



Report on non-conviction-based confiscation

(General Case 751/NMSK - 2012)



02 April 2013



Report on non-conviction-based confiscation

(General Case 751/NMSK - 2012)

02 April 2013

FINAL

Text: Ladislav Hamran

Compilation of answers for tabular overview: K.Babčaková, J. Jarmasz

Special thanks to Robert Sheehan, Hans-Holger Herrnfeld and Mario Ernest

Table of Contents

Preface.....	5
Methodology.....	8
Analysis.....	9
Summary, conclusions and recommendations.....	15
Questionnaire.....	17
Tabular overview	23
Legal Provisions	37
Belgium	39
Bulgaria.....	43
Czech Republic.....	77
Denmark.....	80
Germany	82
Estonia.....	95
Ireland.....	99
Greece.....	111
Spain.....	116
France.....	119
Italy.....	121
Cyprus.....	124
Latvia	125
Lithuania	130
Luxembourg.....	133
Hungary	138
Malta.....	142
The Netherlands.....	146
Austria.....	150
Poland.....	157
Portugal	158
Romania.....	165
Slovenia.....	180
Slovak Republic	203
Finland	207
Sweden.....	211
United Kingdom.....	216

Page intentionally left blank

Preface

The profits made from organised crime are huge. Based on a recent study undertaken by the United Nations Office on Drugs and Crime (UNODC) to estimate illicit financial flows resulting from drug trafficking and other transnational organised crimes,¹ the overall best estimates of criminal proceeds are close to USD 2.1 trillion in 2009 or 3.6% of global GDP.²

The UNODC study also estimates that the largest source of income for transnational organised criminals comes from illicit drugs, which account for some 20% of all crime proceeds, about half of transnational organised crime proceeds, and 0.6% to 0.9% of global GDP.³

Very high proceeds from organised crime also come from crimes other than those that are drug-related. Based on UNODC estimates, human trafficking alone brings in about USD 3 billion annually and involves 140 000 trafficked victims.⁴

The amount of proceeds of crime reported by individual Member States is alarming. In Italy, the profits of organised crime in 2011 were estimated at EUR 150 billion.⁵ EU sales of illicit drugs generate an estimated EUR 100 billion per year.⁶ According to a report issued by the Centre for the Study of Democracy, organised crime in Bulgaria generates EUR 1.7 billion in revenue each year.⁷ Although the data referred to above cannot be confirmed, they suggest the severity of the problem and the extent of organised crime.

To enhance the fight against organised crime and meet the threats posed by it both to national economies and to society, the United Nations, the Council of Europe and the institutions of the European Union have adopted a significant number of international treaties and other legal acts.

Individual states have also adopted legislative and non-legislative measures over recent decades to combat organised crime. One of these legislative measures is the implementation of legislation relating to the confiscation of the proceeds of crime.

However, as practice shows, law enforcement agencies have difficulty in identifying, freezing and confiscating the proceeds of crime. For example, an analysis undertaken by the UK Home Office suggests that approximately GBP 2 billion is theoretically available for seizure in the UK, with a further GBP 3.3 billion of proceeds sent overseas.⁸ The estimated annual level of asset is GBP 125 million.⁹

¹ Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes, United Nations Office on Drugs and Crime, Vienna, 2011.

² Ibid. p. 7.

³ Ibid.

⁴ The Globalization of Crime, A transnational Organized Crime Threat Assessment, UNODC, Vienna, 2010, p. 4.

⁵ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/235&>

⁶ Ibid.

⁷ Ibid.

⁸ Dubourg, R. and Prichard, S., The impact of Organised crime in the UK: Financial Revenues and Economic and Social Costs, Home Office, 2007, str. 76.

⁹ Ibid.

For these reasons, among others, more attention needs to be paid to the identification, freezing and confiscation of the proceeds of crime across the European Union. Therefore, documents of strategic importance have been created to address the confiscation of criminal proceeds, such as the Internal Security Strategy in Action: Five steps towards a more secure Europe.¹⁰

On 13 March 2012, the European Commission submitted to the European Parliament and the Council a proposal for a Directive on the freezing and confiscation of the proceeds of crime to strengthen the systems for freezing, managing and confiscating criminal assets across the European Union.¹¹

The current situation indicates that several decades of effort have not produced satisfactory results, possibly due to the failure to establish a direct link between specific property and specific crimes. To confiscate property, the criminal legislation of many countries requires establishing a link between specific proceeds and specific acts that constitute the essential elements of a crime. Under this standard conviction-based confiscation system, a convicted offender is sentenced, *inter alia*, to forfeiture of assets - property obtained through unlawful criminal conduct.

In response to the problems described above, taking into consideration the complexity of financial flows, trade patterns used by perpetrators of crime to disguise the origin of money and the extent and degree of organisation of crimes, some Member States have implemented confiscation systems to provide for the confiscation of property without a prior criminal conviction.¹²

These systems are generally referred to as civil because they allow for the recovery in civil proceedings before civil courts, where evidence of a specific crime is not required.¹³ For differences between criminal and civil systems, see the table directly below.

¹⁰ Communication from the Commission to the European Parliament and the Council, COM(2010) 673 final

¹¹ 7641/12 DROIPEN 29 COPEN 57 CODEC 656 + ADD 1 + ADD 2

¹² By passing Act No. 575 in 1965, Italy was the first country to implement a preventative confiscation system in continental Europe.

¹³ Most Member States allow in their legislation for the confiscation (forfeiture) of property without a prior conviction of a particular person, even in criminal proceedings, e.g. when offenders die during criminal proceedings not yet closed, etc. Other examples would require further interpretation.

Confiscation in criminal proceedings		Confiscation in civil proceedings
These proceedings are brought against an individual and form part of an action brought against a specific individual (<i>in personam</i>). See also footnote number 13.	Action to be taken	These proceedings are commenced by the State (<i>government</i>) against the property itself (<i>in rem</i>).
The forfeiture usually forms part of the sentencing of the individual once found guilty (criminal conviction) in criminal proceedings.	Sentencing stage	Civil confiscation is imposed before, during or after a criminal conviction, or even when no action is brought against an individual.
A criminal conviction in criminal proceedings is required with clear evidence of a crime "without any reasonable doubt".	Evidence of unlawful conduct	A criminal conviction is not required. Evidence of unlawful conduct must be provided and the illegality of the assets must be decided on the "balance of probabilities", often with a shifting of the burden of proof from the Member State to the individual/owner of the asset.
Object-based and value-based	A link between proceeds and unlawful conduct	Object-based
Criminal courts	Jurisdiction	Criminal or civil courts

However, in practice, the implementation of the two systems illustrated above has divided countries into two groups. In addition, some countries have implemented "extended confiscation", which allows them to confiscate property in criminal proceedings without establishing a direct link between the property and the crime for which the convicted person is sentenced.¹⁴

The fact that no supranational legislative standards for civil confiscation systems exist has made the situation very complex in that the national systems are very different. This situation may hinder cooperation between Member States applying different legal provisions.

To obtain information on the legal regulations applied in individual Member States with respect to non-conviction-based confiscation, at both the criminal and civil level, Eurojust initiated a project in May 2012 to identify differences between these different legal regulations and any problems preventing mutual cooperation between the Member States in the fight against transnational organised crime.

¹⁴ Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property provided the legal ground for such a model and the Member States should have adopted the necessary measures to comply with this Framework Decision by 15 March 2007.

Methodology

To this end, Eurojust prepared a questionnaire consisting of 10 key questions, some of them divided into sub-questions, resulting in 21 questions in total. See the complete questionnaire annexed hereto.

The questions posed in the questionnaire can be divided into thematic units. First, we needed to establish whether legal regulations applied in individual Member States allow for the confiscation of property used to commit a crime (the instrumentalities of crime) and for the confiscation of the proceeds of crime (whether primary or secondary proceeds), without first convicting a particular person of a particular crime. This section of the questionnaire was followed by a question, which presented specific cases. Respondents in individual Member States were asked to decide whether the legal regulations in force in their home countries would allow for the confiscation of property without a conviction.

The questionnaire sought to establish whether criminal legislation applied in individual Member States allows for the confiscation of the proceeds of crime if held by different legal entities.

The questionnaire also explored issues relating to legitimate claims of injured parties and compensation for such claims in the proceedings referred to above. However, the wording of the question suggests that the relevant issue relates only to confiscation in criminal proceedings, in which the persons who caused damage to others have not been convicted (for various reasons). This question is irrelevant in civil confiscation, because neither a specific crime nor victims of such a crime can be identified in a civil recovery proceeding.

Next, the questionnaire explored issues relating to the confiscation of an item with equivalent financial value. In this section, we sought to establish whether the legislation applied in individual Member States allows for the confiscation of property other than instrumentalities of crime or proceeds of crime, due to impairment, loss, sale, etc. of the instrumentalities or proceeds of crime.

The main section of the questionnaire consisted of questions relating to issues of international judicial cooperation. In this section, individual Member States were asked to state whether they would execute a request for mutual legal assistance (MLA) in the matter of identification, freezing and confiscation of assets where the person concerned either has not been or could not have been convicted in the requesting State. This question was followed by questions aimed at establishing whether the Member States have identified any legal impediments to judicial cooperation in decision-making processes, and, if affirmative, to specify the impediments.

The key impediment to the implementation of non-conviction-based confiscation systems, as suggested at various international *fora*, is the unconstitutional nature of these systems in certain Member States. Bearing this situation in mind, we strove to identify those Member States whose constitutions prevent the implementation of a non-conviction-based confiscation system and the reasoning behind this situation.

Each Eurojust National Member was also asked to identify cases referred to Eurojust from individual Member States in the matter of non-conviction-based confiscation. We sought to establish the number of cases of this type at Eurojust. In particular, we focused on the grounds

on which a particular Member State had referred a case to Eurojust, the legal nature of problems, when reported, the form of assistance provided by Eurojust, whether Eurojust had been helpful in tackling the legal problems posed, and, where applicable, whether the means employed by Eurojust to facilitate the exchange of information and MLA between the Member States concerned were successful.

Finally, we explored the decisions taken in this field in individual Member States. We believe that the judicial decision-making process can provide valuable information about the national legislation of the Member States.

Eurojust sent out the questionnaire to all Eurojust National Members in May 2012. Depending on internal rules and regulations of National Members, the questionnaire was either forwarded to the relevant national authorities or answered directly by the National Members.

Replies to the questionnaire were received and processed between June and September 2012. In that period, action was taken to ensure that all legal regulations and judgements that had not been submitted in the English language were translated into English.

Replies were analysed and put into the tables attached hereto for the sake of clarity.

In the analysis section of this report, we also took into consideration other documents, e.g. the summary of replies to the questionnaire presented during the CARIN Presidency of Bulgaria in 2011 on the topic of "Targeting unexplained wealth", the final report of the "Confiscation and Organised Crime: Procedures and Perspectives in International Judicial Cooperation" seminar held by Eurojust in Palermo on 21 and 22 May 2012, the analytical report, "Preventive confiscation and its execution abroad", prepared by Eurojust, and document no. 12219/12 of the Council of the EU dated 4 July 2012, which contains questions on the definitions and application of non-conviction-based confiscation in the Member States and the replies submitted by them.

Analysis

Based on analysis of the information obtained, four confiscation systems in the Member States allow for the confiscation of proceeds of crime without a criminal conviction.¹⁵

However, in some Member States, a clear link between the legislation relating to confiscation without a criminal conviction and a particular confiscation system is difficult to establish.

The first system (system no. 1) refers to non-conviction-based (NCB) confiscation linked to criminal proceedings. Legal regulations applied in a few Member States anticipate situations where criminal proceedings for an offence are instituted against an offender but not concluded because the offender cannot be brought before a court or convicted due to a lack of evidence. These situations occur when the relevant authorities fail to identify an offender or fail to prove a particular person at fault. In practice, these situations may also arise for other reasons, for example when suspects enjoy immunity, die in the course of criminal proceedings or are

¹⁵ For purpose of this report, we will consider the extended confiscation model as a model that allows for confiscation of the criminal assets of the perpetrator if the court concludes that part of the person's property shall have been obtained through other forms of unlawful conduct, for which the court finds the person guilty.

declared dead, are under the age of criminal responsibility, etc.¹⁶ Despite these circumstances, the legal regulations applied in certain Member States allow for the confiscation of property without a criminal conviction.

The second system (system no. 2) refers to extended confiscation. In this situation, a court convicts a particular person of a crime and also awards a decision on the confiscation of property, when either a) the national court believes that the property was obtained through similar unlawful conduct of the person convicted, committed before the actual conviction, or b) the value of the property of the person convicted is disproportionate to the person's legal income and the national court concludes that the property has been obtained through unlawful conduct of the person convicted. Establishing a direct link between the property and the offence is not necessary if the court concludes that part of the person's property was obtained through other unlawful conduct, for which the court finds the person guilty.¹⁷

These two systems fall within criminal non-conviction-based confiscation systems. The other two systems described below fall within civil non-confiscation-based confiscation systems, meaning that decisions on the satisfaction of requirements to order confiscation of property by the State are not awarded by criminal courts in criminal proceedings but by civil courts, regardless of the outcome of criminal proceedings.

The third system can be designated as standard civil forfeiture or confiscation (system no. 3). This system applies to civil proceedings in which courts conclude that property has been obtained through unlawful conduct. Sufficient evidence to instigate criminal proceedings or establish a link between the property and a related crime or criminality in general is lacking. Therefore, the confiscation is civil by nature but with an indirect link to a crime or criminality. This system requires that, initially, the Member State must prove the indirect link before a court. The Member State may then allow the burden of proof that the asset has been obtained legally to “shift” to the respondent.

The fourth system (system no. 4) refers to NCB confiscation based on “unexplained wealth”. This system is applied solely within civil proceedings, where a comparison of the actual property of a person is made against the income declared by that person so as to establish a clear disproportion between the actual and declared property. Establishing an indirect link to a crime is unnecessary. In these cases, the burden of proof that the property has been obtained lawfully lies with the defendant, meaning that the relevant civil court considers in this case whether the person has obtained the property lawfully. Where the court concludes that the person has obtained the property through unlawful conduct, the court will make a decision that the property thus obtained shall be confiscated by the State.

¹⁶ Article 5 of the Proposal for a Directive on the freezing and confiscation of the proceeds of crime, to strengthen the systems for freezing, managing and confiscating criminal assets across the European Union, introduces non-conviction-based confiscation only in circumstances when a criminal conviction cannot be obtained because the suspect has died, is permanently ill, or when his flight or illness prevents effective prosecution within a reasonable time and poses the risk that prosecution could be barred by statutory limitations. However, some Member States apply non-conviction-based confiscation in other situations as well. For more information, see table number 2.

¹⁷ With reference to system no. 2, Czech Republic stated that unless proceedings relate to a particular form of conduct, where the presumption of innocence and obligation to prove the guilt of the accused beyond any reasonable doubt, *inter alia*, are applied and where the burden of proof lies with the State, such proceedings cannot be designated as criminal proceedings. The availability of confiscation in those cases should be covered by civil or administrative law. For more information, see table no. 10.



We have reached the above findings by comparing the legal regulations applied in the Member States and analysing their replies to question no. of the Eurojust questionnaire. For the legal regulations applied in the Member States, see the Legal Provisions section annexed hereto. However, some Member States cannot be clearly classified under one of the groups listed above. The legislation applied in these Member States either represents more than one model, or is a cross between the two confiscation systems. For example, the Netherlands stated several times in its replies to the questionnaire that the system applied in the Netherlands for the confiscation of proceeds of crime mostly resembled system no. 2.

Nonetheless, some countries have implemented more than one of the systems listed above in their legal systems. For example, Italy and Slovenia apply system nos. 1 and 3. In the Slovak Republic,¹⁸ Section 2 of the Property Origin Act extends the operation of this Act to cases where the person is liable to a fine, forfeiture of property or forfeiture of part of their property and the person has property¹⁹ that cannot be governed by the Criminal Code. We can classify this legal approach under system no. 2.

The Republic of Poland stated in the document of the Council of the EU²⁰ that the legal system applied in Poland, in principle, did not allow for the confiscation of property without a criminal conviction. However, pursuant to Section 412 of the Polish Civil Code, the title to any property obtained through unlawful conduct can be withdrawn.^{21 22}

In addition to systems described above, some of the Member States apply different administrative proceedings to confiscate property obtained through unlawful conduct. For example, Hungary reported that any property obtained through unlawful conduct could be

¹⁸ Act No. 101/2010 Coll. on Demonstrating the Origin of Property (the Property Origin Act).

¹⁹ Personal property, real property, residential and non-residential premises, other property rights and other property values, cash in euro and foreign currency, deposits held with banks and branch offices of foreign banks in euro and foreign currency and deposits held with banks having registered offices abroad.

²⁰ 12219/12 dated 4 July 2012.

²¹ Ibid. p. 84.

²² That law imposes an obligation on a person who receives an unintended benefit to repay the sum by which he or she has been "unjustly enriched".

confiscated in tax proceedings. The burden of proof may change in those proceedings and the person concerned is required to demonstrate that the property was obtained lawfully.²³

Analysis also showed that regulations applied in the Member States to govern criminal confiscation differ significantly. These differences between legal regulations arise from different concepts of and views on the confiscation. Most Member States consider confiscation – forfeiture of property by the State – a sentence, penalty or other sanction imposed for a breach of legislation. Therefore, this sentence is imposed on offenders as a principal or concurrent sentence. Confiscation applies to the property of offenders and refers to a sentence for unlawful conduct.

However, in practice, situations in which this sentence cannot be imposed on offenders often arise for one of the following reasons:

- a. the offender is not known,
- b. the property used in unlawful conduct is not the property of the offender,
- c. the proceeds of crime have been transferred to another person,
- d. a permanent impediment to criminal proceedings exists due to which the offender may no longer be liable to prosecution,
- e. the property can be possessed and further handled only based on specific permission and the person concerned does not have that permission (for example, poisons, explosives, weapons), and
- f. the sentence cannot be imposed by virtue of the protection of public order, security of individuals, property or other general interest.

Therefore, the legal regulations applied in a number of Member States provide for the institution of measures that allow for the confiscation of property where any of the situations listed above arises. However, the confiscation of property is considered by some Member States to be an ancillary measure and not a sentence. Measures to confiscate property are made by courts in criminal proceedings, as a rule, during trials to determine guilt and at the sentencing stage. However, courts can also make such a decision in separate hearings, where the decision could not have been made during the preceding trial.

Referring to the facts mentioned above, some Member States do not confiscate proceeds of crime by way of criminal proceedings. Due to the nature of these proceedings, the confiscation of property cannot be considered a sentence or penalty but rather a measure taken by the State to confiscate property that is reasonably suspected to have been obtained through unlawful conduct or illegal sources.

Only a few Member States, i.e. Bulgaria, Ireland, Italy, Slovenia, the Slovak Republic and the UK, have implemented civil confiscation systems in which the confiscation is commenced by a State against the property (*in rem*) and therefore cannot be considered as a penalty. Estonia uses a variation of this model. For more information, see table no. 4.

With reference to the aforementioned, we aimed to establish whether other Member States would execute an International Letter of Request issued by a state applying the civil confiscation

²³ Different administrative confiscation proceedings were not part of the analysis and we mention these possibilities of confiscation only marginally.

system, asking for bank data or freezing orders for purposes of subsequent confiscation. As illustrated in table no. 8, only a few Member States applying system nos. 3 and 4 would obtain the requested assistance, due to a lack of any legal basis in civil matters to handle such requests in other Member States²⁴ or due to the fact that the action sought would be contrary to the fundamental principles of the legal system of the requested State.²⁵

Therefore, we can conclude that civil confiscation systems would probably be less effective where the property to be confiscated is located in a State that does not apply a civil confiscation system. Problems can be expected not only at the stage of the actual recognition of a civil confiscation order but also at the stage of establishing the actual existence of property and freezing it for purposes of subsequent forfeiture in the requesting Member State.

In addition, not all Member States applying the civil systems would be able to handle a request for MLA made by a Member State applying the same system. At this point, we draw attention to the replies submitted by Bulgaria and the Slovak Republic in response to the questionnaire prepared by the Council of the EU.²⁶ Both these Member States, which apply the civil confiscation system, stated that they would only recognise a foreign confiscation order issued either in criminal proceedings or by a criminal court.

Therefore, we consider this fact a drawback to the civil systems for the confiscation of proceeds of crime. The replies of some Member States support this claim, as illustrated in table no. 8. The table shows that Ireland, Italy and the UK as the requesting Member States reported problems with the execution of requests for MLA in the matter of civil confiscation. A few Member States, namely Belgium, Czech Republic, the Netherlands, Portugal and Sweden, reported difficulties in executing these requests.

However, the legal regulations applied in the Member States are inconsistent in areas other than civil confiscation systems. Harmonisation of the criminal legislation of the Member States governing confiscation of property without a criminal conviction would be beneficial. As already stated above, situations often arise in practice where the property is frozen but the perpetrator cannot be convicted for some reason (for example, if the perpetrator dies in the course of proceedings) or located at all. However, the interest of the State is served if the property frozen is confiscated when sufficient evidence is present to establish that the property was obtained through unlawful conduct.

Summary table no. 2 illustrates the diversity in the legislation applied in individual Member States. We listed a number of models in the questionnaire and asked the respondents whether they would be able to confiscate property obtained through unlawful conduct should any of the situations listed arise. Some Member States would not be able to confiscate proceeds of crime in cases of limited non-conviction-based confiscation, which covers situations when the offender

²⁴ According to the European Court of Justice rulings in several cases: *Netherlands v. Rüffer*, 814/79, *LTU v. Eurocontrol*, 29/76 and *Lechouritou and others v Dimosio Tis Omospondiakis Dimokratias tis Germanias*, Case No. 292/05, civil confiscation systems (models 3 and 4) do not fall under the term “civil and commercial matters” according to Article 1 of the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.

²⁵ Article 18/1a and Article 18/4d of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990.

²⁶ 12219/12 dated 4 July 2012, pp. 7 and 93.

absconds, dies or suffers from a mental illness at the time of committing an offence. For more details, *see* summary table no. 2.

In question no. 3, we asked the Member States that would not be able to freeze property in the situations listed above to state what actions they would take in those situations. The replies we received are found in summary table no. 3.

In this analysis, we sought to determine the rationale for any constitutional or other impediments to the implementation of any of the systems described above. Thirteen Member States replied to question no. 10.

We also consulted document no. 12219/12 dated 4 July 2012 of the Council of the EU to find any constitutional impediments to the implementation of civil confiscation systems. By analysing both documents, we ascertained that only five Member States (Poland²⁷, Greece, Romania, Portugal and Sweden²⁸) reported the presence of constitutional impediments to the implementation of civil confiscation systems in their Member States.

In its reply, Romania refers to its Constitution of 1991, under which it is presumed that all property is acquired in good faith and the burden of proof to the contrary lies with judicial authorities. Romania has implemented this fundamental statutory provision into its core legislation to prevent infringement of private property rights, a common practice under the Communist regime.

In its reply to this questionnaire of the Council of the EU, Poland refers to the fundamental constitutional principles codified in the Polish legal system, namely the inviolability of property rights and the principle of presumption of innocence.

Sweden also questioned the constitutionality of civil confiscation systems, arguing that:

“If confiscation and a criminal conviction could be effected in different proceedings this could also constitute a violation of the *ne bis in idem* principle, both domestically and according to the ECHR. Furthermore, confiscation constitutes a limitation on the constitutionally protected right to respect for property and such limitations must always be proportionate and effected with regard to due process.”

Spain and Belgium stated that the implementation of the NCB confiscation system would require a significant review of their criminal legislation.

Malta stated that the implementation of one of the confiscation systems was under consideration and was only a question of legislation.

The Netherlands and the UK considered their own systems fully satisfactory.

In the questionnaire, we asked every Eurojust National Member to provide examples of cases of confiscation without criminal conviction of a particular person. The number of replies we received and the number of cases identified suggest that the number of cases of this type, where reported to Eurojust, was minimal. Only Germany, Sweden, Italy and the UK reported civil confiscation cases or problems with such cases.

²⁷ Poland reported constitutional impediments to the non-implementation of civil confiscation systems in the questionnaire provided in document no. 12219/12 of the Council dated 4 July 2012, p. 83.

²⁸ *See* document no. 12219/12, dated 4 July 2012, p. 112.

When the list of confiscation cases was made available, we sought to determine whether Eurojust had been helpful in addressing those cases, and, where applicable, to what degree. Therefore, we asked individual National Members to provide us with any additional information, particularly whether or not Eurojust had held any coordination meetings to discuss those cases, and, if affirmative, whether or not issues relating to the confiscation had been discussed, what the problems discussed had been and whether the participants in such a meeting had come to any agreement. We also sought to determine whether the objectives of Eurojust laid down in Article 3 of Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2009/426/JHA on the strengthening of Eurojust (the Eurojust Decision) had been accomplished.

Based on the additional information we received, we came to the conclusion that Eurojust only contributed significantly to facilitating the handling of requests for judicial cooperation and the execution of decisions on judicial cooperation in accordance with Article 3(b) of the Eurojust Decision in one case.

In another two cases, Eurojust only referred the requests for MLA to the relevant authority in the requested State. Neither of these cases has been closed.

No coordination meeting as required by Article 17 of the Rules of Procedure of Eurojust²⁹ has been convened with respect to any of the cases referred to above.

Summary, conclusions and recommendations

Confiscation of the proceeds of crime or other illegal assets is an extremely important and complex subject.

As shown in the analysis above, several systems for the confiscation of property obtained illegally or property obtained through unlawful conduct are applied in the Member States.

The purpose of this report is not to judge the effectiveness of a Member State's confiscation system. In our view, we should fully respect the right of each Member State to select and implement a system that best meets its specific needs and reflects its legal culture and any other specific requirements.

However, we cannot overlook the fact that most Member States do not have such civil confiscation systems in place. As a result, only some Member States would be able to execute a request for MLA from a Member State applying the civil system. Most Member States would encounter difficulties in executing requests for legal assistance at the stage of identifying and freezing the property concerned, before even considering the difficulties in recognising confiscation orders issued by foreign courts.

Without any doubt, this situation may affect the overall effectiveness of civil confiscation systems, particularly when the property is situated within the territory of a Member State applying a system other than the civil confiscation system. Indeed, certain Member States using system no. 3 or system no. 4 stated that they would execute a request for MLA only when a

²⁹ Rules of Procedure of Eurojust (2002/C 286/2001).

decision in a criminal case had been taken, and recognise a foreign forfeiture order for property or part thereof only when given by a criminal court.

We have also noted that the phrase “*non-conviction-based confiscation*” is often both misinterpreted and incorrectly considered a synonym for “*civil recovery*”. With reference to the aforementioned, forfeiture without a prior criminal conviction is available in most Member States.

Some Member States have provided contrary responses to other questionnaires similar in subject and content to this one, thus supporting our contention that this subject is both sensitive and complex. Therefore, we currently cannot definitively state that requests for MLA or recognition of foreign judicial decisions would or would not be executed in each Member State in a particular way.

Taking into consideration the extreme complexity of this subject and its crucial role in enhancing overall effectiveness in the fight against crime, we consider education and specialisation of police and judicial authorities to be of crucial importance.

Cooperation between States can be also promoted further informally through CARIN or ARO contact points to ensure that specialists on confiscation of proceeds of crime broaden their knowledge and share their experience.

The tasks imposed on Eurojust and Europol in this field have been stated many times at various seminars and conferences, and in reports. The complex legal nature of the problems encountered requires more intense involvement on the part of these institutions, in which the freezing and confiscation of property obtained through unlawful conduct can be foreseen.

However, the limited number of non-conviction-based confiscation cases reported to Eurojust suggests that the Member States generally request Eurojust’s assistance only for judicial cooperation in criminal matters.

The limited experience of many Member States with civil confiscation models described earlier may suggest that the number of civil confiscation cases with a supranational dimension is minimal. However, we cannot exclude the possibility that the small number of cases can be explained by the negative experience gained by requesting Member States in the handling of earlier requests.

The differences between legal regulations applied in the Member States are complex in both criminal and civil systems. We believe that the legislation in the Member States requires harmonisation in this area.

To prevent these matters becoming even more complex, non-binding legislative guidelines should be adopted in those Member States contemplating further change.

However, we must realise that even if such non-binding legislative guidelines were prepared, they would not resolve the underlying problem without harmonisation of civil confiscation laws.

Questionnaire

Page intentionally left blank

Questionnaire on non-conviction-based confiscation

Most confiscations carried out today by judicial authorities throughout the European Union follow a “classical” pattern in which a person is found guilty of committing a crime and assets or instrumentalities identified and directly connected to that specific crime and person are subsequently confiscated. Due to difficulties in confiscating criminal assets, complexity of financial structures and of crimes committed, some Member States have started applying confiscation without a prior criminal conviction (“**non-conviction-based confiscation**”, hereinafter NCB).

NCB is today recognised by international conventions such as the United Nations Convention against Corruption¹, and the Commission has recently proposed limited harmonisation of NCB legislation².

However, at least four non-conviction-based confiscation models can be identified:

- **Model 1 – NCB confiscation within a criminal procedure**

A criminal procedure has been opened but no conviction is possible either because the suspect is unknown or because the suspect cannot be convicted for other reasons (e.g. the suspect enjoys immunity, is under the age of criminal responsibility, etc). Confiscation of assets and their equivalent value is still possible if a link can be made between the crime and assets of the crime.

- **Model 2 – NCB confiscation within extended confiscation**

The term “confiscation of assets from a similar criminality” means that no particular description of an act or a direct link between a crime and assets (e.g. a person sentenced for another crime) is necessary.

- **Model 3 – NCB confiscation or “civil recovery”**

A civil court recognises, “on balance of probabilities”, that the identified assets were most probably derived from illegal activities. However, this situation does not provide sufficient evidence to commence a criminal case. Confiscation is civil-based but with an indirect link to criminal activities. The State would still be responsible for proving this indirect link in court.

- **Model 4 – NCB confiscation consisting of “unexplained wealth”**

In this purely civil procedure, a comparison is made between the wealth of a person and his/her legal income, demonstrating a clear disproportion and unexplained wealth, but no proven indirect link to criminal activities is necessary. In this case, the burden of proof is reversed and assets can be confiscated if the person cannot prove their legal origin.

¹ Article 54(1) of the Convention: “Each State Party (...) shall in accordance with its domestic law: (c) consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or [another] appropriate case”.

² Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union, COM (2012) 85 final, 12.3.2012.

This questionnaire, prompted initially by discussions held in CARIN's 2011 annual meeting, seeks to identify Member States' legislation and practice with regard to non-conviction-based confiscation³.

You will be asked to tick boxes or provide a short reply to each question and to attach to your answer the relevant national legislation and jurisprudence in this area⁴. Providing legislation and/or case law is particularly important for this project as their analysis will also be taken into consideration in the outcome report. **Please note that all questions listed below relate only to non-conviction-based confiscation.**

Answers should be sent to the Slovak Desk by 15 June 2012. After receipt and analysis of answers, interviews may be conducted with a number of National Desks to supplement the written replies.

- 1) Does your legislation allow confiscation of an instrumentality of crime or criminal proceeds without the conviction of a particular person?⁵
- 2) Can your jurisdiction use confiscation without conviction where:
 - a. the criminal prosecution is statute-barred YES NO
 - b. the suspect enjoys immunity from prosecution YES NO
 - c. the suspect is under the age of criminal responsibility YES NO
 - d. the suspect has died or has been declared deceased YES NO
 - e. the place of residence of the suspect is unknown because he/she has fled the country or has absconded YES NO
 - f. the accused was not criminally responsible at the time of the act (e.g. mental illness) YES NO
 - g. the perpetrator is unknown but reasonable suspicion exists that the assets were derived from criminal activity YES NO
 - h. suspicion is created that assets are the proceeds of serious crimes, due to their disproportion with the declared income of their owner and his/her habitual contacts with known criminals YES NO
 - i. the circumstances indicate that the assets are related to the financing of terrorism YES NO
 - j. the safety of persons or assets, or another similar public interest, requires confiscation, or YES NO
 - k. other cases? YES NO
 - l. If yes, please specify.

³ The intention of this questionnaire is not to duplicate work that was done by Eurojust on preventive confiscation in 2010.

⁴ If English-language versions of your legislation and case law are not available, please attach the original versions of these documents.

⁵ Please note that even if you reply "no" to this question, question number 7 of the questionnaire may still be relevant.

- 3) If your answer to question 1 is negative, please specify how your country would proceed if one of the situations mentioned in question 2 would occur (excluding cases of international cooperation).
- 4) According to your national legislation, is model number 3, as described in the introduction to this questionnaire, applicable in your country?
- 5) Does your criminal legislation allow NCB confiscation of assets belonging to legal entities? YES NO

If yes, under what conditions?

- 6) Are the rights of victims considered during the NCB confiscation procedure?..... YES NO
- 7) Can you use NCB confiscation for other assets of the same value if the proceeds of crime or instrumentalities were damaged, lost, sold, etc... YES NO
- 8) Considering the above four NCB confiscation models, would your national judicial system allow execution of a letter of request (e.g. seizure of property, identification of assets, etc)?
- a. model 1..... YES NO

If yes, please specify the legal ground for its execution.

- b. model 2..... YES NO

If yes, please specify the legal ground for its execution.

- c. model 3..... YES NO

If yes, please specify the legal ground for its execution.

- d. model 4..... YES NO

If yes, please specify the legal ground for its execution.

- 9) Has your jurisdiction experienced any legal obstacles in mutual legal assistance in cases of NCB confiscation? YES NO

If yes, could you please provide some examples?

- Are you aware of any NCB confiscation cases in which Eurojust was involved?..... YES NO

If yes, please specify.

- 10) If your country does not apply one or more of the four models of NCB confiscation mentioned above, could you explain the legal obstacles to their introduction in your country?

