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Committee on Civil Liberties, Justice and Home Affairs

2012/0036(COD)

8.1.2013

AMENDMENTS

30 - 177

Draft report
Monica Luisa Macovei
(PE494.663v01-00)

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

Proposal for a directive
(COM(2012)0085 – C7-0075/2012 – 2012/0036(COD))

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PE498.052v02-00

EN

United in diversity

EN

Amendment 30
Cornelis de Jong

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The main *motive* for cross-border organised crime is financial gain. In order to be effective, law enforcement and judicial authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime.

Amendment

(1) ***One of*** the main *motives* for cross-border organised crime is financial gain. In order to be effective, law enforcement and judicial authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime.

Or. en

Amendment 31
Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The main motive for cross-border organised crime is financial gain. In order to be effective, ***law enforcement and judicial*** authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime.

Amendment

(1) The main motive for ***most crime, and particularly*** cross-border organised crime, ***including mafia-type criminal organization,*** is financial gain. In order to be effective, ***appropriate competent*** authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime. ***However, effective prevention of and fight against organized crime should not be limited to the neutralization of the proceeds of crime but should be extended, in some cases, even to property in any way related to such criminal associations. It is not enough, therefore, merely to ensure mutual recognition in the EU of seizure and confiscation of proceeds of crime. An effective fight against economic crime would also require the mutual recognition of measures taken in a different field from***

that of criminal law or otherwise adopted in the absence of a criminal conviction and that they have as their object, more broadly, any possible asset or income attributable to a criminal organization or to a person with a criminal conduct or suspected to belong to a criminal organization.

Or. en

Justification

This recital deals with the importance of confiscation against serious and organised crime. In particular it underlines the importance of non conviction based confiscation systems in the fight against serious and organised crime. These systems should be effective, mutually recognised and used in Member States.

Amendment 32
Roberta Angelilli

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The main motive for **cross-border** organised crime is financial gain. In order to be effective, law enforcement and judicial authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime.

Amendment

(1) The main motive for organised crime, **and particularly cross-border** crime, is financial gain. In order to be effective, law enforcement and judicial authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime.

Or. it

Amendment 33
Mario Borghezio

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) **The main motive for** cross-border

Amendment

(1) **One decisive outcome of** cross-border

organised crime is financial gain. In order to **be effective**, law enforcement and judicial authorities **should** be given all means to trace, freeze, manage and confiscate the proceeds of crime.

organised crime is **that it generates substantial** financial gain. In order to **provide the necessary counterweight to this criminal strategy**, law enforcement and judicial authorities **have to** be given all means to trace, freeze, manage and confiscate the proceeds of crime.

Or. it

Amendment 34
Mariya Gabriel

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Organised criminal groups operate without borders and increasingly acquire assets in other Member States and in third countries. There is an increasing need for effective international law enforcement cooperation on asset recovery and mutual legal assistance.

Amendment

(2) Organised criminal groups operate without borders and increasingly acquire assets in other Member States and in third countries. There is an increasing need for effective international law enforcement cooperation on asset recovery and mutual legal assistance. ***The adoption of minimum rules will harmonise the Member State's freezing and confiscation regimes facilitating mutual trust and effective cross-border cooperation.***

Or. en

Amendment 35
Zbigniew Ziobro

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The most effective means of combating organised crime are severe legal consequences, effective detection, seizure and confiscation of the

instrumentalities and proceeds of crime. Extended confiscations are particularly effective.

Or. pl

Amendment 36
Roberta Angelilli

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) Although existing statistics are limited, the amounts recovered from criminal **assets** in the Union seem insufficient compared to the estimated proceeds of crime. Studies have shown that, although regulated by EU legislation and national laws, confiscation procedures remain underutilised.

Amendment

(3) Although existing statistics are limited, the amounts recovered from criminal **proceeds** in the Union seem insufficient compared to the estimated proceeds of crime. Studies have shown that, although regulated by EU legislation and national laws, confiscation procedures remain underutilised **and therefore require harmonisation, not least in order to ensure full and complete performance of the confiscation itself.**

Or. it

Justification

First part: linguistic amendment

Amendment 37
Sarah Ludford

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) This Directive concerns only criminal law confiscation measures. It does not prescribe minimum rules in respect of any civil law measures which a Member State

may have in respect of the confiscation of assets considered to be the proceeds of crime.

Or. en

Justification

This keeps a broad provision but ensures Member States can apply civil forfeiture powers under their existing law or establish criminal-based non-conviction based powers pursuant to this Directive. It would ensure full coverage across the EU, but without putting civil forfeiture powers in this criminal law instrument.

Amendment 38
Sarah Ludford

Proposal for a directive
Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) Member States are free to take confiscation procedures which are linked to a criminal case in front of any court whether criminal, civil or administrative.

Or. en

Justification

This makes clear that Member States can implement the Directive through whatever type of court proceedings suits their national system.

Amendment 39
Mariya Gabriel

Proposal for a directive
Recital 9

Text proposed by the Commission

Amendment

(9) Confiscation of instrumentalities and proceeds following a final decision of a court and of property of equivalent value to those proceeds should therefore refer to

(9) Confiscation of instrumentalities and proceeds following a final decision of a court, **both based on a conviction or in the absence of criminal conviction**, and of

this broadened concept for the criminal offences covered by this Directive. Framework Decision 2001/500/JHA required Member States to enable the confiscation of instrumentalities and proceeds of crime following a final conviction and to enable the confiscation of property of equivalent value to the proceeds of crime. Such obligations should be maintained for the criminal offences not covered by this Directive.

property of equivalent value to those proceeds should therefore refer to this broadened concept for the criminal offences covered by this Directive. Framework Decision 2001/500/JHA required Member States to enable the confiscation of instrumentalities and proceeds of crime following a final conviction and to enable the confiscation of property of equivalent value to the proceeds of crime. Such obligations should be maintained for the criminal offences not covered by this Directive.

Or. en

Amendment 40

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) Confiscation of instrumentalities and proceeds following a final decision of a court and of property of equivalent value to those proceeds should therefore refer to this broadened concept for the criminal offences covered by this Directive. Framework Decision 2001/500/JHA required Member States to enable the confiscation of instrumentalities and proceeds of crime following a final conviction and to enable the confiscation of property of equivalent value to the proceeds of crime. Such obligations should be maintained for the criminal offences not covered by this Directive.

Amendment

(9) Confiscation of instrumentalities and proceeds following a final decision of a court and of property of equivalent value to those proceeds should therefore refer to this broadened concept for the criminal offences covered by this Directive. Framework Decision 2001/500/JHA required Member States to enable the confiscation of instrumentalities and proceeds of crime following a final conviction and to enable the confiscation of property of equivalent value to the proceeds of crime. Such obligations should be maintained for the criminal offences not covered by this Directive ***and the concept of proceeds as defined in this Directive should be extended also for the criminal offences not covered by this Directive.***

Or. en

Justification

Having several definitions of proceeds would create many differences between the MS. All MS should have a common and broad definition of proceeds of crime. This was also an explicit indication made by the European Parliament in the resolution on organised crime in the EU of October 2011.

Amendment 41

Monica Luisa Macovei

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) In accordance with the principle of ne bis in idem it is appropriate to exclude from extended confiscation the proceeds of alleged criminal activities for which the affected person has been finally acquitted in a previous trial or in other cases where the ne bis in idem principle applies.

Extended confiscation should also be excluded where the similar criminal activities could not be the subject of criminal proceedings due to prescription under national criminal law.

Amendment

(11) In accordance with the principle of ne bis in idem it is appropriate to exclude from extended confiscation the proceeds of alleged criminal activities for which the affected person has been finally acquitted in a previous trial or in other cases where the ne bis in idem principle applies.

Or. en

Amendment 42

Mariya Gabriel

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, ***even where a criminal conviction cannot be achieved, it*** should ***still*** be possible ***to confiscate assets*** in order to disrupt criminal activities and

Amendment

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases ***non-conviction based confiscation*** should be possible in order to disrupt criminal activities and ensure that profits resulting from criminal activities are

ensure that profits resulting from criminal activities are not reinvested into the licit economy. *Some Member States allow confiscation where there is insufficient evidence for a criminal prosecution, if a court considers on the balance of probabilities that the property is of illicit origin, and also in situations where a suspect or accused person becomes a fugitive to avoid prosecution, is unable to stand trial for other reasons or died before the end of criminal proceedings. This is referred to as non-conviction based confiscation. Provision should be made to enable non-conviction based confiscation in at least the latter, limited, circumstances in all Member States. This is in line with Article 54.1.c) of the United Nations Convention against Corruption, which provides that each State Party is to consider taking the necessary measures to allow confiscation of illicitly acquired property without a criminal conviction, including in cases in which the offender cannot be prosecuted by reason of death, flight or absence.*

not reinvested into the licit economy.

Or. en

Amendment 43
Roberta Angelilli

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should still be possible to confiscate assets in order to disrupt criminal activities and ensure that profits resulting from criminal activities are not reinvested *into the licit economy. Some Member States allow*

Amendment

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should still be possible to confiscate assets in order to disrupt criminal activities and ensure that profits resulting from criminal activities are not reinvested, *particularly in respect of owners of property whose*

confiscation where there is insufficient evidence for a criminal prosecution, if a court considers on the balance of probabilities that the property is of illicit origin, and also in situations where a suspect or accused person becomes a fugitive to avoid prosecution, is unable to stand trial for other reasons or died before the end of criminal proceedings. This is referred to as non-conviction based confiscation. Provision should be made to enable non-conviction based confiscation in at least the latter, limited, circumstances in all Member States. This is in line with Article 54.1.c) of the United Nations Convention against Corruption, which provides that each State Party is to consider taking the necessary measures to allow confiscation of illicitly acquired property without a criminal conviction, including in cases in which the offender cannot be prosecuted by reason of death, flight or absence.

soundness cannot be proven.

