

**NATIONAL CONFISCATION MODELS COVERED BY THE REGULATION no.
1805/2018. TYPES, FEATURES AND SAFEGUARDS**

Republic of Bulgaria

For each question it is important to answer considering the scholars' opinion and the evolution of the jurisprudence/case law (Constitutional Court, Supreme Court, etc.)

1) **Which are the different models of forfeiture/confiscation in Your system of law** (direct confiscation, confiscation of the value, extended confiscation, non-conviction based confiscation, confiscation against third parties, etc.)? Please, explain which are the different models in general, also the ones not falling under the scope of the Regulation.

CONFISCATION MODELS APPLIED IN THE REPUBLIC OF BULGARIA – GENERAL DISPOSITIONS:

Defining the scope into which the Bulgarian legislation should be understood in terms of confiscation it is important to clarify the terminology.

Regulation no. 1805/2018 apply to all freezing orders and to all confiscation orders issued within the framework of proceedings in criminal matters, not only orders covered by Directive 2014/42/EU but other types of order issued without a final conviction¹. Bulgaria has transposed Directive 2014/42/EU² into domestic legislation through several legal acts, including the Criminal Code (SG No. 7 of 2019).

According to art.2, para.2 of the Regulation 'confiscation order' means a final *penalty or measure*, imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property of a natural or legal person. The concept of "confiscation order" in Regulation is different than the respective terms used in the Bulgarian legal system, and therefore the following clarifications are required.

¹ In connection with the mentioned Regulation, measures for its implementation are provided in the national legislation with 1/ Law on the recognition, execution, issuing and sending of deeds for property security and 2/ Law on the recognition, execution and sending of decisions for confiscation or revocation and decisions on enforcement of financial sanctions.

In the Bulgarian legal system the terms "confiscation" of property and "deprivation in favor of the state" are used in connection to criminal proceedings. Both terms have some common features, but many more differences. *Confiscation* of a property under the Bulgarian Criminal Code (CC) is a penalty included in the system of criminal sanctions. *Deprivation in favor of the state is measure*, in most cases, a consequence of the conviction, generally provided for in Art. 53 CC and supplemented with various property measures included as sanctions for the commission of specific crimes in the Special Part of the CC.

In addition, the term "forfeiture" is used in the Republic of Bulgaria about the procedure under the Law for Combating Corruption and Illegal Assets Forfeiture (LCCIAF). It is a forfeiture of unlawfully acquired assets and shall be conducted without prejudice to the criminal proceeding against the person under examination and the persons related thereto. It should be emphasized that this procedure has been declared to lay outside the scope of Directive 2014/42/EU (Judgement CJEU on 19 of March 2020 case C-234/18). At the same time, however, the Bulgarian government has officially announced (in 2016) the transposition of the Directive into national legislation through several laws, one of which is the LCCIAF.

Since the government's official position has not yet changed (at least as far as the prosecution knows), and because of its wide practical application and its connection to some extent with criminal proceedings, it is not possible to present a complete picture of the regime of confiscation in Bulgaria without it. However, it will often be recalled that the CJEU has "placed" this procedure outside the scope of the Directive 2014/42/EU, and its features will be outlined in a brief way.

Within the framework of proceedings in criminal matters:

According the Bulgarian legal doctrine, *confiscation* of property in criminal cases is a penalty by which the assets (all the property or parts of it) of a convicted person are expropriated in favor of the state (Articles 44-46 of the CC). It should be emphasized that the imposition of this penalty is not tied to clarifying whether the origin of the property to be confiscated is connected to the crime or not.

The other term, in fact more important one given the context is "deprivation in favour of the state" under Art.53 of the CC and other articles of the Special part of the CC. It is a *measure* with property consequences understood as the gratuitous and forced expropriation of property for the benefit of the state, in which the ownership of that property passes to the state upon the fact of the entry into force of the sentence.

In fact, in terms of its property consequences, the penalty of confiscation and the measure under Art. 53 CC are identical. However, it is necessary to make a clear distinction between confiscation as a penalty under the CC and deprivation in favor of the state under the CC as a measure of a property nature. Very briefly, the confiscation, as a penalty, is imposed only for the actual commitment of a crime, among those regulated in the Special Part of the CC for a punishable stage of an intentional criminal activity. The measure "deprivation in favor of the state" can be imposed even when what was committed does not constitute a crime (for example, the act is insignificant, or was carried out by a criminally irresponsible person, or there are prerequisites for criminal proceedings not to be initiated, statute of limitations, amnesty, death of the perpetrator and others). Deprivation in favor of the state does not have a retributive nature, unlike confiscation, but only preventive or is aimed at preventing the extraction of any material benefit from the committed crime. The measure deprivation for the benefit of the state is a measure that does not take into account the severity of the committed offense and before it is imposed, it is not

individualized, while when imposing the penalty of confiscation, this is mandatory. That is why the measure often results in affecting the rights of the perpetrator or the persons related to him to a greater extent than in the case of the imposition of the pecuniary penalty. There are other differences which need not be mentioned here or will be explained later.

However, in their use the terms are often confused, and although imprecise, only the term "confiscation" is used. Even in the translation of the text of Art. 53 of the CC from Bulgarian to English the electronic legal information systems translates the verb "*otnema*" not as "deprive", but as **confiscate**. Therefore, *it should be emphasized that when talking about confiscation of property under Art. 53 of the CC, it is always about the measure "deprivation in favor of the state", and not about the penalty.*

Thus, the national legal framework of confiscation (in a broad sense) consists of three main elements.

A/ confiscation within criminal proceedings:

Firstly, confiscation of property as a *penalty* in criminal proceedings, under which the assets (all of the property or parts of it) of a person convicted of a specific crime are expropriated in favor of the state (Articles 44-46 of the CC).

Secondly, a *measure* with property consequences named "deprivation in favor of the state" under Art. 53 of the General part of the CC³, which covers the instrumentalities for committing the crime, the subject of the crime in cases specified by law or when its possession is prohibited, also covers the proceeds of the crime. The confiscation of the subject and/or the means of the crime in favor of the state is further developed by a number of specific *measures* provided separately for specific offences in the Special Part of the CC. They are different in their specifics, providing in some cases the possibility of depriving the equivalence, in others - depriving the instrumentalities of the crime, or depriving property from third parties.

As an example, the offences for which such measures are provided for are indicated below⁴. For the sake of clarity, it should be pointed out that such measures, hereinafter referred to as "*specific measures*", are applied, for example, to crimes against intellectual property, money laundering and terrorist financing, embezzlement, fraud, bribery and various crimes against the economy.

³ Article 53 (1) Notwithstanding the penal responsibility, confiscated in favour of the state shall be:

- a) objects belonging to the culprit that were intended or served for the perpetration of an intentional crime; where the objects are missing or are expropriated, their equivalent shall be awarded;
- b) objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code.

(2) Confiscated in favour of the state shall also be:

- a) articles that have been subject or means of the crime, the possession of which is forbidden, and
- b) direct or indirect benefits gained through the crime, if they are not subject to return or restoration; where the benefit is missing or is expropriated, its equivalent shall be awarded.

⁴ See, for example, Art. 159, para. 9 CC, 172a, para. 6 CC, 172b, para. 3 of the CC, Art. 208, para. 6 of the CC, Art. 224, para. 3 of the CC, Art. 225c, para. 5 of the CC, Art. 234, para. 5 of the CC, Art. 234b, para. 2 of the CC, Art. 235, para. 7 of the CC, Art. 237, para. 3 of the CC, Art. 238, para. 4 of the CC, Art. 240, para. 3 of the CC, Art. 240a, para. 6 of the CC, Art. 242, para. 6 of the CC, Art. 242a of the CC, Art. 260a of the CC, Art. 260c, para. 5 of the CC, Art. 278, para. 7 of the CC, Art. 278a, para. 6 of the CC, Art. 278b prim para. 5 of the CC, Art. 307a of the CC, Art. 307e of the CC, Art. 339a, para. 3 of the CC, Art. 348 of the CC, Art. 354, para. 3 of the CC, Art. 354a, para. 6 CC.

B/ confiscation outside the scope of Directive 2014/42/EU:

Last, but not least, should be presented the forfeiture of illegally acquired property under LCCIAF or the so-called “*civil forfeiture*”. From the point of view of the classification used in the Directive 2014/42/EU, civil forfeiture in the Republic of Bulgaria can be recognized as non-conviction based, and as allowing forfeiture of a value and as forfeiture from third parties. The procedure of civil forfeiture is a separate (outside the criminal case for the offence) proceeding, but it is related to it because it begins after notification that a certain person is accused of committing a crime.

After these preliminary explanations, which are important for the understanding of the Bulgarian legal system, we present the following types of confiscation (in a broad sense), which are applied in the Republic of Bulgaria:

1. direct confiscation⁵:

The property *measures* provided for in Art. 53, para. 1 and para. 2 of the CC.

According to the para. 1 “Notwithstanding the penal responsibility, confiscated in favour of the state shall be: *a) objects belonging to the culprit that were intended or served for the perpetration of an intentional crime... b) objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code*” and para. 2 stipulates that “Confiscated in favour of the state shall also be: articles that have been subject or means of the crime, the possession of which is forbidden, and *b) direct or indirect benefit* ⁶, *gained through the crime, if they are not subject to return or restoration*”. The approach adopted by the legislator, that confiscation of such property is applied “notwithstanding the penal responsibility”, means that it is possible to be carried out both in the case of a final conviction of the guilty person, and in case of impossibility (for some reasons) such a sentence to be ruled.