Page intentionally left blank

Tabular overview

Page intentionally left blank

1. Does your legislation allow confiscation of an instrumentality of crime or criminal proceeds without the conviction of a particular person?		
Positive answer	Legal basis	Negative answer
DK, FI, DE, HU, IT, LT, LV		BG, FR, LU, MT, PL, SE
AT: The court has to declare forfeited assets that were obtained for or by the commission of an act punishable by law.	Section 20 of CC	BE: Generally, NCBC is impossible, only for weapons and drug confiscation it is possible as “security measure” and has to be regulated in a specific law. Also for the mentally ill and minors confiscation is possible on the basis of a simple “finding of guilt”. In case of suspension of the judgement, as well as when there is only a finding of guilt due to exceeding of the reasonable term a confiscation is possible.
CY: There is the possibility for the Court to issue freezing and confiscation orders in cases of a suspect who is outside the jurisdiction of the Republic or has died.	Section 32 & 33 of the Prevention and Suppression of Money Laundering Activities Laws of 2007 and 2010	
CZ: It is possible to impose a protective measure in criminal proceedings – a forfeiture of an item or equivalent value.	Section 101 & 102 of CC	
EL: There is a possibility to confiscate the criminal assets without conviction of a person for reasons of public safety and interest. The 3691/2008 act has also provisions which allow the NCBC.	Article 76 of CC; 3691/2008 Act on money laundering and financing of terrorism	
EE: In criminal proceedings objects used to commit offence or direct objects of offence, in the absence of the permission necessary for the possession, can be confiscated without a conviction, if a person has committed at least an unlawful act. In criminal proceedings it is possible to apply extended confiscation (Model 2). So called “trigger crime” has to take place and there is reason to presume that person has acquired the assets through commission of the criminal offence. In administrative proceedings it is possible to apply administrative confiscation (similar to Model 3) but limited to suspicion of money laundering or terrorism financing.	§ 83(4)(5), § 832 and § 84 of the Penal Code; for administrative confiscation: § 40 of the Money Laundering and Terrorism Financing Prevention Act	RO: The confiscation is ordered by the court only within the criminal file in which the conviction was pronounced. However, there is one exception concerning the confiscation measure applied by an administrative court following a request of National Integrity Agency, in files regarding unjustified wealth of public officials (The President of Romania, the deputies, the senators, the members of the Government, the state secretaries and undersecretaries, as well as those assimilated to them, the magistrates, the country and local councillors, the mayors etc).
IE: There are numerous statutory provisions allowing a court of trial to forfeit property which has been used for the purpose of committing or facilitating the commission of an offence. Such provisions, whilst often directed at specific property used in a particular offence can have a general application. In regard to criminal proceeds without conviction the High Court can make an order a person from disposing of or otherwise dealing with or diminishing in value any property shown to the satisfaction of the court on the balance of probabilities to be directly or indirectly the proceeds of crime.	Section 61 of the Criminal Justice Act 1994 (as amended); Proceeds of Crime Act 1996 and 2005	
PT: The Portuguese law allows the confiscation of instrumentalities of crime and products of crime without the perpetrator having been convicted. The same applies for the benefits/rewards of crime. The law clearly distinguishes between instrumentalities, products, rewards and benefits of crime.		

<p>SI: Yes, in the following cases: assets which must or could be confiscated by material law; in cases of money laundering and bribery (corruption) if we can prove that assets derive from those criminal acts.</p>	<p>Article 498 & 498/a CPA (ZKP); Article 73 CA (KZ-1); Law on confiscation of unlawful property</p>	
<p>ES: The law allows for confiscation of the proceeds and instrumentalities of crime, for value confiscation and for extended confiscation (in this case, limited to terrorism and criminal organization).</p>	<p>Article 127(4) of CC</p>	
<p>UK: It is possible to seize and forfeit cash (instrumentalities or proceeds) which has either been obtained through unlawful conduct or which it is intended to use in unlawful conduct. NCB confiscation applies re other assets which are criminal proceeds (but not instrumentalities). It is also possible to tax income from criminal activity.</p>	<p>Proceeds of Crime Act 2002 (POCA)</p>	

2. Can your jurisdiction use confiscation without conviction where:			
	Positive answer	Negative answer	Not applicable
a. the criminal prosecution is statute-barred	CZ, DK (with time limits), FI, EL, ES, IE, IT, LT, LV, PT, SI, SK, UK	AT, BE, FR, DE, HU, NL, PT, SE	CY (no statute bar), LU, MT, PL, RO
b. the suspect enjoys immunity from prosecution	DK, EL, FI, HU, IE, LV, LT, SI, SK, UK CZ: It depends of the real content of immunity – if it covers also a person's property or not (i.e. privileges of diplomats and consuls).	AT, BE, BG (na), CY, FR, DE, IT, LU (na), MT (na), NL, PL (na), PT, RO (na), ES, SE	BG, LU, MT, PL, RO
c. the suspect is under the age of criminal responsibility	AT, CZ, DK, EL, FI, HU, IE, LT, LV, PT, SI, SK, ES, SE, UK (partially)	BE, CY, FR, DE, IT, NL, UK (partially)	BG, LU, MT, PL, RO
d. the suspect has died or has been declared deceased	AT, CY, CZ, DK (with exceptions for certain instrumentalities), EL, FI, HU, IE, IT, LV, LT, SI, SK, ES, UK	BE, FR, DE, NL, PT, SE	BG, LU, MT, PL, RO
e. the place of residence of the suspect is unknown because he/she has fled the country or has absconded	CY, DK, FI, DE, EL, HU, IE, IT, LV, LT, SI, SK, UK	AT, BE, CZ, FR, NL, PT, ES, SE	BG, LU, MT, PL, RO
f. the accused was not criminally responsible at the time of the act (e.g. mental illness)	AT, CZ, DK, FI, DE, EL, HU, IE, IT, LT, LV, PT, SI, SK, ES, UK (partially)	BE, CY, FR, NL, SE, UK (partially)	BG, LU, MT, PL, RO
g. the perpetrator is unknown but reasonable suspicion exists that the assets were derived from criminal activity	DK, EE, FI, EL, HU, IE, IT, LT, LV, PT (but not possible in the case of rewards or benefits), SI, SK, ES	AT, BE, CZ, FR, DE, NL, SE,	BG, LU, MT, PL, RO UK (<i>reasonable suspicion is not sufficient to confiscate under UK NCB system</i>)
h. suspicion is created that assets are the proceeds of serious crimes, due to their disproportion with the declared income of their owner and his/her habitual contacts with known criminals	DK (but certain conditions apply), HU (2nd part), IE, IT, LV, PT, SI, SK	AT, BE, CY, CZ, FI, FR, DE, EL, HU (1st part), NL, ES, SE	BG, LU, LT, MT, PL, RO, UK
i. the circumstances indicate that the assets are related to the financing of terrorism	DK, FI, EL, HU, IE, IT, LV, LT, SI, SK, ES, UK	AT, BE, CY, CZ, FR, DE, NL, PT, SE	BG, LU, MT, PL, RO
j. the safety of persons or assets, or another similar public interest, requires confiscation	CZ, DK, DE, EL, HU, LV, SI, SK, ES, SE	AT, BE, CY, FI, FR, IE, LT, NL, PT, UK	BG, IT, LU, MT, PL, RO
k. other cases?			
AT: The decision on forfeiture, extended forfeiture and confiscation shall be made in the penal judgment. In the case where results of penal proceedings are not sufficient to judge the pecuniary sanctions, their determination may be reserved by an order for a separate decision. Thus this can be achieved irrespective from a conviction. The above mentioned proprietary orders can be issued in an independent proceeding due to a special application made by a prosecutor.			
CZ: Pardon or amnesty, time bar of criminal prosecution, if the criminal prosecution is conditioned by the consent of a victim and the consent was not granted or was withdrawn.			
EE: In criminal proceedings objects used to commit offence or direct objects of offence, in the absence of the permission necessary for the possession, can be confiscated without a conviction, if a person has committed at least an unlawful act. In criminal proceedings it is possible to apply extended confiscation (Model 2). So called "trigger crime" has to take place and there is reason to presume that person has acquired the assets through commission of the criminal offence. In administrative proceedings it is possible to apply administrative confiscation (similar to Model 3) according to the Money Laundering and Terrorism Financing Prevention Act, limited to suspicion of money laundering or terrorism financing.			
FI: Extended powers of confiscation. "Trigger crime" has to take place and there is a need of reasonable doubt of earlier profiting of criminal activity. Bona fide does not protect third persons.			

HU: According to the CC the confiscation of assets shall be ordered as well: if anything is used/intended to be used as an instrument for the commission of crime, if a thing is a result of the commission of crime, things which are the subject of committed crime or were used as transporting tools, media products through the crime is committed, any financial gain/advantage obtained by a perpetrator in connection with crimes committed in affiliation with OC, all assets obtained by the perpetrator during his involvement in OC shall be subject to forfeiture until proven otherwise, any financial gain/advantage that was used to replace the financial gain/ advantage obtained by the perpetrator in the course of or in connection with a criminal act, any property which was the object of the promised/given gain.

PT: All cases in which a legally defined unlawful act has been committed but the perpetrator could not be punished as happens in the case of amnesty, pardon, lack of awareness of the unlawfulness or negligence.

UK: As long as the civil standard of proof is satisfied, property can be subject to non-conviction-based asset forfeiture if it can be demonstrated that it derives from unlawful conduct. This is subject to various restrictions (such as protecting innocent third party purchasers of property without notice that such property derives from unlawful conduct, and Guidance setting out limitations on when NCB confiscation proceedings may be brought where there are parallel criminal proceedings).

3. If your answer to question 1 is negative, please specify how your country would proceed if one of the situations mentioned in question 2 would occur (excluding cases of international cooperation).

BE: a/ The start of a money laundering investigation is possible. In Belgium money laundering is an autonomous offence. b/ not possible c/ prosecution of minors is possible under the specific legislation concerning criminal proceedings against minors, d/ not possible, e/ conviction (and confiscation) is possible in absentia, f/ specific legislation concerning mentally ill. It is not seen as confiscation but as a security measure. g/ not possible h/ Only possible under the article 43quater Penal Code and under the specific conditions mentioned in that article, i/ specific legislation of financing of terrorism, j/ under specific legislation (ex. drugs or illegal arms) it is possible for the public interest not to give back to "illegal" items to the holder. It is called a security measure.

FR: CC predicts 3 specific situations which allow the confiscation of criminal assets without conviction, namely the offence of non justification of resources, money laundering and concealment.

MT: Unless the proceeds can be tied to a specific offence and a person who is accused and found guilty, no confiscation can take place.

NL: If there is no conviction at all for a criminal offence, there are no possibilities to confiscate the assets.

PL: In each case the sentence of the court is necessary.

RO: If one of the situations mentioned in Q2 appears, confiscation cannot be ordered. However, in case of fugitives, they may be convicted in absentia and the confiscation may be ordered by a court, at the end of the trial. If the defendant died or has been declared deceased, the criminal trial stops, confiscation cannot be ordered, unless sequester was applied during criminal investigation and the court has to decide concerning the seized assets. It has to be underlined though that Romania does not have in its internal legal system provisions related to confiscation *in rem* in its classical sense.

SE: There are quite wide possibilities to confiscate instrumentalities of crime. These sorts of objects are confiscated as part of a conviction. If for some reasons there is no trial ongoing, there is still possibility to provide a confiscation if there is a reasonable risk that such an object will be/can be used as instrument to commit a crime. The legal ground for the confiscation of proceeds of crime is the FD 2005/212 on confiscation which Sweden ratified in 2008.

4. According to your national legislation, is model number 3, as described in the introduction to this questionnaire, applicable in your country?	
Positive answer	Negative answer
IE, IT, SI (in limited range: art. 77/a, 77/b and 77/c CA (KZ-1B)), UK	AT, BE, BG, CY, CZ, DK, FI, FR, DE, EL, HU, LT, LV, MT, NL, PL, PT, RO, ES (any case related to criminal activities must take place before a Criminal Court), SE
EE: Similar procedure as described in Model 3 is applicable in administrative proceedings according to Money Laundering and Terrorist Financing Prevention Act limited to suspicion of money laundering or terrorism financing.	

5. Does your criminal legislation allow NCB confiscation of assets belonging to legal entities? If yes, under what conditions?	
Positive answer	Negative answer
EE, LV, SI, UK	BE, BG, FR, LU, MT, RO, SE
AT, CY, DK, IT: Under the same conditions as for natural persons (no differentiation)	FI: Proceeds of crime should in principle confiscated from natural and legal entities. Execution would be considered case by case. The responsible authority is Legal register centre if issuing country is applying 2006/783/JHA. Otherwise the competent authority is the Ministry of Justice.
CZ: According to Section 101 and 102 of the CC it is possible to forfeit also proceeds of crime that have been transferred to third parties (both natural and legal persons). This forfeiture still occurs in criminal proceedings – it must be proved that: a specific act constituted a criminal offence, a specific item or other value was derived from this criminal offence and was transferred to a legal person, and the burden of proof lies on the part of the State.	
DE: if the offence of an individual can be attributed to a legal entity, it is possible to confiscate its assets. The provisions under which this procedure may be taken in are contained in Sections 73 par. 3, 75 and 76a of the German Criminal Code and in Section 29a and 30 of the German Act on regulatory offences.	
EL: According to Article 46 and 51 of the 3691/2008 Act it is possible to confiscate the assets of a legal entity in the case of its illegal behaviour, even if the concrete perpetrator who acted on behalf of that legal entity cannot be convicted.	
HU: Article 77/B subsection 2 of CC	
IE: The Proceeds of Crime Act is an action <i>in rem</i> rather than an action <i>in personam</i> . Accordingly, where it can be shown that the asset is the proceeds of crime, it does not matter whether the asset belongs to a natural or legal person.	
LT: The property belonging to a legal person shall be confiscated regardless of whether or not this person has been convicted for a criminal offence.	
NL: Only if there is a conviction for a criminal offence (as described in the answer for question 1), confiscation of assets from “other criminal offences” (similar to NCB Model 2) belonging to legal entities is possible.	
PL: Only with the sentence of the court.	
PT: In cases involving the criminal liability of the legal person confiscation is subject to the general requirements being met (the requirements are the same for both, natural and legal persons). In cases where the Portuguese law does not provide for the liability of the legal persons, confiscation can occur if a third party is involved.	
ES: The national legislation permits the criminal accountability of legal entities (Articles 19, 20, 127 and 130 of CC)	

6. Are the rights of victims considered during the NCB confiscation procedure?	
Positive answer	Negative answer
AT, DK, EE, DE, EL, HU, IE, LT, LV, PT, SI, UK	BE, CY, FR, IT, SE
CZ: victims have a possibility to ask for a repatriation of an item or for compensation in criminal proceedings.	FI: Basically not applicable, but they are not to be considered in confiscation procedure.
NL: Only if there is a conviction for a criminal offence (as described in the answer for question 1), confiscation of assets from “other criminal offences” (similar to NCB Model 2) is possible and in this respect the rights of victims are considered.	
ES: Article 127(5) of CC establishes that “The assets seized shall be sold, if of lawful trade, applying the sums obtained to covering the civil liabilities of the convict if the Law does not foresee otherwise”.	

7. Can you use NCB confiscation for other assets of the same value if the proceeds of crime or instrumentalities were damaged, lost, sold, etc?	
Positive answer	Negative answer
AT, CY (in cases mentioned in reply to Q1), CZ, DK, DE, HU, IT, LV, LT, SI	BE, FR, IE, UK, RO, SE
FI: Basically not applicable, but value can be confiscated.	PL: Only with the sentence of the court. PT: The answer varies. With regard to instrumentalities/products, loss of the item cannot be replaced by loss of its value. As far as the loss of rewards or benefits is concerned, those can be replaced by the loss of the respective value. Replacement is only possible if the item cannot be appropriated in kind.
ES: Article 127(3) of CC.	
NL: Only if there is a conviction for a criminal offence (as described in the answer for question 1), it is possible to confiscate assets of the same value from “other criminal offences” (similar to NCB Model 2).	
EL: Article 46 al. 1, 2 of the 3691/2008 Act.	
EE: In criminal proceedings, if extended confiscation is applied, it is possible to use value-based confiscation (substitution of confiscation).	

8. Considering the above four NCB confiscation models, would your national judicial system allow execution of a letter of request (e.g. seizure of property, identification of assets, etc)?		
a. MODEL 1: If yes, please specify the legal ground for its execution.		
Positive answers	Negatives	
DE, EE, HU, LV, ES, SI (CA, CPA)	BE, CY, FR, IE, SE	
AT: The provisions of the Code of criminal procedure are also applicable when executing a request for assistance (section 9 par. 1 of the Austrian Extradition and mutual legal assistance act, section 1 par. 2 of the Austrian act on judicial cooperation in criminal matters with the member states of the EU).	BE: The Belgian Statute of 20 May and of 5 August 2006, the Treaty of Warsaw	
CZ: It is a co-operation in the particular criminal matter – there are a number of international treaties regulating such cooperation.		
FI: Chapter 10, Section 1 and 2 of the CC		DK: Following the MLA execution procedure
EL: LoR can be executed on the ground of MLA and facilitated by the recovery asset office of the Economic crime prosecution unit (PD 85/2005 art. 9 al. 1, 2d, 3d)		
IT: European Convention on Mutual Assistance in Criminal Matters (1959), Convention on Laundering, search, seizure on confiscation of proceeds from crime (1990)		
LT: Article 72 and 73 of the CC, Article 94 of the Code of Criminal Procedure		
NL: Seizure of property is possible on the basis of Article 13, 13a, 13b of the Act on Transferring the execution of sentences (WOTS). This can only be done on the basis of a Treaty. Identification of assets is possible on the basis of the provisions in Title X and XI of Dutch Act on criminal procedure. Coercive measures can only be used on the basis of a Treaty. However, a suspicion of a concrete fact is necessary and the MLA request must be done in connection with a criminal case (art. 552hh of the Dutch code on criminal procedure). It is also possible to start a criminal financial investigation with regard to a MLA request (art. 13a WOTS) that is sent on the basis of a Treaty. This is only possible if the criteria are met to start a CFI according to the Dutch Law. Within such CFI evidence can be gathered, and items can be seized by the Public Prosecutor.		
PL: It has to be a subject of consideration in every case of international request.		
PT: If it concerns interim measures (identification of assets) there are no obstacles in cooperation. If it comes to final measures, these can be ordered only within the criminal proceeding. The same applies with regard to the procedural guarantees ensuring the confiscation (seizure, asset guarantee measures, arrest).		
RO: Romanian legislation(Law no. 302/2004) does not impedes <i>expressis verbis</i> the enforcement of the so called NCBC orders, which have been issues abroad, reason for which, at least, theoretically speaking, this type of cooperation would be possible, but the final decision to execute or not a NCB confiscation order belongs to the courts. To the knowledge of NMRO, there is no practice in this sense which would prove such interpretation.		
UK: Section 444 of the POCA and External orders order		

b. MODEL 2: If yes, please specify the legal ground for its execution		
AT , (see reply to Q8a), EE, LV, NL (see reply to Q8a), IT (see reply to Q8a), PL (see reply to Q8a), PT (see reply to Q8a), RO (see reply to Q8a), UK	BE (see answer to Q8a), CZ, DE, EL, HU, IE	
DK : Yes/No, according to the Article 76 of the CC		
FI : Chapter 10, Section 3 of the CC		
FR : The Court of Cassation recognizes the possibility to execute decisions on confiscation based on non-conviction issued by a foreign jurisdiction in the case that the confiscation could be ordered also according to the French law. Extended confiscation shall be ordered in France for the assets, even without any relation to the offence, whose origin the suspect cannot justify. (Jurisprudence Crisafulli)		
LT : Article 72 of the CC		SI : CA (KZ 1B 77/a)
SE : cases where the conviction is based for a particular offence but confiscated proceeds derive from a further criminal activity that has not been subject of prosecution. However, the legal ground for such a proceeding is FD 2006/783 on mutual recognition and enforcement of confiscation orders within the EU and the FD 2005/212.		
c. MODEL 3: If yes, please specify the legal ground for its execution.		
FR (see reply to Q8b), IT (see reply to Q8a), PL (see reply to Q8a), RO (see reply to Q8a), SI (CA: KZ 1/B 77 a/, b/, c/), UK	AT, BE (see answer to Q8a), CZ, DK, FI, DE, EL, HU, IE, LV, PT, SE	
	LT : Civil procedures do not provide for this particular issue. Nevertheless, in December 2010 the Parliament of the Republic of Lithuania approved amendments to the CC which provide for criminal liability for unjust enrichment (Article 1891 of the CC).	
	NL : A civil NCB confiscation order cannot be executed according to Dutch law. Seizure of assets: a special provision, art. 13c WOTS, allows for the possibility to transfer items that have been seized in NL on the request of a foreign country, to the requesting member state. After the transfer the items can be confiscated in the foreign procedure. First the court must give permission for the transfer of the items. Also guaranty must be given by the requesting member state that the items (or the value of the items) will be returned to the Netherlands after confiscation. The items or the value will then be owned by the Dutch State. It is also possible to make an asset share agreement. It will be a test case whether this provision can be used in a civil NCB confiscation case. Furthermore, this provision can only be used with regard to movable goods. Identification of assets is only possible on the basis of the provisions in Title X and XI of Dutch Act on criminal procedure. Coercive measures can only be used on the basis of a Treaty. A suspicion of a concrete fact is necessary and the MLA request must be done in connection with a criminal case (art. 552hh of the Dutch code on criminal procedure).	

d. MODEL 4: If yes, please specify the legal ground for its execution.	
IT (see reply to Q8a), LV, PL (see reply to Q8a)	AT, BE (see answer to Q8a), CZ, DK, FI, FR, DE, EL, HU, IE, LT (see reply to Q8c), NL (see reply to Q8c), PT, RO, ES, SE, UK
SI : LCAIO (ZOPNI)	

9. Has your jurisdiction experienced any legal obstacles in mutual legal assistance in cases of NCB confiscation? If yes, could you please provide some examples?	
Positive answer	Negative answer
IT : In active cases. Lack of such legislation in the requested countries.	DK, FI, EL, HU, LT, PL, RO, SI, ES
AT : According to Article 58 of the federal law on Extradition and Mutual Legal Assistance legal assistance is to be limited in time when it is granted in the form of confiscation or temporary injunction. Sometimes requests to extend the time limit are not received or are not received in time by foreign authorities	FR : Execution of decisions on NCBC depends on decision of the Court of Cassation. The conditions fixed by the Court of Cassation have to be filled.
BE : A Belgian judge dealing with criminal affairs cannot recognise a foreign request when a person has not been convicted for a certain crime.	PT : No difficulties as the requesting state.
IE : Orders granted in Ireland for NCB are a civil process in Ireland and as such these orders, which have been granted over foreign properties, are not recognised by other European Countries.	DE : It is too early to answer this question regarding the low number of cases. There is one ongoing case in which we expect a court to render a decision in the near future.
CZ : Models 3 and 4 are evidently confiscation based on civil proceedings. There is no legal framework in the Czech Republic for such confiscation.	
NL : For example if in a civil NCB confiscation case is asked for the providing of bank information or bank records, the investigative officer has to mention in the order a suspicion of a criminal fact. Furthermore, the order can only be done if the MLA request is done in connection with a criminal case.	
PT : As the requested state, Portugal has encountered difficulties in enforcing decisions based on civil recovery, as being unable to meet these requests.	
SE : One case in 2005 in which Sweden could not assist UK in identification of assets (UK requested some information on bank accounts and land register in order to identify property belonging to a UK citizen who was the suspect of having sold Chinese fake products at a large scale). It was a Eurojust case.	
UK : In terms of assistance provided to our jurisdiction for our NCB confiscation, difficulties have been encountered in relation to the provision of evidence by overseas authorities and the freezing of property and the enforcement of orders in overseas jurisdictions.	

10. If your country does not apply one or more of the four models of NCB confiscation mentioned above, could you explain the legal obstacles to their introduction in your country?	
BE: The introduction of a NCB confiscation in the Belgian penal system implies a complete change of our criminal procedure code and penal code.	BG: In May 2012 the national parliament adopted a new law based on a civil confiscation without criminal conviction. This law may enter into force on 19 November 2012.
CZ: Model 2 - If it is not proceedings concerning the particular act, where we apply <i>inter alia</i> the principle of presumption of innocence, the duty to prove beyond reasonable doubts and where the burden of proof in on a State, we cannot call such proceedings as a criminal one. Such a possibility to confiscate should be covered by civil or administrative law.	EL: Real estate and personal property are protected by the Greek legislation. Article 17(1) of the Greek Constitution protects real estate, Article 260(1) of the Code of Criminal Procedure allows confiscation of bank accounts, stocks etc, only if they are related to a crime. Measures that restrain someone from free use of his property (such as confiscation) can be imposed by the competent authorities only when there is a specific relation between an illegal act and the acquisition of an asset. In other words, an indirect link to criminal activities is not enough to impose confiscation.
HU: According to Criminal Procedure Code the charge shall be proven by the accuser, and facts shall be proven beyond reasonable doubts. Therefore the model 2 and 3 couldn't be applied. As far as the model 4 is concerned under Hungarian law there is a possibility to deprive a person of his asset in the course of the procedure of the tax administration. In this case the burden of proof is reversed and the person who undergoes this procedure shall prove that the wealth was acquired in a legal way. Nevertheless this evidentiary procedure couldn't be applied in criminal proceedings because of the regime of the burden of proof that is described above.	IE: At the moment in Ireland Mutual Legal Assistance relates to Criminal Matters. So in the event of a criminal conviction in a foreign jurisdiction our Courts will recognise confiscation orders from that country once the crimes fall within the Irish criminal code. We can however in the case of a foreign NCB order being granted over an asset in Ireland adopt that case as a parallel investigation and seek an order ourselves using our Proceeds of Crime Act. In that case the order would be granted to the Bureau and in certain circumstances an application can then be made to repatriate the assets.
MT: It is basically a policy decision and to date the matter is being actively considered.	PL: There are no changes foreseen in domestic legislation concerning the NCBC models. The reasons are so far not well known.
NL: We only apply a model of confiscation similar to NCB Model 2; however a conviction for a criminal offence is required. Without a conviction for a criminal offence, there is no possibility to confiscate assets. If there is a confiscation for a criminal offence, it is possible to confiscate assets of "other criminal offences". This is a wide option to confiscate assets from the convicted person. Therefore there is no need to introduce the (other) NCB confiscation models in NL.	PT: The introduction of civil recovery (model 3) and unexplained wealth (model 4) could raise some constitutional issues that may be difficult to solve. As regards civil recovery, the principle of proportionality could be invoked. As regards model 4, the Constitutional court recently decided that provisions created a crime of unexplained wealth were unconstitutional. However, the introduction of these solutions into the national law will not be impossible.
RO: The main obstacle of introducing NCB confiscation into our legislation is represented by the fact that the Romanian Constitution established a legal presumption concerning the legality of acquirement of assets. It means that the assets are presumed to be legally acquired and the burden of proof belongs to the prosecution. Also the confiscation is ordered by courts at the end of a criminal proceeding. However, in 2012, through Law no. 63/2012, the Romanian Criminal Code was amended and extended confiscation came into force. By this regulation the legislator transposed into national law completely the Council Framework decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime –Related Proceeds, Instrumentalities and Property. The extended confiscation is ordered by court if a	ES: Although our criminal justice system allows for non-conviction-based confiscation, its extension to situations other than the ones described above would be very problematic. If there is a serious risk that prosecution could be statute-barred when the person has fled or is ill, assets could be subject to be frozen until prosecution is again possible. Confiscation is linked to the criminal conviction as an accessory consequence of the criminal sentence and it would not be possible in cases where no conviction has been established yet, unless it is no longer possible to have a conviction. However, the nature of the proceedings is criminal, so you have to demonstrate and prove the illicit origin of the assets, without damage the right of defence that corresponds to the new owners of these assets.

person is convicted for committing an offence expressly and exhaustively laid down by law, that offence can generate financial gain to the convicted, the penalty provided by law is imprisonment of 5 years or more and the court has the conviction that those assets are coming from criminal activities similar with the ones expressly stipulated. The strict provisions of the law also apply to the property transferred to a third person or family members and individuals with whom the convict established marriage relationships or parents and children, if they live together. The extended confiscation is applied also to the property of the legal person which are influenced or controlled by the convict.

UK: Model 1 is not employed in the UK because model 3 is used and it covers all the circumstances which model 1 might. The UK's non conviction model is however property specific. The usual NCB procedure (set out in Part V of POCA) does not allow for extended confiscation when employing an NCB procedure, i.e. it is not possible to use NCB to recover property except where it can be demonstrated to the civil standard that the property was obtained through unlawful conduct.

Page intentionally left blank

Legal Provisions

Page intentionally left blank

Belgium



BELGIAN PENAL CODE
Subsection III. - Special confiscation
(<Inserted by Law 1999-05-04/60, art. 9;
Entry into force : 02-07-1999>

Art. 42 of the Belgian Penal Code

Special confiscation is applied:

- 1 ° On the goods which are the object of the crime, and those which have been used or were intended to be used to commit the crime, when these goods are the property of the convicted person;
- 2 ° On the products resulting from the offense.
- 3 ° On the material benefits that are obtained directly from the offense, the goods and values replacing the direct material benefits and the income from invested benefits.) <Law 1990-07-17/30, art. 1, 004, entry into force: 08/25/1990>

Art. 43 of the Belgian Penal Code

For a serious crime or lesser offence special confiscation (applicable to the matters referred to in Article 42, 1 ° and 2 °) is always pronounced. <W 1990-07-17/30, art. 2, 004, Entry into force: 08/25/1990>

In case of a simple violation (i.a. traffic violation), confiscation shall be pronounced only in the cases determined by law.

Art. 43bis of the Belgian Penal Code

<Inserted by Law 1990-07-17/30, art. 3, 004, Entry into force: 08/25/1990>(Special confiscation applicable to the goods referred to in Article 42, 3 °, can be pronounced by the court in any case, but only if there is a written demand by the Public Prosecutor.) <Law 2002-12-19/86, art. 2, 039; Entry into force: 24/02/2003>

If the goods cannot be found in the belongings of the convicted person, the court estimates the monetary value and the confiscation consists of a corresponding amount.

When the confiscated goods belong to the civil party, they will be returned to him/her.

The confiscated goods will also be returned to the civil party, if the court pronounced the confiscation due to the fact that the confiscated goods are replacements of the goods originally

belonging to the civil party or because they are the equivalent of the goods, within the meaning of the second paragraph of this article.

Any other third party claiming to be entitled to the confiscated goods can assert his right within a period and under conditions determined by the King.

Art. 43ter of the Belgian Penal Code

<Inserted by Law 1997-05-20/50, art. 12, entry into force: 07/13/1997> The special confiscation applicable to the goods referred to (in Articles 42, 43bis and 43quater), can also be pronounced when the goods are located outside the territory of the Belgian state. <Law 2002-12-19/86, art. 3, 039; Entry into force: 24/02/2003>

Art. 43quater of the Belgian Penal Code

§ 1.

<Inserted by Law 2002-12-19/86, art. 4, Entry into force: 24/02/2003> § 1. Without prejudice to Article 43a, third and fourth paragraph, at the request of the public prosecutor, the in § 2 mentioned material benefits, the replacing goods and values and the income from invested benefits, which are found in the belongings or in the possession of a person, can be confiscated, or such person may be sentenced to pay an amount, determined by the court, and estimated as an similar amount as the value of these goods, if that person was found guilty for:

(a) either one or more of the offenses referred to in:

1 ° 136sexies Article and Article 136septies, 1 °;

(1 ° to Article 137, where these offenses are punished with the penalties provided for in Article 138, § 1, 4 ° to 10 °, and of such a nature that they can bring financial gain, and Article 140, provided that this crime or misdemeanor is such that it can generate financial gain;) <W 2006-12-27/32, art. 390, 062, entry into force: 07-01-2007>

2 ° Articles 246 to 251 and Article 323;

(2 ° a. Articles 433sexies, 433septies (, 433octies, 433undecies and 433duodecies ;)) <L 2005-08-10/61, art. 3, 053; Entry into force: 09/12/2005> <L 2006-02-09/33, art. 1, 055; entry into force: 03/10/2006>

3 ° Articles 504bis and 504ter and Article 323;

4 ° Article 2a, § 1, of the Law of 24 February 1921 on the trade in toxins, sedatives and narcotics, disinfectants and antiseptics, insofar as the facts relating to the importation, exportation, manufacture, sale or the offering for sale of the products and substances referred to therein, or § 3, b), or § 4 b) of the same Act;

5 ° (Articles 77ter, 77quater and 77quinquies) of the Act of 15 December 1980 on access to the territory, residence, establishment and expulsion of foreigners; <L 2005-08-10/61, art. 3, 053; entry into force: 09/12/2005>

- 6 ° Article 10, § 1, 2 ° of the Law of 15 July 1985 on the use with animals of substances having a hormonal, anti-hormonal, beta-adrenergic or production stimulating effects.) <L 2003-08-05/32, art. 2, 044, Entry into force: 08/07/2003>
- (b) the offenses defined in Article 324ter or one or more of the following offenses referred when they are committed in the framework of a criminal organization, as defined in Article 324bis:
- (1 ° to Articles 162, 163, 173, 180 and 186 ;) <L 2006-12-27/32, art. 391, 062, Entry into force: 07-01-2007>
- (1 °a) section 379 or 380 (and 383bis, § 1); <L 2006-12-27/32, art. 391, 062, Entry into force: 07-01-2007>
- 2 ° the articles 468, 469, 470, 471 or 472;
- 3 ° Article 475;
- 4 ° Articles 477, 477bis, 477ter, 477quater, 477quinquies, 477sexies or 488bis;
- 5 ° Article 505, except for the goods covered by Article 42, 1 °;
- (5 ° to Article 2c, 4 ° of the Law of 24 February 1921 on the trade in toxic substances, sedatives and narcotics, psychotropic substances, disinfectants and antiseptics and substances that can be used for the illicit manufacture of narcotic drugs and psychotropic substances ;) <L 2006-12-27/32, art. 391, 062, Entry into force: 07-01-2007>
- 6 ° Article 10 of the Law of 5 August 1991 on the import, export and transit of arms, munitions and specifically for military use and related technology;
- 7 ° Article 1 of the Royal Decree of 12 April 1974 on certain transactions relating to substances with hormonal, anti-hormonal, anabolic, anti-infectious, anti-parasitic and anti-inflammatory effect, which article relates to criminal offenses which under the law of 24 February 1921 on the marketing of the toxins, sedatives and narcotics, disinfectants and antiseptics sanctions against;
- 8 ° Articles 3 and 5 of the Royal Decree of 5 February 1990 on certain substances with beta-adrenergic activity, which articles relating to criminal offenses which under the law of 25 March 1964 on medicines sanctions.
- (c) or to multiple offenses jointly prosecuted, and the seriousness, the finality and the matching, permits the court to conclude that these facts were certainly and necessarily committed in the context of serious and organized fiscal fraud, using complex mechanisms or processes on an international scale.

§ 2.

The confiscation provided for in § 1 may be imposed upon the perpetrators, co-perpetrators and accomplices who were convicted of one or more of the crimes listed in this article, and subject to the conditions mentioned in § 1, if the convicted has received more benefits over a relevant period, while there are serious and concrete indications that these benefits result from the crime

for which he was convicted, or from identical facts, and the convicted cannot make the contrary plausible.

This opposite can also be made credible by any third party claiming to be entitled to these benefits.

§ 3.

The relevant period for the purposes of this article is the period of five years prior to the indictment of the person until the date of the judgment.

The serious and specific indications referred to in § 2 can be derived from all credible elements lawfully transmitted to the court, and pointing to an imbalance of some importance between the temporary or permanent increase of wealth and the expenses of the convicted in the relevant period which are proven by the prosecution, and on the other side the temporary or permanent increase of wealth and the expenses of the convicted in this period, which he can make credible that they do not result from the acts for which he was convicted or from identical facts.

Under identical facts are understood: the facts covered by the offense descriptions defined in § 1 and falling under:

- a) either the same description as the offense that is the subject of the conviction,
- b) or a related description, provided that it is included under the same heading of § 1, a), as the offense that is the subject of the conviction.