Or. it

Amendment 44
Cornelis de Jong

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should still be possible to confiscate assets in *order to disrupt criminal activities and ensure that profits resulting from criminal activities are not reinvested into the licit economy. Some Member States allow confiscation* where *there is insufficient evidence for a criminal prosecution, if a court considers* on the balance of

Amendment

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should still be possible to confiscate assets in *those cases* where on the balance of probabilities *it can be established that these assets result from criminal activities, or are going to be used for future criminal activities.*

probabilities *that the property is of illicit origin, and also in situations where a suspect or accused person becomes a fugitive to avoid prosecution, is unable to stand trial for other reasons or died before the end of criminal proceedings. This is referred to as non-conviction based confiscation. Provision should be made to enable non-conviction based confiscation in at least the latter, limited, circumstances in all Member States. This is in line with Article 54.1.c) of the United Nations Convention against Corruption, which provides that each State Party is to consider taking the necessary measures to allow confiscation of illicitly acquired property without a criminal conviction, including in cases in which the offender cannot be prosecuted by reason of death, flight or absence.*

Or. en

Amendment 45

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should still be possible to confiscate assets in order to disrupt criminal activities and ensure that profits resulting from criminal activities are not reinvested into the licit economy. Some Member States allow confiscation where there is insufficient evidence for a criminal prosecution, if a court *considers on the balance of probabilities* that the property is of illicit origin, and also in situations where a suspect or accused person becomes a

Amendment

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should still be possible to confiscate assets in order to disrupt criminal activities and ensure that profits resulting from criminal activities are not reinvested into the licit economy *or criminal activities*. Some Member States allow confiscation where there is insufficient evidence for a criminal prosecution, if a court *is convinced, after making full use of all the available evidence*, that the property is of illicit origin, and also in situations where a

fugitive to avoid prosecution, is unable to stand trial for other reasons or died before the end of criminal proceedings. This is referred to as non-conviction based confiscation. Provision should be made to enable non-conviction based confiscation in at least the latter, limited, circumstances in all Member States. This is in line with Article 54.1.c) of the United Nations Convention against Corruption, which provides that each State Party is to consider taking the necessary measures to allow confiscation of illicitly acquired property without a criminal conviction, including in cases in which the offender cannot be prosecuted by reason of death, flight or absence.

suspect or accused person becomes a fugitive to avoid prosecution, is unable to stand trial for other reasons or died before the end of criminal proceedings. This is referred to as non-conviction based confiscation. Provision should be made to enable non-conviction based confiscation in at least the latter, limited, circumstances in all Member States. This is in line with Article 54.1.c) of the United Nations Convention against Corruption, which provides that each State Party is to consider taking the necessary measures to allow confiscation of illicitly acquired property without a criminal conviction, including in cases in which the offender cannot be prosecuted by reason of death, flight or absence.

Or. de

Amendment 46

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should **still** be possible to confiscate assets in order to disrupt criminal activities and ensure that profits resulting from criminal activities are not reinvested into the licit economy. Some Member States allow confiscation where there is insufficient evidence for a criminal prosecution, if a court considers on the balance of probabilities that the property is of illicit origin, and also in situations where a suspect or accused person becomes a fugitive to avoid prosecution, is unable to stand trial for other reasons or died before

Amendment

(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should **anyhow** be possible to confiscate assets in order to disrupt criminal activities and ensure that profits resulting from criminal activities are not reinvested into the licit economy. Some Member States allow confiscation where there is insufficient evidence for a criminal prosecution **or regardless a criminal prosecution**, if a court considers, on the balance of probabilities, that the property **of a person socially dangerous or having a criminal lifestyle** is of illicit origin **or disproportionate if compared to his**

the end of criminal proceedings. This is referred to as non-conviction based confiscation. Provision should be made to enable non-conviction based confiscation in at least the *latter*, limited, circumstances in all Member States. This is in line with Article 54.1.c) of the United Nations Convention against Corruption, which provides that each State Party is to consider taking the necessary measures to allow confiscation of illicitly acquired property without a criminal conviction, including in cases in which the offender cannot be prosecuted by reason of death, flight or absence.

declared income, and also in situations where a suspect or accused person becomes a fugitive to avoid prosecution, is unable to stand trial for other reasons or died before the end of criminal proceedings. This is referred to as non-conviction based confiscation. Provision should be made to enable non-conviction based confiscation in at least the *above mentioned*, limited, circumstances in all Member States, *including the mutual recognition to such non conviction-based orders*. This is in line with Article 54.1.c) of the United Nations Convention against Corruption, which provides that each State Party is to consider taking the necessary measures to allow confiscation of illicitly acquired property without a criminal conviction, including in cases in which the offender cannot be prosecuted by reason of death, flight or absence *or in other appropriate cases*.

Or. en

Amendment 47

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht, Hubert Pirker

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In individual cases it should be possible to dispense, wholly or in part, with a confiscation order. Thus this would be possible in cases where the measure would disproportionately burden the person affected or lead to the loss of his livelihood, or if the cost of the confiscation disproportionately exceeds the amount being confiscated.

Or. de

Justification

The Commission proposal does not currently contain any provisions for cases of undue hardship. Where the conditions for confiscation exist, confiscation would necessarily be ordered. In order to prevent disproportionate consequences it is essential to introduce a 'hardship clause'.

Amendment 48

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht, Hubert Pirker

Proposal for a directive

Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Confiscation should not hinder or prevent justified claims by victims of criminal offences committed by the person affected. It should be possible to dispense with confiscation where the victim has a claim against the perpetrator as a result of a criminal offence and confiscation would prevent this claim from being fulfilled.

Or. de

Amendment 49

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Recital 13

Text proposed by the Commission

Amendment

(13) The practice by a suspected or accused person of transferring property to a knowing third party with a view to avoiding confiscation is common and increasingly widespread. The current Union legal framework does not contain binding rules on the confiscation of property transferred to third parties. Therefore it is becoming increasingly necessary to allow for confiscation of

(13) The practice by a suspected or accused person of transferring property to a knowing third party with a view to avoiding confiscation is common and increasingly widespread. The current Union legal framework does not contain binding rules on the confiscation of property transferred to third parties. Therefore it is becoming increasingly necessary to allow for confiscation of

property transferred to *third parties, which should normally take place when an accused person does not have property that can be confiscated. It is appropriate to provide for third party confiscation, under certain conditions, following an assessment, based on specific facts, that the confiscation of property of the convicted, suspected or accused person is unlikely to succeed, or in situations where unique objects must be restored to their rightful owner.* Furthermore, to protect the interests of bona fide third parties, such confiscation should only be possible if the third party knew or should have known that property was the proceeds of crime or was transferred in order to avoid confiscation *and* was given for free or transferred in exchange for an amount lower than its market value.

property transferred to *or acquired by* third parties. To protect the interests of bona fide third parties, such confiscation should only be possible if the third party knew or should have *been* known that property was the *instrumentalities or the* proceeds of crime or was transferred in order to avoid confiscation *or if it* was given for free or transferred in exchange for an amount *significantly* lower than its market value.

Or. en

Amendment 50
Josef Weidenholzer

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) The practice by a suspected or accused person of transferring property to a knowing third party with a view to avoiding confiscation is common and increasingly widespread. The current Union legal framework does not contain binding rules on the confiscation of property transferred to third parties. Therefore it is becoming increasingly necessary to allow for confiscation of property transferred to third parties, which should normally take place when an accused person does not have property that can be confiscated. It is appropriate to provide for third party confiscation, under

Amendment

(13) The practice by a suspected or accused person of transferring property to a knowing third party with a view to avoiding confiscation is common and increasingly widespread. The current Union legal framework does not contain binding rules on the confiscation of property transferred to third parties. Therefore it is becoming increasingly necessary to allow for confiscation of property transferred to third parties, which should normally take place when an accused person does not have property that can be confiscated. It is appropriate to provide for third party confiscation, under

certain conditions, following an assessment, based on specific facts, that the confiscation of property of the convicted, suspected or accused person is unlikely to succeed, or in situations where unique objects must be restored to their rightful owner. Furthermore, to protect the interests of bona fide third parties, such confiscation should only be possible if the third party knew or should have known that property was the proceeds of crime or was transferred in order to avoid confiscation and was given for free or transferred in exchange for an amount lower than its market value.

certain conditions, following an assessment, based on specific facts, that the confiscation of property of the convicted, suspected or accused person is unlikely to succeed, or in situations where unique objects must be restored to their rightful owner. Furthermore, to protect the interests of bona fide third parties, such confiscation should only be possible if the third party knew or should have known that property was the proceeds of crime or was transferred in order to avoid confiscation and was given for free or transferred in exchange for an amount lower than its market value. ***Third party confiscation should also be possible where the acting suspect or accused person was acting for another natural or legal person from the outset.***

Or. de

Amendment 51

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In order to grant a more efficient fight against criminal organizations and serious crime, complying with already existing experiences, Member States should introduce in their criminal system an offence to punish and prosecute those behaviours aimed at fictitiously attributing ownership and availability of property to third parties, with the aim to avoid seizure or confiscation measures. Also the support in committing this offence should be suitably punished.

Or. en

Amendment 52
Emine Bozkurt

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The rules on third party confiscation are extending to both natural and legal persons.

