



EUROJUST'S OPINION

ON THE PROPOSAL OF THE EUROPEAN COMMISSION FOR A DIRECTIVE ON THE FREEZING AND CONFISCATION OF PROCEEDS OF CRIME IN THE EUROPEAN UNION

On 15 May 2012 the Chairman of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament, Mr. Juan Fernando López Aguilar, addressed a letter to the President of EUROJUST, Ms. Michèle Coninx, requesting EUROJUST's Opinion on the "*Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crimes in the European Union*" (the "Proposal") presented by the European Commission on 12 March 2012.

With this Opinion EUROJUST aims at giving response to the request of the LIBE Committee and provide a practitioner's point of view on this Proposal.

EUROJUST is following the current negotiations of the Proposal in the Council with great interest. However, this Opinion does not consider the current developments at Council level. EUROJUST expressed its availability to offer any further advice, in the light of its operational experience, to the LIBE Committee, if required, at a later stage of negotiations on this draft legal instrument.

The Opinion has been divided into four parts:

Part I – Introduction

This chapter provides a brief overview of the work done by Eurojust on this area, the existing legal instruments related to freezing and confiscation, and a brief analysis of current problems.

Part II – General remarks related to the scope of the Proposal

This chapter provides a brief overview of relevant issues to be highlighted when considering the scope of the Proposal.

Part III – Analysis of the specific provisions of the new Proposal

This chapter contains the comments of EUROJUST related to specific provisions of the Proposal.



Part IV – Conclusions

This chapter contains a number of general recommendations.

The LIBE Committee is also provided with the following documentation:

Annex I - Good practices developed in some Member States regarding freezing and confiscation

Annex II - Non-conviction based confiscation

Annex III - Summary Report of the Seminar on Confiscation and Organised Crime: procedures and perspectives in international judicial cooperation, Palermo, 21-22 May 2012



PART I – INTRODUCTION

1. Ongoing work at Eurojust:

Freezing and confiscation of proceeds of crime are essential tools in the fight against serious cross-border and organised crime. Confiscation aims at hampering activities of criminal organisations, at preventing criminal wealth from being used to finance other criminal activities and at preventing infiltration in the legal economy.

Over the years, EUROJUST has been paying special attention to these problems and has been requested to provide its assistance in concrete cases. The EUROJUST Annual Reports for 2010 and 2011 give account of best practices and solutions found to overcome legal obstacles.

In addition, problems related to freezing and confiscation have been debated in successful seminars organised by Eurojust with the specific aim to gather experience and best practices from different Member States, discuss common problems and make proposals for future improvements.

During the EUROJUST Strategic Meeting on VAT Fraud (March 2011), practitioners exchanged their experience in the use of the available EU legal instruments. During the EUROJUST Seminar on “Confiscation and Organised crime: Procedures and Perspectives in International Judicial Cooperation (May 2012)”, a number of experts from several Member States discussed the use of confiscation in the fight against organised crime, with special focus on practical ways to solve legal difficulties.

2. Overview of existing instruments on freezing and confiscation:

Before analysing the specific provisions of the “*Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crimes in the European Union*”, EUROJUST would like to provide some additional information related to the existing legal instruments relevant for the analysis of the draft text.

At present, asset recovery is regulated in the European Union by the following instruments:

- Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (the “Joint Action”);
- Council Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (the “2001 Framework Decision”);
- Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (the “2003 Framework Decision”);



- Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (the “extended confiscation Framework Decision”);
- Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (the “2006 Framework Decision”);
- Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime (the “ARO Decision”).

Those instruments have not been implemented fully by all Member States. EUROJUST shares the view of many practitioners that they are under-utilised. Only the implementation of the ARO Decision is considered as moderately satisfactory from a practitioner’s point of view.

It is estimated that the amount of assets/money confiscated is very low compared to the benefits made by criminals. This is considered as a major problem in the impact assessment conducted by the Commission for this Proposal (“the Impact Assessment”). This situation could be due to several obstacles, namely:

- the incomplete and late transposition of the 2003 Framework Decision, the Extended confiscation Framework Decision and the 2006 Framework Decision;
- the existence of diverging national laws combined with the lack of clarity of some EU provisions. Indeed different transpositions into national laws of the framework decisions has increased differences between the national legislations;
- the low utilisation of confiscation in practice, as evidenced by the gap between the estimated size of criminal assets and the amounts confiscated.

