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COMMISSION STAFF WORKING DOCUMENT

Analysis of non-conviction based confiscation measures in the European Union

1. INTRODUCTION

When adopting Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (hereafter “the confiscation Directive”), the European Parliament and the Council issued a joint declaration calling on the Commission to “*analyse, at the earliest possible opportunity and taking into account the differences between the legal traditions and the systems of the Member States, the feasibility and possible benefits of introducing further common rules on the confiscation of property deriving from activities of a criminal nature, also in the absence of a conviction of a specific person or persons for these activities.*”¹

Article 13 of the confiscation Directive calls on the Commission to submit a report “*assessing the impact of existing national law on confiscation and asset recovery*” by October 2019.² While the latter will also discuss aspects related to non-conviction based confiscation, the present document will provide, as an intermediary step, a factual analysis of non-conviction based confiscation policies and will inform the Commission’s reply to the European Parliament and Council in the above-mentioned report. It will notably enable stakeholders to provide further feedback on existing systems and possible ways forward.

The objectives of this analysis are to provide an overview of the provisions on non-conviction based confiscation in Member States’ legislation and to identify trends. The current analysis does not set out to introduce a procedure that could trigger new European legislation.

2. BACKGROUND

A considerable part of criminal activity, especially organised crime, is committed with the aim of creating a profit and these profits are considerable: A study conducted by the Transcrime Joint Research Centre on Transnational Crime considered that the proceeds of organised crimes within the European Union (EU) were up to 110 billion Euros annually.³ The United Nations Office on Drugs and Crime (UNODC) considers that criminal proceeds worldwide reach up to 3.6% of global GDP.⁴ In addition to the harm caused to EU citizens, these profits of organised criminal activity also constitute a threat to the European economy as they are often invested in, or laundered through, legitimate businesses.

Taking away the profit of criminal activity and making sure that “crime does not pay” is a very effective mechanism to combat but also to prevent crime. While the confiscation of criminal proceeds is a principle applied to most criminal activities, it is in practice most frequently applied in cases involving organised crime. Typical examples are crimes generating considerable profit, such as drug trafficking. The proceeds are often converted into assets ranging from cash held in bank accounts to real estate, vehicles, company shares etc.

State authorities should be in a position to expediently identify and trace such assets, freeze and confiscate them. A number of legislative and non-legislative initiatives to increase confiscation of

¹ Council doc. 7329/1/14 REV 1 ADD 1.

² Art. 13 of the Directive was amended on 15. Mai 2014, changing the date of the report from October 2018 to October 2019, OJ L 138/114, 13.5.2014.

³ Quoted in Europol, Does Crime still pay? Criminal Asset Recovery in the EU, Survey of Statistical information 2010-2014, 2016, p.4.

⁴ Ibid.

criminal proceeds have therefore been launched at national level, at international level in organisations such as the United Nations, the Council of Europe and the World Bank, and by the European Union.⁵

Despite these efforts, it is considered that only 1.1% of criminal assets are confiscated in the EU.⁶

The confiscation process is complicated in practice. When seeking to deprive criminals of the proceeds deriving from organised criminal activity, law enforcement services are often faced with complex financial flows aimed at hiding the illicit origin of assets as well as structures that distance the offender from the crime. Even if illicit funds are discovered, connecting them to a criminal act and an offender can pose considerable obstacles. In response to this challenge, legal regimes allowing for the confiscation of property without the need of a prior criminal conviction have been developed in a considerable number of jurisdictions.

While the approaches to establish such non-conviction based confiscation regimes in EU Member States differ considerably regarding their design, legal base and application,⁷ they were all developed in response to the same problem: Traditional – conviction-based – confiscation did not equip law enforcement authorities and judicial authorities with the necessary and effective tools that enable the confiscation of a satisfactory percentage of the proceeds of organised criminal activity. The reasons for this might be that a conviction for an alleged criminal offence may not be possible, in spite of the presence of potential proceeds of illicit activity which could justify confiscation. It might also be too difficult to link the obtained assets to a criminal conviction. Another reason is that at times the conviction of an accused is barred because of his/her immunity, death, absconding or illness. Non-conviction based confiscation measures enable to bridge that gap and seize criminal assets through separate judicial proceedings that might be of criminal, civil or administrative nature.

3. TYPOLOGIES OF NON-CONVICTION BASED CONFISCATION

Most Member States have in place procedures, as part of the national criminal law proceedings, providing for the confiscation of the proceeds of crime in circumstances where a criminal conviction cannot be obtained. Such cases include the death, illness or absconding of the suspect or accused person, the fact that he/she is under the age of criminal responsibility, benefits from immunity, or the fact that no person can be identified as the author of a crime.

In addition to criminal law procedures, some Member States have also introduced parallel procedures which are held in civil or administrative courts and which allow the confiscation of the proceeds of crime in the absence of a criminal conviction. These procedures can be conducted against the assets themselves (actions *in rem*) that have been identified as proceeds of crime without being linked to any action taken against a person. Proceedings can also be based on the disproportion between the assets acquired by a person and his/her declared income (unexplained wealth).

An important trait of these procedures is that they do not require establishing a link between a specific offence and the assets subject to confiscation. Establishing such link may be very difficult in practice with regard to the profits of large criminal organisations. Such profits derive from a multitude of criminal offences committed by a plurality of individuals, often in several countries. They are often intermingled with other assets (acquired both legally and illicitly) in an attempt to disguise their illicit origin.

⁵ See for further information the comprehensive assessment of EU security policy SWD(2017) 278 final annexed to the ninth progress report towards an effective and genuine Security Union (COM(2017) 407 final).

⁶ Quoted in Europol, Does Crime still pay? Criminal Asset Recovery in the EU, Survey of Statistical information 2010-2014, 2016, p.4.

⁷ See chapter 6 below.

For the purpose of this analysis, the factual information collected is organised according to models which are inspired by the non-conviction based confiscation Typologies Guide developed by the EU-funded Camden Asset Recovery Inter-Agency Network (CARIN)⁸ in 2015, which foresees four Models. This classification is only meant to help categorise the different approaches taken in Member States. It facilitates mapping the different approaches to this policy area and identifying trends while also providing a useful frame of reference for the reader. The actual legislative regimes in Member States are often of a hybrid nature and the CARIN classification should only be seen as an indication.