Or. en

Amendment 53
Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive
Recital 15

Text proposed by the Commission

Amendment

(15) Suspected or accused persons often hide property throughout the entire duration of criminal proceedings. As a result confiscation orders cannot be executed, leaving those subject to confiscations orders to benefit from their property once they have served their sentence. It is accordingly necessary to enable the determination of the precise extent of the property to be confiscated even after a final conviction for a criminal offence, in order to permit the full execution of confiscation orders when no property or insufficient property was initially discovered and the confiscation order remains unexecuted. Given the limitation of the right to property by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view of possible future confiscation. This may require ***a regular*** review by the court in order to ensure that their purpose of preventing the dissipation

(15) Suspected or accused persons often hide property throughout the entire duration of criminal proceedings. As a result confiscation orders cannot be executed, leaving those subject to confiscations orders to benefit from their property once they have served their sentence. It is accordingly necessary to enable the determination of the precise extent of the property to be confiscated even after a final conviction for a criminal offence, in order to permit the full execution of confiscation orders when no property or insufficient property was initially discovered and the confiscation order remains unexecuted. Given the limitation of the right to property by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view of possible future confiscation. This may require, ***where necessary, a*** review by the court in order to ensure that their purpose of preventing the

of property remains valid.

dissipation of property remains valid.

Or. en

Amendment 54
Rui Tavares

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) Property frozen with a view to later confiscation should be managed adequately in order not to lose its economic value. Member States should take the necessary measures including sale or transfer of the property to minimise such losses. Member States should take relevant measures, such as the establishment of national centralised Asset Management Offices or equivalent mechanisms (for example where such functions are decentralised), in order to properly manage the assets frozen before confiscation and preserve their value, pending judicial determination.

Amendment

(16) Property frozen with a view to later confiscation should be managed adequately in order not to lose its economic value, ***to encourage its social reuse and to avoid the risk of further criminal infiltration. Towards that end it would be useful to consider the formation of a European fund that will concentrate a fraction of the confiscated assets from Member States. Such fund should then be open to pilot projects by European citizens, associations, coalitions of NGOs and any other organization of civic society, to encourage the effective social reuse of the confiscated assets and to expand the democratic functions of the European Union.*** Member States should take the necessary measures including sale or transfer of the property to minimise such losses ***and to favour the social aims.*** Member States should take relevant measures, such as the establishment of national centralised Asset Management Offices or equivalent mechanisms (for example where such functions are decentralised), in order to properly manage the assets frozen before confiscation and preserve their value, pending judicial determination.

Or. en

Amendment 55
Roberta Angelilli

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) Property frozen with a view to later confiscation should be managed adequately in order not to lose its economic value. Member States should take the necessary measures including **sale or** transfer of the property to minimise such losses. Member States should take relevant measures, such as the establishment of national centralised Asset Management Offices or equivalent mechanisms (for example where such functions are decentralised), in order to properly manage the assets frozen before confiscation and preserve their value, pending judicial determination.

Amendment

(16) Property frozen with a view to later confiscation should be managed adequately in order not to lose its economic value. Member States should take the necessary measures, including transfer of the property, to minimise such losses. Member States should take **all** relevant measures, **be these legislative or otherwise**, such as the establishment of national centralised Asset Management Offices or equivalent mechanisms (for example where such functions are decentralised), in order to properly manage the assets frozen before confiscation and preserve their value, pending judicial determination.

Or. it

Amendment 56
Mario Borghezio

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) Property frozen with a view to later confiscation should be managed adequately in order not to lose its economic value. Member States should take the necessary measures including sale or transfer of the property to minimise such losses. Member States should take relevant measures, such as the establishment of national centralised Asset Management Offices or equivalent mechanisms (for example where such functions are decentralised), in order to properly manage the assets frozen before

Amendment

(16) Property frozen with a view to later confiscation should be managed adequately in order not to lose its economic value **or jeopardise existing employment levels**. Member States should take the necessary measures including sale or transfer of the property to minimise such losses. Member States should take relevant measures, such as the establishment of national centralised Asset Management Offices or equivalent mechanisms (for example where such functions are decentralised), in order to

confiscation and preserve their value,
pending judicial determination.

properly manage the assets frozen before
confiscation and preserve their value,
pending judicial determination.

Or. it

Amendment 57

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) In order that civil society can concretely perceive the effectiveness of the action of the Member states against organized crime, including mafia type, and that proceeds are actually detracted from the criminals, it is necessary to adopt common measures to avoid that the criminal organizations take possession another time of property illicitly obtained. Best practices in several Member States have shown to be effective tools: management and administration by Asset Management Offices (AMO) or similar mechanisms, as well as the use of the confiscated property for projects aimed to contrast and prevent crime, for other institutional or public purposes or social use.

Or. en

Amendment 58

Josef Weidenholzer

Proposal for a directive

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Confiscated proceeds should be

used for public interest and social purposes.

Or. de

Amendment 59
Salvatore Iacolino

Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The practice of using confiscated assets for social purposes fosters and sustains the dissemination of a culture of legality, assistance to crime victims and action against organised crime, hence creating ‘virtuous’ mechanisms, which may also be implemented through non-governmental organisations, that benefit society and the socio-economic development of an area, using objective criteria.

Or. it

Justification

Some Member States have already experimented with using confiscated criminal assets for public purposes, which has met with great success in social terms and in terms of combating criminal activities.

Amendment 60
Cornelis de Jong

Proposal for a directive
Recital 17

Text proposed by the Commission

Amendment

(17) Reliable data sources on the freezing and confiscation of the proceeds of crime are scarce. In order to allow for the

(17) Reliable data sources on the freezing and confiscation of the proceeds of crime are scarce. In order to allow for the

evaluation of this Directive, it is necessary to collect a comparable minimum set of appropriate statistical data on asset tracing, judicial and asset disposal activities.

evaluation of this Directive, it is necessary to collect a comparable minimum set of appropriate statistical data on asset tracing, judicial and asset disposal activities, *whilst respecting the principle of proportionality*.

Or. en

Amendment 61

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) Reliable data sources on the freezing and confiscation of the proceeds of crime are scarce. In order to allow for the evaluation of this Directive, it is necessary to collect a comparable minimum set of appropriate statistical data on asset tracing, judicial and asset disposal activities.

Amendment

(17) Reliable data sources on the freezing and confiscation of the proceeds of crime are scarce. In order to allow for the evaluation of this Directive, it is necessary to collect a comparable minimum set of appropriate statistical data on asset tracing, judicial and asset *management and* disposal activities.

Or. en

Amendment 62

Mario Borghesio

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) Reliable data sources on the freezing and confiscation of the proceeds of crime are scarce. In order to allow for the evaluation of this Directive, it is necessary to collect a *comparable minimum* set of appropriate statistical data on asset tracing, judicial and asset disposal activities.

Amendment

(17) Reliable data sources on the freezing and confiscation of the proceeds of crime are scarce. In order to allow for the evaluation of this Directive, it is necessary to collect a *proper* set of appropriate *comparable* statistical data on asset tracing, judicial and asset disposal activities.

Or. it

Amendment 63
Emine Bozkurt

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Record should be kept of the value of the property destined to be reused for the victims of crimes that were directly or indirectly affected.

Or. en

Amendment 64
Cornelis de Jong

Proposal for a directive
Recital 18

Text proposed by the Commission

Amendment

(18) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, and notably the right to property, the right to respect for private and family life, the right to protection of personal data, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the right not to be tried or punished twice in criminal proceedings for the same criminal offence and the principles of legality and proportionality of criminal offences. This Directive has to be implemented in accordance with these rights and principles.

(18) This Directive respects the fundamental rights and observes the principles recognised by the ***European Convention on Human Rights and the jurisprudence of the European Court of Human Rights, the*** Charter of Fundamental Rights of the European Union, and notably the right to property, the right to respect for private and family life, the right to protection of personal data, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the right not to be tried or punished twice in criminal proceedings for the same criminal offence and the principles of legality and proportionality of criminal offences. This Directive has to be implemented in accordance with these rights and principles.

Amendment 65
Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Some Member States have already successfully adopted non conviction-based systems of confiscation. As a matter of facts, the European Court of Human Rights (ECHR) has never considered as a violation of fundamental rights, sanctioned in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights, the fact that individuals can be subjected to such a measure of privation of their goods.

Amendment 66
Mariya Gabriel

Proposal for a directive
Recital 19

Text proposed by the Commission

Amendment

(19) The measures provided for in this Directive affect substantially the rights of persons, not only of suspected or accused persons but also of third parties who are not being prosecuted. It is therefore necessary to provide ***for specific*** safeguards and judicial remedies in order to guarantee the preservation of their fundamental rights in the implementation of the provisions of this Directive.

(19) The measures provided for in this Directive affect substantially the rights of persons, not only of suspected or accused persons but also of third parties who are not being prosecuted. It is therefore necessary to provide ***all necessary*** safeguards and judicial remedies in order to guarantee the preservation of their fundamental rights in the implementation of the provisions of this Directive.

Amendment 67

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) Since the objective of this Directive, namely facilitating confiscation of property ***in criminal matters***, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment

(20) Since the objective of this Directive, namely facilitating confiscation of property, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment 68

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 1 – paragraph 1

Text proposed by the Commission

This Directive establishes minimum rules on the freezing of property with a view to possible later confiscation ***and*** on the confiscation of property in criminal matters.

Amendment

This Directive establishes minimum rules on the ***seizure or*** freezing of property with a view to possible later confiscation, on the confiscation of property in criminal matters ***and without a criminal conviction and on the management and disposal of confiscated property.***

Amendment 69

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive is without prejudice to the court procedures that Member States may use in order to deprive the perpetrator of the property in question.

