

Insights from other MS States and extra-EU States

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Answers from Hungary

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1. Can You provide us with a short list of the forms of forfeiture and seizure (as well as the related legislative provisions) which fall under the scope of the Regulation and within the concept of proceeding in criminal matter (Art. 1 REG)?

Basic forms (types) of confiscation in Hungary

We only have criminal confiscation, which is regulated in the Criminal Code. We do not have civil forfeiture and NCBC is only available within the frame of a criminal proceedings (however we are capable of executing foreign *in rem* NCBC orders to some extent, as long as they are based on a specific crime).

- a) Confiscation of instrumentalities: means the confiscation of tools, objects, vehicles that are in strong relation with a criminal offence, such as the products of a crime, the tools, equipment and materials involved, or the object on which the offence was carried out. The legal concept of deprivation is rather based on their connection with criminality rather than their value.
- b) ‘Standard’ confiscation of assets: means the confiscation of traceable proceeds, generated by a criminal offence. Assets confiscated on this basis should be traceable back to the crime, which means that their criminal origin should be clear and proven – the connection can be direct (proceeds of the crime) or indirect (assets acquired in exchange of proceeds). E.g.: the offender of drug trafficking uses his proceeds to buy real estate property.
- c) Value-based confiscation (money-judgement) is applicable when it is proven that the defendant has generated proceeds by a criminal offence and it can be precisely established

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(in a certain sum), but the investigation could not find | locate the criminal assets of the offender.

- d) NCBC or non-conviction based confiscation is also available, yet is highly rare in everyday practice. NCBC theoretically covers the cases where there are technical difficulties to prosecute the offender (mental illness or disability, death, gone absconding) or evidential deficits to reach for a verdict (unidentified offender, lack of evidence to support a charge, etc).
- e) Extended confiscation: goes beyond the proceeds of crime by presuming that some additional assets of the offender had also been generated through criminality (thus shifting the burden of proof to the defendant to prove the legal source of property in question). These types of confiscation are available in addition to the standard one, supplementing it and broadening its scope. Two subtypes of extended confiscation are available in Hungary, which are similar in their legal concept yet slightly different in their conditions for application. One is based on the time the asset has been acquired by the offender (during the commission of the criminal offence or at the time he was participating in an OCG), while the other is focusing on the disproportion between the assets and the legal income of the defendant.
- f) Third party confiscation is also available, yet it is not really considered or regarded as a separate form of confiscation, but rather as part of the standard one, typically applied against a legal person or entity that acquired the proceeds (in fraud-money laundering cases and also in VAT fraud cases).
- g) Seizure and freezing: we have two different coercive measures in our laws for securing the proceeds of crime; seizure and freezing (called 'sequestration' in official translations). They are quite similar to each other, with a few differences. First, seized funds may be released in favour of someone else they had been secured from, in other words seizure is suitable for restoring the financial situation before the crime took place by giving the funds back to the victim (or somebody else). Freezing is not capable to re-allocate the funds, only to suspend

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the right of disposal. Secondly, seizure is therefore applied in cases, where the assets to be secured are still traceable back to the offence, while freezing rather used to cover the basis of a later value-based confiscation (thus the assets do not have a clear connection to the crime and might as well derive from a legitimate source).

Hungarian criminal law is in accordance with international and European regulations. Hungary meets the requirements of European legislation; the appropriate legal instruments are regulated by the Act XC of 2017 on Criminal Procedure Act (CPA) and the Act C of 2012 on the Criminal Code (CC).

Legal instrument for *seizure* in Hungary

Asset security and preservation measures (seizure and sequestration) are coercive measures to secure and take assets falling under confiscation of property (forfeiture) regulated in CPA.

Seizure (CPA)

Section 308 (1) *“Its aim is to secure mean of evidence or object of forfeiture (confiscation of property) for the effective conduct of the criminal procedure. Seizure restricts property right.*

(2) *The seizure shall be ordered, if it's subjects*

a) are means of evidence;

b) can be sequestrated under the CPA or confiscated as property according to the law.