Model 1: Classic non-conviction based confiscation applies where confiscation is not possible on the basis of a final conviction. While proceedings have been instituted against an offender, they cannot be concluded, as the offender cannot be brought before the court or convicted due to his/her death, because the offender has absconded or because the court deems him/her unfit for prosecution due to immunity, age or mental state.

Model 2: Extended confiscation allows for the confiscation of assets, which are not connected to the crime for which the offender is being prosecuted. The order to confiscate is effectively 'extended' beyond the assets related to the prosecution, to other assets owned by the defendant.

Model 3: *In rem* proceedings (action against the assets not the person) are initiated to confiscate assets obtained through unlawful conduct.

Model 4: The unexplained wealth model compares the actual property a person has acquired against income declared by that person in order to identify any disparity between the two. Establishing a direct or indirect link to a predicate offence is not necessary.

4. INTERNATIONAL PROVISIONS

Since the 1990's, the confiscation of illicit money has become a political priority at international level; this is reflected in some international conventions.⁹

Several of these conventions recommend the State Parties to adopt national provisions on non-conviction based confiscation. The United Nations Convention against Corruption (UNCAC), for example, states in Art. 54.1.c) that Parties shall "*consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases*".

The 2005 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime and on the financing of terrorism (so-called "Warsaw Convention") calls on Parties to assist other Parties in the execution of freezing and confiscation orders that are not based upon a criminal conviction.¹⁰ Similar provisions are included in Financial Action Task Force (FATF)¹¹

⁸ CARIN is an informal network of law enforcement agencies who share knowledge and information on how to trace assets in a member's country.

⁹ E.g. the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime, the 2000 UN Convention against Transnational organised Crime, the 2003 UN Convention against Corruption (UNCAC), and the 2005 Warsaw Convention.

¹⁰ Article 24.5 of the Warsaw Convention: "The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention".

¹¹ The FATF is an inter-governmental body with the objective to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

Recommendations 4 and 38 respectively¹² and CARIN has also issued several recommendations on non-conviction based confiscation.

These non-binding provisions on non-conviction based confiscation at supranational level have so far not lead to a high degree of alignment of the legislation between countries having national confiscation systems that are historically very different.

5. THE EU LEGISLATION

Non-conviction based confiscation measures have recently been addressed in two important pieces of EU legislation, the confiscation Directive and the confiscation Regulation.

a. CONFISCATION DIRECTIVE

Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union introduces a first set of minimum rules for non-conviction based confiscation. Article 4(2) in particular provides for the obligation to enable confiscation which is not based on a conviction in a limited number of cases (including at least illness and absconding) where conviction-based confiscation is not possible, and under the following conditions: firstly, the offence would be liable to give rise to an economic benefit; secondly the criminal proceedings initiated could have led to a criminal conviction if the suspect or accused person had been able to stand trial.

Article 5 and Article 6 of the confiscation Directive cover extended confiscation and third party confiscation.

The original Commission proposal for the confiscation Directive¹³ included a provision (Art. 5 of the proposal) requiring the Member States to enable non-conviction based confiscation in circumstances where, following proceedings which could, if the suspected or accused person had been able to stand trial, have led to a criminal conviction, but where this criminal conviction cannot be obtained because the suspect has died, is permanently ill or when his flight or illness prevents effective prosecution within a reasonable time and poses the risk that it could be barred by statutory limitations.

The EU co-legislators took divergent views on this provision. The European Parliament strongly supported going beyond it and introducing a general provision on non-conviction based confiscation, which would not apply only in specific cases.¹⁴ The Council did not support such a broad approach at the time and in the final version. Art. 5 of the proposal was replaced by Art. 4(2) which – as set out above – obliges Member States to enable confiscation in a limited number of cases, including at least illness and absconding.

¹² FATF Recommendation 4 requires countries to consider adopting measures allowing proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property, to the extent that such a requirement is consistent with the principles of their domestic law. FATF Recommendation 38 requires countries to ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property, including requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law.

¹³ 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, COM(2012) 85 final.

¹⁴ European Parliament, Report 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 (COM(2012) 0085 – C7-0075/2012 – 2012/0036(COD)), 20.05.2013, p. 22.

b. CONFISCATION REGULATION

A functioning asset recovery regime in the Union requires also an efficient framework for the mutual recognition and the execution of freezing and confiscation orders in other Member States. On 21 December 2016, the European Commission presented a proposal on the mutual recognition of freezing and confiscation orders¹⁵; following this proposal, Regulation (EU) 2018/1805 was adopted by the European Parliament and the Council on 14 November 2018 and will be applicable as of 19 December 2020 (hereafter “the confiscation Regulation”). The Regulation extends the scope of freezing and confiscation orders compared to the former mutual recognition framework. It applies to all freezing and confiscation orders issued within the framework of proceedings in criminal matters. For confiscation orders, a link to a criminal offence (by means of a final penalty or measure imposed by a court following proceedings) is required. Thus, the Regulation covers classic conviction-based confiscation as well as extended confiscation and non-conviction based confiscation if these are issued within the framework of proceedings in criminal matters. It will, however, not apply to freezing or confiscation orders issued within the framework of proceedings in civil or administrative matters.

The confiscation Regulation closes an important lacunae and has the potential to vastly improve cross-border cooperation by providing law enforcement authorities with an efficient tool to confiscate the proceeds of organised crime even when they are laundered or hidden in other EU Member States. The fact that it also covers extended confiscation and non-conviction based confiscation orders issued in proceedings in criminal matters ensures that more robust and extensive non-conviction based confiscation regimes can also benefit from better mutual recognition within the EU.

However, mutual recognition is only one pillar of a strong asset recovery regime, the second pillar is composed of asset recovery provisions in the Member States' material criminal law and will be analysed below.

6. THE LEGISLATION IN THE EU MEMBER STATES

Art. 4(2), Art. 5 and Art. 6 of the confiscation Directive cover certain cases of non-conviction based confiscation. It must be underlined that the Commission is currently verifying the complete transposition of the confiscation Directive into national legislation by Member States. The period for transposing the Directive expired in October 2016 but the Directive is still being transposed in some Member States.¹⁶ Hence, this Staff Working Document merely describes the legal regimes governing non-conviction based confiscation to map the different approaches taken in this policy area and identifies trends. It is not aimed at making any statements as to the completeness or conformity of the transposition at national level and does in no way prejudice possible infringement procedures related to the confiscation Directive.