Or. en

Amendment 70

Alexander Alvaro, Renate Weber

Proposal for a directive

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) ‘proceeds’ means any economic advantage derived from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds by a suspected or accused person and any valuable benefits;

(1) ‘proceeds’ means any ***direct*** economic advantage derived from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds by a suspected or accused person and any valuable benefits;

Or. en

Amendment 71

Rui Tavares

Proposal for a directive

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) ‘proceeds’ means any economic

(1) ‘proceeds’ means any ***direct*** economic

advantage derived from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds by a suspected or accused person and any valuable benefits;

advantage derived from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds by a suspected or accused person and any valuable benefits;

Or. en

Justification

The definition of proceeds as "any economic advantage derived from a criminal offence" is rather ambiguous and very vague, and cannot allow for a coherent, uniform assessment of the economic advantage that should be skimmed. This can lead to significant differences in the evaluation of the confiscated amount. While some states will confiscate the proceeds or a surrogate, others might also confiscate profits from following non criminal activities.

Amendment 72 **Zbigniew Ziobro**

Proposal for a directive **Article 2 – paragraph 1 – point 1**

Text proposed by the Commission

(1) ‘proceeds’ means any economic advantage derived from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds by a suspected or accused person and any valuable benefits;

Amendment

(1) ‘proceeds’ means any economic advantage derived **directly or indirectly** from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds by a suspected or accused person and any valuable benefits;

Or. pl

Amendment 73 **Emine Bozkurt**

Proposal for a directive **Article 2 – paragraph 1 – point 1**

Text proposed by the Commission

(1) ‘proceeds’ means any economic

Amendment

(1) ‘proceeds’ means any economic

advantage derived from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds by a suspected or accused person and any valuable benefits;

advantage ***directly or indirectly*** derived from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds by a suspected or accused person and any valuable benefits;

Or. en

Amendment 74
Zbigniew Ziobro

Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;

Amendment

(2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property, ***as well as property held jointly with a spouse;***

Or. pl

Amendment 75
Alexander Alvaro, Renate Weber

Proposal for a directive
Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) ‘confiscation’ means ***a penalty or*** a measure, ordered by a court following proceedings in relation to a criminal offence resulting in the final deprivation of property;

Amendment

(4) ‘confiscation’ means a measure, ordered by a court following proceedings in relation to a criminal offence resulting in the final deprivation of property;

Or. en

Amendment 76

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht, Hubert Pirker

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) ‘confiscation’ means a **penalty or a** measure, ordered by a court following proceedings **in relation to a criminal offence** resulting in the final deprivation of property;

Amendment

(4) ‘confiscation’ means a measure ordered by a court **in a judgment or** following **criminal** proceedings resulting in the final deprivation of property;

Or. de

Justification

Das Löschen der Einziehung als "Strafe" dient der Erlangung einer einheitlichen europäischen Umsetzung des Vermögensabschöpfungsrechts, welche eine Einigung über den Charakter der Einziehung voraussetzt. Andernfalls wäre nicht auszuschließen, dass die Vollstreckung einer Maßnahme, die im Anordnungsstaat Strafe ist, im Vollstreckungsstaat den verfassungsrechtlichen Maßstäben der Vollstreckung einer Strafe zu unterwerfen wäre, obgleich die Einziehung nach dem Recht des Vollstreckungsstaates nicht als Strafe betrachtet würde. Die zweite Änderung dient der Klarstellung, dass die Einziehung nicht nur nach dem Urteil, sondern auch mit dem Urteil angeordnet werden kann.

Amendment 77

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) ‘confiscation’ means a penalty or a measure, ordered by a court following proceedings **in relation to a criminal offence** resulting in the final deprivation of property;

Amendment

(4) ‘confiscation’ means a penalty or a measure, ordered by a court following proceedings resulting in the final deprivation of property;

Or. en

Amendment 78

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘freezing’ means the temporary prohibition of the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property;

Amendment

(5) ‘freezing’ **or seizure** means the temporary prohibition of the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property;

Or. en

Amendment 79

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 2 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

(6a) as well as any other legal instruments if these instruments provide specifically that this Directive applies to criminal offences harmonised therein.

Or. en

Amendment 80

Emine Bozkurt

Proposal for a directive

Article 2 – paragraph 1 – point 6 – point k a (new)

Text proposed by the Commission

Amendment

(ka) as well as any other future legal instruments where criminal offences are harmonized throughout the EU

Or. en

Amendment 81
Sarah Ludford

Proposal for a directive
Article 2 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

(6a) 'affected person' means any person directly affected by the freezing or confiscation of an accused or convicted person's assets.

Or. en

Amendment 82
Petru Constantin Luhan

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall take the necessary measures to enable it to confiscate, ***either wholly or in part,*** instrumentalities and proceeds following a final conviction for a criminal offence.

1. Each Member State shall take the necessary measures to enable it to confiscate ***all*** instrumentalities and proceeds following a final conviction for a criminal offence.

Or. ro

Amendment 83
Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall take the necessary measures to enable ***it*** to confiscate, either wholly or in part,

1. Each Member State shall take the necessary measures to enable ***judicial authorities*** to confiscate, either wholly or

instrumentalities and proceeds *following* a final conviction for a criminal offence.

in part, instrumentalities and proceeds *or property the value of which corresponds to such instrumentalities and proceeds, subject to* a final conviction for a criminal offence.

Or. en

Amendment 84
Mariya Gabriel

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

1. Each Member State shall take the necessary measures to enable *it* to confiscate, either wholly or in part, instrumentalities and proceeds following a final conviction for a criminal offence.

Amendment

1. Each Member State shall take the necessary measures to enable *only judicial authorities* to confiscate, either wholly or in part, instrumentalities and proceeds following a final conviction for a criminal offence.

Or. en

Amendment 85
Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

1. Each Member State shall take the necessary measures to enable *it* to confiscate, either wholly or in part, instrumentalities and proceeds following a final conviction for a criminal offence.

Amendment

1. Each Member State shall take the necessary measures to enable *a judicial authority, or a judicial authority acting on a court order*, to confiscate, either wholly or in part, instrumentalities and proceeds following a final conviction for a criminal offence.

Or. de

Amendment 86
Roberta Angelilli

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

1. Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds following a final conviction for a criminal offence.

Amendment

1. Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities, **assets** and proceeds following a final conviction for a criminal offence.

Or. it

Amendment 87
Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission

2. Each Member State shall take the necessary measures to enable it to confiscate property the value of which corresponds to the proceeds following a final conviction for a criminal offence.

Amendment

deleted

Or. en

Amendment 88
Mariya Gabriel

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission

2. Each Member State shall take the necessary measures to enable **it** to confiscate property the value of which

Amendment

2. Each Member State shall take the necessary measures to enable **only judicial authorities, when the confiscation**

corresponds to the proceeds following a final conviction for a criminal offence.

provided in paragraph 1 is not possible, to confiscate property the value of which corresponds to the proceeds following a final conviction for a criminal offence.

Or. en

Amendment 89

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

2. Each Member State shall take the necessary measures to enable *it* to confiscate property the value of which corresponds to the proceeds following a final conviction for a criminal offence.

Amendment

2. Each Member State shall take the necessary measures to enable *a judicial authority or a judicial authority acting on a court order, according to their respective powers*, to confiscate property the value of which corresponds to the proceeds following a final conviction for a criminal offence *when the confiscation provided for in paragraph 1 is not possible*.

Or. de

Amendment 90 Roberta Angelilli

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

2. Each Member State shall take the necessary measures to enable it to confiscate property *the value of which corresponds to the proceeds* following a final conviction for a criminal offence.

Amendment

2. Each Member State shall take the necessary measures to enable it to confiscate property *of a value equivalent to the proceeds, profits or value of the crime* following a final conviction for a criminal offence.

Or. it

Amendment 91
Zbigniew Ziobro

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission

2. Each Member State shall take the necessary measures to enable it to confiscate property the value of which corresponds to the proceeds following a final conviction for a criminal offence.

Amendment

2. Each Member State shall take the necessary measures to enable it to confiscate property the value of which corresponds to the proceeds following a final conviction for a criminal offence. ***The full or partial confiscation of property shall not be ordered if the material proceeds or their equivalent value are subject to return to the injured party or another entity.***

Or. pl

Amendment 92
Zbigniew Ziobro

Proposal for a directive
Article 3 – paragraph 2 – point 1 (new)

Text proposed by the Commission

Amendment

(1) At the moment of conviction for a crime from which the perpetrator obtained, even indirectly, material proceeds of significant value, property that the perpetrator took into his possession or to which he otherwise gained title at the time of commission of the crime or afterwards, until such point as a judgment – even a non-legally binding judgment – is handed down, shall be considered the material proceeds of the crime, unless the perpetrator or another interested party is able to demonstrate the legal origin of the property and of the means used to obtain it.

Amendment 93
Cornelis de Jong

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Each Member State shall take the necessary measures to enable judicial authorities, in the absence of a criminal conviction, to confiscate assets of the suspect, where the court finds that on the balance of probabilities it can be established that the assets of the suspect concerned, directly or indirectly represent the proceeds through criminal conduct or are intended for criminal use.

Or. en

Amendment 94
Sarah Ludford

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Each Member State shall take the necessary measures to enable judicial authorities, in the absence of a criminal conviction, to confiscate instrumentalities and proceeds obtained through conduct which is unlawful under the criminal law where a court finds on the balance of probabilities that any matters alleged to constitute unlawful conduct have occurred. This provision does not apply to Member States who already have civil forfeiture powers which enable confiscation in the absence of a criminal

conviction.

Or. en

Justification

This recognises civil forfeiture powers in some Member states which are not linked to criminal proceedings.

