

## Confiscation of Crime Proceeds in Germany

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**TRANSPARENCY  
INTERNATIONAL**  
Deutschland e.V.

**Die Koalition gegen Korruption.**

# Transparency International Germany

- Registered Private Association under German Law
- Founded in 1993
- Focus: Fight against Corruption in Germany and in International Context



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# Transparency International Germany



## Working Groups (Examples)

- **Political Sector**
- **Procurement**
- **Private Business Sector**
- **Criminal Law**
- **Finance Markets**
- **Public Administration  
(Federal and State Level)**
- **Municipalities**
- ...

- **Healthcare System**
- **Freedom of Information**
- **Transparency in Media**
- **Sports**
- **International Conventions**
- **Governmental International  
Development Cooperation**
- **Whistleblowing**
- ...

# Regional Groups



- Local/Regional Presence in Germany
- Direct Access to Active Participation

## **Process of Confiscation:**

**Step 1: Asset Tracing**

**Step 2: Asset Freezing**

**Step 3: Asset Recovery**  
**(= Final Legal Confiscation)**

**(Step 4: Asset Sharing)**

## Asset Tracing

**Confiscation Requires Information about the Assets!**

- **“Integrated” Financial Investigations**  
= Uncovering Illegal Flows of Money or other Assets  
as Integral Part of Criminal Proceedings  
(OC, Drug Trafficking, THB, Economic Crime, Corruption...)
- **Legal Regulations on Money Laundering**  
(German Criminal Code and Money Laundering Act)  
= Suspicious Transaction Reports as Starting Points of Investigations  
(Suspected Crime: Money Laundering – not yet a Basic Offence)

## Asset Freezing

= Preliminary Confiscation

- Detailed Regulations in German Code of Criminal Procedure
- Movable Objects and other Assets can be Seized and Secured if there are “Grounds to Assume” that Forfeiture/Confiscation will be Possible
- Application of Civil Law Instruments in Criminal Proceedings!
  - Orders by Court, by Public Prosecution Office, or by Police (Movable Assets if Danger Ahead)
  - Potential Civil Claims of Aggrieved Persons/Victims are Included and have Priority



## **Asset Confiscation (1)**

**= Final Forfeiture**

**(“Crime Should not Pay”)**

- **Detailed Regulations in German Criminal Code and in Administrative Offences Act**
- **Proceeds from Unlawful Acts can be Confiscated Finally by Court Decision (Part of Criminal Conviction) or together with Regulatory Fines**
  - **Forfeiture: for the Benefit of the State, but**
  - **Claims of Victims (Recovery) have Priority**
- **Principle: Forfeited Proceeds must be Assigned to the Particular Unlawful Act**

## **Asset Confiscation (2)**

**= Final Forfeiture**

**(“Crime Should not Pay”)**

### **Exception: “Extended Confiscation”**

- **Specific Law Concerning Committed Offence must Refer to this Provision (Serious Offences in the Criminal Code)**
  - **Confiscation if “the Circumstances Justify the Assumption that these Objects are Result of Unlawful Acts”**
  - **Direct Relationship with Particular Sentenced Crime not Necessary (“Source” of Assets: Criminal Offences in General)**

## **Asset Confiscation (3)**

**= Final Forfeiture**

**(“Crime Should not Pay”)**

**Further Exception: “Independent Orders”**

- **Precondition: No Person can be Prosecuted or Convicted of the Offence**
  - **Examples:**
    - Statutes of Limitation, Death of Perpetrator(s),  
Proceedings are Terminated (under Special Preconditions)**
    - **Practical Relevance Relatively Low**



## **Asset Confiscation**

### **“Non-Conviction-Based” Approaches?**

- **Penal Law Procedures as such Seem to Set up High Barriers**
- **Principally, Claims of Aggrieved Persons can be Enforced under Civil Law!**
  - But:**
    - **Penal Proceedings Open Better Investigative Powers**
- **Under Civil Law, Damages as such and Particular Claims must be Proved, too**
  - **Most Obvious Means of Evidence at Civil Courts,  
if Claim is Based on Criminal Offence:  
Files from Crime Proceedings and/or Final Penal Sentences**
    - **Thus, the Circle is Complete**

## Asset Confiscation

### Effectiveness of Current Regulations?

- High Estimates of Illegal Gains (Valid?)
- Relatively Low Volume of Actual Final Confiscation Orders
  - Statistics Available?
- Difficulties in International Crime Cases (Rogatory Letters)
  - Simplified Legal Requirements?
  - German Government Intending Legal Changes
    - TI Germany Works on Proposals



# Thanks for your Attention!

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