(3) *Seizure may be ordered for movable things, scriptural money, electronic money or electronic data.”*

Section 309 (1) *“Seizure may be ordered by the court, the public prosecutor's office or the investigation authority.”*

In notary and lawyer offices only by the court; non-delivered consignments and press materials during investigation by the prosecutor's office, during judicial phase by the court.

It limits proprietary rights.

The object of seizure can be

1. goods,
2. scriptural money,
3. electronic money or

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4. electronic data.

At the same time, Section 310 excludes certain things from seizability (e.g. information between the defendant and his defence counsel, between the defendant and the person entitled to refuse testimony, notes of the defence counsel, certain guarded objects of the person entitled to refuse testimony).

According to Section 311 seizure can be carried out in the following ways:

- a) taking possession;
- b) ensuring safekeeping by other means;
- c) leaving the thing in the possession of the person concerned, or
- d) seizure of electronic data.

Seizure may be enforced by leaving the thing in the possession of the person concerned or by ensuring safekeeping by other means if the thing concerned cannot be taken into possession, the proprietor's (operator's) interest is intertwined with its use, or other important reasons justify this.

Sequestration

Section 324 (1) *“Sequestration means the suspension of the right of disposal over sequestered assets for the purpose of securing the forfeiture of assets or a civil claim.”*

Sequestration may be ordered by the court, the public prosecutor's office or the investigation authority.

(2) *“The object of sequestration can be:*

- a) goods;*
- b) scriptural or electronic money;*
- c) financial instrument;*
- d) property rights or*
- e) property claim (collectively: assets).”*

(3) Sequestration (for the purpose of confiscation of property or civil claim, in the latter case motioned by private party) serves the limitation of disposal right over the sequestered object, if it can be reasonably assumed that the execution of the confiscation of property or the satisfaction of the civil claim may be thwarted.

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(4) *“If forfeiture of real estate needs to be ordered, its sequestration shall be ordered.”*

Section 326 (1) *“Sequestration may also include the assets which are not subject to sequestration, however the sequestration of these assets serves their custody and their separation from the assets deriving from the crime is time-consuming.”*

A sequestration ordered under paragraph (1) may last until the separation of assets, but no longer than three months.

Section 327 (1) *“Sequestration can be ordered by any authority: the court, the public prosecutor’s office and the investigation authority.”*

(2) *The court shall order sequestration before the indictment if*

- a) the aim is to ensure a civil claim;*
- b) the asset is not a subject to sequestration, however the sequestration of these assets serves their custody and their separation from the assets deriving from crime is time-consuming;*
- c) the value of the sequestered assets exceeds one hundred million forints.*

Execution of the sequestration

Section 328 (1) *“If there is a publicly certified register in which sequestered assets are to be registered, the execution of sequestration shall be carried out by the registration of the sequestration. If there is no public register in which sequestered asset are registered, an economic operator shall be appointed that is able to exercise the suspense of the right of disposal over the asset and the implementation of the sequestration.”*

Legal instrument for *forfeiture* in Hungary

Sanctions against property (confiscation of property as a measure) are regulated by the *Criminal Code*. The *Criminal Code* regulates the system of penalties and measures, including the *confiscation of property* as a sanction. This measure may be ordered independently or in addition to a penalty or measure. The aim of forfeiture is to recover the assets deriving from crimes.

To recover the assets deriving from crime, shall be ordered the measures of confiscation of property as legal consequence by the court. The aim of this measure is the deprivation of the

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financial benefit and enrichment resulting from the offence. Confiscation of property may be ordered independently or in addition to a penalty or measure. Measures may also be ordered in case of a crime or a punishable criminal act; culpability is not a condition.

