

Guidelines on the application of the Reg. (EU) 2018/1805 to legal persons

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1) Implement immediate registration of confiscation orders in relevant offices to block property disposal.

Bulgaria underscores the crucial need for prompt and effective legal measures to prevent representatives of legal entities from disposing of properties subject to confiscation orders issued by courts within the European Union. This approach necessitates the immediate registration of legally binding confiscation decisions concerning properties owned by legal entities. Such registrations should take place without delay in the Registration Office situated at the location of the real estate in question and, in instances involving bank accounts, within the Registry Office that corresponds to the headquarters and address of the legal entity involved. This procedure aims to ensure that the confiscation orders are enforceable and effective, preventing any potential circumvention of the law.

2) Harmonise legal standards to simplify international cooperation against financial crimes.

3) In particular, introduce the liability of legal person for money laundering along with the connected confiscation of their assets.

Portugal highlights mandates established by certain pieces of European Union legislation, such as Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018, which focuses on combating money laundering through criminal law. This directive necessitates that Member States implement legal provisions that hold legal persons accountable and enable the confiscation of their assets.

4) Ensure greater harmonisation of legal standards across the board to ensure a unified approach in the fight against crimes such as money laundering and corruption (the same form of liability of legal persons).

Additionally, Portugal discusses the flexibility provided by the United Nations Conventions, which allow for the liability of legal persons to be classified as criminal, civil, or administrative, depending on the legal principles of the State Party. This flexibility, however, introduces a level of complexity in international cooperation, especially outside the European Union's area of freedom, security, and justice. Portugal argues that this diversity in legal frameworks complicates global cooperation, making a strong case for the need for greater harmonization of legal standards across the board to ensure a unified approach in the fight against crimes such as money laundering and corruption.

Within the European Union, it is worth noting that **Directive 2017/1371/EU on fighting fraud to the Union's financial interests through criminal law** mandates Member States to take necessary measures to ensure that legal persons can be held liable for the criminal offenses referred to in the Directive, including corruption.

5) Develop effective mechanisms for managing seized companies to ensure continuity of economic activities.

6) Prevent interference from former controllers.

Romania reflects on the initial version of the Proposal for a Directive of asset recovery and confiscation, particularly Article 11 para. 7, which included a specialised provision for the management of entities such as undertakings that must be preserved as ongoing concerns during freezing orders. This provision aimed to prevent access to such entities by the individuals owning or controlling them while allowing their operations to continue. Despite its removal in the aftermath of the COPEN negotiations, Romania recognises the value of this proposal. It underscores the necessity for all member states to develop mechanisms to manage companies effectively when their assets are subject to seizure, ensuring that operations can persist without interference from those previously in control. This highlights the complex challenges faced by EU Member States in regulating asset recovery and confiscation while balancing the need to maintain business operations' viability. In the new Directive 2024/1260 the Chapter IV (Articles 20-22) regulates the asset management phase; the provisions require Member States to ensure that frozen or confiscated assets are **managed efficiently** until their final destination, with a view to **preserving the value of the assets** and **minimising management costs**.

7) Apply extended confiscation against legal persons.

8) Clarify that extended confiscation allows the retrieval of indirect benefits from criminal activities to widen the asset recovery scope. (the concept of proceed in the Directive 42/2014 and in the new Directive 2024/1260 is very wide).

Poland emphasises the importance of applying the extended confiscation to legal persons, suggesting that the legal framework could be enhanced by provisions that allow for the confiscation of benefits derived indirectly from criminal activities. In practice, extended confiscation is already applied to legal persons in many Member States (though not always directly). This approach aims to broaden the scope of assets that can be targeted for confiscation, ensuring that all proceeds of crime, whether directly or indirectly obtained, can be effectively addressed.

9) Evaluate *pro reo* the restitution of the proceeds of the crime with a re-educational logic.

10) Increase the re-educational purpose in the liability systems of entities, linking the threat of sanctions and the punitive system to the adoption of proper compliance programmes aimed at preventing the risk of crime.

11) Update legal handbooks for practitioners to reflect current challenges in enforcing freezing orders.

Spain highlights a significant gap in the current legal infrastructure, emphasizing the need for an updated handbook for judges, prosecutors, and other competent authorities. This updated handbook would replace the existing guide on how to issue and execute requests for the enforcement of freezing orders, aligning with the Council Framework Decision 2003/577/JHA of 22 July 2003. The revision of this handbook is seen as a critical step in addressing the evolving challenges and ensuring that legal practitioners across the EU are equipped with the most current and comprehensive guidance on enforcing freezing orders, which are essential tools in the prevention of financial crimes and the safeguarding of justice within the European Union.