



Civil Liberties Committee makes it easier to confiscate crooks' assets EU wide

Committees Committee on Civil Liberties, Justice and Home Affairs 08-05-2013 - 10:26]

Draft rules to make it easier for national authorities to freeze and confiscate criminals' assets across the EU were beefed up by the Civil Liberties Committee on Tuesday. However, MEPs also sought to safeguard the right to a fair trial. They also called upon member states to use confiscated assets to fight crime and for social projects. The draft law, which must still be negotiated with national governments, is part of a broader EU strategy to fight fraud and corruption.

"Follow the money across the border' should be the driving priority if we want to trace funding for organised 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", said lead MEP Monica Luisa Macovei (EPP, RO).

Today, less than 1% of the proceeds of crimes such as drug trafficking, counterfeiting, human trafficking and small arms smuggling are frozen and confiscated. Most of this "dirty money" is laundered and channelled into the licit economy, often in several member states.

The new rules would enable national authorities quickly to identify and trace such assets – such as cash held in bank accounts, real estate, vehicles, livestock, artworks, company shares, businesses, and collector's items - and to freeze, manage and confiscate them consistently across the EU.

Conviction-based confiscation...

The proposal requires all member states to enable the confiscation of criminal assets following a final conviction for a criminal offence.

... but also in the absence of a conviction

The committee strengthened the rules on "non-conviction based confiscation" to allow the authorities to confiscate money or any assets where a criminal conviction is not possible, provided that a court is "convinced on the basis of specific circumstances and all the available evidence that those assets derive from activities of a criminal nature, while fully respecting the provisions of Article 6 of the European Convention of Human Rights [right to a fair trial] and the European Charter of Fundamental Rights".

However, member states that have already established non-criminal law procedures for non-conviction based confiscation are not required to incorporate these procedures in their criminal law systems too, MEPs explained.

Bringing assets from similar crimes within reach

MEPs also backed clauses strengthening the authorities' power to confiscate assets that are not directly linked to a specific crime, but which were clearly acquired through similar criminal activities by the convicted person. This extended confiscation would be possible where "based on specific facts such as that the value of the property is disproportionate to

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the lawful income of the convicted person, a court finds it substantially more probable that the property in question has been derived from activities of a criminal nature than from other activities".

Recovering assets from third parties

Criminals often transfer their assets to knowing third parties (such as a spouse, other relatives or a "front man") as soon as they come under investigation, in order to avoid confiscation. MEPs amended these rules to ensure that confiscation from third parties is permitted under specific conditions, i.e. where the acquiring third party got them for free or paid significantly less than the market value, and knew or had enough elements to suspect that the assets were of illicit origin.

Each member state should take legislative measures to tackle this practice of fictitious assignment of property to third parties in order to avoid seizure or confiscation, MEPs added.

Injured parties' claims

MEPs also amended the rules to ensure that where injured parties have a claim against the defendant, confiscation does not jeopardise the enforcement of such claims.

Social reuse of confiscated assets

The draft directive sets out general principles for the disposal of confiscated assets - it does not make their social reuse mandatory. However, MEPs suggest that member states "could as a priority destine such property to law enforcement and crime prevention projects as well as to other projects of public interest and social utility".

Next steps

Parliament's negotiating mandate was approved with 46 votes in favour, 7 against and 3 abstentions. MEPs in the negotiating team will now start talks with member states' representatives with a view to reaching a first-reading agreement..

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