When the court imposes the special confiscation under this article, the court may decide not to take into account a part of the relevant period or certain income, goods and values, if the court considers it is appropriate in order to prevent that the convicted becomes subject to an unreasonably severe punishment.

§ 4.

The capital at the disposal of a criminal organization has to be confiscated, without prejudice to the rights of bona fide third parties.

Bulgaria*

ACT ON FORFEITURE TO THE EXCHEQUER OF UNLAWFULLY ACQUIRED ASSETS

Chapter One GENERAL PROVISIONS

Article 1

- (1) This Act regulates the terms and procedure for forfeiture to the Exchequer of unlawfully acquired assets.
- (2) Any assets for the acquisition of which a legitimate source has not been identified shall be treated as assets referred to in Paragraph (1).

Article 2

The proceeding under this Act shall be conducted notwithstanding the criminal or administrative penalty proceeding against the person under examination and/or the persons closely linked therewith.

Article 3

- (1) This Act shall have as an objective to protect the interests of society and to restore the sense of justice in citizens by preventing and limiting the possibilities for unlawful acquisition of assets and disposition thereof.
- (2) To accomplish the objective referred to in Paragraph (1); restrictions may be imposed on ownership while respecting the right to defence of the persons affected and preventing a risk of injustice.

Article 4

The restrictions on ownership provided for in this Act shall be applied to the extent necessary to accomplish the objective of this Act.

Chapter Two AUTHORITIES IDENTIFYING UNLAWFULLY ACQUIRED ASSETS

Article 5

- (1) The Commission for Forfeiture of Unlawfully Acquired Assets, hereinafter referred to as “the Commission”, shall be an independent specialised standing State body.

* Bulgarian Act on forfeiture to the exchequer of unlawfully acquired assets was provided for the Council of Europe for its Compilation of replies to questionnaire dated 4 July 2002, published under the nr. 2012/0036 (COD).

- (2) The Commission shall be a legal person with a head office in Sofia and shall be a first-level spending unit.
- (3) The operation of the Commission shall be assisted by an administration.
- (4) The territorial directorates, located in the geographical jurisdictions of the appellate courts, shall be local units of the Commission which shall be headed by directors and shall be assisted in the operation thereof by inspectors. Territorial bureaus with areas of operation designated in the Rules referred to in Article 20 herein may be established with the territorial directorates.

Article 6

- (1) The Commission shall be a collective authority which shall consist of five members, including a Chairperson and a Deputy Chairperson.
- (2) The Chairperson of the Commission shall be a person who has graduated in Law from a higher educational establishment and who has at least twelve years of relevant experience. The Deputy Chairperson and the members of the Commission shall be persons who have graduated in Law or in Economics from a higher educational establishment and who have at least five years of relevant experience.
- (3) The Chairperson of the Commission shall be appointed by the Prime Minister. The Deputy Chairperson and two of the members shall be elected by the National Assembly, and one of the members shall be appointed by the President of the Republic.
- (4) The National Assembly may not elect to the Commission more than one member nominated by one and the same parliamentary group.
- (5) The term of office of the Commission shall be five years and shall commence as from the day of election or, respectively, appointment of the full complement thereof.

Article 7

- (1) The nominations for a Deputy Chairperson and for members from the quota of the National Assembly shall be laid before the National Assembly not earlier than three months and not later than two months prior to the expiry of the term of office of the Commission and shall be published on the Internet site of the National Assembly.
- (2) The competent committee of the National Assembly shall conduct a hearing of the nominated candidates who satisfy the requirements of this Act and shall lay before the National Assembly a report summarising the results of the said hearing.
- (3) The National Assembly shall elect separately a Deputy Chairperson and two members of the Commission.

Article 8

- (1) Eligibility for membership of the Commission shall be limited to legally capable Bulgarian citizens who:
 1. have not been convicted of a premeditated indictable criminal offence, regardless of whether rehabilitated;

2. have not been released from criminal responsibility for a premeditated indictable criminal offence with imposition of an administrative sanction;
 3. have not been disqualified from holding a particular public office or from practising a particular occupation or activity;
 4. have been cleared for access to information classified as "Top Secret".
- (2) No member of the Commission shall be entitled to hold office for two successive terms.
- (3) A member of the Commission may not:
1. hold office in State or municipal bodies;
 2. pursue commercial activity or be a partner, a managing director or a member of supervisory, management or control bodies of any commercial corporation, co-operative, State-owned enterprise or not-for-profit legal entity;
 3. receive remuneration for pursuit of activities under contract or under a civil-service relationship with any State or public organisation, with any commercial corporation, co-operative or not-for-profit legal entity, natural person or sole trader, except for scientific research and teaching or for exercise of copyright;
 4. practise a liberal profession or any other gainful occupation;
 5. be a member of any political party or coalition, of any organisation pursuing political goals, engage in political activity or engage in any activities which affect the independence thereof.
- (4) If an elected or appointed member of the Commission, as the case may be, is incompatible under Paragraph (3), the said member must take the necessary steps for elimination of the incompatibility within one month after the election or appointment, as the case may be.

Article 9

- (1) The legal relationship with a member of the Commission shall be terminated prior to the expiry of the term of office of the said member by the relevant authority upon:
1. death;
 2. tendering of a resignation;
 3. objective inability to execute the duties thereof for a period exceeding six months;
 4. conviction of a premeditated indictable criminal offence or release from criminal responsibility for a premeditated indictable criminal offence with imposition of an administrative sanction;
 5. incompatibility under Article 8 (3) herein, unless the necessary steps for the elimination of the incompatibility within one month after the election or appointment, as the case may be;
 6. serious breach or systematic dereliction of the official duties;
 7. entry into effect of an act whereby a conflict of interest is ascertained under the Conflict of Interest Prevention and Ascertainment Act;

8. attainment of the age of 65 years;
 9. withdrawal of the clearance for access to information classified as "Top Secret".
- (2) Upon occurrence of any circumstances referred to in Paragraph (1), the electing or appointing authority, as the case may be, shall be notified for the conduct of a new election or appointment, as the case may be.
 - (3) Upon the release from office of a member of the Commission prior to the expiry of the term of office thereof, the electing or the appointing authority, as the case may be, shall elect or appoint, as the case may be, a new member within one month after any such release to serve the remainder of the term of office of the released member.

Article 10

- (1) The Chairperson of the Commission shall receive a basic monthly remuneration to an amount equivalent to 85 per cent of the basic monthly remuneration of the Chairperson of the National Assembly.
- (2) The Deputy Chairperson shall receive a basic monthly remuneration to an amount equivalent to 80 per cent of the remuneration of the Chairperson of the Commission.
- (3) The rest of the members of the Commission shall receive a basic monthly remuneration to an amount equivalent to 75 per cent of the remuneration of the Chairperson of the Commission.
- (4) The members of the Commission shall not be entitled to additional cash incentives.

Article 11

- (1) The Commission shall adopt decisions on:
 1. institution of a proceeding under this Act; any such proceeding shall include submission to the court of a motion for imposition of precautionary measures and of an action for forfeiture to the Exchequer of unlawfully acquired assets;
 2. termination of the examination under Article 27 herein or on extension of the time limit for the said examination;
 3. refusal to institute a proceeding under this Act;
 4. termination of the proceeding under this Act;
 5. conclusion of a settlement under Article 79 herein;
 6. appointment of the directors of territorial directorate and, upon nomination by the said directors, of the inspectors at the said directorates, as well as on a modification and termination of the employment relationships therewith;
 7. exercise of other powers provided for in this Act.
- (2) The decisions of the Commission shall be adopted by a majority of more than one-half of all members and shall have to be reasoned. The reasons shall state the facts, the evidence on the basis of which the facts have been established, as well as the legal conclusions drawn.

- (3) The reasoned refusals of the Commission referred to in Item 3 of Paragraph (1) shall be published forthwith on the Internet site of the Commission in compliance with the requirements of the Personal Data Protection Act and of the Classified Information Protection Act.
- (4) Minutes of proceedings shall be taken at the meetings of the Commission.
- (5) The decisions shall be appealable according to the procedure established by the Administrative Procedure Code. An appellate review of a decision shall not stay the enforcement thereof.

Article 12

- (1) The Chairperson of the Commission shall:
 1. represent the Commission;
 2. organise and direct the operation thereof;
 3. schedule and preside over the meetings;
 4. control and be responsible for the implementation of the budget;
 5. issue penalty decrees on violations committed under this Act;
 6. conclude, modify and terminate the employment relationships with the employees of the administration.
- (2) The Deputy Chairperson of the Commission shall assist the Chairperson and shall deputise therefore in his or her absence.

Article 13

- (1) The directors of territorial directorate and the inspectors thereat shall be authorities of the Commission.
- (2) Eligibility for appointment as directors at the territorial directorates shall be limited to persons who have graduated in Law or in Economics from a higher educational establishment and have at least five years of relevant experience and who satisfy the requirements for occupation of the position under Article 8 (1) herein, as well as the requirements for incompatibility under Article 8 (3) herein after conduct of a competition.
- (3) Eligibility for appointment as inspectors at the territorial directorates shall be limited to persons who have graduated in Law or in Economics from a higher educational establishment, who satisfy the requirements for incompatibility under Article 8 (3) herein after conduct of a competition.

Article 14

- (1) The National Assembly shall exercise parliamentary oversight of the activity of the Commission.
- (2) The members of the Commission shall be obligated to appear, upon invitation, at the National Assembly and to provide the information requested.

Article 15

- (1) Annually, not later than the 31st day of March, the Commission shall present a report on the activity thereof at the National Assembly.
- (2) The report shall furthermore be provided to the President of the Republic and to the Council of Ministers and shall be published on the Internet site of the Commission.

Article 16

- (1) The information that has come to the knowledge of the members of the Commission, of the directors and of the inspectors at the territorial directorates, as well as of the employees in the administration, in the course of or in connection with the execution of the duties thereof shall constitute an official secret.
- (2) Upon assumption of office, the persons referred to in Paragraph (1) shall sign a declaration pledging not to make public the information while holding office and after the release thereof.
- (3) The members of the Commission, the directors of territorial directorate and the employees in the administration shall sign a declaration of private interests and a declaration of a private interest on a particular occasion.

Article 17

The members of the Commission and the directors of territorial directorate shall not incur pecuniary liability for any detriment inflicted upon the exercise of the powers assigned thereto under this Act except where the detriment has ensued from a premeditated indictable criminal offence.

Article 18

The members of the Commission, the directors of territorial directorate and the inspectors shall be provided with accident insurance and life assurance in the course of, or in connection with, the execution of the official duties thereof for the account of the executive budget.

Article 19

- (1) The length of employment service of the members of the Commission and of the directors and the inspectors at the territorial directorates, as well as of the persons in the administration holding a position for which graduation in Law from a higher educational establishment and licensed competence to practise law are required, shall count as legal service record.
- (2) The length of employment service of the persons referred to in Paragraph (1) holding a position for which graduation in Economics from a higher educational establishment is required, shall count as relevant experience in the public sector.

Article 20

- (1) The organisation and operation of the Commission and of the administration thereof shall be regulated by Rules.

- (2) The Rules shall be adopted by the Commission and shall be promulgated in the *State Gazette*.

Chapter Three

IDENTIFICATION OF UNLAWFULLY ACQUIRED ASSETS

Article 21

- (1) The Commission shall institute a proceeding under this Act where a reasonable presumption can be raised that particular assets have been acquired unlawfully.
- (2) A reasonable presumption shall be warranted by the establishment, after an examination, of a significant lack of correspondence in the assets of the person under examination.

Article 22

- (1) The examination referred to in Article 21 (2) herein shall commence by an act of the director of the territorial directorate concerned where a person has been constituted as an accused of a criminal offence under:
1. Article 108a (1) to (3) and Article 109 (3);
 2. Items 7 and 10 of Article 116 (1);
 3. Article 142;
 4. Articles 155, 156, Article 158a (2) and Article 159 (5);
 5. Articles 159a to 159d;
 6. Article 196a;
 7. Article 199;
 8. Articles 201 to 203;
 9. Article 208 (3), (4) and (5);
 10. Article 209 (1) and (2), Articles 210 and 211, Article 212 (3), (4) and (5) and Article 212a;
 11. Articles 213a to 214;
 12. Items 1 and 3 of Article 215 (2);
 13. Article 219 (3) and (4), Article 220 (2) and Article 225c (1) and (2);
 14. Articles 227c (2);
 15. Articles 233 (1) and (2), Article 234 (2), Articles 234a, 234b and Article 235 (1) to (5);
 16. Articles 242 to 242a;
 17. Articles 243 to 246, Article 248a (5), Articles 249 to 252;
 18. Article 253, Article 253a (1) and (2), Articles 254b (2), Articles 255 to 256, Article 259 and Article 260 (1);
 19. Article 280;

20. Articles 282, 283 and 283a;
 21. Articles 301 to 305a, Articles 307c and 307d;
 22. Article 308 (2) and (3) and Article 310 (1);
 23. Article 321 (1) to (3) and (6), Article 321a (1) and (2) and Article 327 (1) to (3);
 24. Article 337 (1) to (4), Article 339 (2) and Item 4 of Article 346 (2), Article 346 (3) and (6);
 25. Article 354a (1) to (4), Article 354b (4) to (6) and Article 354c (1) to (3) of the Penal Code.
- (2) The examination shall furthermore commence where a person has not been constituted as an accused of a criminal offence covered under Paragraph (1) by reason of a refusal to institute a criminal proceeding or a termination of a criminal proceeding in progress because:
1. an amnesty has ensued;
 2. the period of prescription, provided for in the law, has lapsed;
 3. after commission of the offence the actor has lapsed in a sustained mental derangement which precludes sanity;
 4. the actor has died;
 5. in respect of the person, a transfer of a criminal proceeding to another State has been admitted.
- (3) The examination shall furthermore commence where the criminal proceeding in connection with any criminal offence covered under Paragraph (1) has been suspended and the person cannot be constituted as an accused because:
1. after commission of the offence the said person has lapsed in a short-term mental derangement which precludes sanity or suffers from another grave disease;
 2. the said person enjoys immunity;
 3. the address of the said person is unknown and he or she cannot be found.

Article 23

An examination under Article 21 (2) herein shall furthermore commence where an act of a foreign court concerning any of the criminal offences covered under Article 22 (1) herein or an administrative violation referred to in Article 24 (1) herein has been recognised according to Bulgarian legislation.

Article 24

- (1) The examination under Article 21 (2) herein shall commence by an act of the director of the territorial directorate concerned acting on the basis of a notification by the administrative sanctioning authority, where there is an enforceable written statement against a person in connection with an administrative violation of a nature to generate a benefit, provided the said benefit is to an amount exceeding BGN 150,000 at the time of

acquisition thereof and the said benefit cannot be forfeited according to another procedure.

- (2) Any notification referred to in Paragraph (1) shall contain information on:
 1. the person whereupon an administrative sanction has been imposed by an enforceable written statement;;
 2. the administrative violation;
 3. the assets of the person, if data about the said assets are available.
- (3) The State and municipal bodies or the officials who, in the line of duty, have become aware of the acquisition of a benefit from an administrative violation to a value exceeding BGN 150,000 at the time of acquisition thereof which cannot be forfeited according to another procedure, shall be obligated to notify forthwith the director of the territorial directorate concerned and to dispatch thereto the materials under the case file.
- (4) Citizens who have become aware of any circumstances referred to in Paragraph (3) may notify the Commission of the said circumstances.

Article 25

- (1) In the cases covered under Article 22 herein, the examination shall commence acting on the basis of a notification by the prosecutor to the director of the territorial directorate concerned.
- (2) Any notification referred to in Paragraph (1) shall contain information on:
 1. the person in respect of whom the relevant ground under Article 22 herein applies;
 2. the criminal offence of which the person has been constituted as an accused;
 3. the assets of the person, if data about the said assets are available.
- (3) The Ministry of Justice shall notify the Commission of each case of a criminal proceeding instituted in another State or of an enforceable sentence passed by a foreign court on a Bulgarian citizen for criminal offences equivalent to the offences covered under Article 22 (1) herein.
- (4) The Supreme Cassation Prosecution Office and the Ministry of Justice shall notify the Commission upon transfer of a criminal proceeding.

Article 26

The examination before the Commission may not be instituted acting on an anonymous alert.

Article 27

- (1) The examination under Article 21 (2) herein shall continue for up to one year.
- (2) The Commission may extend the time limit referred to in Paragraph (1) on a single occasion by six months.

- (3) The examination shall cover a period of fifteen years reckoned backwards from the date of commencement thereof.
- (4) On the basis of the results of the examination, within one month after the completion thereof the director of the territorial directorate concerned shall prepare a reasoned report to the Commission with a conclusion on:
 1. extension of the time limit for the examination;
 2. termination of the examination;
 3. institution of a proceeding under this Act.

Chapter Four

POWERS OF COMMISSION AUTHORITIES UPON CONDUCT OF EXAMINATION

Article 28

In respect of the period under examination, referred to in Article 27 (3) herein, the authorities referred to in Article 13 (1) herein shall collect information on:

1. the assets, the location thereof, the value and the legal grounds for the acquisition thereof;
2. the fair market value of the assets at the time of acquisition;
3. the fair market value thereof at the time of the examination;
4. transformation of the assets;
5. the revenue and costs of ordinary activities and the extraordinary revenue and costs of the legal person;
6. the customary and extraordinary income and maintenance expenses of the natural person and of the family members thereof;
7. the paid pecuniary obligations at public law to the State and the municipalities;
8. the transactions in the assets of the legal person;
9. the transactions in the assets of the person under examination and of the family members thereof;
10. the trips abroad of the person under examination and of the family members thereof, as well as of the persons who represent the legal person;
11. the injunctions and charges imposed on the assets, as well as the liabilities assumed;
12. any other circumstances relevant to clarifying the origin of the assets, the manner of acquisition and of transformation thereof.

Article 29

The Commission and the directors of territorial directorate may approach the court with a motion for lifting of bank secrecy, of the trade secret under Article 35 (1) of the Markets in Financial Instruments Act and disclosure of the information covered under Article 133 (2) of the

Public Offering of Securities Act, where this is necessary for accomplishment of the objective of this Act.

Chapter Five

INTERACTION WITH OTHER STATE BODIES

Article 30

- (1) For accomplishment of the objective of the Act, the authorities referred to in Article 13 (1) herein, the prosecuting magistracy, the Ministry of Interior, the authorities of the State Agency for National Security, the revenue authorities and the authorities of the National Customs Agency, each acting within the competence vested therein, shall carry out an examination of the sources of acquisition of the assets.
- (2) The procedure and the timeframe for implementation of interaction shall be established by a joint instruction of the Commission, the Chairperson of the State Agency for National Security, the Minister of Interior, the Minister of Finance and the Prosecutor General.

Article 31

The prosecutors who are assigned to supervise pre-trial proceedings in connection with a criminal offence covered under Article 22 (1) herein shall forthwith notify the director of the territorial directorate concerned of:

1. the pre-trial proceedings instituted in connection with criminal offences covered under Article 22 (1) herein;
2. the warrants whereby institution of a criminal proceeding is refused or a criminal proceeding in progress is suspended or terminated, as well as the warrants whereby a suspended criminal proceeding in connection with a criminal offence covered under Article 21 (1) herein is resumed, on the grounds specified in Article 22 (2) and (3) herein;
3. the submission of an indictment to the court;
4. the precautionary measures imposed on the assets of the accused.

Article 32

The directors of territorial directorate may approach the competent revenue authorities with a request to disclose entire tax and social-insurance information on the persons under examination.

Article 33

The directors of territorial directorate shall provide the authorities of the National Revenue Agency with information on the assets forfeited to the Exchequer and on the location of the said assets.

Article 34

- (1) Upon the execution of the powers vested therein under this Act, the authorities referred to in Article 13 (1) herein may request assistance and information from the State and municipal bodies, the merchants, the credit institutions, as well as from other legal persons, from natural persons, from notaries and enforcement agents.
- (2) The authorities and the persons referred to in Paragraph (1) shall be obligated to provide the information within one month after being requested to do so with the exception of information which is provided according to a special procedure.
- (3) Classified information shall be exchanged in accordance with the Classified Information Protection Act.
- (4) Personal data shall be processed in accordance with the Personal Data Protection Act.

Article 35

The authorities referred to in Article 13 (1) herein shall draw up a memorandum on each step performed under this Act, unless the step performed has been attested by another document.

Article 36

Any persons, who in the course of or in connection with the execution of the official duties thereof have learnt information about an examination in progress, shall not be at liberty to make public the said information.

Chapter Six**PRECAUTIONARY MEASURES AND FORFEITURE TO THE EXCHEQUER OF
UNLAWFULLY ACQUIRED ASSETS***Section I***Precautionary Measures****Article 37**

- (1) The Commission shall adopt a decision on submission to the court of a motion for an injunction securing a future action for forfeiture of assets on the basis of a report by the director of the territorial directorate concerned where sufficient data have been collected by the examination raising a reasonable presumption that the said assets have been acquired unlawfully.
- (2) The decision referred to in Paragraph (1) shall specify the charges and injunctions imposed on the assets theretofore.
- (3) The Commission shall submit a motion for an injunction securing a future action for forfeiture of unlawfully acquired assets to the district court exercising jurisdiction over the permanent address of the [natural] person or over the registered office of the legal person, as the case may be. Where a corporeal immovable is incorporated into the assets, the motion shall be submitted to the district court exercising jurisdiction over the *situs* of

the said corporeal immovable, and where several corporeal immovables are incorporated into the assets, the motion shall be submitted to the district court exercising jurisdiction over the *situs* of the immovable of the highest tax assessed value.

- (4) The Commission may not move for the imposition of precautionary measures on the assets of a natural person which is not subject to coercive enforcement according to Article 444 of the Code of Civil Procedure or on any funds of a legal person and of a sole trader intended for payment of labour remunerations and social insurance contributions for the staff solely if charged on a separate analytical account.
- (5) Where sufficient data are not available to raise a reasonable presumption that the assets have been acquired unlawfully, the Commission shall adopt a decision on a refusal to institute a proceeding under this Act and termination of the examination or shall adopt a decision on a return of the case file for the collection of additional data.

Article 38

- (1) The court shall pronounce forthwith by a ruling granting or refusing the imposition of a precautionary measure.
- (2) An injunction securing the action shall be granted where:
 1. exercise of the rights arising from the judgment on forfeiture of the assets would be impossible or impeded without such injunction, and
 2. the motion is supported by sufficient evidence on the basis of which a reasonable presumption can be raised that the person owns or controls any unlawfully acquired assets.
- (3) The ruling granting the imposition of a precautionary measure shall be subject to immediate enforcement.
- (4) The ruling of the court securing the action by an injunction shall be appealable by means of an interlocutory appeal within seven days. The period shall begin to run, in respect of the petitioner, as from the date of service of the said ruling, and in respect of the respondent, as from the date of service of the communication of the precautionary measure imposed by the enforcement agent, by the Registry Service or by the court.
- (5) Acting on a motion by the Commission, separate injunctive orders shall be issued on the basis of the ruling of the court for the movable things and for the corporeal immovables respecting the *ratione loci* competence of the enforcement agent.

Article 39

- (1) The court may impose the precautionary measures covered under Article 397 (1) of the Code of Civil Procedure.
- (2) The precautionary measures shall extend to the interest, as well as to other civil fruits derived from the assets whereupon the said measures have been imposed.
- (3) The court may grant several types of precautionary measures up to the amount of the cost of action.

- (4) Acting on a motion by the Commission or by the director of the territorial directorate concerned, the court may order the sealing of premises, plant and means of transport where there is a risk of the assets kept therein being squandered, destroyed, concealed or disposed of.

Article 40

- (1) After the ruling imposing precautionary measures becomes enforceable, acting on the basis of a reasoned petition by the interested party or on a motion by the Commission, the court may authorise the effecting of a payment or of other steps disposing of the assets whereupon an injunction has been imposed in the cases of urgent need.
- (2) The court shall pronounce forthwith by a ruling which shall be appealable.
- (3) The striking of the preventive attachment, the lifting of the garnishment, as well as the revocation of the other precautionary measures, shall be effected on the basis of the enforceable ruling of the court.

Article 41

- (1) The precautionary measures shall be enforced acting by assignment from the Commission by the competent recording magistrate and by the enforcement agents respecting the *ratione loci* competence as defined in Article 427 (1) of the Civil Procedure Code.
- (2) A preventive attachment shall be recorded and a garnishment shall be imposed forthwith.
- (3) No stamp duty shall be collected on the steps for enforcement of the precautionary measures.

Article 42

- (1) Imposition of preventive attachment on a corporeal immovable shall be effected at the request of the authorities referred to in Article 13 (1) herein by means of recording of the injunctive order on a direction by the competent recording magistrate.
- (2) The recording magistrate shall dispatch a communication of the recording effected to the owner of the assets whereupon the preventive attachment has been imposed.
- (3) A special pledge of a commercial undertaking wherein the corporeal immovable referred to in Paragraph (1) is incorporated, which has been recorded after the preventive attachment, shall be inopposable to the State.

Article 43

- (1) Garnishment of a movable thing shall be imposed forthwith acting at the request of the authorities referred to in Article 13 (1) herein by means of dispatch of a communication by the enforcement agent to the respondent under the injunction.
- (2) The garnishment shall be considered imposed as from the time of receipt of the garnishment communication.
- (3) Acting at the request of the authorities referred to in Article 13 (1) herein, the enforcement agent shall take an inventory, shall conduct an appraisal and shall deliver the corporeal thing for safekeeping to the respondent under the injunction or to a third party

or shall seize the thing and shall deliver the said thing for safekeeping to the authorities referred to in Article 13 (1) herein. A garnishment mark (sticker) may be affixed to the corporeal thing.

- (4) Where the corporeal things are owned by a commercial corporation, the enforcement agent shall dispatch a communication on the garnishment imposed to the Special Pledges Registry as well.

Article 44

- (1) Upon garnishment of a ship or another water-craft, the enforcement agent shall dispatch a communication to the Maritime Administration Executive Agency for recording of the garnishment in the relevant registers.
- (2) Upon garnishment of a means of transport, a communication shall be dispatched to the authorities of the Ministry of Interior.
- (3) Upon garnishment of a civil aircraft, the enforcement agent shall dispatch a communication to the Directorate General of Civil Aviation Administration for recording in the register of civil aircraft.
- (4) Upon registration of agricultural or forestry machinery subject to registration according to the procedure established by the Agricultural and Forestry Machinery Registration and Control Act, the enforcement agent shall dispatch a communication to the Control and Technical Inspectorate with the Ministry of Agriculture and Food.

Article 45

- (1) The garnishment under Article 44 herein shall be considered imposed as from the date of receipt of the garnishment communication by the authorities responsible for the relevant registers.
- (2) A communication of the garnishment imposed shall be dispatched to the respondent under the injunction after the garnishment communication is served upon the official with the relevant register.
- (3) Any alteration of the registration of the means and machinery specified in Article 44 herein shall be inadmissible before lifting of the garnishment.
- (4) The enforcement agent may approach the authorities of the Ministry of Interior with a request for suspension from operation of a motor vehicle whereupon garnishment has been imposed for a period not exceeding three months.

Article 46

- (1) Garnishment of receivables which the respondent under the injunction is owed by a natural or legal person shall be imposed by the enforcement agent by means of dispatch of a garnishment communication to the garnishee and to the bank wherewith the said garnishee holds accounts.
- (2) The garnishment shall be considered imposed as from the date and hour of receipt of the garnishment communication by the garnishee or by the bank wherewith the said garnishee has opened bank accounts.

- (3) A communication of the garnishment imposed shall be dispatched to the respondent under the injunction after the garnishment communication is served upon the garnishee.
- (4) Where the garnished receivable is secured by a pledge, the pledgee shall be ordered to surrender the corporeal thing pledged to the enforcement agent who shall deliver the said thing for safekeeping to a person designated by the authority referred to in Article 13 (1) herein.
- (5) Where the garnished receivable is secured by a mortgage, the garnishment shall be noted in the relevant book at the Registry Service.
- (6) Where a writ of execution has been issued for the receivables referred to in Paragraph (1), the enforcement agent shall seize the said writ from the person who holds it and shall deliver the said writ for safekeeping to the authority referred to in Article 13 (1) herein.
- (7) The extinctive prescription for the receivable shall cease to run as from the time of receipt of the garnishment communication by the garnishee.

Article 47

- (1) In the cases referred to in Article 46 (6) herein, the authorities referred to in Article 13 (1) herein shall have the right to move that the collection of the receivable be awarded to the Commission and that a separate enforcement case be instituted against the person who is the debtor under the writ of execution.
- (2) The sums collected under the enforcement case shall be transferred by the enforcement agent to an account of the Commission.

Article 48

- (1) Imposition of garnishment on funds in national or foreign currency shall be effected by means of taking an inventory, seizing and depositing the said funds on a special bank account of the Commission. In translating the exchange rate of the foreign currency, the exchange rate of the Bulgarian National Bank for the relevant currency as at the date of the inventory shall apply.
- (2) Imposition of garnishment on all types of bank accounts of the respondent under the injunction in national or foreign currency shall be effected by means of dispatch of the garnishment communication to the bank.
- (3) Garnishment may furthermore be imposed on all types of corporeal things deposited in safe-deposit vaults or boxes, as well as on sums provided for escrow management by the respondent under the injunction.
- (4) The garnishment under Paragraphs (2) and (3) shall be considered imposed as from the time of receipt of the garnishment communication by the bank. A communication of the garnishment imposed shall be dispatched to the respondent under the injunction after receipt of the communication by the bank.
- (5) The server shall record the hour and date of receipt. Where the communication has been dispatched by post, the competent official shall record the hour and date of receipt.

Article 49

- (1) Imposition of garnishment on physical securities shall be effected by means of taking an inventory at the nominal value thereof and seizure of the said securities by the enforcement agent.
- (2) Upon imposition of garnishment on physical registered shares or bonds, the enforcement agent shall notify the commercial corporation. The garnishment shall take effect in respect of the commercial corporation as from the receipt of the garnishment communication.
- (3) The enforcement agent shall deliver the physical securities for safekeeping at a bank, the said delivery being attested by a memorandum.

Article 50

- (1) Imposition of garnishment on dematerialised securities shall be effected by means of dispatch of a garnishment communication to the Central Depository, simultaneously notifying the commercial corporation.
- (2) The garnishment shall have effect as from the time of service of the garnishment communication upon the Central Depository.
- (3) The Central Depository shall forthwith notify the relevant regulated market of the garnishment imposed.
- (4) Within three days after receipt of the garnishment communication, the Central Depository shall be obligated to provide the enforcement agent with information on the securities owned by the respondent under the injunction and on the other garnishments imposed under other claims.
- (5) The enforcement agent shall notify the authorities referred to in Article 13 (1) herein of the information received under Paragraph (4).

Article 51

- (1) Imposition of garnishment on government securities shall be effected by means of dispatch of a garnishment communication to the Central Depository or to the Bulgarian National Bank as a sub-depositary, and to foreign institutions whereat government securities accounts are registered.
- (2) The garnishment shall be considered imposed as from the date of receipt of the garnishment communication by the person who keeps a register of the government securities.
- (3) Within three days after receipt of the garnishment communication, the person who keeps a register of government securities shall be obligated to provide the enforcement agent with information on the securities owned by the respondent under the injunction and on the garnishments imposed under other claims.
- (4) The enforcement agent shall notify the authorities referred to in Article 13 (1) herein of the information received under Paragraph (3).

Article 52

- (1) Garnishment of securities shall extend to all property rights conferred by the security.
- (2) Any disposition of the securities after receipt of the garnishment communication shall have no effect in respect of the State.

Article 53

- (1) Garnishment of a participating interest in a commercial corporation shall be imposed by means of dispatch of a garnishment communication by the enforcement agent to the Registry Agency.
- (2) The garnishment shall be recorded according to the procedure applicable to the recording of a pledge of a participating interest in a commercial corporation and shall be considered imposed as from the recording thereof in the Commercial Register. The Registry Agency shall notify the commercial corporation of the garnishment recorded.

Article 54

The transfer of the right of ownership, the creation and transfer of real rights and the creation of real charges in respect of a corporeal immovable under preventive attachment, as well as the disposition of garnished movable things, securities, participating interests and receivables, effected after the time as from which the preventive attachment or the garnishment are considered imposed, shall have no effect in respect of the State.

Article 55

- (1) Upon commencement of coercive enforcement according to the procedure established by the Code of Civil Procedure, the Tax and Social-Insurance Procedure Code and by the Special Pledges Act against any assets and receivables whereupon precautionary measures have been imposed according to the procedure established by this Act, the enforcement authority shall forthwith notify the Commission and shall dispatch a duplicate copy of the act in pursuance of which the enforcement is carried out. The Commission may approach the court with a motion to revoke the precautionary measures and to replace the said measures by another equivalent injunction.
- (2) Any assets and receivables, whereupon precautionary measures have been imposed or where against coercive enforcement has commenced according to the procedure established by the Tax and Social-Insurance Procedure Code prior to the imposition of the precautionary measures according to the procedure established by this Act, shall be realised by a public enforcement agent according to the procedure established by the Tax and Social-Insurance Procedure Code until the judgment on forfeiture of the assets to the Exchequer becomes enforceable. Prior to the commencement of coercive enforcement according to the procedure established by the Tax and Social-Insurance Procedure Code, the public enforcement agent shall notify the Commission and shall dispatch a duplicate copy of the act in pursuance of which the enforcement is carried out. The Commission may approach the court with a motion to revoke the precautionary measures or to replace the said measures by another equivalent injunction.

Article 56

The provisions of the Code of Civil Procedure shall apply to any matters unregulated in this Section.

Section II

Steps after Imposition of Precautionary Measures

Article 57

- (1) After imposition of the precautionary measures, the authorities referred to in Article 13 (1) herein shall invite the natural person under examination to present a written declaration on:
1. the corporeal immovables and motor vehicles, ships and aircraft, limited real rights to corporeal immovables, cash deposits, securities, works of art, movable archaeological property, participating interests in commercial corporations, receivables, patents, trademarks and industrial designs, as well as other assets owned by the said person and by the family members thereof;
 2. a list of the bank accounts held by the said person and by the family members thereof in Bulgaria and abroad;
 3. the sources of means and the grounds for acquisition of the assets and for maintenance of the family of the said person;
 4. any transactions in corporeal immovables, movable things, participating interests and shares in commercial corporations, transfer of an undertaking or other commercial or legal transactions in assets of the person and of the family member thereof effected during the period under examination, as well as the sources of means for effecting the said transactions;
 5. any obligations to third parties;
 6. a balance of the cash at hand as at the initial date of the period under examination;
 7. other circumstances related to the assets of the person under examination.
- (2) Where the person under examination is deceased, the legal and testamentary heirs thereof who have accepted the succession shall be invited to present the declaration referred to in Paragraph (1). Where the succession is not accepted, the authorities referred to in Article 13 (1) herein shall enter a motion under Article 51 of the Succession Act.
- (3) The person shall present the declaration within fourteen days after receipt of the communication or, if the said person is abroad, within one month.
- (4) The standard form of the declaration shall be endorsed by a decision of the Commission and shall be published in the *State Gazette*.

