

Tilburg University

Editor's foreword

Fijnaut, C.J.C.F.

Published in:
European Journal of Crime, Criminal Law and Criminal Justice

Publication date:
1997

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
Fijnaut, C. J. C. F. (1997). Editor's foreword. *European Journal of Crime, Criminal Law and Criminal Justice*, 5(3), 191-192.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.



Cyrille Fijnaut

Editor's Foreword

This issue is almost entirely devoted to the problem of the policy – at the European as well as the national level – with regard to money-laundering on the one hand and proceeds-hunting on the other. It contains several of the papers that were presented at a workshop that took place in Paris in December 1996. These papers were prepared within the framework of the comparative research project of the Max Planck Institute for Foreign and International Criminal Law on money-laundering and the measures taken to contain this problem.

Reading the papers included in this issue, one can only come to the conclusion that anti-money-laundering measures make up a favourite subject of policy makers in the field of international and organized crime, and that they still cause many problems, both at the legislative and at the implementation and enforcement levels. With respect to the legislation in the Member States of the European Union that has been enacted under the pressure of international agreements and conventions, the often vague and inconsistent ways in which money-laundering is penalised and the differences between the categories of predicate offences that are linked to money-laundering are noteworthy. In relation to its implementation and enforcement it can be said that two issues are still highly controversial in many countries. First, the way in which potential cases of money-laundering are to be transferred to the police and the judiciary, and second the extent to which these authorities are to investigate these cases, that is to say beyond the first phase wherein only cash is changed into other currencies. In addition one must not lose sight of the fact that the effectiveness of the systems in place is increasingly questioned, in relation to the containment of international and organized crime itself. Has the introduction of the existing anti-money-laundering measures not merely caused the displacement of the illegal flows of money?

With a view to these problems it is not at all astonishing that more and more attention is being paid to the confiscation of illegally obtained goods. Confiscation of such goods on a large scale would not only demonstrate that crime does not pay, but would also prevent criminals from obtaining or exerting control on legal sectors of the economy. But this approach is also plagued by some tough problems. One of them is that in practice it is often difficult to make a clear distinction between legal and illegal goods. Another well-known problem is that proving the ownership of illegal goods is usually quite a arduous task. There are, of course, ways in which these problems can be solved to a certain extent, but they create, in turn, problems which are not easily solved, e.g., the reversal of the burden of proof and the introduction of civil forfeiture. Also, the systematic application of financial investigations in criminal cases is often seen as a solution for some of the problems confiscation actually poses. In theory this might be true, in practice it is not that easy to realise. The regular police usually lack the knowledge to conduct financial investigations, and regulatory bodies whose

members would be capable of conducting them are frequently loathe to get involved in the fight against international and organized crime.

In this issue, these and other problems are addressed in detail. Together they raise the fundamental question of whether the current policy against money-laundering should be continued or whether it should be replaced by a different approach to the financial aspects of organized crime. The history of the fight against organized crime contains some famous examples wherein the shortcomings and drawbacks of the criminal justice system were compensated by the use of tax law. Has the time come to draw some conclusions from the lessons of history? Should the financial fight against organized crime be handed over to the tax authorities? Do not immediately say yes; the spectre of tax collectors and finance ministers dealing with worldwide tax evasion and fraud, should make you think twice...