

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

2012/0036(COD) - 03/04/2014 - Final act

PURPOSE: to establish a legal framework on the freezing and confiscation of proceeds of crime in the European Union.

LEGISLATIVE ACT: Directive 2014/42/EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

CONTENT: this Directive establishes minimum rules on the freezing of property with a view to possible subsequent confiscation and on the confiscation of property in criminal matters. This Directive is without prejudice to the procedures that Member States may use to confiscate the property in question.

Scope: the Directive shall apply to criminal offences within the scope of the instruments it lists. Under the scope of these instruments, Member States should apply an extended confiscation to at least a certain number of criminal offences.

Confiscation: Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia.

Where confiscation on the basis of abovementioned is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to **economic benefit**, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

Extended confiscation: Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from **criminal conduct**.

The notion of 'criminal offence' shall include at least the following: (i) active and passive corruption in the private sector as well as active and passive corruption involving officials of institutions of the Union or of the Member States; (ii) offences relating to participation in a criminal organisation; (iii) causing or recruiting a child to participate in pornographic performances; (iv) illegal system interference and illegal data interference; (v) a criminal offence that is punishable by a custodial sentence of a maximum of at least four years.

Confiscation from a third party: Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete

facts and circumstances, including that the transfer or acquisition was carried out **free of charge or in exchange for an amount significantly lower than the market value**. This measure shall not prejudice the rights of bona fide third parties.

Freezing: Member States should take the necessary measures to enable the freezing of property with a view to possible subsequent confiscation. Those measures, which should be ordered by a competent authority, should include **urgent action** to be taken when necessary in order to preserve property.

Safeguards: Member States should take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the right to an effective remedy and a fair trial in order to uphold their rights.

Amongst the safeguards, the following should be noted:

- the right to information as regards the freezing order;
- the right to challenge the circumstances of the case;
- the right to restitution of property frozen by not subject to subsequent confiscation;
- the reason for any confiscation;
- the right of access to a lawyer during the confiscation proceedings;
- the right to challenge the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.

Moreover, where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States should take the necessary measures to ensure that the confiscation measure does not prevent those victims from seeking **compensation** for their claims.

The freezing order shall remain in force only for as long as it is necessary to preserve the property with a view to possible subsequent confiscation.

Effective confiscation and execution: Member States shall take the necessary measures to enable the detection and tracing of property to be frozen and confiscated even after a final conviction for a criminal offence.

Management of frozen and confiscated property: Member States shall take the necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation.

Member States shall consider taking measures allowing confiscated property to be **used for public interest or social purposes**.

Statistics: Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities on the number of freezing orders executed and other statistics of the same type (including the number of requests for freezing orders to be executed in another Member State). The Member States shall also send each year the following statistics to the Commission.

Undue hardship: when implementing this Directive, Member States may provide that, in exceptional circumstances, confiscation should not be ordered, insofar as it would, in accordance with national law, represent **undue hardship for the affected person**, on the basis of the circumstances of the respective individual case which should be decisive. Member States should make a very restricted use of this possibility, and should only be allowed to provide that confiscation is not to be ordered in cases where it would put the person concerned in a situation in which it would be very difficult for him to survive.

Reporting: the Commission shall, by 4 October 2018 submit a report to the European Parliament and the Council, assessing the impact of existing national law on confiscation and asset recovery, accompanied, if necessary, by adequate proposals. In that report, the Commission shall also assess whether there is any need to revise the list of offences.

It should be noted this Directive replaces [Joint Action 98/699/JHA](#) and certain provisions of Framework Decisions [2001/500/JHA](#) and [2005/212/JHA](#).

ENTRY INTO FORCE: 19.05.2014.

TRANSPOSITION: 04.10.2015.