Article 58

The authorities referred to in Article 13 (1) herein shall furthermore invite the following to present a declaration:

1. the third parties referred to in Articles 64, 65 and 67 herein;
2. the persons who represent, manage or control a legal person referred to in Article 66 (1) herein.

Article 59

Conclusions adverse to the person under examination and to the family members thereof may not be drawn upon a refusal to present a declaration.

Article 60

- (1) After imposition of the precautionary measures, the Commission shall afford the person under examination an opportunity to participate in the proceeding.
- (2) The authorities referred to in Article 13 (1) herein shall notify the person under examination, shall provide the said person with all materials concerning the said person so as to familiarise himself or herself therewith, and shall allow the said person a period of one month to lodge objections and to present evidence.
- (3) Legal persons shall be represented before the Commission by the persons who represent the said legal persons by law or according to the rules of organisation thereof. Where no rule for representation exists, the legal person shall be represented by two members of the management thereof.
- (4) In the proceeding before the Commission, the person under examination may be represented by a lawyer or by another person according to the procedure established by the Code of Civil Procedure who holds a written authorisation.
- (5) The explanations given by the person under examination and the declarations submitted under Articles 57 and 58 herein may not be grounds for the initiation of criminal prosecution against the said person, nor may be used as evidence in support of a criminal charge.

Article 61

- (1) After considering the objections of the person under examination and collecting the evidence specified thereby, the director of the territorial directorate concerned shall submit a reasoned report to the Commission within one month. The said report shall state:
 1. the type and value of the assets acquired;
 2. the existence or the non-existence of a significant lack of correspondence in the assets of the person under examination;
 3. evidence that the third parties knew or presumed that the assets have been acquired unlawfully;
 4. evidence of the existence or non-existence of any charges or of other injunctions imposed on the assets;
 5. other evidence whereon the motion is based;
 6. final conclusion.

- (2) Within one month after submission of the report referred to in Paragraph (1), the Commission shall adopt a decision on:
1. termination of the proceeding under the case file, if the evidence collected does not establish or cannot raise a reasonable presumption that the assets have been acquired unlawfully;
 2. bringing an action for forfeiture to the Exchequer of unlawfully acquired assets.

Section III

Forfeitable Assets

Article 62

Unlawfully acquired assets shall be forfeited to the Exchequer according to the procedure established by this Act.

Article 63

- (1) Where it is not possible to forfeit self-contained assets referred to in Article 62 herein, the money equivalent thereof, determined at a market price at the time of bringing the action for forfeiture, shall be forfeited.
- (2) The assets referred to in Article 62 here shall include:
1. the personal assets of the person under examination;
 2. the assets acquired jointly by the two spouses or by the *de facto* cohabitantes;
 3. the assets of the children who have not attained majority, and
 4. the assets of the spouse of the person under examination, regardless of the regime of property relations chosen by the spouses;
 5. the assets of the *de facto* cohabitee with the person under examination.

Article 64

Any transactions effected in unlawfully acquired assets shall be ineffective in respect of the State and the consideration given under any such transactions shall be forfeitable where the said transactions are:

1. gratuitous transactions with natural or legal persons;
2. onerous transactions with third parties, if the said parties knew or could have presumed that the assets have been acquired unlawfully or if the said parties acquired the assets for the purpose of concealing the unlawful origin thereof or the actual rights related thereto.

Article 65

Forfeitability shall furthermore apply to any unlawfully acquired assets which the person has transferred during the period under examination to a spouse, to a *de facto* cohabitee with the

person, to a former spouse, to any lineal relatives up to any degree of consanguinity, to any collateral relatives up to the fourth degree of consanguinity, and to any affines up to the second degree of affinity.

Article 66

- (1) Forfeitability shall apply to any assets which the person under examination has transferred or contributed as a cash asset or a non-cash asset to the capital of a legal person if the persons who manage or control the said legal person knew or, judging from the circumstances, could have presumed that the said assets have been acquired unlawfully.
- (2) Forfeitability shall furthermore apply to any assets unlawfully acquired by a legal person which is controlled by the person under examination or by the persons closely linked therewith, whether independently or jointly.
- (3) The assets shall furthermore be forfeited upon succession in title of the legal person.

Article 67

Forfeitability shall furthermore apply to any assets which have been acquired by a third party for the account of the person under examination in order to evade the forfeiture of the said assets or to conceal the origin of, or the actual rights to, the said assets.

Article 68

Until otherwise proven, any movable things and funds found on the person of the person under examination, in the dwelling thereof or on other premises, means of transport, strong boxes or safes, whether owned or rented thereby, shall also be considered movable things and funds belonging to the person under examination.

Article 69

- (1) The unlawfully acquired assets shall be appraised according to the actual value thereof as at the time of acquisition or alienation thereof.
- (2) If it is established that the price stated in the document attesting ownership is not the actually agreed price or that the document attesting ownership does not state a price, the assets shall be appraised as at the time of acquisition or alienation thereof as follows:
 1. the corporeal immovables and the limited real rights thereto: at fair market value;
 2. the foreign currency and the precious metals: at the central exchange rate of the Bulgarian National Bank;
 3. the securities: at fair market value;
 4. the means of transport: at fair market value;
 5. the rest of the movable things and rights: at fair market value;
 6. undertakings or participating interests in commercial corporations or co-operatives: at fair market value, and where such value cannot be determined, according to accounting data.

Article 70

In the cases where any unlawfully acquired assets have been transformed, in part or in whole, into other assets, forfeitability shall apply to the assets so transformed.

Article 71

Any unlawfully acquired assets shall furthermore be forfeited by legal or testamentary heirs up to the portion received thereby.

Article 72

In case the assets are unavailable or have been alienated, the money equivalent thereof shall be forfeited.

Article 73

- (1) The rights of the State under this Act shall be extinguished upon the lapse of a fifteen-year period of prescription.
- (2) The prescription shall begin to run as from the date of acquisition of the assets.

*Section IV***Proceeding before Court for Forfeiture to the Exchequer of Unlawfully Acquired Assets****Article 74**

- (1) The Commission shall bring an action for forfeiture to the Exchequer of unlawfully acquired assets before the district court within whose geographical jurisdiction the permanent address of the person under examination is located within three months after imposition of the precautionary measures.
- (2) Where the assets incorporate, *inter alia*, a corporeal immovable, the action shall be brought before the district court exercising jurisdiction over the *situs* of the immovable, and in the cases where the assets incorporate more than one corporeal immovable, the action shall be brought before the district court exercising jurisdiction over the *situs* of the immovable of the highest tax assessed value.
- (3) The statement of action and the enforceable judgment shall be subject to recording in the Property Register of the Registry Agency.
- (4) Acting *ex officio* or on a motion by the interested parties, the court shall revoke the precautionary measures imposed on the assets if the Commission fails to present evidence that it has brought the action within the statutory time limit.

Article 75

- (1) An action for performance shall be brought against the person under examination and the persons referred to in Articles 64, 65, 66, 67 and 71 herein for forfeiture to the Exchequer of unlawfully acquired assets.

- (2) The Commission shall bring actions against third parties for establishment of the circumstance that the assets have been acquired unlawfully and for declaration of the ineffectiveness of legal transactions.
- (3) Upon submission of the statement of action, the Commission shall not remit stamp duty.

Article 76

- (1) The district court shall institute a case and shall publish in the *State Gazette* a notice stating: the number of the case; particulars of the motion entered; an inventory of the assets, indication as to the time limit within which the interested parties may present the claims thereof to the assets, as well as the date for which the first hearing is scheduled, which may not be earlier than three months after the publication of the notice.
- (2) The person under examination and the persons referred to in Articles 64, 65, 66, 67 and 71 herein shall be constituted as respondents in the proceeding.

Article 77

- (1) The court shall examine the case sitting in public session.
- (2) The Commission shall be represented by the Chairperson or by an employee possessing licensed competence to practise law who has been authorised by the Chairperson.
- (3) All evidence admissible under the Code of Civil Procedure shall be presented in the proceeding.
- (4) In the proceeding before the court, the Commission shall present evidence of:
 1. the type and value of the assets acquired during the period under examination;
 2. the circumstances under Articles 22, 23 and 24 herein;
 3. the existence of a significant lack of correspondence in the assets of the person under examination;
 4. the circumstances that the third parties knew or could have presumed that the assets have been acquired unlawfully;
 5. other circumstances relevant to clarifying the origin of the assets and the manner of acquisition thereof;
 6. the existence of any charges and injunctions on the assets other than those imposed under this Act.
- (5) Where proving by means of a written document is required, conclusions adverse to the respondent may not be made if it is proved that the document has been lost or destroyed not through the fault of the party.

Article 78

- (1) After conclusion of the examination of the case, the court shall pronounce by judgment which shall be appealable according to the standard procedure.

- (2) By the judgment, the court shall award stamp duty and the costs incurred depending on the outcome of the case.

Article 79

- (1) In the proceeding under this Act, the parties may conclude a settlement whereby not less than 75 per cent of the assets or the money equivalent thereof would be forfeited.
- (2) Any such settlement shall be approved by the court if it is not contrary to the law and to good morals.
- (3) The settlement shall have the consequences of an enforceable judgment as from the day of approval thereof and shall be non-rescindable.
- (4) The stamp duty on the proceeding shall be determined on the sum for which the settlement has been reached and shall be borne by the parties in equal shares.
- (5) The costs of the proceeding shall be awarded against the parties as incurred.

Article 80

The provisions of the Code of Civil Procedure shall apply to any matters unregulated in this Section.

Chapter Seven

MANAGEMENT OF ASSETS WHEREUPON PRECAUTIONARY MEASURES HAVE BEEN IMPOSED. MANAGEMENT OF FORFEITED ASSETS

Section 1

Management of Assets under Injunction

Article 81

- (1) The assets whereupon an injunction has been imposed may be left for safekeeping with the person under examination or with the person who holds the assets at the time of imposition of the precautionary measures.
- (2) On a motion by the Commission, the court shall appoint another person as a keeper of the assets and shall fix the remuneration thereof.
- (3) The remuneration shall be remitted by the Commission.
- (4) The keeper shall be selected in consideration of the person thereof, as well as in consideration of the nature of the corporeal thing and of the place where the said thing is located or will be stored.
- (5) The corporeal thing shall be delivered for safekeeping against signed acknowledgment.

Article 82

- (1) In addition to the obligations covered under Articles 469 to 471 of the Code of Civil Procedure, the person referred to in Article 81 herein shall furthermore be obligated to notify the Commission:
 1. of any damage to the assets;
 2. of any proceedings affecting the assets;
 3. of any steps related to transfer or attachment of rights of third parties to the assets, presenting copies of the documents establishing the transfer or the creation of the rights;
 4. of any steps related to a change in the identification of the immovable;
 5. upon a risk of the assets being destroyed or damaged.
- (2) The person referred to in Article 81 herein shall be obligated to afford the authorities referred to in Article 13 (1) herein access in order to check the condition of the assets.
- (3) If the person under examination or the person who holds the assets at the time of imposition of the injunction fails to fulfil the obligations thereof, the Commission may approach the enforcement agent with a request to deliver the assets under injunction for safekeeping to another person.
- (4) The costs incidental to the storage and maintenance of the assets under injunction shall be paid by the Commission.

Article 83

- (1) Movable things of historical value shall be provided for safekeeping to the National Museum of History or to another museum.
- (2) Movable things of scientific value shall be provided for safekeeping to the National Library, to the relevant institute of the Bulgarian Academy of Sciences, or to a university.
- (3) Movable things of precious metals, precious stones and articles thereof shall be provided for safekeeping to the Bulgarian National Bank.
- (4) Movable things of artistic, antiquarian or numismatic value shall be provided for safekeeping to the Ministry of Culture.
- (5) Exotic animals and plants shall be provided to zoological gardens and other institutes.
- (6) In the cases covered under Paragraphs (1) to (5), the costs incidental to the safekeeping and maintenance of the assets under injunction shall be paid by the Commission.

Article 84

- (1) As an exception, the Commission may approach the court with a motion to authorise the sale of movable things which:
 1. may be substantially diminished in value during the period of safekeeping and the preservation thereof requires disproportionate costs;
 2. are perishable.

- (2) The movable things referred to in Paragraph (1) shall be sold by the enforcement agent at an open-bidding auction which shall be conducted within seven days after receipt of the request or shall be left for sale by a merchant at a retail establishment, on a wholesale market or a commodity exchange designated by the Commission. The owner may enter the auction without restraint.
- (3) The delivery of the corporeal thing shall be attested by a memorandum signed by the enforcement agent or by the merchant. The merchant shall receive a commission fee for the sale effected.
- (4) Where no documents are available on sanitary control carried out, as well as where no data are available on origin, composition and expiry date, the sale shall be effected after authorisation by the Bulgarian Food Safety Agency and the authorities of the regional health inspectorates with the Ministry of Health.
- (5) Animals belonging to the national genetic pool, plant-variety seeds and planting stock of a guaranteed origin shall be sold by the enforcement agent upon authorisation by the Minister of Agriculture and Food or by a person empowered thereby solely to other agricultural producers.
- (6) The authorities referred to in Paragraphs (4) and (5) shall pronounce on the request within three days after the receipt thereof.

Article 85

The proceeds from the assets sold according to the procedure established by Article 84 herein shall be transferred by the enforcement agent to the special bank account of the Commission.

Article 86

- (1) The Commission shall keep a register wherein the following shall be recorded:
 1. the person whereagainst a proceeding has been instituted;
 2. the assets whereupon an injunction has been imposed;
 3. particulars of the owner and of the person who holds the assets at the time of imposition of the injunction, as well as of the keeper of the relevant assets;
 4. other particulars which are necessary for identification of the assets whereupon an injunction has been imposed.
- (2) The standard form of the register shall be endorsed by an order of the Chairperson of the Commission.
- (3) Disposition of the immovables or burdening the said immovables by charges, or the assumption of any obligations whatsoever by the person under examination, which would lead to impediments to the satisfaction of the rights under the judgment on forfeiture to the Exchequer of unlawfully acquired assets, shall have no effect in respect of the State.
- (4) The Commission shall issue certificates on the existence of precautionary measures imposed under this Act within seven days after the receipt of a request from the court, the enforcement agents, the authorities of the National Revenue Agency and from other State bodies.

Section II

Management of Forfeited Assets

Article 87

- (1) There shall be established an Interdepartmental Board for Management of Forfeited Assets, hereinafter referred to as “the Board”.
- (2) The Board shall be a collective authority which shall consist of deputy ministers designated by the Minister of Justice, the Minister of Finance, the Minister of Economy, Energy and Tourism, the Minister of Labour and Social Policy, and the Minister of Regional Development and Public Works.
- (3) The Board shall be chaired by a Deputy Minister of Finance.
- (4) The administration of the Ministry of Finance shall ensure the technical support for the operation of the Board.

Article 88

- (1) On a monthly basis, the Commission shall notify the Board of the enforceable judgments on forfeiture to the Exchequer of unlawfully acquired assets.
- (2) The Commission shall forthwith submit the enforceable judgments for recording at the competent registry services, in respect of the corporeal immovables, and to the competent structural units of the Ministry of Interior, in respect of the motor vehicles.
- (3) The enforceable judgments on forfeiture, the writs of execution issued on the basis of the said judgments and all other documents required for the enforcement of the judgment on forfeiture shall be dispatched by the Commission to the Board within three days after the full set of documents comprising the case file has been procured.
- (4) For the meetings of the Board, the Commission shall prepare a separate report on each particular case.

Article 89

- (1) The Board shall propose to the Council of Ministers to allocate for management the assets forfeited according to the procedure established by this Act to public-financed organisations and municipalities for the performance of the functions thereof or to order the sale of the said assets.
- (2) The Board shall meet at least once every two months and shall adopt decisions by a simple majority.
- (3) Representatives of the National Association of Municipalities in the Republic of Bulgaria, of non-profit organisations, branch and professional organisations may be invited to the meetings of the Board.
- (4) The Board shall endorse rules of organisation of the operation thereof.

Article 90

- (1) The assets in respect of which a decision on sale has been made shall be sold by the National Revenue Agency according to the procedure established by the Tax and Social-Insurance Procedure Code.
- (2) The Board shall dispatch to the National Revenue Agency the decision referred to in Paragraph (1) for execution within seven days after the adoption thereof together with the full set of documents comprising the case file referred to in Article 88 (3) herein.
- (3) If after exhaustion of the methods of public sale according to the procedure established by the Tax and Social-Insurance Procedure Code the assets are not sold, the National Revenue Agency shall notify the Board in writing, returning the case file for making a subsequent decision on management and disposition of the assets.
- (4) In the cases where assets have been allocated for management, the public-financed organisation or municipality concerned shall reimburse to the National Revenue Agency the costs incidental to the management, storage and arrangement of the sale of the said assets.

Chapter Eight**LIABILITY****Article 91**

Any person, who has sustained detriment as a result of legally non-conforming acts, actions or omissions by the authorities and by the officials under this Act, committed in the course of, or in connection with, the execution of the powers or in the line of duty of the said authorities and officials, may bring an action for compensation against the State under the terms and according to the procedure established by the Act on the Liability of the State and the Municipalities for Detriment.

Chapter Nine**INTERNATIONAL CO-OPERATION****Article 92**

The Commission for Forfeiture of Unlawfully Acquired Assets shall exchange information for the purposes of this Act with the competent authorities of other States and with international organisations on the basis of international instruments and international treaties which are in force for the Republic of Bulgaria.

Chapter Ten

ADMINISTRATIVE PENALTY PROVISIONS

Article 93

- (1) Any official blameworthy of a breach of the obligation referred to in Article 34 herein shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 5,000, unless the said breach constitutes a criminal offence.
- (2) Where the breach under Article 34 herein has been committed by a commercial corporation, a bank or another credit institution, a pecuniary penalty of BGN 2,000 or exceeding this amount but not exceeding BGN 20,000 shall be imposed.

Article 94

- (1) The written statements ascertaining the violations shall be drawn up by officials designated by the Chairperson of the Commission, and the penalty decrees shall be issued by the Chairperson of the Commission.
- (2) The drawing up of the written statements, the issuing, the appeal against and the execution of the penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

SUPPLEMENTARY PROVISION

§ 1. Within the meaning of this Act:

1. "Assets" shall be money, assets of any type, whether tangible or intangible, movable or immovable things or limited real rights.
2. "Control of a legal person" shall apply where:
 - (a) a natural person holds, whether directly or indirectly, more than 50 per cent of the participating interests in, or of the capital of, the legal person and controls the said legal person, whether directly or indirectly;
 - (b) a natural person exercises control within the meaning of § 1c of the Supplementary Provisions of the Commerce Act;
 - (c) 50 per cent or more of the assets of a not-for-profit legal entity is managed or distributed to the benefit of a natural person;
 - (d) a not-for-profit legal entity has been established or operates to the benefit of a group of natural persons.
3. "Family members" shall be a spouse, the *de facto* cohabitee with the person under examination and the children who have not attained majority.
4. "Income" shall be: remuneration received by a person under an employment relationship and under a civil-service relationship, income from services provided through work done in person, income from practice of liberal professions, the net income from entrepreneurship, dividends and interest, other income from movable and immovable property, income from agricultural activity and retail trade, other income from betting in

lotteries and on sports events, interest, licence royalties and commission fees, proceeds from the sale of assets, income from insurance, from litigation, bank credits and loans extended by natural persons, as well as any other income, revenue and sources of financing.

5. "Net income" shall be income, revenue or sources of financing net of the amount of the customary and extraordinary expenses incurred by the person under examination and the family members thereof.
6. "Customary expenses" shall be the expenses on maintenance of the person and of the family members thereof according to data provided by the National Statistical Institute.
7. "Significant lack of correspondence" shall be an extent of the lack of correspondence between the assets and the net income which exceeds BGN 250,000 for the entire period under examination.
8. "Transformation of assets" shall apply where, in consideration of a real right, another real right is acquired, in whole or in part, without the respective part being insignificant.
9. "Closely linked persons" shall be a spouse or a *de facto* cohabitee with the person under examination; a former husband wherewith the marriage has been terminated within five years prior to the commencement of the examination by the Commission; lineal relatives up to any degree of consanguinity; collateral relatives up to the fourth degree of consanguinity, and affines up to the second degree of affinity.

TRANSITIONAL AND FINAL PROVISIONS

§ 2.

The Act on Forfeiture to the Exchequer of Assets Acquired from Criminal Activity (promulgated in the *State Gazette* No. 19 of 2005; amended in Nos. 86 and 105 of 2005, Nos. 33 and 75 of 2006, Nos. 52, 59 and 109 of 2007, No. 16 of 2008, Nos. 12, 32 and 42 of 2009, Nos. 18 and 97 of 2010, Nos. 33 and 60 of 2011) is hereby superseded.

§ 3.

- (1) Within two months after the entry into force of this Act, the National Assembly shall elect and the President and the Prime Minister shall appoint members of the Commission for Forfeiture of Unlawfully Acquired Assets.
- (2) The credentials of the members of the Commission for Establishing Property Acquired from Criminal Activity who are incumbent upon the entry into force of this Act shall be terminated upon the election or the appointment, as the case may be, of the members of the Commission for Forfeiture of Unlawfully Acquired Assets.
- (3) The assets, liabilities, archives and the other rights and obligations of the Commission for Establishing Property Acquired from Criminal Activity shall pass to the Commission for Forfeiture of Unlawfully Acquired Assets.
- (4) The Commission referred to in Paragraph (1) shall adopt the Rules referred to in Article 20 herein within one month after the determination of the composition thereof.

- (5) The employment relationships of the employees of the Commission for Establishing Property Acquired from Criminal Activity shall be settled under the terms and according to the procedure established by Article 123 of the Labour Code.

§ 4.

The authorities referred to in Article 13 (1) herein, who have been appointed prior to the entry into force of this Act, shall be obligated to take the action necessary for the elimination of incompatibility under Items 1, 3 and 5 of Article 8 (3) herein.

§ 5.

Any examinations and proceedings for the forfeiture of assets acquired from criminal activity, which are not completed until the entry into force of this Act, shall be completed under the terms and according to the procedure established by the Act on Forfeiture to the Exchequer of Assets Acquired from Criminal Activity as hereby superseded.

§ 6.

This Act shall furthermore apply to any assets acquired unlawfully prior to the entry into force of the said Act.

§ 7.

Within six months after the entry into force of this Act, the National Revenue Agency shall deliver to the Interdepartmental Board for Management of Assets Forfeited to the Exchequer the case files of any assets which have been forfeited to the Exchequer according to the procedure established by the Act on Forfeiture to the Exchequer of Assets Acquired from Criminal Activity as hereby superseded and which have not been sold as at the date of entry into force of this Act, for making a decision under this Act.

§ 8.

The instruction referred to in Article 30 (2) herein shall be adopted within three months after the entry into force of this Act.

§ 9.

The Act on the Liability of the State and the Municipalities for Detriment (promulgated in the *State Gazette* No. 60 of 1988; amended in No. 59 of 1993, No. 12 of 1996, No. 67 of 1999, No. 92 of 2000, No. 105 of 2005, Nos. 33 and 33 of 2006, No. 43 of 2008 and No. 17 of 2009) shall be amended and supplemented as follows:

1. In Article 2:
 - (a) there shall be inserted a new Paragraph (2):

“(2) The State shall be liable for any detriment inflicted on citizens by judicial acts under the Act on Forfeiture to the Exchequer of Unlawfully Acquired Assets.”;
2. the existing Paragraph (2) shall be renumbered to become Paragraph (3).
3. There shall be inserted an Article 2a:

“Liability for Activity of Commission for
Forfeiture of Unlawfully Acquired Assets

Article 2a

The State shall be liable for any detriment inflicted on citizens and legal persons as a result of legally non-conforming acts, actions or omissions by the authorities and by the officials under the Act on Forfeiture to the Exchequer of Unlawfully Acquired Assets, committed in the course of, or in connection with, the execution of the powers or in the line of duty or the said authorities and officials.”

§ 10.

In Article 3 (2), Article 4a and Article 12 of the Measures against the Financing of Terrorism Act (promulgated in the State Gazette No. 16 of 2003; amended in No. 31 of 2003, No. 19 of 2005, No. 59 of 2006, Nos. 92 and 109 of 2007, Nos. 28 and 36 of 2008 and Nos. 33 and 57 of 2011), the words “the Commission for Establishing Property Acquired from Criminal Activity” shall be replaced by “the Commission for Forfeiture of Illegally Acquired Assets”.

§ 11.

In Item 4 of Article 35 (6) of the Markets in Financial Instruments Act (promulgated in the *State Gazette* No. 52 of 2007; amended in No. 109 of 2007, No. 69 of 2008, Nos. 24, 93 and 95 of 2009, No. 43 of 2010, No. 77 of 2011, No. 21 of 2012), the words “the Commission for Establishing Property Acquired from Criminal Activity” shall be replaced by “the Commission for Forfeiture of Illegally Acquired Assets”.

§ 12.

In Article 25 (2) of the Notaries and Notarial Practice Act (promulgated in the *State Gazette* No. 104 of 1996; amended in Nos. 117, 118 and 123 of 1997, No. 24 of 1998, No. 69 of 1999, No. 18 of 2003, Nos. 29 and 36 of 2004, Nos. 19 and 43 of 2005, Nos. 30, 39 and 41 of 2006, Nos. 59 and 64 of 2007, Nos. 50 and 69 of 2008, Nos. 42, 47 and 82 of 2009, No. 87 of 2010, Nos. 32, 41 and 82 of 2011), the words “the Act on Forfeiture to the Exchequer of Assets Acquired from Criminal Activity” shall be replaced by “the Act on Forfeiture to the Exchequer of Unlawfully Acquired Assets”.

§ 13.

In Item 4 of Article 62 (6) of the Credit Institutions Act (promulgated in the *State Gazette* No. 59 of 2006; amended in No. 105 of 2006, Nos. 52, 59 and 109 of 2007, No. 69 of 2008, Nos. 23, 24, 44, 93 and 95 of 2009, Nos. 94 and 101 of 2010, Nos. 77 and 105 of 2011), the words “the Commission for Establishing Property Acquired from Criminal Activity” shall be replaced by “the Commission for Forfeiture of Illegally Acquired Assets”.

§ 14.

In Item 3 of Article 74 (1) of the Tax and Social-Insurance Procedure Code (promulgated in the *State Gazette* No. 105 of 2005; amended in Nos. 30, 33, 34, 59, 63, 73, 80, 82, 86, 95 and 105 of 2006, Nos. 46, 52, 53, 57, 59, 108 and 109 of 2007, Nos. 36, 69 and 98 of 2008, Nos. 12, 32, 41 and 93 of 2009, Nos. 15, 94, 98, 100 and 101 of 2010, Nos. 14, 31, 77 and 99 of 2011 and No. 26 of 2012), the words “the Commission for Establishing Property Acquired from Criminal Activity”

shall be replaced by “the Commission for Forfeiture of Illegally Acquired Assets and the directors of territorial directorate thereof”.

§ 15.

In Article 2 (1) of the Public Disclosure of Senior Public Officials’ Financial Interests Act (promulgated in the *State Gazette* No. 38 of 2000; amended in Nos. 28 and 74 of 2002, No. 8 of 2003, No. 38 of 2004, No. 105 of 2005, Nos. 38 and 73 of 2006, No. 109 of 2007, Nos. 33, 69 and 94 of 2008, No. 93 of 2009, Nos. 18 and 62 of 2010), there shall be inserted an Items 26a:

“26a. the Chairperson, the Deputy Chairperson and the members of the Commission for Forfeiture of Unlawfully Acquired Assets;”.

§ 16.

This Act shall enter into force six months after the promulgation thereof in the *State Gazette*.

Czech Republic



Section 70 Confiscation of a Thing or Other Asset Value

- (1) The court may impose a sentence of confiscation of a thing or other asset value that
 - a) was used to commit a criminal act,
 - b) was intended to commit a criminal act,
 - c) has been acquired by the offender through a criminal act or as a reward for such act,
or
 - d) has been acquired by the offender, even in part, for a thing or other asset value referred to in letter c), provided that the value of the thing or other asset value is not insignificant in relation to the value of the acquired thing or other asset value.
- (2) The sentence of confiscation of a thing or other asset value can be imposed only if a thing or other asset value belonging to the offender is concerned.
- (3) If the offender possesses the thing or other asset value as specified in Sub-sections (1) and (2) in contradiction to another legal enactment, in connection to which a sentence of confiscation of a thing or other asset value may be imposed, the court shall impose also this sentence in any case.
- (4) Prior to legal force of this decision shall apply prohibition of alienation of the confiscated thing or other asset value, which also includes other disposing with the thing or other asset value that leads to obstructing confiscation of the thing or other asset value.
- (5) The confiscated thing or other asset value shall devolve on the state.

Section 71 Confiscation of Equivalent Value

- (1) If an offender, to whom a thing or other asset value that could be confiscated according to Section 70 Sub-section (1) or (2), destroys, damages or otherwise disvalues, alienates, renders useless, removes or utilizes, particularly consumes or otherwise circumvents confiscation of such thing or other asset value, or if he/she obstructs the execution of punishment of forfeiture of a thing or other asset value prior the court could decide on confiscation, the court may decide confiscation of equivalent value up to a value not exceeding the value of such thing or other asset value. The value of a thing or other asset value, whose confiscation may be ordered by a court, shall be determined upon a professional statement or expert opinion.
- (2) If the thing or other asset value is, even in part, destroyed, damaged or otherwise disvalued or removed, the court may impose confiscation of equivalent value along with confiscation of other asset value as specified in Section 70 (1).
- (3) The confiscated equivalent value shall devolve on the state.

Section 101 Forfeiture of a Thing or Other Property Value

- (1) Unless a sentence of confiscation of a thing or other asset value under Section 70 (1) is imposed, the court may order that such thing or other asset value shall be seized,
 - a) if it belongs to an offender who cannot be prosecuted or sentenced,
 - b) if it belongs to an offender whose punishment has been waived by the court, or
 - c) if it endangers safety of persons or property, eventually safety of society, or if there is a threat that it shall be used to commit a crime.

- (2) If conditions under Sub-section (1) are not met, the court may impose seizure of a thing or other asset value only if it is, even indirectly, proceeds of crime, especially if
 - a) the thing or other asset value was obtained through criminal act or as a reward for such an act and it does not belong to the offender;
 - b) the thing or other property value was acquired, even partially, by a person other than the offender for other thing or asset value that was obtained through criminal act or as a reward for such an act, if the value of the thing or other asset value acquired through such a criminal act or as a reward for such an act is not insignificant in relation to the value of the acquired thing or other asset value; or
 - c) the thing or other asset value was acquired, even partially, by a person other than the offender for other thing or asset value which the offender, even partially, acquired for a thing or other asset value that was obtained through a criminal act or as a reward for such act, if the value of the thing or other asset value obtained through such a criminal act or as a reward for such an act is not insignificant in relation to the value of the acquired thing or other asset value.

- (3) If the offender or other person unlawfully or contrary to another legal regulation possesses a thing or other asset value referred to in Sub-section (1) or (3), in relation to which is possible to impose forfeiture of a thing or other asset value, the court shall always impose this protective measure.

- (4) Instead of imposing forfeiture of a thing or other asset value, the court may impose an obligation
 - a) to modify the thing or other asset value in such a way to it could not be used for a purpose dangerous to society;
 - b) to remove a certain devise;
 - c) to remove a marking or make alterations to it; or
 - d) to restrict disposition with such thing or other asset value;
 - e) and determine a reasonable time therefor.

- (5) If the obligation referred to in Sub-section (4) is not fulfilled within the stated time, the court shall decide on forfeiture of the thing or other asset value.

Section 102 Forfeiture of Substitute Value

If a person, to whom a thing or other property value that could be forfeited according to Section 101 (1) or (2) belongs, prior to ordering the forfeiture, destroys, damages or otherwise disvalues, alienates, renders unusable, removes or utilizes, partially consumes or otherwise circumvents forfeiture of such a thing or other asset value, or if he/she obstructs the execution of the sentence of forfeiture of a thing or other asset value by conduct contrary to the prohibition imposed under Section 70 (4), eventually if he/she obstructs forfeiture of a thing or other asset value by conduct contrary to the prohibition imposed under Section 104 (2), the court may order forfeiture of a substitute value up to a value not exceeding the value of such thing or other asset value. The value of a thing or other asset value, forfeiture of which may be ordered by court shall be determined by an elaborate professional opinion or an by an expert opinion.

Denmark[†]



CRIMINAL CODE

75.

- (1) The proceeds gained from a criminal offence, or a sum equivalent to such proceeds may be confiscated in whole or in part. In cases without the necessary basis on which to establish the amount of such proceeds, a sum estimated to be equivalent to the proceeds may be confiscated.
- (2) Where it is considered to be necessary to prevent further crime or otherwise required due to special circumstances, the following objects may be confiscated:
 - 1) objects used or intended to be used in a criminal act;
 - 2) objects produced by a criminal act; and
 - 3) objects in respect of which a criminal offence has otherwise been committed.
- (3) In place of confiscation of the objects referred to in subsection (2) above, a sum which is equivalent to their value or part of their value may be confiscated.
- (4) In place of confiscation under subsection (2) above, arrangements concerning the objects may be decided upon for the purpose of preventing further crimes.
- (5) When an association is dissolved by judgment, its capital, documents, records, etc. may be confiscated.

76.

- (1) Proceeds may be confiscated under section 75(1) of this Act from any person to whom the proceeds of a crime have passed directly.
- (2) The objects and sums referred to in section 75(2) and (3) of this Act may be confiscated from a person who is responsible for the offence and from someone on whose behalf he has acted.
- (3) Specially protected rights in confiscated property shall only lapse upon a decision by the court in circumstances similar to those referred to in subsection (2) above.
- (4) Where, after the criminal offence, one of the persons referred to in subsections (1) and (2) above has disposed of proceeds or of objects of the nature referred to in section 75(2) of this Act or of rights in these, the transferred property or its value may be confiscated from the acquirer if he knew that the transferred property was connected to the criminal act, if he displayed gross negligence in this respect or if the transfer to him was made as a gift.
- (5) Where a person who is liable to have property confiscated under subsections (1)-(4) dies, his liability shall lapse. However, this shall not apply to confiscation under section 75(1) of this Act.

[†] The Danish Penal Code is part of the Compilation of replies to questionnaire of the Council of Europe dated 4 July 2012, published under the nr. 2012/0036 (COD).

76A.

