



# Procedural aspects of confiscation in Europe

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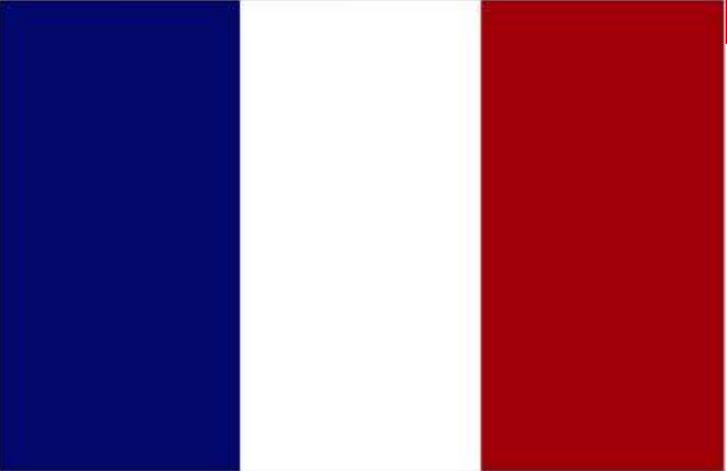
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## B. III: Procedural aspects of confiscation

1. Provisions regulating the confiscation proceedings
2. Requesting authorities
3. Imposing authorities
4. Standard of proof
5. Time limit for issuing the confiscation order
6. Rights and guarantees of the person addressed by the order & Legal remedies against a confiscation order



# European influence?

Directive 2014/42/EU, art. 5, par. 1:

Member States shall adopt the necessary measures to enable the confiscation (...) of property (...) where:

“a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is *satisfied* that the property in question is derived from criminal conduct.”





## European influence?

Recital 21, Directive 2014/42/EU:

“Extended confiscation should be possible where a court is satisfied that the property in question is derived from criminal conduct. This does not mean that it must be established that the property in question is derived from criminal conduct.

Member States *may provide* that it could, *for example*, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more probable, that the property in question has been obtained from criminal conduct than from other activities.”

# Authorities and procedures

Confiscation: “something special”

- Netherlands: separate procedure
- Germany: possibility of a separate procedure
- Italy: preventive confiscation → special, simplified procedure
- Italy: extended confiscation → informal procedure; hearing in chambers **if** defendant opposes the decision



# Standard of proof



# Rights, guarantees and legal remedies



# Conclusion

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