As it has been already said, Art. 53, para. 1, item “b” of the CC indicates that the subject of an intentional crime is confiscated when this is provided for in the law, taking into account the law that applies to the corresponding crime in the Special Part of the CC. These are the *specific measures* provided for specific crimes in the Special Part of the CC, which are applied upon conviction only for this type of crime.

The specific measures constitute *lex specialis* in relation to the general rule in Article 53, para. 1, item b) of the CC. They sometimes expand the scope of deprivation of property that has been used for a crime beyond the property belonging to the perpetrator, in other cases provide for confiscation of value.

⁵ According to Art. 4, para. 1 of Directive 2014/42/EC confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence.

⁶ According to Art. 53, para. 3 „Within the meaning of Paragraph 2, letter “b”:

1. a direct benefit shall be any economic gain, occurring as a direct consequence of the crime;
2. an indirect benefit shall be any economic gain, occurring as a result of disposal with the direct gain, as well as any property obtained as a result of subsequent full or partial transformation of a direct benefit, including when it was mixed with a property obtained from lawful sources; the property up to the value of the included benefit shall be subject to confiscation, including the occurring increases of the property, if they are directly linked to the disposal or transformation of the direct benefit and the inclusion of the direct benefit in the property”.

2.confiscation of the value⁷:

On first place, this type of confiscation is provided for in Art. 53 of CC. It is stated in para. 1 that “confiscated in favour of the state shall be: a) objects belonging to the culprit that were intended or served for the perpetration of an intentional crime; **where the objects are missing or are expropriated, their equivalent shall be awarded**”, and para. 2 says “confiscated in favor of the state shall be: b) direct or indirect benefits gained through the crime, if they are not subject to return or restoration; **where the benefit is missing or is expropriated, its equivalent shall be awarded**”.

In addition, some of the special measures provided for specific crimes in the Special Part of the CC also provides for confiscation of the value. For example, for financing of terrorism Art. 108a, para. 8 of the CC provides that “where the object of the crime financing of terrorism may not be found or has been expropriated, payment of its equivalent sum shall be ruled”. The provisions related to money laundering offence (Art. 253, para. 6 of CC and Art. 253a, para. 3 of CC) also stipulate that the object of money laundering or the property into which it has been transformed shall be forfeited to the benefit of the state, and where absent or transferred, its equivalent shall be confiscated.

Finally, unlawfully acquired assets forfeiture (“*civil forfeiture*”) also covers property equivalent, if specific property cannot be confiscated - Art. 142 of LCCIAF. Again, it should be emphasized that the civil forfeiture is considered to stay outside the scope of Directive 2014/42/EU.

3. extended confiscation⁸:

Civil forfeiture under the LCCIAF can be defined as extended confiscation, as it is based on proving that the property in possession has no legal source.

As an extended confiscation, even exceeding the standard under the Directive, is the penalty “confiscation” under Art. 44 – 46 of CC. According to Art. 44, para. 1 *Confiscation shall be compulsory appropriation without compensation of property in favour of the state, of assets belonging to the culprit or of part thereof, of specified pieces of property of the culprit, or of parts of such pieces of property*. The penalty is imposed by the court together with the sentence for the committed crime when it is provided for in the sanctioning part of the relevant text of the CC. It applies only to available property that belongs to the guilty person.

⁷ According to Art. 4 and Art. 6 of Directive 2014/42/EC) - either in whole or in part, ...of property the value of which corresponds to such instrumentalities or proceeds subject to a final conviction for a criminal offence; confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties.

⁸ According to Art. 5 of Directive 2014/42/EC - confiscation, either in whole or in part, of property belonging to a person convicted of a crime which may lead directly or indirectly to an economic benefit, when the court — based on the circumstances of the case, including the specific facts and available evidence, such as proof that the value of the property is disproportionate to the lawful income of the convicted person, is convinced that the property in question was acquired through criminal conduct.

This type of confiscation is included as a penalty for certain crimes such as crimes against the Republic, human trafficking, theft and robbery, embezzlement and fraud, smuggling, for some of the heavier punishable hypotheses of the crimes of kidnapping, tax crime, transportation of illegal crossing the border, for bribery and others.

4. confiscation without conviction⁹:

Although it was accepted by CJEU that the so-called "*civil forfeiture*" established by the LCCIAF does not fall within the scope of Directive 2014/42/EU, this procedure should be mentioned at the first when talking about confiscation without conviction. The basis of this type of confiscation is the forfeiture of unlawfully acquired assets from a person who has been charged (in the course of pre-trial proceedings) with a crime of a certain scope, outlined by the LCCIAF. The Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission (CCUAAFC), as an administrative body, after being notified that a person has been charged with a crime of the relevant type, begins an inspection of his and his/her family's property. If the owned property exceeds the amount of legal income, the Commission files a claim in the civil court for confiscation of the illegally acquired property. The crimes for which this non-conviction based confiscation is provided are those that generate benefits - embezzlement, fraud, bankruptcy, money laundering, bribery, distribution of narcotics and others.

The civil forfeiture mechanism is completely separate from criminal proceedings, and the procedure combines elements of civil, administrative and criminal proceedings. The court decision to confiscate property does not depend on whether the accused has been convicted of the crime. The proceedings are under the Civil Procedural Code (CvPC) and are based on the verification of whether the person or members of his/her family owns property, for the acquisition of which there is no legal source.

Within *the criminal proceedings*, here should be included Art. 53 of the CC, which is applied "notwithstanding the penal responsibility". It means that the deprivation in favour of the state of such property is possible both in the case of a final conviction against the guilty person, and in the case of impossibility (for some reason) to rule a sentence, but only if the circumstances of the case were such that the perpetrator would be found "guilty" and having committed a "crime". In other words, art. 53 of the CC applies only if the reason for the termination of the criminal proceedings is non-rehabilitative. If the act is not a crime or the perpetrator is not guilty, confiscation under Art. 53 of the CC may be enacted only if the possession of the objects is forbidden by the law.

5. confiscation from a third party¹⁰:

⁹ According to Art. 4, para. 2 of Directive 2014/42/EC –where, on the basis of paragraph 1, confiscation is not possible, at least in cases where this impossibility is due to the illness or escape of a suspect or accused person, Member States shall take the necessary measures to enable confiscation of benefits and of means of the crime in cases where the criminal proceedings are initiated for a crime that leads directly or indirectly to economic benefits, and the proceedings could have ended with a conviction if the suspect or the accused had been present at the proceedings.

¹⁰ According to Art. 6 of Directive 2014/42/EC - the confiscation of proceeds or of other property, the value of which corresponds to the proceeds which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties

The autonomous mechanism of under the LCCIAAF applies to third parties. The proceedings are under the CvPC and are based on the verification of whether the person or members of his/her family own property, for the acquisition of which there is no legal source.

Within **the criminal proceedings**, the measure deprivation in favour of the state under Art. 53 of the CC applies against third parties, other than the guilty person, when it comes to benefits from criminal activity or illegal possession of the subject of the crime. According to Art. 53, para. 2 of the CC, the benefits of criminal activity can be confiscated when they are held or owned by third parties. The subject of a crime under Art. 53, para. 2, b. "a" of the CC, when it represents items prohibited for possession, is also subject to confiscation, even if it is in the possession of third parties. The means (tools) of the crime can be confiscated under Art. 53 of the CC only if they belong to the perpetrator and therefore this measure does not apply to third parties.

In addition, some of the *specific measures* in the Special Part of the CC also provide for confiscation of the subject or means of the crime, even if they are owned by third parties. For example, the provisions regarding TF and ML (Art. 108a, para. 8 of the C , Art. 253, para. 6 and Art. 253a, para. 3 of the CC) are not limited to property that belongs to the perpetrator and the confiscation in these cases also applies to third parties.

2) For each confiscation model:

- a) **Which is the object of the confiscation and its meaning/interpretation?** (proceeds, products of the crime, instruments of the crime, etc.). Clarify if and in which case it is possible to confiscate the ‘value equivalent’.

<p>1. <u>Direct confiscation</u></p> <p>Article 53, para. 1, „a“ and „b“ CC</p>	<p>Art. 53, para. 1 of CC defines the object of confiscation - „a) <i>objects belonging to the culprit that were intended or served for the perpetration of an intentional crime</i>“, and the understanding is that the provision relates to the means (instrumentalities) of committing a crime.</p> <p>Item „b)“ of the same provision of CC stipulates that confiscated shall be „<i>objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code</i>“. The understanding according to the Bulgarian legislation about the subject of the crime - it is the object of encroachment (violation) or the good that the perpetrator has damaged or threatened to damage. The subject of a crime shall be confiscated under art. 53, para. 1 CC whenever it has a material expression.</p>
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knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value.

