

## Insights from other MS States and extra-EU States

*RECOVER – GA 101091375**Answers from Finland*

Kai Lakio (Detective Chief Inspector).

Answers to the questionnaire on “Asset Recovery Office’s activities and management of frozen and confiscated assets”.

1. In accordance with Section 4 of the Act on the Application of the Regulation on the Mutual Recognition of Freezing and Confiscation Decisions in the European Union (895/2020), the competent authorities in Finland for making a freezing decision are the official prosecutor and the court. In practice, freezing is mostly the responsibility of the prosecutor in Finland, and the prosecutor's office also receives freezing requests that arrive in Finland in accordance with the regulation<sup>1</sup>.

In Finland, the Asset Recovery Office has been established in the Central Criminal Police (= National Bureau of Investigation), and in Finland it serves law enforcement authorities, i.e. the police, Customs and the Border Guard. When, in accordance with the prevailing practice, assets are found in tracing the proceeds of crime, the ARO office informs the domestic and foreign authorities about the international instrument suitable for securing the assets. If necessary, the ARO office directs freezing requests to the competent authority, but in practice there is rarely a need for this. The reason is that the competent authorities of the Member States know Article 24 of the Freezing Regulation (EU) 2018/1805 "determination of the competent authorities", i.e. the Member States have notified the Commission of the competent authorities and the information is available to the Member States and the European Judicial Network.

2. The ARO office does not get to know all outgoing or incoming freezing cases according to the EU freezing regulation, and it does not need them. In the case of freezings arriving in Finland or leaving Finland in accordance with the EU Freezing Regulation (EU) 2018/1805, the competent authority is the prosecutor (Act on the application of the Regulation on the mutual recognition of freezing and confiscation decisions in the European Union 895/2020).

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3. The ARO crime proceeds tracing offices established in EU member states serve the ARO offices of the member countries and thus the competent authorities of the member states. In addition, in Finland, for example, police departments or Customs make use of the ARO office in tracing the proceeds of crime to EU member states. The supervisor of the Finnish ARO office is also the national crime benefit coordinator and a member of the global CARIN expert network. Thus, domestic and foreign authorities contact the ARO office with various questions related to the proceeds of crime.

4. In the case of freezings arriving in Finland or leaving Finland in accordance with the EU Freezing Regulation (EU) 2018/1805, the competent authority is the prosecutor (Act on the application of the Regulation on the mutual recognition of freezing and confiscation decisions in the European Union 895/2020).

According to my understanding, detailed and accurate statistics are not kept on this topic, such as, for example, on case-by-case freezing requests sent abroad during the preliminary investigation phase. However, based on my experience, I can state that the EU freezing instrument is very suitable for securing criminal proceeds from various crimes and, in addition to this, the instrument in question also enables consideration of the compensation perspective of the interested party (Articles 29 and 30).

5. In Finland, pre-trial investigation authorities in general, and thus also the ARO criminal proceeds tracing office located in the police, have at their disposal effective methods of tracing criminal proceeds and the powers to carry out their tasks. In general, it can be stated that this applies to both public and private data sources and registers. EU and national level strategies, such as strategies for combating organized crime, emphasize the importance of removing the proceeds of crime. Nationally, the importance of the criminal benefit angle is evident from the police's performance goals, but also from Chapter 1, Section 2 of the Pretrial Investigation Act, which provides for matters to be investigated in the preliminary investigation. The law obliges to find out in the preliminary investigation also the possibilities for returning the property obtained by the crime and for the enforcement of the forfeiture penalty imposed as a result of the crime or the compensation to be paid to the interested party.

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6. ARO criminal proceeds tracing offices have been established in EU member states specifically for the purpose of tracing criminal proceeds. The direct exchange of information between ARO offices is based on the framework decision 2006/960/YOS (Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and Intelligence between law enforcement authorities of the Member States of the European Union). The framework decision is also applied by Iceland and Norway. The Framework Decision has been brought into force in Finland by the Implementation Act 26/2009 and Decree 58/2009 on its implementation and application. Right now, a new ARO and confiscation directive on asset recovery and confiscation (EU) 2024/1260 has been negotiated in the EU. The operation of the ARO offices and the exchange of information are therefore in a transition phase, as the latter directive must be implemented nationally in the member states by 23 November 2026. The directive has implications for several different national laws.

7. AROs exchange information to trace the proceeds of crime directly between AROs. Information exchange is based on the use of the Secure Information Exchange Network Application (SIENA). In accordance with Framework Decision 2006/960/JHA, information is exchanged for the purpose of carrying out a criminal investigation or criminal intelligence operation.

8. The operation of the ARO offices is controlled by Europol, which can, for example, carry out inspections of the operation of the ARO offices. The ARO message exchange makes it possible to ensure the flow of information to Europol, which also maintains the SIENA system. Tracing the proceeds of crime between other than the ARO offices in question mainly takes place through legal aid channels.