It has also been highlighted by national prosecutors that, in many cases, even though assets have been traced abroad, national competent authorities would favour confiscation of equivalent value within national territory rather than engaging in pursuing proceeds of crime activities abroad. The international co-operation system in this field could therefore still be enhanced.

In order to make the current legal framework more efficient, in 2010 the Commission announced in the Action Plan Implementing the Stockholm Programme that it would propose a “*new legal framework for asset recovery*”. Additionally, already in the Communication from the Commission to the European Parliament and the Council “Proceeds of organised crime, ensuring that “crime does not pay””, published in 2008, the Commission had envisaged a number of possible legislative novelties.

EUROJUST would like to refer also to a number of national good practices developed in some Member States regarding freezing and confiscation. These examples of national good



practices, taken from EUROJUST's internal work and from the EUROJUST Seminar on confiscation and organised crime taking place in Palermo on 21-22 May 2012 are included in the Annex I of this Opinion for consultation.

PART II – GENERAL REMARKS RELATED TO THE SCOPE OF THE PROPOSAL

The Treaty on the Functioning of the European Union (TFEU) places specific conditions upon the EU's possibilities to harmonise legislation. The Commission uses these conditions in the Proposal to suggest amendments to the current asset recovery legal framework in 9 particularly serious crime areas.

The main legal basis for the Proposal is Article 83(1) TFEU, and its scope is limited to the "*particularly serious crimes*" listed in this Article, namely: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, money laundering, corruption, counterfeiting of means of payment, computer related crime, organised crime. Illicit trafficking of arms is not included in the scope of this Proposal as this crime area has not benefitted yet from a common EU definition.

Criminal activities not specifically listed would be covered by the Proposal if they comply with the criteria set out by Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime.

Thus, the Commission deems that the previous legal framework on confiscation must remain in place in order to "*maintain a degree of harmonisation with respect to criminal activities which fall outside the scope of this Directive*".

The Proposal in particular maintains in force:

- Article 2, 4 and 5 of the "2005 Framework Decision". These provisions concern the obligation for Member States to take necessary measures to enable confiscation, the introduction of legal remedies to preserve the interested parties' rights and the non violation of human rights and fundamental principles;
- The "2003 Framework Decision"; and
- The "2006 Framework Decision".

EUROJUST takes note that the main legal basis for the Proposal is Article 83(1) TFEU and that, according to the Proposal, the existing legal framework on freezing and confiscation must remain in place with respect to criminal activities falling outside the scope of this Directive. However, it may be useful to consider that asset recovery is a tool aimed at fighting all kinds of serious crime.

Although EUROJUST is aware of the limitations of the Treaty on the Functioning of the European Union with regard to the legal basis to be used for harmonisation purposes, the



difficulties that practitioners could encounter in applying such a multi-fold fragmented legal framework should not be underestimated, even more so if this Proposal is limited to 9 particularly serious crime areas only.

PART III – ANALYSIS OF SPECIFIC PROVISIONS OF THE NEW PROPOSAL

EUROJUST would like to provide the following comments related to specific provisions of the Proposal.

1. Extended powers of confiscation (Article 4):

Extended confiscation allows confiscating assets which go beyond the direct proceeds of a crime. A criminal conviction can be followed by an extended confiscation of additional assets which the court determines are the proceeds of other similar crimes.

Article 4, paragraph 1 of the Proposal envisages extended confiscation for “*property belonging to a person convicted of a criminal offence where, based on specific facts, a court finds it substantially more probable that the property in question has been derived by the convicted person from similar criminal activities than from other activities*”.

Extended confiscation is excluded where:

- the similar activities referred to in paragraph 1 could not be subject of criminal proceedings due to prescription under national criminal law;
- the affected person has been finally acquitted in a previous trial (thereby upholding the presumption of innocence under article 48 of the Charter of Fundamental Rights) or where the *ne bis in idem* principle applies.

A significant positive change to the 2005 Framework Decision should be stressed: a national court has currently to be “**fully convinced that the property in question has been derived from similar criminal activities of the convicted person**” (emphasis added) where, according to the Proposal, a court has to find it “**substantially more probable that the property in question has been derived by the convicted person from similar criminal activities than from other activities**” (emphasis added). This change should allow greater flexibility in applying extended confiscation, as burden of proof has been reduced.

