

**Country report: Lithuania**

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**Section I – The models of confiscation against legal persons: harmonisation**

1. **How was the Directive 2014/42/EU transposed in Your national legal order and how did this affect national law in relation to legal persons?**

Directive 2014/42/EU is in line with the national law in Lithuania. Confiscation and extended confiscation are penal measures in Lithuania and must be applied if the grounds for these penal measures are met. Article 67 Para 5 (CC) states that a legal entity may be subject to confiscation of property or extended confiscation of property. All provisions in the national law about legal persons were in force in Lithuania before Directive 2014/42/EU was adopted.

2. **Which models of confiscation applicable against natural persons, can affect indirectly the assets of legal persons? E.g. If the proceeds are got by the legal persons or when the confiscation involves the share in legal entity held by the convicted person. For forms of confiscation also applicable to natural persons, you may refer to the answers to the previous questionnaire, highlighting particular issues related to the application of confiscation to legal persons.**

All the models of confiscation (direct confiscation, confiscation of the value, extended confiscation, non-conviction based confiscation, confiscation against third parties) are applicable against legal persons.

There are two tools of confiscation in Criminal Law: Confiscation (Article 72 of the Criminal Code of the Republic of Lithuania (hereinafter CC)) and Extended Confiscation (Article 72(3) CC). Confiscation of the value, confiscation against third parties, and non-conviction-based confiscation can be applied within the framework of Confiscation (Art.72 CC) and Extended Confiscation (Art. 72(3) CC).

**Confiscation (classical confiscation) Art. 72 Para 4:** The property held by another natural or legal person and being subject to confiscation shall be confiscated irrespective of whether the person has been convicted of the commission of an act prohibited by this Code, where:

- 1) when transferring the property to the offender or other persons, he was, or ought to have been, aware that this property would be used for the commission of the act prohibited by this Code;
- 2) the property has been transferred thereto under a fake transaction;
- 3) the property has been transferred thereto as to a family member or close relative of the offender;
- 4) the property has been transferred to him as to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);
- 5) when acquiring the property, he or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware

that the property is an instrument or a means used to commit an act prohibited by this Code or the result of such an act.

**Extended Confiscation Art. 72-3 Para 3:** 3. The property referred to in paragraph 2 of this Article and being subject to confiscation, if it has been transferred to another natural or legal person, shall be confiscated from this person, where at least one of the following grounds exists:

- 1) the property has been transferred under a fake transaction;
- 2) the property has been transferred to the offender's family members or close relatives;
- 3) the property has been transferred to to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);
- 4) the person whereto the property has been transferred or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property has been obtained by criminal means or with illicit funds of the offender.

Civil confiscation, which is non-conviction-based confiscation, is also in Lithuania. Civil confiscation is regulated by the Law on Civil Confiscation of the Republic of Lithuania. Confiscation of the value and confiscation against third parties can be applied in civil confiscation as well.

In summary, confiscation models can overlap and be applied simultaneously.

**3. Which models of confiscation can be applied directly against legal persons?**

**Please, provide us with the related legislative provisions. Does your country provide for criminal liability of legal persons?**

About the models of confiscation see the answer under question No 2.

A legal entity shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of the Criminal Code of Lithuania (Art 20 CC).

Grounds for criminal liability of a legal persons are (Art. 20, Para 2 and 3):

«[.]

2. A legal entity shall be held liable for the criminal acts committed by a natural person solely where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying a managing position in the legal entity, was entitled:

- 1) to represent the legal entity, or
- 2) to take decisions on behalf of the legal entity, or
- 3) to control activities of the legal entity.

3. A legal entity may be held liable for criminal acts also where they have been committed for the benefit of the legal entity by an employee or by an authorised representative of the legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person indicated in paragraph 2 of this Article.

[.]».

Full article you can find at the annex.

All crimes and offences are set out in the Special Part of the CC. If the commission of an offence is punishable by a legal person, there is a footnote in the same Article: “A legal entity shall also be held liable for the acts provided for in this Article “, for example:

«Article 189-1. Unjust Enrichment

1. A person who holds by the right of ownership the property whose value exceeds 900 MSLs, while being aware or having to be and likely to be aware that such property could not have been acquired with legitimate income,

shall be punished by a fine or by arrest or by a custodial sentence for a term of up to four years.

2. A person who takes over the property referred to in paragraph 1 of this Article from third parties shall be released from criminal liability for unjust enrichment where he gives a notice thereof to law enforcement institutions before the service of a notice of suspicion and actively cooperates in determining the origin of the property.

3. A legal entity shall also be held liable for the acts provided for in this Article».

4. **Which is the object of the confiscation and its meaning/interpretation? (proceeds – gross or net of expenses -, products of the crime, instruments of the crime, etc.). Clarify if and in which case it is possible to confiscate the ‘value equivalent’.**

The object of confiscation is an instrument or a means used to commit an act prohibited by Criminal Code or the result of such an act. The property of any form directly or indirectly obtained/derived from the act prohibited by this Code shall be considered as the result of the act.

Where the property which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 4 of this Article (see the Annex, Art 72) a sum of money equivalent to the value of the property subject to confiscation.

**5. Which are the elements to be realised and/or to be assessed for its application? e.g., conviction for a crime, property or availability of the confiscation object, link -between the crime and the proceeds/instruments/products, etc., disproportionality ('the value of the property is disproportionate to the lawful income of the convicted person'), illegal origin (suspects/presumption of illegal origin), temporal connection with the crime, the lack of a justification of the legal origin by the owner, etc.**

An instrument or a means used to commit an act prohibited by Criminal Code or the result of such an act are the objects of confiscation. If the property has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate a sum of money equivalent to the value of the property is subject to confiscation (Art 72, Para 5 of CC). The temporal connection of the property with the crime if the property has the features of proceeds or instrumentalities of the crime is also subject to confiscation (classical confiscation under Art 72).

