



Doc. 15500 – Compendium of written amendments
27/04/2022

(Final version)

How to put confiscated criminal assets to good use?

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A. Draft Resolution

1. The Parliamentary Assembly reaffirms its full and wholehearted support for fighting organised crime and corruption. This requires confiscating illicit profits and other criminal assets as widely as possible. In Resolutions 2218 (2018) and 2365 (2021), the Assembly called for non-conviction-based confiscation and the reversal of the burden of proof, with appropriate safeguards, as well as for the strengthening of financial intelligence units.
2. The Assembly considers that the impact of confiscating illegal assets on the fight against organised crime and corruption is further enhanced by making good use of confiscated financial assets and any other confiscated property, such as buildings or vehicles, in a way that is beneficial for society as a whole (in what is known as “social re-use”). This can be achieved by financing specific projects aimed at strengthening the State’s capacity to tackle organised crime and confiscate more illegal assets or at repairing the damage done by criminals to particular population groups, communities, towns or regions.
3. Instead of simply channelling seized assets into the overall national budget, such projects send a clear and visible message to all that crime does not pay and that society is ready to defend itself and even use ill-gotten gains to fight crime and repair the damage it does. Such projects build afflicted communities’ resilience to crime and corruption by showing how confiscated property and assets can be put to good use, in contrast to the hardship crime brings.
4. The State must be stronger than crime and reclaim the ground occupied by the criminal underworld. The authorities must make a visible and long-term commitment to win the trust of the populations concerned, who shall not live in fear of the criminals’ vengeance.
5. In international asset confiscation cases, the States where the relevant assets have been confiscated and the States from which the funds came must agree on an equitable division of these funds. This should take due account of the principle of re-using the proceeds of crime for social purposes (while avoiding the risk of any further misappropriation of returned funds) and the resources mobilised to carry out the confiscation.
6. The European Union has also called for the social re-use of confiscated criminal assets (Regulation (EU) 2018/1805). Paragraph 47 of the preamble to this Regulation states that “frozen property and confiscated property could be earmarked, as a matter of priority, for law enforcement and organised crime prevention projects and for other projects of public interest and social utility”.
7. Various forms of social re-use of confiscated criminal assets are already practised in several Council of Europe member States, notably in Italy, the United Kingdom and Spain, and to a lesser extent in Albania, Estonia, France, Georgia, Hungary, Latvia, the Republic of Moldova, Montenegro, Norway, Romania, Slovenia and Turkey.

8. The Assembly notes the following best practices:
 - 8.1. setting up a centralised institution at national level responsible for the social use of confiscated criminal assets (financial assets and movable and immovable property) with the necessary powers and resources to administer the assets in question and make them available for social purposes, in co-operation with local public and non-governmental bodies;
 - 8.2. giving priority to the use of confiscated funds to compensate direct and indirect victims, according to a sufficiently broad definition;
 - 8.3. using part of the confiscated assets and items to enhance police and judicial capacity to identify, seize and confiscate as many criminal assets as possible;
 - 8.4. "directly using" confiscated assets for public purposes for example by converting mafia-owned villas into socio-cultural centres, holiday accommodation for disadvantaged people, rehabilitation centres for drug addicts and enabling law enforcement agencies to use confiscated luxury cars;
 - 8.5. with regard to confiscated businesses, taking all possible measures, in co-operation with business associations, trade unions and banks, to help potentially viable companies overcome the "legality shock" (payment of taxes and social security contributions, cessation of financing through money laundering), in order to avoid the impression that "the mafia gives work, the State lays off";
 - 8.6. avoiding public auctions of confiscated items as far as possible, as they may open the way to put pressure on potential buyers or to the purchase of the items by front men of the criminals themselves; in cases where such a sale or the takeover of a confiscated business is necessary, strictly verifying the reliability of the buyer or the person taking over the business;
 - 8.7. ensuring civil society participation both in decision-making processes and in designing and managing projects for the social re-use of confiscated assets;
 - 8.8. putting in place appropriate safeguards to avoid possible conflicts of interest and ensure transparency and accountability for the use of confiscated assets at the same level as for the management of other public resources.
 - 8.9. reporting at regular intervals to parliament by the competent authorities;
 - 8.10. regular updating of legislation and administrative practice to counter avoidance strategies used by mafia-type criminal groups.
9. The Assembly invites all member and observer States of the Council of Europe and States whose parliaments enjoy observer or partner for democracy status to the Assembly to:
 - 9.1. introduce, or further promote, the possibility of socially re-using confiscated illegal assets;