EUROJUST believes that in respect of Article 4 of the Proposal, it would also be useful to consider that Article 3(2) of the 2005 Framework Decision establishes an alternative minimum set of rules for extended confiscation, leaving it to the Member States to apply one of the three options. According to the Commission, the patchy transposition of the 2005 Framework Decision options has limited the mutual recognition of confiscation orders. However, a possible amendment of the Proposal could be to add former Article 3(2)(c) of the 2005 Framework Decision establishing the criteria of disproportionate property to the lawful income and convert the two circumstances in the Proposal into obligations for Member States rather than keeping them as options.



EUROJUST also endorses the following statement contained in the Commission's Impact Assessment for this Proposal: "Some EU legal provisions are not well coordinated. (...) [Article 3(2)] is not coordinated with the provisions on the grounds for refusal of mutual recognition of confiscation orders laid down in Framework Decision 2006/783/JHA. As a result the scope for mutual recognition of confiscation orders is restricted. The authorities in one Member State are obliged to execute confiscation orders issued by another Member State only if these orders are based on the same alternative criteria applied in the Member State receiving the order."

In this regard, it can also be considered that Article 8(2)(g) of the 2006 Council Framework Decision, which lists "extended powers of confiscation" of the issuing authority as a possible ground for non-recognition or non-execution of the mutual recognition orders, is hampering extended confiscation's use. Therefore, a possible amendment to the 2006 Framework Decision (for instance a simple deletion of this ground for refusal from the grounds for non-recognition or non-execution of mutual recognition orders) could enhance the situation.

3. Third party confiscation (Article 6):

EUROJUST welcomes the introduction for the first time of binding rules on confiscation of property transferred to third parties.

In order to protect the position of a third party acquiring property in *bona fide*, Article 6 of the Proposal permits confiscation from a third party only for cases mentioned under paragraph 1 point (a) and (b) and if some listed conditions are met.

Article 6 of the Proposal limits the assets concerned by third-party confiscation to those for which non-conviction based confiscation is unlikely to succeed and have been transferred, in particular where the person is already suspected or convicted. In this respect, this wording could be seen as a limitation as assets could, from the start, be owned by relatives or close friends to the criminals and not be transferred, or at least transferred before the criminals know they are suspected.

Therefore, EUROJUST suggests that a possible amendment to the Proposal could be the presumption that any asset held by heirs or close friends has been transferred if the owner cannot explain the licit origin of those assets. It would also be useful to consider Article 3(3) of the 2005 Framework Decision which provides the notion of "controlling influence" and gives the possibility to Member States to introduce this concept in their national legislation. A possible amendment of the Proposal could be to keep this concept in the Proposal and make it obligatory rather than optional.

4. Precautionary freezing (Article 7):



Article 7, paragraph 1, requires Member States to enable the freezing of property in danger of being dissipated, hidden or transferred out of the jurisdiction in view of possible later confiscation. It clarifies that such measures should be ordered by a court.

While Joint Action of 3 December 1998 provided for a non binding recommendation to Member States to set up this possibility, the Proposal makes it compulsory for Member States to take the necessary measures that would enable to freeze assets “*in danger of being dissipated*”.

Article 7, paragraph 2, introduces also the possibility to use freezing powers in urgent cases where a risk of dissipation, hiding or transfer of property occurs, before a court’s decision, if waiting for it could compromise the possibilities of freezing at a later stage. These measures of immediate freezing can be taken by any competent authority and are subjected to confirmation by a court as soon as possible.

EUROJUST would like to underline that while Article 7 provides for freezing in view of a possible further confiscation, it would also be useful to consider Article 14 of the Proposal of the Directive establishing minimum standards on the rights, support and protection of victims of crime which provides for return of property belonging to victims seized in the course of criminal proceedings. Therefore, a possible amendment of the Proposal could be to introduce this aim as a second alternative aim to confiscation.

5. Determination of the extent of the confiscation and effective execution (Article 9):

This provision requires Member States to allow financial investigation on the person’s assets to be pursued to the extent necessary to fully execute a confiscation order “*following a final conviction for a criminal offence or following proceedings as foreseen in Article 5*”, in case no property or insufficient property was discovered and the confiscation order could not be executed or not fully executed. Previously hidden assets resurfaced could then be targeted. In order to confiscate those assets, Article 9 requires all Member States to “*take the necessary measures to make it possible to determine the precise extent of the property to be confiscated*”.