	<p>"Objects" mean any material objects or valuable objects, and includes both movable and immovable assets that are instrumentalities of the crime, served in some way to commit it (item "a") or are the subject of the crime (item "b").</p> <p>Confiscation of the value of the means of committing the crime is possible (letter "a"), but there is no legal possibility of confiscation of value related to the subject of a crime committed (letter b).</p>
<p>Article 53, para. 2, "a" and "b" CC</p>	<p>Article 53, para. 2, item „a“ of the CC is about „articles that have been <i>subject or means of the crime, the possession of which is forbidden</i>“. Object of confiscation is the subject or the means of the crime, which possession is prohibited by law. In that case they are deprived in favour of the state: 1/ regardless of whether confiscation is provided for in the relevant crime; 2/ even if they do not belong to the perpetrator, but to a third party.</p> <p>Art. 53, para. 2, letter "b" refers to „<i>direct or indirect benefits gained through the crime, if they are not subject to return or restoration</i>“. If the property representing such benefit is missing or is transferred, confiscation of its equivalent shall be ruled. A detailed explanatory provision is included (article 53, para. 3) – „<i>Within the meaning of Paragraph 2, letter "b": 1. a direct benefit shall be any economic gain, occurring as a direct consequence of the crime; 2. an indirect benefit shall be any economic gain, occurring as a result of disposal with the direct gain, as well as any property obtained as a result of subsequent full or partial transformation of a direct benefit, including when it was mixed with a property obtained from lawful sources; the property up to the value of the included benefit shall be subject to confiscation, including the occurring increases of the property, if they are directly linked to the disposal or transformation of the direct benefit and the inclusion of the direct benefit in the property</i>“. The applicability of confiscation in this case covers both movable and immovable assets as well as intangible benefits such as virtual assets.</p>
<p>Specific measures in the Special part of the CC</p>	<p>As it was mentioned above art. 53, para 1, item b) of the CC provides confiscation of „objects belonging to the culprit, which were subject of intentional crime - <i>in the cases expressly provided in the Special Part of this Code</i>“. There are such <i>specific provisions</i> in the Special Part of the CC regarding about 25 different crimes. These <i>specific provisions</i> are aimed at the subject of the crime, and in some cases (such as money laundering) it is provided that the property into which it was transformed or the property intended for the commission of the crime shall be forfeited. In some cases, if the subject of the crime is missing or has been transferred, its equivalent value is taken away.</p>
<p>2. confiscation of the value:</p>	

<p>Article 53 (1)(a) of the CC</p> <p>Article 53, para 2 (b) of the CC</p> <p>Specific measures in the Special part of the CC</p> <p>Civil forfeiture under LCCIAF</p>	<p>A confiscation of a value can take place if the original property can no longer be found or has been transferred to another person – which in practice covers cases where the original item of property cannot be found and/or is merged with the legal property of the defendant or another person.</p> <p>Article 53 (1)(a) of the CC provides that the equivalent of the <i>means (instruments, tools)</i> of the crime shall be <i>forfeited where the property is missing or transferred</i>. It should be borne in mind that an equivalent value of the means of the crime can only be confiscated if they belong (or belonged) to the perpetrator, not to a third party.</p> <p><i>However, there is no legal possibility to confiscate the value of the object of the crime (Art. 53(1)(b) CC) if it is missing or transferred.</i></p> <p>Where the direct and indirect benefit referred to in Article 53(2)(b) of the CC acquired through the committing of the crime <i>is missing or expropriated, its equivalent shall be adjudged</i>. Forfeiture of the equivalent of the missing benefit is therefore possible.</p> <p>Some of the <i>specific measures</i> provided for specific crimes in the Special Part of the CC also provides for confiscation of the value. For example, for terrorist financing (Art. 108a, para. 8 of the CC) - “where the object of the crime financing of terrorism may not be found or has been expropriated, payment of its equivalent sum shall be ruled”. The provisions related to money laundering offence (Art. 253, para. 6 of CC and Art. 253a, para. 3 of CC) also stipulate that the object of money laundering or the property into which it has been transformed shall be forfeited to the benefit of the state, and if are missing or transferred, <i>its equivalent value shall be adjudged</i>.</p> <p>Civil forfeiture may also cover property equivalent, if specific property cannot be confiscated - Art. 142 of LCCIAF</p>
<p>3. extended confiscation:</p> <p>Civil forfeiture under LCCIAF</p> <p>The penalty “confiscation” – art.44-46 of the CC</p>	<p>The civil confiscation under LCCIAF is aimed at illegally acquired property. The object of confiscation can be any type of property.</p> <p>Confiscation as a penalty for a crime under Article 44–46 of the CC refers to any property belonging to the guilty person or to a part thereof, to certain of his properties or to parts of such properties. It refers to property available at the moment of ruling the decision of forfeiture which may be subject to that penalty. The law provides that the personal and household items of the convicted person and his family, the items necessary for the exercise of his occupation specified in a list adopted by the Council of Ministers,</p>

	<p>and the means for the maintenance of his family for one year are not a subject to confiscation.</p> <p>The object of confiscation in this case is extremely broad and does not depend on whether the property was acquired by criminal means, whether it has a lawful source, whether it is the means of a crime or the object of a crime.</p>
<p>4. confiscation without conviction:</p> <p>Civil forfeiture under LCCIAF</p> <p>Article 53 of the Criminal Code</p>	<p>The basis of the civil confiscation under LCCIAF is the confiscation in favour of the state of the so-called inexplicably acquired property by persons charged with committing a crime within the scope of art. 108 of the LCCIAF.</p> <p>Article 53 of the CC applies “notwithstanding of criminal liability”, which means that the confiscation of such property is possible both where a conviction has been handed down against the guilty person and where it is impossible (for different reasons) to end the case with a conviction. The object of confiscation is the same as that described in “1. direct confiscation”.</p>
<p>5. confiscation against third parties:</p> <p>Civil forfeiture under LCCIAF</p> <p>Art. 53, para. 2 of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>The civil confiscation under LCCIAF applies to third parties - spouses, persons in de facto cohabitation, minor children.</p> <p>Proceeds of crime (Article 53(2)(b) of the CC) may be confiscated when held or possessed by third parties. The understanding of “proceeds” as an object of confiscation is described in “1. Direct confiscation”.</p> <p>The object of an offence under Article 53(2)(b) of the CC, when it constitutes prohibited possessions, is also subject to confiscation, even if it is in the possession of third parties. The understanding of ‘object of a crime’ as an object of forfeiture is described in “1. Direct confiscation”.</p> <p>Some of the <i>Specific measures</i> in the Special Part of the CC provide for confiscation of the subject or means of the crime, regardless of whose property they are. This means that it is possible to confiscate them for the benefit of the state even if they are the property of third parties, not only the perpetrator of the crime.</p>

b) Which is the scope of its introduction? (the fight against organized crime/money laundering/corruption/terrorism/, etc., the application of the principle that crime doesn't pay, etc.)

1. Direct confiscation	
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<p>Article 53 of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>Article 53 of the CC applies to all offences provided for in the Special Part of the CC, with the exception of para. 1(b). According to this text, 'the property belonging to the guilty party and which has been the subject of an intentional crime' shall be forfeited to the State <i>in the cases provided for in the special part of the Criminal Code</i>. Deprivation in favour of the state has a preventive nature or is aimed at preventing the perpetrators to obtain of any material benefit from the committed crime.</p> <p>The crimes for which such confiscation is provided for in the Special Part of the CC are related to distribution of pornographic materials, intellectual property, bribery in the public and private spheres, numerous crimes in the economic sector, smuggling, etc. The rule to always confiscate in favour of the state the subject of actual corruption crimes applies - art. 307a of the CC, Art. 225 of the CC. The introduction of this type of specific measures is aimed at countering and punishing corruption.</p>
<p>2. confiscation of the value:</p> <p>Article 53 (1)(a) of the CC</p> <p>Article 53, para 2 (b) of the CC</p> <p>Specific measures in the Special part of the CC</p> <p>Civil forfeiture under LCCIAF</p>	<p>The confiscation under Article 53 of the CC of the equivalent of the proceeds of crime (para. 1(a)) can only be applied if they belong (or belonged) to the perpetrator. This rule applies to all crimes in the Special Part of the CC.</p> <p>The confiscation of the equivalent of the direct and indirect benefit obtained through the offence (Article 53(2)(b) of the CC) applies to all offences in the Special Part of the CC.</p> <p>Some of the <i>specific measures</i> in the Special Part of the CC are related to forbidden items (for example some types of pornographic materials), but many more are aimed at confiscation of the subject of the crime such as money laundering, terrorist financing, bribery in the public and private spheres, numerous crimes in the economic sector, smuggling, etc. Therefore, the introduction in the law is related to the seriousness of the specific crime.</p> <p>The scope of its introduction is confiscation of illegally acquired property, when a reasonable assumption can be made that a property has been illegally acquired.</p>
<p>3. extended confiscation:</p> <p>Civil forfeiture under LCCIAF</p>	<p>The scope of its introduction is confiscation of illegally acquired property, when a reasonable assumption can be made that a property has been illegally acquired. The conclusion of the absence or presence of a legal source for the acquisition of the said property is required by the economic analysis of the defendant's</p>