In preparation of this document, the Commission gathered information on the non-conviction based confiscation regimes in Member States through expert meetings held in Brussels on 16 September and 17 November 2016 and follow-up bilateral contacts with experts and national administrations between July and September 2018. Reference is also made to previous analysis of the subject, such as the summary of the national legislation on non-conviction based confiscation produced by the General Secretariat of the Council in 2012,¹⁷ a Eurojust report on non-conviction based confiscation issued in

¹⁵ COM(2016) 819 final.

¹⁶ As of February 2019, 24 Member States have notified complete transposition of the provisions of the confiscation Directive, while 2 Member States have partially transposed the Directive. The United Kingdom chose not to opt in the Directive, and Denmark does not participate in the Directive because of its opt out.

¹⁷ Council document 7461/12 DROIPEN.

2013 and the impact assessment for the confiscation Regulation proposal.¹⁸ More detailed information can be found in the Annex to this Staff Working Document.¹⁹

From the analysis it becomes clear that most Member States' non-conviction based confiscation regimes go beyond the minimum harmonisation requirements set out in the confiscation Directive but vary considerably in their scope:

- 25 Member States (all except BG, IE, UK) primarily rely on classic non-conviction based confiscation proceedings (**Model 1**);
- 26 Member States (all except EL and IE) have extended confiscation regimes (**Model 2**);
- 13 Member States (EE, DE, EL, IT, LV, LT, LU, NL, PL, RO, SK, SL, ES) also have some form of *in rem*/unexplained wealth procedures (**Models 3 and 4**) in addition to classic ones, or have draft law envisaging such regime;
- 3 Member States (BG, IE, UK) primarily rely on *in rem*/unexplained wealth proceedings (**Models 3 and 4**).

Looking at Member States having implemented classic non-conviction based confiscation regimes (**Model 1**) differences in scope are visible:

- 8 Member States cover the situation of illness or absconding but also other situations; 4 of them (ES, HU, SE, SI) also cover death, the other 4 (EE, PL, PT, SK) exclude death;
- 7 Member States (BE, CZ, FR, LT, LU, MT, NL) cover only the situation of illness or absconding;
- 7 Member States (AT, CY, EL, FI, HR, IT, LV) cover the situations of death, illness or absconding;
- 2 Member States (DK, EL) cover only the situation of death;
- 1 Member State (DE) covers all cases where a conviction is not possible in criminal proceedings;
- 1 Member State (RO) covers only the case of illness of the suspect or accused person.

17 Member States (14 through Model 1 proceedings and 3 through Model 3 proceedings) cover the case of death of the suspect or accused person.

When looking at different non-conviction based confiscation systems, several national approaches serve as interesting case studies to demonstrate common aspects or to point out possible approaches. While the systems implemented in Ireland and the United Kingdom display common features included in several *in rem* proceedings (Model 3), the Bulgarian system is a good example of an unexplained wealth approach (Model 4). The Italian and the German system on the other hand indicate how systems anchored in criminal law can include hybrid elements to strengthen confiscation regimes. Both regimes include the possibility to go beyond classic non-conviction based confiscation (Model 1) and extended confiscation (Model 2) by including concepts of *in rem* (Model 3) or unexplained wealth regimes (Model 4). Key characteristics of these systems are summarised in the table below.

Ireland and the United Kingdom

Looking at *in rem* proceedings (**Model 3**) applied in both Ireland and the United Kingdom common characteristics are evident:

- They target property believed to be the proceeds of crime rather than the person (who may not even

¹⁸ Commission Staff Working Document, Impact Assessment Accompanying the Proposal for a Regulation on the Mutual Recognition of Freezing and Confiscation Orders, SWD(2016) 468 final.

¹⁹ The summary of non-conviction based confiscation regimes provided in this chapter takes into account legislation on non-conviction based confiscation that has been enacted in EU Member States up to 7 September 2018.

<p>be investigated);</p> <ul style="list-style-type: none"> • They apply civil procedural law rather than criminal procedural law. Regarding matters of evidence, they apply the civil law standard "on the balance of probabilities" (rather than the criminal standard "beyond reasonable doubt"); • They include important safeguards such as notice provisions, the opportunity for a respondent to contest the confiscation order by seeking to vary or annulling it, the opportunity for any persons claiming ownership to be heard, provision for legal aid, provision for compensation etc.; • The statutory agency charged with the pursuit of the proceeds of crime (e.g. the Criminal Asset Bureau in Ireland) is multidisciplinary and is empowered to share confidential information.
<p>Bulgaria</p> <p>As regards the key features of unexplained wealth systems classified under Model 4, the Bulgarian system provides for a good case study:</p> <ul style="list-style-type: none"> • There is no requirement that the assets should be proceeds or instruments of crime. The lack of evidence that the assets derive from legal sources is sufficient; • The speed of the procedure compared to criminal proceedings is much higher. The investigation may last for up to one year and can be extended of six months • Meeting the standards of proof in a separate civil proceeding is far easier than in criminal proceedings.
<p>Italy</p> <p>Italy operates a system of preventive confiscation aimed at preventing a re-use of property, which is essentially proven to have been acquired through, or thanks to the income of, a criminal activity:</p> <ul style="list-style-type: none"> • The system requires proving the “social danger” of the person that has obtained the property, e.g. if he/she is proven to be habitually involved in the commission of criminal activities or proven to habitually live by means of the proceeds of crime (Art. 1 and of the Italian Antimafia Code). • Preventive confiscation orders are based on evidence examined according to the same rules that apply to criminal evidence in strict meaning, which prove that the proposed person obtained the property due to his/her being “dangerous to society” at the time of the acquisition.
<p>Germany</p> <p>A fundamental reform of the German asset recovery regime (“Vermögensabschöpfung”) in 2017 established a new form of non-conviction based confiscation in German law and includes several key changes:</p> <ul style="list-style-type: none"> • It allows for preventive confiscation and traditional <i>in rem</i> law confiscation regimes. • An asset can be confiscated if secured within a criminal proceeding against a person for serious crimes (similar to the list in Art. 83(1) TFEU). It is sufficient if the asset can be linked to a crime and that the accused cannot be convicted or prosecuted for that crime. • For organised crime offenses, unexplained wealth can also be confiscated independent of a criminal conviction. • Special provisions are included to address questions such as burden of proof. <p>The German legislators have anchored this regime in criminal law and criminal procedure, and consider therefore that it is of criminal law character.</p>

7. ANALYSIS OF TRENDS IN NON-CONVICTION BASED CONFISCATION

While in general a greater degree of harmonisation can be observed following legislative changes introduced in the Member States in recent years, important differences persist regarding non-conviction based confiscation. Some Member States have indeed developed more extensive non-conviction based confiscation regimes for Models 1 (classic non-conviction based confiscation) and Model 2 (extended confiscation) than provided for by the confiscation Directive, and several Member States also operate *in rem* and unexplained wealth regimes (Models 3 and 4).

