



# Confiscation: The Norwegian regime

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- Norway is a member of the EEA, but not the EU
    - Is not bound by EU's confiscation regime, incl. the 2018-regulation
  - Perhaps Norway should join the EU regime?

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- The confiscation regime is mainly conviction based
    - Non-conviction based confiscation is not explicitly recognised
      - However, the government has promised in its manifest to introduce such rules
      - The Justice dept. has appointed a committee to explore the possibilities
    - No explicit unjust enrichment mechanisms
  - An important distinction is made between the confiscation of proceeds of crime and the forfeiture of instrumentalities
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- I. Confiscation of crime proceeds
    - The purpose is to restore status quo ante
    - 1) Regular criminal confiscation (s. 67 of the Penal Code)
      - Only assets connected to an offence for which there is a criminal conviction can be confiscated
      - Confiscation can be ordered based on the *actus reus* of the offence; no mens rea is necessary

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- 2) Extended criminal confiscation (s. 68 of the Penal Code)
    - Enables confiscation of assets which cannot be linked a particular offence
    - A trigger conviction is required:
      - For one offence, which carries a sentence of 6 years imprisonment, *or*
      - For two or more offences during the past 5 years, which carry a prison sentence of two years or more,
      - and the offences are of a nature likely to produce considerable economic gain
    - The burden of proof is reversed as regards the origin of the assets
    - All of the defendant's assets may potentially be confiscated
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- The Norwegian regime for confiscation proceeds of crime has a very wide scope as a consequence of three concurring aspects
    - 1) The wide scope of the offence of handling stolen goods (s. 332)
      - The predicate offence does not have to be proved
    - 2) The actus reus of the offence is necessary for confiscation
    - 3) Confiscation is also possible where the perpetrator is unknown (s. 74(3))
  - Although not recognised in law, the existing powers are not a far cry from both NCB confiscation and unexplained wealth mechanism.
  - Confiscation can be ordered both by the courts and the prosecutor

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- II. Forfeiture of instrumentalities (s. 69 of the Penal Code)
    - The purpose is mainly preventative
    - Property connected with an offence, for which there is a conviction, may be confiscated
      - E.g. instrumentalities, the object of an offence etc.
  - III. Preventive confiscation (s. 70 of the Penal Code)
    - Property may be confiscated if there is a considerable risk that it will be used to commit an offence
    - No conviction is required; the measure is forward-looking

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THANK YOU FOR YOUR ATTENTION!





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