

Insights from other MS States and extra-EU States**RECOVER - GA 101091375***Answers from Sweden***Gustaf Almkvist (Uppsala universitet)****12.8 Brief report of the interview of: Ass. Prof. Dr. Gustaf Almkvist – University of Uppsala – Swedish National Expert – Interview of 08 November 2023**

Prof. Almkvist started giving an overview of Swedish legislation on confiscation, in particular referencing Ch. 36 CC, providing for the confiscation of proceeds, instrumentalities of the crime, tools used to commit the crime, and products of the crime. He pointed out that for applying such criminal confiscation the beyond reasonable doubt standard must be met by the prosecution. He then added that extended confiscation was introduced in Sweden in 2008, requiring a conviction but not that the proceeds can be related to the offense to which conviction applies. Extended confiscation, he highlighted, can be applied only if the minimum sentence for the crime is 4 years of incarceration or, alternatively, for certain named offenses (e.g. theft, minor possession of drugs). The standard of proof of the illicit origin of wealth is “clearly more probable”, so it is lower than a criminal standard. Confiscation under Swedish Criminal Law is typically qualified as a special legal consequence of the crime aimed at serving the purpose of general prevention.

Professor Almkvist stressed that Sweden is going to introduce a new form of unexplained wealth confiscation in 2024, the reform process is currently ongoing. The application of this UWC is based on the same concept as extended confiscation (criminal conduct that

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does not have to be specified), but without the requirement for a criminal conviction (but criminal procedure is applied, with full safeguards). The new UWC regime will thus be applicable when the inability of the suspect to maintain a certain amount of property/wealth is demonstrated (i.e. it cannot be justified by the suspect in relation to his/her lawful income). The professor pointed out that the standard of proof in this case is lower than BARD, akin to the one provided by art. 16 of the Proposal for a new directive (*“When determining whether the frozen property is derived from criminal offenses, account shall be taken of all the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is substantially disproportionate to the lawful income of the owner of the property”*). While he conceded that UWC is a very efficient and strong tool in the fight against organized and economic crime, he did not highlight any problem of compliance with the presumption of innocence, as the burden of proof is still on the prosecution and presumptions are relative and rebuttable by the suspect.

Professor Almkvist then argued that, in his opinion, all Swedish models of confiscation, which are applied in criminal proceedings, likely fall within the scope of application of the REG., under the broad EU law notion of proceedings in criminal matters. The professor was not aware of data on problems and grounds of refusal in the application of the REG. He then pointed to the issue of third parties' rights and possible violations of ne bis in idem principle, answering the question on suggested changes of national legislation to satisfy the safeguards provided by the REG. Professor Almkvist then said that only minor changes were adopted to transpose the Directive 2014/42/EU in the Swedish legal order,

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which was already considered compliant with EU law (just a few changes, it lowered the minimum sentence from 6 years to 4 years).

In relation to the proposals of harmonization of MS legislation, also in consideration of the new proposal of a directive (May 2022), he expressed interest in seeing how MS will implement unexplained wealth confiscation (art. 16 Proposal). He then specified that in Swedish law there is no distinct notion of corporate criminal liability. Special legal consequences such as confiscation can be applied to corporations, but are accessory to offenses committed by physical persons (for example a bribed CEO of a company). In this regard, he pointed out that if a crime which generates wealth is committed within a company, but it is not possible to identify the culpable physical person, confiscation can still be applied against the corporation under Ch. 36, s. 1 CC. As for the value confiscation, the Professor said that it is applicable for both direct and extended confiscation (even if generally unnecessary and therefore rarely applied in the latter case).

He later stressed that confiscation can be applied also in the case of death of the affected person, as long as it can be proven within the confiscation proceedings against a third party that the object of confiscation relates to a specific criminal offense (e.g. confiscation of inherited assets). Extended confiscation always requires a criminal conviction.

Each form of confiscation has proportionality limits and cannot be manifestly unreasonable. There have been some cases where the confiscation was found by Courts to be disproportionate as applied to negligent offenses. Professor Almkvist concluded by stressing that the most critical issue in Sweden relating to fundamental rights is the compatibility of extended confiscation with the ne bis in idem principle (the same property

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considered twice for confiscation, after acquittal from one offense and subsequent conviction of another offense), and that it is possible that the upcoming introduction of UWC will raise new problems in this regard.