



Chasing Criminal Money

Challenges and Perspectives On
Asset Recovery in the EU

Edited by
Katalin Ligeti &
Michele Simonato

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CHASING CRIMINAL MONEY

The fight against dirty money is not a new topic, nor a recent problem. It has existed within international and national agendas since the 1980s. Nonetheless, the evolving complexity of criminal skills and networks; the increasingly global dimension of crime; the financial crisis; and the alleged unsatisfactory results of the efforts hitherto undertaken cause us to re-pose and re-discuss some questions. This book addresses several issues concerning the reasons, objectives and scope of national and supranational strategies targeting criminal money, as well as the concrete modalities to overcome its obstacles. The main objective is to explore where the EU stands and where it ought to go, providing useful input for policy-makers and further research. Nevertheless, the problems are not limited to the EU area, and assets—particularly money—cross EU borders much more easily than people do. The reflections developed in the chapters, therefore, aim at going beyond these EU borders. The book is divided into two parts. The first one focuses on the core of asset recovery policies, namely confiscation or forfeiture laws, and explores in particular some issues concerning the respect of fundamental rights. The second part addresses other problematic aspects related to the asset recovery process, such as the return of assets to victim countries, the cross-border investigations on dirty money, and the social use of confiscated assets.

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Volume 3: *Chasing Criminal Money: Challenges and Perspectives On Asset Recovery in the EU* Edited by Katalin Ligeti and Michele Simonato

FOREWORD

JOHN AE VERVAELE*

Chasing criminal assets does not sound like a traditional tool of criminal justice. In reality, though, it has become one of its main tools and objectives when dealing with organised crime and serious offences. In the past decades, many criminal law jurisdictions have put into place asset recovery laws and strategies, and many have done so to comply with obligations under international law, be it global or regional. Asset recovery laws and strategies are far from being technical issues reserved for a specialised audience. They are not only about how to follow the criminal money and eventually get it; they have a lot to do with the general objectives of criminal justice systems and the trade-off between effectiveness and human rights.

Asset recovery laws include provisions on freezing, seizure, confiscation (forfeiture) and asset sharing, and affect substantive criminal law, criminal procedure and mutual legal assistance. This already shows that asset recovery is not restricted to post-conviction execution. Quite the opposite, the hard core can be found in the pre-trial setting, where it guarantees that the assets can be identified, do not flee or simply evaporate. The link with criminal suspicion required for coercive freezing and seizure is just one of the debates. Can freezing and seizure measures be taken in a proactive, anticipative phase, for instance in the administrative enforcement setting? Or can preventive confiscation be imposed as an administrative measure? What is the extent of the freezing and seizure? Can it include all property, unless the licit origin is proven by the suspect? Do we need special financial investigation techniques in the criminal procedure and do the same procedural guarantees apply? Even if we focus on the final decision of confiscation of proceeds of crime, there is a growing tendency to unlink it from the criminal conviction. The new vocabulary is a real expression of the changing concepts: preventive confiscation, extended confiscation, non-conviction based confiscation, *in rem* confiscation.

This book contains updated and elaborated scientific contributions on the issues that were addressed, from many perspectives, both in terms of expertise and national background, at an international conference in Luxembourg in June 2015. A range of questions concerning the objectives and scope of national and

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supranational strategies targeting criminal money are addressed. The book chapters are grouped into two parts. The first part deals with the core aspects of asset recovery, ie the powers granted to law enforcement authorities to gain possession over tainted property and the dilemmas that these powers create. The second part then turns to distinct features that make up the complexity of asset recovery. It highlights not only several national practices of model potential, but also a broad range of overarching challenges, such as the role of financial investigation units, the difficulties linked to virtual currencies and the social use of recovered assets. The contributions look in detail at different phases of asset recovery, allowing the reader to journey throughout this 'complex legal process'. They also show how different legal realities try to address legal questions related to the balance between efficiency and human rights protection.

The European Union defines the scope and the approach of the entire volume; likewise, the contribution to the improvement of its legal framework is the intended objective. Nevertheless, the book does not overlook the broader global picture, in which asset recovery has a high priority. Since it is only around a decade since this term was officially adopted in an international law instrument, its infancy calls for conceptual clarification and development of common understandings of the crucial underlying questions related to the objectives and functions of the criminal justice systems. As it stands the constitutional and human rights courts have not been able to deliver this common understanding from the point of view of fundamental and human rights protection.

Both European and non-European lawyers, from the academia and from practice, will find in this book information and inspiration. In every continent, many countries are elaborating and discussing reforms of their legal systems in order to ensure an increased effectiveness of the efforts against criminal wealth. The coherence of these reforms is even more important in a globalised context. For this reason, this volume can only be welcomed as one of the first—and certainly not the last—attempts to identify and define the shape of such a complex enforcement mechanism.

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