<p>The penalty “confiscation” – art.44-46 of the CC</p>	<p>financial situation during the checked period, as the established net income is compared in size with the owned property.</p> <p>The penalty of ‘confiscation’ may be imposed only for the commission of such crimes for which the Special Part of the CC provides for such penalty.</p> <p>Confiscation, as an additional penalty, may be imposed for some of the crimes against the Republic (Article 114, Article 95—107, Article 108a and 109), distribution of pornographic material (Article 159(5)), trafficking in human beings (Article 159d), theft (Article 195(2); Article 196(2), robbery (Article 196), embezzlement (Article 201; Article 202(3), obsession (Article 206(3), fraud (Article 210, Article 211), extortion (Article 213 bis(3) and (4); Article 214), smuggling (Article 242(5)), relating to cultural and archaeological property (Article 177 bis; Article 278), document offence (Article 309(4)). For some of the more serious hypotheses of the crimes of kidnapping (Article 142(3), theft (Article 196 bis), embezzlement (Article 203(2), obsession (Article 206(4), fraud (Article 212(7)), extortion (Article 214(2), (Article 255(2) and (3), tax offence (Article 255(3); Article 255a(2); Article 255b(3); Article 256(3)), trafficking in human beings across the border (Article 280(3)), bribery (Article 302; Article 302a), confiscation of motor vehicles (Article 346(5)), related to the use of nuclear energy (Article 356m), the penalty of confiscation is mandatory imposed.</p> <p>It should be clarified that the penalty of confiscation was introduced many years ago in the Bulgarian criminal law and aims at least partial recovery of damages caused and/or impact on the guilty person. The introduction of the penalty has no connection with European Community acts.</p>
<p>4. confiscation without conviction: Civil forfeiture under LCCIAF</p> <p>Article 53 of the CC</p>	<p>Please see 3. Extended confiscation</p> <p>Article 53 of the CC applies “irrespective of criminal liability” to all offences. The exception is Article 53(1)(b) of the CC, according to which “objects belonging to the culprit, which were subject of intentional crime” shall be confiscated in favour of the state <i>in the cases expressly provided for in the special part of the CC</i>.</p> <p>Please see 1. Direct confiscation.</p>
<p>5. confiscation against third parties: Civil forfeiture under LCCIAF</p> <p>Art. 53, para. 2 of the CC</p>	<p>Please see 3. Extended confiscation</p> <p>Pursuant to Article 53, para. 2(b) of the CC the proceeds of <i>any crime</i> may be confiscated when held or possessed by third parties.</p>

<p>Specific measures in the Special part of the CC</p>	<p>The object of an offence under Article 53, para. 2(a) of the CC, when it constitutes prohibited possessions, is also subject to confiscation, even if it is in the possession of third parties. The provision applies to all offences. Please see 1. Direct confiscation.</p> <p>Some of the Specific measures in the Special Part of the CC provide for confiscation of the subject or means of the crime, regardless of whose property they are. This means that it is possible to confiscate them for the benefit of the state even if they are the property of third parties, not only the perpetrator of the crime. The introduction of the measures is aimed at confiscation of the subject of the serious specific crimes.</p>
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c) **Which are the elements to be realised and/or to be assessed for its application?**

e.g., conviction for a crime,

property or availability of the confiscation object,

link between the crime and the proceeds/instruments/products, etc.,

disproportionality (*'the value of the property is disproportionate to the lawful income of the convicted person'*),

illegal origin (suspects/presumption of illegal origin),

temporal connection with the crime,

the lack of a justification of the legal origin by the owner, etc.

<p>1. Direct confiscation</p> <p>Article 53 of the CC</p>	<p><u>General requirements:</u></p> <p>Article 53 of the CC is applied a/ together with the realization of criminal liability - through the conviction or b/ separately from the sentence or without it when for some reasons it is not possible to convict the guilty person (due to death, escape, etc.).</p> <p>In order to impose confiscation of property under Article 53 of the CC, it is required that the means and/or the proceeds are related to the crime.</p> <p><u>Further specific requirements:</u></p> <p>Another element that is specifically examined for the means used to commit the crime (Article 53 (1) (a) of the CC) is the <i>ownership</i>, as they may only be confiscated if they belong to the guilty person. With regard to the proceeds of crime referred to in Article 53, para.2 (b) of the CC, property is only relevant in order to direct the measure towards a specific person, as it is also possible to confiscate them from third parties.</p> <p>With regard to the property belonging to the guilty person and which has been the subject of an intentional crime (Article 53(1)(b) of the CC), the <i>availability of the object</i> of confiscation is required.</p>
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<p>Specific measures in the Special part of the CC</p>	<p>The <i>specific measures</i> in the Special part are applied together with the sentence for the respective crimes. Therefore, a conviction is necessary. It is also necessary to prove <i>a link</i> between the object of the crime (the property) and the crime itself.</p>
<p>2. confiscation of the value:</p> <p>Article 53 (1)(a) of the CC</p> <p>Article 53, para 2 (b) of the CC</p> <p>Specific measures in the Special part of the CC</p> <p>Civil forfeiture under LCCIAF</p>	<p>The confiscation under Article 53 of the CC of the equivalent of the proceeds of crime (para.1(a)) can only be applied if they belong (or belonged) to the perpetrator. Please see 1. Direct confiscation.</p> <p>Article 53(2)(b) of the CC provides for confiscation of value in respect of proceeds acquired through the crime. The requirements are set out in 1. Direct confiscation.</p> <p>The specific measures in the Special part of the CC which allow for confiscation by equivalent, are applied together with the sentence for the respective crimes. Therefore, a conviction is necessary. It is also necessary to prove a link between the object of the crime (the property) and the crime itself.</p> <p>The <i>civil forfeiture</i> is applied by the court in case there is a disproportionality between the property and the lawful income of the person charged with a crime.</p>
<p>3. extended confiscation: Civil forfeiture under LCCIAF</p> <p>The penalty “confiscation” – art.44-46 of the CC</p>	<p>Please see 2. confiscation by equivalent</p> <p>Confiscation under Article 44—46 of the CC is a criminal sanction whereby the assets of a person convicted of a specific crime (all or parts of the assets) are confiscated by the State without compensation. Under the Bulgarian CC, the penalty of confiscation (Article 37(3) of the CC, Article 44—47 of the CC) is imposed by a court as a punishment when passing sentence in a criminal case. In order for such a penalty to be imposed, it must be provided for by the legislator for the relevant crime. It is important to note that in some cases confiscation is imposed compulsorily, while in others the court has discretionary power to decide whether to impose it, i.e. it is provided as an option.</p> <p>Prerequisites for the imposition of this penalty are that the property is owned (only if it belongs to the guilty party) and that it is available at the time of sentencing. Its value and relevance to the crime are not of a relevance for the decision.</p>
<p>4. confiscation without conviction: Civil forfeiture under LCCIAF</p> <p>Article 53 of the CC</p>	<p>Please see 2. confiscation by equivalent</p>

	<p>Article 53 of the CC applies ‘irrespective of criminal liability’. The necessary preconditions for the application of Article 53 without conviction (see 1. Direct confiscation, general requirements, item 1) are that the act in connection with which the funds, objects and proceeds are confiscated in favour of the State has the characteristics of a crime and to such an extent that, had the guilty person not absconded or died (or otherwise), he would have been convicted. The ownership is also investigated where the proceeds of crime are involved. No conviction is required if the reason is that the person is dead. If the reason is that the person escaped, then a conviction in the absence of the defendant is required.</p>
<p>5. confiscation against third parties:</p> <p>Civil forfeiture under LCCIAF</p> <p>Art. 53, para. 2 of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>Please see 2. confiscation by equivalent.</p> <p>Proceeds of crime from any offence under Article 53(2) of the CC may be confiscated when held or possessed by third parties. The object of an offence under Article 53(2)(b) of the Criminal Code, when it constitutes prohibited possessions, is also subject to confiscation, even if it is in the possession of third parties. What is stipulated in 1. Direct confiscation applies.</p> <p>The specific measures in the Special part are applied together with the sentence for the respective crimes. Therefore, a conviction is necessary. It is also necessary to prove a link between the object of the crime (the property) and the crime itself.</p>

d) [Can this form of confiscation be applied when the owner or the convicted is dead?](#)

<p>1. direct confiscation:</p> <p>Article 53 of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>The confiscation of the instrumentalities of a crime and proceeds of crime under Art. 53 para. (1) and (2) of the CC apply independently of criminal liability and <i>may therefore also be imposed if the court is unable to rule a conviction (in the case of a death of the perpetrator before the end of the trial)</i> on the guilt of the perpetrator.</p> <p>The specific measures in the Special part of the CC are applied directly together with the sentence for the respective crimes. That is why the measures may not be imposed separately from the conviction. Therefore, if the offender dies before the conviction is ruled, the measure does not apply. In such cases, however, it is possible to apply Article 53 of the CC.</p>
<p>2. confiscation of the value:</p>	

<p>Article 53 (1)(a) of the CC</p> <p>Article 53, para 2 (b) of the CC</p> <p>Specific measures in the Special part of the CC</p> <p>Civil forfeiture under LCCIAF</p>	<p>When the conditions for imposing a deprivation of value in favour of the state under Art. 53 of the CC, this is also possible in the event of death of the convicted.</p> <p>Please see 1. direct confiscation about the Specific measures in the Special part of the CC.</p> <p>Civil confiscation is a procedure that takes place even after the death of the person being checked for illegally acquired property. It continues with respect to the property acquired by the heirs.</p>
<p>3. extended confiscation: Civil forfeiture under LCCIAF</p> <p>The penalty “confiscation” – art.44-46 of the CC</p>	<p>Please see 2. confiscation of the value about the Civil forfeiture under LCCIAF.</p> <p>The penalty of confiscation under Article 44—46 of the CC applies only to the guilty person. The general principle that criminal liability is personal. Therefore, in case of the death of the perpetrator before the end of the trial, the penalty cannot be applied.</p>
<p>4. confiscation without conviction: Civil forfeiture under LCCIAF</p> <p>Article 53 of the CC</p>	<p>Please see 2. confiscation of the value, Civil forfeiture under LCCIAF.</p> <p>Article 53 of the CC applies ‘irrespective of criminal liability’ to all offences. If the perpetrator of the offence is dead, the measure may be applied provided that the other requirements are met.</p>
<p>A.5. confiscation against third parties: Civil forfeiture under LCCIAF</p> <p>Art. 53, para. 2 of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>Please see 2. confiscation of the value, Civil forfeiture under LCCIAF.</p> <p>Proceeds of crime from any offence under Article 53(2) of the CC may be confiscated when held or possessed by third parties. Article 53 of the CC applies ‘irrespective of criminal liability’ to all offences. If the perpetrator of the offence is dead, the measure may be applied provided that the other requirements are met.</p> <p>The specific measures in the Special part of the CC are applied directly together with the sentence for the respective crimes. That is why the measures may not be imposed separately from the conviction. Therefore, if the offender dies before the conviction is ruled, the measure does not apply. In such cases, however, it is possible to apply Article 53 of the CC.</p> <p>Confiscating the subject of crime will be possible in case of death of the perpetrator of the FT or ML only if it belonged to him, i.e. it is not possible against the third party in case of a death of the perpetrator.</p>

e) For the model of confiscation which demands the conviction for a crime: **Can this model of confiscation be applied when the crime is statute barred (i.e. after the prescription) or somehow (in particular circumstances) without the conviction?**