In 2016, the European Commission found that “a significant discrepancy exists between what criminals invest and what is actually confiscated”.²⁰ While progress was achieved regarding the harmonisation and strengthening of confiscation regimes as well as the mutual recognition of such orders, it remains true that only a very small percentage of criminal assets are being confiscated. Although comprehensive, precise and reliable data is difficult to obtain, statistics from Italy and the United Kingdom, which have both implemented quite robust non-conviction based confiscation regimes, indicate that the such regimes can contribute to increasing the amount of confiscated assets.²¹

Furthermore, the 2015 study by Transcrime Joint Research Centre on Transnational Crime²² concluded the assets of criminal groups are increasingly invested in other Member States and criminals are reported to target those Member States with weak asset recovery regimes.²³ Given the openness of the EU’s internal market, the exploitation of diverging confiscation regimes between Member States has the potential to disrupt economic activity across the European Union. Even when managing licit businesses, organised crime groups often support these activities with the recourse to intimidation and corruption, which may have detrimental effects on fair competition and the smooth functioning of the internal market. The resulting loss of revenues could affect both national and EU financial interests, even when it takes place in only one Member State.

8. POSSIBLE CHALLENGES

A key challenge to the introduction of non-conviction based confiscation legislation is the compliance with fundamental rights. The absence of a criminal conviction raises issues relating to the right to fair trial, effective judicial remedy, the presumption of innocence as well as the right to property. The European Court of Human Rights has repeatedly assessed the compliance of national non-conviction based confiscation measures with the requirements, notably of Article 6 of the European Convention on Human Rights and Article 1, Protocol 1 while giving great weight to the safeguards and procedural guarantees in place. Usually, the European Court of Human Rights considers a measure proportionate if the individual had effective means to contest it. For proceedings conducted under criminal law, it is easier to provide for these safeguards while traditional civil law confiscation regimes rely on specific procedures and institutions to ensure the guarantee and availability of these safeguards to affected parties.²⁴

While *in rem* and unexplained wealth procedures can satisfy procedural safeguards, the European Court of Human Rights has also examined whether they can be considered as a criminal charge. The court has developed three so-called *Engel* criteria to decide whether a sanction is in fact a criminal sanction and should thus benefit from the procedural safeguards of Art 6 ECHR: (1) The classification of the measure in national law, (2) the nature of the offence and the (3) degree of severity of the penalty risked. When ruling on the UK’s *in rem* confiscation regime for example, the court held in the cases *Butler v. UK*²⁵ and *Webb v. UK*²⁶, that cash confiscation proceedings were not criminal in nature. The nature of the offense was considered to be preventive rather than criminal as the aim was to take

²⁰ Commission Staff Working Document, Impact Assessment Accompanying the Proposal for a Regulation on the Mutual Recognition of Freezing and Confiscation Orders, SWD(2016) 468 final, p. 16.

²¹ Ibid, p. 26.

²² "From illegal markets to legitimate businesses: The Portfolio of Organised crime in Europe", 2015, available at <http://www.transcrime.it/pubblicazioni/the-portfolio-of-organised-crime-in-europe/> (last consulted 24.10.2018, 11:45), p.21.

²³ Commission Staff Working Document, Impact Assessment Accompanying the Proposal for a Regulation on the Mutual Recognition of Freezing and Confiscation Orders, SWD(2016) 468 final, p. 17.

²⁴ For a more detailed analysis of fundamental right considerations related to non-conviction based and extended confiscation, see Annex 6 of the Impact Assessment for the proposal of the confiscation Regulation, supra fn. 19.

²⁵ ECtHR, *Butler v. UK*, N°41661/98.

²⁶ ECtHR, *Webb v. UK*, N°56054/00.

extract illicit cash flows from the economy. In other cases, e.g. *Welch v the UK*²⁷, the European Court of Human Rights has considered a confiscation measure to be of punitive character, thus amounting to a criminal sanction.

However, the European Court of Human Rights is applying an autonomous interpretation of the term criminal charge, which is not necessarily equal to the meaning of the term in national or EU law.

9. INDICATIONS ON THE FEASIBILITY OF STRENGTHENING PROVISIONS ON NON-CONVICTION BASED CONFISCATION AT EUROPEAN LEVEL

The European Parliament has been a long-standing supporter of more extensive non-conviction-based confiscation regimes.²⁸ In 2016, the European Parliament stressed the importance to strengthen “*EU measures concerning the [...] confiscation of proceeds of crime*”²⁹, and recital 16 of the Directive on combating money laundering by criminal law calls on Member States to “*strongly consider enabling confiscation in all cases where it is not possible to initiate or conclude criminal proceedings, including in cases where the offender has died.*”³⁰

In several expert meetings³¹ organised by the Commission, stakeholders voiced support regarding the opportunity and the need to further harmonise the national legislations in this area.³²

When considering how to respond to the calls for action above and how to make non-conviction based confiscation regimes more effective, hybrid models that include successful aspects of different approaches are of particular interest. As described in Chapter 6, some national non-conviction based confiscation regimes are anchored in criminal proceedings³³ and feature aspects of *in rem* (Model 3) or unexplained wealth (Model 4) proceedings. The Italian system has been considered quite successful compared to other regimes³⁴ and has also been examined by the European Court of Human Rights³⁵, which confirmed the system’s compliance with the procedural safeguards of Art. 6 of the European Convention of Human Rights. Given its recent adoption, the German model has not been challenged at that level and no data is yet available to assess its performance. However, both models represent modern approaches of how to shape innovative non-conviction based confiscation regimes that promise higher confiscation rates while being anchored in criminal proceedings.

