

*RECOVER (GA101091375)**The subject matter of the Regulation (EU) 2018/1805. National confiscation models**Reform proposals: Poland*

The main objective of Directive 2024/1260 on the recovery and confiscation is to enhance the capacity of the competent authorities to trace and identify, secure, and confiscate tools used to commit crimes, proceeds of crime, or property derived from criminal activity, as well as to manage such tools, proceeds, or property.

In light of the above, an initiative has been undertaken to commence legislative work within an inter-ministerial working group in order to amend the existing legal provisions necessary to implement the aforementioned Directive, particularly with regard to the management of seized assets and the development of a strategy for asset recovery.

Currently, Poland does not have a central system for managing seized and confiscated assets, nor an central system to assist victims in recovering lost assets, either during the preparatory stage of proceedings or after a judgment has been rendered. Consequently, no authority has been designated to be responsible for such actions or to gather information on the status and extent of enforcement of financial criminal judgments, particularly concerning the scope of assets seized from offenders based on such judgments.

Thus, a comprehensive approach to asset recovery seems necessary, one that would encompass all stages: identification of assets, their securing, and, subsequently, enforcement after a court judgment, along with the path for further distribution of the funds obtained by the State Treasury.

Creating a coherent concept in this area would require a new approach to regulations, particularly procedural ones, related to asset securing, and even more broadly, to asset confiscation (restricting the disposal of assets) for the purposes related to criminal proceedings. This concerns the rules under which the right to property is restricted, including

property that constitutes evidence in a case, as well as property secured for the future execution of judgments. It should be emphasized that this distinction is currently unclear, causing numerous practical problems related to the execution of such decisions both domestically and in international cooperation.

When shaping these instruments, the international context should also be taken into account, namely the current asset recovery system functioning within the European Union. It cannot be overlooked that differences between the legal systems of the State issuing the order and the State executing it remain one of the greatest challenges in the effective enforcement of freezing orders. It must be acknowledged that in each Member State, the provisions related to the issuance and execution of orders are interconnected and operate within certain general systemic assumptions, and thus take each other into account. Therefore, applying enforcement provisions from another legal system often leads to significant difficulties in their application.

Consequently, Poland has commenced an inquiry into procedural and substantive criminal solutions concerning the recovery and freezing of assets in any way connected to crime, as applied in the Member States of the European Union. The findings of this inquiry will be taken into account when constructing Polish solutions to ensure that they do not conflict with European frameworks and, as far as possible, align with the fundamental rules applicable within the European Union.