

Country report. Romania

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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 about legal persons?

Models of confiscation	Remarks
<p>Extended confiscation</p>	<p>Extended confiscation was introduced in both the 1969 Criminal Code and the new Criminal Code in the chapter on security measures.</p> <p>The legislative amendment introduced by Law No. 63/2012 aimed to transpose into Romanian law Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-related Proceeds, Instrumentalities and Property.</p> <p>According to the regulation:</p> <p>(1) Property other than that referred to in Article 112 shall also be confiscated if the person has been convicted of one of the following offences, if the offence is likely to have been committed for material</p>

	<p>gain and the penalty provided for by law is imprisonment for 4 years or more:</p> <ul style="list-style-type: none">a) offences related to drug and precursor trafficking;b) offences related to trafficking and exploitation of vulnerable persons;c) offences related to the state border of Romania;d) money laundering offences;e) offences under the legislation on preventing and combating pornography;f) offences under anti-terrorism legislation;g) setting up an organised criminal group;h) offences against property;i) failure to comply with the rules on arms, munitions, nuclear materials and explosives;j) counterfeiting of coins, stamps or other valuables;k) breach of trade secrets, unfair competition, non-compliance with import or export regulations, embezzlement, offences relating to import and export regulations and the introduction and disposal of waste and residues;l) gambling offences;m) corruption, related offences and offences against the financial interests of the European Union;n) tax evasion offences;o) offences related to customs procedures;p) fraud using computer systems and electronic means of payment;q) trafficking in human organs, tissues or cells.
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	<p>(2) Extended confiscation shall be ordered if all of the following conditions are met:</p> <p>(a) the value of the property acquired by the convicted person during a period of 5 years before and, if applicable, after the commission of the offence, up to the date of issue of the Court's indictment, clearly exceeds the income lawfully obtained by him/her⁸⁸⁷;</p> <p>(b) the Court is satisfied that the property in question is derived from criminal activity of the kind referred to in paragraph (1).</p> <p>(3) For the purposes of applying paragraph (2), account shall also be taken of the value of property transferred by the convicted person or by a third party to a member of the convicted person's family or to a legal person over which the convicted person has control.</p> <p>(4) Property within the meaning of this Article includes money.</p>
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⁸⁸⁷ By Constitutional Court Decision No. 11 of 15 January 2015, published in Official Gazette No. 102 of 9 February 2015, the Constitutional Court admitted the exception of unconstitutionality of the provisions of Article 112¹, paragraph (2), letter (a) of the Criminal Code, finding them constitutional insofar as extended confiscation does not apply to property acquired before the entry into force of Law No. 63/2012 amending and supplementing the Criminal Code of Romania and Law No. 286/2009 on the Criminal Code. Pursuant to Article 147, paragraph (1) of the Romanian Constitution, published in Official Gazette no. 767 of 31 October 2003, the provisions of the laws and ordinances in force, as well as those of the regulations, that have been declared unconstitutional shall cease to have legal effect 45 days after the publication of the decision of the Constitutional Court, if the Parliament or the Government, as the case may be, do not, within this period, bring the unconstitutional provisions into line with the provisions of the Constitution. During this period, the provisions found to be unconstitutional shall be suspended by operation of law. Therefore, during the period from 9 February 2015 to 25 March 2015, the provisions of Article 112¹, paragraph (2) letter a) of the Criminal Code, insofar as the extended confiscation applies to assets acquired before the entry into force of Law No. 63/2012 on the Amendment and Completion of the Criminal Code of Romania and Law No. 286/2009 on the Criminal Code, were suspended by operation of law and ceased to have legal effect as of 26 March 2015, since the legislator did not intervene to amend the provisions declared unconstitutional.

	<p>(5) In determining the difference between the lawful income and the value of the property acquired, account shall be taken of the value of the property at the time of its acquisition and of the expenses incurred by the convicted person and the members of his family.</p> <p>(6) If the property to be confiscated is not found, money and assets up to their value shall be confiscated instead.</p> <p>(7) Property and money obtained from the exploitation or use of property subject to confiscation, as well as property produced such property, shall also be confiscated.</p> <p>(8) Confiscation shall not exceed the value of the property acquired during the period referred to in paragraph (2) exceeding the level of the lawful income of the convicted person.</p> <p>The legislative amendment introduced by Law No. 228/2020 was necessary following the entry into force of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and the proceeds of crime committed in the European Union. Under the new directive, if a person has been convicted of an offence punishable by a prison sentence of 4 years or more, and has assets acquired within the last 5 years which the Court is satisfied have been derived from criminal activity, it shall order extended confiscation. Satisfaction is based on the disparity between the legal income and the wealth held.</p>
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	<p>Extended confiscation can only be ordered if a crime has been committed and only if the offender has been convicted. Unlike the 1969 Criminal Code, which required the commission and conviction of a crime as a condition for the imposition of other security measures, the new Criminal Code makes extended confiscation the only security measure for which these conditions must be met.</p> <p>Differences in the establishment of the security measure of extended confiscation as amended by Law No. 63/2012 vs. Law No. 228/2020:</p> <table border="1"> <thead> <tr> <th data-bbox="660 907 1070 981">Law No. 63/2012</th> <th data-bbox="1070 907 1481 981">Law No. 228/2020</th> </tr> </thead> <tbody> <tr> <td data-bbox="660 981 1070 1126">Transposes Framework Decision 2005/212/JHA</td> <td data-bbox="1070 981 1481 1126">Transposes Directive 2014/42/EU</td> </tr> <tr> <td data-bbox="660 1126 1070 1417">Offences punishable by law with imprisonment of 4 years or more (5 years in the 1969 Criminal Code)</td> <td data-bbox="1070 1126 1481 1417">Any offence punishable by law with imprisonment of 4 years or more</td> </tr> <tr> <td data-bbox="660 1417 1070 1986">Mandatory requirement: the value of the property acquired by the convicted person, within a period of 5 years before and, if applicable, after the offence was committed, up to the date of the Court's decision, clearly exceeds the</td> <td data-bbox="1070 1417 1481 1986">The Court's conviction that the property in question is derived from criminal activity may be based, inter alia, on the disproportion between the lawful income and the person's wealth</td> </tr> </tbody> </table>	Law No. 63/2012	Law No. 228/2020	Transposes Framework Decision 2005/212/JHA	Transposes Directive 2014/42/EU	Offences punishable by law with imprisonment of 4 years or more (5 years in the 1969 Criminal Code)	Any offence punishable by law with imprisonment of 4 years or more	Mandatory requirement: the value of the property acquired by the convicted person, within a period of 5 years before and, if applicable, after the offence was committed, up to the date of the Court's decision, clearly exceeds the	The Court's conviction that the property in question is derived from criminal activity may be based, inter alia, on the disproportion between the lawful income and the person's wealth
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	income lawfully obtained by the convicted person	
	Extended confiscation cannot operate from third parties	Extended confiscation from third parties if they knew or should have known that the purpose of the transfer was to avoid confiscation

Please note that in Romania, the confiscation models applied to natural persons are also applied to legal persons.

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.

A confiscation order against a natural person may affect a legal person, even though the legal person was not involved in the commission of the offence. For example, the shares held by the natural person may be confiscated (special confiscation) if they were acquired from sums constituting the proceeds of crime.

The assets of a legal entity can also be confiscated if the assets of the legal entity were used and the legal entity knew the purpose for which they were used - special confiscation from a third party. At the same time, the shares held by the convicted natural person can also be confiscated to a large extent.

In conclusion, shares held by a natural person have the legal nature of the property and can be confiscated from the owner if the conditions for special or extended confiscation are met with respect to the owner.

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?

In Romania, legal persons are criminally liable.

According to Article 136, paragraph (2) of the Criminal Code, the main penalty applicable to a legal person is a criminal fine.

Article 135 of the Criminal Code: Conditions for criminal liability of the legal person

(1) The legal person, with the exception of the State and public authorities, shall be criminally liable for criminal offences committed in the performance of the object of its activity or in the interest or on behalf of the legal person.

(2) Public institutions shall not be criminally liable for offences committed in the exercise of an activity which cannot be the subject of private domain.

(3) The criminal liability of the legal person shall not exclude the criminal liability of the natural person who has contributed to the commission of the same offence.

Article 136 of the Criminal Code: Penalties applicable to the legal person

(1) The penalties applicable to the legal person are principal and complementary.

(2) The principal penalty is a fine.