According to Section 74 of the Criminal Code

The objects of the confiscation of property can be

- the financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with a criminal act,
- any financial gain or advantage that was used to replace the gain or advantage obtained by the offender or
- any property that was supplied or intended to be used to finance the means used for the commission of a crime, the conditions required or the facilitation of the commission of a crime of; and
- any property embodying the subject of financial gain given or promised.
- Any financial gain or advantage resulting from criminal activities obtained by the offender, also if it served the enrichment of another person, shall be confiscated. If such gain or advantage was obtained by an economic operator, this economic operator shall be subject to confiscation of property.

Section 75 (1) *“Confiscation of property shall be ordered for a specific sum*

- a) if the property is no longer accessible;*
- b) if the property to be seized subject to confiscation under Subsection (1) of Section 74 cannot be separated from other assets, or it would impose unreasonable difficulties;*
- c) in connection with assets obtained in good faith for consideration.*

(2) *Confiscation of property shall be ordered, even if*

- a) the perpetrator cannot be prosecuted for reason of minority or insanity, or due to other grounds for exemption from criminal responsibility;*
- b) the perpetrator had been given a warning;*
- c) it cannot be executed during the period of special protection specified by the Act on the Special Protection of Borrowed Cultural Goods.*

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(3) Seized assets shall become the property of the State unless provided for by law to the contrary.”

The rules of the confiscation of property contain two special cases (extended confiscation)

According to Section 74/A (1) unless proven otherwise, all the assets have to be regarded as assets subject to confiscation of property and confiscation of property shall be ordered for the property acquired by the offender during his participation in a criminal organisation, the placing on the market and trafficking of drugs, and the commission of human trafficking committed in a commercial or criminal association.

According to Section 74/A (2) regulates the “extended confiscation of property” to comply with the Directive 2014/42/EU of the European Parliament and of the Council.

Unless proven otherwise, all the assets have to be regarded as assets subject to confiscation of property and confiscation of property shall also be ordered on property acquired by the offender from statutory offences within five years prior to the initiation of criminal proceedings from offences defined by Criminal Code, if the property or the offender’s lifestyle is particularly disproportionate to his justifiable income or personal circumstances.

The obvious disproportion between the offender’s financial situation, personal circumstances, and verifiable income has to be proven by the investigation authority or the prosecutor; while the burden of proof regarding other circumstances is reversed in the case of extended confiscation.

The function of extended confiscation as defined in Directive 2014/42/EU in order to effectively fight against crime is to allow the perpetrator’s additional property/asset to be confiscated under certain conditions in addition to property related to the specific criminal offence if the offender is found guilty. Accordingly, property acquired by the perpetrator of a high latency offence listed in Section 74/A(2) of the Criminal Code in the five years preceding the initiation of criminal proceedings and derived from a criminal offence may also be subject to confiscation. The time limit for the acquisition of property was set by the legislator in accordance with the minimum limitation period.

The subject of confiscation may include assets acquired by the perpetrator during the specified period, which could not have been legally obtained based on their legitimate (verified) income. The

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investigative authority and the prosecutor must prove the significant discrepancy between the perpetrator’s financial situation, personal circumstances, and legitimate (verified) income. Otherwise, the burden of proof is reversed in cases of extended confiscation.

The list of offences in Section 74/A(2) of the Criminal Code is primarily contained in the Act in accordance with Articles 3 and 5 of Directive 2014/42/EU. On the one hand, the offences listed here correspond to the offences regulated by the EU legal acts contained in the Directive. In addition, when defining the relevant offences, the legislator has paid particular attention to conduct that could generate economic benefits, which could potentially be subject to confiscation of assets. This aspect is reflected in the Directive as a condition for extended confiscation. Another part of the crimes on the list was added because of their severity.

Pursuant to Directive 2014/42/EU (Article 10 thereof) arrangements for the proper management of property secured by seizure have been introduced (for purpose of subsequent confiscation) to ensure compliance with it, so that its value is not reduced by more than the natural rate. (Act XC of 2017, Section 333–334).

2. Can You give some statistical data about the application of the Regulation (e.g.: how many cases, which models of confiscation)?