<p>1. direct confiscation: Article 53 of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>The confiscation of the proceeds of crime and proceeds of crime under Art. 53 para. (1) and (2) of the CC apply independently of criminal liability and <i>may therefore also be imposed if the court is unable to rule a conviction (in the case of a statute of limitations expired)</i> on the guilt of the perpetrator.</p> <p>The Specific measures under the Special part of the CC concerning the object of the offence and the instrumentalities may not be imposed separately from the conviction. Therefore, if the crime is statute barred, the measure does not apply. In such cases, however, it is possible to apply Article 53 of the CC.</p>
<p>2. confiscation of the value: Article 53 (1)(a) of the CC</p> <p>Article 53, para 2 (b) of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>Where forfeiture is adjudged under Article 53 of the CC, this is possible even when the crime is statute barred.</p> <p>Confiscation of value is provided in respect of FT. The special provisions under Article 108a (8) of the Criminal Code, Article 253 (6) of the Criminal Code and Article 253a (3) of the Criminal Code concerning the object of the offence of FT or ML (as well as the property into which it is transformed in money laundering) may not be imposed separately from the conviction. Therefore, when the crime itself is statute barred the measure does not apply. In such cases, however, it is possible to apply Article 53 of the CC.</p>
<p>3. extended confiscation:</p> <p>The penalty “confiscation” – art. 44-46 of the CC</p>	<p>The penalty of confiscation requires a conviction. This means that if there is a condition due to which the criminal proceedings must be terminated (Article 24, Paragraph 1 of the Criminal Procedural Code (CPC) specifies the conditions and among them is the case when the crime is statute barred, amnesty and others) the penalty cannot be imposed.</p>
<p>4. confiscation without conviction:</p> <p>Article 53 of the CC</p>	<p>Article 53 of the CC applies ‘irrespective of criminal liability’ to all offences. If the crime is statute barred, the measure may be applied provided that the other requirements are met.</p>
<p>5. confiscation against third parties:</p> <p>Art. 53, para. 2 of the CC</p>	<p>Proceeds of crime from any offence under Article 53(2) of the Criminal Code may be confiscated when held or possessed by third</p>

<p>Specific measures in the Special part of the CC</p>	<p>parties. Article 53 of the CC applies ‘irrespective of criminal liability’ to all offences. If when the crime is statute barred, the measure may be applied provided that the other requirements are met.</p> <p>The Specific measures in the Special part of the CC which can be applied to third persons may not be imposed separately from the conviction. Therefore, if the crime is statute barred, the measure shall not apply.</p> <p>In these cases, however, it is possible to confiscate the subject of crime and the proceeds of crime under Article 53 of the CC. The confiscation of the object of the crime if the crime is statute barred will only be possible if it belonged to the perpetrator of the FT or ML, i.e. it is not possible against third parties.</p>
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f) **Which is the legal nature?** (a criminal sanction — accessory or principal criminal penalty-, a preventive measure — *ante delictum* criminal prevention measure -, security measure in a broad sense, administrative measure, civil measure *in rem*, a civil consequence of committing an offense — provided for by criminal law -, another type of autonomous — *sui generis* - instrument, etc.)

<p>1. direct confiscation: Article 53 of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>The confiscation of means, subject of the crime and benefits from the crime under Art. 53, para. 1 and para. 2 of the CC are applied regardless of criminal liability. It is defined as another measure of a property nature. The depriving in favour of the state is a consequence of a committed crime and can be equated with that of confiscation.</p> <p>The specific measures provided for in the Special Part of the CC for the commission of certain crimes have the same legal nature.</p>
<p>2. confiscation of the value: Article 53 (1)(a) of the CC</p> <p>Article 53, para 2 (b) of the CC</p> <p>Specific measures in the Special part of the CC</p> <p>Civil forfeiture under LCCIAF</p>	<p>Please see 1. direct confiscation, Article 53 of the CC</p> <p>Please see 1. direct confiscation, Article 53 of the CC</p> <p>Please see 1. direct confiscation, Specific measures in the Special part of the CC</p> <p>The procedure under LCCIAF is directed not against the person, but against the property, regardless of the criminal process. It is not based on a conviction. The rule is known as civil forfeiture or “in rem” procedure.</p>
<p>3. extended confiscation: Civil forfeiture under LCCIAF</p> <p>The penalty “confiscation” – art.44-46 of the CC</p>	<p>Please see 2. confiscation of the value, Civil forfeiture under LCCIAF.</p> <p>Confiscation under Articles 44—46 of the CC is a penalty for a crime committed.</p>

<p>4. confiscation without conviction: Civil forfeiture under LCCIAF</p> <p>Article 53 of the CC</p>	<p>Please see 2. Confiscation of the value, Civil forfeiture under LCCIAF</p> <p>Please see 1. direct confiscation, Article 53 of the CC</p>
<p>5. confiscation against third parties: Civil forfeiture under LCCIAF</p> <p>Art. 53, para. 2 of the CC</p> <p>Specific measures in the Special part of the CC</p>	<p>Please see 2. confiscation of the value, Civil forfeiture under CCIAF.</p> <p>Please see 1. direct confiscation, Article 53 of the CC</p> <p>Please see 1. direct confiscation, Specific measures in the Special part of the CC</p>

3) In particular, in your national legal order is confiscation without conviction possible in cases of death, illness, absconding, prescription, amnesty, etc. and which are the relevant legal bases?

The confiscation of the funds subject to the crime and the proceeds of the crime under Article 53 (1) and (2) of the CC may be imposed if the court is unable to pronounce a verdict (in the case of death of the perpetrator, statute of limitations expired, amnesty, etc.) as regards the guilt of the perpetrator. In cases of absconding or other reasons for the defendant's absence, it is possible to pass sentence in the absence of the accused under certain conditions (under CPC). In these cases, the application of Article 53 of the CC is done together with the conviction.

The Specific measures in the Special part of the CC may not be imposed separately from the conviction. Therefore, in case of death of the perpetrator, statute of limitations expired, amnesty, the measure is not applied, but it is possible to apply Article 53 of the CC. In cases of absconding or other reasons for the defendant's absence, it is possible to pass sentence in the absence of the accused under certain conditions (CPC). In these cases, the application of the respective Specific measure shall be decided together with the conviction.

As for the civil confiscation under the LCCIAF, it is also applied when an amnesty has followed for the crime itself, the statute of limitations provided for in the law has expired, after the commission of the crime the perpetrator fell into a long-term disorder of consciousness that excludes sanity, the perpetrator has died or in relation to the person, the transfer of criminal proceedings to another country is allowed - see Art. 108, para. 2, item 2 of LCCIAF.

4) For each model of confiscation:

a) which is the procedure for its application? (the qualification/nature, the competent authority, the different steps, etc.), you should also specify the forms of freezing and seizure orders in your legal system and their prerequisites.

<p>1. direct confiscation: Article 53 of the CC, Specific measures in the Special part of the CC</p>	<p>The deprivation in favor of the state under Art. 53 of the CC as well as the Specific measures in the Special part of the CC, is a measure that can only be imposed by a court. An exception to this rule is the</p>
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	<p>confiscation of material evidence in favor of the state by the prosecutor upon termination of the pre-trial proceedings. Forfeiture in favor of the state is entered in the dissolution decree and refers to material evidence, the possession of which is prohibited by law.</p> <p>Usually, the court orders this measure as part of the sentence (Art. 301 of CPC¹¹). Competent for imposing the measure is the court that is competent to consider the criminal case for the crime with which the defendant is accused. The jurisdiction rules are set in Art. 35 of the CPC. Direct confiscation of objects for the benefit of the state is applied by the court <i>ex officio</i>, i.e. there is no need to be explicitly requested by one of the parties in the criminal case, the court is obliged to apply it when the conditions are present.</p> <p>Important steps are the identification, seizing and freezing of the relevant property, which is usually done in pre-trial proceedings. In general, there are two ways to seize and freeze the object of confiscation.</p> <p>One way, in regards with the means of a crime and the object of a crime is to keep them as material evidence in the case. Art. 109 of the CPC stipulates <i>objects intended or used for the perpetration of the crime, upon which there are traces of the crime or which were subject of the crime, as well as all other objects which may serve to clarify the circumstances in the case shall be collected as material evidence</i>. For this purpose, the means of gathering evidence are used (Articles 159-165 of the CPC), which, however, cannot be applied in principle to secure property which is a subject to confiscation.</p> <p>The main method is search and seizure, where physical objects, documents or digital data can be seized when they represent the means and object of the crime.</p> <p>The search and seizure are carried out by the bodies of the pre-trial proceedings (prosecutor and investigative authorities) when authorized by the competent court of first instance. In urgent cases, the bodies of the pre-trial proceedings (investigation/prosecutor's office) can carry out these actions without judicial permission, but approval from the court must be requested within 24 hours after it is carried out.</p>
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¹¹ Art.301 (1) In pronouncing the sentence, the court shall consider and decide on the following issues: 1. whether there is an act done, was it perpetrated by the defendant, and was it culpably perpetrated; 2. whether the act constitutes a crime and whether its qualification is correct; whether the defendant is subject to punishment, what punishment needs to be determined, and in cases under Article 23 - 25 and 27 CC, what aggregate punishment to be imposed on him/her;... whether the grounds pursuant to Article 53 of the CC are at hand.