Disproportionality between the assets and the legal income is in relation to application of extended confiscation and civil confiscation.

What is important, there is a crime of Unjust Enrichment (Art 189-1 CC), see the annex. And there is interesting thing: despite this crime is in relation to disproportionality between the assets (property) and legal income, when a natural or legal person is sentenced, his/ it's assets (property) is subject to classical confiscation under the Art 72 of CC.

**6. Which are the elements to demonstrate in order to apply the 'freezing' order against the legal persons?**

In general (both in natural and legal persons), when considering whether to apply a freezing (restriction of ownership rights), it is necessary to take into account whether these assets will be subject to future compensation to the victims (civil claim), or confiscation (an instrument or a means or the result of criminal offence), or extended confiscation (property of the offender or part thereof disproportionate to the legitimate income of the offender, where there are grounds for believing that the property has been obtained by criminal means).

Special provisions about provisional restraint of ownership rights of a legal person are set out in the Art. 151 Para 2 CPC (full article you can find in the annex):

«2. The ownership rights of a legal person may be provisionally restrained further to the prosecutor's decision:

1) in order to secure a probable confiscation of property in the cases provided for by article 72 of the Criminal Code of the Republic of Lithuania and a probable extended confiscation of property in the cases provided for by article 723 of the Criminal Code of the Republic of Lithuania;

2) in order to secure a civil claim where there are sufficient grounds for bringing a civil action against a legal person».

The grounds for confiscation and extended of the property that is transferred to the third person – legal entity are foreseen in the Articles 72 Para 4 and 72-3 Para 3 (see the annex).

These grounds for future confiscation, extended confiscation and compensation to the victims should be seriously kept in mind. Still, the standard of proof in the freezing (restraint of ownership rights) phase is not as high as in the final stage of the case when confiscation, etc., is applied.

This information is provided in the context of domestic cases.

**7. Can this model of confiscation be applied when the crime is statute barred (i.e. after the prescription) or somehow (in particular circumstances) without the conviction?**

Criminal Procedure Code of the Republic of Lithuania (hereinafter CPC) Article 94, Para 1 sets out: At the time of sentencing or termination of the proceedings, the issue of objects relevant to the investigation and examination of the offense shall be resolved as follows: the property referred to in Articles 72 and 72-3 of the Criminal Code of the Republic of Lithuania shall be confiscated).

The Supreme Court of Lithuania in "The Review of Court Practice in the Application of Confiscation of Property (Article 72 of the Criminal Code)" No. AB-32-1: (Published: "Court Practice. 2010, 32") set out: «It should be noted that, in the cases in question, the



provisions of Article 72 of the CC must be considered in a systematic manner in conjunction with Article 94(1)(1) of the CPC, which provides that, at the time of sentencing or termination of the proceedings, the instruments, means and results of the criminal offence, which correspond to the features provided for in Article 72 of the CC, shall be confiscated. In certain cases, this provision has been interpreted in case-law as allowing for the confiscation of assets on condition that the assets (but not the conditions for their confiscation) meet the requirements of Article 72 CC. The reason for this is that the end of the proceedings cannot be the basis for keeping in circulation property whose criminal origin has been objectively established or which has been used in the commission of an offence. The possibility to confiscate assets without prosecuting the perpetrator is in line with the purpose of the confiscation of assets. The case law of the Supreme Court of Lithuania has stated that confiscation of property derived from a criminal offense is similar in nature to civil measures, as only the illegally obtained property is confiscated. On the other hand, confiscation of assets differs from civil measures in that, in the case of confiscation of assets, the State receives the assets, whereas in the case of civil liability measures, the victim receives the assets (Cassation case No 2K-270/2004). It is generally accepted in legal doctrine that law cannot be derived from wrongfulness, and that therefore, given this legal status of the property, it must be confiscated irrespective of whether or not the perpetrator and the other persons to whom it has been transferred have been held criminally liable for prosecution. Otherwise, it would create an incentive for those persons to dispose of the illegally acquired property. Consequently, when criminal proceedings are terminated by a court decision on the grounds referred to in Article 3 Para 1 (2), (4) and (7) of the CPC, the property may be confiscated pursuant to Article 94(1)(1) of the CPC if it meets the criteria set out in Article 72 of the CPC»

Article 3 Para 1 CPC providing provisions about circumstances preventing criminal proceedings establishes that criminal proceedings may not be instituted and must be

discontinued: [...]

«(2) if the period of limitation of criminal liability has expired; [...]

4) (after 28/11/2017 amendments No XIII-805 changed to (3)) in the case of a person who, at the time of the commission of the offence, was under the age of criminal responsibility; [...]

7) (after 28/11/2017 amendments No XIII-805 changed to (5)) a deceased person, except where the case is necessary for the rehabilitation of the deceased person or for the reopening of the case of other persons on the grounds of newly discovered circumstances; [...] ».

8. **Which is the legal nature of the confiscation against legal persons? (a criminal sanction - accessory or principal criminal penalty -, a preventive measure - *ante delictum* criminal prevention measure -, security measure in a broad sense, administrative measure, civil measure *in rem*, a civil consequence of committing an offence - provided for by criminal law - another type of autonomous - *sui generis* - instrument, etc.):**

In general, confiscation and extended confiscation are penal sanctions (see the Annex, Art 67 CC). Civil confiscation is a civil measure *in rem*.

9. **For each model of confiscation against legal persons:**

○ **Which is the procedure for its application? (the qualification/nature, the competent authority, the different steps, etc.)**

At the time of sentencing or termination of the proceedings, the property referred to in Articles 72 and 72-3 of the Criminal Code of the Republic of Lithuania shall be confiscated. The decision is rendered by the court.