(3) The complementary penalties are:

a) dissolution of the legal person;

- b) suspension of the activity or one of the activities of the legal person for a period of 3 months to 3 years;
- (c) closure of some of the legal person's places of business for a period of between 3 months and 3 years;
- (d) exclusion from participation in public procurement procedures for a period of 1 to 3 years;
- (e) placing under judicial supervision;
- (f) notification or publication of the judgment of conviction.

Article 137 of the Criminal Code: Setting of a fine for the legal person:

- (1) The fine is the amount of money that the legal person is ordered to pay to the State.
- (2) The amount of the fine is determined by the day-fine system. The amount of the day-fine, which varies from 100 to 5,000 lei, is multiplied by the number of days, which varies from 30 to 600 days.
- (3) The Court shall determine the number of days-fine taking into account the general criteria for the individualisation of the penalty. The amount of a day-fine shall be determined taking into account the total income and total assets contained in the annual financial statements or, where applicable, in the annual accounting reports, which the legal person is required by law to draw up and submit for the financial year preceding the indictment.
- (3¹) The amount of a day-fine shall be determined taking into account the value of the assets at the time of the indictment in the case of a legal person who:
 - a) is not obliged to draw up and submit the documents referred to in paragraph (3) in accordance with the law;

b) was established in the year of the indictment.

(4) Special limits on days-fine are between:

a) 60 and 180 days-fine, if the law only provides for a fine for the offence committed;

b) 120 and 240 days-fine, if the law provides for a maximum of 5 years' imprisonment, alone or alternatively with a fine;

c) 180 and 300 days-fine, if the law provides for imprisonment of up to 10 years;

d) 240 and 420 days-fine, if the law provides for imprisonment of up to 20 years;

e) 360 and 510 days-fine, if the law provides for imprisonment for more than 20 years or life imprisonment.

(5) If the offence committed by the legal person was intended to obtain a pecuniary benefit, the specific limits of the days-fine provided by law for the offence committed may be increased by one third, without exceeding the general maximum fine. In determining the amount of the fine, the amount of the pecuniary benefit obtained or sought shall be taken into account.

In Romania, the confiscation models applied to natural persons are also applied to legal persons. There are no separate confiscation rules for legal persons.

National criminal law provides for two types of confiscation following the commission of a criminal offence: special confiscation, which also includes the situation of confiscation in equivalent, and extended confiscation, both of which are regulated in the Criminal Code - hereinafter referred to as the CC. Both special confiscation and extended confiscation may be applied to third parties, thus including the type of confiscation against third parties.

Special confiscation can also be applied without a conviction, while extended confiscation cannot be applied without a conviction. Thus, in Romania, non-conviction-based confiscation is regulated and is also a form of special confiscation.

To sum up, in Romania, special confiscation corresponds to direct confiscation, confiscation in equivalent, confiscation against third parties and non-conviction-based confiscation, while extended confiscation can be ordered both against the convicted person and third parties and can also be ordered as confiscation in equivalent.

The legal regime for special confiscation and extended confiscation is set out in the General Part of the CC, under Title IV "Security Measures". Confiscation is regulated as a security measure, i.e. a preventive coercive measure aimed at eliminating a state of danger and preventing the commission of criminal offences.

Confiscation is applied *in rem*, to the property linked to the offence. For this reason, it is not subject to any statute of limitations and is not affected by grounds that lead to the termination of criminal proceedings or that extinguish criminal liability.

Confiscation is a final security measure. It cannot be revoked because the threat no longer exists. Confiscated property is returned to the State or destroyed.

To eliminate as quickly as possible the danger posed by the existence of the property to be confiscated, the legislator has provided for the possibility of seizing it for confiscation, both at the prosecution stage, by the prosecutor, and at the trial stage, by the judge.

a. Special confiscation

Under Article 112 of the CC:

(1) The following are subject to special confiscation:

- a) property derived from the commission of a criminal offence;
- b) property used or intended to be used in any way to commit a criminal offence, if it belongs to the perpetrator or to another person who knew the purpose of its use;
- c) property used immediately after the commission of the offence to ensure the escape of the perpetrator or the retention of the benefits or proceeds obtained, if it belongs to the perpetrator or to another person who knew the purpose of its use;
- d) property given to induce the commission of a criminal offence or to reward the perpetrator;
- e) property acquired through the commission of a criminal offence, unless it is returned to the victim or used to compensate the victim;
- f) property the possession of which is prohibited by criminal law.

(2) In the cases referred to in paragraph 1, letters b) and c), if the value of the property to be confiscated is manifestly disproportionate to the nature and gravity of the offence, partial confiscation shall be ordered, in monetary equivalent, taking into account the consequences caused or likely to be caused and the contribution of the property to those consequences. If the property has been produced, modified or adapted for the purpose of committing a criminal offence, it shall be entirely confiscated.

(3) In the cases referred to in paragraph (1), letters b) and c), if the property cannot be confiscated because it does not belong to the perpetrator and the person who possessed it was not aware of the purpose of its use, its cash value shall be confiscated in accordance with the provisions of paragraph (2).

(4) The provisions of paragraph (1), letter b) shall not apply to offences committed through the press.

(5) If the property to be confiscated in accordance with paragraph (1), letters b) - e) cannot be found, money and other property shall be confiscated instead, up to their value.

(6) The property and money obtained from the use of the property subject to confiscation, as well as the property generated by it, with the exception of the property referred to in paragraph (1), letters b) and c), shall also be confiscated.

b. Extended confiscation

Law No. 63/2012 amended both the 1969 Criminal Code and Law No. 286/2009 on the new Criminal Code, introducing into both acts the security measure of extended confiscation. This legislative amendment aimed to transpose into Romanian law the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-related Proceeds, Instrumentalities and Property.

On 5 November 2020, Law No. 228/2020, which amends the Criminal Code with regard to adapting the extended confiscation provisions, entered into force. The amendment made by Law No. 228/2020 was necessary following the entry into force of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and the proceeds from crime committed in the European Union. Under this new regulation, extended confiscation will be ordered where a person has been convicted of an offence punishable by a custodial sentence of four years or more and has property acquired within the last five years which the Court is satisfied has been derived from criminal activity. The conviction is based on the disproportion between the legal income and the assets.

According to Article 112¹ of the CC:

(1) Assets other than those referred to in Article 112 shall also be subject to confiscation if a person has been convicted of an offence which is likely to bring him material benefit and for which the penalty prescribed by law is imprisonment for a term of four years or more, if the Court is convinced that the assets in question derive from criminal activity. The Court's conviction may also be based on the disproportion between the legal income and the person's wealth.

(2) Extended confiscation shall be ordered in respect of property acquired by the convicted person within a period of five years before and, where applicable, after the commission of the offence, up to the date of issue of the writ of summons. Extended confiscation may also be ordered in respect of property which has been transferred to third parties, if the third parties knew or should have known that the purpose of the transfer was to avoid confiscation.

(3) For the purpose of applying the provisions of paragraph (2), the value of property transferred by the convicted person or by a third party to a member of the family or to a legal person over which the convicted person has control shall also be taken into account.

(4) For the purposes of this Article, property shall include money.

(5) In determining the difference between the lawful income and the value of the property acquired, the value of the property at the time of its acquisition and the expenses incurred by the convicted person and the members of his family shall be taken into account.

(6) If the property to be confiscated is not found, money and assets up to their value shall be confiscated in its place.

(7) Property and money obtained from the exploitation or use of property subject to confiscation, as well as property produced by such property, shall also be confiscated.

(8) Confiscation shall not exceed the value of the property acquired during the period referred to in paragraph (2), which exceeds the amount of the convicted person's lawful income.