	Received freezing order			Issued freezing order			
	Non-recognition	Recognition and execution		Non-recognition	Recognition		
Total	6	44 (no data on recognition: 11)		1	18 (no data on recognition: 1)		
		Successful	In part		Unsuccessful	Successful	In part
		15	7	11	13	3	1

Data about the application of the Regulation based on an empirical study

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The application of the Regulation was researched by examining current cases, where possible, with execution: in which freezing and confiscation orders were received by Hungarian authorities or issued by Hungarian authorities between 2021 and 2023.

The experience of the empirical study is presented on the basis of a more detailed analysis of the 40 cases of freezing orders available for research purposes.

States Parties to the proceedings

Received freezing order in Hungary	Issued freezing order by Hungary
Issuing State (number of FO):	Executing State (number of FO):
France (17)	Croatia (1)
Germany (6)	Germany (1)
Italy (5)	Portugal (1)
Austria (1)	Spain (1)
Croatia (1)	
Czech Republic (1)	
Lithuania (1)	
Romania (1)	
Slovakia (1)	
Slovenia (1)	
Spain (1)	
<i>Total: 36</i>	<i>Total: 4</i>

Urgency

24 of 40 cases requested urgency of execution.

Affected person(s)

Affected persons	Frequency
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Legal persons	25
Natural persons	3
Both (legal persons and natural persons)	3
No data	9
<i>Total</i>	<i>40</i>

Information on property to which the order relates

Property	Frequency
An amount of money	37
Specific items of property (movable, immovable)	2
No data	1
<i>Total</i>	<i>40</i>

Criminal offence in relation to which the freezing order is issued

Criminal offences	Frequency
Fraud	18
Fraud and money laundering	14
Money laundering	2
Breach of trust in economic transactions	1
Illicit trafficking in narcotic drugs	1
<i>Total</i>	<i>40</i>

High rates of involvement in criminal organisations.

The method of committing fraud is often BEC (Business Email Compromise) or investment fraud.

EUROJUST involvement

EUROJUST was involved in 11 of the 40 cases.

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3. 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)? And which are the grounds for refusal applied in the praxis?

Main problems identified in practice include

- a) Victim restitution: Hungary is applying Reg. 1805/2018 exclusively for confiscation purposes, as it is unsuitable for victim compensation in accordance with our national regime. This problem rises from two different legal aspects present in our national law. First is that victim compensation and confiscation exclude each other in the Hungarian Criminal Code. We compensate victims in the first place, and are only able to confiscate if there was either no victim (drug crimes, corruption), or the proceeds are exceeding the civil claims of the injured parties (unlikely case). Some other countries confiscate all the assets, and retribute victims in the second step, on the debit of the confiscated funds. Secondly, the assets taken away from the victim are regarded as the subject of the criminal offence, and are therefore treated as evidence. Securing evidence however falls in the scope of the EIO and not the FO, while repatriating the proceeds (transferring them back to the victim's country) is possible under the rules of 'restitution' (EU MLA Convention Art. 8; ETS 182 Art. 12 for CoE countries). The same goes for confiscation judgments: once the assets are confiscated, they will become the property of the state, and can only be redistributed to other countries through asset sharing agreements.
- b) Pressure of time: proceeds are still moving faster than the available EU judicial tool, even it provides a unified and simplified way to secure the funds. One case example clearly showed, that FIU communication and suspending powers are still much faster and more capable to tackle the money flow: in the specific case the monies were already frozen on the account thanks to FIU intervention, by the time the judicial request arrived. Best practice of course

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is to use FIU | ARO | informal channels (CARIN, ARIN) combined and simultaneously with FO, but this also doubles or triples the capacity needs to freeze the funds.