Anchoring non-conviction based confiscation in criminal law proceedings ensures the involvement of judicial authorities in the process, which implies a high level of safeguards. It is clear that any reinforced non-conviction based confiscation model at EU level would have to be accompanied by strong procedural safeguards.

²⁷ ECtHR, *Welch v. UK*, N°17440/900.

²⁸ See Committee on Civil Liberties, Justice and Home Affairs, Report 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 (COM(2012)0085 – C7-0075/2012 – 2012/0036(COD)), 20.05.2013, p.22 and Report on the proposal for a directive of the European Parliament and of the Council on countering money laundering by criminal law (COM(2016)0826 – C8-0534/2016 – 2016/0414(COD)), p.28.

²⁹ European Parliament, Report on the fight against corruption and follow-up of the CRIM resolution. (2015/2110(INI)), 11.4.2016, p.7
Committee on Civil Liberties, Justice and Home Affairs.

³⁰ Recital 16 of the Directive (EU) 2018/1673 on combating money laundering by criminal law.

³¹ See Chapter 5 above.

³² Commission Staff Working Document, Impact Assessment Accompanying the Proposal for a Regulation on the Mutual Recognition of Freezing and Confiscation Orders, SWD(2016) 468 final.

³³ As regards the term a ‘court having jurisdiction in particular in criminal matters’, the ECJ clarified in the *Baláz* judgement (C-60/12) that it “is an autonomous concept of Union law and must be interpreted as covering any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure”.

³⁴ Commission Staff Working Document, Impact Assessment Accompanying the Proposal for a Regulation on the Mutual Recognition of Freezing and Confiscation Orders, SWD(2016) 468 final, p. 27.

³⁵ ECtHR, *M. v. Italy* N°12386/86 and *Arcuri and three others v. Italy* N°54024/99.

10. CONCLUSION

Member States' legal frameworks on non-conviction based confiscation have undergone considerable changes over the last years

It also holds true that while confiscation has received more attention recently, the actual rate is still very low. The lack of current data is an aspect that should also be addressed, as it is necessary to substantiate theoretical considerations. Further reflection and consultation on this matter are necessary, notably through dialogue with stakeholders including organised civil society by hosting dedicated Expert Meetings.

This work constitutes an intermediary step and will inform the Commissions' reply to the call of the European Parliament and the Council in their joint declaration in the context of the Report on the transposition of the confiscation Directive, which will be presented by the Commission at the end of 2019.

ANNEX

1. INTRODUCTION

This Annex contains the results of an analysis carried out by the European Commission of provisions on non-conviction based confiscation in the legislation of the Member States. In preparation of this Staff Working Document, the Commission services gathered information through expert meetings held in Brussels on 16 September and 17 November 2016 and follow-up bilateral contacts with experts between July and September 2018.³⁶ Reference was also made to previous analysis of the subject, such as the summary of the national legislation on non-conviction based confiscation produced by the Council in 2012³⁷, a Eurojust report on non-conviction based confiscation issued in 2013 and the impact assessment for the confiscation Regulation proposal³⁸.

2. THE LEGISLATION ON NON-CONVICTION BASED CONFISCATION IN THE EU MEMBER STATES

Art. 4(2), Art. 5 and Art. 6 of the confiscation Directive cover certain cases of non-conviction based confiscation. It must be underlined that the Commission is currently verifying the complete transposition of the confiscation Directive into national legislation by Member States. The period for transposing the Directive expired in October 2016 but the Directive is still being transposed in some Member States.³⁹ Hence, this Staff Working Document merely describes the legal regimes governing non-conviction based confiscation to map the different approaches taken in this policy area and identify trends. It is not aimed at making any statements as to the completeness or conformity of the transposition at national level and does in no way prejudge possible infringement procedures related to the confiscation Directive.

AUSTRIA

Austria has a conviction-based system in place. There are some elements of non-conviction based confiscation, but there must always be a link with criminal proceedings, which would correspond to **Model 1**. Austria also has extended confiscation, which would correspond to **Model 2**. There is no civil or administrative confiscation in the Austrian legal system.

BELGIUM

The information contained in the Belgian reply to the 2012 Council questionnaire is still relevant. Belgium has a purely conviction based system, which would correspond to **Model 1**. *In absentia* proceedings apply in case a conviction cannot be obtained due to illness or absconding of the offender. A reform of the Criminal Code is under way and a reflection is ongoing on whether to include changes to the purely conviction based system, but no decision has been taken yet. A draft law was approved by the Council of Ministers and is being examined by the *Conseil d'Etat*.

³⁶ The summaries of national non-conviction based confiscation regimes provided in the annex take into account legislation on non-conviction based confiscation that has been enacted in EU Member States up to 7 September 2018.

³⁷ Council document 7461/12 DROIPEN.

³⁸ Commission Staff Working Document, Impact Assessment Accompanying the Proposal for a Regulation on the Mutual Recognition of Freezing and Confiscation Orders, SWD(2016) 468final, Brussels, 21.12.2016.

³⁹ As of February 2019, 24 Member States have notified complete transposition of the provisions of the confiscation Directive, while 2 Member States have partially transposed the Directive. The United Kingdom chose not to opt in the Directive, and Denmark has opted out of the EU legislation in the Justice and Home Affairs area.