Article 94 Para 3 CPC also sets out that Confiscation or Extended Confiscation are imposed by the court. If the issue concerning property confiscation according to Article 72 or 72-3 of the Criminal Code has to be solved before the discontinuation of the pre-trial investigation, the pre-trial investigation is discontinued by the decision of a pre-trial judge approving the decisions of the prosecutor to discontinue the pre-trial investigation. When the issue of property confiscation or extended property confiscation has to be solved, a meeting is organised with the participation of the prosecutor, a person in relation to whom the decision of confiscation was adopted, as well as the representative of that person. The pre-trial judge may decide to invite other persons as well. Participation of the prosecutor and representative of a person in relation to whom the decision of confiscation was adopted is obligatory. Decision of a pre-trial judge may be appealed in line with the procedure stipulated in part X of this Code.

Article 94 Para 4: A court that has passed a decision indicated in paragraph 3 of this Article following the order prescribed by the Government of the Republic of Lithuania may give over the implementation of such a decision to the competent institution of another EU Member State in the territory of which the property subject to confiscation is present or in the territory of which a person in relation to whom the decision of confiscation was adopted may have income or property.

Article 94 Para 5. On the basis and in the order set in the international agreements of the Republic of Lithuania and upon the request of a foreign institution the court may decide that after the legitimization of the decision the objects and valuables obtained in a criminal way may be transferred to a foreign institution in order it returned it to the rightful owners if the latter are established and if this does not violate the rightful interests of other persons. The objects which are prohibited from circulation are not transferred to a foreign institution.

○ **Which is the standard of the proof/is the reversal of the burden of the proof admitted?**

In cases of Confiscation under Article 72 CC the burden of proof is on the prosecution.

What regards Extended Confiscation under Article 72-3, the burden of proof is also laid on prosecution, but it is also to be mentioned that Article 72-3 sets out provision if the offender fails, in the course of criminal proceedings, to provide proof of the legitimacy of acquisition of the property. The Supreme Court of the Republic of Lithuania concluded (cassation decision No 2K-195-976/2022): «The CPC does not provide for special methods of proof specifically for establishing the grounds and conditions for confiscation of property, so all the grounds and conditions necessary for extended confiscation of property are determined in accordance with the general rules of evidence. The burden of proving that the value of the property acquired or transferred by the perpetrator does not correspond to the perpetrator's legitimate income and that this difference exceeds the amount of the MGL 250 is on the prosecution in the case (Cassation ruling in criminal case No 2K-72-511/2021).[.] At

the same time, it should be noted that decisions on confiscation of the proceeds of drug trafficking, money laundering, corruption or other serious crimes do not necessarily have to be based on full proof of the illicit origin of such assets, i.e. in accordance with the principle of 'beyond reasonable doubt'. Where there is evidence of such criminal activity, proof of the illicit origin of the property may also be based on the principle of a high degree of probability, combined with the owner's inability to prove otherwise (e.g., judgement of 12 May 2015 in *Gogitidze and Others v. Georgia*, petition No. 36862/05, para. 107; Judgement of 26 June 2018, *Telbis and Viziteu v. Romania*, Petition No. 47911/15, para. 68). This is also the practice of the Court of Cassation (e.g. Cassation decisions in criminal cases No 2K-51-788/2021, 2K-72-511/2021, 2K-62-495/2022)».

Lithuanian jurisprudence follows the principles of proportionality, balance of interests set out by the European Court of Human Rights. Court does not require proof 'beyond reasonable doubt' of the illicit origins of the property in such proceedings. Instead, proof on a balance of probabilities or a high probability of illicit origins, combined with the inability of the owner to prove the contrary, was found to suffice for the purposes of the proportionality test.

- **Which are the safeguards (limitations e.g. proportionality clauses, relevant legal remedies)?**

Practice of the Supreme Court of Lithuania pays attention to the principle of proportionality. For example, Cassation decision No 2K-201-303/2022 lays down that the Court draws attention to the fact that in order to have a preventive effect, i.e. to ensure that the relevant measure will not be used in the future, the possibility of confiscating the confiscated property (instrument) itself into the ownership of the

State should be considered first (cassation rulings in criminal cases No 2K-107-976/2021, 2K-91-303/2021). Therefore, in cases where confiscated property is identified in a case, the court must first assess the possibility of confiscating such property on the basis of Article 72(1) to (4) of the CC, and only in the absence of such a possibility, or where for certain reasons it is not appropriate, should it decide on the recovery of the value of the property to be confiscated, in accordance with Article 72(5) of the CC. In such cases, reasons must be given, *inter alia*, as to why the case does not establish the possibility of confiscating the instrument itself and why confiscation of the value of the instrument (or part of it) is more appropriate. When applying the provisions of Article 72(5) of the CC, i.e. confiscating the monetary value of the instrument of commission of the offence rather than the instrument itself, it is also necessary to consider whether such a measure of criminal sanction is in line with the objectives of confiscation of property, and to assess the proportionality of such recovery (Cassation decisions in Criminal Cases No 2K-17-788/2019, 2K-195-788/2019, 2K-107-976/2021, 2K-91-303/2021).

- **Is the trial *in absentia* possible in your legal system in order to apply the confiscation?**

The trial *in absentia* is possible to apply in the Lithuanian legal system. It is possible to confiscate the property *in absentia*.

Art. 246 CPC sets out that the case shall be heard at the court of first instance in the presence of the accused, who shall be obliged to appear before the court. The trial shall be conducted in the absence of the accused only if he is outside the territory of the Republic of Lithuania and refuses to appear before the court. The presence of an accused person who is unable to appear before the court in which

the case is being heard or who is detained in a detention centre may be ensured by means of audio-visual remote transmission. Where the accused does not attend the court hearing in the case provided for in paragraph 1 of this Article, the proceedings shall be held in accordance with the general procedure, except for the exceptions provided for in Chapter XXXII of this Code.

A case may be heard in the absence of the accused in the case provided for in Article 246 of CPC. The judge shall decide whether the case may be tried in the absence of the accused at the time of preparation for the trial. If, during the trial, it appears that it is impossible to give a fair trial in the absence of the accused, the trial shall be adjourned (Article 433 CPC. Trial in the absence of the accused).