- c) Language problems: we prefer to receive the certificate in Hungarian of course, but also accommodate FOs in English, German or French. Difficulties are coming from the fact that the FOs are submitted directly to the local level judicial units where the assets are located and they might have problems understanding a French or German certificate (English is commonly used). Using translators will result in losing time, and it also has to be mentioned that – according to our domestic provisions – prosecutors themselves cannot act as translators in their own cases. The central authority (Prosecutor General’s Office, PGO) has of course capacity and staff to deal with urgent translations on a wide range, but it will again result in time loss, as it will have to forward the FO to the competent local level once it has been translated. Use of other languages might cause problems as well, as it turned out in a case, where the Spanish delegated prosecutor of the EPPO submitted FOs to be executed in the frame of a pre-planned police raid involving multiple countries. Most fortunately, translations arrived in the last minutes before the action, otherwise even the Metropolitan Chief Prosecutor’s Office would have had problems with the Spanish certificates.
- d) Issues affecting the effectiveness of cross-border cooperation:
- In some cases, problems have arisen concerning cooperation, as certain Member States are less flexible in responding to requests; cooperation with national authorities is more challenging compared to cooperation under the European Investigation Order (EIO). In these cases, Eurojust often plays a successful role as a facilitator and mediator.
 - After enforcement, it emerged in some cases (requests from foreign authorities) that the foreign authority has not cooperated after the freezing, despite regular contacts by the home authority on the need to maintain the freezing, the pending case, the final decision on the frozen assets (e.g. in a particular drug trafficking case, the freezing was fast-tracked, but it was only much later, during a personal meeting, that the prosecution was informed

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that a procedure similar to a retrial was ongoing and that until this was completed, they would in any case request the maintenance of the coercive measure).

- e) Problems arise where there is no decision from the requesting Member State or where there is a decision from a Member State but it is not indicated in the decision what appeal is available against the decision (usually an email consultation will be successful in such cases).
- f) In some cases, the problem manifests in the difficulty and time required to obtain accurate information about what the authority intends to seize abroad. Multiple mutual legal assistance requests may be needed to determine whether the bank account is active, whether it has funds, in whose name it is, and whether it is indeed linked to the suspect. A similar issue arises with requests from other countries (for example, the domestic authority is approached under the EIO framework, and during the search, several bundles of cash are found, but they cannot be seized under the EIO. A freezing certificate is required, yet the cash must be held and secured until the certificate arrives).
- g) There has been only some cases of refusal to comply with requests from foreign authorities.

4. Within your national legal system, is there any need to reform the confiscation models to comply with the guarantees required by the Reg. 1805/2018?

As explained under Q3a) the main issue is that we cannot use the FOs | foreign confiscation judgements under the Reg. for victim compensation. This problem showed itself quite well in a case, where we were able to freeze the assets stolen by a fraud from another MS's victim, and later executed the confiscation order issued by the victim's country. The obvious problem was that we implemented the confiscation order 'as it is' in a 'word-by-word' approach, which resulted in confiscating the victim's money, which became the property of the Hungarian state. Since we are unable to carry out compensation to victims once confiscation has taken place, the current situation can only be solved by entering into an asset sharing agreement, which will have to be done on

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Ministerial level. Again, the best solution would have been using the legal instrument of ‘restitution’ instead of executing confiscation orders in the legal frame of the Reg.

This problem also arose in further cases from another perspective: in one of these cases the Hungarian authorities initiated proceedings because an unknown person transferred various amounts from the Hungarian victim’s account in a Hungarian financial institution to an account in a bank in another Member State. Some of the amounts transferred were still in the beneficiary account. The Hungarian authority – in accordance with the possibilities of the Hungarian legislation – would have first requested a European Investigation Order to seize the money and return it to the victim, but the foreign authority informed them that this would require the issuance of an FO. Accordingly, the Hungarian prosecution issued an FO and requested restitution to the victim under Article 29.

There was also a solution where the Hungarian district prosecutor's office contacted the Hungarian section of EUROJUST to obtain information from the foreign member state's authority regarding the intended use of the amount to be confiscated based on the certificate of confiscation order.