4. What 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’.

Models of confiscation	Meaning/Interpretation
<p><u>Special confiscation</u></p> <p>Direct confiscation</p> <p>NCBC</p> <p>Article 112, paragraphs (1), (6) of the CC</p>	<p>(1) The following are subject to special confiscation:</p> <p>(a) property derived from the commission of a criminal offence;</p> <p>b) property used or intended to be used in any way to commit a criminal offence, if it belongs to the perpetrator or to another person who knew the purpose of its use;</p> <p>c) property used immediately after the commission of the offence to ensure the escape of the perpetrator or the retention of the benefits or proceeds obtained, if it belongs to the perpetrator or to another person who knew the purpose of its use;</p> <p>d) property given to induce the commission of a criminal offence or to reward the perpetrator;</p> <p>e) property acquired through the commission of a criminal offence, unless it is returned to the victim or used to compensate the victim;</p> <p>f) property the possession of which is prohibited by criminal law.</p>

	<p>(6) The property and money obtained from the use of the property subject to confiscation, as well as the property generated by it, with the exception of the property referred to in paragraph (1), letters b) and c), shall also be confiscated.</p>
<p><u>Special confiscation</u></p> <p>Confiscation by equivalent</p> <p>Confiscation against third parties</p> <p>NCBC</p> <p>Article 112, paragraphs 2, 3, 5 of the CC</p>	<p>(2) In the case referred to in paragraph (1), letters b) and c), if the value of the property to be confiscated is manifestly disproportionate to the nature and gravity of the offence, confiscation shall be ordered only in part, by monetary equivalent, taking into account the result obtained or that could have been obtained and the contribution of the property to it. If the property has been produced, modified or adapted for the commission of the criminal offence, it shall be confiscated in its entirety.</p> <p>(3) In the cases referred to in paragraph (1), letters b) and c), if the property cannot be confiscated because it does not belong to the perpetrator and the person who possessed it was not aware of the purpose of its use, its cash value shall be confiscated in accordance with the provisions of paragraph (2).</p> <p>(5) If the property to be confiscated in accordance with paragraph (1), letters b) - e) cannot be found, money and other property shall be confiscated instead, up to their value.</p>
<p><u>Extended confiscation</u></p> <p>Confiscation against third parties</p> <p>Confiscation by equivalent</p> <p>Article 112¹ of the CC</p>	<p>(1) Assets other than those referred to in Article 112 shall also be subject to confiscation if a person has been convicted of an offence which is likely to bring him material benefit and for which the penalty prescribed by law is imprisonment for a term of four years or more, if the Court is convinced that the assets in question derive from</p>

	<p>criminal activity. The Court's conviction may also be based on the disproportion between the legal income and the person's wealth.</p> <p>(2) Extended confiscation shall be ordered in respect of property acquired by the convicted person within a period of five years before and, where applicable, after the commission of the offence, up to the date of issue of the writ of summons. Extended confiscation may also be ordered in respect of property which has been transferred to third parties, if the third parties knew or should have known that the purpose of the transfer was to avoid confiscation.</p> <p>(3) For the purpose of applying the provisions of paragraph (2), the value of property transferred by the convicted person or by a third party to a member of the family or to a legal person over which the convicted person has control shall also be taken into account.</p> <p>(4) For the purposes of this Article, property shall include money.</p> <p>(5) In determining the difference between the lawful income and the value of the property acquired, the value of the property at the time of its acquisition and the expenses incurred by the convicted person and the members of his family shall be taken into account.</p> <p>(6) If the property to be confiscated is not found, money and assets up to their value shall be confiscated in its place.</p> <p>(7) Property and money obtained from the exploitation or use of property subject to confiscation, as well as property produced by such property, shall also be confiscated.</p> <p>(8) Confiscation shall not exceed the value of the property acquired during the period referred to in paragraph (2), which exceeds the amount of the convicted person's lawful income.</p>
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Please note that in Romania the confiscation models applied to natural persons are also applied to legal persons.

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.

Models of confiscation	Elements to be realised/assessed
<p><u>Special confiscation</u></p> <p>Direct confiscation</p> <p>Confiscation by equivalent</p> <p>Confiscation against third parties</p> <p>NCBC</p> <p>Article 112 of the CC</p>	<p>a) Property derived from the commission of a criminal offence.</p> <p>In this case, there is a link between the offence and the proceeds of crime.</p> <p>Property which did not exist before the offence was committed, or which existed in a different form.</p> <p>For example, counterfeit currency, illegally produced alcoholic beverages, etc.</p> <p>Conditions must be met:</p> <ul style="list-style-type: none"> - a criminal offence has been committed. It is not necessary for the act to constitute a criminal offence, but it is sufficient that the act is

	<p>unjustified. A criminal act is justified in the following situations: 1. self-defence; 2. necessity; 3. exercise of a right or performance of an obligation; 4. consent of the injured party;</p> <p>- the property is obtained by committing an offence provided for by criminal law. This applies to assets that did not exist before the offence was committed, but only came into existence after the offence was committed, e.g. the fraudulent issue of currency (Article 315 of the Criminal Code).</p> <p>Another category of assets that are considered to have been produced by the criminal act are those that have acquired through the act a certain quality, a factual position that they could only have acquired by illegal means (assets smuggled into the country, certain narcotics contained in higher doses in medicines produced on the basis of abusive prescriptions).</p> <p>This category also includes the confiscation of stolen assets which, as a result of the criminal offence, have become part of other assets because the original assets have lost their individuality and their release into the civil circulation constitutes a danger.</p> <p>If the assets produced were destroyed or consumed by the perpetrator before the offence was discovered, they cannot be confiscated or ordered to pay the monetary equivalent because they no longer exist and no longer represent a danger to society and there is no likelihood of further offences being committed.</p>
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	<p>b) Property used or intended to be used in any way to commit a criminal offence, if it belongs to the perpetrator or to another person who knew the purpose of its use.</p> <p>These provisions do not apply to offences committed through the press. In this case, there is a link between the offence and the instruments.</p> <p>c) Property used immediately after the commission of the offence to ensure the escape of the perpetrator or the retention of the benefits or proceeds obtained, if it belongs to the perpetrator or to another person who knew the purpose of its use.</p> <p>In this case, there is a link between the crime and the instruments.</p> <p>d) Property given to induce the commission of a criminal offence or to reward the perpetrator.</p> <p>This category includes, for example, a sum of money given to a person to commit murder.</p>
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	<p>e) Property acquired through the commission of a criminal offence, unless it is returned to the victim or used to compensate the victim.</p> <p>In this case, there is a link between the crime and the products of the crime.</p> <p>f) Property the possession of which is prohibited by criminal law.</p> <p>This includes assets the possession of which is not permitted by law, or which are held in conditions other than those permitted (e.g. weapons, narcotics, explosives). Assets that are prohibited by criminal law are those whose possession requires the possession of certain permits or authorisations, as the case may be.</p>
<p><u>Extended confiscation</u></p> <p>Confiscation against third parties</p>	<ol style="list-style-type: none"> 1. Have committed one or more offences for which the law prescribes a prison sentence of 4 years or more. 2. The Court has convicted the defendant of an offence for which the law prescribes imprisonment of 4 years or more. 3. The offence for which conviction has been ordered is likely to result in material benefit to the defendant. Material benefit means any pecuniary advantage that could have been obtained by the defendant through the commission of the offence. It is not necessary for the defendant to have actually obtained the benefit in question, but the act committed by the defendant must be likely to result in such a benefit.

	<p>4. The Court is satisfied that the property acquired is derived from criminal activity. The Court's conviction may also be based on the disproportion between the legitimate income and the person's wealth. The Court is satisfied that third parties knew or should have known that the purpose of the transfer of property to them was to avoid confiscation.</p>
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Please note that in Romania the confiscation models applied to natural persons are also applied to legal persons.

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

Procedural aspects of precautionary measures

The Criminal Procedure Code regulates the precautionary measures in the General Part, Title V, Chapter III, Articles 249-254.

Precautionary measures are procedural measures of real coercion consisting in the seizure of movable or immovable property belonging to persons designated by law, using an attachment of such property.

As the name of the law suggests, these procedural measures have only a precautionary and not a remedial function. At the same time, they are procedural measures of a real nature, designed to ensure the enforcement of the fine or the costs or the special/extended confiscation.

Precautionary measures prevent the person against whom the measure has been applied from disposing of or encumbering the assets in question and thus also prevent the risk of insolvency.

The provisions on seizure orders apply to both natural and legal persons.

General conditions for taking precautionary measures

Article 249

(1) The prosecutor, in the course of criminal proceedings, the pre-trial chamber judge or the Court, ex officio or at the request of the prosecutor, in the course of pre-trial chamber proceedings or in the course of the trial, may, by order or, as the case may be, by reasoned order, take precautionary measures to prevent the concealment, destruction, alienation or removal from the investigation of property which may be subject to special or extended confiscation or which may serve to guarantee the enforcement of a fine or legal costs or to compensate for damage caused by the offence.

(2) The precautionary measures shall consist in making movable or immovable property unavailable by means of a seizure order.

(3) Precautionary measures to ensure the execution of the fine may be taken only on the property of the suspect or defendant.

