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### III RESEARCH QUESTIONNAIRE - IV WORKPACKAGE

## Assessing the possibility to apply the REG to legal persons and enterprises

*December 2023 – March 2024*

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.).

#### Section I – The models of confiscation against legal persons: harmonisation

1. How was the **Directive 2014/42/EU transposed in Your national legal order** and how did this affect national law in relation to **legal persons**?

2. Which models of confiscation applicable against natural persons, **can affect indirectly the assets of legal persons? E.g. If the proceeds are got by the legal persons or when the confiscation involves the share in legal entity held by the convicted person.**

For forms of confiscation also applicable to natural persons, you may refer to the answers to the previous questionnaire, highlighting particular issues related to the application of confiscation to legal persons.

3. **Which models of confiscation can be applied directly against legal persons?** Please, provide us with **the related legislative provisions**. Does your country provide for **criminal liability of legal persons**?

4. **Which is the object of the confiscation and its meaning/interpretation?** (proceeds – gross or net of expenses -, products of the crime, instruments of the crime, etc.). Clarify if and in which case it is possible to confiscate the 'value equivalent'.

5. **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.

6. **Which are the elements to demonstrate in order to apply the freezing order against the legal persons?**

7. **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?**

8. **Which is the legal nature of the confiscation against legal persons?** (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.)

9. For each model of confiscation against legal persons:

○ **Which is the procedure for its application?** (the qualification/nature, the competent authority, the different steps, etc.)

○ **Which is the standard of the proof/is the reversal of the burden of the proof admitted?**

○ **Which are the safeguards (limitations e.g. proportionality clauses, relevant legal remedies)?**

○ **Is the trial in absentia possible in your legal system in order to apply the confiscation?**

○ For the confiscation without conviction: **can this form of confiscation be applied also in case of acquittal?**

10. For each model of confiscation against legal persons, **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?**

11. For each model of confiscation:

○ **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 against legal persons?**

○ **Is there any significant national case law of your Supreme Court on the application of freezing or confiscation measures against legal persons?**

12. **Are there European Court of Human Rights cases in relation to “Your” model of confiscation against legal persons?** Please, explain the position of the ECHR about “Your” model of confiscation against legal persons.

13- **Is there any CJEU decision concerning “Your” confiscation model against legal persons?**

14. **In Your system of law are there other efficient measures to prevent the or react against the involvement of corporations in crime (and in particular in organised crime), in other words**

alternatives to freezing and confiscation (e.g. in Italy judicial administration or judicial control) for targeting the illegal assets of legal persons?

15. Do you have **statistical data on the application of confiscation measures against legal persons at national level?** And could you compare them with those against natural persons?

## **SECTION II. The application of the Regulation 1805/2018 for the mutual recognition of freezing and confiscation orders against the legal persons.**

1. Can You give some **statistical data** about the application of the Regulation in case of freezing or confiscation orders in regard to legal persons (e.g.: how many cases, which models of confiscation)?

2. Which are the **problems** encountered in applying the Regulation (both in executing requests from foreign authorities in Your country and in obtaining the execution of Your requests abroad) in cases of freezing orders and confiscation orders related to legal persons? And which are the **grounds for refusal** applied in the praxis in this sector?

3. Do you have **any proposals of harmonization of MS legislation, also in consideration of the new proposal of a directive (May 2022) on freezing and confiscation orders involving legal persons?**

4. Could you give your inputs about **possible guidelines** on the practical implementation of the Regulation in relation to legal persons?

5. Do you have any further **reform proposals**, at a national or international level, in this sector?

6. Do you have any further **policy recommendations**, at a national or international level, in this sector?