Since confiscation has different implications in each member state in terms of the outcome, if the requesting authority’s aim is to return the seized amount to the victim, the district prosecutor’s office may propose that the seizure be terminated and return it to the victim instead of confiscation.

5. Do you believe the guarantees provided for in the Reg. 1805/2018 to be sufficient? If not, why?

We do not see any issues regarding the guarantees, our specific problems are coming from the differences of our national system in terms of victim compensation.

6. Could you give your inputs about possible guidelines on the practical implementation of the Regulation?

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To this date, three guidelines were issued in the prosecution service regarding the implementation of the Reg., two on the top level (PGO) and one is on county level, by the Metropolitan Chief Prosecutor's Office. The ones issued by the PGO are both underlining the problems of victim compensation, and guiding lower units to use the tool of 'restitution' in victim-crime cases instead of the Reg., to avoid the undesirable result of confiscating the victim's funds. The Metropolitan guideline gives a brief yet all-round overview on the implementation process and the duties of the prosecutorial unit in course of execution. It also gives a good explanation to local level offices, on which cases it is reasonable to leave the transposition of the certificate (issuing the domestic order of seizure or freezing) to the investigating authority.

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

Our national laws were mostly in line with the Directive 2014/42/EU already before the deadline of implementation; however, some minor amendments have been made in order to completely comply with the new set of rules. We already had freezing, third party confiscation, post-conviction asset tracing (financial investigation after the final judgement) and safeguards as well as extended confiscation, which operated on slightly different legal bases. For an all-inclusive transposition, another type of extended confiscation has been introduced in the Criminal Code and some general provisions on asset management were added into the Act on Criminal Proceedings. Both amendments took place in October 2016, in the frame of Act 103 of 2016. The most important result of transposition was the new figure of extended confiscation, which was based on the disproportion of actual assets of the offender and his legal revenues (please see it in detail in answer for Q1, under Section 74/A (2) of the Criminal Code of Hungary).

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8. Do you have any proposals of harmonisation of MS legislation, also in consideration of the new proposal of a directive (May 2022) on freezing and confiscation orders?

- a) It would be practical if freezing orders could also be sent through an electronic system, similar to the European Investigation Order (EIO) and the recently introduced e-evidence platform.
- b) The use of modern (possibly AI-based) translation programs as well as the wider use of the English language as it seems to be the most commonly used one in international cooperation.
- c) A channel similar to the existing platform used for cooperation within the framework of Joint Investigation Teams (JIT), such as a hotline, could facilitate quick and flexible communication in problematic cases using the advancements of modern technology; furthermore see Q3b).
- d) European regulations have “split” the seizure of evidence (EIO) and the seizure of assets for asset recovery purposes (freezing order); based on practical experience, this duality is not necessarily advantageous. It is worth considering the idea of “reconsolidating” the EIO and freezing order into a single channel (also regarding guarantees and deadlines). In some countries – like Hungary – the current duality leads to difficulties in practice, especially in victim crimes, where the subject of the offence is also regarded as an exhibit (*corpus delicti*) and treated as means of evidence. The previous freezing regime, as introduced by FWD 577/2003/JHA was also applicable for evidence which was far more comfortable.

9. Do you have any further reform proposals, at a national or international level?

- a) Extended confiscation’s limited scope: extended confiscation is targeting the assets of the offender, and is therefore inefficient in cases where the assets are registered under the name of relatives, co-actors or other trusted persons or strawman (together might be referred to as nominees – based on the FATF vocabulary). We should find a way to combine the rules of extended and third party confiscation, in cases where it is clear that the assets of nominees were

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actually purchased by the defendant. It would be useful to have a guiding regulation on EU level for such cases, saying that MSs might consider to treat third-party assets as the assets of the offender, if there is substantial evidence showing that the property has been acquired by the offender and is registered under straw-ownership in order to avoid extended confiscation. A possible solution appears in the draft additional protocol of the Warsaw Convention, which tries to solve the same issue from a different angle – by creating the criminal responsibility of the beneficiaries and recipients of assets ('closely associated persons') which would obviously not work in the case of minors, elder people and strawmen with mental disabilities or errors).