9. The operations of the Finnish ARO office are not affected by the application of the EU Freezing Regulation (EU) 2018/1805, because the competent authority in freezing cases arriving in Finland or leaving Finland in accordance with the EU Freezing Regulation (EU) 2018/1805 is the prosecutor (L mutual recognition of decisions on freezing and confiscation on the application of the Regulation 895/2020 in the European Union).

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In Finland, cooperation between prosecutors and national authorities and the flow of information to utilize the EU freezing regulation is smooth. Finland is able to act quickly on asset freeze requests from EU member states. In other member states that apply the regulation, the need for prompt execution of freezing orders in order to successfully secure assets has been found to be challenging from time to time. Instead of deciding to renew or further develop the Freezing Regulation (EU) 2018/1805, it has been decided to speed up the securing of assets with the ARO and Confiscation Directive (EU) 2024/1260, according to Article 11, ARO offices must be given the opportunity to take immediate action. In other words, a new instrument is being introduced in the EU member states (excluding Ireland and Denmark), the purpose of which is to ensure the use of the actual freeze regulation instrument in question.

10. In Finland, in order to secure the proceeds of crime and compensation for damages based on crime, all pre-trial investigation authorities carry out the tracing of the proceeds of crime in accordance with 1:2 of the Pre-trial Investigation Act. In addition, for example, the Money Laundering Investigation Center participates in tracing the proceeds of crime in Finland within the framework of its legal regulations.

In Finland, after a final judgment, the responsibility for measures is transferred to the Ministry of Justice. For example, confiscation judgments between EU member states are handled by the Court Register Center, which requests enforcement from the National Bailiff's Office.

With the start of the national implementation of the ARO and Confiscation Directive (EU) 2024/1260, these above-mentioned steps and the authorities involved in their implementation will also be reviewed when preparing national laws.

### **Answers to the questionnaire on “Management and Social Reuse of Frozen and Confiscated Assets”.**

1.

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In Finland has not been established a separate Asset Management Office (AMO). This is based on the fact that the preliminary investigation authorities, such as the police, take care of the property they seize in accordance with the Coercive Measures Act. If the means of coercion used is collateral confiscation, the property will then be taken care of by the Bailout Office. After the final judgments, the Ministry of Justice contacts these authorities to liquidate and account for the assets<sup>2</sup>.

When the national implementation of the ARO and confiscation directive (EU) 2024/1260 begins, the need to establish an AMO office or offices will also be assessed.

2.

In Finland police lead the pre-trial investigation. When using coercive measures, police cooperate closely with the prosecutor. Police can use coercive measures to secure confiscation (criminal benefit from crime) or compensation for complainants (payment for damages). Please see the following statistics; all kinds of assets secured by all kinds of coercive measures in the pre-trial investigation phase (seizure, confiscation for security). I have picked the latest numbers from Police Board reports which are on Internet, but unfortunately only in Finnish ([Financial statements and reports on operations - Police \(poliisi.fi\)](#)).

### **Property seized -total, by coercive measures in pre-trial investigation (million euros)**

2019 2020 2021 2022 2023

### **The total amount of criminal proceeds taken by coercive measures in all crimes (pre-trial investigation phase)**

42,0 36,2 50,1 40,6 38,8

### **The amount of criminal proceeds taken by coercive measures in economic crimes (pre-trial investigation phase)**

31,7 24,9 40,4 26,7 24,5

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When it comes to statistics after final judgements, this kind of issue belongs to the Ministry of Justice. These statistics are not the same as above mentioned; for example, confiscation is possible even if the police have been unable to use coercive measures earlier in the pre-trial investigation. If you need that kind of information, I recommend you to take contact to the Ministry of Justice/ Legal Register Centre and ask for statistics after final judgements. [Https: Legal Register Centre](https://www.lrc.fi/).

3.

The Coercive Measures Act enables the securing of property using seizure or value-based collateral seizure.

According to PKL (Coercive Measures Act) 7:13,3 regarding confiscation:

“The subject of the seizure must be kept as it is and must be handled carefully. The head of the police department or the head of the national unit of the police can order the object to be sold as soon as it becomes apparent that it is easily perishable, soon to be lost, rapidly decreasing in value or very expensive to maintain. Tests can be performed on an object seized for evidence, if it is necessary to investigate the crime”.

In other words, as a general rule, the seized property is kept as is for court settlement. Only the above-mentioned exceptional situations stipulated in the law enable the sale of property already in the preliminary investigation phase.

When it is a value-based security seizure, the Foreclosure Service is responsible for taking care of the property and implementing it in accordance with the foreclosure code. This makes it possible for the enforcement agency to sell assets more flexibly, even in the preliminary investigation phase.

4.