(4) Precautionary measures for special confiscation or extended confiscation may be taken in respect of the property of the suspect or defendant or other persons in whose ownership or possession the property to be confiscated is located.

(4¹) In the case of property that may be subject to special or extended confiscation, the prosecutor shall be obliged to take precautionary measures to prevent the concealment, destruction, alienation or evasion of prosecution of such property.

(5) The precautionary measures to compensate for the damage caused by the crime and to guarantee the execution of the legal costs may be taken on the property of the suspect or

defendant and of the person liable in civil proceedings, up to the amount of their probable value.

(6) The precautionary measures referred to in paragraph (5) may be taken during criminal proceedings, pre-trial and trial proceedings and at the request of the civil party. The precautionary measures taken ex officio by the judicial bodies referred to in paragraph (1) may also be used by the civil party.

(7) The precautionary measures referred to in paragraph. (1) shall be mandatory if the injured person is a person who lacks or has limited capacity.

(8) Property belonging to a public authority or institution or to any other person governed by public law may not be seized, nor may property exempted by law.

Precautionary measures may also be ordered with a view to special or extended confiscation, in which case they may relate to the property of the suspect, the defendant or other persons in whose ownership or possession the property to be confiscated is found.

Although the wording of Article 249, paragraph 4 of the CPC expressly states that such a measure may also be ordered in respect of the property of third parties, it is assumed in the literature that the measure of extended confiscation will ultimately not be ordered in respect of the property of third parties, but in respect of the property derived from the criminal activity of the convicted person.

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?

Models of seizure	Remarks
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<p>Special confiscation</p>	<p>If it is established during the criminal investigation that the statute of limitations has expired, the prosecutor shall close the criminal investigation and refer the matter to the Preliminary Chamber Judge for special confiscation.</p> <p>Even if the perpetrator has been indicted and it is established during the trial that criminal liability is statute-barred, the Court shall order confiscation if it finds that an unjustified criminal act has been committed.</p>
<p>Extended confiscation</p>	<p>Extended confiscation cannot be ordered in the case of a prescription, as the condition of conviction is not met.</p>

Please note that in Romania the confiscation models applied to natural persons are also applied to legal persons.

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.)

<p>Models of confiscation</p>	<p>Elements to be realised/assessed</p>
<p><u>Special confiscation</u></p> <p>Direct confiscation</p>	<p>Special confiscation is a security measure of a patrimonial nature, consisting in the confiscation of certain assets related to the offence committed.</p>

<p>Confiscation by equivalent</p> <p>Confiscation against third parties</p> <p>NCBC</p>	<p>In other words, the security measure consists in the forcible transfer, free of charge, to the State's assets, of property belonging to a person who has committed an offence provided for by criminal law without justification or which is related to such an offence or which is held in violation of the law.</p> <p>The justification for taking the security measure of special confiscation is the danger posed by leaving certain assets in circulation, which gives rise to the belief that they could be used in the future to commit similar offences.</p> <p>The security measure of special confiscation is a preventive sanction and not a civil remedy.</p>
<p><u>Extended confiscation</u></p> <p>Confiscation by equivalent</p> <p>Confiscation against third parties</p>	<p>Extended confiscation was introduced in both the 1969 Criminal Code and the new Criminal Code in the chapter on security measures.</p> <p>Extended confiscation may be ordered only if a criminal offence has been committed and only if the perpetrator has been convicted.</p> <p>Extended confiscation may also be ordered by the Court only in the judgment disposing of the case. Until then, assets suspected of being the proceeds of illegal activities may be seized (under Article 249 of the Criminal Procedure Code). Therefore, de lege lata, extended confiscation is a security measure in Romanian law.</p> <p>The purpose of this measure is to remove the threat posed by the possession by criminals or criminal organisations of significant</p>

	<p>material resources derived from criminal activities which have not been dealt with by the judicial authorities. Thus, the purpose of this measure is precisely to prevent the dangerous situation that could result from the possession by criminal organisations of significant material resources that could be reinvested and used for criminal activities.</p> <p>The security measure of extended confiscation is also highly repressive. It is subject to more favourable criminal law provisions. The case law of the Constitutional Court has established that the provisions on extended confiscation are constitutional insofar as they apply only to offences committed after the entry into force of Law No. 63/2012⁸⁸⁸, i.e. 22 April 2012.</p> <p>It has also been established that the legal provisions on extended confiscation are constitutional, to the extent that extended confiscation does not apply to property acquired before the entry into force of Law No. 63/2012⁸⁸⁹.</p>
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Please note that in Romania the confiscation models applied to natural persons are also applied to legal persons.

9. For each model of confiscation against legal persons:

⁸⁸⁸ Decision No. 78/11.02.2014 and Decision No. 11/15.01.2015.

⁸⁸⁹ Decision No. 356/25.06.2014.

a) What is the procedure for its application? (the qualification/nature, the competent authority, the different steps, etc.)

Models of confiscation	Rules of procedure
Special confiscation	<p>Special confiscation can only be ordered by judges in Romania.</p> <p>Special confiscation may be ordered if the offence is found to be criminal and unjustified. Accordingly, for this type of confiscation it is not mandatory to order a conviction, as long as the Court finds that the offence is criminal and unjustified, and can therefore order confiscation in cases such as: prescription, death, amnesty.</p> <p>If, in the course of the criminal proceedings, the prosecutor orders the closure of the criminal case, he may, if he considers that the conditions for special confiscation are met, refer the matter to the Preliminary Chamber Judge with a view to ordering confiscation, in accordance with Article 549¹ of the CPC.</p>
Extended confiscation	<p>Extended confiscation can only be ordered by judges in Romania.</p> <p>Extended confiscation can only be ordered if the person has been convicted of at least one offence and all of the above conditions for extended confiscation are met.</p>

b) What is the standard of the proof/is the reversal of the burden of the proof admitted?

Regarding the standard of proof for special confiscation, the Code does not explicitly state what this standard is, only that the specific conditions of each type of confiscation must be proven.

However, in the case of extended confiscation, the judge must be satisfied that the assets in question are derived from criminal conduct.

No reversal of the burden of proof is allowed, as the person is still presumed innocent. However, judicial authorities may use relative presumptions as evidence.

c) What are the safeguards (limitations e.g. proportionality clauses, relevant legal remedies)?

In terms of safeguards, in both special and extended confiscation, the Courts are required to identify and summon all persons concerned to enable them to defend themselves.

About proportionality, partial confiscation may also be ordered in certain circumstances based on equivalent confiscation, by Article 112 of the Criminal Code. Thus, according to Article 112, paragraph 2 of the Criminal Code, in the case provided for in paragraph (1), letter b) – “property used or intended to be used in any way to commit a criminal offence, if it belongs to the perpetrator or to another person (including a legal person) who knew the purpose of its use, and letter (c) - property used immediately after the commission of the offence to ensure the escape of the perpetrator or the retention of the benefits or proceeds obtained, if it belongs to the perpetrator or to another person who knew the purpose of its use”, if the value of the assets to be confiscated is manifestly disproportionate to the nature and gravity of the offence, partial confiscation shall be ordered, by monetary equivalent, taking into account the damage caused or likely to be caused and the contribution of the

assets to that damage. If the property has been produced, modified or adapted to commit the offence provided for in the criminal law, it shall be confiscated in its entirety.

d) Is the trial in absentia possible in your legal system to apply the confiscation?

In the case of absconding from criminal proceedings, confiscation may be ordered under common law rules. There is no express provision. However, there is an extraordinary remedy known as the reopening of criminal proceedings in the event of a default judgment. In this procedure, the person convicted in absentia can request a retrial of his case if he was not aware of the existence of the criminal proceedings - Article 466 of the CPC.

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

In Romania, an acquittal may be pronounced in the following cases referred to in Article 16 of the CPC: a) the fact does not exist; b) the fact is not provided for by criminal law or was not committed with the culpability required by law; c) there is no evidence that a person committed the offence; d) there is a justifiable or exonerating reason. There is no prohibition on ordering confiscation if the Court orders acquittal.

Please note that in Romania the confiscation models applied to natural persons are also applied to legal persons.

