require concrete responses, including related to safeguards for persons affected.

As a first step, the Commission has just finalized a comparative law study. I consider it as a good basis for further work. I'm pleased that its conclusions will be presented to you during this seminar.

The Italian Presidency has gathered highly experienced speakers. Together with the experts invited, I am convinced that great ideas will be put on the table.

Ladies and Gentlemen, dear colleagues,

The European Commission has made a strong commitment together with the Italian Presidency for the preparation of this event. We expect that this seminar will be a landmark on the path to seriously strengthen our capacity to freeze and – above all – to confiscate criminal assets in the EU.

Saying so, I wish you fruitful discussions. I hope they'll be the dawn for outstanding and decisive actions.