Amendment 95
Josef Weidenholzer

Proposal for a directive
Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Claim for compensation

Each Member State shall take the necessary measures to ensure that injured parties' compensation claims are taken into account.

Or. de

Amendment 96
Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall adopt the necessary measures to enable *it* to confiscate, either wholly or in part, 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*

1. Each Member State shall adopt the necessary measures to enable *competent authorities* to confiscate, either wholly or in part, property belonging to a person convicted of a criminal offence where, based on specific facts *such as that the value of property is disproportionate to the lawful income of the convicted person, a court finds it on the balance of*

activities than from other activities.

probabilities that the property in question has been acquired unlawfully.

Or. en

Amendment 97

Alexander Alvaro, Renate Weber

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

1. Each Member State shall adopt the necessary measures to enable it to confiscate, either wholly or in part, 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.

Amendment

1. Each Member State shall adopt the necessary measures to enable it to confiscate, either wholly or in part, property belonging to a person convicted of a criminal offence where, based on specific facts ***and after full utilization of all evidence, a court is convinced*** that the property in question has been derived by the convicted person from similar criminal activities than from other activities.

Or. en

Amendment 98

Petru Constantin Luhan

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

1. Each Member State shall adopt the necessary measures to enable it to confiscate, ***either wholly or in part,*** 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.

Amendment

1. Each Member State shall adopt the necessary measures to enable it to confiscate ***all*** property belonging to a person convicted of a criminal offence where, based on specific facts, a court finds that the property in question has been derived by the convicted person from similar criminal activities ***and not*** from ***any*** other activities.

Amendment 99**Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht****Proposal for a directive****Article 4 – paragraph 1***Text proposed by the Commission*

1. Each Member State shall adopt the necessary measures to enable it to confiscate, either wholly or in part, 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.

Amendment

1. Each Member State shall adopt the necessary measures to enable it to confiscate, either wholly or in part, property belonging to a person convicted of a criminal offence where, based on specific facts ***and after making full use of all the available evidence***, a court ***is convinced*** that the property in question has been derived by the convicted person from similar criminal activities than from other activities.

Or. de

Justification

The right to property means that non-conviction based confiscation must be subject to strict constitutional standards. It is constitutionally sound only if the relevant court is convinced of the criminal origin of the object concerned following a thorough examination of all the evidence. The specific offence need not be determined. However, the court must at least be convinced of the criminal origin of the property.

Amendment 100**Rui Tavares****Proposal for a directive****Article 4 – paragraph 1***Text proposed by the Commission*

1. Each Member State shall adopt the necessary measures to enable it to confiscate, either wholly or in part, property belonging to a person convicted of a criminal offence where, based on specific facts, ***a court finds it substantially***

Amendment

1. Each Member State shall adopt the necessary measures to enable it to confiscate, either wholly or in part, property belonging to a person convicted of a criminal offence where, based on specific facts ***and after full utilization of***

more probable that the property in question has been derived by the convicted person from similar criminal activities than from other activities.

all evidence a court is convinced that the property in question has been derived by the convicted person from similar criminal activities than from other activities.

Or. en

Amendment 101
Véronique Mathieu

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

1. Each Member State shall adopt the necessary measures to enable it to confiscate, either wholly or in part, 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*.

Amendment

1. Each Member State shall adopt the necessary measures to enable it to confiscate, either wholly or in part, 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 *belonging to the convicted person is of illegal origin*.

Or. fr

Amendment 102
Alexander Alvaro, Renate Weber

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Each Member State shall take the necessary measures to enable it to confiscate proceeds and instrumentalities without a criminal conviction, following proceedings *which could*, if the suspected or accused person had been able to stand trial, *have led to a criminal conviction*, where:

Amendment

Each Member State shall take the necessary measures to enable it to confiscate proceeds and instrumentalities without a criminal conviction, *if a court, based on specific facts and after full utilization of all evidence, is convinced that* following proceedings *would have led to a criminal conviction*, if the suspected

or accused person had been able to stand trial, where:

Or. en

Amendment 103

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Each Member State shall take the necessary measures to enable it to confiscate proceeds and instrumentalities without a criminal conviction, **following** proceedings **which could**, if the suspected or accused person had been able to stand trial, have led to a criminal conviction, where:

Amendment

Each Member State shall take the necessary measures to enable it to confiscate proceeds and instrumentalities without a criminal conviction **where, based on specific facts and after making full use of all the available evidence, the court is convinced that** proceedings **would**, if the suspected or accused person had been able to stand trial, have led to a criminal conviction, where:

Or. de

Justification

The right to property means that non-conviction based confiscation must be subject to strict constitutional standards. It is constitutionally sound only if the relevant court is convinced of the criminal origin of the object concerned following a thorough examination of all the evidence. A specific offence need not be determined. However, the court must at least be convinced of the criminal origin of the property.

Amendment 104

Rui Tavares

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Each Member State shall take the necessary measures to enable it to

Amendment

Each Member State shall take the necessary measures to enable it to

confiscate proceeds and instrumentalities without a criminal conviction, following proceedings *which could*, if the suspected or accused person had been able to stand trial, *have led to a criminal conviction*, where:

confiscate proceeds and instrumentalities without a criminal conviction, *if a court, based on specific facts ad after full utilization of all evidence, is convinced that* following proceedings *would have led to a criminal conviction*, if the suspected or accused person had been able to stand trial, where:

Or. en

Amendment 105
Véronique Mathieu

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Each Member State shall take the necessary measures to enable it to confiscate proceeds and instrumentalities without a criminal conviction, following proceedings *which could*, if the suspected or accused person had been able to stand trial, *have led to a criminal conviction*, *where*:

Amendment

Each Member State shall take the necessary measures to enable it to confiscate proceeds and instrumentalities without a criminal conviction, following proceedings, *if the judicial authorities are convinced, on the basis of probative evidence, that* if the suspected or accused person had been able to stand trial, *he/she would have convicted of a criminal offence*:

Or. fr

Amendment 106
Sarah Ludford

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Each Member State shall take the necessary measures to enable it to confiscate proceeds and instrumentalities without a criminal conviction, following

Amendment

Each Member State shall take the necessary measures to enable it to confiscate proceeds and instrumentalities without a criminal conviction, following

proceedings which could, if the suspected or accused person had been able to stand trial, have led to a criminal conviction, where:

proceedings which could, if the suspected or accused person had been able to stand trial, have led to a criminal conviction *or in any other proceedings*, where:

Or. en

Amendment 107

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Each Member State shall take the necessary measures to enable judicial authorities to confiscate any assets belonging to a person unable to justify their legitimate origin where a court find, on the basis of specific circumstances and respecting the right of the defence and bona fide third parties, that those assets derive from criminal activities that are allegedly related to that person.

Or. en

Amendment 108

Mariya Gabriel

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the death or permanent illness of the suspected or accused person prevents any further prosecution; or

deleted

Or. en

Amendment 109

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) the **death or** permanent illness of the suspected or accused person prevents any further prosecution; or

Amendment

(a) the permanent illness of the suspected or accused person prevents any further prosecution; or

Or. de

Justification

The option of non-conviction-based confiscation in the event of the death of the suspected or accused person should be deleted. If the alleged culprit dies, this would mean enforcing the confiscation order on his heirs. This would then be a case of confiscation from a third party in accordance with Article 6, which should only take place subject to strict conditions.

Amendment 110

Sarah Ludford

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) **the death** or permanent illness of the suspected or accused person **prevents any further** prosecution; or

Amendment

(a) **illness** or permanent illness of the suspected or accused person, **which results in the person being unfit to stand trial, prevents effective** prosecution or **where the statutory limitation period has expired due to the illness,**

Or. en

Justification

Illness should be more narrowly defined as being such that the person could not stand trial. It is useful to separate out the points on death, illness and flight (see other ams) as the circumstances differ.

Amendment 111
Mariya Gabriel

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the illness or flight from prosecution or sentencing of the suspected or accused person prevents effective prosecution within a reasonable time, and poses the serious risk that it could be barred by statutory limitations.

deleted

Or. en

Amendment 112
Sarah Ludford

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the ***illness or*** flight from prosecution or sentencing of the suspected or accused person prevents effective prosecution within a reasonable time, and poses the serious risk that it could be barred by statutory limitations.

(b) the flight from prosecution or sentencing of the suspected or accused person ***combined with an inability to have the accused person returned by FD 2002/584/JHA or other means,*** prevents effective prosecution within a reasonable time, and poses the serious risk that it could be barred by statutory limitations.

Or. en

Justification

Member States should make reasonable efforts to get the accused person returned by issuing a European Arrest Warrant or using other forms of European cooperation, before confiscating property. Illness and death are dealt with separately in other ams.

Amendment 113
Georgios Papanikolaou

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) the illness or flight from prosecution or sentencing of the suspected or accused person prevents effective prosecution within a reasonable time, and poses the serious risk that it could be barred by statutory limitations.

Amendment

(b) the illness or flight from prosecution or sentencing of the suspected or accused person prevents effective prosecution within a reasonable time, and poses the serious risk that it could be barred by statutory limitations. ***This applies to Member States where conviction in absentia for a criminal offence is not recognised by law.***

Or. el

Amendment 114
Sarah Ludford

Proposal for a directive
Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the suspected or accused person has died

Or. en

Amendment 115
Sarah Ludford

Proposal for a directive
Article 5 – paragraph 1 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

This provision does not apply to Member States which already have civil confiscation powers which enable confiscation in these categories of case.