- **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?**

Principle/rights	Remarks
PRINCIPLE OF LEGALITY	The principle of legality underpins the entire criminal process and is expressly mentioned in the Criminal Procedure Code in Article 2.
PRINCIPLE OF NON-RETROACTIVITY	<p>In transitional situations, the provisions on special and extended confiscation may be applied retroactively only to the extent that they do not prevent the application of the more favourable criminal law.</p> <p>Constitutional Court Decision 356/2014 established that the provisions on extended confiscation are constitutional insofar as extended confiscation does not apply to property acquired before the entry into force of Law 63/2012 which introduced extended confiscation into the Romanian system, i.e. 22 April 2012.</p>

	<p>At the same time, according to Constitutional Court Decision No. 78/2014, it was established that the provisions on extended confiscation are constitutional insofar as they apply only to offences committed under the new legislative solution that came into force after the entry into force of Law No. 63/2012, that is, after 22 April 2012.</p> <p>In particular, for extended confiscation to be ordered, both the acquisition of the assets and the commission of the offence must have occurred after 22 April 2012.</p>
<p>THE RIGHT TO PRIVATE PROPERTY</p>	<p>With regard to the right to property, the Courts are obliged to inform any interested party before a confiscation measure is ordered. Thus, in the course of criminal proceedings, the judicial authorities are obliged to summon third parties whose property will be affected by the confiscation order, to inform them of the proceedings and the possible consequences for their civil rights, and to give them a real opportunity to defend themselves, including the possibility of presenting evidence.</p>
<p>THE RIGHT TO A FAIR TRIAL</p>	<p>With regard to the right to a fair trial, this principle is expressly provided for in article 8 of the CPC, which states that: "The judicial authorities shall conduct the prosecution and trial in compliance with the procedural guarantees and the rights of the parties and subjects of the</p>

	<p>proceedings, so that the facts constituting the offences are established in a timely and complete manner, that no innocent person is held criminally liable, and that any person who has committed an offence is punished in accordance with the law within a reasonable time."</p>
THE RIGHT OF DEFENCE	<p>The right of defence is expressly provided for in Article 10 of the CPC and gives everyone who can justify it the possibility of organising his or her defence in the forms provided for in criminal proceedings. Thus, the persons concerned may benefit from a qualified defence by a lawyer, which may be provided free of charge. The person concerned may also make use of all the means of evidence relating to the interest he or she claims to have.</p> <p>At the same time, confiscation may only be ordered after an adversarial procedure in which the parties and third parties concerned are guaranteed an effective defence.</p>
THE PRESUMPTION OF INNOCENCE	<p>The presumption of innocence is explicitly stated in Article 4 of the CPC. Thus, every person is presumed innocent until proven guilty by a final criminal judgement. The ordering of a confiscation measure in the absence of a conviction must be justified with the utmost caution so as not to undermine the presumption of innocence.</p>
NE BIS IN IDEM	<p>It is clear from the entire content of Article 112 CC that special double confiscation is not possible. The Latin principle of non bis in idem, with regard to the punishment of a person, also applies to special</p>

	<p>confiscation and consists in the fact that both the property and its monetary equivalent cannot be confiscated. The property is first confiscated in kind, and only if this is not possible is the monetary equivalent of the property confiscated.</p>
<p>OTHERS</p>	<p>The provisions of Article 44, paragraph (8) of the Romanian Constitution establish the presumption of the legal nature of the property acquired ("Lawfully acquired property cannot be confiscated. The legal nature of the acquisition is presumed"). These are often invoked as a basis for lifting seizures for confiscation by persons who are not parties to criminal proceedings.</p> <p>However, since the presumption is relative (<i>juris tantum</i>) - since it can be rebutted by evidence to the contrary - if there are indications that the third party acquired the property as a result of acts provided for by criminal law, the Court may require him to present his own defence as to how he came into possession of the property. In this case, the constitutional provision is not violated, but this requirement helps to clarify the situation.</p>
<p>Relevant case law will determine the constitutionality (or otherwise) of the confiscation measure</p>	<p>Constitutional Court Decision No. 78/2014</p> <p>Constitutional Court Decision No. 356/2014</p> <p>Both decisions have been presented above in the section on the principle of non-retroactivity.</p>

Please note that in Romania the confiscation models applied to natural persons are also applied to legal persons.

10. For each model of confiscation:

a) 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?

Decision No. 72/2023 on the rejection of the exception of unconstitutionality of the provisions of Article 91, paragraph (1), second thesis, of Law No. 85/2014 on insolvency prevention and insolvency proceedings

Decision No. 72/2023 of the Constitutional Court of Romania rejected, as unfounded, the exception of the unconstitutionality of the second thesis of Article 91, paragraph (1) of Law No. 85/2014 on insolvency prevention and insolvency procedures. The exception was raised by a bank in the context of a case before the Bucharest Tribunal, arguing that the relevant provisions discriminate against secured creditors in insolvency proceedings, as criminal seizure measures affect the realisation value of assets and, implicitly, the recovery of claims.

The Court rejected these arguments, stating that seizure measures in criminal law have a specific purpose, namely to ensure that certain assets remain in the estate of a person until possible confiscation for the benefit of the State, without aiming to create a patrimonial advantage for creditors with a right of claim. The Court emphasised that the existence of seizure measures does not prevent the realisation of creditors' rights in insolvency proceedings and that such measures do not confer on the State or other beneficiaries of seizure measures the status of preferential creditors in relation to creditors in insolvency proceedings.

Furthermore, the Court reiterated that the seizure measures ordered in criminal proceedings do not affect the right to private property, as they are temporary and justified by the needs of the criminal investigation. The High Court of Cassation and Justice also clarified that the existence of seizure measures does not suspend the insolvency liquidation procedure and does not prevent the realisation of assets by the judicial liquidator.

In conclusion, the Constitutional Court established that the second thesis of Article 91, paragraph (1) of Law No. 85/2014 is constitutional and rejected the exception of unconstitutionality, confirming that the criticised legal provisions are by constitutional principles and the specific needs of the insolvency and criminal proceedings.

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

1. High Court of Cassation and Justice, The Panel for Preliminary Ruling on Questions of Law in Civil Matters, Decision No. 1/2020:

In interpreting the provisions of Article 91, paragraph (1), Article 102, paragraph (8) and Articles 154-158 of Law No. 85/2014 on insolvency prevention and insolvency proceedings, as subsequently amended and supplemented, with reference to the provisions of Article 249, paragraphs (1) and (2) of the Criminal Procedure Code (respectively Article 163 paragraphs (1) and (2) of the Criminal Procedure Code of 1968), the existence of security measures established in the course of criminal proceedings against the assets of a legal person prior to the opening of insolvency proceedings with a view to special confiscation, compensation for the damage caused by the offence or guaranteeing the execution of legal costs: a) does not suspend the liquidation proceedings provided for by Law No. 85/2014 with regard to the seized property; b) is not such as to render unavailable the property in respect of which the recovery procedure has been initiated pursuant to the provisions of Law No. 85/2014; c)

does not prevent the liquidation of the property carried out by the judicial liquidator in the exercise of the powers conferred by Law No. 85/2014.

2. High Court of Cassation and Justice, The Panel for Appeal in the Interest of the Law, Decision No. 18/2020:

The High Court of Cassation and Justice of Romania pronounced Decision no. 18/2020 to clarify the application of Article 493, paragraph (1), letter a) of the Criminal Procedure Code, which refers to the preventive measure of prohibiting the initiation or, where applicable, suspending the dissolution or liquidation proceedings of legal entities⁸⁹⁰. This decision comes in the context of a divergence in judicial practice regarding the applicability of this measure in the special insolvency proceedings of legal entities, regulated by Law No. 85/2014 on insolvency prevention and insolvency procedures.

The High Court's decision emphasises the need for an integrated approach that takes into account the overlap between the criminal procedure law and the legislation on commercial companies. It states that, in the case of legal persons, preventive measures must ensure the smooth running of the criminal proceedings by preventing activities that could negatively affect their course or purpose.

The High Court establishes that the prohibition on initiating or suspending dissolution or liquidation proceedings does not apply in the context of the insolvency procedure regulated by Law No. 85/2014. This is because the insolvency procedure is a special, collective and egalitarian procedure that involves a unique framework for the realisation of the claims registered in the estate, under the strict control of the insolvency judge.

⁸⁹⁰ Preventive measures are presented in question 14.

Furthermore, it is emphasised that the insolvency procedure is not a choice for the debtor, but a legal obligation, and that failure to comply with this obligation may lead to criminal liability. Therefore, the application of the preventive measure of prohibition within the insolvency proceeding would be contrary to the purpose of this law and would impose an excessive burden on both the debtor and the creditors in the insolvency proceeding, affecting their rights and interests.