EUROJUST believes that in order to do so, it seems that it is in fact the precise extent of the profit derived from the relevant criminal activities which needs to be determined. A possible amendment to this Article could therefore include a reference to calculation of benefits. Calculation of benefits already exists in some national legislation.

6. Management of frozen property (Article 10)

The Proposal intends to facilitate and optimise the management of property frozen in view of possible later confiscation, by requesting the introduction of “*necessary measures such as establishing national centralised office or equivalent mechanisms (...) and measures optimis(ing) the economic value of such property*”, notably by including “the sale or transfer of property which is liable to decline in value” (emphasis added).



A number of Member States have already established asset management offices. Management of frozen and confiscated assets is important in order to maximise the value of those assets and to make sure that freezing and confiscation are properly recorded and executed.

EUROJUST particularly welcomes Article 10 of the Proposal.

Furthermore Article 10, paragraph 2 seems to allow for the sale of frozen assets before the conviction of the suspected person has been decided on.

EUROJUST considers that a possible amendment to this paragraph could be the introduction “restitution/ compensation” measures should assets have been sold because, in particular, their value was declining but the defendant not found guilty.

7. Statistics (Article 11):

According to this Article, Member States would, for the first time, have the obligation to collect and report a number of figures relating to freezing, confiscation and re-use of criminal assets. In this respect, consideration might be given to the fact that the list of statistics to be provided is quite long and detailed.

EUROJUST suggests limiting the list of statistics to be collected to key data in order to facilitate fulfilment of this obligation by Member States.

In principle, however, this new obligation is particularly welcome as it could also enable key stakeholders, such as EUROJUST, to assess, by deduction, in which proportion it has been assisting Member States in these areas. This assessment will however only be possible, if Member States provide EUROJUST with statistical feedback on cases.

8. Non-conviction based confiscation (Article 5):

The issuance of confiscation orders generally requires a criminal conviction. Non-conviction based confiscation allows confiscating proceeds and instrumentalities without a criminal conviction under limited circumstances where criminal prosecution cannot be exercised.

According to Article 5 of the Proposal, non-conviction based confiscation is possible only where a criminal conviction cannot be obtained because the suspect:

- has died;
- is permanently ill; or
- when his flight or illness prevents effective prosecution within a reasonable time and poses the risk that it could be barred by statutory limitations.

Some international instruments such as the 2005 Council of Europe *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the*



Financing of Terrorism, state that cooperation should exist “to the widest extent possible (...) with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention.”. Already the 1990 Council of Europe Convention on Money Laundering, Search, Seizure, Confiscation of Criminal Profits provided for the confiscation of proceeds of crime in proceedings which did not have to be criminal, the relevant factor being the “judicial” character of the decision of confiscation.

Some EU Member States recognise the possibility of applying non-conviction based confiscation. Ireland, Italy, and the United Kingdom are particularly advanced in this area. An overview of the existing systems is included in the Annex II of this Opinion.

It should be mentioned that the European Court of Human Rights has held that the application of preventive patrimonial measures does not violate the right to property, right to free trade and right to access to a fair trial, as the power Mafia gains from huge criminal profits jeopardises the very rule of law within the State.

The provision contained in Article 5 of the Proposal is of particular relevance for EUROJUST’s work. On a number of occasions, EUROJUST has been informed of difficulties linked to cooperation between countries applying non-conviction based confiscation and those who do not know this concept. Such difficulties hamper judicial cooperation in this area and limits, for instance, recognition and execution of civil recovery orders overseas.

While introducing non-conviction based confiscation in the EU legislation on asset recovery could be seen as an answer to recurrent difficulties already pointed out by EUROJUST in its Annual Reports, the differences in legislation and concepts between Member States’ national legislation make it difficult to detail the conditions of implementation of this measure.

Therefore, EUROJUST would favour an amendment to Article 5 of the Proposal keeping its wording quite broad (“the suspected person is not available for prosecution”), while, at the same time, introducing the principle of mutual recognition in this area to enable Member States, in spite of the legislative differences, to recognise and execute requests initiated by other Member States.

PART IV - CONCLUSIONS



Freezing and confiscation of proceeds of crime are essential “horizontal” tools in the fight against serious cross-border and organised crime. Efficient recovery of criminal assets is also indispensable to prevent and combat money laundering activities, the financing of other criminal activities and infiltration in the legal economy.

