CITIZENSPACT
FOR EUROPEAN DEMOCRACY

Theme: Legality	Policy proposal 1

Title: Legislate on the right to enjoyment of assets

The EU should adopt elaborate legislative measures that regulate the extent of the right of enjoyment of assets which serves as the grounds for the existence of property in tax havens that is not owned but just enjoyed.

Further information (elaborated during research workshop):

A) The criminal dimension of EU law has taken some three decades to emerge and develop. Regulating the economic freedoms of citizens, the attempts to prevent financial crimes have remained in the weakest pillar of legislation that rests upon intergovernmental cooperation and the possibility for **member states to opt out.**

B) Under Protocol 36 of the Lisbon Treaty, the UK also has the option to opt-out of all the police and criminal justice legislation adopted prior to the Lisbon Treaty, when they gained the right to opt-in on a case-by-case basis. The country has also decided to opt out of certain provisions of the Economic and Monetary Union, EMU (Protocol 25, TFEU) that would otherwise introduce further safeguards on transparency in the financial sector. The argumentation given ie "to protect the Kingdom's interest" and that "the EMU must improve the competitive position of the UK's financial services industry, particularly in London" adds up to the shield of the **financial secrecy seller.**

C) The current EU Money Laundering Directive (Directive 2005/60/EC) despite its three rounds of previous amendments still fails to provide ultimate regulation of the cornerstone criminal issue, ie **disclosure and tracking of the beneficial ownership**.

D) Domestication of the Money Laundering Directive in member states parallels the shortcomings of the EU instrument. Alike the supranational tool, internal legislation similarly fails to strictly determine the range and nature of sources of information about the beneficial owner. Measures to improve **clarity and accessibility of the data** should be introduced and follow all transactions of the economic entity. Limiting further the commercial confidentiality should enable a wide range of interested parties, including the public (along with the authorities and third parties, which is what the Directive requires now) to know not only the beneficial owner but also those persons that are in **enjoyment of the assets**. The collected data, subject to regular updates, should be distributed in an ICT-friendly matter with a minimum of administrative hurdles and preferably in as many European languages as possible.

E) **Measurability of the 25% threshold** (those entities/persons that own more than those assets) for disclosure of the ownership information, according to the provisions of the Money-Laundering Directive in effect, is subject to a wide range of financial instruments that are in the hands of financial services providers, that would still favourably protect customers. While any methodological tool for assets gauging, even if imposed by the Union, might yield a vast amount of manipulative or speculative data. Instead, all persons and entities that enjoy the assets should be disclosed, in the absence of any threshold.

F) The **blacklist Register** of those natural persons and legal entities owning or enjoying the assets shall contain complete data on the location, disposition, movement and rights with regards to the assets, as well as visualise interlinks with **formal and informal shadow networks** of others in ownership/enjoyment, and their structure. Submissions of NGOs, civil society activists and investigative journalists will be accepted and verified by the EU agencies in charge of the Register. The authorities *ex officio* should take measures upon new

submissions to the Register.

G) The European Parliament shall be empowered to exercise **control over the collection, publication and distribution of data** on the ownership and enjoyment of dubious assets. Failure of EU institutions, agencies and officials to diligently maintain this Register shall be subject to a complaint filed with the EU Court of Justice and the European Ombudsman.

Theme: Legality	Policy proposal 2

Title: Focus on pursuit of the criminal assets rather than the criminal

The authorities should focus on prosecuting the criminal assets, combining their efforts and approaches in civil law along with criminal pursuit of the suspected.

Further information (elaborated during research workshop):

A) The European Parliament has eventually accepted[1] the arguments defended vigourously by civil society organisations that the **ill-gotten gains amount to 1% of national budgets** of member states and therefore it has impact on the EU financial sources that include allocations of national budgets. As in many events the illegal assets are due to organised criminal activity, the criminal property and proceeds are at the brink of several jurisdictions, therefore, they shall be approached by authorities in cooperation with each other across national boundaries.

B) Transnational prosecution of illegally acquired assets continuously takes place with a huge degree of **mistrust** among the authorities involved. EU institutions shall step in and exercise their powers Furthermore, most member states still practise **confiscation** after criminal conviction and pursuit instruments under civil law are widely neglected.

