

**Directive on the Freezing and Confiscation  
of Instrumentalities and Proceeds of Crime in the European Union**  
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**The need for a European Directive to freeze and confiscate crooked assets**

- In 2009, the total amount of criminal proceeds estimated to approximately USD 2.1 trillion, i.e. 3.6% of global GDP
- Less than 1% of the proceeds of crimes are frozen and confiscated
- Confiscation procedures in EU Member States underutilised and laws at national level uneven
- 29 April 2014: Publication in the EU Official Journal following the adoption of the Directive as negotiated during the trilogues by Rapporteur Macovei, the Council and the Commission
- Directive lays down minimum rules for Member States with respect to freezing and confiscation of criminal assets through direct confiscation, extended confiscation and third party confiscation

**The traditional type: confiscation following a final criminal conviction**

- Member States required to enable confiscation following a final criminal conviction
- Introduction of provisions allowing confiscation even if the suspect is ill and has flown the country. Proceedings can be done for instance *in absentia*.

**Extended confiscation**

- Extended confiscation involves the confiscation of assets which go beyond the direct proceeds of a crime so that there is no need to establish a connection between suspected criminal assets and a specific criminal conduct.
  - With extended confiscation procedures, the judge will have the power to look over the whole income of a convicted person. If the person cannot justify the source of his wealth then the assumption will be that everything comes from similar criminal activities for which he has been convicted and the judge will be able to extend the confiscation order to the whole wealth.
- Under the Directive, extended confiscation will apply to crimes related to:
  - Active and passive corruption in the private and public sectors
  - Active and passive corruption involving EU and Member States officials
  - Participation in a criminal organisation
  - Child pornography
  - Cybercriminality
  - Criminal offence punishable in the Member States of a maximum of at least 4 years
- Provision to enable the European Commission to extend the list of offences to other crimes.
- In the case of the Directive, limitation to EU legislation but in principle other countries could apply extended confiscation to a larger spectrum of criminal offences.

### **Third party confiscation**

- Third party confiscation involves the confiscation of assets that have been transferred by an investigated or convicted person to a third party
- In cases of goods transferred for free or below the market price
- When the third party knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation

### **The way forward: non-conviction based confiscation (NCBC)**

- In practice, conviction based confiscation (CBC) procedures not efficient enough leading some countries to complement their system with NCBC procedures (also called civil confiscation).
  - For instance, United States, United Kingdom, Ireland, Italy and Bulgaria
  - Results examples of NCBC
    - In April 2013, assets worth 1.3 billion euro were confiscated from an Italian businessman 'with mafia links'. Among the assets confiscated were 43 companies, 98 properties, 66 bank accounts, credit cards, investment funds, cars and boats. Most were located in Sicily and in Calabria, the southern region of Italy
    - In UK, civil recovery orders amounted to 11.5 million pounds in 2011/2012 and to more than 4 million pounds in 2012/2013
- NCBC procedures allow the freezing and confiscation of property irrespective of a prior conviction of its owner in a criminal court
  - Under NCBC procedures, proceedings are against a property (houses, bank accounts, cars, etc.)
  - NCBC procedures are based on the civil level of proof, i.e. the balance of probabilities
  - Irish experience: based on the information provided by the Asset Recovery Office (ARO), the High Court decides whether it is satisfied that there are reasonable grounds to believe that the property in question is the proceeds of crime.
- Together with the Directive, Joint Declaration from the European Parliament and the Council asking the European Commission to study the feasibility of introducing non-conviction based confiscation

### **After confiscation**

- Some EU Member States apply the principle of social reuse of confiscated assets to the benefit of victims, the community and law enforcement
- In the Directive, Member states are encouraged taking measures allowing the use of confiscated property for public interest or social purposes as this exists in Italy.
  - Give back the assets to the community that is the victim of organized crime and sometimes suffers from lack of economic and social development, environmental damages, loss of rights and freedoms for citizens.
  - Another example of such social re-use, in Italy or in UK: police, prosecutors, or all those working to catch offenders receive part of the amounts confiscated to buy machines and equipment which are crucial in the fight against organised crime and terrorism.

#### **Recovery proceeds of grand political corruption of Ukraine: loosed opportunity?**

*International expert conference, Kiev 24 April 2014*

## **Recommendations**

- Adopt a national law on criminal and civil confiscation
  - Ensure deep cooperation with the Anti-Money Laundering Office
- Make illicit enrichment and conflicts of interest criminal offences
  - Article 20 of the United Nations Convention Against Corruption
- Adopt a national law requesting a declaration of interest and a declaration of assets from all civil servants and all public officials and their family
  - Declarations must be very detailed, published on website in order to be publicly available and renewed at least annually. Sanctions must be included and enforced.
  - Set-up a National Integrity Agency having the power to ask banks, tax offices or other relevant institutions all the information necessary to check those declarations.
  - Best practice: UK House of Commons' Declarations.
- Support investigative journalism
  - Able to 'Follow-the-Money' across borders through their investigations
  - Use their results as proofs in Court proceedings