Decision No. 18/2020 therefore clarifies that the preventive measures provided for in Article 493, paragraph (1), letter (a) of the Criminal Procedure Code do not extend to insolvency proceedings, thus ensuring a uniform and consistent interpretation of the legislation in this field and protecting the fundamental principles of commercial law and human rights.

Other cases from National Courts

Brasov Court of Appeal, Criminal Chamber, Sentence No. 39/27.06.2019, unpublished:

1. In the case of the offence of influence peddling, the assets received by the offender in exchange for promising to exert influence on public officials shall be confiscated, and if they are "not found", confiscation by equivalent shall be ordered. This legal provision is a special application of the general case of taking the security measure of confiscation provided for in Article 112, paragraph (1), letter (e) of the Criminal Code. The difference between the two is that 'receiving' involves acquiring the asset directly from the buyer of influence, whereas 'acquiring' may also be the result of a more complex operation which results in the transfer of the asset to the assets of the person from whom it is confiscated. The reason for establishing this obligation for the Court to confiscate property obtained by a person as a result of committing the offence of influence peddling is to prevent the possibility of the commission of offences constituting an opportunity for the acquisition of property by any person, whether a participant in the commission of the offence or a third party. If the third party who acquired the property is a person of bad faith, the Court shall order the

confiscation of the property in kind from him, and if he is a person of good faith, it shall order the confiscation of the equivalent of the value of the alienated property from the defendant. According to the evidence in the case, the defendant acquired the assets of Snagov Forest and Băneasa Royal Farm as a result of the offence of influence peddling committed by the defendant T.R. At the same time, the Court found that the defendant had also committed the offence of influence peddling, taking into account the conditions and manner in which the offence was committed, as well as the company's interest in committing the offence, which precluded a finding of good faith on her part in acquiring the assets that were the subject of influence peddling. (...) the Court finds that it is necessary to confiscate the entirety of these assets from the company R. SRL, either directly, for those parts of the assets that are currently owned by the company, or by equivalent means, for those parts of the assets that have been sold to bona fide persons or for which acts of disposition have been made.

2. About the land of the Royal Farm Băneasa, alienated on 15.01.2009 by the company R. SRL to the company H. in the form of two lots, of 5,583 square metres, since the bad faith of the acquiring third party cannot be maintained, the Court will order its confiscation by equivalent, as provided for by the same text of the law. Judicial practice has interpreted the phrase "if they are not found" as referring both to a physical impossibility of confiscating the property when it is no longer physically in the offender's possession, and to a legal impossibility when the property has legally come into the possession of a bona fide acquirer. The opposite interpretation, according to which the property could also be confiscated from the bona fide acquirer, would be detrimental to the latter's right to property, guaranteed by the Constitution and the European Convention on Human Rights, and to the principle of security of legal relations. From the testimony of witness B.A.M., it appears that he received these lands in exchange for services rendered to R. SRL so that this company benefited from their alienation and the equivalent value should be confiscated from it. As regards the

determination of the equivalent value of the alienated property to the bona fide acquirer, the Court considers that, since the special measure of confiscation is ordered by judgment and takes effect from the time of its disposal and not retroactively, the current value of the property must be taken into account and not the value it had at the time of alienation. For this reason, the Court will take into account the current value of the land as determined by the topographical expert appointed by the Court.

Timisoara Court of Appeal, Criminal Chamber, Decision No. 260/24.02.2017, unpublished:

The phrase "subject to confiscation (...) if the person is convicted" refers not only to the assets of the convicted person, but also to assets that formally belong to another person, but whose acquisition was financed by the convicted person from money obtained from the criminal activities that are the subject of the trial in the case.

Based on Article 112¹, paragraph (1), letter a) of the Criminal Code, it was ordered the extended confiscation of the amount of 6,500 euros belonging to the defendant L.S., deposited in his name and at the disposal of the Prosecutor's Office of the High Court of Cassation and Justice - Directorate for Investigating Organized Crime and Terrorism in the account (...) opened with BCR; the Audi car type 4H/GCDTAQ1/A8 L, property of SC AT SRL (which is a legal person); the apartment located in T. (...), property of M.V.O.

By the provisions of Article 112¹, paragraph (2) of the Criminal Code, extended confiscation shall be ordered if the following conditions are cumulatively met: the value of the assets acquired by the convicted person during five years before - and, if applicable, after the commission of the offence until the date of the indictment by the Court - clearly exceeds the proceeds lawfully obtained by him; the Court is convinced that the assets in question are derived from criminal activities of the kind referred to in paragraph 1.

Paragraph 3 of the same article stipulates that the value of property transferred by the convicted person or by a third party to a member of the family or to a legal person over

which the convicted person has control shall also be taken into account for the application of the above provisions.

In the present case, these legal provisions are applicable, since the above conditions are cumulatively met, since the value of the assets acquired by the defendant L.S. up to the date of the Court's summons exceeds the income lawfully received by him, and the Court is convinced that the assets in question originate from the financing of the illegal activities which are the subject of the present proceedings.

As stated above, the measure of extended confiscation may concern an asset that is the property of another person, as is the case here, the apartment located at (...), which rightfully belongs to M.V.O., who, according to the evidence in the case, purchased this apartment with legal documents, the sale-purchase having taken place during the period in which she was the concubine of the defendant L.S. and later became his wife.

From the evidence, i.e. from the data provided by the tax authorities, financial institutions and other institutions, regarding the determination of the income of the defendants L.S. and M.V.O, it was established that in the period 2012-2015 the defendant L.S. did not appear with any real estate in the records of the Land Register, did not appear with any taxable assets in the records of the Local Council of S. (...), worked part-time - 2 hours a day - at SC L SRL and ASEL SRL respectively, in his accounts it was noted that there were no funds in the companies for which the defendant L.S. carried out activities, i.e. SC EDR SRL, AT SRL, ASEL SRL, very small losses or income were noted and no other legal income was found to have been received by the defendant during the period under review.

With regard to M.V.O., it should also be noted that, between 22 April 2012 and 18 February 2016, she did not appear in the land register with any property other than the abovementioned apartment, she did not appear in the records of the municipality of L. with any taxable assets (...), her bank accounts showed a lack of funds, she was employed from 1

August 2012 to 6 August 2012 as a cashier at R., from 11 March 2013 to 1 June 2013 at ESRL as an unskilled agricultural worker, from 27 February 2015 to 29 June 2015 as a receptionist at SC HH SRL, and from 13 August 2015 to date as an assistant manager at SC ASEL SRL, with a taxable income of 3,870 lei.

It should also be noted that M.V.O. married the defendant L.S. on 25 February 2016. The assets described above and seized were acquired between 16 March 2015 and 13 November 2015, for an amount of 106,500 euros, without, however, generating any significant legal income, the assets having been acquired in the context in which the defendants L.S. and SC EDR SRL carried out specific activities related to the trafficking of high-risk drugs between 5 June 2015 and 6 June 2015, from which it results without doubt that the sums of money required to acquire these assets were the result of the illicit trafficking of high-risk drugs, a fact that is corroborated by the testimony of witness M.M.A. corroborated by the message sent on 5 October 2015, from which it can be concluded without a doubt that the defendant L.S. obtained substantial sums of money for illegal activities carried out in the framework of the trafficking of high-risk drugs, and from this illegal income had the financial resources necessary to purchase the apartment located in T. (...) in the name of M.V.O, purchased with the sum of 50,000 euros, of which 39,000 euros were paid by bank transfer and the balance of 11,000 euros in cash, it should be noted that the sum of 39,000s euro in an account opened with BCR comes exclusively from cash deposits made between 30 June 2015 and 4 August 2015 by the account holder, M.V.O. From the same illicit income, the defendant L.S. had the necessary means to purchase the AUDI A8 (...), worth approximately 50,000 euros, which was owned by AR SRL, a legal entity in which the father of the defendant L.S. was the sole partner, but which was in fact controlled by the defendant, who signed the purchase contract for the car, carried out all the activities related to the registration of the car, and was the one who used that car permanently. Furthermore, the sum of 6,500 euros found in the defendant's apartment during the house search could not be credibly justified, since the total

value of the above-mentioned assets amounts to 106,500 euros, which exceeds the income lawfully obtained by the defendant L.S., this aspect resulting without any doubt from the documentary evidence, namely the answers received from the tax authorities, banks and public or private institutions, the data obtained from credit institutions or other institutions holding data on the financial situation of the defendant L.S., as well as from the execution of the technical surveillance warrant, which consisted in obtaining data on his financial transactions.