C) The low-intensity cooperation in civil matters at the Europe-wide stage still rests upon a number of soft-law standards and the slow procedures of mutual recognition of judgements. **Administrative instances as well as ad-hoc tribunals in civil matters** can be introduced to foster the civil-law approach to criminal assets.

D) **European police officers, prosecutors and judges,** through the vehicles of their professional organisations and contacts with similar networks outside Europe, could analyse best practices from common law and other legal systems and still within their restraint powers, they could focus on the civil rather than the criminal prosecution. At simplest, initially circular letters can be exchanged so as to intensify similarities in the law enforcement and jurisprudence, shifting the emphasis from the conviction of the offender to the assets of the criminal activity. Eurojust, Europol, CEPOL, and the European Judicial Network should also be major players in this process. A common achievement would be also the widespread ratification of the 2005 **Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism** which also provides useful instruments in civil prosecution and confiscation.

E) Any special procedural and out-of-court facilities should be in compliance with the provision in article 6 of the European Convention of Human Rights, which guarantees a **fair trial**, and the jurisprudence by the European Court of Human Rights.. Confiscation, undertaken either through the administrative or the judicial resorts, should be remain **appealable for all citizens**.

F) Insofar as the legislation (EU or domestic) is silent about it, the courts and law-enforcement authorities shall enjoy the **discretion in determining the new proprietor of the confiscated property** (ie in transboundary criminal activity of 2 or more member states involved, that would be European Confiscation Fund/Trust) and the scope of interested persons that shall directly be informed of the confiscation. The ***eurlex*** database should be extended to integrate also this easily accessible information.

Theme: Legality	Policy proposal 3

Title: European Confiscation Fund and social re-use of criminal assets

The EU should establish European Confiscation Fund and promote the social re-use of criminal assets.

Further information (elaborated during research workshop):

A) Due to the complexity of transnational organised criminal activities, in an increasing number of cases **it is difficult for national courts to identify precisely the original source of the criminal proceeds**. Most often the multitude of the criminal assets allows it to have the directly injured persons to become fairly and equally compensated but also to have a certain amount of the confiscated property distributed among a wider population of European citizens.

B) While in Central and Eastern European countries confiscation provokes the bitter sentiment of nationalisation of private property during the Communist dictatorships, often cities and regions in this part of Europe lack administrative capacity and resources to manage the funds that have been transferred to the city/region after confiscation**. Cities and regions should be encouraged to voluntarily share confiscated assets with a European Confiscation Fund whose remaining other sources constitute the property confiscated after administrative or judicial acquisition of illegally gained assets.**

C) The European Confiscation Fund should be assigned to the overall **own resources of the Union** and follow the budgeting requirements of articles 310 and 311 of the Treaty on the Functioning of the European Union. As such, the Fund's **structure, size and objectives on annual and multiannual bases** (the EU's Multiannual Financial Framework) should be determined by the EU Council with unanimity, after consulting the European Parliament, and approved by each Member State in accordance with its constitutional requirements.

D) **Civil society organization and victims of organised crime should be heavily involved in consultations** with the European institutions before the European Confiscation Fund is designed and established, **and democratic control** should be exercised by citizens and their organisations directly (with access to the Fund's meetings and documentation) and through the facilities of the European Parliament.

E) The objectives of the European Confiscation Fund should, among others, fluctuate around the social reuse of the illegally gained property. The Fund should provide grants and scholarships that aim to further eliminate organised criminality (for example, journalists' investigations or policy-oriented research), repatriate victims of organised crime and entitle impoverished people with a means of living (for instance, farming land). **The rich variety of social reuse models should be explored and further developed at the local, regional and European levels**.

F) The distribution of the **European Confiscation Fund should be subject to full transparency and accountability** and its expenditure reports should be verified by the EU Court of Auditors. Fraudulent use of the Fund's resources

should be pursued by OLAF, the European Anti-Fraud Office.

Theme: Legality	Policy proposal 4

Title: Fast collection of valid evidence in investigating transnational organised crime

Mutual coordination among local, national and European authorities should be improved so as to give an adequate response to the transnational organised crime being in the pre-trial stage.