Article 436 CPC lays down special rules of proceedings in the absence of the accused:

1. In the absence of the accused, at the beginning of the examination of evidence in court, after the prosecutor has read out the indictment in accordance with the procedure laid down in Article 271 of this Code, the defence counsel shall be given an opportunity to state his/her opinion on the accusation. The parties to the proceedings may ask the defence counsel to clarify his position.
2. In the absence of the accused, the possibility provided for in Article 273 of this Code to conduct a summary examination of evidence may not be exercised, although the case file contains a confession of the accused, which is not contested by the defence.
3. In the absence of the accused, the defence counsel shall be given the opportunity to make a closing statement after the closing arguments. The court shall then proceed immediately to deliver its verdict.

Article 437 CPC establishes the rules of enforcement of the judgement *in absentia*.

1. The judgement delivered in the absence of the accused shall be served on the defence counsel. The time-limit within which the judgement shall become final shall begin to run from the moment of service of the judgement on the defence counsel.

2. A judgement which has been delivered and has become final shall be enforceable only in so far as it is possible to execute it without the convicted person before the convicted person is arrested or brought before the court by way of extradition or pursuant to a European Arrest Warrant.

- **For the confiscation without conviction: can this form of confiscation be applied also in case of acquittal?**

Civil confiscation can be applied in case of acquittal on certain legal grounds. The Law on Civil Confiscation of Property of the Republic of Lithuania was adopted on 31 March 2020 and came into force on 1 July 2020. More detailed information was provided in Questionnaire WP11.

10. **For each model of confiscation against legal persons, does it comply with the principles of:**

- legality? legal specificity of a statute?
- non-retroactivity of the /more severe/statute?
- the right to private property?
- the proportionality?
- the right to a fair trial?
- the right to defence?
- the presumption of innocence?
- the ne bis in idem principle?



- and other relevant rights – what sort of?

Please note, all the answers given in Questionnaire WP II are applicable in the context of legal persons, however, some special provisions and exceptions should be kept in mind:

**Article 388. Representative of the legal person to be prosecuted**

1. The representative of a legal person to be prosecuted may be the manager or an employee of the legal person or a lawyer authorised by the legal person to act as a representative in the proceedings.

2. When a power of attorney to act as a representative in proceedings is submitted, the pre-trial investigation officer shall adopt a decision to recognise the person as a representative of the legal person.

3. If the legal person appoints an unsuitable person as a representative or does not appoint a representative at all, the pre-trial investigation officer shall have the right to appoint a representative of the legal person by way of a decision.

4. The representative of a legal person shall exercise all the rights conferred by this Code on the suspect and the accused in the proceedings, and shall perform the duties of the parties to the proceedings.

More information regarding special provisions regarding legal persons is given in the annexe.

**11. For each model of confiscation:**

- Are there constitutionality issues which have been detected in the legal doctrine and is there any relevant jurisprudence ruling on the constitutionality (or not) of the confiscation measure against legal persons?

NO.

- Is there any significant national case law of your Supreme Court on the application of freezing or confiscation measures against legal persons?

**12. Are there European Court of Human Rights cases in relation to ‘Your’ model of confiscation against legal persons? Please, explain the position of the ECHR about ‘Your’ model of confiscation against legal persons.**

NO.

**13. Is there any CJEU decision concerning ‘Your’ confiscation model against legal persons?**

No (?)

**14. In Your system of law are there other efficient measures to prevent the or react against the involvement of corporations in crime (and in particular in organised crime), in other words alternatives to freezing and confiscation (e.g. in Italy judicial administration or judicial control) for targeting the illegal assets of legal persons?**

Civil confiscation.

15. Do you have statistical data on the application of confiscation measures against legal persons at national level? And could you compare them with those against natural persons?

No statistical data can be specified under the criteria of legal and natural persons.

**SECTION II. The application of the Regulation 1805/2018 for the mutual recognition of freezing and confiscation orders against the legal persons.**

**1. Can You give some *statistical data* about the application of the Regulation in case of freezing or confiscation orders in regard to legal persons (e.g.: how many cases, which models of confiscation)?**

No statistical data can be specified under the criteria of legal and natural persons.

**2. 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) in cases of freezing orders and confiscation orders related to legal persons? And which are the grounds for refusal applied in the praxis in this sector?**

No specific problems were encountered regarding legal persons. Problems are general and they were listed in previous questionnaire:

«In practice, we see that there are recurrent difficulties by Member States in the presentation of freezing or confiscation certificates:

- The freezing certificates are sent without a translation into Lithuanian, even though the Republic of Lithuania has declared that it accepts these only in Lithuanian. Member States do not fill in all the fields required by the Regulation correctly.

- There are cases where the competent judicial authorities of the European Union still use the form set out in Council Decision 2003/577/JHA of 22 July 2003 on the execution of freezing orders against property or evidence in the European Union instead of the Regulation's freezing certificate (Annex I).

- In some cases, Sections E(1) and (2) of the Regulation freezing certificate (Annex I) are incompletely filled in, and references to the relevant articles of the national law of the Member State are not always included.

- Member States do not tick the boxes even though it is clear from the freezing certificate that the relevant boxes should have been ticked.

- There are cases where a copy of the national decision is not attached».

**3. 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 involving legal persons?**

In light of the Proposal for Directive On Asset Recovery and Confiscation (Art.16), we suppose that provisions regarding civil confiscation (unexplained wealth) in the context of scope should be clearly included in REG. This should be done after the Directive is adopted.

**4. Could you give your inputs about possible guidelines on the practical implementation of the Regulation in relation to legal persons?**

No.