- (1) Total or partial confiscation of property belonging to a person who is found guilty of a criminal offence may take place when
 - 1) the offence committed is of a nature which may produce significant proceeds; and
 - 2) according to the law, the act committed is punishable with imprisonment for six years or more or is a violation of controlled drugs legislation.
- (2) Under conditions such as those mentioned in subsection (1) above, property acquired by the spouse or cohabitant of the offender may be fully or partly confiscated unless
 - 1) the property was acquired more than five years prior to the criminal offence upon which the confiscation under subsection (1) is based; or
 - 2) the marriage or cohabitation had not been commenced at the time of the acquisition.
- (3) Under the conditions mentioned in subsection (1) above, property transferred to a legal person in which the offender has a controlling interest, alone or together with his closest relations, may be wholly or partly confiscated. The same provision shall apply if the offender in question receives a significant part of the revenues of the legal person. Confiscation may not take place if the property was transferred to the legal person more than five years prior to the criminal act upon which confiscation according to subsection (1) above would be based.
- (4) Confiscation according to subsections (1)-(3) above may not take place if the offender shows that the property has most probably been acquired in a lawful way or with funds that have been lawfully acquired.
- (5) In place of confiscation of certain items of property according to subsections (1)-(3) above, an amount corresponding to the value or part of the value of the property may be confiscated.

77.

- (1) Where proceeds or property items are confiscated under section 75(1) or 76A of this Act, and a person is entitled to compensation on account of the offence committed, the confiscated property may be used in satisfaction of the claim for compensation.
- (2) The same provision shall apply to objects and other property confiscated under section 75(2) and (3) of this Act, if so decided in the sentence.
- (3) Where, in one of the situations referred to in subsections (1) and (2) above, the offender has paid compensation to the victim as prescribed by the sentence, the confiscated sum shall be reduced accordingly.

77A.

In case there is concern that, due to their nature combined with other existing circumstances, certain objects may be used in a criminal act, they may be confiscated if this measure is viewed as necessary for the prevention of the criminal offence. Under the same conditions, other assets including money may be confiscated. Section 75(4) of this Act shall apply correspondingly.

Germany



Excerpts from GERMAN CRIMINAL CODE (Strafgesetzbuch - StGB)

http://www.gesetze-im-internet.de/englisch_stgb/

SEVENTH TITLE CONFISCATION AND DEPRIVATION ORDERS

Section 73

Conditions of confiscation

- (1) If an unlawful act has been committed and the principal or a secondary participant has acquired proceeds from it or obtained anything in order to commit it, the court shall order the confiscation of what was obtained. This shall not apply to the extent that the act has given rise to a claim of the victim the satisfaction of which would deprive the principal or secondary participant of the value of what has been obtained.
- (2) The order of confiscation shall extend to benefits derived from what was obtained. It may also extend to objects which the principal or secondary participant has acquired by way of sale of the acquired object, as a replacement for its destruction, damage to or forcible loss of it or on the basis of a surrogate right.
- (3) If the principal or secondary participant acted for another and that person acquired anything thereby, the order of confiscation under subsections (1) and (2) above shall be made against him.
- (4) The confiscation of an object shall also be ordered if it is owned or subject to a right by a third party, who furnished it to support the act or with knowledge of the circumstances of the act.

Section 73a

Confiscation of monetary value

To the extent that the confiscation of a particular object is impossible due to the nature of what was obtained or for some other reason or because confiscation of a surrogate object pursuant to section 73(2) 2nd sentence has not been ordered, the court shall order the confiscation of a sum of money which corresponds to the value of what was obtained. The court shall also make such an order in addition to the confiscation of an object to the extent that its value falls short of the value of what was originally obtained.

Section 73b

Assessment of value

The scope of what was obtained and its value as well as the amount of the victim's claim the satisfaction of which would deprive the principal or secondary participant of that which was obtained may be estimated.

Section 73c

Hardship

- (1) Confiscation shall not be ordered to the extent it would constitute an undue hardship for the person affected. The order may be waived to the extent the value of what was obtained is no longer part of the affected person's assets at the time of the order or if what was obtained is only of minor value.
- (2) As to conditions of payment section 42 shall apply *mutatis mutandis*.

Section 73d

Extended confiscation

- (1) If an unlawful act has been committed pursuant to a law which refers to this provision, the court shall also order the confiscation of objects of the principal or secondary participant if the circumstances justify the assumption that these objects were acquired as a result of unlawful acts, or for the purpose of committing them. The 1st sentence shall also apply if the principal or secondary participant does not own or have a right to the object merely because he acquired the object as a result of an unlawful act or for the purpose of committing it. Section 73(2) shall apply *mutatis mutandis*.
- (2) If the confiscation of a particular object has, after the act, become impossible in whole or in part section 73a and section 73b shall apply *mutatis mutandis*.
- (3) If after an order of confiscation pursuant to subsection (1) above, due to another unlawful act which the principal or secondary participant committed before that order, a decision must again be taken as to the confiscation of objects of the principal or secondary participant, the court in doing so shall take into account the previous order.
- (4) Section 73c shall apply *mutatis mutandis*.

Section 73e

Effect of confiscation

- (1) If the confiscation of an object is ordered title to the property or the right confiscated shall pass to the state once the order becomes final if the person affected by the order has a right to it at the time. The rights of third parties in the object remain unaffected.
- (2) Prior to its becoming final the order shall have the effect of a prohibition to sell within the meaning of section 136 of the Civil Code; the prohibition shall also cover dispositions other than sales.

Section 74

Conditions of deprivation

- (1) If an intentional offence has been committed objects generated by or used or intended for use in its commission or preparation, the court may make a deprivation order.
- (2) A deprivation order shall not be admissible unless

1. the principal or secondary participant owns or has a right to the objects at the time of the decision; or
 2. the objects, due to their nature and the circumstances, pose a danger to the general public or if there is reason to believe that they will be used for the commission of unlawful acts.
- (3) Under the provisions of subsection (2) No 2 above the deprivation of objects shall also be admissible if the offender acted without guilt.
- (4) If deprivation is prescribed or permitted by a special provision apart from subsection (1) above, subsections (2) and (3) above shall apply *mutatis mutandis*.

Section 74a

Extended conditions of deprivation

If the law refers to this provision, objects may be subject to a deprivation order as an exception to section 74(2) No 1 if at the time of the decision the person who owns or has a right to them

1. at least with gross negligence contributed to the property or the right being the object of or being used for the act or its preparation; or
2. acquired the objects dishonestly with knowledge of the circumstances that would have allowed their deprivation.

Section 74b

Principle of proportionality

- (1) If deprivation is not otherwise prescribed it may not be ordered in cases under section 74(2) No 1 and section 74a if it is disproportionate to the significance of the act committed and the blameworthiness of the principal or secondary participant or of the third party in cases of section 74a.
- (2) In cases under section 74 and section 74a the court shall defer the deprivation order and impose a less incisive measure if the purpose of a deprivation order can also be attained thus. Particular consideration shall be given to instructions
 1. to destroy the objects;
 2. to remove particular fittings or distinguishing marks from or otherwise modify the objects; or
 3. to dispose of the objects in a specified manner.

If the instructions are carried out the deferment order shall be rescinded; otherwise the court shall subsequently order the deprivation.

- (3) If deprivation is not otherwise proscribed it may be limited to a part of the objects.

Section 74c

Deprivation of monetary value

- (1) If the principal or secondary participant has used, particularly disposing of it or consuming it, the object which he owned or had a right to at the time of the offence and which could have been subject to deprivation, or if he has otherwise obstructed the deprivation of the object, the court may order the deprivation from the principal or secondary participant, of a sum of money no greater than the amount equivalent to the value of the object.
- (2) The court may also make such an order in addition to the deprivation of an object or in place thereof, if the principal or secondary participant has, prior to the decision on the deprivation, encumbered it with the right of a third party, the extinguishment of which cannot be ordered without compensation or could not be ordered in the case of deprivation (section 74e(2) and section 74f); if the court makes the order in addition to the deprivation, then the amount of the surrogate value shall be assessed according to the value of the encumbrance.
- (3) The value of the object and the encumbrance may be estimated.
- (4) As to conditions of payment section 42 shall apply *mutatis mutandis*.

Section 74d

[Omitted]

Section 74e

Effect of deprivation

- (1) If the deprivation of an object is ordered, title to the property or the right ordered deprived shall pass to the state once the order becomes final.
- (2) The rights of third parties in the object remain unaffected. The court shall order the cessation of these rights if it bases the deprivation on the fact that the conditions of section 74(2) No 2 are met. It may also order the cessation of the rights of a third party if no compensation is due to him pursuant to section 74f(2) Nos 1 or 2.
- (3) Section 73e(2) shall apply *mutatis mutandis* to the order of deprivation and the order deferring deprivation before they have become final.

Section 74f

Compensation

- (1) If a third party had title to the property or to the right ordered deprived at the time the decision on deprivation or destruction became final or if the object was encumbered by a right of a third party which was extinguished or prejudiced by the decision, the third party shall be adequately compensated in money from the public treasury, taking into consideration the fair market value.
- (2) Compensation shall not be granted if

1. the third party at least with gross negligence contributed to the property or the right being the object of or being used for the act or its preparation,
 2. the third party acquired the objects or the right dishonestly with knowledge of the circumstances that would have allowed their deprivation, or
 3. it would be lawful under the circumstances which justified the deprivation or destruction, to deprive the third party permanently of the object and without compensation on the basis of provisions outside the criminal law.
- (3) In cases under subsection (2) above the court may grant compensation to the extent that it would constitute an undue hardship to deny it.

Section 75

Special provision for organs and representatives

If a person commits an act

1. in his capacity as an organ authorised to represent a legal entity or as a member of such an organ;
2. in his capacity as a director or member of board of directors of an association lacking independent legal capacity;
3. as a partner authorised to represent a partnership with independent legal capacity; or
4. as an authorised representative with full power of attorney or in a management position as general agent or authorised representative, with a commercial power of attorney, of a legal entity or association listed in Nos 2 or 3 above; or
5. as another person acting in a responsible capacity for the management of the business or enterprise of a legal entity or association listed in Nos 2 or 3 above, including the supervision of the management of the business, or other exercise of controlling powers in a senior management position,

which in relation to him and under the other conditions of sections 74 to 74c and section 74f would allow the deprivation of an object or its surrogate value or justify the denial of compensation, his act shall be attributed and these provisions applied to the person or entity represented. Section 14(3) shall apply *mutatis mutandis*.

—Common provisions—

Section 76

Subsequent orders for confiscation or deprivation of monetary value

If an order for confiscation or deprivation of an object is not enforceable or inadequate because after making it one of the conditions indicated in section 73a, section 73d(2), or section 74c has arisen or come to its attention, the court may subsequently order the confiscation or deprivation of the monetary value.

Section 76a

Independent orders

- (1) If for reasons of fact no person can be prosecuted or convicted of the offence, confiscation or deprivation of the object or the monetary value or destruction must or may be independently ordered if the conditions under which the measure is prescribed or available otherwise are met.
- (2) Subsection (1) above shall, under the provisions of section 74(2) No 2, (3) and section 74d, apply if
 1. prosecution of the offence is barred by the statute of limitations; or
 2. for other reasons of law no person may be prosecuted and the law does not provide otherwise.

Deprivation or destruction must not be ordered in the absence of a request or authorisation to prosecute or a request by a foreign state.

- (3) Subsection (1) above shall apply if the court orders a discharge or if the proceedings are terminated pursuant to a provision allowing this in the discretion of either the public prosecution service or the court or with their mutual agreement.

Excerpts from the GERMAN CODE OF CRIMINAL PROCEDURE (Strafprozessordnung - StPO)

http://www.gesetze-im-internet.de/englisch_stpo/

PART SIX SPECIAL TYPES OF PROCEDURE

CHAPTER III PROCEDURE CONCERNING CONFISCATION AND SEIZURE OF PROPERTY

Section 430

[Omitted]

Section 431

[Participation of Third Persons in Proceedings]

- (1) If in the criminal proceedings a decision has to be made concerning confiscation of an object and it appears to be credible that
 1. a person other than the indicted accused owns, or is entitled to, the object, or
 2. another person has some other right to the object, the extinguishment of which could be ordered in the event of confiscation (Section 74e subsection (2), second and third sentences, of the Criminal Code),

the court shall order that the other person shall participate in the proceedings as far as confiscation is concerned (person with an interest in the confiscation). The court may dispense with the order if due to certain facts it may be assumed that participation is not feasible. The court may also dispense with the order if participation is required on the part of a party, association, or institution outside the territorial scope of this statute pursuing action directed against the existence or security of the Federal Republic of Germany or against any constitutional principles designated in section 92 subsection (2) of the Criminal Code, and if it is to be assumed, in the light of the circumstances, that such party, association or institution, or one of its agents, made the object available to promote such action; in this case it shall be sufficient to hear the owner of the object or the person authorized to exercise the right prior to the decision on confiscation of the object, if this is feasible.

- (2) The court may order that participation shall not extend to the question of the indicted accused's guilt if
 1. confiscation in the case of subsection (1), number 1, is possible only on the condition that the indicted accused owns, or is entitled to, the object, or
 2. the object, in the light of the circumstances that may substantiate confiscation, can be taken away permanently, without compensation, from the person with an interest in the confiscation also by virtue of legal provisions outside the criminal law.
- (3) If a decision has to be given against a legal person or an association (section 75, in conjunction with section 74c, of the Criminal Code) on confiscation of an equivalent sum of money, the court shall order their participation.
- (4) Participation in the proceedings may be ordered at any time prior to pronouncement of confiscation and, if an admissible appeal on fact and law has been filed, at any time prior to completion of the closing speeches in appellate proceedings on fact and law.
- (5) The decision ordering participation in the proceedings cannot be contested. If participation in the proceedings is refused or an order is made pursuant to subsection (2), an immediate complaint shall be admissible.
- (6) If a person states before the court or the public prosecution office, either in writing or orally for the record, or before any other authority in writing that he does not want to object to the confiscation of the object, his participation in the proceedings shall not be ordered or the order shall be revoked.
- (7) The course of the proceedings shall not be delayed by participation in the proceedings.

Section 432

[Hearing a Person with an Interest in Confiscation]

- (1) If during the preparatory proceedings indications arise that a person might have an interest in the confiscation, he shall be heard if this appears feasible. Section 431 subsection (1), third sentence, shall apply *mutatis mutandis*.

- (2) If a person who might have an interest in the confiscation states that he wants to object to the confiscation and if it appears credible that he has a right to the object, the provisions concerning the examination of the accused shall, in the event of his examination, apply *mutatis mutandis* if it is conceivable that he might become a participant in the proceedings.

Section 433

[Rights and Duties of a Person with an Interest in Confiscation]

- (1) With the opening of the main proceedings, a person with an interest in the confiscation shall have the rights which a defendant enjoys unless otherwise provided by this statute. In accelerated proceedings this shall apply from the beginning of the main hearing, and in proceedings for a penal order, from the issuance of the penal order.
- (2) The court may order the personal appearance of a person with an interest in the confiscation for the purpose of clarifying the facts. If such person's personal appearance has been ordered and he fails to appear without sufficient excuse, the court may order that he be brought before it if a summons has been served upon him also drawing his attention to this possibility.

Section 434

[Representation by Defence Counsel]

- (1) A person with an interest in the confiscation may at any stage of the proceedings be represented, on the basis of a written power of attorney, by an attorney or any other person who may be chosen as defence counsel. The provisions in Sections 137 to 139, 145a to 149, and 218 applying to the defence shall apply *mutatis mutandis*.
- (2) The court may assign to a person with an interest in the confiscation an attorney or another person who may be appointed as defence counsel, if the factual or legal situation is complex or if he cannot exercise his rights himself.

Section 435

[Summons to the Main Hearing]

- (1) Notification of the date set down for the main hearing shall be served on the person with an interest in the confiscation; Section 40 shall apply *mutatis mutandis*.
- (2) On notification of the date of the hearing, if he is a participant in the proceedings, he shall be furnished with the bill of indictment and, in the cases referred to in Section 207 subsection (2), with the order opening proceedings.
- (3) At the same time, the person with an interest in the confiscation shall be advised of the fact that
1. the hearing may be conducted in his absence and
 2. the decision given on the confiscation shall apply to him as well.

Section 436

[Non-Appearance at the Main Hearing]

- (1) If a person with an interest in the confiscation fails to appear at the main hearing despite being properly informed of the date of the hearing, the hearing may be conducted in his absence; Section 235 shall not be applicable.
- (2) Section 244 subsection (3), second sentence, and subsections (4) to (6) shall not apply to applications made by the person with an interest in the confiscation for evidence to be taken regarding the question of the defendant's guilt.
- (3) If the court orders confiscation on the basis of circumstances constituting an obstacle to compensation of the person with an interest in the confiscation, it shall also declare that such person shall not be entitled to compensation. This shall not apply if the court considers compensation of such person to be necessary because it would constitute undue hardship to refuse such compensation; in this case the court shall also determine the amount of compensation (section 74f subsection (3) of the Criminal Code). The court shall, in advance, advise persons with an interest in the confiscation of the possibility of such a decision and shall give them the opportunity to make submissions.
- (4) If a person with an interest in the confiscation was neither present nor represented when the judgment was pronounced, the judgment shall be served on him. The court may order parts of the judgment not concerning the confiscation to be struck out.

Section 439

[Subsequent Proceedings]

- (1) If confiscation of an object has been ordered with binding effect and if someone substantiates
 1. that at the time when the decision entered into force he had a right to the object, which right is negatively affected by the decision or no longer exists; and
 2. that he could not exercise the rights of a person with an interest in the confiscation through no fault of his own, either in the proceedings at first instance or in the appellate proceedings on fact and law,he may claim in subsequent proceedings that the confiscation, insofar as it relates to him, was not justified; Section 360 shall apply *mutatis mutandis*.
- (2) The application for subsequent proceedings shall be made within a month after the day on which the applicant acquired knowledge of the final decision. The application shall be inadmissible if two years have elapsed since the decision entered into force and its execution has been effected.
- (3) The court shall not examine the verdict of guilt if, in the light of the circumstances that substantiated the confiscation, an order pursuant to Section 431 subsection (2) would have been admissible in criminal proceedings. In all other cases Section 437 subsection (1) shall apply *mutatis mutandis*.
- (4) If the right claimed by the applicant is not proved, the application shall be unfounded.

- (5) Prior to the decision, the court may revoke the confiscation order with the public prosecution office's consent, if the subsequent proceedings are considered disproportionate.
- (6) Reopening of the proceedings pursuant to Section 359, number 5, for the purpose of making objections pursuant to subsection (1) shall be precluded.

Section 440

[Independent Confiscation Proceedings]

- (1) The public prosecution office and the private prosecutor may file the application to order confiscation independently if this is admissible by virtue of a statute and the order is to be anticipated in view of the outcome of the investigations.
- (2) The object must be designated in the application. The facts substantiating the admissibility of the independent confiscation shall also be stated. Otherwise Section 200 shall apply *mutatis mutandis*.
- (3) Sections 431 to 436 and 439 shall apply *mutatis mutandis*.

Section 441

[Omitted]

Section 442

[Forfeiture; Destruction; Rendering Unusable]

- (1) Forfeiture, destruction, rendering something unusable and eliminating a situation that is illegal shall be equivalent to confiscation within the meaning of Sections 430 to 441.
- (2) If forfeiture pursuant to section 73 subsection (3) or section 73a of the Criminal Code is directed against a person other than the indicted accused the court shall order that such person shall participate in the proceedings. He may state his objections to the order of forfeiture in subsequent proceedings, if through no fault of his own he was not in a position, either in proceedings at first instance or in appellate proceedings on fact and law, to exercise the rights of a participant in the proceedings. If under these conditions subsequent proceedings are applied for, execution measures shall not be taken against the applicant prior to the conclusion of such proceedings.

Section 443

[Seizure of Property]

- (1) Property or individual items of property may be seized, if located within the territorial scope of this statute and if they belong to an accused against whom public charges were preferred or a warrant of arrest was issued for a criminal offence pursuant to
 1. sections 81 to 83 subsection (1), section 89a, sections 94 or 96 subsection (1), sections 97a or 100, sections 129 or 129a, also in conjunction with section 129b subsection (1), of the Criminal Code;

2. one of the provisions referred to in section 330 subsection (1), first sentence, of the Criminal Code, provided that the accused is suspected of intentionally endangering life or limb of another or another person's property of considerable value, or under the conditions in section 330 subsection (1), second sentence, numbers 1 to 3, of the Criminal Code, or pursuant to section 330 subsection (2) or section 330a subsections (1) and (2) of the Criminal Code;
3. sections 51, 52 subsection (1), numbers 1 and 2, letters c and d, or subsections (5) and (6) of the Weapons Act, section 34 subsections (1) to (6) of the Foreign Trade and Payments Act or pursuant to section 19 subsections (1) to (3), section 20 subsections (1) or (2), each also in conjunction with section 21 or section 22a subsections (1) to (3) of the War Weapons Control Act; or
4. a provision referred to in section 29 subsection (3), second sentence, number 1, of the Narcotics Act under the conditions set out therein or a criminal offence pursuant to sections 29a, section 30 subsection (1), numbers 1, 2 and 4, section 30a or section 30b of the Narcotics Act.

The seizure shall also include any property subsequently acquired by the accused. The seizure shall be revoked before conclusion of the main hearing at first instance.

- (2) Seizure shall be ordered by the judge. In exigent circumstances, the public prosecution office can make a provisional order for seizure; the provisional order shall become ineffective if it is not confirmed by the judge within three working days.
- (3) The provisions in Sections 291 to 293 shall apply *mutatis mutandis*.

Excerpts from GERMAN ACT ON REGULATORY OFFENCES (Ordnungswidrigkeitengesetz - OWiG)

http://www.gesetze-im-internet.de/englisch_owig/

PART 1 GENERAL PROVISIONS SEVENTH TITLE CONFISCATION AND DEPRIVATION ORDERS

CHAPTER SIX FORFEITURE; REGULATORY FINE IMPOSED ON LEGAL PERSONS AND ASSOCIATIONS OF PERSONS

Section 29a

Forfeiture

- (1) If the perpetrator has gained something for an act or arising out of an act which may be sanctioned by a regulatory fine, and if a regulatory fine has not been assessed against him for the act, forfeiture of a sum up to the amount of the pecuniary advantage gained may be ordered.

- (2) If the perpetrator of an act which may be sanctioned by a regulatory fine has acted for another, and that person has gained something thereby, forfeiture of a sum up to the amount designated in subsection 1 may be ordered against him.
- (3) The extent of what has been acquired and its value may be estimated. Section 18 shall apply *mutatis mutandis*.
- (4) If no regulatory fining proceedings are initiated against the perpetrator, or if they are discontinued, forfeiture may be ordered in its own right.

Section 30

Regulatory Fine Imposed on Legal Persons and on Associations of Persons

- (1) Where someone acting
 1. as an entity authorised to represent a legal person or as a member of such an entity,
 2. as chairman of the executive committee of an association without legal capacity or as a member of such committee,
 3. as a partner authorised to represent a partnership with legal capacity, or
 4. as the authorised representative with full power of attorney or in a managerial position as procura-holder or the authorised representative with a commercial power of attorney of a legal person or of an association of persons referred to in numbers 2 or 3,
 5. as another person responsible on behalf of the management of the operation or enterprise forming part of a legal person, or of an association of persons referred to in numbers 2 or 3, also covering supervision of the conduct of business or other exercise of controlling powers in a managerial position,
 6. has committed a criminal offence or a regulatory offence as a result of which duties incumbent on the legal person or on the association of persons have been violated, or where the legal person or the association of persons has been enriched or was intended to be enriched, a regulatory fine may be imposed on such person or association.
- (2) The regulatory fine shall amount
 1. in the case of a criminal offence committed with intent, to not more than one million Euros,
 2. in the case of a criminal offence committed negligently, to not more than five hundred thousand Euros.

Where there has been commission of a regulatory offence, the maximum regulatory fine that can be imposed shall be determined by the maximum regulatory fine imposable for the regulatory offence concerned. The second sentence shall also apply where there has been commission of an act simultaneously constituting a criminal offence and a regulatory offence, provided that the maximum regulatory fine imposable for the regulatory offence exceeds the maximum pursuant to the first sentence.

-
- (3) Section 17 subsection 4 and section 18 shall apply *mutatis mutandis*.
- (4) If criminal proceedings or regulatory fining proceedings are not commenced on account of the criminal offence or of the regulatory offence, or if such proceedings are discontinued, or if imposition of a criminal penalty is dispensed with, the regulatory fine may be assessed independently. Statutory provision may be made to the effect that a regulatory fine may be imposed in its own right in further cases as well. Independent assessment of a regulatory fine against the legal person or association of persons shall however be precluded where the criminal offence or the regulatory offence cannot be prosecuted for legal reasons; section 33 subsection 1 second sentence shall remain unaffected.
- (5) Assessment of a regulatory fine incurred by the legal person or association of persons shall, in respect of one and the same offence, preclude a forfeiture order, pursuant to sections 73 or 73a of the Penal Code or pursuant to section 29a, against such person or association of persons.

Estonia



PENAL CODE

§ 83. Confiscation of object used to commit offence and direct object of offence

- (1) A court may apply confiscation of the object used to commit an intentional offence if it belongs to the offender at the time of the making of the judgment or ruling.
- (2) In the cases provided by law, a court may confiscate the substance or object which was the direct object of the commission of an intentional offence, or the substance or object used for preparation of the offence if these belong to the offender at the time of the making of the judgment and confiscation thereof is not mandatory pursuant to law.
- (3) As an exception, a court may confiscate the objects or substance specified in subsections (1) and (2) of this section if it belongs to a third person at the time of the making of the judgment or ruling and the person: 1) has, at least through recklessness, aided in the use of the objects or substance for the commission or preparation of the offence, 2) has acquired the objects or substance, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than the normal market price; or 3) knew that the objects or substance was transferred to the person in order to avoid confiscation thereof.
- (3 1) If the object used to commit an intentional offence or direct object of offence was used by the person on the basis of a contract for use or contract of sale with a reservation on ownership, a court may confiscate the proprietary rights of the person arising from that contract. [RT I 2008, 54, 304 - entry into force 27.12.2008]
- (4) In the absence of the permission necessary for the possession of an object or substance, such object or substance shall be confiscated.
- (5) In the cases provided for in subsection (4) of this section, a device, object or substance may be confiscated if the person has committed at least an unlawful act.
- (6) In the cases provided for in subsections (1), (2) and (4) of this section, the object used to commit a misdemeanour or the substance or object which was the direct object of a misdemeanour may be confiscated by the extra-judicial body prescribed by law. [RT I 2007, 2, 7 - entry into force 01.02.2007]

§ 831. Confiscation of assets acquired through offence

- (1) A court shall confiscate of the assets acquired through an offence object if these belong to the offender at the time of the making of the judgment or ruling.
- (2) As an exception, a court shall confiscate the assets or substance specified in subsection (1) this section if these belong to a third person at the time of the making of the judgment or ruling, and if: 1) these were acquired, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than

the normal market price; or 2) the third person knew that that the assets were transferred to the person in order to avoid confiscation.

- (3) The court may decide not to confiscate, in part or in full, property acquired through offence if, taking account of the circumstances of the offence or the situation of the person, confiscation would be unreasonably burdensome or if the value of the assets is disproportionably small in comparison to the costs of storage, transfer or destruction of the property. The court may, for the purpose of satisfaction of a civil action, decrease the amount of the property or assets to be confiscated by the amount of the object of the action. [RT I 2007, 2, 7 - entry into force 01.02.2007]

§ 832. Extended confiscation of assets acquired through criminal offence

- (1) If a court convicts a person of a criminal offence and imposes imprisonment for a term of more than three years or life imprisonment, the court shall, in the cases provided by this Code, confiscate a part or all of the criminal offender's assets if these belong to the offender at the time of the making of the judgment, and if the nature of the criminal offence, the legal income, or the difference between the financial situation and the standard of living of the person, or another fact gives reason to presume that the person has acquired the assets through commission of the criminal offence. Confiscation is not applied to assets with regard to which the person certifies that such assets have been acquired out of lawfully received funds.
- (2) As an exception, a court may confiscate the assets of a third person on the bases and to the extent specified in subsection (1) this section if these belong to the third person at the time of the making of the judgment or ruling, and if: 1) these were acquired, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than the normal market price; or 2) the third person knew that that the assets were transferred to the person in order to avoid confiscation.
- (3) Assets of a third party which has been acquired more than five years prior to the commission of a criminal offence shall not be confiscated.
- (4) Upon extended confiscation of assets acquired through criminal offence, the court shall take account of the provisions of subsection 831 (3) of this Code.. [RT I 2007, 2, 7 - entry into force 01.02.2007]

§ 84. Substitution of confiscation

If assets acquired by an offence have been transferred, consumed or the confiscation thereof is impossible or unreasonable for another reason, the court may order payment of an amount which corresponds to the value of the assets subject to confiscation. [RT I 2007, 2, 7 - entry into force 01.02.2007]

§ 85. Effect of confiscation

- (1) Confiscated objects shall be transferred into state ownership or, in the cases provided for in an international agreement, shall be returned.

- (2) In the case of confiscation, the rights of third persons remain in force. The state shall pay compensation to third persons, except in the cases provided for in subsections 83 (3) and (4), 831 (2) and 832 (2) of this Code. [RT I 2007, 2, 7 - entry into force 01.02.2007]
- (3) Before entry into force, the decision of an extra-judicial body or court concerning confiscation has the effect of a prohibition against disposal.

Excerpt from Money Laundering and Terrorist
Financing Prevention Act of the Republic of Estonia

§ 40. Suspension of transaction, restriction of disposal of property and transfer of property to state ownership

- (1) In the event of suspicion of money laundering or terrorist financing, the Financial Intelligence Unit may issue a precept to suspend a transaction and to impose restrictions on the disposal of an account or other property constituting the object of the transaction, professional operation or professional service or other assets or property suspected of being associated with money laundering or terrorist financing for up to 30 days as of the delivery of the precept. In the event of property registered in the land register, ship register, Estonian Central Register of Securities, traffic register, construction register or another state register, the Financial Intelligence Unit may, in the event of justified suspicion, restrict the disposal of the property for the purpose of ensuring its preservation for up to 30 days.

[RT I, 08.05.2012, 1 – entry into force 18.05.2012]

- (2) Before expiry of the term specified in subsection (1) a transaction may be entered into or the restriction of disposal of an account or other property may be derogated from only upon the written consent of the Financial Intelligence Unit. During the time that restrictions on using an account are in force, the credit institution or financial institution shall not execute any orders issued by the account holder for debiting the account.

[RT I 2009, 61, 401 – entry into force 26.12.2009]

- (3) In addition to the provisions of subsection (1) of this section, the Financial Intelligence Unit may, on the basis of a precept, restrict the use of property for up to 60 days for the purpose of ensuring its preservation if:

[RT I 2009, 61, 401 – entry into force 26.12.2009]

- (1) during verification of the source of the property in the event that there is a suspicion of money laundering, the owner or possessor of the property fails to submit evidence certifying the legality of the source of the property to the Financial Intelligence Unit within 30 days as of the suspension of the transaction or as of the imposition of restrictions on the use of the account or other assets or property;

[RT I, 08.05.2012, 1 – entry into force 18.05.2012]

- (2) there is suspicion that the property is used for terrorist financing.

(31) Property subject to restrictions on use imposed by the Financial Intelligence Unit pursuant to the procedure provided for in this section shall not be seized or transferred in enforcement proceedings or bankruptcy proceedings.

[RT I 2009, 61, 401 – entry into force 26.12.2009]

(4) If in the event of suspicion of money laundering the legality of the source of the property is verified before the term specified in subsection (3) of this section expires, the Financial Intelligence Unit is required to revoke the restrictions on the disposal of the property immediately. [RT I, 08.05.2012, 1 – entry into force 18.05.2012]

(5) After submission of the materials specified in subsection 37 (2) of this Act, the competent authority shall immediately inform the Financial Intelligence Unit of the seizure of, refusal to seize or release from seizure of assets or property pursuant to the procedure provided for in the Code of Criminal Procedure. If assets are or property is seized pursuant to the procedure provided for in the Code of Criminal Procedure, the Financial Intelligence Unit shall be required to immediately terminate any restrictions of disposal of the assets or property after a court ruling regarding the seizure of the assets or property has entered into force.

[RT I, 08.05.2012, 1 – entry into force 18.05.2012]

(6) If the owner of assets or property has not been identified, the Financial Intelligence Unit may request that the administrative court give permission to restrict the disposal of the assets or property until the owner of the assets or property has been identified, including also in the event of termination of the criminal procedure, but not for more than one year. The possessor of the assets or property against whom the restriction of disposal of the assets or property is being decided has the right to give an explanation to the administrative court within the prescribed term.

[RT I, 08.05.2012, 1 – entry into force 18.05.2012]

(7) If the owner of assets or property has not been identified within one year after the establishment of restrictions on the disposal of the assets or property, the Financial Intelligence Unit or the Prosecutor's Office may apply to the administrative court for permission to transfer the assets or property to state ownership. The administrative court shall decide the granting of the permission in a court hearing. The assets or property shall be sold pursuant to the procedure provided for in the Code of Enforcement Procedure and the amount received from the sale shall be transferred to state revenue. The owner of the property has the right to claim an amount corresponding to the value of the assets or property within three years as of the date of transfer of the assets or property to state revenue.

[RT I, 08.05.2012, 1 – entry into force 18.05.2012]

Ireland



PROCEEDS OF CRIME ACT, 1996

AN ACT TO ENABLE THE HIGH COURT, AS RESPECTS THE PROCEEDS OF CRIME, TO MAKE ORDERS FOR THE PRESERVATION AND, WHERE APPROPRIATE, THE DISPOSAL OF THE PROPERTY CONCERNED AND TO PROVIDE FOR RELATED MATTERS. [4th August, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation

1.—(1) In this Act, save where the context otherwise requires—

“the applicant” means a member or an authorised officer who has applied to the Court for the making of an interim order or an interlocutory order and, in relation to such an order that is in force, means any member or, as appropriate, any authorised officer;

“authorised officer” means an officer of the Revenue Commissioners authorised in writing by the Revenue Commissioners to perform the functions conferred by this Act on authorised officers;

“the Court” means the High Court;

“dealing”, in relation to property in the possession or control of a person, includes—

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt,
- (b) removing the property from the State, and
- (c) in the case of money or other property held for the person by another person, paying or releasing or transferring it to the person or to any other person;

“disposal order” means an order under section 4 ;

“interest”, in relation to property, includes right;

“interim order” means an order under section 2 ;

“interlocutory order” means an order under section 3 ;

“member” means a member of the Garda Síochána not below the rank of Chief Superintendent;

“the Minister” means the Minister for Finance;

“proceeds of crime” means any property obtained or received at any time (whether before or after the passing of this Act) by or as a result of or in connection with the commission of an offence;

“property” includes money and all other property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property and references to property shall be construed as including references to any interest in property;

“the respondent” means a person in respect of whom an application for an interim order or an interlocutory order has been made or in respect of whom such an order has been made and includes any person who, but for this Act, would become entitled, on the death of the first-mentioned person, to any property to which such an order relates (being an order that is in force and is in respect of that person).

- (2) In this Act—
- (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other provision is intended, and
 - (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
 - (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Interim order

2.—(1) Where it is shown to the satisfaction of the Court on application to it ex parte in that behalf by a member or an authorised officer—

- (a) that a person is in possession or control of—
 - (i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or
 - (ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, and
- (b) that the value of the property or, as the case may be, the total value of the property referred to in both subparagraphs (i) and (ii), of paragraph (a) is not less than £10,000,

the Court may make an order (“an interim order”) prohibiting the person or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value during the period of 21 days from the date of the making of the order.

