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Drugs Assets Funds – a preliminary insight

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Mr. Chairman, distinguished drug coordinators, dear colleagues,

It's a privilege for the EMCDDA to open this afternoon's discussion with a presentation on such an interesting subject like the confiscation of assets from drug-related crime, and the use of these assets to combat such crime and reduce drug-related problems.

Mr. Chairman, as you know we are discussing in these days the new EU drugs action plan, which proposes to (and I quote) **utilize confiscated assets to finance drug projects, exploring the possibility of developing a fund to be used for joint operational projects** (to be financed from the confiscation of assets earned through drug production and trafficking).¹

Your call to discuss about these kinds of funds, the so-called **Drug Assets Funds**, is certainly to be welcomed, bringing light to this important matter.

I am pleased therefore to present you the findings of the small research we have done on your kind request.

¹ Strategy aim 27.1, Aim 20. Utilise confiscated assets to finance drug projects. Explore the possibility of developing a fund to be used for joint operational projects to be financed from the confiscation of assets earned through drug production and trafficking. Date 2007. The Commission to Study on best practice in the establishment of such a fund.



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1. What is a Drug Assets Fund?

First of all we have asked ourselves what is a **Drug Assets Fund**. I think is important to clarify this point here today.

From our brief research we have found out that **Drug Assets Funds** are those funds held by the government, that constitute the money derived from the sale of assets which have been confiscated from drug related crimes.

The monies held in the fund can then be used for combating drugs crime, preventing drug abuse, treating drug addicts, etc.

It is evident that such a system embraces a political and practical appeal; it sends the message that the criminals are denied their profits, but also potentially brings fresh money into usually troubled budgets. It is, in principle, a win/win solution.

However, we have discovered, through our rather superficial research (I must admit), that the constitution of such a fund, according to the different legal systems and administrative cultures, may give rise to certain difficulties for implementation.

2. What is the situation therefore in the European Union countries? Which countries have such a fund and which countries do not?

- Out of 26 countries, a few (such as Spain, France, Luxembourg) report the operation of a legal structure that we can define as a **drug assets fund**, meaning that assets from drug crimes are the main focus of the system and are collected into a specific fund for redistribution.



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- Some others (such as **UK**) have a broader “**crime**” **fund**, (not only drugs related) where assets from a number of different crimes may be confiscated and recycled directly into action against crime. The philosophy is similar to a **drug assets fund** but there is no exclusive emphasis on the “drugs” aspect.
- In a few other countries, the law permits the court to directly order the destination of the confiscated assets. It may award traffickers’ cash to a treatment centre, or award a vehicle to a police force. In these countries, therefore, the “fund” exists more as a statement of progress at the end of the year, rather than a bank account with a visible balance.
- Finally the majority of the countries can execute their rights to confiscate drugs-related assets, and put them at the disposal of the financial administration that will re-use them according to their needs. Indeed, all EU Countries (as others) that ratify international agreements² (in particular the 1988 UN Convention) have endorsed the general principle that proceeds, property or their value, derived from **drug-related** offences, should be confiscated and disposed by Countries.

3. Outside the EU

If we look for a moment outside the European Union, we see further existence of **general crime funds** (*not exclusively drug related, such as in UK*). In **Australia**, the State of New South Wales in the financial year 2002-03 confiscated assets from crimes to the equivalent of eleven million euros³ (11M). In the **United States**, the equivalent of three hundred and

² (art.5(5)(a)) 40 FATF recommendations, 1988 UN Convention against illicit traffic in narcotic drugs and psychotropic substances, 1990 CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime, 2000 UN Convention against Transnational Organized Crime, 2003 UN Convention against Corruption

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering
Council of the EU Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime

³ A\$19m. Speech by Mr John Watkins, Minister for Police, in NSW Parliament answering a question on criminal assets seizure 10/11/2004
<http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA20041110028>



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seventy million euros (370M) were confiscated in 2003 by the Federal fund. In the same year, one hundred and ninety million euros (190M) served to run that Fund, and one hundred and fifty million euros (150M) went to law enforcement operations⁴. In **Canada**, the equivalent of forty-four million euros (44M) were confiscated from January 2000 to July 2004.

4. What this broad and superficial picture tells us

So what can we see from this broad and superficial picture?

Few countries run **confiscated assets funds** (whether drug related or not).

The majority in fact, report that any proceeds from asset confiscation go to central government funds, and are controlled by the Ministry of Finance or similar.

They may have considered (or be considering at the moment) the establishment of drug assets (or just crime) funds, but have not implemented the idea due to various reasons, some legal, some practical.

From discussions with national experts, we found that some reasons were common to a number of countries.

- One reason given for not having specific asset funds was that basic laws or financial rules determine that all monies raised by government are put into general revenue, and all disbursements are then made from there.
- A second reason seems to be the difficulty in budget programming. A department would not be able to run a project in the coming year if it could not guarantee that the money for that project would be forthcoming, unless it were supported by normal funds. Openly, we were told that a drug asset fund could thus be an unnecessary level of administration.

⁴ US\$479m, \$245m, \$191m. Assets Forfeiture Fund And Seized Asset Deposit Fund: Annual Financial Statement Fiscal Year 2003



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- Another reason for avoiding specific funds was that the financial administrations seem to prefer to maintain **maximum budgetary flexibility** – any dedicated fund means that the money will not be available for redistribution elsewhere.
- Finally, the difficulty in separating assets from a multi-faceted criminal organisation, when their origin may be from drug smuggling, gun-running, people trafficking or exploitation etc. was also presented as a possible problem.

At the same time we have discovered that talks are underway in certain countries to consider the establishment of such a fund.

Mr Chairman,

This list of difficulties should not leave the impression of a generalised negative attitude towards such a system. It's a bias of our research having concentrated on the majority who are not speaking on this issue, thus outlining the difficulties seen by them. And we will listen now to some examples in which these or other problems have been apparently put aside.

5. Some points for reflections

I will conclude therefore with some points for reflections

- The first concerns the **criteria of cost-benefit** that any public measure should have. Clearly the concept of any kinds of funds, dedicated to face the drug phenomenon, can be supported in a domain in which budgets are often moderate.

However, in our small research we have heard that in some cases the **costs** for the creation and management of such dedicated funds **risk being equal or superior** to the revenue.

This may be due to low revenue, high administrative costs, or a combination. Therefore the **economic viability** should be considered. Nevertheless, the



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symbolic, ethical and political component of such funds is certainly part of the reflection.

This leads us to suggest that any system should be simple and proportionate.

- Second, it would be worth considering that what we are seeing fits in the larger picture of the issue of the **drugs economies**.

Questions like: **What we are spending to face the drug phenomenon?** Or **What is its overall cost of drugs upon our society?** by and large leave us unprepared.

There are of course rough estimations. However, profiting from the experience of countries that are pioneers in this research, as the new EU action plan calls for, there might be room for progress at EU level.

- Third, and finally Mr. Chairman,

The concept of a **fund to be used for joint operational projects**, as suggested in the new EU action plan, needs clearly to be studied and analyzed, perhaps profiting from the experiences of countries which have already a good base of knowledge in this area. The European Commission seems the body suited to undertake such a study. The EMCDDA will again be pleased to put at the disposal of the European Union its knowledge and capacity.

Thank you