Amendment 116

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) proceeds which were transferred *to third parties by a convicted person or on his behalf, or by suspected or accused persons under the circumstances of Article 5*, or

Amendment

(a) proceeds *or instrumentalities* which were transferred *directly or indirectly to or acquired by third parties*, or

Amendment 117

Cornelis de Jong

Proposal for a directive

Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) *proceeds* which were transferred to third parties by a convicted person or on his behalf, or by suspected or accused persons under the circumstances of Article 5, or

Amendment

(a) *assets* which were transferred to third parties by a convicted person or on his behalf, or by suspected or accused persons under the circumstances of Article 5, or

Amendment 118

Cornelis de Jong

Proposal for a directive

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) other property of the convicted person, which was transferred to third parties ***in order to avoid*** confiscation of property the value of which corresponds to the ***proceeds***.

Amendment

(b) other property of the convicted person, which was transferred to third parties ***for the sole reason of avoiding*** confiscation of property the value of which corresponds to the ***assets***.

Or. en

Amendment 119

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) other property ***of the convicted person***, which was transferred to third parties in order to avoid confiscation of property the value of which corresponds to the ***proceeds***.

Amendment

(b) other property which was transferred to ***or acquired by*** third parties in order to avoid confiscation of property the value of which corresponds to the ***proceeds***.

Or. en

Amendment 120

Roberta Angelilli

Proposal for a directive

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) other property of the convicted person, which was transferred to third parties in order to avoid confiscation of property ***the value of which corresponds to the*** ***proceeds***.

Amendment

(b) other property of the convicted person, which was transferred to third parties in order to avoid confiscation of property, ***of a value equivalent to the proceeds, profits or value of the crime***.

Or. it

Amendment 121

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht, Hubert Pirker

Proposal for a directive

Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

2. The confiscation of proceeds or property referred to in paragraph 1 shall be possible where ***the property is subject to restitution or where***

Amendment

2. The confiscation of proceeds or property referred to in paragraph 1 shall be possible where

Or. de

Justification

The existence of a (civil-law) claim to restitution does not create an entitlement to confiscate proceeds or property from a third party. The state's right to confiscate illicitly acquired property must be strictly separated from the injured party's civil-law claim to restitution; in principle the two are mutually exclusive. At any rate we should avoid confusing the two claims.

Amendment 122

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

2. The confiscation of proceeds or property referred to in paragraph 1 shall be possible where ***the property is subject to restitution or where***

Amendment

2. The confiscation of proceeds or property referred to in paragraph 1 shall be possible where

Or. en

Amendment 123

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 6 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) an assessment, based on specific facts relating to the convicted, suspected or accused person, indicates that the confiscation of property of the convicted person, or of the suspected or accused person under the circumstances of Article 5, is unlikely to succeed, and

deleted

Or. en

Amendment 124
Salvatore Iacolino

Proposal for a directive
Article 6 – paragraph 2 – point b – introductory part

Text proposed by the Commission

Amendment

(b) the proceeds or property were transferred for free or in exchange for an amount lower than their market value ***when*** the third party:

(b) the proceeds or property were transferred for free or in exchange for an amount lower than their market value, ***this without prejudice to the principle of the good faith of the third party concerned.***

Or. it

Amendment 125
Roberta Angelilli

Proposal for a directive
Article 6 – paragraph 2 – point b – introductory part

Text proposed by the Commission

Amendment

(b) the proceeds or property were transferred for free or in exchange for ***an*** amount lower than their market value when the third party:

(b) the proceeds or property were transferred for free or in exchange for ***a percentage*** amount lower than their market value when the third party:

Or. it

Amendment 126

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 6 – paragraph 2 – point b – introductory part

Text proposed by the Commission

(b) the proceeds or property were transferred for free or in exchange for an amount lower than their market value **when the third party:**

Amendment

(b) the proceeds or property were transferred for free or in exchange for an amount **significantly** lower than their market value;

Or. en

Amendment 127

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 6 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) in the case of proceeds, the third party knew about their illicit origin, or, in the absence of such knowledge, a reasonable person in its position would have suspected that their origin was illicit, based on concrete facts and circumstances;

Or. en

Amendment 128

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 6 – paragraph 2 – point b b (new)

Text proposed by the Commission

Amendment

(bb) in the case of other property, the

third party knew that it was transferred in order to avoid confiscation of property the value of which corresponds to the proceeds or, in the absence of such knowledge, a reasonable person in its position would have suspected that it was transferred to avoid such confiscation, based on concrete facts and circumstances.

Or. en

Amendment 129
Roberta Angelilli

Proposal for a directive
Article 6 – paragraph 2 – point b – point i

Text proposed by the Commission

i) in the case of proceeds, knew about their illicit origin, *or, in the absence of such knowledge, a reasonable person in its position would have suspected that their origin was illicit, based on concrete facts and circumstances;*

Amendment

i) in the case of proceeds, knew about their illicit origin;

Or. it

Amendment 130
Zbigniew Ziobro

Proposal for a directive
Article 6 – paragraph 2 – point b – point ii – point 1 (new)

Text proposed by the Commission

1) It shall be deemed that the person closest to the perpetrator is aware that the property constitutes the material proceeds of the crime, and in the case of economic operators, if the perpetrator or the person closest to him acted as part of the organ of the legal person or was authorised to

Amendment

manage or represent the business at the moment of its acquisition.

Or. pl

Amendment 131

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Fictitious assignment of property to third parties

Each Member State takes legislative measures in order to introduce provisions aimed at prosecuting conducts of those who fictitiously attribute ownership and availability of property to third parties, with the aim to avoid seizure or confiscation measures.

Or. en

Amendment 132

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 7 – title

Text proposed by the Commission

Amendment

Freezing

Freezing *or seizure*

Or. en

Amendment 133

Mariya Gabriel

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

1. Each Member State shall take the necessary measures to enable it to freeze property in danger of being dissipated, hidden or transferred out of the jurisdiction with a view to possible later confiscation. Such measures shall be ordered by a court.

Amendment

1. Each Member State shall take the necessary measures to enable it to freeze property in danger of being dissipated, hidden or transferred out of the jurisdiction with a view to possible later confiscation. Such measures shall be ordered by a court. ***It includes the introduction of non-conviction based confiscation, with full respect of the rights of the defence and of bona fide third parties, and that they can be challenged before a court.***

Or. en

Amendment 134

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht

**Proposal for a directive
Article 7 – paragraph 1**

Text proposed by the Commission

1. Each Member State shall take the necessary measures to enable it to freeze property in danger of being dissipated, hidden or transferred out of the jurisdiction with a view to possible later confiscation. Such measures shall ***be ordered by a court.***

Amendment

1. Each Member State shall take the necessary measures to enable it to freeze property ***without delay where there is a danger of its*** being dissipated, hidden or transferred out of the jurisdiction with a view to possible later confiscation, ***or where there is reason to suppose that the conditions for confiscation are met.*** Such measures shall ***require an order by the competent national authority, which shall be obtained without delay following the freezing of the property, except where the property consists of movable items, in which case an order shall be required only where it applied for by the person affected. The person affected by the measures under this Article shall have a right to contest the order and appeal against it to a court.***

Or. de

Amendment 135
Monica Luisa Macovei

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

1. Each Member State shall take the necessary measures to enable *it to* freeze property *in danger of being dissipated, hidden or transferred out of the jurisdiction with a view to possible later confiscation. Such measures shall be ordered by* a court.

Amendment

1. Each Member State shall take the necessary measures to enable *its competent authorities to immediately freeze or seize* property *with a view to possible later confiscation. The person affected by the measures provided for in this Article shall have a right of appeal to* a court.

Or. en

Amendment 136
Véronique Mathieu

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

1. Each Member State shall take the necessary measures to enable it to freeze property in danger of being dissipated, hidden or transferred out of the jurisdiction with a view to possible later confiscation. Such measures shall be ordered by *a court*.

Amendment

1. Each Member State shall take the necessary measures to enable it to freeze property in danger of being dissipated, hidden or transferred out of the jurisdiction with a view to possible later confiscation. Such measures shall be ordered by *the competent authorities*.

Or. fr

Amendment 137
Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. Each Member State shall take the necessary measures to enable its competent authorities to immediately freeze property when there is a high risk of dissipation, hiding or transfer of that property before a court's decision. Such measures shall be confirmed by a court as soon as possible.

deleted

Or. de

Justification

Amendment to paragraph 1 also covers paragraph 2.

Amendment 138
Georgios Papanikolaou

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. Each Member State shall take the necessary measures to enable its competent authorities to immediately freeze property when there is a high risk of dissipation, hiding or transfer of that property before a court's decision. Such measures shall be confirmed by a court as soon as possible.

2. Each Member State shall take the necessary measures to enable its competent authorities to immediately freeze property when there is a high risk of dissipation, hiding or transfer of that property before a court's decision. Such measures shall be confirmed by a court as soon as possible, ***even during preliminary criminal proceedings.***

Or. el

Amendment 139
Cornelis de Jong

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. Each Member State shall 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 that suspects*** have the right to ***a fair trial, in order to preserve their rights.***

Amendment

1. Each Member State shall take the necessary measures to ensure that the persons ***whose assets are frozen or confiscated*** under this Directive, ***irrespective of their ownership at the time of confiscation,*** have the right to ***an effective remedy, including the right to a fair trial.***

Or. en

Amendment 140
Mariya Gabriel

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. Each Member State shall 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 that suspects have the right to a fair trial, in order to preserve their rights.***

Amendment

1. Each Member State shall take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the ***full*** right to an effective remedy, ***including the full*** right to a fair ***trial and the possibility to appeal the decision.***

Or. en

Amendment 141
Sarah Ludford

Proposal for a directive
Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Each Member State shall take the necessary measures to ensure that affected persons have the right to an effective remedy prior to the final decision

on confiscation being taken, including the opportunity to make legal representations, in order to preserve their rights.

