

The subject matter of the Regulation (EU) 2018/1805. National confiscation models

Policy recommendations: General framework of the forms of freezing and confiscation orders covered by the REG and applied across the 10 MS partners of RECOVER

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ITALY

- the traditional model of confiscation (art. 240 of the criminal code)
- the special forms of mandatory confiscation, provided for in criminal code or in special laws and connected seizure order (articles 321-323 of the code of criminal procedure)
- • the special forms of the value based confiscation order, provided for in criminal code or in special laws and connected seizure order (articles 321-323 of the code of criminal procedure)
- extended confiscation pursuant to art. 240 bis c.p. and connected seizure orders (articles 321-323 of the code of criminal procedure)
- preventive confiscation (art. 24 and 34 d.lgs. 159/2011) and connected seizure orders (art. 20)

POLAND

- Direct Confiscation (art. 44 CC).
- Confiscation of the value.
- Extended Confiscation.
- Non-Conviction-based Confiscation

LITHUANIA

- Confiscation (Art. 72 CC).
- Extended Confiscation (Art. 72-3 CC).
- Confiscation of the value (Art. 72 and 72-3 CC).
- Confiscation against third parties (Art. 72 and 72-3 CC).
- Non-conviction-based confiscation (Art. 72 and 72-3 CC).
- Civil confiscation (law on the Civil Confiscation of property, No. XIII-2825 of 2020)

THE NETHERLANDS

The forms of freezing orders covered by the REG are:

- Freezing (article 94 DCC) for the purpose of forfeiture or withdrawal from circulation
- Freezing (article 94a DCC) for the purpose of value confiscation

The forms of confiscation orders covered by the REG are:

- Forfeiture with seizure (O)
- Forfeiture without seizure (O/W)
- Withdrawal from circulation (O)
- Value confiscation order (W)

SPAIN

- Direct confiscation (art. 127 (1) and (2) SCC).
- Confiscation of the value (Articles 127 (3) as well as Arts. 127 quater (1) and 127 septies SCC).
- Non conviction-based confiscation -NCBC- or “autonomous confiscation” (Art. 127 ter SCC).
- Extended confiscation (Article 127 bis as well as Articles 127 quinquies and sexies SCC).
- Third-party Confiscation (Art. 127 quárter SCC).

GERMANY

- Direct confiscation - Section 73 StGB (confiscation of proceeds of crime) and 74 StGB (confiscation of products, instrumentalities, objects of crime)
- Confiscation of the value (Section 73c , 73d , 74c StGB; Section 29a OWiG)
- Non-conviction-based confiscation -NCBC- or “autonomous/independent confiscation” (Section 76a StGB) > 76a (1-3) StGB (confiscation without conviction in cases of death, illness, absconding, time-barring etc.); 76a (4) StGB (confiscation of assets of uncertain origin)
- Extended confiscation (Section 73a StGB)
- Third-party Confiscation (Section 73b StGB , Section 29a (2) OWiG)

- Pre-trial precautionary measures: freezing of assets (Section 111b - 111q StPO)

ROMANIA

- Special confiscation, which corresponds to direct confiscation, confiscation in equivalent, confiscation against third parties and non conviction based confiscation
- Extended confiscation, that can be ordered against the convicted person and against third parties, and also can be ordered as confiscation in equivalent
- both types of confiscation, special and extended, are regulated in the Criminal Code - in General Part of the Criminal Code, under Title IV "Security measures" (art. 112 and 112¹)
- Only criminal confiscation falls within the scope of the Regulation
- Both confiscation measures in criminal matters in Romania are ordered only by the criminal Courts, thus fulfilling the conditions set out in Article 1 para. 4 and recital 13 of the Regulation.

In addition to the general provisions mentioned above (art. 112 and 112¹ Criminal Code), which define the different models of criminal confiscation in the Romanian legal system, confiscation is also provided for by specific provisions in the special part of the Criminal Code or in other special laws. These provisions do not establish new forms of confiscation, but only regulate particular applications of special confiscation and extended confiscation:

- Corruption offences (taking bribes art. 289 Criminal Code, giving bribes art. 290 Criminal Code, influence peddling art. 291 Criminal Code, buying influence art. 292 Criminal Code);
- Offences of money laundering and terrorist financing (Law 129/ 2019 on preventing and combating money laundering and terrorist financing, as well as amending and supplementing some normative acts - art. 51);
- Offences of illicit drug trafficking and consumption (Law No 143/2000 on preventing and combating illicit drug trafficking and consumption - Article 16);
- Offences against the hunting and game protection regime (Law on hunting and game protection no. 407/2006 - art. 46).

PORTUGAL

- Direct confiscation (articles 109 (1) and 110 (1) (a) and (b) PC)
- Value confiscation (articles 109 (3) and 110 (4) PC)
- Extended confiscation (unexplained wealth confiscation) (article 7.º Law no. 5/2002)
- Non-conviction-based confiscation [articles 109 (2) and 110 (5) PC]
- Third-party confiscation [articles 111 PC]

BULGARIA

- Direct confiscation under Article 53 of the Bulgarian Criminal Code (CC) and under specific measures provided for some of the crimes in the Special Part of the CC (ML, TF, bribery, smuggling etc.)

- Confiscation of the value under Article 53 (1)(a) of the CC, Article 53, para 2 (b) of the CC and under specific measures provided for some of the crimes in the Special Part of the CC (ML, TF, bribery, smuggling etc.)
- Extended confiscation under art.44-46 of the CC
- Confiscation without conviction under Article 53 of the CC
- Confiscation against third parties under Art. 53, para. 2 of the CC and some of the specific measures in the Special Part of the CC (TF, ML, etc.)

FRANCE

- Standard Conviction-based Confiscation (Art. 131-21 PC; Art. 131-39 PC; Art. 131-6 PC; Art. 131-14 PC; Art. 131-16 PC).
- Extended Confiscation (Art. 131-21(5) PC).
- Value-based Confiscation (Art. 131-21(9) PC).
- Non-conviction-based Confiscation (Art. 41-4 CCP; Art. 99 CCP; Art. 481 CCP).
- Third-party Confiscation (Art. 131-21(2,5,6) PC).