The defendant L.S. claimed that the amount used to buy the Audi A8 car came from the sale of several cars he had previously bought at auction in a bailiff's office and, during the Court's investigation, the defendant stated that the car had been bought following an insurance policy obtained from ASEL, but this could not be proved.

About the apartment in T. (...), the witness M.V.O. defended herself both before the Court of First Instance and before the Court of Appeal in the appeal proceedings, stating that the sum of 50,000 euros with which this apartment was bought came from the sale of apartments by her mother and her partner, sales that would have taken place in 1999 and 2000 respectively, and also claimed that she had inherited from her mother, who died in 2014, the sum of 40,000 euros, which was initially held by her mother in accounts and later kept by her in the house.

However, M.V.O.'s allegations have not been substantiated, as the purchase contracts submitted as evidence were concluded approximately 15 years ago and it is not possible to justify holding such sums of money at the level of those used to purchase an apartment in 2015.

In these circumstances, it is obvious that the sum of 6,500 euros, the AUDI A8 car and the apartment in T. (...) were purchased with money illegally obtained by the defendant L.S. from the activities related to the trafficking of high-risk drugs, which he is accused of in this case.

Therefore, since all the conditions required by Article 112¹ of the Criminal Code for extended confiscation are met, the measure of extended confiscation of these assets was ordered, since the only evidence of the modest income of the defendant L.S. and the witness M.V.O., currently, the defendant's wife, was provided. This measure is well-founded and lawful, and in this context, the request of the defendant L.S. to lift the attachment on these assets, i.e. to lift the extended confiscation order, appears to be unfounded.

About the objections raised by the witness M.V.O., the complainant in the case, the Court found that they were unfounded concerning all the evidential material managed in the case, namely the Court's arguments on the issues at stake regarding the security measure of extended confiscation of the apartment located in T. (...).

The reasoning of the Court of Justice in relation to this measure is therefore relevant: the expression "subject to confiscation (...) if the person is convicted" refers not only to the property of the convicted person, but also to property formally belonging to another person, but the acquisition of which was financed by the convicted person out of money obtained from the criminal activities which are the subject of the proceedings in question, and, furthermore, in paragraph (3) of Article 112¹ of the Criminal Code, " the value of property transferred by the convicted person or by a third party to a member of the family or to a legal person over which the convicted person has control", in the specific case does not strictly refer to the apartment, but to the money obtained with which the apartment was purchased, the defendant L. S. is the real financier of the property, although the deeds of sale were drawn up before the marriage between the witness and the defendant, and the witness M.V.O. is listed as the sole owner in the title deed, but this is a formal situation.

The Court of Appeal referred to the defence of the complainant, witness M.V.O., regarding the origin of the money, which, according to the complainant, came from an inheritance, but the documentary evidence submitted in the case file and the appeal proceedings could not

objectively prove this aspect, so that the applications for the lifting of the security measure imposed on the personal apartment, namely the lifting of the measure of extended confiscation, appear to be unfounded.

National doctrine

In doctrine (L.V. Lefterache, Judge of the Hight Court of Cassation and Justice, Extended Confiscation, in C.J. No. 7/2015, p. 396), it has been pointed out that third parties may be subject to security measures if it is established that they are connected to the defendant in the case, that their activities are under the control of the defendant, that the activities have benefited from sources of financing that are not of lawful origin. Recently, in the literature (I. Visinescu, Confiscation from third parties, in C.D.P. No. 1/2019), the following mechanism has been shown by which the measure of special confiscation can be applied in the case of a finding of simulation of withholding: "The Court thus has the opportunity to submit the request of the representative of the Prosecutor's Office (as the representative of the interests of the State - unsecured creditor) to the contradictory discussion of the parties. It should not be forgotten that it is obligatory to summon the third party in the criminal proceedings in order to inform him of the possible consequences for his assets and to enable him to defend himself both against the bad faith alleged by the prosecutor and against the simulation of the legal act. Since it is also possible to take a security measure on the property of another person with a view to confiscation, as mentioned above, it seems obvious to summon that person in the criminal proceedings. In addition, from the moment the seizure order was issued, the third party was aware of the consequences that could indirectly affect his assets, through a fictitious transfer of assets acquired through the commission of the criminal offence. Thus, after having discussed in the hearing the measure of confiscation of the property transferred to the third party, the representative of the Prosecutor's Office will invoke the fictitious transfer of the property from the defendant to the third party in bad faith. In this situation, the Court must determine, on the basis of the evidence before it,

whether or not the transfer of the property to the third party in bad faith was fictitious, carried out with the purpose of defrauding the interests of the State. Since the sanction of the simulation is the unenforceability of the simulated act, third parties can invoke the existence of the secret contract against the parties when it infringes their rights (the secret act being in fact the simulated agreement which provides that the public act - the sale of the goods - does not really exist). It would be wrong for the Court, without a proposal from the Prosecutor's Office, to include ex officio in the proceedings the third party to whom the property was transferred in bad faith and to invoke ex officio the simulation of the legal act or the fictitious transfer of the property, thus violating the rules of civil law to which the provisions of Article 52 of the Criminal Procedure Code refer. The Court will therefore hold that the legal transaction concluded in bad faith between the offender or a third party (in the case of special confiscation) or between the convicted person and a family member or a legal person over which the convicted person has control (in the case of extended confiscation) is not enforceable against the State, the property is always in the possession of the defendant/convicted person, and it follows that if the non-transferability is established as a preliminary question for the resolution of the merits, the measure of confiscation of the property is ordered from the defendant/convicted person, who is the real owner of the property. In this way, the State, through the Ministry of Finance, acquires the title to the property in question, and the title of the third party is not enforceable against the State.

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.

The case of CREDIT EUROPE LEASING IFN S.A. v. Romania, decided by the European Court of Human Rights (ECHR) under application number 38072/11, concerns a complaint

by the company Credit Europe Leasing IFN S.A. against the Romanian State, relating to the violation of the right to a fair trial, enshrined in Article 6 of the European Convention on Human Rights.

The complainant company challenged the excessive duration of the seizure of its movable assets, considering it a violation of its right to respect for its property in the absence of an effective domestic remedy. In the proceedings, the European Court of Human Rights (ECHR) noted that the assets in question were seven vehicles and 779 kiosks seized by the DIICOT order in 2010. Although the Government argued that the kiosks belonged to another company, the Court confirmed that the complainant company remained the owner and demanded the return of the kiosks after the user failed to fulfil its contractual obligations.

The Court emphasised that Article 1 of Protocol No. 1 to the European Convention on Human Rights contains three distinct rules relating to respect for property, deprivation of property and regulation of the use of property in the public interest. It found that the seizure of the assets constituted an interference in the exercise of the complainant company's right to property, which lasted for almost nine years and had a negative effect on the company since it was unable to use or capitalise the assets.

The Court examined whether the interference with the property right had a legitimate aim and found that the aim was to ensure that the use of the assets did not benefit the accused to the detriment of the community. However, the Court examined the proportionality of the interference and concluded that a fair balance had not been maintained between the general interest and the protection of the rights of the complainant company. The seizure imposed an excessive burden on the company without giving it an effective opportunity to challenge the measure or to obtain adequate compensation for the damage suffered.

In conclusion, the ECHR found a violation of Article 1 of Protocol No. 1 to the Convention, emphasising the need for a fair balance between measures taken in the public interest and the protection of the fundamental rights of individuals and legal entities. This judgment underlines the importance of ensuring access to justice and the right to property in the context of the application of seizure measures in criminal proceedings. The ECHR's decision in this case underlined the importance of Member States respecting the obligations they have taken on by ratifying the European Convention on Human Rights, including guaranteeing the right to a fair trial and resolving disputes within a reasonable time. The Court also reiterated that national courts must ensure that judicial proceedings are conducted in a manner which respects the fundamental rights of the parties concerned.

Through this case, the ECHR has contributed to strengthening the jurisprudence on the application of Article 6 of the European Convention on Human Rights, highlighting the need for a fair and timely process for all parties involved in litigation.

13. Is there any CJEU decision concerning the “Your” confiscation model against legal persons?

No decisions were identified.

14. In Your system of law are there other efficient measures to prevent 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?