**5. Do you have any further reform proposals, at a national or international level, in this sector?**

- No specific proposals in the context of legal persons, but general proposals are applicable:

REMARKS IN THE LIGHT OF THE NEW DIRECTIVE 2024/1260

National measures

1. Adopt national legislation in order to enable non-conviction-based confiscation where suspected or accused person is absconding.
2. Adopt clear legislation on the tracing and identification of property to be frozen and confiscated after a final conviction in criminal cases.
3. Adopt national legislation precisely defining the functions of the ARO and enabling ARO urgent freezing powers.
4. Designate at least one competent authority to function as an asset management office for the purpose of the management of frozen and confiscated property until the disposal of that property further to a final confiscation order.
5. In order to clarify the effectiveness of the asset recovery process from beginning to end (final compensation to victims, final confiscation of assets), it is necessary to improve the collection of statistics during all stages of the process in one system, including the results of judicial proceedings (civil claims satisfied, assets actually confiscated, value of assets to be confiscated) until completion (how much was actually compensated to the victims, how much of property was actually found and confiscated, what is the unpaid balance).

EU measures: REG 2018/1805

In light of Art. 16 (Confiscation of unexplained wealth linked to criminal conduct) of DIRECTIVE 2024/1260, we see the need to amend REG 2018/1805 to enable asset tracing and confiscation within the EU and define clear proceedings in civil confiscation because, in practice, serious problems were discovered.

**6. Do you have any further policy recommendations, at a national or international level, in this sector?**

ANNEX:

**Provisions of the Criminal Code of the Republic of Lithuania:**

**Article 20. Criminal Liability of a Legal Entity**

1. A legal entity shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of this Code.

2. A legal entity shall be held liable for the criminal acts committed by a natural person solely where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying a managing position in the legal entity, was entitled:

- 1) to represent the legal entity, or
- 2) to take decisions on behalf of the legal entity, or
- 3) to control activities of the legal entity.

3. A legal entity may be held liable for criminal acts also where they have been committed for the benefit of the legal entity by an employee or by an authorised representative of the

legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person indicated in paragraph 2 of this Article.

4. A legal entity may be held liable for criminal acts where they have been committed under conditions of paragraphs 2 or 3 of this Article by another legal entity controlled by or representing the legal entity, where they have been committed for the benefit of the former legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person occupying a managing position in it or by his representative.

5. Criminal liability of a legal entity shall not release from criminal liability a natural person who has committed, organised, instigated or assisted in commission of the criminal act. Criminal liability of the legal entity for the criminal act committed, organised, instigated or assisted for its benefit or in its interests by a natural person shall not be eliminated by the natural person's criminal liability, as well as by the fact that the natural person is released from criminal liability for this act or is not subject to criminal liability due to other reasons.

6. The State, a municipality, a state and municipal institution and agency as well as international public organisation shall not be held liable under this Code. State and municipal enterprises, public institutions, which are owned or shared by the State or a municipality, as well as private and public limited liability companies, if all or a part of their shares are owned by a State or a municipality, are not considered as state and municipal institutions and agencies and shall be held liable under this Code.

#### **Article 67. Purpose and Types of Penal Sanctions**

1. Penal sanctions must assist in implementing the purpose of a penalty.
2. An adult person released from criminal liability on the grounds provided for in Chapter VI of this Code or released from a penalty on the grounds provided for in Chapter X of this

Code or released on bail from custodial sentence may be subject to the following penal sanctions:

- 1) prohibition to exercise a special right;
- 2) deprivation of public rights;
- 3) deprivation of the right to be employed in a certain position or to engage in a certain type of activities;
- 4) compensation for or elimination of property damage;
- 5) unpaid work;
- 6) payment of a contribution to the fund of crime victims;
- 7) confiscation of property;
- 8) prohibition to approach the victim;
- 9) participation in the programmes addressing violent behaviour;
- 10) extended confiscation of property;
- 11) an obligation to notify a change of residence or departure from residence.

3. Prohibition to exercise a special right, deprivation of public rights, deprivation of the right to be employed in a certain position or to engage in a certain type of activities, payment of a contribution to the fund of crime victims, confiscation of property, prohibition to approach the victim, participation in the programmes addressing violent behaviour, extended confiscation of property and an obligation to notify a change of residence or departure from residence may be imposed together with a penalty. No payment of a contribution to the fund of crime victims shall be imposed in addition to the fine.

4. A minor released from criminal liability on the grounds provided for in Chapter VI or Chapter XI of this Code or released from a penalty on the grounds provided for in Chapter X of this Code may be subject to extended confiscation of property.



5. A legal entity may be subject to payment of a contribution to the fund of crime victims, confiscation of property, extended confiscation of property. No payment of a contribution to the fund of crime victims shall be imposed in addition to the fine.

6. When imposing two or more penal sanctions, the compatibility of the sanctions and the possibility of their corrective effect upon the convicted person must be taken into consideration.

### **Article 72. Confiscation of Property**

1. Confiscation of property shall be the compulsory uncompensated taking into the ownership of a state of any form of property subject to confiscation and held by the offender or other persons.

2. An instrument or a means used to commit an act prohibited by this Code or the result of such an act shall be considered as property subject to confiscation. The property of any form directly or indirectly obtained/derived from the act prohibited by this Code shall be considered as the result of the act.

3. The property held by the offender and being subject to confiscation must be confiscated in all cases.

4. The property held by another natural or legal person and being subject to confiscation shall be confiscated irrespective of whether the person has been convicted of the commission of an act prohibited by this Code, where:

1) when transferring the property to the offender or other persons, he was, or ought to have been, aware that this property would be used for the commission of the act prohibited by this Code;

2) the property has been transferred thereto under a fake transaction;

3) the property has been transferred thereto as to a family member or close relative of the offender;

4) the property has been transferred to him as to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);

5) when acquiring the property, he or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property is an instrument or a means used to commit an act prohibited by this Code or the result of such an act.

5. Where the property which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 4 of this Article a sum of money equivalent to the value of the property subject to confiscation.