In Finland, asset management is clear and the flow of information between authorities is functional. In situations where the correct type of coercive measures is only specified later during the preliminary investigation, the property must be transferred from time to time to the authority responsible for the correct coercive measures. Sometimes, depending on the type of asset, managing it can be challenging and expensive. However, the national legislation does not allow e.g. expenses to be covered from the income from the sale of confiscated property. However, it must be remembered that in Finland, coercive measures are used in criminal proceedings in addition to the basis of confiscation, often also to secure the payment of damages to the interested party. If the expenses were always deducted from the top, this would tend to weaken the chances of the interested party receiving compensation.

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5.

I refer to the 3rd answer. The police are responsible for property enforcement actions, while the Bailiff's Office is responsible for monetary enforcement.

Act on the enforcement of fines 2002/672, Chapter 4, Section 38, provides for the enforcement of the penalty of forfeiture:

"When the decision regarding the confiscation of property to the state has become enforceable, the property must, in accordance with the order of the relevant state authority, be put to the use of the state, sold or disposed of (enforcement act). The confiscation penalty is enforced by the police department. A record of the taking over of assets for the purpose of execution must be drawn up in compliance with Section 12 of Chapter 7 of the Coercive Measures Act (806/2011) as applicable. (22.7.2011/816)

The provisions of chapter 2 on the enforcement of receivables apply to the enforcement of a monetary forfeiture sanction to the extent that the forfeited amount of money is not in the possession of the police authority and this chapter does not provide otherwise.

In addition, the separate provisions on the enforcement of the forfeiture sanction imposed in the customs criminal case and in the criminal case investigated by the border guard are valid. (19.9.2014/756)"

As a general rule, the property is sold during the enforcement phase at a public auction, and the enforcement authority in question transfers the funds to the account designated by the Legal Registry Center. Typically, the property to be disposed of is of little value or it is illegal to possess it. In practice, property is rarely used by the State.

6.

As stated in the answer to point 5 above, typically the property is sold at public auction, which determines the price. In auctions, the authorities use e.g. public platforms and bulletins.

7.

As I pointed out in the answer to point 3, seizures must generally be kept as they are, so it can take a long time to get to the stage of selling the seized property, taking into account the requirement for a final judgment. If the

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criminal case moves from the District Court to the Court of Appeal and possibly further to the Supreme Court, the delays can be significant. Realization of seizures already in the preliminary investigation phase requires a basis laid down in the Coercive Measures Act (easily perishable, soon lost, rapidly decreasing in value or very expensive to maintain). If the means of coercion is confiscation of collateral, then the Foreclosure Office can sell the property more flexibly in accordance with the foreclosure arc already in the preliminary investigation phase. In this case, the sale of the property can come into question even on a very quick schedule.

8.

When the property is sold, the proceeds are paid to the account designated by the Legal Registry. As a general rule, therefore, the seizures are realized only after a final judgment, so the actual income is not accrued after the sale of the property before the settlement phase. The foreclosure agency is responsible for the funds received from the sale of the property in accordance with the foreclosure arc.

9.

In Finland, funds from confiscated property are accounted for in the state budget, which enables democratic decision-making regarding the funds. Through this, it is also possible to direct funds to public benefit purposes. Personally, I consider this established method of operation to be transparent and profitable.

As an example, the newspaper Suomenmaa article on July 21, 2022: “Customs received more than 46 million euros from the sale of bitcoins - the money acquired through online drug deals will be allocated to helping Ukraine”.

To my knowledge, there is no detailed information specifically about the allocation of assets secured by the freezing regulation (EU) 2018/1805 for public purposes. Funds from the confiscated property are therefore generally diverted to the state budget, unless the court deems that, instead of confiscation, the claimant's claim for compensation is the primary basis for sentencing. When the property is secured by the freezing regulation (EU) 2018/1805, articles 29 and 30 concerning the rights of the interested owner, i.e. the victim, i.e. the regulation enables the property or amount of money to be fully returned to the victim. Already due to this field of use of the instrument, property or assets do not always end up confiscated by the state. On the basis of a confiscation sentence



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alone, the funds are divided between the requesting and executing member states, for which the Legal Registry Center is responsible in Finland.

(Personal opinion:)

I consider the Freezing Regulation (EU) 2018/1805 to be a functioning international instrument, which makes it possible, on a case-by-case basis, to also secure the payment of damages to the interested party, even in full. This is important considering the adhesion principle applied in the criminal process, i.e. the connection of the claimant's compensation claims to the actual criminal case. Instead of further developing this freezing regulation in order to promote the need for quick application of the freezing regulation, i.e. securing assets, it has now been decided that, under Article 11 of the ARO and Confiscation Directive (EU) 2024/1260, ARO offices will be allowed to take immediate action. The purpose of these short-term measures is therefore to ensure the use of the actual freezing order in question. In addition, it is noteworthy that the EU member states Ireland and Denmark do not apply regulation, but the Council's framework decision on the implementation of decisions on the freezing of assets or evidence in the European Union (2003/577/JHA) still functions as a security instrument for these states.