

RECOVER

I RESEARCH QUESTIONNAIRE - II WORKPACKAGE

“ESTABLISHING THE SUBJECT MATTER OF THE REGULATION”:

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

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.

- 2) For each model of confiscation:
 - 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'.

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

 - 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.

 - d) **Can this form of confiscation be applied when the owner or the convicted is dead?**

 - 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?

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.)

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?**

4) For each model of confiscation:

- a) **which is the procedure for its application?** (the qualification/nature, the competent authority, the different steps, etc.)
- b) **which is the standard of the proof/is the reversal of the burden of the proof admitted?**
- c) **Which are the safeguards (limitations e.g. proportionality clauses, relevant legal remedies)?**
- d) **Is the trial *in absentia* possible in your legal system in order to apply the confiscation?**
- e) For the confiscation without conviction: **can this form of confiscation be applied also in case of acquittal?**

5) For each model of confiscation:

Does it comply with the principles of:
legality?
legal specificity of a statute?
non-retroactivity of the /more severe/statute?
the right to private property?
the proportionality?
the right to a fair trial?
the right to defence?
the presumption of innocence?
the *ne bis in idem* principle?
and other relevant rights – what sort of?

6) 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?**
- b) **Are there European Court of Human Rights cases in relation to “Your” model of confiscation?**

Please, explain the position of the ECHR about “Your” model of confiscation.

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

7) For each model of confiscation:

- a) How was the Directive 2014/42/EU transposed in Your national legal order and how did this affect national law?**
- b) Does the relevant confiscation procedure fall within the concept of “proceedings in criminal matters” which is provided for by the Regulation (EU) no. 1805/2018?**
- c) In Your opinion are the safeguards required by the Regulation enough for the protection of the defendants’rights? Is there any additional national legislation 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?**