BULGARIA⁴⁰

In 2018, Bulgaria adopted a new legislation – the Law for Combating Corruption and Illegal Assets Forfeiture establishing the Commission for Anti-Corruption and Illegal Assets Forfeiture (CACIAF) as an independent, specialized, permanently acting state body. According to this law, civil forfeiture proceedings are conducted without prejudice to other criminal or administrative proceedings against the person under examination. The civil forfeiture proceeding targets specified assets and has as an objective to identify the means and the sources for the acquisition of these assets. An enforceable criminal conviction is not a pre-condition for the forfeiture of assets. This non-conviction based confiscation by way of civil proceedings targets the assets which are reasonably presumed to be the proceeds of unlawful conduct when criminal proceedings against a person have been brought or an administrative violation of at least BGN 50 000 (approximately € 25 000) has been committed. The definition of "unlawfully acquired assets" is based on a disproportion between the assets of a person and his/her net income which is in excess of BGN 150 000. The persons under examination must prove the legitimate nature of the assets. This procedure can be used also if the suspect/defendant is dead, mentally ill or for other reasons (including amnesty, prescription, immunity, unknown address and person cannot be found or in case of an admitted transfer of the criminal proceeding to another State Country). An examination shall furthermore commence where an instrument of a foreign court concerning any of the criminal offences or administrative violations covered in the Act has been recognised according to Bulgarian legislation. Civil forfeiture proceeding could also be launched in case of suspicions about corruption of public officials. The Bulgarian legislation would correspond to **Model 4**. However, it should be noted that because of its specifics the civil forfeiture legislation in Bulgaria includes certain elements of other models of non-conviction based confiscation.

CROATIA

Croatia has implemented **Model 1**, based on the principle that no one is entitled to keep assets acquired by illegal means. Non-conviction based confiscation is possible in case of death, flight and illness of the suspect/accused person. The non-conviction based confiscation procedure is conducted by the judge who is or would be competent for the criminal proceedings. Extended confiscation also exists in Croatia, which would correspond to **Model 2**.

CZECHIA

The legislation in the Czech Republic would correspond to **Models 1 and 2**. Protective measures under the Criminal Code are used in cases when assets are transferred to third parties or the suspect/accused person is absconding. It is possible to use such measures also for suspect/accused persons with serious illness or in case of death. The law amending the Income Tax Act, adopted in December 2016, also introduced **Model 4** to the Czech legislation by allowing for punitive taxation of disproportional undeclared income, without any connection to a crime.

CYPRUS

Cyprus has non-conviction based confiscation covering the cases of illness, absconding and death of the suspect/accused person, which would correspond to **Model 1**. The standard of proof in these cases is the balance of probability. Furthermore, legal provisions allow extended confiscation, which corresponds to **Model 2**. Cyprus has no provisions on civil confiscation and non-conviction based confiscation orders (other than the three instances above). New legislation in 2018 made it possible to

⁴⁰ Currently, a request for a preliminary ruling (case C-234/18) is pending before the European Court of Justice which includes questions relating to Bulgaria's non-conviction based confiscation regime as well as the confiscation Directive. At this moment, the Court has not issued a judgement.

register and enforce foreign confiscation orders, as long as these are obtained in the criminal sphere provided that the relevant provisions of the domestic legislation can be satisfied.

DENMARK

Denmark did not participate in the adoption of the confiscation Directive because of its opt-out.⁴¹ Danish legislation allows for confiscation of proceeds of crime or a sum equivalent to such proceeds without a criminal conviction if the person liable to confiscation dies. This includes extended confiscation of property belonging to third parties. It also allows for the confiscation of instrumentalities of crime without a criminal conviction if it is necessary for the prevention of further criminal offences. According to case law, confiscation is also possible when a person cannot be convicted due to young age or insanity at the time of the offence. This would correspond to **Models 1 and 2**.

ESTONIA

Estonia has a conviction-based system, which nevertheless includes some elements of non-conviction based confiscation. The possibility for *in absentia* proceedings exists in case of absconding of the suspect/accused person and illness. In addition, non-conviction based confiscation is possible for instrumentalities that require a permit or are illegal to possess, or if the owner of the assets cannot be identified. This legislation would correspond to **Model 1**. Estonia also has extended confiscation (**Model 2**). Although there is no civil recovery in Estonia, some administrative measures allow the freezing of assets in cases of money laundering, in the absence of a criminal investigation. These assets can be later confiscated if their owner cannot be identified, again in administrative proceedings. This legislation would correspond to **Model 3**.

FINLAND

The Finnish system is mainly conviction-based, but includes some elements of non-conviction based confiscation as well. Non-conviction based confiscation is possible under criminal procedures (as a general provision which also covers the cases of illness, absconding and death of the suspect/accused person) if there is enough evidence that a crime has been committed, which would correspond to **Model 1**. A reversal of the burden of proof in extended confiscation, which would largely correspond to **Model 2**, was recently introduced. In practice non-conviction based confiscation is not widely used.

FRANCE

France traditionally has a purely conviction based system. A reform in 2016 extended the scope of provisions which prevent the restitution of seized property to the accused or a third party in case a conviction in a criminal proceeding cannot be obtained (e.g. in case of death). This provision would seem to correspond to **Model 1**. Extended confiscation exists in France, which would correspond to **Model 2**. The confiscation of assets is also possible in case a person is incriminated for possessing unexplained assets and having habitual relations with criminals ("*délit de non-justification des ressources*"). This type of confiscation is very similar to **Model 4**, but is based on a criminal conviction and takes place under criminal proceedings. Foreign non-conviction based confiscation orders can be executed in France through mutual legal assistance.

⁴¹ According to Article 2 of Protocol 22 to the Treaty on the Functioning of the European Union, measures adopted pursuant to Title V of Part Three TFEU shall not be binding upon or applicable in Denmark.

GERMANY

Germany introduced an important legislative reform that introduces a non-conviction based confiscation regime which would correspond to **Model 1** (as it covers the cases of illness, death and absconding of the suspect/accused persons), **Model 2** (the scope of extended confiscation would be enlarged to all crimes without restrictions) and **Model 3** (in cases of organised crime and terrorism a shifting of the burden of proof would kick in for the assets of unclear origin. The suspect/accused person would have to prove the licit origin of the assets; otherwise the assets can be confiscated without a criminal conviction).

GREECE

Greece has a conviction-based system, which includes some elements of other systems. In the anti-money laundering legislation there are provisions on value confiscation. This also enables the confiscation of the proceeds of crime, which are predicate offences of money laundering, in case of death of the suspect/accused persons. This legislation would correspond to **Model 1**. In the tax legislation there are also provisions on unexplained wealth which would allow the confiscation of assets based on a disproportion with the declared income. This legislation would correspond to **Model 4**. In Greece, tax evasion is a predicate offence for money laundering. Prosecution is always made on the ground of money laundering, as well as the predicate offence.