- (2) An interim order—
- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and

- (b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.
- (3) Where an interim order is in force, the Court, on application to it in that behalf by the respondent or any other person claiming ownership of any of the property concerned may, if it is shown to the satisfaction of the Court that—
- (a) the property concerned or a part of it is not property to which subparagraph (i) or (ii) of subsection (1)(a) applies, or
 - (b) the value of the property to which those subparagraphs apply is less than £10,000, discharge or, as may be appropriate, vary the order.
- (4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interim order.
- (5) Subject to subsections (3) and (4), an interim order shall continue in force until the expiration of the period of 21 days from the date of its making and shall then lapse unless an application for the making of an interlocutory order in respect of any of the property concerned is brought during that period and, if such an application is brought, the interim order shall lapse upon—
- (a) the determination of the application,
 - (b) the expiration of the ordinary time for bringing an appeal from the determination,
 - (c) if such an appeal is brought, the determination or abandonment of it or of any further appeal or the expiration of the ordinary time for bringing any further appeal, whichever is the latest.
- (6) Notice of an application under this section shall be given—
- (a) in case the application is under subsection (3), by the respondent or other person making the application to the applicant,
 - (b) in case the application is under subsection (4), by the applicant to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts, and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him or her.

Interlocutory order

- 3.—(1) Where, on application to it in that behalf by the applicant, it appears to the Court, on evidence tendered by the applicant, consisting of or including evidence admissible by virtue of section 8 —
- (a) that a person is in possession or control of—
 - (i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or

- (ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, and
 - (b) that the value of the property or, as the case may be, the total value of the property referred to in both subparagraphs (i) and (ii) of paragraph (a) is not less than £10,000, the Court shall make an order (“an interlocutory order”) prohibiting the respondent or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person—
 - (I) that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, or
 - (II) that the value of all the property to which the order would relate is less than £10,000: Provided, however, that the Court shall not make the order if it is satisfied that there would be a serious risk of injustice.
- (2) An interlocutory order—
- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and
 - (b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.
- (3) Where an interlocutory order is in force, the Court, on application to it in that behalf at any time by the respondent or any other person claiming ownership of any of the property concerned, may, if it is shown to the satisfaction of the Court that the property or a specified part of it is property to which paragraph (I) of subsection (1) applies, or that the order causes any other injustice, discharge or, as may be appropriate, vary the order.
- (4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interlocutory order.
- (5) Subject to subsections (3) and (4), an interlocutory order shall continue in force until—
- (a) the determination of an application for a disposal order in relation to the property concerned,
 - (b) the expiration of the ordinary time for bringing an appeal from that determination,
 - (c) if such an appeal is brought, it or any further appeal is determined or abandoned or the ordinary time for bringing any further appeal has expired, whichever is the latest, and shall then lapse.

- (6) Notice of an application under this section shall be given—
- (a) in case the application is under subsection (1) or (4), by the applicant to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts,
 - (b) in case the application is under subsection (3), by the respondent or other person making the application to the applicant, and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him or her.
- (7) Where a forfeiture order, or a confiscation order, under the Criminal Justice Act, 1994 , or a forfeiture order under the Misuse of Drugs Act, 1977 , relates to any property that is the subject of an interim order, or an interlocutory order, that is in force, (“the specified property”), the interim order or, as the case may be, the interlocutory order shall—
- (a) if it relates only to the specified property, stand discharged, and
 - (b) if it relates also to other property, stand varied by the exclusion from it of the specified property.

Disposal order

- 4.—(1) Subject to subsection (2), where an interlocutory order has been in force for not less than 7 years in relation to specified property, the Court, on application to it in that behalf by the applicant, may make an order (“a disposal order”) directing that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister or to such other person as the Court may determine.
- (2) Subject to subsections (6) and (8), the Court shall make a disposal order in relation to any property the subject of an application under subsection (1) unless it is shown to its satisfaction that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.
- (3) The applicant shall give notice to the respondent (unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts), and to such other (if any) persons as the Court may direct of an application under this section.
- (4) A disposal order shall operate to deprive the respondent of his or her rights (if any) in or to the property to which it relates and, upon the making of the order, the property shall stand transferred to the Minister or other person to whom it relates.
- (5) The Minister may sell or otherwise dispose of any property transferred to him or her under this section, and any proceeds of such a disposition and any moneys transferred to him or her under this section shall be paid into or disposed of for the benefit of the Exchequer by the Minister.
- (6) In proceedings under subsection (1), before deciding whether to make a disposal order, the Court shall give an opportunity to be heard by the Court and to show cause why the

order should not be made to any person claiming ownership of any of the property concerned.

- (7) The Court, if it considers it appropriate to do so in the interests of justice, on the application of the respondent or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under subsection (1) for such period not exceeding 2 years as it considers reasonable.
- (8) The Court shall not make a disposal order if it is satisfied that there would be a serious risk of injustice.

Ancillary orders and provision in relation to certain profits or gains, etc.

- 5.—(1) At any time while an interim order or an interlocutory order is in force, the Court may, on application to it in that behalf by the applicant, make such orders as it considers necessary or expedient to enable the order aforesaid to have full effect.
- (2) Notice of an application under this section shall be given by the applicant to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts and to any other person in relation to whom the Court directs that notice of the application be given to him or her.
- (3) An interim order, an interlocutory order or a disposal order may be expressed to apply to any profit or gain or interest, dividend or other payment or any other property payable or arising, after the making of the order, in connection with any other property to which the order relates.

Order in relation to property the subject of interim order or interlocutory order

- 6.—(1) At any time while an interim order or an interlocutory order is in force, the Court may, on application to it in that behalf by the respondent or any other person affected by the order, make such orders as it considers appropriate in relation to any of the property concerned if it considers it essential to do so for the purpose of enabling—
 - (a) the respondent to discharge the reasonable living and other necessary expenses (including legal expenses in or in relation to proceedings under this Act) incurred or to be incurred by or in respect of the respondent and his or her dependants, or
 - (b) the respondent or that other person to carry on a business, trade, profession or other occupation to which any of that property relates.
- (2) An order under this section may contain such conditions and restrictions as the Court considers necessary or expedient for the purpose of protecting the value of the property concerned and avoiding any unnecessary diminution thereof.
- (3) Notice of an application under this section shall be given by the person making the application to the applicant and any other person in relation to whom the Court directs that notice of the application be given to him or her.

Receiver

7.—(1) Where an interim order or an interlocutory order is in force, the Court may at any time appoint a receiver—

- (a) to take possession of any property to which the order relates,
- (b) in accordance with the Court's directions, to manage, keep possession or dispose of or otherwise deal with any property in respect of which he or she is appointed, subject to such exceptions and conditions (if any) as may be specified by the Court, and may require any person having possession or control of property in respect of which the receiver is appointed to give possession of it to the receiver.

(2) Where a receiver takes any action under this section—

- (a) in relation to property which is not property the subject of an interim order or an interlocutory order, being action which he or she would be entitled to take if it were such property, and
- (b) believing, and having reasonable grounds for believing, that he or she is entitled to take that action in relation to that property, he or she shall not be liable to any person in respect of any loss or damage resulting from such action except in so far as the loss or damage is caused by his or her negligence.

Provisions in relation to evidence and proceedings under Act

8.—(1) Where a member or an authorised officer states—

- (a) in proceedings under section 2 , on affidavit or, if the Court so directs, in oral evidence, or
- (b) in proceedings under section 3 , in oral evidence, that he or she believes either or both of the following, that is to say:
 - (i) that the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, proceeds of crime,
 - (ii) that the respondent is in possession of or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, and that the value of the property or, as the case may be, the total value of the property referred to in both paragraphs (i) and (ii) is not less than £10,000, then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matter referred to in paragraph (i) or in paragraph (ii) or in both, as may be appropriate, and of the value of the property.

(2) The standard of proof required to determine any question arising under this Act shall be that applicable to civil proceedings.

- (3) Proceedings under this Act in relation to an interim order shall be heard otherwise than in public and any other proceedings under this Act may, if the respondent or any other party to the proceedings (other than the applicant) so requests and the Court considers it proper, be heard otherwise than in public.
- (4) The Court may, if it considers it appropriate to do so, prohibit the publication of such information as it may determine in relation to proceedings under this Act, including information in relation to applications for, the making or refusal of and the contents of orders under this Act and the persons to whom they relate.
- (5) Production to the Court in proceedings under this Act of a document purporting to authorise a person, who is described therein as an officer of the Revenue Commissioners, to perform the functions conferred on authorised officers by this Act and to be signed by a Revenue Commissioner shall be evidence that the person is an authorised officer.

Affidavit specifying property and income of respondent

9.—At any time during proceedings under section 2 or 3 or while an interim order or an interlocutory order is in force, the Court or, as appropriate, in the case of an appeal in such proceedings, the Supreme Court may by order direct the respondent to file an affidavit in the Central Office of the High Court specifying—

- (a) the property of which the respondent is in possession or control, or
- (b) the income, and the sources of the income, of the respondent during such period (not exceeding 10 years) ending on the date of the application for the order as the court concerned may specify, or both.

Registration of interim orders and interlocutory orders

10.—(1) Where an interim order or an interlocutory order is made, the registrar of the Court shall, in the case of registered land, furnish the Registrar of Titles with notice of the order and the Registrar of Titles shall thereupon cause an entry to be made in the appropriate register under the Registration of Title Act, 1964, inhibiting, until such time as the order lapses, is discharged or is varied so as to exclude the registered land or any charge thereon from the application of the order, any dealing with any registered land or charge which appears to be affected by the order.

- (2) Where notice of an order has been given under subsection (1) and the order is varied in relation to registered land, the registrar of the Court shall furnish the Registrar of Titles with notice to that effect and the Registrar of Titles shall thereupon cause the entry made under subsection (1) of this section to be varied to that effect.
- (3) Where notice of an order has been given under subsection (1) and the order is discharged or lapses, the registrar of the High Court shall furnish the Registrar of Titles with notice to that effect and the Registrar of Titles shall cancel the entry made under subsection (1).
- (4) Where an interim order or an interlocutory order is made, the registrar of the Court shall, in the case of unregistered land, furnish the Registrar of Deeds with notice of the order

and the Registrar of Deeds shall thereupon cause the notice to be registered in the Registry of Deeds pursuant to the Registration of Deeds Act, 1707.

- (5) Where notice of an order has been given under subsection (4) and the order is varied, the registrar of the Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall thereupon cause the notice registered under subsection (4) to be varied to that effect.
- (6) Where notice of an order has been given under subsection (4) and the order is discharged or lapses, the registrar of the Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall thereupon cancel the registration made under subsection (4).
- (7) Where an interim order or an interlocutory order is made which applies to an interest in a company or to the property of a company, the registrar of the Court shall furnish the Registrar of Companies with notice of the order and the Registrar of Companies shall thereupon cause the notice to be entered in the Register of Companies maintained under the Companies Acts, 1963 to 1990.
- (8) Where notice of an order has been given under subsection (7) and the order is varied, the registrar of the Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall thereupon cause the notice entered under subsection (7) to be varied to that effect.
- (9) Where notice of an order has been given under subsection (7) and the order is discharged or lapses, the registrar of the Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall thereupon cancel the entry made under subsection (7).

Bankruptcy of respondent, etc.

- 11.—(1) Where a person who is in possession or control of property is adjudicated bankrupt, property subject to an interim order, an interlocutory order, or a disposal order, made before the order adjudicating the person bankrupt, is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act, 1988 .
- (2) Where a person has been adjudicated bankrupt, the powers conferred on the Court by section 2 or 3 shall not be exercised in relation to property of the bankrupt for the purposes of the said Act of 1988.
- (3) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before the 1st day of January, 1989, this section shall have effect with the modification that, for the references in subsections (1) and (2) to the property of the bankrupt for the purposes of the Act aforesaid, there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy existing before that date.

Property subject to interim order, interlocutory order or disposal order dealt with by Official Assignee

12.—(1) Without prejudice to the generality of any provision of any other enactment, where—

- (a) the Official Assignee or a trustee appointed under the provisions of Part V of the Bankruptcy Act, 1988, seizes or disposes of any property in relation to which his or her functions are not exercisable because it is subject to an interim order, an interlocutory order or a disposal order, and
 - (b) at the time of the seizure or disposal he or she believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property, he or she shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his or her negligence in so acting, and he or she shall have a lien on the property, or the proceeds of its sale, for such of his or her expenses as were incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his or her remuneration as may reasonably be assigned for his or her acting in connection with those proceedings.
- (2) Where the Official Assignee or a trustee appointed as aforesaid incurs expenses in respect of such property as is mentioned in subsection (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to an order under this Act, he or she shall be entitled (whether or not he or she has seized or disposed of that property so as to have a lien) to payment of those expenses.

Winding up of company in possession or control of property the subject of interim order, interlocutory order or disposal order.

13.—(1) Where property the subject of an interim order, an interlocutory order or a disposal order made before the relevant time is in the possession or control of a company and an order for the winding up of the company has been made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to the property.

- (2) Where, in the case of a company, an order for its winding up has been made or such a resolution has been passed, the powers conferred by section 2 or 3 on the Court shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit him or her from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) In this section—

“company” means any company which may be wound up under the Companies Acts, 1963 to 1990;

“relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up,
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution, and
- (c) in any other case where such an order has been made, the time of the making of the order.

Immunity from proceedings

14.—No action or proceedings of any kind shall lie against a bank, building society or other financial institution or any other person in any court in respect of any act or omission done or made in compliance with an order under this Act.

Seizure of certain property

15.—(1) Where an order under this Act is in force, a member of the Garda Síochána or an officer of customs and excise may, for the purpose of preventing any property the subject of the order being removed from the State, seize the property.

(2) Property seized under this section shall be dealt with in accordance with the directions of the Court.

Compensation

16.—(1) Where—

- (a) an interim order is discharged or lapses and an interlocutory order in relation to the matter is not made or, if made, is discharged (otherwise than pursuant to section 3 (7)),
- (b) an interlocutory order is discharged (otherwise than pursuant to section 3 (7)) or lapses and a disposal order in relation to the matter is not made or, if made, is discharged,
- (c) an interim order or an interlocutory order is varied (otherwise than pursuant to section 3 (7)) or a disposal order is varied on appeal, the Court may, on application to it in that behalf by a person who shows to the satisfaction of the Court that—
 - (i) he or she is the owner of any property to which—
 - (I) an order referred to in paragraph (a) or (b) related, or
 - (II) an order referred to in paragraph (c) had related but, by reason of its being varied by a court, has ceased to relate, and

- (ii) the property does not constitute, directly or indirectly, proceeds of crime or was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, award to the person such (if any) compensation payable by the Minister as it considers just in the circumstances in respect of any loss incurred by the person by reason of the order concerned.

1. The Minister shall be given notice of, and be entitled to be heard in, any proceedings under this section.

Expenses

- 17.—The expenses incurred by the Minister and (to such extent as may be sanctioned by the Minister) by the Garda Síochána and the Revenue Commissioners in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

Short title

- 18.—This Act may be cited as the Proceeds of Crime Act, 1996.

Greece



PENAL CODE

Article 76

1. Items which are products of felony or misdemeanour that stems from malice, as well as their price and what was gained from this, as well as items used or intended for the execution of such an act may be confiscated if they belong to the perpetrator or to any of the participants. For other criminal offences, this measure may be taken only in cases where the law specifically provisions.
2. If a danger to public order results from the aforementioned items, their confiscation is obligatorily imposed on whoever possesses them, even without sentencing a certain person for an act which was committed. The confiscation is executed also against the heirs, if the decision was irrevocably issued while the one to whom the forfeiture was addressed lives. If no prior conviction of a certain person was announced or prosecution could not take place, the confiscation is ordered either by the Court which judged the case or the Court of Misdemeanours, on proposal by the Public Prosecutor.
3. In each case of confiscation, the court decides if the confiscated goods are to be destroyed.

CODE OF CRIMINAL PROCEDURE

Seizure at banks and other institutions

Article 260

1. Those referred to in Article 251 may personally seize securities, at banks and other public or private institutions in amounts which are deposited in a current account and any other document or item deposited, and when these are contained in security lockers, even if they do not belong the accused or not written in his name, as long as they are related to the crime.
2. These persons have the right to examine the correspondence and all acts of the bank or institution in order to find the items which must be seized or to confirm other circumstances useful for ascertaining the truth. In the case of refusal they proceed to search and seizure of useful documents and items.

Law 3691/2008 (art. 46 and 51)

Article 46 Confiscation of assets

1. The assets which constitute the product of the basic offence or the offences referred to in Article 2 or which were obtained directly or indirectly from the product of such offences or the means which were used or intended to be used to commit such offences, are seized and, insofar as there is no case of their return their owner pursuant to paragraph 2 of Article 310 and the last paragraph of Article 373 Criminal Procedure Code, as necessarily

confiscated with the conviction. Their confiscation imposed even if the assets or means belong to a third party insofar as he was acting with knowledge of the basic offence or the offences of article 2 at the time of their possession. The provisions of this paragraph also apply in case of attempting the aforementioned offences.

2. In the case that the asset or the product referred to in paragraph 1 no longer exists, has not been found or cannot be seized, are seized and confiscated under the terms of paragraph 1 assets of equal value to that of aforementioned asset or the product at the time of the conviction, as determined by the Court. The Court may also impose a fine up to the value of the asset or the product, if it judges that there are no additional assets to be confiscated or those existing are below the value of the asset or the product.
3. Confiscation is also ordered when no prosecution was exercised because of death of the offender or the prosecution which was brought against him was definitively terminated or declared inadmissible. In these cases the confiscation is ordered by decree of the Judicial Council or a decision of the Court which terminates or declares the criminal prosecution inadmissible and if no prosecution was exercised by the locally competent Council of Misdemeanours. The provisions of Article 492 and paragraph 3 of Article 504 Criminal Procedure Code also apply correspondingly to this specific case.
4. The provisions of paragraph 2 of Article 310 and the last paragraph of Article 373 Criminal Procedure Code also apply correspondingly in the case that confiscation was ordered of assets of a third party who did not participate in the trial nor was summoned to it.

Article 51 Liability of legal entities

1. If any of the criminal offences of money laundering was committed for the benefit of a legal entity by a natural person, acting either individually or as a member of an organ of the legal entity and holds a managerial position therein on basis of authority to represent it or authorisation to make decisions on its account or to exercise control therein, the following sanctions are imposed on a legal entity, cumulatively or alternatively:
 - a) If it concerns a liable entity or company trading in a regulated market by decision of the competent authority, according to article 6, are imposed:
 - i) an administrative fine of fifty thousand (50,000) to five million (5,000,000) Euros
 - ii) a permanent or temporary for a period between one month to two years revocation or suspension of license or disqualification from carrying out the business activity,
 - iii) a prohibition of carrying out certain business activities or establishing branches or increase of the share capital for the same period,
 - iv) definitive or temporary for the same period, exclusion from entitlement to public benefits, aid, subsidies, allocation of projects and services, supplies, advertising and public tenders or legal entities of the public sector.

The administrative fine of point i) is always imposed, regardless of other penalties.

The SEC [Securities and Exchange Commission] is the competent authority for the imposition of the aforementioned sanctions on companies trading in a regulated

market which are not supervised by other competent authorities referred to in Article 6.

- b) If this concerns another non-liable legal entity, by joint decision of the Minister of Justice, Transparency and Human Rights and the relevant competent Minister, are imposed:
- i) an administrative fine of twenty thousand (20,000) to two million (2,000,000) Euros
 - ii) the sanctions provisioned in points ii), iii) and iv) of paragraph a)

The competent Minister per case is the Minister in charge of the Ministry which has the following competences, in order of priority:

- supervises the proper and legal operation of the legal entity and can impose sanctions
- provides operational licences
- keeps registers in which Articles of Association are registered,
- keeps the professional register in which the legal entity is registered,
- finances, subsidises or provisions financial support.

The aforementioned competencies may be exercised by agencies or other organisations which fall under or are controlled by the relevant Ministry.

2. When the lack of supervision or control by a natural person referred to in paragraph 1 of this document has facilitated the commissioning of the act of money laundering from criminal activities for the benefit of a legal entity by a hierarchically lower member, the following sanctions are imposed on the legal person, cumulatively or alternatively,:

- a) In the case referred to in subparagraph a) of paragraph 1:
- an administrative fine of ten thousand (10,000) to one million (1,000,000) Euros
 - that which is provisioned in subparagraphs ii), iii) and iv), for up to six months.
- b) In the case referred to in subparagraph b) of paragraph 1:
- an administrative fine of five thousand (5,000) to five hundred thousand (500,000) Euros,
 - that which is provisioned in subparagraphs ii), iii) and iv), for up to six months.

3. For cumulative or alternative imposition of the sanctions provisioned in the previous paragraphs and for the measurement of these sanctions, in particular, the seriousness of the offence, the degree of culpability, the financial standing of the legal entity, the amount of illegal income or any possible resulting benefit and possible recurrence by the legal person are taken into account.

No sanction may be imposed without prior summons of the legal representatives of the legal entity to provide explanations. The summons is notified to the party concerned at least ten (10) full days before the day of the hearing. In other respects, the provisions of paragraphs 1 and 2 of Article 6 of Law 2690/1999 (Administrative Procedure Code) (O.G. 45 A) apply.

4. The application of the provisions of the previous paragraphs is independent of the civil, criminal or disciplinary liability of the legal persons stated therein.
5. Prosecutors and police authorities, the College of Combating Economic Crime [CCEC] and the Commission shall inform the Competent Authorities and the Minister of Justice, Transparency and Human Rights for cases in which there is involvement of a legal entity as referred to in paragraphs 1 to 3, in the commission of acts of money laundering as well as for the relevant judicial decisions.
6. The liability of legal entities for felonies of paragraph 6 of Article 187A of the Penal Code specified in Article 41 of Law 3251/2004.

PD 85/2005 (art. 9 par. 1, 2d, 3d)

Article 9 Directorate of Special Affairs

1. The Directorate of Special Affairs plans and coordinates audits, carried out by the Regional Directorates of SCS [Special Control Service] for the prevention and prosecution of economic crime, which falls under the competence of the SCS in matters of a peculiar nature or of economic interest for the Greek State, the national economy and the European Union (EU).
2. The Directorate of Special Affairs is structured into the following Departments:
 - d) Department D - Recovery of assets and funds derived from criminal activities.
3. The Directorate of Special Affairs has the following competences, split among its Departments, as follows:
 - d) Department D - Recovery of assets and funds derived from criminal activities.
4. The competences of the Department are that of case a) of paragraph 3 of Article 9 of the PD 85/2005 (Department A - Community and National Grants and Subsidies) concerning money laundering matters from criminal activities, of private funds of illegal origin, illegal brokerage and banking acts and illicit financial agreements, transactions and activities in general, competences exercised until today by Department B of the Special Economic Affairs Division.
5. It cooperates with corresponding services of the of the European Union's member states, for the detection and tracking in our country, of products and other assets originating from cross-border criminal activities and maybe the subject of judicial assistance for freezing or seizure or confiscation in criminal cases and the implementation of Decision 2007/845/JHA [Justice and Home Affairs Council] of the Council of the European Union of 6 December 2007, and its decisions:
 - a) 2001/500/JHA on money laundering, the tracking, identification, freezing, seizure and confiscation of assets,
 - b) 2003/577/JHA on the execution of freezing orders,
 - c) 2005/212/JHA on confiscation of assets,
 - d) 2006 / 783/JHA on mutual recognition of confiscation orders and

- e) 2006/960/JHA on simplifying the exchange of information between law enforcement authorities of the European Union's member states.

It cooperates at national level with all relevant authorities of a country for immediate response and assistance to requests of the relevant Services of the European Union member states, in accordance with applicable national and EU legislation and the non-EU member states covered by mutual administrative assistance agreements signed by our country.

It is determined as the National Bureau for the recovery of funds and assets from criminal activities and as the contact point with the corresponding Services for capital and assets recovery of the European Union's member states and aims on the one hand to facilitate mutual administrative cooperation and assistance with the rapid exchange of information and data through the network CARIN (CAMDEN ASSETS RECOVERY INTERAGENCY NETWORK) and on the other hand to reinforce mutual understanding of the methods and techniques in the field of trans-border detection, freezing, seizure and confiscation of the products and other assets originating from criminal activities, for more effective combating of trans-border organised crime.

It conducts internal investigations and, where necessary, forward the requests on to the Regional Directorates of CCEC [College for Combating Economic Crime], to carry out relevant investigations and audits.

Law enforcement and judicial authorities must inform in a timely manner Department D for all freezing, seizure and confiscation of assets and capital on the one for record-keeping in this area and on the other hand, in order to fulfil the requirements of EUROPOL and of the European Union's member states as national point of contact for our country.

The recovery of the capitals and all types of assets and proceeds from criminal activities takes place under judicial assistance with the procedure provisioned by the Ministry of Justice, Transparency and Human Rights, which is not substituted with these provisions.

In exercising its competences it is supported by the scientific and administrative staff of the College for Combating Economic Crime and staff seconded from the Ministry of Justice, Transparency and Human Rights by joint decision of the Ministers of Finance and Justice, Transparency and Human Rights, notwithstanding the existing provisions.

Art. 17 par. 1 of the Greek Constitution

The property is under the protection of the State, however the rights deriving there from, may not be exercised contrary to the public interest.

Spain



CRIMINAL CODE

Article 127 On ancillary consequences

1. All penalties imposed for a malicious felony or misdemeanour shall lead to loss of the assets obtained therefrom and of the goods, means or instruments with which they were prepared or executed, as well as the gains obtained from the felony or misdemeanour, whatever the transformations these may have undergone. All shall be seized, unless they belong to a third party in good faith who is not responsible for the felony, who has acquired them legally.

The Judge or Court of Law shall extend the seizure of assets, goods, instruments and gains for criminal activities committed within the setting of a criminal or terrorist organisation or group, or for an offence of terrorism. For these purposes, the property of each and every one of the persons found guilty of felonies committed within the criminal or terrorist organisation or group or for an offence of terrorism that is disproportionate in relation to the revenue lawfully obtained by each one of those persons shall be deemed to have been obtained by the criminal activity.

2. In cases in which the Law foresees imposing a sentence of imprisonment exceeding one year for committing an imprudent felony, the Judge or Court of Law may order the loss of the assets obtained thereby and of the assets, means or instruments with which this has been prepared or executed, as well as the gains from the offence, whatever transformations they may have undergone.
3. If, for any circumstance, it were not possible to seize the assets stated in the preceding Sections of this Article, seizure of other assets for an equivalent value pertaining to those criminally accountable for the act shall be seized.
4. The Judge or Court of Law may order the seizure foreseen in the preceding Sections of this Article even when no punishment is imposed on any person due exemption from criminal accountability or due to the statute of limitations, in the latter case, as long as the unlawful status of the assets is proven.
5. The assets seized shall be sold, if of lawful trade, applying the sums obtained to covering the civil liabilities of the convict if the Law does not foresee otherwise and, if not of lawful trade, they shall be applied to the use provided by the laws and, failing that, shall be destroyed.

Articles 19 and 20 - Causes of exclusion from criminal accountability

Article 19

Those under the age of eighteen years shall not be criminally accountable pursuant to this Code. When a minor under that age commits an offence, he shall be held accountable pursuant to the terms set forth in the law regulating the criminal accountability of minors.

Article 20

The following persons shall not be criminally accountable:

1. Those who, at the time of committing a crime, due to any mental anomaly or alteration, cannot comprehend the unlawful nature of the act, or to act in line with that comprehension.

A transitory mental disorder shall not cause exoneration from the punishment when provoked by the subject in order to commit the offence, or when he would or should have foreseen that it would be committed.

2. Whoever, at the time of committing a felony or misdemeanour, is in a state of absolute intoxication due to consumption of alcoholic beverages, toxic and narcotic drugs, psychotropic substances or others that cause similar effects, as long as such state have not been sought for the purpose of committing it, or when he would or should have foreseen that it would be committed, or when under the influence of a withdrawal syndrome, due to his dependence on such substances, that prevents him from comprehending the unlawfulness of the act, or acting in keeping with such comprehension.
3. Whoever, due to suffering alterations in perception from the time of birth, or from childhood, has a seriously altered his awareness of reality.
4. Whoever is acting in defence of his person or his own rights or those of others, as long as the following requisites are fulfilled:

One. Unlawful aggression. In the case of defence of goods, unlawful aggression shall be deemed as an attack on these that constitutes a felony or misdemeanour and that places them in serious danger of deterioration or imminent loss. In the case of defence of the dwelling or its premises, trespassing the former or latter shall be deemed unlawful aggression.

Two. Rational need for the means employed to prevent or repel it.

Three. Lack of sufficient provocation on the part of the defending person.

5. Whoever, in a state of necessity, in order to avoid damage to himself or others, causes damage to another's legally protected interest or fails to perpetrate a duty, as long as the following requisites concur:

One. The damage caused is not greater than the damage sought to be prevented;

Two. That the situation of necessity has not been intentionally provoked by the subject;

Three. That the person in need is not bound, due to his office or occupation, the obligation to sacrifice himself.

6. Whoever acts driven by insurmountable fear.
7. Any person who acts in carrying out of a duty or in the lawful exercise of a right, authority or office.

In the cases of the first three Sections, the security measures foreseen in this Code shall be applied.

Article 130 Causes that extinguish criminal accountability

1. Criminal accountability is extinguished:
 1. On death of the convict.
 2. When the sentence is fully served.
 3. By definitive remission of the sentence, as set forth in Article 85.2 of this Code.
 4. By the granting of the royal pardon.
 5. When forgiven by the victim, when the Law foresees this. Such forgiveness must be granted specifically before the sentence is handed down, to which end the Judge or Court of Law sentencing must hear the victim of the offence before handing it down.

In felonies or misdemeanours against minors or the incapacitated, Judges or Courts of Law, having heard the Public Prosecutor, may reject the effectiveness of the forgiveness granted by their representatives, ordering proceedings to continue, with intervention by the Public Prosecutor, or the serving of the sentence.

In order to reject the forgiveness to which the preceding Section refers, the Judge or Court of Law must hear the representative of the minor or incapacitated person again.

6. By prescription of the offence.
 7. By prescription of the sentence or the security measure.
2. Transformation, merger, absorption or split of a legal person does not extinguish its criminal accountability, which shall be transferred to the firm or firms into which it is transformed, is merged or absorbed, and it shall extend to the firm or firms arising from the split. The Judge or Court of Law may order the punishment to be transferred to the legal person in view of the proportion that the legal person originally accountable for the offence has therein.

Criminal accountability is not extinguished by concealed or merely apparent dissolution of the legal person. It shall be deemed, in all cases, that there is concealed or merely apparent dissolution of the legal person when its economic activity continues and it maintains a substantial identity of clients, providers and employees, or the most important part thereof.

France



PENAL CODE

Article 131-21

The additional penalty of confiscation shall be applied in the instances laid down by law or regulations. It shall also be applied by operation of law for serious crimes and offences punishable by a penalty of imprisonment for a period greater than one year, with the exception of press offences.

Confiscation shall apply to all moveable and immovable property, of any nature whatsoever, either individually or jointly owned, used in the commission of the offence or intended for use in its commission, of which the perpetrator is the owner or, subject to the rights on ownership in good faith, of which the perpetrator has free disposal.

It shall also apply to all property that is the object or product, either direct or indirect, of the offence, with the exception of property eligible for restitution to the victim. In the event that the product of the offence is pooled with lawfully-obtained funds for the acquisition of one or more items of property, confiscation may apply to these items of property only to the extent of the estimated value of said product.

Furthermore, confiscation may also apply to all moveable or immovable property defined by the law or regulations punishing the offence.

In the event of a serious crime or offence punishable by at least five years of imprisonment that has generated a direct or indirect profit, confiscation shall also apply to moveable or immovable property, of any nature whatsoever, either individually or jointly owned, belonging to the convicted person or, subject to the rights on ownership in good faith, of which the convicted person has free disposal, in the event that neither the convicted person nor the owner, when given an opportunity to provide an explanation relating to the property targeted for confiscation, is able to justify the origin of said property.

In the event that the law punishing the serious crime or offence so allows, confiscation may also apply to all or part of the property of the convicted person or, subject to the rights on ownership in good faith, of which the convicted person has free disposal, of any nature whatsoever, either moveable or immovable or individually or jointly owned.

Confiscation is mandatory for the items defined as dangerous or noxious by law or regulations, or the possession of which is unlawful, whether or not this property is owned by the convicted person.

The additional penalty of confiscation shall also apply, under the same conditions, to all incorporeal rights, of any nature whatsoever, either individually or jointly owned.

Confiscation in value may be imposed. For the recovery of the sum representing the value of the item confiscated, the provisions governing judicial enforcement of public debts shall apply.

The item confiscated shall devolve to the State, except in the event of a specific provision prescribing its destruction or its attribution, but it shall remain encumbered, up to its full value, with any proprietary right lawfully created in favour of third parties.

In the event that the confiscated item is a vehicle that has not been seized or impounded during the investigation, the convicted person must, on the orders of the public prosecutor, hand over said vehicle to the department or organisation responsible for its destruction or disposal.

Italy



THE RELEVANT PROVISIONS ON PREVENTIVE CONFISCATION

Article 2-bis of law no. 575/1965 states:

1. The prosecutor or the Commissioner of Police competent to request the application of precautionary measures shall carry out, with or without the help of the Financial Police or of the Judicial Police, investigations into the lifestyle, financial means and property of the persons referred to in article 1 who may be the subjects of the precautionary measure of special surveillance for public security with or without obligatory residence, as well as, with the help of the Financial or Judicial Police, into the economic activities pertaining to the said persons in order also to ascertain their sources of income.
2. More specifically, it should be ascertained whether the said persons are holders of licenses, authorizations, concessions or permits to carry out business or commercial activities, including enrolment on professional and public registers, whether they benefit from contributions, fundings or soft loans and any other endowments of the same kind, whatever their titles, granted or awarded by the State, public authorities or the European Community.
3. The said investigations shall also concern spouses, children and persons who have cohabited with the persons referred to in paragraph 1 during the past five years, as well as any natural or legal persons, companies, societies or associations whose property the said persons appear to have at their disposal either partially or totally, directly or indirectly.
4. When there exists an actual danger that the goods deemed liable for confiscation pursuant to article 2-ter may be lost, withheld or alienated, the Prosecutor or the Commissioner of Police may request the court with jurisdiction on the application of the precautionary measures to provide for the seizure of the said goods before the date of the sitting has been decided.
5. The court shall comply by issuing a decree within five days of the said request. The seizure, if provided for, shall not take place if it is not confirmed by the court within 30 days of the request. The provisions referred to in paragraph 4 of article 2-ter shall apply. If the goods subject to seizure are registered as third party property, the procedure referred to in paragraph 5 of article 2-ter shall apply.
6. The prosecutor and the Commissioner of Police for the Province may request any office of the Public Administration, any bank as well as any business, company and authority, either directly or through the Judicial Police, for information on and copies of documents deemed pertinent to investigations concerning the persons referred to in the above paragraphs. Following authorization by the prosecutor or by the court, the officers of the Judicial Police may seize the said documents as provided for in articles 253, 254 and 255 of the Code of Criminal Procedure.