	<p>The proceeds of a crime can also be seized as material evidence, insofar as they are (according to Article 109 of the CPC) "objects that can serve to clarify the circumstances of the case". Seizure of funds, object of and benefits from a crime under this order can be carried out without the person being charged.</p> <p>The other way to secure property which is subject to confiscation in favour of the state is the procedure under Art. 72 of the CPC. The conditions to take steps accordingly are: a) the owner of the property to be accused of committing a crime; b) regarding this crime confiscation (the penalty) or deprivation in favour of the state (the measure) to be provided. CPC does not contain the procedure itself for taking security measures, it only states that the competent court of first instance may, at the prosecutor's request, apply measures to secure the fine, the confiscation of property or the property measure. The text refers to the procedure in the civil security process established in the CvPC.</p> <p>It is set in Part IV of CvPC (Precautionary Proceedings). The security measures in Chapter 35 of CvPC include imposition of a preventive attachment of a immovables; garnishment of movable things and receivables of the debtor as well as other appropriate measures determined by the court (Art. 397 CvPC).</p> <p>When, upon request of the prosecutor¹², the court applies (by a ruling¹³) a security measure under Art. 72 of the CPC, the prosecutor notifies the bailiff about this, as well as the CCIAAFC. The Commission, according to Art. 72a of CPC manages and keeps the property secured unless it constitutes material evidence.</p> <p>It should be noticed that according to Bulgarian legislation (Art. 234, para. 8 of CPC) the measures under Art. 72a of CPC shall be applied for a certain period in the pre-trial proceedings. After expiry of this period the measures shall be revoked if the case is not brought to court.</p> <p>When the final judgment imposes confiscation and/or a measure under Art. 53 of the CC or a Specific measure, the implementation of this sanction is assigned to the National Revenue Agency (Article 416, Paragraph 3 of the CPC).</p>
<p>2. Confiscation of the value Article 53 (1)(a) of the CC Article 53, para 2 (b) of the CC, Specific measures in the Special part of the CC</p> <p>Civil forfeiture under LCCIAF</p>	<p>Please see 1. Direct confiscation, Article 53 of the CC</p> <p>The civil forfeiture mechanism is completely separate from criminal proceedings, and the procedure combines elements of civil,</p>

¹² Please see Annex No 1.

¹³ Please see Annex No 2.

	<p>administrative and criminal proceedings. The CCIAAFC, as an administrative body, after being notified that a person has been charged with a crime of the relevant type, begins an inspection of his and his family's property. If the owned property exceeds the amount of legal income, the Commission may file a claim in the civil court for confiscation of the illegally acquired property. The crimes for which this non-conviction-based confiscation is provided are those that generate benefits - embezzlement, fraud, bankruptcy, money laundering, bribery, distribution of narcotics and others.</p> <p>The court decision to confiscate property does not depend on whether the accused has been convicted of the crime. The proceedings are under the LCCIAF and CvPC and are based on the verification of whether the person or members of his/her family owns property, for the acquisition of which there is no legal source.</p>
<p>3. extended confiscation: Civil forfeiture under LCCIAF The penalty "confiscation" – art.44-46 of the CC</p>	<p>Please see 2. Confiscation of the value, Civil forfeiture under LCCIAF</p> <p>The confiscation under Art. 44-46 of the CC is applied by the court together with the sentence for the committed crime when such a penalty is provided for the relevant crime. It is important to note that in some cases confiscation is mandatory and in other cases the court has a discretionary power to decide whether to impose it, i.e. it is provided as a possibility.</p> <p>The securing of property, which may later be confiscated as a punishment for the committed crime, is carried out in accordance with the procedure of Art. 72 of the CPC, which refers to the precautionary proceedings in the CvPC as it was described in 1. Direct confiscation.</p>
<p>4. confiscation without conviction: Civil forfeiture under LCCIAF Article 53 of the CC</p>	<p>Please see 2. Confiscation of the value, Civil forfeiture under LCCIAF</p> <p>Article 53 of the CC applies "notwithstanding the criminal liability" in relation to all crimes. The procedure is not different from the one described for 1. Direct confiscation because the decision depends on whether the elements of a crime are present, and in such a way that if the culprit had not fled or died, he would have been found guilty. The measure is imposed by the court, in this case (due to the impossibility of a verdict) – by court ruling.</p> <p>Securing the funds, the object and the benefits for future confiscation in favor of the state is carried out in the ways described in 1. Direct confiscation.</p>
<p>5. confiscation against third parties: Civil forfeiture under LCCIAF</p>	<p>Please see 2. Confiscation of the value, Civil forfeiture under LCCIAF.</p>

<p>Art. 53, para. 2 of the CC, Specific measures in the Special part of the CC</p>	<p>The benefits of criminal activity from any crime under Art. 53, para. 2 of the CC can be confiscated when held or owned by third parties. Some of the Specific measures in the Special part of the CC are applied against third parties. The confiscation of objects for the benefit of the state by third parties is also carried out by the court with the sentence of the guilty person.</p> <p>Securing items to the aim of future confiscation from third parties appears to be possible only when they are seized as material evidence (the procedure is described in 1. Direct confiscation). The procedure under Art. 72 of the CPC is applicable only to the accused, not to property owned by third parties.</p>
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b) What is the standard of proof/is reversal of the burden of proof allowed?

<p>1 direct confiscation: Article 53 of the CC Specific measures in the Special part of the CC</p>	<p>Article 53 of the CC, as well as Specific measures in the Special part of the CC are applied by the court together with the sentence (Art. 301 of the CPC). The standard of proof is related to the proof of the crime, i.e. must be convinced of the defendant's guilt - according to Art. 303, Para. 1 of the CPC, the sentence cannot rest on assumptions, and according to paragraph 2, the court recognizes the defendant as guilty when the accusation is proven beyond doubt. The burden of proof rests on the representative of the prosecution - the prosecutor. The law does not permit a reversal of the burden of proof.</p>
<p>2. confiscation of the value Article 53 (1)(a) of the CC, Article 53, para 2 (b) of the CC, Specific measures in the Special part of the CC</p>	<p>Article 53 of the CC provides for confiscation of value in relation to the proceeds of crime, as well as in relation to the means of crime. Confiscation of value is also provided for some offences Specific measures in the Special part of the CC. Regarding the proof, please see 1. Direct confiscation.</p>
<p>3. extended confiscation: The penalty "confiscation" – art.44-46 of the CC</p>	<p>The penalty "confiscation" under Art. 44-46 of the CC is imposed by a court when passing a sentence in a criminal case. Regarding the standard of proof and the reversal of the burden of proof, please see 1. Direct confiscation.</p>
<p>4. confiscation without conviction: Article 53 of the CC</p>	<p>Art. 53 is applied "notwithstanding the criminal liability" regarding all crimes. When deciding whether to impose this measure, the court examines whether the elements of the offence are present, in such a way that if the culprit had not fled or died, he would have been convicted. Therefore, no lower standard of proof can be expected</p>

	than in cases where a conviction is possible. Please see 1. Direct confiscation.
5. confiscation against third parties: Art. 53, para. 2 of the CC, Specific measures in the Special part of the CC	The benefits of criminal activity from any crime under Art. 53, para. 2 of the CC can be confiscated when held or owned by third parties. Some of the Specific measures in the Special part of the CC apply to third parties. The confiscation of property for the benefit of the state from third parties depends on whether the property was a means of, object of, or benefit of a crime. Therefore, the measure will be imposed by the court only if it is successfully proved that a crime has been committed. Please see 1. Direct confiscation.

c) What are the safeguards (restrictions, e.g. proportionality clauses, appropriate legal remedies)?

1. direct confiscation:	Art. 53 of the CC, as well as the Specific measures of the Special part of the CC shall be applied by the court together with the sentencing (Article 301 of the CPC). Guarantees of protection are fully bound by the rules of conduct of the criminal proceeding, in which it is established whether the accused is guilty or not. Proportionality clauses can only be sought in the application of precautionary measures (art. 72 CPC), i.e. whether the value of the property requested for security is relatively equivalent to the object of the crime, the means or the benefit, based on the charge. The rights of good faith third parties are protected by the possibility of appealing a decision under Art. 53 of the CC when their rights are unlawfully affected.
2. confiscation of the value	Art. 53 of the CC applies to all crimes, provides for confiscation of equivalent in terms of benefits and the means of the crime. Regarding safety measures, the same applies as in 1. Direct confiscation.
3. extended confiscation:	About guarantees please see 1. Direct confiscation.
4. confiscation without conviction:	Article 53 of the CC applies "regardless of criminal liability" in relation to all crimes. It is being investigated whether the signs of a crime are present, and in such a way that if the defendant had not fled or died, he would have been convicted. About guarantees please see 1. Direct confiscation.