Certain preventive measures may be taken against legal persons in accordance with Article 493 of the Criminal Procedure Code. Thus, in the course of criminal proceedings, the judge

of rights and freedoms may, on a proposal from the prosecutor or, where appropriate, the preliminary chamber judge or the Court, order one or more preventive measures if there are reasonable grounds to suspect that the legal person has committed an offence provided for by criminal law, and solely in order to ensure the proper conduct of the criminal proceedings.

The measures that can be taken consist of:

1. Prohibition on initiating or suspending proceedings for the dissolution or liquidation of the legal person, in order to prevent it from disappearing and thus avoid criminal and often civil liability.
2. Prohibition of the initiation or suspension of the merger, division or reduction of the share capital of the legal person, initiated before or during criminal proceedings, in order to prevent the disappearance or reduction of the legal person in order to avoid liability.
3. Prohibition of certain asset operations in order to prevent a significant reduction in the assets or the insolvency of the legal person, thus protecting the share capital and the possibility of incurring civil and criminal liability.
4. Prohibition on the conclusion of certain legal acts, established by the judicial body in order to limit actions that could affect the company's assets and to prevent the seizure of assets constituting the company's capital.
5. Prohibition from engaging in activities of the same nature as those in which the offence was committed, in order to prevent the legal person from committing the same offence again.

These measures are subject to essential conditions, such as the existence of reasonable grounds to suspect that the legal person has committed a criminal offence and the need to ensure the proper conduct of criminal proceedings.

Preventive measures may be ordered by the judge of rights and freedoms during criminal proceedings, on a proposal from the prosecutor, or, where appropriate, by the preliminary chamber judge or the Court during the trial. The procedure includes the mandatory participation of the prosecutor and the possibility of challenging the measures within 24 hours.

In order to ensure compliance with the preventive measures, the Court may require the legal person to deposit a security which will be returned at the end of the criminal proceedings, depending on compliance with the measures or the outcome of the trial.

Preventive measures have an initial duration of no more than 60 days, with the possibility of extension if the original reasons remain. They may be lifted if there are no longer grounds for maintaining them.

In conclusion, the provisions of the Criminal Procedure Code provide for preventive measures applicable to legal persons, which are necessary to ensure the proper conduct of criminal proceedings and to prevent legal persons from evading liability.

The Constitutional Court of Romania, by its Decision No. 34/2017, rejected the exception of unconstitutionality of Article 493 of the Criminal Procedure Code, which regulates preventive measures applicable to legal persons. In justifying the derogation, it was argued that these preventive measures violate fundamental rights such as the right to work, economic freedom and the principle of proportionality, so that they could adversely affect the conduct of economic activities and the legal existence of companies. The Court found that the preventive measures were justified in order to ensure the proper conduct of the criminal proceedings and did not violate the Constitution, since they were applied with the aim of preventing the legal disappearance of the companies and preserving the legal entity and the share capital.

The Court also emphasised that economic freedom is not an absolute right and may be restricted by law in order to protect the general interests of society and to ensure the fair conduct of criminal proceedings. It was noted that restrictions imposed by preventive measures must be proportionate to the objective pursued, non-discriminatory and not affect the essence of the right to economic freedom. The Court reiterated that preventive measures do not completely prevent legal persons from carrying on their economic activities, but only impose certain restrictions in order to prevent acts which could prejudice the conduct of criminal proceedings.

In conclusion, the Constitutional Court ruled that Article 493 of the Criminal Procedure Code is constitutional and that the preventive measures provided for therein are necessary and proportionate to ensure the proper conduct of criminal proceedings, thus protecting the values of the rule of law and the public interest.

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

There are currently no statistics on the application of confiscation measures against legal persons at the national level. Romania is currently implementing a unique electronic register called ROARMIS - Romanian Asset Recovery and Management Integrated System. This system is managed by ANABI.

It will include real-time data on seizure and confiscation orders. The system also provides for efficient management of the seizure of assets. At the same time, the system will make it easier to identify assets that have been seized or confiscated under the Regulation's recognition procedure, as it will have functions to identify cases with an extraneous element.

In the future, with adequate completion of the data by all authorities involved (courts, prosecutor's offices, police, tax authorities), we will be able to produce relevant statistics,

including a comparative analysis between confiscation measures ordered against natural and legal persons.

SECTION II. The application of 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 about legal persons (e.g.: how many cases, which models of confiscation)?

The Ministry of Justice, as the central authority for judicial cooperation in criminal matters in Romania, does not have statistical data on confiscation orders transmitted so far by other Member States under Regulation (UE) 2018/1805. However, the orders transmitted so far have, in principle, concerned natural persons. In addition, in 2024 (January), the Ministry of Justice received a confiscation order from Luxembourg concerning two legal persons, the procedure is pending.

The statistical data of the Public Ministry:

No.	Type of data requested	Number of requests	National prosecutor's office	Member State	Type of assets / Reasons for refusal
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1	Number of seizure orders concerning legal persons, sent to other Member States, which have been recognised and executed, including type of confiscation	5	PT CJ DIICOT DIICOT DIICOT DIICOT	Hungary Bulgaria The Netherlands	Bank accounts / transactions
2	Number of seizure orders concerning legal persons, sent to other Member States, which were refused recognition and execution, including type of confiscation and reasons for refusal	1	DIICOT	Poland	The bank account of the legal person subject to the seizure order had already been frozen in a national case. The execution was not actually refused, but the money was not returned (the freezing was requested in order to return the money to the victim).
3	Number of seizure orders concerning legal persons, received from other Member	10	PT Cluj PT Cluj	Lithuania Germany	Freezing bank accounts

	States, which have been recognized and executed, including type of confiscation		PT Sălaj	Italy	Freezing bank accounts
			PJ Baia Mare	Germany	Freezing bank accounts An EIO was requested in terms of discovery and seized documents if they were not handed over voluntarily
			PT Dâmbovița	France	Freezing bank accounts
			PJ Rm. Sărat	France	
			PJ Rm. Sărat	Germany	

			PT Braşov	The Netherlands	Freezing bank accounts
			PT Timişoara	Spain	
			PT Bihor	Austria	
		25	PT Bucharest	Estonia Spain Italy Belgium France Denmark Luxemburg Hungary Austria Sweden	
		7	DIICOT DIICOT DIICOT DIICOT	Italy x 3 Belgium x 2 Spain France	
	Total	42			

4	Number of seizure orders concerning legal persons, received from other Member States, which have been refused recognition and enforcement, including type of confiscation and reasons for refusal	2	PT Bucharest	France	The assets subject to the seizure order did not belong to the investigated persons
		1	DIICOT	Italy	Following an analysis of national, international and European jurisprudence, it was concluded that the proceedings which led to the seizure order could not be considered " <i>in criminal matters</i> " within the meaning of the Regulation (EU) 2018/1805
Total point 4		3			

2. What 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 what are the grounds for refusal applied in the praxis in this sector?

As can be seen from the data provided by the Public Ministry, the grounds for refusal are determined by Member States' different interpretations of the concept of "criminal matter". Certain obstacles may also arise if the same assets of the legal person are seized in national criminal proceedings.

3. Do you have any proposals of harmonization of MS legislation, also in consideration of the new proposal of a directive (May 2022) on freezing and confiscation orders involving legal persons?

In its original form, in Article 11, paragraph 7 of the proposal for a Directive on asset recovery and confiscation was a special provision: "Where the property to be frozen consists of entities that should be preserved as a going concern, such as undertakings, the freezing order shall include measures to exclude access to this property by the persons owning or controlling them while allowing for continued operations". This provision was removed following the COPEN negotiations. However, we appreciate that such a proposal would have been very useful, particularly in the context where all Member States would have to regulate instruments to ensure the management of companies in a situation where their parts would have been seized.

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

As far as the use of this instrument by Romanian practitioners is concerned, we appreciate that it is necessary to intensify the training activities to achieve a better knowledge of the concrete steps to be followed - the identification of the assets of the legal entities concerned located abroad, or the practical way to use the cooperation instrument - issuing the order, filling in the form, sending the documents to the executing State.

It is also necessary, especially in the case of investigative bodies, to use specific tools in this matter, such as contacting Asset Recovery Offices, through which useful financial information could be obtained before the time of applying the procedures provided for in Regulation 2018/1805.

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

As mentioned in point 3, we believe that it would be appropriate to regulate the manner in which the seized shares are administered. In this sense, we believe that the seized shares should be administered by an insolvency practitioner under the supervision of a specialised insolvency Court.

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

We hope that more Member States will join this effort, creating a real European network of practitioners in this field.