However, concrete experience shows that international judicial cooperation in asset recovery and in particular mutual recognition of freezing and confiscation orders are still delayed or even hampered by numerous obstacles, such as the differences between national legal systems and the unsatisfactory implementation of EU instruments. As a result, it is still commonly experienced that the amount of assets or money confiscated is very low compared to the benefits made by criminals.

Practice shows that in many cases, even though assets have been traced abroad, national competent authorities would favour confiscation of equivalent value within national territory rather than engaging in pursuing proceeds of crime activities abroad. The international co-operation system in this field could therefore still be enhanced.

EUROJUST welcomes the attempt made in the Proposal to lay down common minimum rules applicable in all Member States in a number of key areas, such as direct confiscation, extended powers of confiscation, third party confiscation, precautionary freezing and non-conviction based confiscation, as further harmonisation of freezing and confiscation regimes can facilitate judicial cooperation and mutual recognition.

However, in order for the draft Directive to bring added value in practice, the proposed minimum rules should be as comprehensive as possible to prevent that the future harmonised rules diverge too much from the existing national provisions and also from the consolidated current practice. Such a situation, in fact, would lead to the practical inapplicability of the new provisions and would ultimately hamper judicial cooperation.

On the other hand, experience shows that the existing European Union legal instruments, such as Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence, the Council Framework Decision 2005/212/JHA on confiscation of crime related proceeds, instrumentalities and property, or the Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders, are still under-utilised by practitioners, for reasons ranging from lack of clarity in the applicable provisions to the cumbersomeness of the procedure.

Careful lessons shall be driven from practice so as to make sure that the provisions of the future Directive are transposed harmoniously and properly throughout the European Union, so as to prevent weak enforcement due to diverging interpretation, misunderstanding amongst practitioners, and ultimately new impediments to international judicial cooperation.

While the overall aim of the Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crimes in the European Union is



particularly useful, EUROJUST has highlighted a number of amendments which could enhance the text of the Proposal while keeping its core substance.



ANNEX I

Good practices developed in some Member States regarding freezing and confiscation

EUROJUST would like to refer to a number of national good practices developed in some Member States regarding freezing and confiscation. These examples of national good practices have been taken from Eurojust's internal work and from the EUROJUST Seminar on confiscation and organised crime taking place in Palermo on 21-22 May 2012.

EUROJUST also provides the European Parliament with the Summary Report of the Seminar on Confiscation and Organised Crime: procedures and perspectives in international judicial cooperation, Palermo, 21-22 May 2012 for further consultation. Note that this Summary is classified CONFIDENTIAL.

The national good practices can be summarised as follows:

- **Italy** has developed broad possibilities for investigating assets and carrying out an economic assessment of suspects, close relationships and family. In **The Netherlands** the examining judge can, under certain conditions, order a Criminal Financial Investigation which focuses on illegally obtained advantages and on tracing capital assets.
- In the **United Kingdom** restraint orders are made against a person and not against an asset, *i.e.* it is not the asset that is "frozen" but rather the person who is not allowed to dissipate the asset. Freezing in the pre-trial stage is possible. In **The Netherlands** freezing is also possible at a pre-trial stage as a precautionary measure.
- France distinguishes between:
 - "simple" confiscations where, for instance, the direct or indirect proceeds of the offence would be confiscated;
 - "extended" confiscations that would include confiscation of unjustified assets;
 - "global" confiscation where all assets belonging to the person sentenced (even those not related to the offence) are confiscated. This "global confiscation" is only possible for the most serious offences.
- On a similar pattern, the **Dutch legislation** provides for two different types of confiscation: the ordinary one (where a direct link between the offence and the asset is needed and where the asset is confiscated) and the special one where a link between the offence and the asset is not always necessary and where value based confiscation can be applied.
- **France** also allows for value confiscation. Even if proceeds of crime have been mixed with lawful assets to acquire property, confiscation in value can be made on the estimated value of the asset. **The Netherlands** has opted more generally for a value confiscation regime rather than an "object" confiscation system.
- A reverse or lowered burden of proof can be found in **Belgium, Denmark, Estonia, Ireland** (for interim order), **Hungary, The Netherlands, Finland**, and the **United Kingdom**.