5. confiscation against third parties:	The benefits of criminal activity from any crime under Art. 53, Par. 2 of the CC can be confiscated when held or owned by third parties. The Specific measures apply to third parties. About guarantees please see 1. Direct confiscation.
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c) Is a default trial (**in absentia**) possible in your legal system to enforce confiscation?

1. direct confiscation:	Art. 53 of the CC, as well as the Specific measures of the Special part of the CC shall be applied by the court together with the sentencing (Article 301 of the CPC). Judicial proceedings in absentia (in the absence of the accused) for the imposition of depriving in favor of the state (confiscation) are possible only to the extent that it is possible to pass a sentence in the absence of the accused for the crime itself. In this regard, the rules of the CPC apply - art. 269. <i>(1) In cases with accusations of a serious crime, the presence of the defendant at the court session is mandatory. (2) The court may order the defendant to appear in cases where his presence is not mandatory, when this is necessary to reveal the objective truth. (3) When this will not prevent the disclosure of the objective truth, the case may be considered in the absence of the defendant, if: 1. he is not found at the address indicated by him or has changed it without notifying the relevant authority; 2. his place of residence in the country is unknown and, after a thorough search, has not been established; 3. is regularly summoned, has not given valid reasons for his non-appearance and the procedure under Art. 247c, para. 1; 4. is located outside the borders of the Republic of Bulgaria and: a) his place of residence is unknown; b) cannot be summoned for other reasons; c) is regularly summoned and has not given valid reasons for his non-appearance.</i> These are general rules that apply to all types of deprivation (confiscation) of property for the benefit of the state.
2. confiscation of the value	Please see 1. Direct confiscation.
3. extended confiscation:	Please see 1. Direct confiscation.
4. confiscation without:	Please see 1. Direct confiscation.
5. confiscation against third parties:	Please see 1. Direct confiscation.

e) On confiscation without conviction: can this form of confiscation also be applied in case of acquittal?

It is possible only in the cases under Art. 53, para. 2, item "a" of the CC - the items, object or means of the crime, the possession of which is prohibited. In all other cases under Art. 53 of the CC is not possible. Art. 53 of the CC applies "regardless of criminal liability" in relation to all crimes, but only when the elements of a committed crime are present. It means that it is necessary to prove the crime committed in such a way that if the defendant had not escaped or died, he would have been found guilty. For the securing of the means, the object and the benefits for future confiscation in favor of the state please see above.

The procedure of civil forfeiture is a separate (outside the criminal case for the offence) proceeding and is applicable even in case of acquittal.

5) For every model of confiscation:

Does it comply with the principles of:

legality?

1 direct confiscation:	Positive answer. Deprivation of means, subject of the crime, and benefits of the crime in favour of the state is applied then and to the extent that this sanction is provided for in the law.
2. confiscation of the value	The law about the depriving of value of the means, subject and the benefits of the crime in favor of the state is applied then and to the extent that this sanction is provided for in the law.
3. extended confiscation:	Positive answer. The penalty confiscation is applied only if provided for in the CC.
4. confiscation without conviction:	Please see 1. Direct confiscation.
5. confiscation against third parties:	Please see 1. Direct confiscation.

legal specificity of a law (how precise, clear or general is the law and allows judgment by practitioners)?

1 direct confiscation:	The law of depriving of means, subject and benefits from a crime in favor of the state, is clear and doesn't allow prerequisites for free interpretation in its application.
2. confiscation of the value	The law about the depriving of equality of the means, subject and the benefits of the crime in favor of the state, is clear and doesn't allow prerequisites for free interpretation in its application.
3. extended confiscation:	As it was pointed out, the penalty "confiscation" is provided for some offences as a mandatory type of penalty, and for others - as a

	possibility, i.e. the court may consider whether or not to impose confiscation on the convicted person.
4. confiscation without conviction:	The law about the confiscation of the means, subject and the benefits of the crime in favor of the state, is clear and doesn't allow prerequisites for free interpretation in its application.
5. confiscation against third parties:	The law about the confiscation of the means, subject and the benefits of the crime in favor of the state, is clear and doesn't allow prerequisites for free interpretation in its application.

lack of retroactivity of the /heavier/ law?

1 direct confiscation:	About the depriving of the means, subject and the benefits of the crime in favor of the state, applies the general rule of the CC, that when a legislative change occurs before sentencing, the law more favorable to the guilty person applies.
2. confiscation of the value	About the depriving of equality of the means, subject and the benefits of the crime in favor of the state, applies the general rule of the CC, that when a legislative change occurs before sentencing, the law more favorable to the guilty person applies.
3. extended confiscation:	About the penalty confiscation applies the general rule of the CC, that when a legislative change occurs before sentencing, the law more favorable to the guilty person applies.
4. confiscation without conviction:	Applies the general rule, that when a legislative change occurs before sentencing, the law more favorable to the guilty person applies.
5. confiscation against third parties:	About the confiscation from third parties, applies the general rule, that when a legislative change occurs before sentencing, the law more favorable to the guilty person applies.

the right of private property?

1. direct confiscation:	Positive answer. The confiscation of benefits from criminal activity, as well as the possibility of confiscation of value according to Art. 53, para. 2, item b) of the CC are generally interpreted to protect the rights of the third party who purchased the original item in good faith. The same applies to the confiscation under the Specific
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	measures of the Special part of the CC. Acquisition in good faith is interpreted in accordance with the Property Act which provides that good faith is always presumed until proven otherwise. Article 396 of the CvPC provides that the ruling allowing the security of the claim cannot be suspended due to its appeal by the defendant (including by third parties). In addition, the third party can use various means provided by the CvPC to protect its rights, including bringing a claim for the restoration of a right that has been violated (Art. 124), a claim for legal protection against violated possession and possession (Art. 356) or to seek legal protection against the implementation of a protective measure that affected his rights (Art. 440).
2. confiscation of the value	Positive answer. Please see 1. Direct confiscation.
3. extended confiscation:	Please see 1. Direct confiscation.
4. confiscation without conviction:	Please see 1. Direct confiscation.
5. confiscation against third parties:	Please see 1. Direct confiscation.

proportionality?

1 direct confiscation:	Positive answer. The means of the crime, objects of the crime and benefits of the crime, which are related to the committed crime, are confiscated.
2. confiscation of the value	Positive answer. Depriving the state of the equivalence of the means and benefits of a crime in favor of the state contains a principle of proportionality in itself.
3. extended confiscation:	As a rule, proportionality does not apply to the penalty confiscation under art. 44-46 of CC. It is aimed at confiscation of specific property regardless of its relevance to the subject of the crime. Furthermore, in cases where extended confiscation as a penalty is envisaged as a possible penalty, then the court considers to what extent it is necessary to apply it in view of the objectives of the penalty under Art. 36 of the CC.
4. confiscation without conviction:	Please see 1. Direct confiscation.

5. confiscation against third parties:	Please see 1. Direct confiscation.
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the right to a fair trial?

1 direct confiscation:	Positive answer. Forfeiture of funds of, object of, and benefits of a crime for the benefit of the state is applied then and to the extent that this sanction is provided for in the law.
2. confiscation of the value	Positive answer. Forfeiture of the equivalent of the funds and benefits of a crime for the benefit of the state is applied then and to the extent that this sanction is provided for in the law.
3. extended confiscation:	Positive answer. The "forfeiture" penalty applies only if provided for in the CC.
4. confiscation without conviction:	Please see 1. Direct confiscation.
5. confiscation against third parties:	Please see 1. Direct confiscation.

the right to defence?

1. direct confiscation:	Positive answer. The grounds for applying the measure are related to the grounds in general for convicting the person guilty of the crime committed. All guarantees for conducting the criminal proceedings for the crime itself, established in the CPC.
2. confiscation of the value	Please see 1. Direct confiscation.
3. extended confiscation:	Please see 1. Direct confiscation.
4. confiscation without conviction:	Please see 1. Direct confiscation.
5. confiscation against third parties:	Please see 1. Direct confiscation.

the presumption of innocence?

1 direct confiscation:	Positive answer. The grounds for applying the measure are related to the grounds in general for convicting the person guilty of the
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	crime committed. All guarantees for conducting the criminal proceedings for the crime itself, established in the CPC, including the presumption of innocence, apply.
2. confiscation of the value	Please see 1. Direct confiscation.
3. extended confiscation:	Please see 1. Direct confiscation.
4. confiscation without conviction:	Art. 53 from CC applies "regardless of criminal liability" in relation to all offences. The presumption of innocence is respected by imposing the measure only if the elements of a crime are present and to such an extent that if the guilty party had not fled or died, he would have been convicted.
5. confiscation against third parties:	Please see 1. Direct confiscation.

the principle **ne bis in idem**?

1. direct confiscation:	Positive answer. The grounds for applying the measure are related to the grounds in general for convicting the person guilty of the crime committed. All guarantees for conducting the criminal proceedings for the crime itself, established in the CPC, including the avoidance of double punishment for the same act, apply.
2. confiscation of the value	Please see 1. Direct confiscation.
3. extended confiscation:	Please see 1. Direct confiscation.
4. confiscation without conviction:	Please see 1. Direct confiscation.
5. confiscation against third parties:	Please see 1. Direct confiscation.

and other relevant rights – what kind?