Or. en

Amendment 142
Renate Weber

Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission

2. Each Member State shall take the necessary measures to ensure that reasons are given for any decision to freeze property, that the decision is communicated to the person affected as soon as possible after its execution and that it remains in force only for as long as it is necessary to preserve the property with a view to future confiscation. Each Member State shall provide for the effective possibility to appeal against the decision to freeze by the persons whose property is affected before a court at any time before a decision on confiscation is taken. Frozen property which is not subsequently confiscated shall be returned immediately to its legitimate owner.

Amendment

2. Each Member State shall take the necessary measures to ensure that reasons are given for any decision to freeze property, that the decision is communicated to the person affected as soon as possible after its execution and that it remains in force only for as long as it is necessary to preserve the property with a view to future confiscation. Each Member State shall provide for the effective possibility to appeal against the decision to freeze by the persons whose property is affected before a court at any time before a decision on confiscation is taken. Frozen property which is not subsequently confiscated shall be returned immediately to its legitimate owner *who preserves the right to an effective remedy if his / her property has been altered by the freezing measure.*

Or. en

Amendment 143
Renate Weber

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

3. Each Member State shall take the necessary measures to ensure that reasons are given for any decision to confiscate and that the decision is communicated to the person affected. Each Member State shall provide for the effective possibility to appeal against the decision to confiscate before a court by the persons whose property is affected.

Amendment

3. Each Member State shall take the necessary measures to ensure that reasons are given for any decision to confiscate and that the decision is communicated ***immediately*** to the person affected. Each Member State shall provide for the effective possibility to appeal against the decision to confiscate before a court by the persons whose property is affected.

Or. en

Amendment 144
Rui Tavares

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

3. Each Member State shall take the necessary measures to ensure that reasons are given for any decision to confiscate and that the decision is communicated to the person affected. Each Member State shall provide for the effective possibility to appeal against the decision to confiscate before a court by the persons whose property is affected.

Amendment

3. Each Member State shall take the necessary measures to ensure that ***the accused or convicted person has the opportunity to challenge the application for confiscation before an independent judicial authority. They shall be given access to material evidence in accordance with the Directive on the right to information in criminal proceedings; have at least the right to be heard, the right to ask questions and the right to provide evidence before a final decision on confiscation is taken. Each Member State shall take the further necessary measures to ensure that*** reasons are given for any decision to confiscate and that the decision is communicated to the person affected. Each Member State shall provide for the effective possibility to appeal against the decision to confiscate before a court by the persons whose property is affected.

Justification

Article 48 CFR in accordance with article 6 ECHR and the jurisprudence of the ECtHR require the opportunity for an accused person to be heard prior to a confiscation decision being made as to whether the proceeds or instrumentalities are in fact related to any criminal offence or have been garnered through innocent means.

Amendment 145
Véronique Mathieu

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

3. Each Member State shall take the necessary measures to ensure that reasons are given for any decision to confiscate ***and that the decision is communicated to the person affected.*** Each Member State shall provide for the effective possibility to appeal against the decision to confiscate before a court by the persons whose property is affected.

Amendment

3. Each Member State shall take the necessary measures to ensure that reasons are given for any decision to confiscate. Each Member State shall provide for the effective possibility to appeal against the decision to confiscate before a court by the persons whose property is affected.

Amendment 146
Sarah Ludford

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

3. Each Member State shall take the necessary measures to ensure that reasons are given for any decision to confiscate and that the decision is communicated to the person ***affected.*** Each Member State shall provide for the effective possibility to appeal against the decision to confiscate before a court by the persons whose

Amendment

3. Each Member State shall take the necessary measures to ensure that ***the accused or convicted person has the opportunity to challenge the application for confiscation before an independent judicial authority. They shall be given access to material evidence in accordance with the Directive on the right to***

property is affected.

information in criminal proceedings; have at least the right to be heard, the right to ask questions and the right to provide evidence before a final decision on confiscation is taken. Each Member State shall take the further necessary measure to ensure that reasons are given for any decision to confiscate and that the decision is communicated to the person *accused or convicted person*. Each Member State shall provide for the effective possibility to appeal against the decision to confiscate before a court by the persons whose property is affected

Or. en

Justification

Article 48 CFR in accordance with article 6 ECHR and the jurisprudence of the ECtHR require the opportunity for an accused or convicted person to be heard prior to a confiscation decision related to a criminal offence.

Amendment 147
Véronique Mathieu

Proposal for a directive
Article 8 – paragraph 3 – point 1 (new)

Text proposed by the Commission

Amendment

(1) Each Member State shall take the necessary measures to ensure that any decision to confiscate is communicated as soon as possible. Such communication may be deferred in cases where it threatens to hamper the investigation.

Or. fr

Amendment 148
Sarah Ludford

Proposal for a directive
Article 8 – paragraph 4

Text proposed by the Commission

4. In proceedings referred to in Article 4, the ***suspected or accused*** person shall have an effective possibility to contest the probability on the basis of which the property concerned is considered to be proceeds.

Amendment

4. In proceedings referred to in Article 4, the ***convicted*** person shall have an effective possibility to contest the probability on the basis of which the property concerned is considered to be proceeds.

Or. en

Justification

Article 4 only covers convicted persons so it is not correct to refer to a 'suspected or accused person'.

Amendment 149
Monica Luisa Macovei

Proposal for a directive
Article 8 – paragraph 5

Text proposed by the Commission

5. In the cases referred to in Article 5, the person whose property is affected by the decision to confiscate shall be represented by a lawyer ***throughout the proceedings*** in order to pursue ***the*** rights of ***the*** defence of ***the person*** relating to the establishment of the criminal offence and to the determination of the proceeds and instrumentalities.

Amendment

5. In the cases referred to in Article 5, the person whose property is affected by the decision to confiscate shall be ***informed that throughout the proceedings he/she has the right to be*** represented by a lawyer ***of choice or to be provided with an ex officio lawyer in accordance with the particular rules existent in the Member State*** in order to pursue ***his/her*** rights of defence relating to the establishment of the criminal offence and to the determination of the proceeds and instrumentalities.

Or. en

Amendment 150
Sarah Ludford

Proposal for a directive
Article 8 – paragraph 5

Text proposed by the Commission

5. *In the cases referred to in Article 5*, the person whose property is affected by the decision to confiscate shall be represented by a lawyer throughout the proceedings in order to pursue the rights of the defence of the person relating to the establishment of the criminal offence and to the determination of the proceeds and instrumentalities.

Amendment

5. The person whose property is affected by the decision to confiscate shall **have the right to** be represented by a lawyer throughout the proceedings in order to pursue the rights of the defence of the person relating to the establishment of the criminal offence and to the determination of the proceeds and instrumentalities.

Or. en

Justification

The right to a lawyer should exist in all criminal proceedings covered by the Directive. However, the EU does not have the power in this instrument to impose the obligation for Member States to pay for a lawyer, as implied by the proposal.

Amendment 151
Mariya Gabriel

Proposal for a directive
Article 8 – paragraph 6

Text proposed by the Commission

6. Where the person whose property is affected is a third party, the person or the person's lawyer shall be informed of the proceedings that can lead to a decision to confiscate that property and shall be allowed to participate in those proceedings to the extent necessary to effectively preserve the person's rights. That person shall have **at least the right to be heard, the right to ask questions** and the right to **provide evidence** before a final decision on confiscation is taken.

Amendment

6. Where the person whose property is affected is a third party, the person or the person's lawyer shall be informed of the proceedings that can lead to a decision to confiscate that property and shall be allowed to participate in those proceedings to the extent necessary to effectively preserve the person's rights. That person shall have **the full right to a fair trial** and the right to **an effective remedy** before a final decision on confiscation is taken.

Or. en

Amendment 152
Renate Weber

Proposal for a directive
Article 8 – paragraph 6

Text proposed by the Commission

6. Where the person whose property is affected is a third party, the person or the person's lawyer shall be informed of the proceedings that can lead to a decision to confiscate that property and shall be allowed to participate in those proceedings to the extent necessary to effectively preserve the person's rights. That person shall have at least the right to be heard, the right to ask questions and the right to provide evidence before a final decision on confiscation is taken.

Amendment

6. Where the person whose property is affected is a third party, the person or the person's lawyer shall be informed ***immediately*** of the proceedings that can lead to a decision to confiscate that property and shall be allowed to participate in those proceedings to the extent necessary to effectively preserve the person's rights. That person shall have at least the right to be heard, the right to ask questions and the right to provide evidence before a final decision on confiscation is taken.

Or. en

Amendment 153

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht, Hubert Pirker

Proposal for a directive
Article 8 – paragraph 6 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

The confiscation of a set of assets shall have the effect of preventing further confiscation in respect of the same assets. The Member States shall take the necessary measures to ensure that multiple confiscations in respect of the same assets are avoided.

Or. de

Justification

The proposal for a directive makes no mention of how to proceed if several Member States are investigating different persons in respect of alleged offences and if the confiscation of the same proceeds of these offences is an option in each of the various Member States. There is no provision for such a combination of circumstances under current law. Specifically, this is not an instance of 'Ne bis in idem' under Article 54 of the Convention implementing the Schengen Agreement, since forfeiture of criminal assets does not fall within the commonly accepted meaning of 'penalty'.

Amendment 154

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht, Hubert Pirker

Proposal for a directive

Article 8 – paragraph 6 – subparagraph 2 (new)

Text proposed by the Commission

Amendment

All Member States shall take the necessary measures to ensure that, where as a result of a criminal offence injured parties have claims against the accused, confiscation does not jeopardise the enforcement of such claims.