- In the **United Kingdom**, after the defendant is convicted, the court must determine the amount of the offender's benefit and the recoverable amount. There is a rule for calculating the benefit derived from the offence and a number of criteria are taken into consideration, in particular the "criminal lifestyle" (or not) of the offender. As such, if the offender has a criminal lifestyle, the court would assume that any property transferred to him within 6 years of the criminal proceedings commencing against him was the result of his criminal activities. If the offender cannot pay the sum, then he must pay what is available to him. The law in the **United Kingdom** imposes strict limitations on the release of funds and the defendant is only allowed to spend reasonable amounts on general living expenses. If the defendant is acquitted, the prosecutor does not have to pay compensation (except in case of "serious default"). In **The Netherlands**, the judge is also estimating the amount of assets that have been obtained illegally.
- In **Italy**, confiscation can take place regardless of any proof of causal link with previous criminal activities and any specific timeframe between acquisition of an asset and the commission of the main crime. It is up to the defendant to demonstrate the licit origin of the assets. Furthermore, the measure can be applied also to spouses, children and cohabiters, plus linked legal entities.

A number of Member States have already created asset management offices or set up management of asset rules, for instance:

- Act n°2010-768 of 9 July 2010 aiming at facilitating the seizure and confiscation in criminal law created, in **France**, a public administrative body placed under the joint supervision of the Ministry of Justice and the Ministry of Budget (AGRASC).
- Legislative Decree n04 of 4 February 2010 converted into law by Article 1, sub-section 1, of Law n050 of 31 March 2010 established the National Agency for the Administration of Assets Sequestered and Confiscated from Organised Crime in **Italy**.
- In **Spain**, the Asset Recovery Office will also, in addition to finding criminal asset, be entrusted with keeping, managing and liquidating criminal assets.
- In the **United Kingdom**, a management receiver is appointed to preserve the suspect/defendant's assets pending the conclusion of proceedings.

As far as reuse of confiscated assets is concerned, **Italy** has established long standing "good practices", including for the protection of witnesses.

ANNEX II



Non-conviction based confiscation

Some EU Member States recognise the possibility of applying non-conviction based confiscation. Italy, the United Kingdom and Ireland are particularly advanced in this area.

Italy has adopted and implemented a preventive system of seizure and confiscation for assets in possession of persons belonging to Mafia-type organisations. It is possible to “*place under observation all financial and other assets that are even just suspected of belonging to a Mafia-type association, even if they are registered to a front man, and confiscate them if they turn out to derive from illicit activities, or if their overall value is greater than the declared income from, or is disproportionate to, economic activity carried out, and cannot be accounted for in terms of legitimate origin*”. Indeed, the Italian law has introduced the possibility of applying asset-related prevention measures independently of the danger to society of the individual in question, and, therefore, also in case of residence abroad, or in case of death.

The **United Kingdom** has established civil recovery which makes confiscation possible for property obtained from crime even if no criminal conviction has been decided in the case. The action is then undertaken *in rem*. It is brought by the State on the basis that property is, or represents, the proceeds of crime. The *onus* is on the offender to contradict the assumption that his property is derived from the profits of crime. Assets can also be recovered when fraudulently registered in the name of another person. The crime can have been committed overseas, provided that the conduct would have been criminal if committed in the United Kingdom. The effect of the civil recovery order is to transfer ownership of the property to a trustee in civil recovery, whose duty is to sell the property and pay the proceeds to the Treasury.

Clarification was recently provided by the Ministry of Justice of Ireland on the **Irish non-conviction based model**. Its key concepts are: the confiscation is made *in rem* on the property that constitutes the proceeds of crime and not *in personam* against a convicted person; civil law concepts are applied rather than criminal law concepts. Therefore, with regard to matters of evidence, it is the civil law standard that applies, that is ‘*on balance of probabilities*’ rather than the criminal standard of ‘*beyond any reasonable doubt*’. Consequently, “*the Irish Criminal Asset Bureau must satisfy the High Court (exercising civil jurisdiction) that, on balance of probabilities, the specified property constitutes directly or indirectly the proceeds of crime*” Then only is the burden of proof “*shifted to the respondent to show that the property was obtained legitimately*”. “*The sanction provided by the [Irish] legislation is not considered punitive or criminal in nature. (...) It deprives the holder of the beneficial enjoyment of the property in question which has been shown to the satisfaction of the High Court to be property that constitutes, directly or indirectly, proceeds of crime or that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.*”