6. When ordering confiscation of property, the court must specify the items subject to confiscation or the monetary value of the property subject to confiscation.

### **Article 72-3. Extended Confiscation of Property**

1. Extended confiscation of property shall be the taking into ownership of the State of the property of the offender or part thereof disproportionate to the legitimate income of the offender, where there are grounds for believing that the property has been obtained by criminal means.

2. Extended confiscation of property shall be imposed provided that all of the following conditions are met:

1) the offender has been convicted of a less serious, serious or grave premeditated crime from which he obtained, or could have obtained, material gain;

2) the offender holds the property acquired during the commission of an act prohibited by this Code, after the commission thereof or within the period of five years prior to the commission thereof, whose value does not correspond to the offender's legitimate income, and the difference is greater than 250 minimum standards of living (MSLs) or transfers such property to other persons within the period specified in this point;

3) the offender fails, in the course of criminal proceedings, to provide proof of the legitimacy of acquisition of the property.

3. The property referred to in paragraph 2 of this Article and being subject to confiscation, if it has been transferred to another natural or legal person, shall be confiscated from this person, where at least one of the following grounds exists:

1) the property has been transferred under a fake transaction;

2) the property has been transferred to the offender's family members or close relatives;

3) the property has been transferred to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);

4) the person whereto the property has been transferred or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property has been obtained by criminal means or with illicit funds of the offender.

4. The extended confiscation of property provided for in this Article may not be imposed on the property of the offender or third parties or part thereof if it is not recoverable under international treaties of the Republic of Lithuania and provisions of the Code of Civil Procedure of the Republic of Lithuania and other laws.

5. Where the property, or part thereof, which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 3 of this Article a sum of money equivalent to the value of the property subject to confiscation.

6. When ordering extended confiscation of property, the court must specify the items subject to confiscation or the monetary value of the property or part thereof subject to confiscation.

#### Article 10. Types of Criminal Acts

Criminal acts shall be divided into crimes and misdemeanours.

#### **Article 11. Crime**

1. A crime shall be a dangerous act (act or omission) forbidden under this Code and punishable with a custodial sentence.

2. Crimes shall be committed with intent and through negligence. Premeditated crimes shall be divided into minor, less serious, serious and grave crimes.

3. A minor crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration of three years.

4. A less serious crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years in prison.

5. A serious crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of three years, but not exceeding ten years in prison.

6. A grave crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years.

**Article 12. Misdemeanour**

A misdemeanour shall be a dangerous act (act or omission) forbidden under this Code which is punishable by a non-custodial sentence, with the exception of arrest.

**Article 189-1. Unjust Enrichment**

1. A person who holds by the right of ownership the property whose value exceeds 900 MSLs, while being aware or having to be and likely to be aware that such property could not have been acquired with legitimate income,

shall be punished by a fine or by arrest or by a custodial sentence for a term of up to four years.

2. A person who takes over the property referred to in paragraph 1 of this Article from third parties shall be released from criminal liability for unjust enrichment where he gives a notice thereof to law enforcement institutions before the service of a notice of suspicion and actively cooperates in determining the origin of the property.

3. A legal entity shall also be held liable for the acts provided for in this Article.

Please note: 1 MSL = 50 EUR.

Under Article 189-1, only the persons who hold the property having the characteristics specified in Article 1891 of the Criminal Code after the entry into force of this Law shall be criminally liable.

**Article 190. Interpretation of the Value of Property**

1. [..]

2. [..]

3. The legitimate income referred to in Article 189-1 of this Chapter shall be income derived from activities not prohibited by legal acts, irrespective of whether or not it has been accounted for in accordance with the procedure laid down by legal acts.

### **Provisions of the Criminal Procedure Code of the Republic of Lithuania:**

#### **Article 151 CPC. Provisional restraint of ownership rights**

1. For the purposes of securing a civil claim, a probable (extended) confiscation of property **or for the return of criminally acquired property to the owner or legal manager**, provisional restraint of the ownership rights may be imposed, upon the decision of the prosecutor, on a suspect or a natural person who, in accordance with the provisions of legal acts, is held financially responsible for the actions of the suspect, or on any other natural persons who possess the property received or acquired as a result of a criminal offence or who possess the property subject to confiscation which corresponds to the property defined by Article 723 of the Criminal Code of the Republic of Lithuania. Provisional restraint of the ownership rights may be imposed in conjunction with seizure or search.

2. The ownership rights of a legal person may be provisionally restrained further to the prosecutor's decision:

1) in order to secure a probable confiscation of property in the cases provided for by article 72 of the Criminal Code of the Republic of Lithuania and a probable extended confiscation of property in the cases provided for by article 72(3) of the Criminal Code of the Republic of Lithuania **or for the purpose for the return of criminally acquired property to the owner or legal manager**;

2) in order to secure a civil claim where there are sufficient grounds for bringing a civil action against a legal person;

3. A detailed list of the property of a person subject to provisional restraint of the ownership rights shall be made in the presence of persons indicated in Paragraph 4 of Article 145 of this Code. All the property subject to inventory must be shown to the persons present. In the official record of the provisional restraint of ownership rights or in annex thereof which is drawn up separately (detailed list of property) the quantity and individual features of the objects listed in the inventory must be specified. Provisional restraint of the ownership rights may not be applied in respect of objects which, pursuant to the list laid down by the laws of the Republic of Lithuania, are necessary for the suspect, his family members or persons dependant upon him.

4. Property in respect of which the right of ownership is provisionally restrained shall be transferred, at the discretion of the prosecutor, to a representative of a municipal institution or to the owner of such property or a member of his family, a close relative, or another person. Liability under Article 246 of the Criminal Code of the Republic of Lithuania for the disposal, concealment, destruction or damage of such property must be clarified to them. As a result, a written undertaking is taken from such persons. If necessary, such assets may be taken away. Where ownership of cash deposits is provisionally restrained, all operations with them shall be terminated unless otherwise specified in the decision on the provisional restraint of ownership rights.