1. direct confiscation:	
2. confiscation of the value	
3. extended confiscation:	

4. confiscation with no conviction:	
5. confiscation against third sides:	

7) For each model of confiscation:

a) **Are there constitutionality issues which have been detected in the legal doctrine and is there any relevant jurisprudence ruling on the constitutionality(or not) of the confiscation measure?**

1. direct confiscation:	
2. confiscation of the value	
3. extended confiscation:	
4. confiscation without conviction:	
5. confiscation against third parties:	<p>The identified problem is connected to the rights of the third parties.</p> <p>Decision № 12 from 30 of September 2021 r. of the Constitutional court of Bulgaria – The constitutional law suit was started to find out if there are constitutional violations in Art. 234, para. 3, in the part “no matter who’s owning”, and others of the CC. It was considered that only Art. 53, para. 2 CC foresees a possibility of depriving belongings or subjects which are not owned by the perpetrator, but this is only for belongings, subjects or means of the crime, the owning of is forbidden and that keeps the balance between the inviolability of the private property and the justified intervention of the government in protection of the public interest. This balance is violated in the provisions of Art. 234d, Par. 3, Art. 242, Par. 8, Art. 242, Par. 8, Art 280, Par. 4 and Art. 281, Par. 3 from CC. Despite the pursued goal from the law – prevention of the considered crimes in the considered cases from CC, is legitimate goal, the mean which the legislator is using does not meet the objective and it’s accomplishment, when it comes to sanctioning a person which actions are not criminal and because of that it is entirely disproportionately and inappropriate. The Constitutional Court announces the regulations Art. 234, Par. 3, in the part “no</p>

	<p>matter who's owning", of Art. 242, Par. 8, in the part "when it's not owned by the perpetrator", of Art. 280, Par. 4, in the part "or it was provided voluntarily" and of Art. 281, Par. 3 in the part "or it was provided voluntarily" from CC as violating the Constitution.</p> <p>Decision № 1 from 24 January 2023 - Unconstitutionality is requested of regulation of Art. 240a, Par. 7 of CC in the part "when it's not owned by the perpetrator"... Considering the mentioned and with the already pronounced as violating the constitution regulations of the Bulgarian criminal law for depriving vehicles or conveyances of third person, who doesn't knowing, was unable or unobligated to know that his belonging is being used for crime, on much higher reasons the regulation of Art. 240a, Par. 7 CC should be approved as constitutional violation as it's about vehicles or conveyances which have been used for removing the subject of the crime after performance of the executive act extraction of natural resources by the meaning of Art. 240a, Par. 1 CC. The court finds a contradiction of the provision with Art. 4, Par. 1 (the rule of law), Art. 17, Par. 1 and 3 (the right of belongingness), Art. 56 and Art. 122, Par. 1 (the right of defense) of the Constitution.</p>
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b) Are there European Court of Human Rights cases in relation to "Your" model of confiscation?

Judgment on case of Todorov and others v. Bulgaria (Applications nos. 50705/11 and 6 others), 13 July 2021.

Please explain the position of ECHR about "Your" model of confiscation.

1. direct confiscation:	
2. confiscation of the value	
3. extended confiscation:	<p>The case Todorov and others v. Bulgaria unites seven appeals from different persons, all in connection with the application of the first confiscation law adopted in Bulgaria in 2005 - the Law on confiscation for the benefit of the state of property acquired through criminal activity (we note that this law has currently been replaced with LCCIAF and not valid).</p>

	<p>The judgment of the ECtHR is that in three of these cases, the national courts have thoroughly investigated the existence of such a connection between the crime and the seized property, therefore, in these appeals, it accepts that there is no violation of the human rights convention. In the remaining four cases, the national courts did not examine whether there was such a connection at all, but acted on the basis of the presumption that once a crime had been committed, the property was illegally acquired and should be confiscated - regardless of the fact that in some cases it was property, acquired long before the criminal activity, and in one of the cases the proceeds of crime were returned in full within the framework of the criminal proceedings, so there is no way that what was confiscated afterwards was the result of the same crime. In these four cases, the ECHR accepted that the confiscation did not meet the standards of proportionality of the imposed restrictive measures, which led to a violation of the right to property under Article 1 of Protocol No. 1 to the Convention.</p>
4. confiscation without conviction:	
5. confiscation against third parties:	<p>Decision of 13 October 2015 in the Unsped Paket Servisi SaN case. Ve TIC. A. S. v. Bulgaria (appeal No. 3503/2008), as well as the decision in case 34129/03 with parties "Microintellect" - OOD, v. Bulgaria of March 4, 2014 of the ECHR. The ECHR, as well as the national Constitutional Court, have rejected some elements of the "confiscation model", which allows a sentence to confiscate property of third parties, not directly related to the crime and not necessarily involved in the criminal prosecution.</p>

c) **Is there any CJEU decision concerning “Your” confiscation model?**

1. The decisions are concerning **Civil forfeiture** done according to the order in LCCIAF:

1.1. Decision CJEU on 19 of March 2020 on law suit C 234/18 - ... The subject of proceeding by request of LCCIAF, the national proceeding doesn't fall in the material scope of Directive 2014/42. ... After it's opening this proceeding is focused only on property, for which is claimed, it was acquired illegally and it is conduct no matter the eventually illegal proceeding against the alleged perpetrator of the crimes and so is from the end point of such a proceeding and especially from the possible sentence for the perpetrator. ... Under these circumstances it should be stated that the decision which the referring court should rule in the main proceedings shall not be issued in or after proceedings which relate to one or more offences. Therefore, it does not fall within the scope of the Framework decision 2005/212. ... In view of the above considerations,

the questions asked should be answered that the Framework Decision 2005/212 must be interpreted in the sense that it allows the legislation of a member state, under which national jurisdiction orders the confiscation of illegally acquired property after proceedings which are not dependent neither from establishing a crime, nor on a greater ground from convicting the alleged perpetrators of that crime.

1.2. Judgment of the court 28 October 2021 in case C-319/19 - Directive 2014/42 must be interpreted as not applying to legislation of a Member State which provides that confiscation of illegally obtained assets is to be ordered by a national court in the context of or following proceedings which do not relate to a finding of one or more criminal offences.

2. CJEU decision concerning the extended confiscation model:

2.1. Decision of CJEU form 14 of January 2021 on case C-393/19 - "Article 2(1) of Council Framework Decision 2005/212/JHA of 24 February 2005 in relation to Article 17(1) of the Charter of Fundamental Rights of the European Union must be interpreted in the sense that it does not allow national legislation that allows the confiscation of a means used to commit a crime of qualified smuggling when that means belongs to a bona fide third party. Article 4 of Framework Decision 2005/212 in conjunction with Article 47 of the Charter of Fundamental Rights must be interpreted in the sense that it does not allow a national legal framework which allows in criminal proceedings to confiscate property belonging to a person other than the perpetrator of the crime without that person having effective legal remedies".

2.2. Decision of CJEU (21 October 2021) in Joined Cases C-845/19 and C-863/19 - the requests have been made in the context of criminal proceedings against DR (C-845/19) and TS (C-863/19) (together, 'the persons concerned') concerning applications for the confiscation, following the conviction of the persons concerned of possession of narcotics for the purposes of their distribution, of sums of money which those persons claim belong to third parties. ... 1. Directive 2014/42/EU must be interpreted as meaning that the possession of narcotics for the purposes of their distribution comes within its scope, even though all the elements inherent in the commission of that offence are confined within a single Member State. 2. Directive 2014/42 must be interpreted as meaning that it not only provides for the confiscation of property constituting an economic benefit derived from the criminal offence in respect of which the perpetrator has been convicted, but also provides for the confiscation of property belonging to that perpetrator in respect of which the national court hearing the case is satisfied that it derives from other criminal conduct, in compliance with the safeguards provided for in Article 8(8) of that directive and on condition that the offence in respect of which its perpetrator has been convicted is among those listed in Article 5(2) of that directive and that that offence is liable to give rise, directly or indirectly, to economic benefit within the meaning of the same directive. 3. Article 8(1), (7) and (9) of Directive 2014/42, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation which allows for the confiscation, in favour of the State, of property which is claimed to belong to a person other than the perpetrator of the criminal offence, without that person having the right to appear as a party in the confiscation proceedings.

9) For each model of confiscation:

a) How was the Directive 2014/42/EU transposed in Your national legal order and how did this affect your national law?

1 direct confiscation:	Law for amendment and addition of CC – SG Nr. 7 from 2019 r.
2. confiscation of the value	Law for amendment and addition of CC – SG Nr. 7 from 2019 r.
3. extended confiscation:	
4. confiscation with no conviction:	Law for amendment and addition of CC – SG Nr. 7 from 2019 r.
5. confiscation against third sides:	Law for amendment and addition of CC – SG Nr. 7 from 2019 r.

b) Does the relevant confiscation procedure fall within the concept of “proceeding in criminal matters” which is provided for by the Regulation (EU) no. 1805/2018?

All types of confiscation procedures described above fall within the concept of “proceeding in criminal matters” which is provided for by the Regulation (EU) no. 1805/2018 with the exception of the **Civil forfeiture** under LCCIAF.

B) In your opinion are the safeguards required by the Regulation enough for the protection of the defendants’ rights? Is there any additional national legalization aimed at adjusting the national legal order to the provisions of Regulation or any relevant need thereof in order to make Your national confiscation models more compliant with the safeguards required by the Regulation? Are there any lessons that we should learn from Your national experience?

We are of the opinion that the safeguards required by the regulation are sufficient to protect the rights of the defendants. The national legislation has been adapted to the provisions of the Regulation, at the moment there is no need for a change.