Article 2-ter, paragraphs 2 to 9, of law no. 575/1965 states:

2. [...] the court may, even *ex officio*, provide for the seizure, by order with statement of reasons, of the goods that the person who is the subject of the said proceeding appears to have at his/her own disposal, directly or indirectly, when their value appears to be out of all proportion to his/her income or economic activity, or when it can be reasonably argued, on the basis of the available evidence, that the said goods are the proceeds of unlawful activities or the use thereof.
3. With the application of the precautionary measures the court provides for the confiscation of the goods subject to seizure whose lawful origin has not been proved. In cases of complex investigations, the above provision may be issued within one year from the day on which the seizure was made; the latter term may be postponed by one year by a reasoned decree of the court. In order to calculate the above terms, as well as the term provided for in paragraph 5 of article 2-bis, the reasons for interruption of the time of custody, as provided for in the Code of Criminal Procedure, should be taken into account when applicable.
4. The seizure shall be revoked by the court when a request for application of precautionary measures has been rejected, or when it appears that the seizure concerns goods of lawful origin or that the suspect could not have such goods at his/her own disposal either directly or indirectly.
5. If it is found that the goods subject to seizure are owned by third parties, the latter are summoned by the court to take part in the proceeding, by an order with statement of reasons, and, with or without the assistance of legal counsel, they may submit their counterclaims in the judges' council chamber, within the terms set by the court, and request the admission of any item of evidence that may be useful to determine the final decision on confiscation.
6. At the instance of the prosecutor or of the Commissioner of Police for the Province, the provisions referred to in this article may be also issued, if the circumstances so require, after application of the precautionary measures but before the latter cease to take effect. The said instance shall be dealt with by the same court that has ordered the precautionary measures, in accordance with the formalities required by the proceeding and with the provisions referred to in the previous paragraph.
7. If the person who may be subject to the precautionary measures is absent, resident or staying in a foreign country, the proceeding for the application of the latter may be continued or instituted at the instance of the prosecutor or of the Commissioner of Police with jurisdiction over the place where the said person was last resident, for the sole purpose of applying the provisions referred to in this article as to the goods that can be reasonably deemed to be the proceeds of unlawful activities or the use thereof.
8. The proceeding may also be instituted or continued for the above purposes if the said person has been sentenced to a term of imprisonment or is the subject of a probation order.

9. Seizure and confiscation may in any event be provided for in respect of goods subject to seizure in the course of a criminal proceeding, but the effects thereof shall be suspended for the entire duration of the said proceeding and shall become extinct if confiscation of the said goods is provided for in the course of the criminal proceeding.

Cyprus



Under sections 32 and 33 of the **Prevention and Suppression of Money Laundering Activities Laws of 2007 and 2010**, there is the possibility for the Court to issue freezing and confiscation orders in cases of a suspect who is outside the jurisdiction of the Republic or has died.

Section 32

- (1) Subject to the provisions of subsection (2) and upon the application of the Attorney General, a Court may make an order for the freezing of property of a suspect who is outside the jurisdiction of the Republic or has died.
- (2) The court shall make a freezing order under subsection (1), if satisfied by affidavit or other evidence that-
 - (a) there is prima facie evidence against the suspect for the commission of a prescribed offence; and
 - (b) the property of the suspect may be converted or transferred or removed outside the jurisdiction of the Republic for the purpose of concealing or disguising its illicit origin.
- (3) The freezing order shall have effect for six months but the court may extend its validity for up to a period of one year if reasonable grounds concur.

Section 33

- (1) Subject to the provisions of subsection (2) and upon the application of the Attorney-General, a court may make an order for confiscation of property against a suspect who is outside the jurisdiction of the Republic or has died.
- (2) The court shall make the confiscation order under subsection (1) if the suspect does not appear before the court during the validity of the freezing order made under section 32 (Freezing order of property against an absent suspect) and if it is satisfied that;
 - (a) The prosecution has taken reasonable steps to contact him; and
 - (b) any person who is likely to be affected by the making of a confiscation order has been given the opportunity to make representations, if he so wishes, before the court in respect of the making of the order.
- (3) Where the court has made a confiscation order under this section and the suspect is subsequently brought before the court in respect of a prescribed offence for which a confiscation order has been made, Part II of this Law shall not apply in respect of the said offence, but the provisions of Part III shall apply *mutatis mutandis*."

Latvia

**CRIMINAL PROCEDURE LAW****Chapter 27 Actions with Criminally Acquired Property****Section 355. Criminally Acquired Property**

- (1) Property shall be recognised as criminally acquired, if such property directly or indirectly has come into the property or possession of a person as a result of a criminal offence.
- (2) If the opposite has not been proven, property, including financial resources, shall be recognised as criminally acquired if such property or resources belong to a person who: 1) is a member of an organised criminal group, or supports such group; 2) has him or herself engaged in terrorist activities, or maintains permanent relations with a person who is involved in terrorist activities; 3) has him or herself engaged in the trafficking of human beings, or maintains permanent relations with a person who is engaged in the trafficking of human beings; 4) has him or herself engaged in criminal activities with narcotic or psychotropic substances, or maintains permanent relations with a person who is engaged in such activities; 5) has him or herself engaged in criminal activities with counterfeit currency, State financial instruments or maintains constant relations with a person who is involved in such activities; 6) has him or herself engaged in criminal activities in order to cross the State boundary or to promote relocation of another person across the State boundary, or to ensure a possibility to other persons to reside illegally in the Republic of Latvia, or maintains constant relations with a person who is involved in such activities; 7) has him or herself engaged in criminal activities in relation to child pornography or sexual abuse of children, or maintains constant relations with a person who is involved in such activities.
- (3) Within the meaning of this Section, the maintenance of permanent relations with another person who is engaged in specific criminal activities means that the person lives together with a second person or controls, determines, or influences the behaviour thereof.

[29 June 2008; 12 March 2009]

Section 356. Recognition of Property as Criminally Acquired

- (1) Property may be recognised as criminally acquired by a court adjudication that has entered into effect, or by a decision of a public prosecutor regarding the termination of criminal proceedings.
- (2) During pre-trial criminal proceedings, property may also be recognised as criminally acquired by: 1) a decision of a district (city) court in accordance with the procedures specified in Chapter 59 of this Law, if a person directing the proceedings has sufficient evidence that does not cause any doubt regarding the criminal origins of the property or the connection of the property with a criminal offence; 2) a decision of a person directing

the proceedings, if, during a pre-trial criminal proceedings, property was found with and seized from a suspect, accused, or third person in relation to which property the owner or lawful possessor thereof had previously submitted a loss of property, and, after the finding thereof, has proven his or her rights to such property, eliminating any reasonable doubt.

[12 March 2009; 21 October 2010]

Section 357. Returning of Criminally Acquired Property

- (1) Property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof by a decision of a person directing the proceedings, after the storage of such property is not longer necessary for the achievement of the purpose of criminal proceedings.
- (2) Property, the circulation of which is prohibited by law and which, as a result of such prohibition, is located in the possession of a person illegally, shall not be returned to such possessor, but rather transferred to the relevant State authority, with a decision of a person directing the proceedings, or to a legal person that is entitled to obtain and use such property.
- (3) Property, also financial resources the origin of which is the State resources used for disclosure of a criminal offence, shall be returned to the legal possessor or recovered for the benefit of him or her. If such property is alienated, destroyed or concealed and it is not possible to return it, other property, also financial resources, may be subjected for such recovering in the value of the property to be returned.

[12 March 2009]

Section 358. Confiscation of Criminally Acquired Property

- (1) Criminally acquired property shall be confiscated with a court decision, if the further storage of such property is not necessary for the achievement of the purpose of criminal proceedings and if such property does not need to be returned to the owner of lawful possessor, and acquired financial resources shall be included in the State budget.
- (2) If criminally acquired property has been alienated, destroyed, concealed or disguised, and the confiscation of such property is not possible, other property, and financial resources, at the value of the property being confiscated may be subjected to confiscation or recovery.
- (3) If an accused does not have property that may be subjected to the confiscation referred to in Paragraph two of this Section, the following may be confiscated: 1) property that the accused person after the committing of the criminal offence has alienated to a third person without corresponding consideration; 2) the property of the spouse of the accused person, if separate ownership of the property of the spouses was not specified at least one year before the commencement of the criminal offence; 3) the property of another person, if the accused has a common (undivided) household with such person.

- (4) The following shall be included in the State budget: 1) resources that have been acquired in realising confiscated property or property, in accordance with the procedures specified in regulatory enactments, the ownership of which has not been ascertained or the owner of which does not have lawful right to such property, or the owner or lawful possessor of which has refused such property; 2) resources that a person has acquired from the realisation of property, knowing the criminal origins of such property; 3) yield acquired as a result of the use of criminally acquired property; 4) confiscated financial resources; 5) financial benefits, or material benefits of another nature, that a State official has accepted as a bribe.

[17 May 2007; 12 March 2009; 14 January 2010]

Section 359. Use of the Resources from the Realisation of Criminally Acquired Property

If a victim has requested compensation for harm, and the resources referred to in Section 358, Paragraph four of this Law have been acquired in concrete criminal proceedings, such resources shall be used first for the ensuring and payment of the requested compensation.

Section 360. Rights of Third Persons

- (1) If criminally acquired property has been found on a third person, such property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof.
- (2) If criminally acquired property has been returned to the owner or lawful possessor thereof, the third person who acquired such property, or pledge, in good faith has the right to submit a claim, in accordance with civil procedures, regarding compensation for the loss, including against an accused or convicted person.

Chapter 59 Proceedings regarding Criminally Acquired Property

Section 626. Reasons for Initiating Proceedings regarding Criminally Acquired Property

A person directing the proceedings has the right, in the interests of solving the financial matters, which have come about in pre-trial criminal proceedings, in timely manner and in the interests of the economy of proceedings, to separate the materials from a criminal case regarding criminally acquired property and to initiate proceedings, if the following conditions exist:

- 1) the totality of evidence provides a basis for believing that the property that has been seized or upon which an attachment has been imposed is of a criminal origin or related to a criminal offence;
- 2) due to objective reasons, the transferral of the criminal case to court is not possible in the near future (in a reasonable term), or such transferral may cause substantial unjustified expenses.

[14 January 2010; 21 October 2010]

Section 627. Decision to Initiate Proceedings regarding Criminally Acquired Property

- (1) If the conditions referred to in Section 626 of this Law exist, a person directing the proceedings shall take a decision to initiate proceedings regarding criminally acquired property and transfer the criminal case regarding the criminally acquired property to a court.
- (2) A person directing the proceedings shall indicate the following in a decision: 1) the materials that have been separated from the criminal case regarding a criminal offence currently in investigation into the case regarding criminally acquired property; 2) the persons that are related to the concrete property; 3) the actions with the criminally acquired property that he or she proposes.
- (3) A decision and the materials attached to such decision shall be sent to a district (city) court.

Section 628. Informing of Persons related to Property

A person directing the proceedings shall immediately send a copy of the decision referred to in Section 627 of this Law to a suspect or accused and the person by whom property has been seized or an attachment has been imposed on property, if such persons exist in the relevant criminal proceedings, or to another person who has the right to concrete property, simultaneously indicating the right to.

- 1) participate in proceedings regarding criminally acquired property personally or through the intermediation of a defence counsel or representative;
 - 2) express his or her attitude in court, orally or in writing, toward the taken decision;
- submit applications to the court.

Section 629. Court Proceedings regarding Criminally Acquired Property

- (1) Having received a decision on the initiation of proceedings regarding criminally acquired property, a judge shall: 1) determine the time and place of the court session; 2) summon the person directing the proceedings and a public prosecutor, if a decision has been taken by an investigator, as well as the persons referred to in Section 628 of this Law to the court session.
- (2) A court session shall take place within 10 days after receipt of a decision of the person directing the proceedings to a court.
- (3) The person directing the proceedings, a public prosecutor, others summoned and arrived persons, their representatives or defence counsels shall be heard and the submitted evidence examined in a court session.
- (4) During a court session the persons involved in court proceedings have equal rights to submit recusations or requests, to submit evidence, to participate in inspection of evidence, to submit written explanations to the court, as well as to participate in examination of other matters, which have arisen during the court proceedings.

[12 March 2009; 21 October 2010]

Section 630. Court Decision on Criminally Acquired Property

- (1) In adjudicating materials regarding criminally acquired property, a court shall decide: 1) whether the property is related to a criminal offence or is of criminal origin; 2) whether there is information regarding the owner or lawful possessor of the property; 3) whether a person has lawful rights to the property; 4) actions with the criminally acquired property.
- (2) If a court finds that the connection of property with a criminal offence has not been proven or the property is not of criminal origin, such court shall take a decision to terminate proceedings regarding the criminally acquired property.

[12 March 2009; 21 October 2010]

Section 631. Court Decision on an Appeal in respect of Criminally Acquired Property

- (1) A court decision may be appealed within 10 days in a regional court submitting a complaint or protest to a district (city) court.
- (2) A complaint or protest shall be adjudicated by a court in the composition of three judges within a term and in accordance with the procedures specified in Section 629 of this Law, first hearing a submitter of a complaint or protest and examining the submitted evidence.
- (3) In examining a complaint or protest, a court may repeal a decision of a district (city) court and take a decision referred to in Section 630 of this Law. A decision shall not be subject to appeal.

[12 March 2009]

Lithuania



CRIMINAL CODE

Article 72 of the Criminal Code of the Republic of Lithuania provides that confiscation of property is applicable only in respect of the property used as an instrument or a means to commit a crime prohibited by the Code or as the result of a criminal offence. Result of a criminal offence prohibited by the Code is property of any kind which was directly or indirectly received from the criminal act.

The property belonging to a legal person shall be confiscated regardless of whether or not this person has been convicted for a criminal offence, where:

- 1) when transferring the property to the perpetrator or other persons, the persons having management powers in the legal person and having the right to represent the legal person and make decisions or control activities of legal person on behalf of the legal person were aware or ought to have been aware or could have been aware that the property may be used for commission of a criminal offence prohibited by the Code;
- 2) property has been transferred to a legal person on the basis of a sham transaction;
- 3) property has been transferred to a legal person, where the perpetrator and his family members and close relatives are managers, members of management body of that legal person or stakeholders possessing at least fifty percent of legal person's shares (share, contributions etc.);
- 4) when acquiring the property, the persons having management powers in the legal person and having the right to represent the legal person and make decisions or control activities of legal person on behalf of the legal person were aware or ought to have been aware or could have been aware that the property has been used as an instrument or means to commit a criminal act or it is a result of criminal act.

Article 72. Extended Confiscation of Property

1. Extended confiscation of property is taking for the benefit of the State of the property or part of the property belonging to the perpetrator which is not proportional to the legal income of the perpetrator in cases when there are grounds to assume that such property was actually proceeds of crime.
2. Extended confiscation of property shall be applied if all the following conditions are met:
 - 1) perpetrator was found guilty of committing a crime of moderate gravity, grave crime, or particularly grave crime which was committed deliberately and which could have provided him with material benefits;
 - 2) perpetrator has property acquired while the act prohibited by this Code was being committed, after it was committed, or within five years before it was committed if

- the value of such property does not correspond to his legal income and such difference exceeds the amount of 250 MSLs, or transferred such property to other persons within the period of time indicated in this item;
- 3) during the criminal procedure the perpetrator failed to ground legitimacy of acquisition of such property.
3. Confiscable property specified in the part 2 of this article which was transferred to another natural or legal persons shall be confiscated from such person on any of the following grounds:
- 1) property was transferred by having concluded a fake transaction;
 - 2) property was transferred to the family members or close relatives of the perpetrator;
 - 3) property was transferred to a legal entity if the perpetrator, family members or close relative thereof is the head of the entity, member of the management body, or participants owning at least fifty per cent of the shares of the legal entity (shares, contributions, etc.);
 - 4) the person to whom the property was transferred or persons who occupied managerial positions in the legal entity and were entitled to represent the legal entity or make decisions in the name of the legal entity, or control the activity of the legal entity, were aware or were supposed to be or could have been aware of the fact that such property was actually proceeds of crime or acquired using illegal funds of the perpetrator.
4. Extended confiscation of property specified in this article shall not be applied to the property or part thereof belonging to the perpetrator or third persons if exaction may not be performed in respect of such persons further to the international treaties of the Republic of Lithuania, provisions of the Civil procedure Code of the Republic of Lithuania, other acts of law.
5. If the confiscable property or part thereof is concealed, consumed, belongs to third persons, or it is impossible to seize it due to other reasons, or in cases when confiscation of such property would be inexpedient, the court shall exact the pecuniary amount corresponding to the value of the confiscable property or part thereof from the perpetrator or third persons.
6. When ordering extended confiscation of property the court shall indicate the items bound for confiscation or the amount of money corresponding to the value of confiscable property.

In December 2010 the Parliament of the Republic of Lithuania approved amendments to the Criminal Code which provide for criminal liability for unjust enrichment (Article 1891 of the Criminal Code).

Article 189. Unjust Enrichment

1. Any person who owns property the value of which exceeds 500 MSLs while being aware or if he ought or could have been aware that such property could not be obtained from

legitimate income, shall be punished by a fine or arrest, or imprisonment for a term of up to 4 years.

2. Any person who has taken over property defined in Part 1 of this Article from the third parties shall be exempted from criminal liability for unjust enrichment provided that prior to the serving of Notice of Suspicion upon him he reported about that to law enforcement authorities and actively cooperated with them to disclose the origin of such property.
3. A legal person shall also be held liable for the acts specified in this Article.

By Resolution of the Government of the Republic of Lithuania, the current minimum standard of living (MSL) is 130 LTL (1 EUR – 3.4528 LTL)

Luxembourg



SECTION V. - OF SPECIAL CONFISCATION

Art. 31. (L. 1 August 2007) Special confiscation shall apply:

- 1) To property, including property of any nature, tangible or intangible, moveable or immovable, as well as to legal instruments or documents attesting a title or right in relation to a property, property that is the object or product, either direct or indirect, of an offence or which constitutes an asset of any sort gained from the offence, including income generated by this property.
- 2) To property that was used in or intended for the commission of the offence, in the event that it is owned by the convicted party.
- 3) To property that has replaced the property specified in 1) of this Section, including income generated by the replacement property.
- 4) To property owned by the convicted party, the monetary value of which corresponds to that of the property specified in 1) of this Section, in the event that the latter cannot be found for the purpose of confiscation.

In the event that the property is owned by the victim of the offence, it shall be returned to the victim. Confiscated property shall also be allocated to the victim in the event that the judge decides upon its confiscation due to the fact that it constitutes a replacement for the property belonging to the victim of the offence or that it constitutes the value of this property, in the sense of Point 1) of this Article.

Any other third party claiming a right over the confiscated property may assert this right. In the event of claims recognised as legitimate and justified, the court shall rule on restitution.

The court that orders the confiscation shall remain competent with regards to ruling on restitution requests, submitted to the public prosecutor's office or the court itself, by either a victim or a third party, who asserts a right over the confiscated property.

The request must be submitted within a period of two years from the date on which the confiscation decision is executed; rights to restitution shall be foreclosed after this period.

The request shall also be foreclosed in the event that the property has been transferred to the Requesting State in execution of a relevant agreement between the two States or of an arrangement in place between the Government of Luxembourg and the Government of the Requesting State.

In the event that it is not possible to execute the confiscation, the decision that orders the confiscation of the property specified in 2) of Section 1 of this Article shall pronounce, a fine that shall not exceed the value of the confiscated item. This fine shall have the character of a penalty.

1. In the event that the accused have used a car or horses to transport items that they knew to be stolen, judges must order the confiscation of this car or these horses, in the event that they have been seized and are the property of the accused receiver of stolen goods. *Court, 24 July 1909, P. 8, 293.*
2. Whilst it is true that the principles laid down in relation to criminal participation and special confiscation are not applicable in the event of a simple fault by omission, they are applicable, however, in the event of a positive and intentional act of prohibited transportation; this fact perfectly admits the idea of cooperation and does not, in any way, exclude the application of the rules governing the confiscation of items that were the object of the offence.

Article 10 of the Law of 29 July 1912 on health requirements for livestock goes so far as to allow for the application of confiscation, without stipulating on the nature that it seeks to attribute to this confiscation, in particular, it does not stipulate whether this confiscation should serve as a penalty or whether this measure is permitted as a precautionary measure in the interest of public health; therefore, the judge must apply this measure without making any distinction on this issue. *Court of Cassation, 6 October 1916, P. 10, 11.*

3. Items that cannot be considered to be products of the offence of which the criminal court judge is seized shall not be subject to special confiscation. *Court, 21 July 1934, P. 13, 312.*
4. A decriminalised major offence should not be completely treated as a minor offence; in the event that the admission of attenuating circumstances lessens the level of culpability and thereby reduces the penalty, the fact is that the major offence, as defined by law, remains, together with all of its constituent elements.

It follows that the reduction in penalty shall have no special effect on accessory penalties, in particular on special confiscation, as it is the law that determines cases of special confiscation and not the nature given to the offence by the level of penalty applied.

In order to give rise to the confiscation of the object used to commit the offence, it is enough that the object was used to commit the offence and that the accused owned the object, however the law does not require that the object was essential in the perpetration of the offence.

The confiscation of an object used to commit an offence shall not be subject to the existence of a prior seizure, as the text of Article 43 of the Criminal Code does not include any restriction of this type. *Court of Cassation, 15 May 1952, P. 15, 349.*

5. By means of the term “items used for or destined for the commission of the offence”, Article 42 of the Criminal Code refers to items that have been used in the perpetration of the offence and it covers, therefore, both items used during acts in preparation of the offence and those used during acts that, subsequent to the commission of the offence, enabled the perpetrator to obtain the advantage from the offence that he/she sought.

Thus, the confiscation of a lorry used by the accused to travel to the scene of the offence and to transport the stolen items due to their weight or their volume, which he/she would not have been able to transport otherwise, must be ordered.

Furthermore, the confiscation of a car used by a co-accused whilst acting as a lookout must be ordered, as this car was destined for use during the execution of this act forming part of the offence.

In order for an act of theft to have been committed the perpetrator must, with the intention of appropriating the item, take possession of the item by a method that constitutes obtaining real possession, in such a manner that the owner is no longer able to make free use of it.

Theft has therefore been committed when, in order to remove or transport the items, the thief binds them together or places them in a bag or a basket.

In the same manner, the theft of heavy and cumbersome items is committed not by their disassembly, handling or movement, but solely by their loading into a lorry, due to the fact that only this act impinges upon the right of the owner, by removing the aforementioned items from his/her possession to effectively place them in the possession of the accused. As the lorry was used directly in the perpetration of the theft, it is therefore subject to confiscation. *Court, 26 September 1966, P. 20, 239.*

6. In the event of an appeal in cassation introduced by an accused who has been sentenced to a single penalty for several offences, a plea based on the alleged illegality of the sentencing to the main penalty shall be deemed inadmissible due to a lack of legal interest in the event that this penalty is justified by the offences which have been upheld by the judge dealing with the case, but have not been attacked by the plea, with the provisions relevant to the judgment handed down also being legally justifiable. The plea shall also be deemed inadmissible, due to a lack of interest, in the event that it finds fault with the judgment handed down as it orders the confiscation of prohibited weapons, even in the event that this measure was taken only as a result of one of the offences that were accepted by the judge dealing with the case and is attacked by the plea, whereas the confiscation of prohibited weapons constitutes a measure relating to safety and not a penalty and must be ordered even outside of the rules governing confiscation laid down in Article 42 of the Criminal Code, the sole condition being that this confiscation must be attached to legal proceedings.

As the confiscation of prohibited weapons is not considered a penalty, rather a measure relating to safety, it must be ordered by judges dealing with the case, even outside of the rules governing confiscation laid down in Article 42 of the Criminal Code, the sole condition being that such confiscation must be attached to criminal proceedings. It follows that a confiscation of prohibited weapons may be ordered even in the event that the seizure of the weapons was carried out in an illegal manner or during an unauthorised search and that it was impossible to obtain a conviction of the accused, either due to the illegal nature of the search that led to the seizure or for any other reason. *Court of Cassation, 10 November 1966, P. 20, 228.*

7. Pursuant to Article 12, paragraph 1, section 3, of the amended law of 14 February 1955 on travel on all public thoroughfares, special confiscation of a vehicle used to commit an offence must always be ordered in the event that the accused has committed the serious offence of drink driving within one year of the date of a previous conviction for the same offence.

This confiscation must be ordered even in the event that the vehicle is part of the property that is owned jointly by the accused and his/her spouse.

Indeed, in the event that the accused is the owner, even only in part, of the objects or instruments of the offence these may be confiscated, there shall be no requirement to determine whether or not the accused possesses a right of disposal over the items, the legislator need only seek to ascertain whether or not the accused is the owner of the confiscated items, with no requirement that he/she be the sole owner. *Court, 23 July 1981, P. 25, 185.*

8. The condition relating to special confiscation laid down in Article 42(1) of the Criminal Code, namely that the item used to commit the offence must belong to the convicted person, is not fulfilled with regard to a vehicle used to commit an offence in the event that the sale contract concluded by the accused contains a reservation of title clause to the benefit of the seller until such time as payment of the agreed upon price has been completed and that this sale price has not been paid in full. *Court, 1 October 1990, P. 28, 107.*
9. The expression “items used for or destined for the commission of the offence” should be understood in a very broad sense and targets items used for the offence, i.e. those used in the perpetration of the offence, which covers both items used during acts in preparation of the offence and those used during acts that, subsequent to the commission of the offence, enabled the perpetrator to obtain the advantage from the offence that he/she sought. *Court, 19 November 1990, P. 28, 122.*

Art. 32. (L. 13 June 1994) Special confiscation shall always be ordered in the event of serious crime and it may be ordered in the event of a major offence.

It shall only be ordered in the event of minor offences for certain situations as determined by law[‡].

- *See Penal Code Articles 64, 552(2), 553(1), 557(3), 561(4) and 563(1).*

Art. 32-1. (L. 27 October 2010) In the event of money laundering, in the sense of Article 506(1) to 506(8) and in the event of the offences specified in Articles 112(1), 135(1) to 135(6) and 135(9), special confiscation shall apply:

- 1) To property, including property of any nature, tangible or intangible, moveable or immovable, as well as to legal instruments or documents attesting a title or right in relation to a property, property that is the object or product, either direct or indirect, of an offence or which constitutes an asset of any sort gained from the offence, including income generated by this property.
- 2) To property that was used in or intended for the commission of the offence.
- 3) To property that has replaced the property specified in 1) and 2) of this Section, including income generated by the replacement property.

[‡] Translator’s note: under Luxembourg law there is a distinction between three levels of criminal offence with increasing degrees of seriousness “contraventions”, “délits” and “crimes”; for the purposes of this document I have translated these, where necessary for differentiation, as “minor offence”, “major offence” and “serious crime”, respectively.

- 4) To property owned by the convicted party, the monetary value of which corresponds to that of the property specified in 1) and 2) of this Section, in the event that the latter cannot be found for the purpose of confiscation.

The confiscation of the property specified in the first Section of this article shall be ordered, even in the event of acquittal, exemption from punishment, extinction or prescription of the criminal proceedings.

In the event that the property is owned by the victim of the offence, it shall be returned to the victim. Confiscated property shall also be allocated to the victim in the event that the judge decides upon its confiscation due to the fact that it constitutes a replacement for the property belonging to the victim of the offence or that it constitutes the value of this property, in the sense of Point 1) of this Article.

Any other third party claiming a right over the confiscated property may assert this right. In the event of claims recognised as legitimate and justified, the court shall rule on restitution.

The court that orders the confiscation shall remain competent with regards to ruling on restitution requests, submitted to the public prosecutor's office or the court itself, by either a victim or a third party, who asserts a right over the confiscated property.

The request must be submitted within a period of two years from the date on which the confiscation decision is executed, rights to restitution shall be foreclosed after this period.

The request shall also be foreclosed in the event that the property has been transferred to the Requesting State in execution of a relevant agreement between the two States or of an arrangement in place between the Government of Luxembourg and the Government of the Requesting State.

Hungary



CRIMINAL CODE

Section 77

- (1) An object shall be confiscated: a) which is actually used or intended to be used as an instrument for the commission of a criminal act; b) the possession of which constitutes an endangerment to public safety or is illegal; c) which is created by way of a criminal act; d) for which the criminal act was committed, or that was used for the transportation of this object in connection with the criminal act after the fact.
- (2) Media products, in which a criminal act is realized, shall be confiscated.
- (3) In the cases defined under Paragraphs a) and d) of Subsection (1) confiscation shall not be ordered if the object is not owned by the perpetrator, unless the owner was aware of the perpetration of the criminal act, and unless confiscation is prescribed mandatory by international convention.
- (4) Confiscation shall be ordered, even if the perpetrator cannot be prosecuted due to being a minor or to a mental disorder, or if the perpetrator had been reprimanded.
- (5) No confiscation shall be ordered after the lapse of the statute of limitations for the punishment of the act, or beyond a period of five years.
- (6) Confiscation of an object shall not be ordered if it falls within the scope of civil forfeiture.
- (7) Confiscated objects shall devolve upon the State unless otherwise prescribed by law.

Section 77/A

- (1) In the cases under Paragraphs a) and d) of Subsection (1) of Section 77, confiscation may be foregone in exceptional cases, if it entailed an unreasonable burden to the perpetrator or the owner, disproportionate to the gravity of the criminal act, provided the omission of confiscation is not precluded by any international obligation.
- (2) Subsection (1) shall not apply in connection with crimes committed in affiliation with organized crime.

Section 77/B

- (1) The following shall be subject to forfeiture: a) any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act; b) any financial gain or advantage obtained by an offender in connection with crimes committed in affiliation with organized crime; c) any financial gain or advantage that was used to replace the financial gain or advantage obtained by the offender in the course of or in connection with, a criminal act; d) any property that was supplied or intended to be used to finance the means used for the commission of a crime, the

- conditions required therefore or facilitating that; e) any property embodying the subject of financial gain.
- (2) Any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act, also if it served the enrichment of another person, shall be seized subject to civil forfeiture. If such gain or advantage was obtained by an economic operator, it shall be subject to forfeiture.
 - (3) In the event of death of the perpetrator or the person profiteering as specified in Subsection (2), or the economic operator was transformed, the property transferred by succession shall be seized from the successor in title as specified in Subsection (1).
 - (4) In the case referred to in Paragraph b) of Subsection (1), all assets obtained by the perpetrator during his involvement in organized crime shall be subject to forfeiture until proven otherwise.
 - (5) The following property cannot be seized: a) that is reserved to cover any civil claim awarded during the criminal proceeding; b) that was obtained in good faith for consideration; c) in the case referred to in Paragraph b) of Subsection (1), if the property is proven to be legitimate.

Section 77/C

- (1) Forfeiture shall be ordered for a specific sum: a) if the property is no longer accessible; b) if the property to be seized subject to forfeiture under Section 77/B cannot be separated from other assets, or it would impose unreasonable difficulties; c) in the case defined in Paragraph b) of Subsection (5) of Section 77/B.
- (2) Forfeiture shall be ordered, even if the perpetrator cannot be prosecuted due to being a minor or to a mental disorder, or if the perpetrator had been reprimanded.
- (3) Seized assets shall become the property of the State unless prescribed by law to the contrary.
- (4) For the purposes of Sections 77/B and 77/C, any profits, intangible assets, claims of any monetary value and any financial gain or advantage shall be deemed assets.

Criminal Procedure Code

Section 569

Upon the motion of the prosecutor the court shall decide upon confiscation, forfeiture of property or the transfer of any seized items into the ownership of the state if no criminal proceedings have been instituted against anyone or the criminal proceedings have been terminated, or suspended due to the unknown location or mental disease of the defendant.

Section 551

- (1) Criminal proceedings may be instituted against persons holding a public office specified in a separate act, until they hold such an office, only after their immunity has been suspended.

- (2) The persons listed in subsection (1) may only be questioned as suspects after the suspension of their immunity, and before that – with the exception of being caught in the act – no coercive measure stipulated in this Act may be applied against such persons.

Section 552

- (1) If the criminal proceedings reveal any data suggesting that the defendant is a person enjoying immunity, in addition to the suspension of the proceedings, a motion shall be filed for the decision by the person authorised to suspend the immunity. Prior to the filing of the indictment, this motion shall be submitted by the Prosecutor General, and thereafter, or in cases based on private accusation, by the court. In the event of catching the offender in the act, the motion shall be submitted immediately.
- (2) If the person authorised to suspend the immunity has rejected the motion, the proceedings shall be terminated. Unless provided otherwise by law, the termination of the proceedings on such grounds shall not prevent the conducting of the criminal proceedings after the cessation of the personal immunity.
- (3) After the suspension of the immunity, expedited proceedings shall be conducted in compliance with this Act.

Section 553

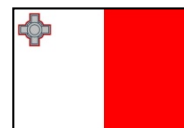
- (1) In the cases of persons enjoying diplomatic immunity or other immunity under international law (hereinafter collectively: diplomatic immunity), the provisions stipulated in Sections 551 and 552 shall be applied with the deviations set forth in this Section.
- (2) Against persons enjoying diplomatic immunity, no criminal procedural action may be taken before the suspension of their immunity.
- (3) The motion for suspending diplomatic immunity shall be submitted by the court through the minister in charge of justice, and the Prosecutor General shall submit it directly to the minister in charge of foreign politics.

Section 554

- (1) Until a decision made on the issue of diplomatic immunity, the court shall suspend the proceedings even if the person enjoying immunity acts as a private accuser. If the court establishes the existence of immunity based on the position of the minister in charge of foreign politics, it shall terminate the proceedings.
- (2) Should it become necessary in the course of the proceedings to question a person enjoying diplomatic immunity as a witness or should such a person act as a private party, prior to the filing of the indictment the Prosecutor General, and thereafter, or in cases based on private accusation the court, through the minister in charge of justice, submits the case – without suspending the proceedings – to the minister in charge of foreign politics, requesting his opinion.

- (3) If the immunity can be established based on the opinion of the minister in charge of foreign politics, the person enjoying immunity may not be questioned and his civil claim may not be adjudicated.
- (4) The persons enjoying immunity, as specified in Section 553 (1), may not act as a defence counsel or expert in criminal proceedings, and may not be employed as an official witness.

Malta



CRIMINAL CODE

23.

- (1) The forfeiture of the *corpus delicti*, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property.
- (2) In case of contraventions, such forfeiture shall only take place in cases in which it is expressly stated in the law.
- (3) In the case of things the manufacture, use, carrying, keeping or sale whereof constitutes an offence, the forfeiture thereof may be ordered by the court even though there has not been a conviction and although such things do not belong to the accused.
- (4) Notwithstanding the provisions of subarticles (1) to (3), where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may after hearing the parties and if it deems it proper so to act after taking into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority.