5. A person subject to provisional restraint of the ownership rights shall be entitled to appeal against such decision of a prosecutor to a pre-trial judge. Such an appeal must be examined by the investigating judge not later than within seven days from the receipt of the appeal. The resolution of the investigating judge may be appealed against to a higher court. The resolution of the higher court shall be final and not subject to appeal.

6. Provisional restraint of the ownership rights imposed further to the prosecutor's decision may not last longer than for a period of six months. This term may be extended by the ruling of a pre-trial judge but for not more than six months. The pre-trial judge rulings on either extending or refusing to extend the time period of provisional restraint of the ownership rights shall be appealed in accordance with the procedure established in Part X of this Code. Where the case has been referred to the court, the imposition of provisional restraint of the ownership rights or the extension of the time period of this penal measure shall be decided (in the form of a court ruling) by the court having jurisdiction over the case. The court ruling shall be appealed against in accordance with the procedure established in Part X of this Code.

7. In cases involving medium crimes provided for under Article 189 Parts 1 and 2 of the Criminal Code of the Republic of Lithuania, serious or particularly serious (grave) crimes or in criminal cases where a civil action has been brought with regard to reimbursement of damages caused by the criminal offence or where the suspect has gone into hiding, the number of extensions of the time periods of provisional restraint of ownership rights shall be unlimited.

8. Provisional restraint of the ownership rights shall be cancelled further to the decision of a prosecutor or a court ruling, where this measure has become unnecessary.

**Article 152. Resolution on provisional restraint of ownership rights**

1. Resolution on provisional restraint of ownership rights shall indicate:

- 1) time and location of making the resolution;
- 2) the prosecutor who made the resolution;
- 3) motives of making the resolution and the grounds for provisional restraint of ownership rights;



- 4) the person with regard to whom the provisional restraint of ownership rights was imposed (name, surname, personal number, and the place of residence of a natural person; name, address of the registered office and code of a legal person);
- 5) the person with regard to the satisfaction of whose claim the provisional restraint of ownership rights **or the return of criminally acquired property** is being imposed (name, surname, personal number, and the place of residence of a natural person; name, registered office and the code of a legal person) when the ownership right is restricted with a view to securing a civil claim **or the return of criminally acquired property**;
- 6) the name of the property the ownership rights thereto are provisionally restrained, its code (where the property is registered in the property register), its brief description, location and other identifying information;
- 7) the owner (co-owners) of the property subject to provisional restraint of ownership rights: name, surname, personal number, the place of residence of a natural person; name, location of the registered office and code of a legal person;
- 8) forms of provisional restraint of ownership rights (total restriction of ownership right or individual components of this right) and the extent;
- 9) the term of application of provisional restraint of ownership rights;
- 10) the custodian or administrator of the property (name, surname, personal number and the place of residence of a natural person; location of the registered office and code of a legal person);
- 11) procedure for execution of the resolution;
- 12) procedure for appealing the resolution.

2. The resolution shall be notified to the person whose property rights are to be provisionally restrained and all the owners (co-owners) of the property the ownership rights to which are subject to provisional restraint immediately but not later than on the next work day, following the procedure established in this Code. A copy of the resolution on provisional restraint of ownership rights shall be delivered to the owner (co-owners) of the property the ownership right to which is subject to the provisional restraint. Where there is no possibility of a prompt notification of resolution, it shall be deemed that the resolution is notified upon its registration in the register of the statements of seizure of property.

3. A copy of the resolution on provisional restraint of ownership right and its record shall be delivered to the administrator of the register of acts of seizure of property immediately and not later than on the next working day.

4. Where at the moment of passing of the resolution on provisional restraint of ownership right the composition and location of the property subject to restraint is not known, the particular property may not be indicated in the resolution. In such a case, the prosecutor making the resolution shall undertake measures in order to establish the composition and location of the property the ownership rights to which are to be restrained and as soon as this information is established, an additional resolution shall be made.

5. The additional resolution shall be passed, notified and registered following the procedure provided for in this Article.

6. Having revoked the provisional restraint of ownership rights, the prosecutor or the court shall promptly notify the administrator of the register of the acts of seizures of property and deliver the resolution or the ruling on revocation of provisional restraint of ownership rights.

SPECIAL PROVISIONS OF CPC REGARDING LEGAL PERSONS:

**Article 387. Procedure**

1. The procedure for the trial of criminal offences committed by legal persons shall be governed by the general rules of this Code, with the exceptions provided for in the articles of this Chapter.

2. Where proceedings for criminal offences have been instituted separately in respect of a legal person and a natural person, such offences shall normally be investigated together. The proceedings shall be conducted and decisions taken in respect of a legal person in accordance with the general rules of this Code and the exceptions provided for in the articles of this Chapter, and in respect of a natural person in accordance with the general rules of this Code.

3. Proceedings in respect of a criminal offence against a legal person may be instituted or continued separately from proceedings against a natural person who may have committed a criminal offence in its favour or interest:

1) where the period of limitation for conviction has expired in respect of a criminal offence committed by a natural person, but has not yet expired in respect of a legal person;

2) when a natural person is released from criminal liability and the case against him or her is dismissed;

3) where the natural person has been convicted of the same charge;

4) where the proceedings against a natural person are suspended or discontinued because he or she has suffered from a mental disorder as a result of the commission of the offence and is therefore unable to comprehend the substance of his or her actions or to control them;

5) where the natural person has died and the proceedings against him or her are not instituted or are discontinued as a result;

- 6) where the competent authority of the foreign State does not authorise the prosecution of the natural person;
- 7) where the natural person absconds from the pre-trial investigation or the court or his whereabouts are unknown;
- 8) where the natural person is outside the Republic of Lithuania and avoids appearing before the court, and the court decides, in accordance with the procedure laid down in Article 433 of this Code, to continue the proceedings against the legal person and to postpone the proceedings against the natural person;
- 9) when, during the pre-trial investigation, the public prosecutor, and during the trial, the court hearing the case, decides to separate the proceedings of the legal person and of the natural person who may have committed a criminal offence for its benefit or in its interests, if it is considered that in such a case, the proceedings in respect of the legal person or in respect of the natural person will be able to proceed more quickly;
- 10) where the complex management structure of the legal person or other circumstances do not allow to identify, prosecute or convict a specific natural person who committed the criminal offence, but there are grounds to believe that the criminal offence was committed by one or more natural persons referred to in Article 20(2) or (3) of the Criminal Code of the Republic of Lithuania, or that the criminal offence was committed by the joint actions (omissions) of such persons;
- 11) in other cases where criminal proceedings against the natural person who may have committed the criminal offence are not initiated or continued.