- 9.2. take due account in the preparation of the relevant texts of the best practices identified in various member States above mentioned;
- 9.3. as a requested State having confiscated illegal assets coming from a foreign requesting State, share the funds in an equitable manner, taking into account the principle of social re-use in the requesting State, but also the resources used to confiscate the assets, and the risk of any further misappropriation of the funds in the requesting State;
- 9.4. as a State requesting the return of funds seized by a requested State, provide the latter with precise assurances as to the social re-use of the returned funds;
- 9.5. make foreign bribery a criminal offence if it is not already and provide in the relevant texts for the possibility of using any fines incurred for social re-use projects in the victim countries in accordance with the same principles as those applicable to confiscated criminal assets.
- 9.6. concerning the assets of Russian oligarchs subject to targeted sanctions for their responsibilities in the war of aggression launched against Ukraine by the Russian Federation:

Amendment 1

Tabled by Mr Oleksii GONCHARENKO, Ms Inese LĪBIŅA-EGNERE, Mr Arkadiusz MULARCZYK, Ms Yevheniia KRAVCHUK, Ms Krista BAUMANE, Mr Emanuelis ZINGERIS

In the draft resolution, paragraph 9.6, replace the words "Russian oligarchs" with the following words:

"Russian citizens and oligarchs".

Sub-amendment 1 to amendment 1

Tabled by the Committee on Legal Affairs and Human Rights

In amendment 1, delete the following words:

"and oligarchs".

Amendment 3

Tabled by Ms Lesia VASYLENKO, Mr Serhii SOBOLIEV, Mr Artem DUBNOV, Mr Serhii KALCHENKO, Ms Yevheniia KRAVCHUK, Ms Larysa BILOZIR

In the draft resolution, paragraph 9.6, after the words "concerning the assets of Russian oligarchs" insert the following words:

"and state enterprises".

- 9.6.1. identify and freeze as many of these assets as possible, without delay;
- 9.6.2. provide for the use of suitable assets, in particular houses and apartments, for the reception of Ukrainian refugees;
- 9.6.3. reflect on the final usage that could be made of these assets once they will be confiscated definitively, taking into account three elements: 1) these assets were stolen from the Russian people and should be returned to them; 2) as long as the current regime is in place, the risk of renewed misappropriation of these assets is high; 3) the

Amendment 4

Tabled by Ms Lesia VASYLENKO, Mr Serhii SOBOLIEV, Mr Artem DUBNOV, Mr Serhii

Russian Federation will be bound to compensate Ukraine for the damage caused by its war of aggression; this would open the way for using these assets for partly offsetting the financial debt of the Russian Federation vis-à-vis Ukraine.

KALCHENKO, Ms Yevheniia KRAVCHUK, Ms Larysa BILOZIR

In the draft resolution, paragraph 9.6.3, replace the words "reflect on the final usage that could be made of these assets once they will be confiscated definitively, taking into account three elements:" with the following words:

"adopt a decision on the final usage of these assets once confiscated definitively, based on the following considerations:".

Amendment 2

Tabled by Mr Oleksii GONCHARENKO, Ms Inese LĪBIŅA-EGNERE, Ms Yevheniia KRAVCHUK, Ms Krista BAUMANE, Mr Emanuelis ZINGERIS, Mr Arkadiusz MULARCZYK

In the draft resolution, paragraph 9.6.3, replace the words "1) these assets were stolen from the Russian people and should be returned to them" with the following words:

"1) these assets should in the first place be used to compensate Ukrainian citizens for any damage caused by the Russian Federation's war of aggression; 2) these assets were stolen from the Russian people and should be returned to them, only after all compensations are made to citizens of Ukraine".

B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution... (2022) and reaffirms its full and wholehearted support for fighting organised crime and corruption, including through the systematic confiscation of assets of illegal origin.
2. It refers to its previous work aimed at facilitating the confiscation of illegal assets by authorising their confiscation without prior conviction and by reversing the burden of proof, with adequate safeguards (Resolution 2218 (2018)), as well as by strengthening financial intelligence units and intensifying international co-operation (Resolution 2279 (2019) and Resolution 2365 (2021)).
3. It also recalls the important work accomplished in this sense by the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and stresses the importance of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).
4. As a follow-up to this work, the Assembly invites the Committee of Ministers to consider preparing a recommendation to member States aimed at promoting the social re-use of confiscated illegal assets.
5. It considers that having a recommendation based on an in-depth study of the best practices already put in place by several member States would send a powerful message to the communities affected by criminal and corrupt practices that crime does not pay and that the rule of law is capable of defending them by using those ill-gotten gains to fight crime and repair the damage it does.