HUNGARY

Hungary has implemented **Model 1** in its Criminal Procedure legislation, non-conviction based confiscation goes beyond the requirements of the confiscation Directive as it is possible upon request of the prosecutor for any reason. In practice it is applied in the cases of death, flight and illness of the suspect/accused person, or when the perpetrator is unknown. Extended confiscation also exists in Hungary with a shifting of the burden of proof, which would correspond to **Model 2**. There is no civil confiscation in the Hungarian legislation.

IRELAND

Ireland operates two systems aimed at the confiscation of criminal assets, a criminal confiscation system and a non-conviction based system. The former acts *in personam* against a convicted person, while the latter acts *in rem* on the property that constitutes the proceeds of crime. The Proceeds of Crime legislation does not operate as an alternative to criminal prosecution. In any case, where there is sufficient evidence to pursue criminal proceedings, criminal prosecution will be prioritised. In circumstances where property may be subject to confiscation under both criminal justice legislation and Proceeds of Crime legislation, the application of the relevant orders under the criminal justice legislation takes precedence. These provisions would correspond to **Model 3**. Ireland also has a punitive tax code aimed at confiscation proceeds of crime, similar to **Model 4**.

ITALY

In Italy, non-conviction based preventative confiscation measures can be applied against persons suspected to belong to mafia-type associations and to person suspected to be involved in particularly serious crimes. The preventive confiscation proceeding is based on social harm and is separate and independent from the criminal proceedings. Preventive confiscation proceedings can be initiated against either a non-convicted person or a person sentenced for a crime. Consequently, if, at the end of a criminal trial, a person is acquitted of charges of participating in a mafia-type criminal association, this acquittal does not constitute *per se* a reason to modify or repeal a preventative confiscation measure, because the lack of evidence for a criminal conviction does not necessarily mean an absence of social harm. . The nature of the preventative confiscation is hybrid, being to a large extent criminal. It also refers to procedural safeguards which would be applied in criminal proceedings. On the other

hand, the preventative confiscation is not a criminal proceeding focused on the criminal liability of the defendant, but a prevention judgment, focused to ascertain the social harm of the person involved. The assessment of the social harm should not be necessarily construed on the ground of facts, which are crimes. Non-conviction based confiscation measures can be applied also if the suspect/defendant is dead, a fugitive or for other reasons (including if the suspect/defendant is mentally unfit for prosecution). It is possible to apply preventative confiscation measures even when the person is dead. Where the death occurs during the proceedings, such proceedings should continue against the person's heirs or assignees. The legislation in Italy would correspond to **Models 1, 2 and 4**.

LATVIA

Latvia's legislation enables non-conviction based confiscation not only in the cases of illness and absconding of the suspect or accused person, but also in the case of death, and would correspond to **Model 1**. Extended confiscation also exists in Latvia, which would correspond to **Model 2**. Unexplained wealth provisions also exist (which would correspond to **Model 4**), with a shifting of the burden of proof which would kick in for the assets of unclear origin.

LITHUANIA

Lithuania has a conviction-based system which would correspond to **Model 1**. Extended confiscation also exists in Lithuania, which would correspond to **Model 2**. Efforts to introduce a civil confiscation model are under way, after the Supreme Court of Lithuania decided that non-conviction based confiscation could be justified for the purpose of fighting organised crime. A new draft law on Organised Crime prevention would enable to start wealth investigation if value of suspected illegal assets are at least EUR 50,000. Non-conviction based confiscation would be included as a preventive measure, with a lighter standard of proof and a shifting of the burden of proof to the accused. This legislation would implement **Model 3** and **Model 4**.

LUXEMBOURG

Luxembourg has a conviction based system which would correspond to **Model 1** (*in absentia* proceedings apply to illness and absconding of the suspect/accused person) and includes extended confiscation (**Model 2**). In cases of money laundering and terrorist financing, the legislation enables confiscation of assets also in case of acquittal or prescription. These provisions would correspond to **Model 3**. A judgement of the LU District Court has recognised civil recovery orders by UK (**Model 3**).

MALTA

Malta has implemented legislation that would correspond to **Model 1 and Model 2**. For the moment there is no civil confiscation in the Maltese legislation.

NETHERLANDS

In the Netherlands, *in absentia* proceedings exist in case of illness and absconding. There is no provision covering the case of death of the suspect/accused person. In this case, the family members inheriting the assets would be likely prosecuted for money laundering. The Netherlands have also extended confiscation, which would correspond to **Model 2**. The Netherlands also have provisions on unexplained wealth similar to **Model 4**, but they take place under criminal proceedings. For the moment there is no civil confiscation in the Dutch legislation.

POLAND

Poland has a conviction-based system in place and new legislation broadens the scope of confiscation. A first step was already taken in 2015, when a change in the criminal code stated that confiscation is to

be considered as a measure rather than a. Current legislation covers the cases of illness and absconding of the suspect/accused person, but also other cases, which would correspond to **Model 1**. Poland also has extended confiscation, limited to certain offences and to the property acquired after committing the crime, which would correspond to **Model 2**. The Polish government also announced changes in the Act on the liability of legal persons to ensure that confiscation applies to legal persons as well. In this case *in rem* proceedings, which would correspond to Model 3, would be introduced to confiscate the assets unlawfully gained.

PORTUGAL

In Portugal, confiscation is not a penalty, but a restorative measure with legislation that would correspond to **Models 1 and 2**. While the latter it labelled “extended confiscation” in Portugal and is based on a criminal conviction, the extended confiscation depends on a disparity of declared assets and actual wealth rather than the connection of certain property to a criminal act. Reflection is ongoing to introduce additional provisions on unexplained wealth, which would correspond to **Model 4**, but the Constitutional Court has twice indicated that there might be constitutional issues.

ROMANIA

The existing Romanian legislation provides for non-conviction based confiscation corresponding to **Model 1** (limited to the case of illness of the suspect/accused person). Extended confiscation (**Model 2**) is only possible on the basis of a conviction. Romania does not have civil confiscation. It has *sui generis* administrative provisions to confiscate unexplained wealth of public officials, which would correspond to **Model 4**

SLOVAKIA

In Slovakia, confiscation is a protective measure within criminal proceedings and applies when the suspect/accused person cannot be convicted for reasons such as immunity, age, prescription, insanity or *ne bis in idem*. In 2010, an additional Legal Act based on civil proceedings was adopted, as criminal proceedings were considered too restrictive and burdensome. This procedure, which was devised taking into account the jurisprudence of the European Court of Human Rights, is more flexible than the stricter criminal procedures and foresees a shifting of the burden of proof. The existing legislation in Slovakia would correspond to **Model 1, Model 2 and Model 3**.

