

# Freezing and confiscation of instrumentalities and proceeds of crime in the EU

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Monica Luisa MACOVEI (EPP, RO) on the proposal for a directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union.

The committee recommends that the position of the European Parliament adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

**Purpose:** as well as establishing minimum rules on the freezing of property with a view to possible later confiscation, on the confiscation of property in relation to criminal matters, the Directive also **recommends general principles for the management and disposal of confiscated property.**

**Definitions:** Members amended certain definitions, and in particular:

- ‘proceeds’ now means any economic advantage derived **directly or indirectly** from a criminal offence;
- ‘property’ also refers to property **held jointly with a spouse**;
- ‘confiscation’ means a measure ordered by a judgment of the competent national court or following judicial proceedings, **in relation to a criminal offence**, resulting in the final deprivation of property based upon a judgment.

**Reinforcing the provisions of non-conviction based confiscation:** the committee wishes to extend provisions regarding non-conviction-based confiscation. The text now states that, in addition to the provisions in the Commission proposal, judicial authorities may also confiscate, as a criminal sanction, proceeds and instrumentalities **without a criminal conviction** where a court is convinced on the basis of specific circumstances and all the available evidence that those assets **derive from activities of a criminal nature**, while fully respecting the provisions of Article 6 of the ECHR and the European Charter of Fundamental Rights. Such confiscation is to be considered of criminal nature according, amongst others, to the following criteria: (i) the legal classification of the offence under national law, (ii) the nature of the offence and (iii) the degree of severity of the penalty that the person concerned risks incurring and shall also be in line with national constitutional law.

**Extended confiscation:** the report notes that extended confiscations are particularly effective in combating organised crime, and that some Member States already allow confiscation for instance where a criminal conviction is not pursued or cannot be achieved, if a court is satisfied, after making full use of the available evidence, including the disproportionality of assets compared to the declared income, that the property derives from activities of a criminal nature. Accordingly, the text now states that judicial authorities may confiscate property belonging to a person convicted of a criminal offence where, based on specific facts such as that the **value of the property is disproportionate in relation to the lawful income of the convicted person**, a court finds it **substantially more probable** that the property in question has been derived from activities of a criminal nature than from other activities.

**Third party confiscation:** the amendments state that confiscation of property shall be possible if the proceeds or property were transferred for free or in exchange for an amount **significantly** lower than their market value.

In addition, a new clause states that each Member State shall take legislative measures in order to introduce provisions aimed at prosecuting those persons who fictitiously attribute ownership and availability of property to third parties, with the aim of avoiding seizure or confiscation measures.

**Freezing:** Members consider that competent authorities must be able to immediately freeze or seize property with a view to possible its later confiscation. The person affected by this measure shall have a right of appeal to a court. The committee deleted the Commission's wording that such property must be in danger of being dissipated, hidden or transferred out of the jurisdiction.

The rules on third-party confiscation extend to both natural and legal persons.

**Safeguards:** the amended text specifies that the persons whose instrumentalities and proceeds of crime are confiscated under the directive, **irrespective of their ownership at the time of confiscation**, have the right to an effective remedy, including the right to a fair trial.

In addition, the amended text states:

- affected persons must have the right to an effective remedy prior to a final decision on confiscation being taken, including the opportunity to make legal representations, in order to preserve their rights;
- where as a result of a criminal offence injured parties have claims against the accused, **confiscation must not jeopardise the enforcement of such claims.**

**Management of frozen and confiscated property:** the committee's amendments specify that:

- Member States must provide for the possibility of confiscated property being used for **social purposes. Statistics collected by Member States** shall show the type of use to which the confiscated property has been put, and the contribution it has made to the social and economic development of the area and local communities concerned;
- a new recital states that it would be useful to consider the formation of a **Union fund** that would collect a part of the confiscated assets from Member States. Such a fund should be open to pilot projects by the citizens of the Union, associations, coalitions of NGOs and any other civil society organisation, to encourage the effective social reuse of the confiscated assets and to expand the democratic functions of the Union;
- Member States must take measures, based on existing best practice while applying national law, to provide for the disposal and the destination of the confiscated property. It could as a priority **earmark such property** for law enforcement and crime prevention projects as well as for other projects of public interest and social utility. Member States are also called upon to take all the necessary measures to prevent any criminal or illegal infiltration in this phase.

Lastly, they may introduce a **revolving fund** for financing measures aimed at safeguarding property between the time when it is frozen and the time when it is confiscated, in order to ensure its integrity against any acts of vandalism or acts that may render it less immediately available.