- b) Merge of property in victim crime cases: money-mule cases are still on the rise in Hungary and most possibly they still represent a formidable threat within the EU as well. The predicates in these laundering schemes are most frequently fraud or IT fraud crimes, which cause financial harm or damage to the victims. Even though victim restitution is regarded as a high priority task in these cases, compensation gets real difficult where the seized funds are not sufficient to cover every victim's claim. The real problem occurs when the monies of multiple victims get intermingled or mixed in a way they cannot be separated from each other anymore, and the funds are far from enough to compensate all victims. National law does not cover this problem, and nor does it provide a legal basis or guiding provisions on how to distribute the funds among the victims. It would be useful to see a basic provision on EU level which regulates the procedure to be followed in these scenarios.
- c) Joint beneficiaries of the crime: it is the same problem as the previous one, but on the offenders' side. If two or more defendants obtain the proceeds of crime together, and their benefit cannot be established exactly, it is difficult to define the extent of confiscation per person. In our national criminal law, no joint liability or jointly ordered confiscation is possible for the obtained proceeds, and estimation is also out of the question. Lacking a proper legal basis, practice is dividing the proceeds in equal parts between offenders and courts order confiscation accordingly.

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- d) Splitting asset-sharing competence based on the value of assets: on the domestic level, asset sharing treaties should be concluded by a Minister with competence, therefore the procedure might be lengthy and cumbersome. It would be advisable to keep the top level for cases with significant value, yet drop the competence of concluding asset sharing treaties to local level (local courts) in petty crime cases and crimes of less significant value.
- e) Unexplained wealth as a criminal offence: we are well aware that the new asset recovery Directive (2024/1260) does introduce a possibility for confiscating unexplained wealth under Article 16, but we are sceptical if it would live up to the expectations of the judicial practice. The core idea of unexplained wealth should be – as the name suggests – that the exact source of the property is unknown, and in the meantime, it cannot be explained by the legitimate financial sources of the offender. The new Directive however is notably restricting it by saying it should derive from a ‘criminal conduct’ in a ‘frame of a criminal organisation’. These two elements are setting pre-conditions for application extremely difficult to meet, while narrowing down the scope of the instrument, against its core idea (if the assets are deriving from crimes committed in an OCG, the source of the wealth is no longer unexplained). Unexplained wealth should rather be put into substantive criminal law as an offence that could work as a double-edged sword: serving as the basis of confiscation on the one hand, and operating a generic predicate for laundering on the other.

10. Do you have any further policy recommendations, at a national or international level?

11. Which models of confiscation can be applied against legal persons and which are their constituent elements?

- Could you give your inputs about possible guidelines on the implementation of the Regulation against legal persons?
- Do you have any reform proposals for your country in this regard?

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In Hungary, confiscation of property is regulated as a general measure by the Criminal Code, while criminal measures applicable to legal entities are governed by a separate law, Act CIV of 2001. There is currently no significant practice related to the regulation as it has not been implemented yet into the domestic laws.

Legal persons might be subject to all models of confiscations, except for extended ones. The standard confiscation, the value-based one, is available against legal entities, just like NCBC and third party confiscation, rules are no different from the ones applicable for the offender. To be precise, confiscation rules do not make any difference between offenders and others; if anyone obtains the proceeds of crime (including companies, trusts and other entities), confiscating the funds is compulsory and is carried out the same way. In addition to the general forms of confiscation, the court may impose a fine on the legal person involved in the crime, and based on this possibility freezing may be ordered in course of the investigation to secure the financial basis for the fine.

To summarise, confiscation of property is carried out according to the general rules. In the case of confiscation there is no need to examine the liability of the legal entity, whereas it is necessary for the fine to be regulated by the separate law. (Furthermore, see Q1f). Hence the confiscation is based on the same rules, we do not see any additional need for reforms.