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NOTE

from :	Incoming Cyprus Presidency
to :	Working Party on Substantive Criminal Law
No. Prop. :	7641/12 DROIPEN 29 COPEN 57 CODEC 656
Subject :	Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of the proceeds of crime in the European Union - Questionnaire

In order to support the current work on the draft Directive and especially on Article 5 on non-conviction based confiscation, the Presidency considers helpful to have additional, more extensive information on the current legal definitions and practical application of non-conviction based confiscation in the Member States.

To that end, the incoming Cyprus Presidency has established a questionnaire, which is set out in the Annex. Member States are kindly requested to submit their replies to this questionnaire by e-mail **by Tuesday 03 July 2012 cob** to the following e-mail addresses:

epapakyriacou@mokas.law.gov.cy (Eva Papakyriacou, incoming Cyprus Presidency) and
milena.petkova@consilium.europa.eu (Milena Petkova, GSC).

Further, Member States are also requested to provide the text of the relevant national provisions in the original language and when possible also in English.

QUESTIONNAIRE

These questions aim at obtaining a better understanding of the current law and procedures in the Member States as regards the issue of non-conviction based confiscation. They do not refer to the question how such national laws and procedures should actually be established and defined, but on a stock-taking of the current situation and possibilities. Since mutual recognition principles are very important in cross-border cooperation between different types of systems, also the extent to which orders issued in one type of confiscation system can be recognised in another has been addressed.

The incoming Cyprus Presidency will use the answers provided by the delegations for defining the direction of future work on this particular article.

Questions:

1. Does your country have provisions allowing for the confiscation of the proceeds of crime (i.e. assets derived from criminal activity) and instrumentalities of crime without a criminal conviction?
2. If so, is a link to criminal proceedings required or are the confiscation procedures totally independent from criminal proceedings? Please also clarify if the action to confiscate the proceeds of crime or instrumentalities without a criminal conviction is directed at the person (*in personam*) or at the asset (*in rem*).
3. In cases where a link to criminal proceedings is required, could the confiscation procedures take place before a criminal, civil or administrative court?
4. Does your legislation provide for particular requirements that need to be met in order for the provisions for non-conviction based confiscation to apply (for ex. when the suspect is not able to stand trial due to illness, death, being a fugitive, etc.).

Please specify any particular circumstances and describe how non-conviction based confiscation applies in these situations.

5. If your country does not have provisions allowing the confiscation of the proceeds of crime and/or instrumentalities of crime without a criminal conviction, can you indicate the potential legal obstacles to their introduction in your country?
6. Is it possible in your national system to recognise non-conviction based confiscation orders issued by another Member State:
 - whose system requires a link to criminal proceedings
 - whose system applies civil forfeiture procedures.