



## ECLAN CONFERENCE 2025

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“Criminal conduct” doesn’t pay! The new responses to illicit/unjustified enrichment under EU criminal law

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## **SUMMARY:**

**I. Confiscation of crime proceeds as the first piece of the puzzle**

**II. The plot thickens: obstacles to confiscation of crime proceeds and the mechanics of State response (confiscation, money laundering, criminalizing unjustified enrichment)**

**III. Shifting from *crime proceeds* to *unjustified wealth*: the criminal *offence* as a spectre**

**IV. Questions**

## I. Confiscation of crime proceeds as the first piece of the puzzle

### PROFITABLE OFFENCES

trafficking (drugs, arms, people)  
racketeering  
corruption (*lato sensu*)  
fraud  
etc.

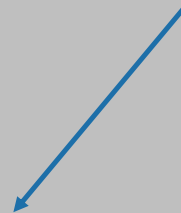


### STATE RESPONSE

- Punishing the offender
- Confiscating the proceeds



- General and special prevention
- Retribution
- etc.



Restitution to the legitimate owners:  
application of private law



### CRIME CANNOT PAY!

- 1 – Preventing the pursuit of illicit profit
- 2 – Reinstatement of the legitimate property order

## II. The plot thickens: obstacles to confiscation of crime proceeds and the mechanics of State response (confiscation, money laundering, criminalizing unjustified enrichment)

1. The offenders try to **conceal or disguise** crime proceeds to avoid confiscation

2. **Difficult to prove** all the elements and features of the predicate offence (time, place, guilt, etc)

- It is enough to prove that the proceeds stem from an unlawful criminal act, even if in the absence of mens rea or other requirements for a conviction (eg, “punishability”, *Strafbarkeit*)

adaptation ↓

- **Criminalizing money laundering** (protecting the criminal justice system *sub specie* confiscation claim)

- AML Regulatory system: **prevention duties** for designated entities

(autonomy)

3. Conviction for a crime, but there is **no evidence** that certain assets—or the convict’s estate—**derive** from that or any other criminal **offence**

- **Extended confiscation** (art. 14 Dir. 1260) or **confiscation of unexplained wealth** (PT law)

4. **Early termination of criminal proceedings or liability**

(e.g., death or irreversible illness of the suspect/defendant, time bars, amnesty, etc.)

- Survival of the confiscation claim in the ongoing criminal proceedings (!) or in separate proceedings exclusively dedicated to the confiscation of assets (Art. 15 Dir 1260)

## II. The plot thickens: obstacles to confiscation of crime proceeds and the mechanics of State response (confiscation, money laundering, criminalizing unjustified enrichment) (cont.)

### 5. No conviction and no evidence

that the property derives from a **criminal offence**



- "Civil recovery" and "UWOs"



- Confiscation of  
"unexplained wealth linked  
to **criminal conduct**",  
"property derived from  
**criminal conduct**  
committed within the  
framework of a criminal  
organisation" (art. 16 Dir.  
1260)



- Criminalization  
of **unjustified  
enrichment**

**III. *[in progress]***

## IV. Questions

**What is the impact of replacing the unlawful, culpable and punishable criminal act (aka, crime) with the spectre of an offence (semi-act, suspicion, criminal conduct/activity, etc.)?**

1. **Confiscation:** What is the distinction, at this level, between crime proceeds and proceeds deriving from criminal conduct?
2. **Criminal procedure:** the appropriation (usurpation?) of criminal procedure solely for the purpose of asset confiscation (as a measure, not a criminal sanction) and its limits: a constitutional issue?
3. **Money laundering:** If the rationale for criminalising money laundering lies in protecting the State's confiscatory claim, can it include not only assets derived from predicate *offences* but also property deemed to be the proceeds of "*criminal conduct*"?
4. **Unjustified enrichment:**
  - the disorientation of the European legislator as to the model to be implemented
  - the spectre of unproven past offences and the presumption of innocence;
  - offence of mere state: should criminal law and procedure serve to restore the legitimate order of property ownership?
  - the model of false declarations (incl. omissions, disobedience, etc.): why do we need a special regime?

Thank you!

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[PPT Template: Panayiotis Constantinides]