Further information (elaborated during research workshop):

A) The **European Evidence Warrant** (established by the Council Framework Decision 2008/978/JHA) that lays down the grounds for the mutual recognition of evidentiary material (objects, documents and data) still allows one single EU member country to lead the exchange of evidence. Asymmetries are also due to the domestication of the Warrant in the legislation of member states that have exercised their powers to designate competent authorities. Hence, an institutionally institutional framework is set up, further fragmented by national boundaries and the lack of an above-national leading authority. **Priority should be given to joint investigation of transnational organised crime as opposed to petit in-country offences.**

B) Alternatives to penitentiary measures in the pre-trial stage shall be explored and established transnationally. Custody of the suspected should have a moralising effect and reduce the costs incurred through the public budget. **Alternative custodial modes shall be reciprocal to the weight of the evidence collected thus far and recognised across country borders.**

C) The plausibility of the gathered evidence should be enhanced through the introduction of **standards that are based on the latest developments in science and human inventions**. Joint investigation would imply the sharing of **high technological equipment, personnel expertise and analytical findings** in order to build a common evidentiary repository in the case at issue. Complex investigations of transnational organised crimes should make best use of available resources, experts and facilities across national boundaries. Information submitted through investigative reports by journalists and along the lines of transparency and accounting procedures (so-called Accounting Directive 2013/34/EU and Transparency Directive 2013/34/EU) for public **surveillance over listed and non-listed companies in all sectors.**

D) **European agencies, particularly Europol, the OLAF Anti-Fraud Agency and the European Prosecutor's Office, should have full powers in collecting evidence in the EU 28** (the UK has opted out). Those competences should extend beyond the jurisdictional boundaries of the Union in the events when the crimes investigated affects the Union citizens and aspirations to promote justice worldwide. Partnerships with international organisations and non-EU states constitute another safeguard for the investigation of transnational organised crimes against the background of internationally shared and recognised evidence.

E) Disclosure and exchange of evidence should be compliant with the highest

European standards of **an individual's privacy**. The authorities and officers involved should be fully liable for any violations of fundamental rights and freedoms arising from their misconduct. By no means should any data leaks be made possible and any commercial and personal battles through the vehicles of law-enforcement agencies should be strictly prohibited and avoided.

Theme: Legality	Policy proposal 5

Title: Citizens and auditors in public procurement

Procurement tenders at local, regional, national and European levels should be inclusive of citizens and independent experts in auditing.

Further information (elaborated during research workshop):

A) The substance and procedure of many public tenders are subject to violations. Procurement infringements often takes form of subtle wrongdoings that are *prima facie* lawful but a more sophisticated analysis brings the offences into light. **Injured parties do not appeal and are outplaced from the market** by players that are becoming increasing more powerful through a series of procurement fraud. Therefore, any illicit tender within the EU economy (even in a small town, or in a micro market sector) sets the prerequisites for distortion of the single market and more systemic disruptions at all levels.

B) **A comprehensive Europe-wide legislative tool** (preferably an EU Regulation that would leave member states with a lesser room for implementation discretion) to prevent and fight against fraudulent procurement should substitute for the available soft-law guidelines of the EU. **Tender procedures should be typified** (ie contingent upon a classification of goods and services to be tendered) and thus bring in accordance variant national, regional and local practices in procurement.

C) Access to the procurement process is given to few outstandingly active citizens and organisations that want to obtain information about the tender. Involvement, even at the level of drafting the tender rules and publisizing it, should be inclusive of the majority of institutions and not left to the arbitrary choice of a public official/power holder. The best practices in organising the process shall be gathered across towns, regions, countries and EU institutions and systematized to serve the goals of complete accountability. The opinions of the citizenry should be fully taken into consideration.

D) A **"Naming and Shaming" database** should be initiated and maintained by citizens, civil society organisations and investigative journalists. Law-enforcement authorities at all levels should be duly informed if there are substantial arguments to believe that a tender has been fraud. A tracking system on the website would serve to inform the wide public on the progress in investigating the complaint.

E) Auditors that have a proven track record of independent practice should be attracted by civil society organisations and civil groups to monitor the procurement procedures at all levels. **Public audits committees** will have full access to all documentation, have their meetings open to the public and media and be compensated through the public budget of the respective

town, region, country or European institution. The auditors should apply the most recent advancements of their profession and exchange information across the public audits committees in which they are involved.