

Insights from other MS States and extra-EU States

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Answers from Latvia

Maija Hedvalla (Prosecutor General's Office).

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)?**

In the Latvian criminal procedure, there are the following types of forfeiture and seizure (hereinafter – I will refer to both terms as confiscation):

- I. Confiscation as a punishment
 - 1) Confiscation as an additional punishment for a crime (Section 36 of the Criminal Law)
 - 2) Confiscation as a coercive measure applied to a legal person (Section 70.5 of the Criminal Law)
- II. Special confiscation
 - 1) Confiscation of a criminally acquired property (Section 70.11 of the Criminal Law)
 - a) confiscation to the state budget
 - b) restitution to a victim
 - 2) Confiscation of an object of criminal offence (Section 70.12 of the Criminal Law)
 - 3) Confiscation of the property connected with a criminal offence (Section 70.13 of the Criminal Law)

Relevant Section from the Criminal Law

Insights from other MS States and extra-EU States

Section 36. Forms of Punishment

(1) One of the following basic punishments may be adjudged against a person who has committed a criminal offence:

- 1) [1 December 2011];
- 2) deprivation of liberty;
- 3) [13 December 2012];
- 4) [13 December 2012];
 - 4.1) probationary supervision;
- 5) community service;
- 6) a fine.

(2) In addition to a basic punishment, the following additional punishments may be adjudged against a convicted person:

- 1) confiscation of property;
- 2) deportation from the Republic of Latvia;
- 3) probationary supervision;
- 4) community service;
- 5) a fine;
- 6) restriction of rights.

(3) For a person who has committed a criminal violation, a less serious crime, or a serious crime for which a punishment of deprivation of liberty for a period of up to five years is provided for, a prosecutor in drawing up a penal order may

Insights from other MS States and extra-EU States

specify probationary supervision, community service, or fine, and also additional punishments - community service, fine, or restriction of rights.

(4) The procedures for serving a punishment shall be determined in accordance with law.

[12 February 2004; 28 September 2005; 8 December 2005; 21 May 2009; 8 July 2011; 1 December 2011; 13 December 2012; 10 March 2016; 17 December 2020]

Section 70.5 Confiscation of Property

(1) Confiscation of property is the compulsory alienation of the property owned by a legal person to the State ownership without compensation.

(2) A court, when determining the confiscation of property, shall specifically indicate which property is to be confiscated.

(3) [14 March 2013]

(4) Property owned by a legal person which has been transferred to another person, may also be confiscated.

[13 December 2012; 14 March 2013]

Section 70.11 Confiscation of a Criminally Acquired Property

(1) Criminally acquired property is any economic benefit which has come into the ownership or possession of a person as a direct or indirect result of committing a criminal offence.

(1.1) Indirectly criminally acquired property is any economic benefit which has come into the ownership or possession of a person as a result of further use of directly criminally acquired property, including as a result of reinvestment or transformation, or resources which the person has acquired from the sale of such property, and also the gained fruits and profit.

Insights from other MS States and extra-EU States

(2) If the value of the property is not proportionate to the legitimate income of the person and the person does not prove that the property is acquired in a legitimate way, as a criminally acquired property can also be recognised the property that belongs to a person:

1) who has committed a crime which, in its nature, is focused on the gaining of property or other kind of benefit regardless of whether any property or other kind of benefit has been gained as a result of the crime;

2) who is a member of an organised group;

3) who has committed a crime related to terrorism.

(3) A property which is at the disposal of such person who maintains permanent family, economic or other kind of property relationships with the person referred to in Paragraph two of this Section can also be recognised as a criminally acquired property, if the value of the property is not proportionate to the legitimate income of the person and the person does not prove that the property is acquired in a legitimate way.

(4) Criminally acquired property shall be confiscated if it needs not be returned to the owner or legal possessor.

[22 June 2017; 11 June 2020; 7 April 2022]

Section 70.12 Confiscation of an Object of a Criminal Offence

(1) Object of a criminal offence is the instrumentalities or means which were foreseen or used for the commission of a criminal offence.

(2) The objects of a criminal offence shall be confiscated.

[22 June 2017]

Section 70.13 Confiscation of the Property Connected with a Criminal Offence

Insights from other MS States and extra-EU States

- (1) Property connected with a criminal offence are objects whose circulation is prohibited or whose origin or ownership in the respective criminal case has not been established, or such property of a perpetrator of a criminal offence which should not be left in the ownership of the person due to the committed criminal offence.
- (2) The property connected with a criminal offence shall be confiscated.
- (3) Animals might be confiscated if they should not be left in the ownership of the perpetrator of the criminal offence due to the committed criminal offence.
- (4) A vehicle in the ownership of a person who has committed a criminal offence may be subject to confiscation if a criminal offence against traffic safety has been committed.
- (5) A vehicle which is in the ownership of a person who has committed a criminal offence and which has been used by such person for committing the criminal offence provided for in Section 262 or 262.1 of this Law shall be subject to confiscation.

[22 June 2017; 27 October 2022]

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

This data is not in my possession.

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?**

In Latvia, it is the Ministry of Justice that is the competent authority for the confiscation matters and therefore that would be in the best position to reply to this question regarding confiscation.

Regarding the order for freezing, the following can be named among the common issues:

Insights from other MS States and extra-EU States

- 1) insufficient information regarding the property that does not allow to identify it;
- 2) discrepancies between the original text and translation (mistakes mostly related to the misspelling of the names, banks accounts, etc).

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?

In Latvia, it is the Ministry of Justice that is the competent authority for the confiscation matters and therefore it would be in the best position to reply to this question.

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

In Latvia, it is the Ministry of Justice that is the competent authority for the confiscation matters and therefore would be in the best position to reply to this question.

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

N/a.

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

It was transposed in 2017, amending various legal acts, but mostly Criminal Law and Criminal Procedure Law. For example, the concept of special confiscation was introduced. Special confiscation of property is the compulsory alienation of a criminally acquired property or object of a criminal offence, or the property connected to a criminal offence to the State ownership without compensation. The special confiscation of property is not a criminal punishment.

8. 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?

Insights from other MS States and extra-EU States

The following issued could be taken into consideration:

- 1) the definition of a victim of a crime varies from country to country. For example, in Latvia a victim in criminal proceedings may be a natural person or legal person to whom harm was caused by a criminal offence, that is, a moral injury, physical suffering, or a material loss (Article 95 of the Criminal Law). In other countries the scope of those who can be a victim is wider. For example, in some countries the insurance companies can be victims with the right to restitution once they have compensated damage to the direct victim of a crime. This can lead to the practical problems when it comes to cross-border confiscation with a purpose of restitution;
- 2) the victim's claim for the moral damages. In many countries this is a matter of the civil proceedings therefore it falls out of the scope of the Regulation 2018/1805;
- 3) the situation with the parallel confiscations with the different purposes (confiscation into the state budget and restitution to the victim);
- 4) the role and competence of the authorities dealing with the assets that are not judicial authorities.

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

N/a.

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

This question falls into the competence of the Ministry of Justice.

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

Please see Section 70.5 above in the first question.



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Insights from other MS States and extra-EU States