Or. de

Justification

There should be uniform rules on dealing with claims by injured parties. It would go against the aims of the Commission's other legislation on victims' rights if European law on confiscation meant that injured parties' claims could not be enforced. It needs to be ensured that the confiscation provided by the proposal for a directive cannot thwart the claims of injured parties.

Amendment 155

Alexander Alvaro, Renate Weber

Proposal for a directive

Article 8 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. A confiscation of an economic advantage has to have the effect, that the

same economic advantage cannot be confiscated again. Each Member State shall take the necessary measures to avoid multiple collections concerning the same economic advantage.

Or. en

Amendment 156
Sarah Ludford

Proposal for a directive
Article 8 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. If the court comes to the conclusion that confiscation would lead to the destruction of livelihood of the concerned person, the confiscation ought to be omitted in part or completely in consideration of the principle of proportionality.

Or. en

Justification

Due to the principle of proportionality confiscation must not lead to the destruction of the legitimate livelihood of the affected individuals or corporate bodies.

Amendment 157
Alexander Alvaro, Renate Weber

Proposal for a directive
Article 8 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

6c. If the court comes to the conclusion that confiscation would lead to the destruction of livelihood of the concerned person, the confiscation ought to be omitted in parts or completely in

consideration of the principle of proportionality.

Or. en

Amendment 158
Alexander Alvaro, Renate Weber

Proposal for a directive
Article 8 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6b. Each Member State shall take the necessary actions in order to ensure that confiscation does not endanger the injured persons' rights and titles against the accused resulting from his criminal action.

Or. en

Amendment 159
Alexander Alvaro, Renate Weber

Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

Amendment

Each Member State shall take the necessary measures to make it possible to determine the precise extent of the property to be confiscated ***following a final conviction for a criminal offence or following proceedings as foreseen in Article 5, that has resulted in a decision to confiscate, and to allow further measures to be taken to the extent necessary to effectively execute that decision to confiscate.***

Each Member State shall take the necessary measures to make it possible to determine the precise extent of the property to be confiscated.

Or. en

Amendment 160
Rui Tavares

Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

Each Member State shall take the necessary measures to make it possible to determine the precise extent of the property to be confiscated ***following a final conviction for a criminal offence or following proceedings as foreseen in Article 5, that has resulted in a decision to confiscate, and to allow further measures to be taken to the extent necessary to effectively execute that decision to confiscate.***

Amendment

Each Member State shall take the necessary measures to make it possible to determine the precise extent of the property to be confiscated. ***The decision must be proportionate and take into account any hardship to the accused or convicted person or any affected person.***

Or. en

Justification

The measure must be applicable to all actions under the Directive and ensure that only assets are taken which would be proportionate with the property rights of the accused, convicted and affected persons, and the criminal activity concerned.

Amendment 161

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht, Hubert Pirker

Proposal for a directive
Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In individual cases it may be possible, in accordance with the proportionality principle, to dispense, wholly or in part, with a confiscation order if confiscation would create undue hardship for the person affected or his family members. Such a case shall be deemed to exist if the measure would disproportionately burden

the person affected or lead to destruction of his livelihood, or if the cost of the confiscation disproportionately exceeds the amount being confiscated.

Or. de

Justification

The Commission proposal currently makes no provision for cases of undue hardship: where the conditions for confiscation exist, confiscation will necessarily be ordered. In order to prevent disproportionate consequences it is essential to introduce a 'hardship clause'. Under the proportionality principle, confiscation must not lead to the loss of the affected natural person's livelihood, or destruction of the affected legal entity.

Amendment 162
Salvatore Iacolino

Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Use of confiscated assets for social purposes

The Member States shall take direct steps to promote the use for social purposes of criminal assets, instrumentalities and proceeds. Such resources may be made available to public bodies to enable activities promoting legality and assistance to victims to be launched – including through non-governmental organisations – using objective criteria, and also to police forces and the judicial authorities in order to combat crime as referred to in Article 2(6).

Or. it

Justification

Some Member States have already experimented with using confiscated criminal assets for public purposes, which has met with great success in social terms and in terms of combating

criminal activities.

Amendment 163
Véronique Mathieu

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Cooperation between Member States

Member States shall ensure that the same pecuniary advantages are not confiscated for the same criminal activities. Pecuniary advantages which have been confiscated once may not be confiscated again for the same offences.

Or. fr

Amendment 164
Salvatore Iacolino

Proposal for a directive
Article 10 – title

Text proposed by the Commission

Amendment

Management of frozen property

Management of frozen ***and confiscated*** property

Or. it

Justification

The management of property should be better defined, including when that property has been confiscated, in terms of its use for social purposes.

Amendment 165
Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive
Article 10 – title

Text proposed by the Commission

Amendment

Management of frozen property

Management of frozen, ***seized and confiscated*** property

Or. en

Amendment 166
Salvatore Iacolino

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall take the necessary measures, such as the establishment of national centralised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view *of* possible later confiscation.

1. Each Member State shall take the necessary measures, such as the establishment of national centralised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view *to* possible later confiscation, ***and shall provide for the possibility of confiscated property being used for social purposes.***

Or. it

Justification

The management of property should be better defined, including when that property has been confiscated, in terms of its use for social purposes.

Amendment 167
Emine Bozkurt

Proposal for a directive
Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In this regard close cross border cooperation and efficient exchange of information between Members States'

police, judicial and financial authorities is essential.

Or. en

Amendment 168

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 10 – paragraph 2

Text proposed by the Commission

2. Each Member State shall ensure that the measures referred to in paragraph 1 optimise the economic value of such property, and shall include the sale or transfer of property which is liable to decline in value.

Amendment

2. Each Member State shall ensure that the measures referred to in paragraph 1 ***to frozen property*** optimise the economic value of such property, and shall include, ***only if necessary***, the sale or transfer of property which is liable to decline in value. ***Each Member State shall take all the necessary measures to prevent any criminal infiltration in this phase.***

Or. en

Amendment 169

Rui Tavares

Proposal for a directive

Article 10 – paragraph 2

Text proposed by the Commission

2. Each Member State shall ensure that the measures referred to in paragraph 1 optimise the economic value of such property, and shall include the sale or transfer of property which is liable to decline in value.

Amendment

2. Each Member State shall ensure that the measures referred to in paragraph 1 ***encourage the social reuse and*** optimise the economic value of such property, and shall include the sale or transfer of property which is liable to decline in value. ***Each Member State shall take the necessary measures to prevent any criminal infiltration in this phrase.***

Or. en

Justification

This amendment aims at aligning the text of the Directive to the amendment made to recital 16.

Amendment 170

Sonia Alfano, Rita Borsellino, Monica Luisa Macovei

Proposal for a directive

Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Each Member State shall take the necessary measures, based on existing best practices, to provide for the disposal and the destination of property confiscated. It shall be a priority to destine such property to law enforcement and crime prevention projects as well as to other projects of public interest and social utility. Any other destination of such property shall be considered only if the above mentioned are not possible and in any case each Member State shall take all the necessary measures to prevent any criminal or illegal infiltration in this phase.

Or. en

Amendment 171

Emine Bozkurt

Proposal for a directive

Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Each Member States shall ensure that a substantial part of confiscated assets are destined to be reused for the victims directly or indirectly affected by crimes.

Amendment 172
Salvatore Iacolino

Proposal for a directive
Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Each Member State may introduce a revolving fund for financing measures aimed at safeguarding property between the time it is frozen and the time it is confiscated, in order to ensure its integrity against any acts of vandalism or acts that may render it less immediately available.

Or. it

Amendment 173
Cornelis de Jong

Proposal for a directive
Article 11

Text proposed by the Commission

Amendment

Article 11

deleted

Statistics

Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of their confiscation systems. The statistics collected shall be sent to the Commission each year and shall include for all criminal offences:

(a) the number of freezing orders executed,

(b) the number of confiscation orders executed,

(c) the value of property frozen,

- (d) the value of property recovered,*
- (e) the number of requests for freezing orders to be executed in another Member State,*
- (f) the number of requests for confiscation orders to be executed in another Member State,*
- (g) the value of the property recovered following execution in another Member State,*
- (h) the value of the property destined to be reused for law enforcement, prevention or social purposes,*
- (i) the number of cases where confiscation is ordered in correlation with the number of convictions for the criminal offences covered by this Directive,*
- (j) the number of requests for freezing and confiscation orders refused by the courts,*
- (k) the number of requests for freezing and confiscation orders not upheld following legal challenges.*

Or. en

Amendment 174
Cornelis de Jong

Proposal for a directive
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Statistics

Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of their confiscation systems. The statistics collected shall be

sent to the Commission each year and shall include:

(a) the number of freezing orders executed,

(b) the number of confiscation orders executed.

Or. en

Amendment 175

Axel Voss, Monika Hohlmeier, Manfred Weber, Jan Philipp Albrecht, Hubert Pirker

Proposal for a directive

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of their confiscation systems. The statistics collected shall be sent to the Commission each year and shall include for all criminal offences:

Amendment

Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of their confiscation systems. The statistics collected shall be sent to the Commission each year and shall include for all criminal offences *falling within the scope of this directive*:

Or. de

Amendment 176

Roberta Angelilli

Proposal for a directive

Article 11 – paragraph 1 – point k a (new)

Text proposed by the Commission

Amendment

(ka) the type of use to which the confiscated property has been put, and the contribution this has made to the social and economic development of the area and local communities concerned;

Or. it

Amendment 177
Roberta Angelilli

Proposal for a directive
Article 11 – paragraph 1 – point k b (new)

Text proposed by the Commission

Amendment

(kb) the length of the procedures for allocating the confiscated property, especially where that property was in good condition at the time it was confiscated.

Or. it