4. In the cases referred to in subparagraphs 1, 2, 3 and 4 of paragraph 3 of this Article, in the course of the criminal proceedings of a legal person, the issues of guilt and criminal liability of a natural person who has committed a criminal offence for the benefit of or in the interests of the legal person shall not be reviewed. The court shall refer to the decisions or findings previously made in this or another criminal case, which established the fact of a criminal

offence committed by a natural person. In the cases referred to in paragraph 3(1), (2) and (3) of this Article, the natural person who has the status of a convicted person in the proceedings and/or his/her defence counsel shall be summoned to appear before the court, but their failure to do so shall not stay the proceedings. The court shall have the right to question the natural person and to carry out other steps in the investigation of evidence.

5. In the cases referred to in subparagraphs 5, 6, 7, 8, 9 and 11 of paragraph 3 of this Article, in the course of the criminal proceedings of a legal person, the issue of criminal liability of a natural person who has committed a criminal offence for the benefit of or in the interests of the legal person shall not be decided. The court shall base itself on the evidence, decisions or conclusions in this or any other criminal case, which have been taken and which establish the fact of a criminal offence committed by a natural person. The provisions of Articles 435 and 436 of this Code shall apply to an accused natural person. If, in the course of the trial, it becomes apparent that it is not possible to resolve the case fairly in the absence of the accused natural person, the trial shall be adjourned or a decision shall be taken on the consolidation of the criminal proceedings against the natural person and the legal person.

**Article 388. Representative of the legal person to be prosecuted**

1. The representative of a legal person to be prosecuted may be the manager or an employee of the legal person or a lawyer authorised by the legal person to act as a representative in the proceedings.

2. When a power of attorney to act as a representative in proceedings is submitted, the pre-trial investigation officer shall adopt a decision to recognise the person as a representative of the legal person.

3. If the legal person appoints an unsuitable person as a representative or does not appoint a representative at all, the pre-trial investigation officer shall have the right to appoint a representative of the legal person by way of a decision.

4. The representative of a legal person shall exercise all the rights conferred by this Code on the suspect and the accused in the proceedings, and shall perform the duties of the parties to the proceedings.

**Article 389. Provisional procedural coercive measures against a legal person**

1. The following procedural coercive measures may be imposed on a legal person: temporary suspension of the activities of the legal person and temporary restriction of the activities of the legal person.

2. The activities of a legal person shall be temporarily suspended or temporarily restricted by a decision of a pre-trial judge or a court at the request of a public prosecutor.

3. A temporary suspension or temporary limitation of the activities of a legal person shall be imposed if the activities of the legal person to be prosecuted are liable to impede the smooth conduct of the criminal proceedings, as well as to violate the order of the economy, cause damage to the finances, nature, public safety and intellectual property.

4. The order to suspend the activities of a legal person shall oblige the legal person to temporarily cease all economic, commercial, financial or professional activities provided for in its founding documents and to close all branches. The order shall specify the time limit for the temporary suspension of the activities of the legal person. At the request of the public prosecutor, this time limit may be extended by order of the pre-trial judge or the court.

5. The order temporarily restricting the activities of a legal person shall prohibit the legal person from engaging in certain activities provided for in its founding documents and shall oblige the closure of certain branches of the legal person. The order shall specify the duration of the temporary restriction of the activities of the legal person.

6. The order temporarily suspending the activities of a legal person or temporarily restricting the activities of a legal person shall be sent to the bailiff for execution.

7. The order shall be notified to the representative of the legal person by signature.

8. The representative of a legal person may appeal against the decision of a pre-trial investigation judge or a court to temporarily suspend the activities of a legal person or to temporarily restrict the activities of a legal person to a higher court within seven days from the date of receipt of the decision.

9. A decision of a pre-trial investigation judge or a court not to impose a temporary suspension of the activities of a legal person or a temporary limitation of the activities of a legal person may be appealed against by a public prosecutor within the terms and in accordance with the procedure set out in paragraph 8 of this Article.

### **Article 390. Sentencing in a case in which a legal person is on trial**

1. In a criminal case in which a legal person and a natural person are jointly prosecuted and tried, the court shall deliver a single judgment. The operative part of that judgment shall set out separately the judgments of the court in respect of the legal person and in respect of the natural person. The representative of the convicted legal person and the convicted natural person, as well as other participants in the proceedings before the court, shall have the right to appeal against the judgment in accordance with the procedure laid down in Article 313 of this Code.

2. Where a criminal case concerning a legal person is tried separately, the court shall pass sentence only on the legal person. The representative of the convicted legal person and other participants in the proceedings shall have the right to appeal against this verdict in accordance with the procedure laid down in Article 313 of this Code. A sentence passed on a legal person shall not be binding on the court hearing a criminal case against a natural person if such a case is pending. If, after the examination of such a case, new circumstances arise which make it possible to set aside the conviction or decision rendered against the legal person and to

reopen the criminal proceedings, the proceedings on the basis of the new circumstances may be initiated in accordance with the procedure laid down in Article 446 of this Code.