

Guest Editorial eucrim 2/2013



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Editorial

EDITORIAL

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CITATION SUGGESTION

M. Macovei, "Guest Editorial eucrim 2/2013", 2013, Vol. 8(2), eucrim, p33.
DOI: <https://doi.org/10.30709/eucrim-2013-005>

Published in

2013, Vol. 8(2) eucrim p 33

ISSN: 1862-6947

<https://eucrim.eu>



Dear Readers,

Nothing says more than the figures: \$2.1 trillion is the total amount of criminal proceeds generated in 2009 according to UN estimates. Not only does money laundering facilitate corruption, organized crime, and terrorism, but it steals from all EU citizens. At present, less than 1% of the proceeds of crime are frozen and confiscated, proving that dirty money remains in the criminals' pockets. This is why we must concentrate our efforts on dragging out this money if we ever want to get real results. Otherwise, dirty money will produce new organized crime networks, fund terrorism, or go to the underground economy or into the licit economy through money laundering.

As rapporteur for the draft directive on the freezing and confiscation of proceeds of crime in the European Union, I proposed several progressive, groundbreaking measures.

The first move of action will give each Member State the ability to immediately freeze property when it can be sufficiently assumed that the criminal acquired the property through illegal means. This is an indispensable measure because it provides for the ability to freeze property before it can be dissipated or transferred into another jurisdiction.

Furthermore, non-conviction based confiscation is explicitly provided including the cases and circumstances where it can be decided. Non-conviction based confiscation means that even in the absence of a criminal conviction, money or any assets could be confiscated where a court is satisfied or convinced *that the money or assets derive from activities of a criminal nature. Certainly, the judicial proceedings will follow the requirements of a fair trial.* In some Member States, e.g., the United Kingdom or Ireland, non-conviction based confiscation is decided by civil courts, and the State sues the property itself, proving that it was obtained through activities of a criminal nature. In such cases, a prison sentence is not sought by the State whose priority is to stop the dirty money flows. This step is necessary to hamper the cross-border money laundering that can occur during a criminal investigation, and makes a connection between the criminal activity and the property. If we want to disrupt and eliminate organized crime activities, taking the money is much more effective than sending a few people to prison and leaving the dirty money outside.

In addition, Member States' power to confiscate was increased by allowing extended confiscation of property if it is disproportionate to the lawful income of the convicted person and where the court finds it substantially more probable that the property in question has been derived from activities of a criminal nature than from other activities.

Moreover, the new legislation will fill an existing gap that is continuously being exploited by organized criminal groups: their ability to transfer assets to a third party in order to avoid confiscation. This void will be filled by a provision that allows for the confiscation of property acquired by third parties if they were aware of their illegal origin or had enough elements to be aware of it.

"Follow the money across borders" must be the driving principle if we want to trace the funding of organized crime and terrorism effectively and efficiently. Confiscating criminals' assets, even where a criminal conviction is not possible, is clearly necessary to recover the proceeds of crime. Therefore, after months of intense negotiations with my colleagues at the European Parliament, I am pleased that on 7 May 2013 the Committee on Civil Liberties, Justice and Home Affairs endorsed these proposals by a very strong majority. The next step in this dossier is negotiation with the Council. This will not be easy: there are some Member States that would not like to go further than the system currently in place. However, I believe that the public interest in reducing organized crime by taking its money will prevail.

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The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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