SLOVENIA

Slovenia’s law on the Confiscation of Assets of Illicit Origin allows for the confiscation of the proceeds of crime without criminal conviction in a civil procedure. In order to begin civil confiscation proceedings, “reasons for suspicion” have to be established (in the pre-trial or trial phases of a criminal case). “Reasons for suspicion” is a legal standard in criminal law, in which the probability is lower than “probable cause”. The actions are *in rem* and include particular requirements: the value of assets owned by suspects has to exceed € 50 000 and the assets have to be derived or obtained from particular criminal offences. These provisions would correspond to **Model 3**. The legislation also allows for **Model 1** confiscation but only in cases of corruption and money laundering.

SPAIN

Spain has a conviction-based system, which nevertheless includes some elements of non-conviction based confiscation. Spanish legislation foresees non-conviction based confiscation of assets and instrumentalities in case of death, illness, absconding, prescription of criminal responsibility and exemption thereof (Article 127 *ter*). Legislation also foresees *in absentia* proceedings in case of non-conviction based confiscation due to death, illness and absconding of the suspect or accused person. This legislation would correspond to **Models 1 and 2**.

SWEDEN

In Sweden, confiscation without connection to prosecution, which would correspond to **Model 1**, is possible within a year from the time when the obstacle to prosecution occurred. Extended confiscation, which would correspond to **Model 2**, exists for certain crimes such as bribery.

UNITED KINGDOM

The UK has not participated in the adoption of the confiscation Directive.⁴² It operates three systems aimed at the confiscation of proceeds of crime, a criminal confiscation system, a non-conviction based system and recovery through taxation. The non-conviction based model enables civil proceedings to claim property obtained through unlawful conduct. The proceedings are *in rem* and it is not necessary to link the acquisition of the property to a specific crime, so long as it is shown that the property was acquired through or in return for conduct of one of a number of kinds, each of which would have been unlawful conduct. The proceedings adopt civil practice and procedure and the civil standard of proof (balance of probabilities) is applied. Protection exists for *bona fide* third parties and victims of crime that can demonstrate a legal interest in the property. This procedure can be used if the suspect/defendant is dead, a fugitive, or criminal confiscation is not possible for other reasons. This would correspond to **Model 3**. The Criminal Finances Act 2017 recently introduced Unexplained Wealth Orders ("UWO") to help identify property which may have been laundered in or through the United Kingdom. An UWO requires certain categories of suspects to set out the nature/extent of their interest in identified property and explain how they obtained it. A failure to provide a response would assist any subsequent civil recovery proceedings. While corresponding to **Model 4**, UWOs do not result in the actual recovery of property rather they help to ensure proceedings under **Model 3** can be pursued.

⁴² In accordance with Article 10(4) of Protocol (No 36) on transitional provisions annexed to the Treaties, the United Kingdom notified that it does not accept the full powers of the Commission and the Court of Justice with regard to acts in the field of police and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. For the details, see Commission Decision 2014/858/EU of 1 December 2014 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis (OJ L 345 of 1.12.2014, p. 6). Points 29 and 33 of the List of Union acts adopted before the entry into force of the Lisbon Treaty in the field of police cooperation and judicial cooperation in criminal matters which cease to apply to the United Kingdom as from 1 December 2014 pursuant to Article 10(4), second sentence, of Protocol (No 36) on transitional provisions (OJ C 430 of 1.12.2014, p. 17).

SUMMARY OF THE NON-CONVICTION BASED CONFISCATION LEGISLATION IN THE EU MEMBER STATES

	Classic non-conviction based confiscation	Extended confiscation	<i>In rem</i> confiscation	Unexplained wealth
1. Austria	YES (death, illness and absconding)	YES		
2. Belgium	YES (illness and absconding only)	YES		
3. Bulgaria		YES		YES
4. Croatia	YES (death, illness and absconding only)	YES		
5. Czechia	YES (illness and absconding only)	YES		
6. Cyprus	YES (death, illness and absconding only)	YES		
7. Denmark	YES (death only)	YES		
8. Estonia	YES (illness and absconding, owner unknown, instrumentalities)	YES	YES (limited scope, administrative proceeding)	
9. Finland	YES (death, illness and absconding only)	YES		
10. France	YES (illness and absconding only)	YES		
12. Germany	YES (death, illness and absconding, other cases)	YES	YES (limited scope)	
12. Greece	YES (death, illness and absconding only)			YES (limited scope)
13. Hungary	YES (death, illness and absconding, perpetrator unknown)	YES		
14. Ireland			YES	YES (tax-based approach which is similar)
15. Italy	YES (death, illness and absconding)	YES		YES
16. Latvia	YES (death, illness and absconding only)	YES		YES
17. Lithuania	YES (illness and absconding only)	YES	YES (draft, organised crime)	YES (draft, organised crime)
18. Luxembourg	YES (illness and absconding only)	YES (only for some offences)	YES (limited scope)	
19. Malta	YES (illness and absconding only)	YES		
20. Netherlands	YES (illness and absconding only)	YES		YES (within criminal proceedings)
21. Poland	YES (illness and absconding, other cases)	YES	YES (draft law)	
22. Portugal	YES (illness and absconding, perpetrator unknown)	YES (based on		

	Classic non-conviction based confiscation	Extended confiscation	<i>In rem</i> confiscation	Unexplained wealth
		unexplained wealth assessment)		
23. Romania	YES (illness only)	YES		YES (limited scope, administrative proceedings)
24. Slovakia	YES (illness and absconding, immunity, age, prescription, insanity, <i>ne bis in idem</i>)	YES	YES (unclear, maybe 4)	
25. Slovenia	YES (death, illness and absconding, instrumentalities)	YES	YES	
26. Spain	YES (death, illness and absconding, age, prescription)	YES		YES (cannot confirm)
27. Sweden	YES (death, illness, absconding and other cause)	YES		
28. United Kingdom		YES	YES	