23B.

- (1) Without prejudice to the provisions of article 23 the court shall, in addition to any punishment to which the person convicted of a relevant offence may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of article 121D, order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said article 121D.
 - (1A) Any property, whether in Malta or outside Malta, of or in the possession or under the control of any person convicted of a relevant offence or in the possession or under the control of a body corporate as may become liable under the provisions of article 121D shall, unless proved to the contrary, be deemed to be derived from the relevant offence and be liable to confiscation or forfeiture by the court.
 - (1B) The provisions of article 7 of the Act shall *mutatis mutandis* apply so however that any reference in that article to "article 3(3)" shall be construed as a reference to subarticle (1A) of this article and any reference in the said article 7 to "an offence under article 3" shall be construed as a reference to a relevant offence.

- (2) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate in *solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.
- (3) For the purposes of this article:
- "proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through the commission of the offence and includes any income or other benefits derived from such property;
- "property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- "relevant offence" and "the Act" have the same meaning assigned to them by article 23A(1).

23C.

- (1) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.
- (2) When a person has been found guilty of a relevant offence and in consequence thereof any moneys or other movable property or any immovable property is liable to forfeiture, the provisions of article 22(3A)(b) and (d) of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* in the circumstances mentioned in those paragraphs.

Prevention of Money Laundering Act

Article 3(5)

- (5) (a) Without prejudice to the provisions of article 23 of the Criminal Code the court shall, in addition to any punishment to which the person convicted of an offence of money laundering under this Act may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of subarticle (4), order the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said subarticle (4) and any property of or in the possession or under the control of any person found guilty as aforesaid or of a body corporate as mentioned in this subarticle shall, unless proved to the contrary, be deemed to be derived from the offence of money laundering and liable to confiscation or forfeiture by the court even if in the case of immovable property such property has since the offender was

charged passed into the hands of third parties, and even if the proceeds of property, movable or immovable, are situated in any place outside Malta:

Provided that, for the purposes of this subarticle, "proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property.

- (b) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine shall be recoverable as a civil debt and for this purpose the sentence of the court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.
- (c) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.

7.

- (1) Where an order of forfeiture is made under article 3(5), the person found guilty and any other person having an interest may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of an offence under article 3 or is otherwise involved in the offence of money laundering, nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.
- (2) Such action shall be brought not later than three months from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.
- (3) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.
- (4) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.
- (5) The application and the notice of the date fixed for hearing shall be served on the Commissioner of Police without delay, and the said Commissioner shall file his reply thereto within fifteen days after the date of the service of the application.
- (6) The court shall hear the application to a conclusion within twenty working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties or for an exceptional reason to be recorded

by the court, and such adjourned date shall not be later than that justified by any such reason.

- (7) Saving the preceding provisions of this article, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the Civil Court, First Hall, shall apply in relation to any such application.
- (8) Any decision revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

8.

When the court allows the demand for a declaration as provided in article 7(1) in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment upon its becoming definite, and the applicant shall thereupon be entitled to the recovery of the income received by the Government from such property during the period of its forfeiture.

The Netherlands



PENAL CODE

Article 36e

1. If so required by the Public Prosecutions Service, an individual who has been convicted of a criminal act may be obliged by means of an extraordinary court order to pay an amount of money to the State, in confiscation of the proceeds of crime.
2. That obligation can be imposed upon a person, as defined in paragraph one, who has derived benefit by means of or from the profits of the act referred to therein or from any other criminal acts, in relation to which sufficient evidence is available that these were committed by the convicted person himself/herself.
3. If so required by the Public Prosecutions Service, an individual who has been sentenced for having committed a criminal act, which, based upon its definition in law, renders the perpetrator liable for a fine of the fifth category, can be obliged by means of an extraordinary court order to pay an amount of money to the State, in confiscation of the proceeds of crime, in the event that it has been made sufficiently plausible that that particular criminal act or any other criminal acts have in any manner led to a situation in which the convicted person derived benefit from the proceeds of crime. If that is the case, it can also be assumed that:
 - (a) Amounts expended by the convicted person during a period of six years prior to that offence being committed, constitute the proceeds of crime, unless it can plausibly be demonstrated that such amounts were expended from a legal source of income, or that
 - (b) Items that have come into the possession of the convicted person within a period of six years prior to the committing of that offence represent the proceeds of crime in the sense of paragraph one, unless it has been plausibly demonstrated that those items were acquired from a legal source.
4. On its own initiative, if so required by the Public Prosecution Service or at the request of the convicted person, the court may depart from the period of six years laid down in the third paragraph and may take into account a shorter period instead.
5. The court shall determine the amount regarded as equivalent to the proceeds derived from the criminal act(s). Proceeds are also deemed to include any cost-savings that have been achieved. The value of items regarded by the court as forming part of the proceeds of crime can be estimated at their market value at the time the judgment is handed down, or, in reference to the proceeds that could be realised in the event of a public sale, in the event that costs need to be recovered. The court may determine that the convicted person is required to pay an amount lower than the amount estimated as having proceeded from the crime. In the event that the current ability of the suspect or convicted person to effect payment of the required amount is insufficient and having received a reasoned request from a suspect or convicted person, the court may take account of this when determining

- the amount to be paid. In the absence of any such request, the court may apply those powers, either on its own initiative, or if requested to do so by the Public Prosecutor.
6. Items shall be understood to include all objects and property rights.
 7. In determining the amount of the proceeds of crime, in the sense of paragraphs one and two, in relation to criminal acts committed by two or more persons, the court may stipulate that those persons be jointly and severally liable or shall assume liability for part of the jointly payable amount, such part to be determined by the court.
 8. In determining the amount estimated to equate to the proceeds derived from the crime, any claims by injured third parties that have been legally upheld shall first be deducted.
 9. In imposing the measure, account will also be taken of the obligations imposed in previous decisions, requiring the person concerned to pay an amount of money in confiscation of the proceeds of crime.
 10. In application of Article 577c of the Dutch Code of Criminal Procedure, the court shall be entitled to order committal for a failure to comply with an order. Such committal shall constitute a measure.

Enforcement of Criminal Judgments (Transfer) Act

1.1.1.1. Part B. Seizure

Article 13

1. Upon receipt of a request received from a foreign State by virtue of a convention or treaty, a criminal financial investigation may be initiated in the Netherlands, in accordance with the stipulations of Section nine of Part IV of Book 1 of the Dutch Code of Criminal Procedure, for the purpose of determining the proceeds of crime that exist or were acquired in the Netherlands by a person who forms the subject of criminal investigation in the State submitting that request.
2. The criminal financial investigation may only be initiated in the event that this would have been possible in such case that the act or acts that the person is suspected of having committed in the requesting State had been committed in the Netherlands.
3. During the course of the criminal financial investigation, the seizure of goods in accordance with Article 94, paragraph two, and Article 94a, paragraph two of the Dutch Code of Criminal Procedure may only take place in the event that well-founded reasons give rise to an expectation that a request will be submitted on behalf of the requesting State for the enactment of forfeiture or of a sanction providing for the confiscation of the proceeds of crime.
4. The Public Prosecutor shall send to Our Minister without delay a copy of his decision upon completion of the criminal financial investigation. The Public Prosecutor shall also inform Our Minister of any information that may be of use to the foreign State that submitted the request.

Article 13a

1. In so far as such measures are provided for under a convention or treaty, the following items may be seized on behalf of a foreign State:
 - (a) Items in relation to which a sanction providing for the forfeiture of those items may be imposed under the law of the foreign State
 - (b) Items, which, in order to preserve the right of redress arising from an obligation that may be imposed under the law of the foreign State, requiring payment of an amount of money for the purpose of confiscation of the proceeds of crime, or
 - (c) Items that may serve as evidence of the proceeds of crime
2. Seizure, in the sense of paragraph one, items a and b, may only take place in the event that in the information provided by the foreign State in support of its request, the competent authorities of that State have issued a seizure order, or would have issued a seizure order in the event that the relevant items had been located within the territory of that State and in the event that seizure of such items is permitted under Dutch law.
3. In application of paragraph two, seizure under Dutch law is permitted, if this would have been possible in the event that the criminal act or acts in relation to which the foreign State is seeking seizure had been committed in the Netherlands.
4. The seizure of items, defined in paragraph one, subsections a and b, may furthermore only take place in the event that well-founded reasons give rise to an expectation that a request will be submitted on behalf of the requesting State for the enactment of forfeiture or of a sanction providing for the confiscation of the proceeds of crime.

Article 13b

1. In so far as this is provided for under a convention or treaty, items, in relation to which a court in a foreign State has issued an order comparable to forfeiture or to the confiscation of the proceeds of crime, may be seized at the request of that foreign State.
2. Seizure in accordance with paragraph one may only take place in cases in which well-founded reasons give rise to an expectation that the order referred to in that paragraph will be enacted in the Netherlands within the short term.

Article 13c

1. The stipulations of paragraph three of Article 13 and of paragraph four of Article 13a shall not prevent items, once seized, from being transferred to the requesting foreign State, with a view to the imposition and enactment of a forfeiture or of a sanction providing for the confiscation of the proceeds of crime. To that end, items seized shall be placed at the disposal of the Public Prosecutor, in so far as the court, taking into account the applicable convention or treaty, grants permission for the same.
2. The permission required by virtue of paragraph one shall solely be granted subject to the condition that the surrender of the items to the foreign authorities is stipulated, that the items shall be returned, including in the event that they have been declared forfeit or have been confiscated as a result of forming the proceeds of crime, in which case they shall be

transferred under the ownership of the Dutch State, or the requesting State shall transfer an amount of money, to be determined by Our Minister and corresponding to the full or partial value of the items, to the Dutch State. Our Minister may decide to forego the entitlement for the transfer of the stipulated amount, in the event that the requesting State demonstrates that the surrendered items have been transferred to third-party titleholders.

3. The processing of a request or demand for the granting of permission by the court shall take place in public. The processing of such a request shall be subject to the stipulations of Part I, Book 1 of the Dutch Code of Criminal Procedure as appropriate.
4. The Public Prosecution Service may initiate an appeal to the Supreme Court within fourteen days of the date of the decision. Other participants in the proceedings may initiate such an appeal to the Supreme Court within fourteen days of the date of the letter informing them of that decision.

Austria



§ 20a StGB the failure of decay

- (1) The decay towards a third party according to § 20 (2 and 3) is ruled out as far as this third party has acquired the assets without knowledge of the punishable action.
- (2) Moreover, the decay is ruled out :
 1. towards a third party as far as this third party has acquired the assets without knowledge of the punishable action,
 2. as far as the person affected satisfies civil claims from the action or has provided security for it or
 3. as far as its effect is achieved by other legal measures.
- (3) It is to be desisted from the decay as far as the assets that are liable to revocation or the prospect of insertion are disproportionate to the procedural efforts the decay or insertion would require.

§ 21 StGB placement in an institution for mentally disturbed offenders

- (1) If a person commits an offence punishable by a custodial sentence of at least one year and cannot be punished solely because he/she has committed it under the influence of a state that excludes the soundness of mind (§ 11) based on a mental or emotional abnormality, the court needs to institutionalize him to an institution for mentally disturbed offenders provided that, according to his person, his condition and the kind of offence, it is to be feared that he otherwise would commit an action liable to prosecution with serious consequences under the influence of his mental or emotional abnormality.
- (2) If such fear exists, the court also needs to institutionalize those to an institution for mentally disturbed offenders who commit an action liable to prosecution by a custodial sentence of at least one year with serious consequences under the influence of his mental or emotional abnormality and are of sound mind. In such case, the placement is to be decreed at the same time as the proclamation of sentence.
- (3) In accordance with paragraph 1 and 2, punishable actions against property do not come into question as offence unless they have been committed by violent means against a person or by threat with a current danger to life (§ 89).

§ 22 StGB placement in an institution for offenders requiring rehabilitation

- (1) Any person who is devoted to the abuse of intoxicating or addicting substances and is sentenced for an offence committed because of his addiction or in connection with his toxicomania or because of a punishable action committed in a state of intoxication (§ 287) is to be institutionalized by the court to an institution for offenders requiring

rehabilitation provided that, according to his person, his condition and the kind of offence, it is to be feared that he otherwise would commit a punishable action with severe consequences or punishable actions with not only light effects in connection with his toxicomania to intoxicating or addicting substances.

- (2) It is to be desisted from placement if the offender has to serve a sentence of more than two years, if the conditions for a placement in an institution for mentally disturbed offenders are applicable or if the attempt of rehabilitation appears to be pointless from the start.

§ 23 StGB placement in an institution for dangerous recidivists

- (1) If a person is sentenced to more than two years in prison after having completed the twenty-fourth year of his life, the court additionally needs to order his placement in an institution for dangerous recidivists,
1. If the conviction takes place solely or mainly because of intentional criminal offences against life and limb, against freedom, against property with the use or threat of violence against a person, against sexual integrity and self-determination according to § 28a of the Narcotic Substances Act or because of one or more intentional homicidal offences,
 2. If he already has been convicted twice to custodial sentences of more than six months each as stated in C. 1 and therefore has spent at least eighteen months imprisoned before the condemned actions had been committed, but after he has finished the nineteenth year of his life and
 3. If it is to be feared that he would keep committing offences with serious consequences because of his tendency to offences as stated in C. 1 or because he is used to earning his keep by committing such offences.
- (2) It is to be desisted from placement if the conditions for a placement of the offender in an institution for mentally disturbed offenders are applicable.
- (3) The arrest in an institution for mentally disturbed offenders according to § 21 (2) or in an institution for offenders requiring rehabilitation is identical to prison sentence (par.1 C. 2) insofar as the time of arrest is to be counted towards the sentence.
- (4) An earlier sentence is left out of consideration if more than five years have passed between its serving and the following offence. Times in which the convict has been detained on behalf of regulatory action are not included in this period. If the sentence has been served only by taking preceding detention into account, the period does not start until the decision is final.
- (5) Decisions made abroad are to be taken into account if the conditions of § 73 are applicable and if it is to assume that the perpetrator would have been sentenced to a custodial sentence of at least six months by a domestic court also and if he would have spent the time necessary to meet the conditions of Par. 1 C. 2 in prison.

§ 26 StGB confiscation

- (1) Objects that have been used by the perpetrator to commit a punishable offence, were intended to be used while committing the action or that are a result of this action are to be confiscated to counteract the commission of punishable offences if there seems to be a need to so due to the objects' specific nature.
- (2) It is to be desisted from confiscation if the beneficiary resolves the objects' specific nature, especially by removing or disabling mechanisms or labelling that make it easier to commit punishable offences. Objects on which a person that is not involved possesses the legal right may be confiscated only if the person concerned does not offer a guarantee that the objects are not used to commit punishable offences.
- (3) If the conditions for confiscation are applicable, the objects are to be confiscated even if no specific person can be prosecuted or sentenced for the punishable offence.

§ 165 StGB money laundering

- (1) A person who hides or conceals the origin of assets that originate from a crime, a punishable offence against property punishable by terms of imprisonment, an offence according to §§ 223, 224, 225, 229, 230, 269, 278, 288, 289, 293, 295 or 304 to 308, an offence against the rules of intellectual property right committed professionally, the financial crime of smuggling falling into the competence of the courts or of the evasion of input and output transactions especially by giving false statements in international legal transactions about the origins or the true nature of those assets held, their transfer or knowledge of where they are is subject to prison sentences of up to three years.
- (2) Equally punishable, whoever knowingly acquires, keeps, invests, administers, converts, utilises or transfers to third parties, components of assets which stem from any punishable offence by another party as mentioned in paragraph 1.
- (3) Equally punishable, whosoever knowingly acquires, keeps, invests, administers, converts, utilises or transfers to third parties, components of assets under the control of a criminal organisation (§ 278a) or a terrorist organisation (§ 278b).
- (4) If the offence is regarding an amount in excess of 50,000 Euros or committed as a member of a criminal organisation, which is associated with continuous money laundering, it is punishable with a prison sentence of up to ten years.
- (5) An asset stems from a punishable offence if the perpetrator of the punishable offence obtained it through the offence or in exchange for committing the offence or if the value of the originally obtained or received asset value is personified in him.

§ 278b StGB Terrorist Organisation

- (1) Whosoever leads a terrorist organisation (paragraph 3), is punishable with five to fifteen years imprisonment. Whosoever leads a terrorist organisation which limits itself to the threatening of terrorist offences or the financing of terrorism (§ 278d) is punishable with one to ten years imprisonment.

- (2) Whosoever participates as a member (§ 278 paragraph 3) of a terrorist organisation is punishable with one to ten years imprisonment.
- (3) A terrorist organisation is a long-term association of more than two people with the objective that one or more terrorist offences (§ 278c) or the financing of terrorism (§ 278d) by one or more of the members of this organisation.

§ 278c StGB Terrorist offences

- (1) Terrorist offences are
 1. murder (§ 75),
 2. bodily harm according to §§ 84 to 87,
 3. kidnapping for ransom (§ 102),
 4. grievous duress (§ 106),
 5. dangerous threat according to § 107 Abs. 2,
 6. grievous damage to property (§ 126) and damage to data (§ 126a), if this could result in endangering another's life or property to a large extent,
 7. deliberate offences which endanger public welfare (§§ 169, 171, 173, 175, 176, 177a, 177b, 178) or deliberate damage to environment (§ 180),
 8. Aircraft piracy (§ 185),
 9. deliberate endangering of aircraft safety (§ 186),
 - 9a. Incitement to terrorist offences and endorsement of terrorist offences (§ 282a) or
 10. a punishable offence according to § 50 Weapons Act 1996 (Waffengesetz 1996) or § 7 of the War Material Act (Kriegsmaterialgesetzes), if the offence is capable of causing a severe or longer term disturbance to public life or severe damage to the economy, and is committed with the aim of intimidating the population in a grievous manner, to place public authorities or an international organisation under duress to act, tolerate or acquiesce, or to severely shake or destroy the economic or social fundamental structures of a state or international organisation.
- (2) Whosoever commits a terrorist offence according to paragraph 1 is punishable according to the law applicable to the offence stated there, whereby the maximum penalty for each respective penalty is set at a half, to maximum twenty years.
- (3) The offence is not seen as a terrorist offence if the offence is aimed at establishing or re-establishing democratic or the rule of law or at exercising or protecting human rights.

§ 278d StGB Financing terrorism

- (1) Whosoever intentionally provides or collects assets, which are, even if only a portion is used in order to carry out:
 1. Aircraft piracy (§ 185) or the intentional endangerment of aviation safety (§ 186),

2. Kidnapping with ransom (§ 102) or the threat thereof,
3. An attack on the person, life or freedom of persons under the protection of national law or the violent attack on the residence, work place or vehicle of such a person, which is capable of endangering the person, life or freedom of such or person or the threat thereof,
4. Intentional endangerment through nuclear energy or ionising radiation (§ 171), or the threat thereof, the unauthorised handling of nuclear material or radioactive substances (§ 177b), an otherwise punishable act in order to obtain nuclear material or radioactive substances or the threat of committing the theft or robbery of nuclear materials or radioactive substances in order to force another to act, tolerate or neglect an act,
5. Grievous attack on the life or person of another at an airport which serves international civilian aviation, the destruction or grievous damage of such an airport or an aircraft located at the airport or the disruption of services at the airport, as long as this offence is committed using a weapon or other device and is capable of endangering airport security,
6. A punishable act which is committed as described in §§ 185 or 186 against a ship or fixed platform against a person who is on board a ship or fixed platform or against the loading of a ship or shipping facility.
7. The transport of an explosive device or other lethal device to a public place, a state or public institution, public transport system or benefit institution or the use of such devices with the objective of causing death or grievous bodily harm to another or the extensive destruction of a place the infrastructure of the system, as long as the destruction is capable of causing considerable economic damage,
8. A punishable act which is aimed at causing death or severe bodily harm of a civilian or other person who is not an active participant in an armed conflict or hostilities, if the act is aimed, due to its character or the circumstances, at intimidating population groups, or to force a government or international organisation to carry out or neglect an act,

and is punishable with imprisonment from six months to five years. The punishment may however not be stricter in type and measure than the law applicable for the offence financed.

- (2) The perpetrator is not to be punished according to paragraph 1 if the offence can be punished by a stricter penalty according to another regulation.

Code of Criminal Procedure

§ 443.

- (1) The punitive sentence will decide regarding the confiscation or extended confiscation, the seizure and other regulations concerning property rights (liability for fines, confiscation and compensation) unless otherwise stated in this section.

- (2) If the results of the criminal proceedings are neither sufficient in itself nor after the implementation of hearing of evidence, which don't considerably delay rulings on liability or criminal rulings, in order to carry out the regulations concerning property rights stated in paragraph 1, the sentence may be reserved through making a decision on a separate ruling (§§ 445, 445a), except in the case that such a decision is not permissible due to the affected asset values or objects.
- (3) Regarding the rulings on regulations concerning property, unless in the case of § 445a, an appeal may be lodged against the ruling concerning the penalty both against or in favour of the sentenced or liable persons (§§ 64, 444).

§ 445.

- (1) If there are sufficient grounds for the assumption that for confiscation (§ 20 StGB), extended confiscation (§ 20b StGB) or seizure (§ 26 StGB) is justified without the possibility for one of the institutions named in §§ 21 to 23 StGB to rule in a criminal proceeding, then the prosecutor is to make an independent application for the remittal of such regulation concerning property rights.
- (2) The district court with jurisdiction over the scene of the crime, if this is unknown or located abroad, the district court with jurisdiction for the location where the object is situated will rule on the application for confiscation in an independent proceeding after public oral hearing (§ 445a). The regulations concerning the main proceeding in proceedings held before district courts as well as § 444 are to be applied as applicable.
- (3) Appeals against the ruling can be filed both in favour of or against the accused in compliance with §§ 463 bis 468 (§ 489); § 444 paragraph 1 last phrase applies accordingly.

§ 445a.

- (1) The district court may rule over an application for confiscation in an independent proceeding after hearing the prosecutor and the liable parties (*Haftungsbeteiligte/r*) (§ 444) if the values of the object to be confiscated is not in excess of 1,000 Euros or deals with an object which is generally legal to possess. In the case that the accused resides abroad or cannot be ascertainable without considerable investigation, the hearing may be revoked.
- (2) In cases where the proceeding is ended by the public prosecutor's office, either in compliance with the regulations of chapters 10 and 11 (Translator's note: of the Austrian Constitution), through regulations referring to it or in compliance with § 35 SMG, the public prosecutor has to order the 2 proceedings for confiscation as stated in paragraph 1 and to carry out the necessary proceedings stated in § 408 Abs, as long as the accused does not demand a court ruling. § 444 paragraph 2 shall apply accordingly.

§ 58. ARHG Applicable Procedural Regulations

A request for judicial assistance which requires a different procedure to Austrian procedural law, is applicable if the criminal procedure and its principles according to the provisions of

chapter 1 of the StPO. If judicial assistance is rendered in the form confiscation, information regarding bank accounts and banking transactions or any of the regulated investigation measures stated in the 4th or 5th sections of the 8th chapter of the StPO, then this is limited. The foreign authority making the request is to be informed through the correct channels.

Poland



Poland does not have provisions allowing for the confiscation of the proceeds of crime and instrumentalities of crime without a criminal conviction. However, Article 412 of Polish Civil Code stipulates that the benefits rendered in an unfair order may be confiscated by the court. This mechanism is rarely used because of its specific construction and intrusive nature. It shall be noticed that it does not pertain strictly to the proceeds of crime, although it has some common features. It is wholly a civil law institution, separate from criminal proceedings and directed at the person (*in personam*).

THE CIVIL CODE

Article 412

The court may impose the forfeiture of the benefit, if it has been intentionally rendered in exchange for committing the deed which is prohibited by law or in an unfair order. (...)

Portugal



CHAPTER IX

Confiscation of instrumentalities, proceeds and advantages

Article 109 Confiscation of instrumentalities and proceeds

- 1 – The objects used or intended to be used for the commission of a typical unlawful act, or which have been produced thereby, are confiscated when, by virtue of their nature or of the circumstances of the case, they endanger the safety of the persons, the morality or the public order, or seriously risk to be used for the commission of new typical unlawful acts.
- 2 – The preceding paragraph is also applicable even if no specific person may be punished for the act.
- 3 – If the law does not determine a special purpose to the objects lost pursuant to the previous numbers, the judge may order that they are, totally or partially, destroyed or placed out of trade.

Article 110 Objects belonging to a third party

- 1 – Without prejudice of the paragraphs hereunder, the confiscation does not take place if the objects do not belong, at the date of the act, to any of the offenders or beneficiaries, or if they did not belong to them at the time the confiscation was ordered.
- 2 – Even though the objects belong to a third party, the confiscation is ordered when their owners have contributed, in a censurable manner, to their use or production, or have obtained advantages from the act; or furthermore when the objects are, by any title, acquired after commission of the act and the acquirers are aware of their origin.
- 3 – If the objects consist of inscriptions, representations or enrolments drawn up in paper, in another support or audiovisual expression mean, belonging to a third party in good faith, the confiscation will not take place and the restitution will be made after deletion of the inscriptions, representations or enrolments which integrate the typical unlawful act. If not possible, the court orders their destruction with entitlement to compensation pursuant to the civil law.

Article 111 Loss of advantages

- 1 – Any reward given or promised to the agents of a typical unlawful act, for themselves or for another person, is lost for the benefit of the State.
- 2 – The property, rights or advantages that, through the typical unlawful act, have been directly acquired by the offenders, for themselves or for another person, and represent a property advantage of any kind are also confiscated, without prejudice to the rights of the victim or of third parties in good faith.
- 3 – The preceding paragraphs apply to the property or rights obtained by means of a transaction or exchange of the property or rights directly attained by means of the typical unlawful act.

- 4 – If the reward, rights, property or advantages referred to in the preceding paragraphs cannot be confiscated in kind, the confiscation is replaced by the payment to the State of the respective value.

Law n.º 45/2011 of June 24 Setting up an Asset Recovery Office (ARO) (*Gabinete de Recuperação de Activos – (GRA)*) under the Criminal Police

Under Article 161, sub-paragraph c), of the Constitution, the Assembly of the Republic decides as follows:

CHAPTER I

General provision

Article 1 Subject-matter

- 1 – This law sets up an Asset Recovery Office, according to Council Decision nº 2007/845/JAI, of 6 December 2007, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.
- 2 – It also lays down provisions for the management of assets recovered, seized or confiscated to the State, with a view to safekeeping them and, if possible, increasing their value.

CHAPTER II

Asset Recovery Office

Article 2 Scope

The Asset Recovery Office (in short ARO/GRA) is set up under the Criminal Police. It has investigative powers, similar to those of criminal police bodies.

Article 3 Mission

- 1 – GRA's mission consists of identifying, tracing and seizing property or proceeds related to crimes, both at internal and international level, ensuring cooperation with asset recovery offices set up by other States and of carrying out any other duties as committed to it by law.
- 2 – The GRA is also responsible for the collection, analysis and processing of statistical data on seizure, confiscation and destination of property or proceeds related to crime.

Article 4 Competence

- 1 – The GRA carries out the financial or patrimonial investigation mentioned in Article 3 above by decision of the Public Prosecutor: a) Where the instrumentalities, property or proceeds are related to crimes punishable with a custodial penalty of three years or more; and b) Where the estimated value of the instrumentalities, property or proceeds is higher than 1000 units of account.

- 2 – Whenever authorised by the Prosecutor General of the Republic or upon delegation by the district deputy prosecutors-general, the GRA may carry out the financial or patrimonial investigations in cases not covered by the preceding paragraph, taking due account of the economic, scientific, artistic or historical estimated value of the property to be recovered and of the complexity of the investigation.
- 3 – The seizure of property is carried out by the GRA under the provisions of the Code of Criminal Procedure. Within 10 days after being notified, the owner of the property or rights may request to the investigating judge to change or revoke the decided measure.
- 4 – The notification mentioned in the preceding paragraph is done by edicts or by advertisement when the owner of the property or the rights is not found.
- 5 – The proceedings implemented by the GRA are documented in annexes to the files.
- 6 – For the purposes of article 8 (2) of Law no. 5/2002, of 11 January, the financial or patrimonial investigation may be carried out after the end of the criminal inquiry is closed.

Article 5 Composition and coordination

- 1 – The GRA is composed of officers from the following bodies:
 - a) Criminal Police;
 - b) Register and Notary Services Institute, *I.P.*;
 - c) Directorate-General for Taxation;
 - d) General Directorate for Customs and Excise Duties.
- 2 – The composition and coordination of the GRA are established by joint ministerial order of Government Members responsible for the areas of Finance and Justice.
- 3 – Officers integrating the GRA are appointed on secondment, for a term set out in the order mentioned in the preceding paragraph.

Article 6 Operation

The rules for GRA's activity are established by order of the National Director of the Criminal Police or upon delegation by the Deputy National Director.

Article 7 Branches

- 1 – The GRA has its seat in Lisbon and includes the following branches:
 - a) North Branch, located in Porto;
 - b) Central Branch, located in Coimbra;
 - c) South Branch, located in Faro.
- 2 – GRA's officers mentioned in Article 5 (1), subparagraphs c) and d) perform their duties in Lisbon.
- 3 – The territorial jurisdiction of GRA's Branches coincides with the territorial jurisdiction of the Criminal Police Directorates where they are seated, as well as of the Criminal Investigation Departments depending upon the latter.

Article 8 Access to information

- 1 – In order to carry out the financial or patrimonial investigation referred to in this chapter, the GRA may have access to information held by national or international bodies, in the same way as the criminal police bodies in charge of the criminal investigations.
- 2 – For the purposes established in the preceding paragraph, the GRA may have access, in particular, to the data bases held by:
 - a) The Registration and Notary Services Institute;
 - b) The Directorate-General for Taxation and of the General Directorate for Customs and Excise Duties;
 - c) The Social Security;
 - d) The Real Estate Market Committee;
 - e) The Bank of Portugal.
- 3 – Where access depends upon permission by a judicial authority, the authorising order shall identify the natural or legal persons covered by the measure and shall specify the information to be provided, the delays for its production and the documents to be provided. Whenever such specification is not possible, the order may take a generic form for each of the subjects involved.
- 4 – In the case of information regarding banking accounts and where the holders of such accounts, or the persons intervening in the transactions, are not known, it shall be sufficient to identify the accounts and the transactions in respect of which the information shall be provided.

Article 9 Cooperation

- 1 – The GRA shall cooperate, at police level, with the asset recovery offices set up by other States and shall exchange information, data and best practices.
- 2 – The GRA also assists judicial authorities when carrying out any relevant judicial cooperation acts.

CHAPTER III

Property management

Article 10 Property management

- 1 – The management of property seized or recovered in the framework of national proceedings or of international legal cooperation acts is ensured by a unit of the Institute for Financial and Justice Infrastructures Management, I.P. (*Instituto de Gestão Financeira e de Infra-Estruturas da Justiça (IGFIJ, I.P.)*), hereinafter Asset Management Office (AMO) (*Gabinete de Administração de Bens (GAB)*)
- 2 – The board of directors of IFGIJ, I.P. is competent to carry out all acts of administration and management of the GAB.
- 3 – When performing its administration powers, the GAB shall:

- a) Protect, preserve and manage property recovered or placed in custody of the State;
 - b) Determine the sale, allocation to public service or destruction of property mentioned in subparagraph a) above, without prejudice to the enforcement of the relevant EU law provisions;
 - c) Exercise any other powers provided for by law.
- 4 – The GAB carries out its duties in strict compliance with the principle of transparency, aiming at a rational, efficient management of administered property and, if possible, at increasing its patrimonial value.
 - 5 – The GAB carries out the examination, the description and the registration of the asset's evaluation, for the purpose of establishing the value of a possible compensation.
 - 6 – The GAB provides the GRA with statistical data for the purposes of Article 3 (2).

Article 11 Competence

The GAB acts, under this chapter, upon request of the GRA or of the judicial authorities, whenever the value of the seized asset is higher than 50 units of account.

Article 12 Evaluation

- 1 – After the deadline set in Article 4 (3), or after the decision mentioned therein, the GAB shall evaluate the seized asset to the effect of managing it and of establishing the value of a possible compensation.
- 2 – Whenever the evaluation reveals a particular complexity or requires special knowledge, the GAB may request the collaboration of entities of recognized competence.
- 3 – An appeal may be lodged with the competent judge, against the decision of the President of IGFIJ, I.P. that homologates the evaluation. The judge shall decide, by unappealable order, after having carried out the legal steps found useful. The provisions of Article 68 (5) of the Code of Criminal Procedure shall apply accordingly.
- 4 – The owner or the legitimate holder of an asset which is not a relevant piece of evidence, may request to the competent judicial authority to deliver the relevant asset against the deposit of the assessed value in the bank account of IGFIJ, I.P.

Article 13 Preliminary information

- 1 – Before selling, allocating or dismantling property, the GAB shall request to the Public Prosecutor information about its worthiness as evidence and about the probability of its confiscation to the State. Such information is urgent.
- 2 – The Public Prosecutor shall decide whether the worthiness as evidence may be assessed through a sample of the seized asset.

Article 14 Anticipated sale

The GAB shall sell any perishable goods or any property subject to deterioration or devaluation or shall allocate them to public purposes or to useful social purposes, before the decision becomes final, where those assets do not constitute relevant evidence.

Article 15 Exemption from road traffic single tax

When seized, deposited or provisionally allocated to public service, by the entities referred to in Article 5 (1), subparagraph a) of the Code on the Road Traffic Single Tax, vehicles shall be exempted from such tax.

Article 16 Immoveable property

- 1 – Immoveable property is preserved and managed by the GAB and may not be disposed of until the relevant decision has become final.
- 2 – Without prejudice to the provisions of paragraph (1) above, the GAB may carry out the anticipated sale or the allocation of the managed immoveable property, whenever that property is in serious risk of devaluation or may affect public health and security and does not constitute relevant evidence.
- 3 – In cases provided for in paragraph (2) above, where the immoveable property constitutes relevant evidence, the GAB may carry out the necessary rehabilitation works.
- 4 – The GAB shall collect the municipal tax on real estate (*imposto municipal sobre imóveis – IMI*) regarding immoveable property under its administration.

Article 17 Destination of income

- 1 – The income generated by the management of property recovered or confiscated to the State shall revert as follows:
 - a) 50% to the Modernization of Justice Fund;
 - b) 50% to the IGFIJ, I.P.
- 2 – The preceding paragraph does not apply to:
 - a) The provisions of Article 39 of Decree-Law no. 15/93, of 22 January, Article 110 of Law no. 144/99, of 31 August, Article 18 of Law no. 88/2009, of 31 August, as well as the provisions contained in agreements, treaties or conventions binding the Portuguese State;
 - b) The proceeds of the revenue, of property related to tax offences, as well as the revenue, corresponding to EU's own resources.

Article 18 Compensations

- 1 – Expenses incurred in relation to real estate, under Article 16, and with movable property allocated to public service shall be recovered, in case the real estate or the movable property is returned to its owner.
- 2 – For the purposes of paragraph (1) above, the value of any works or betterments made by the GAB in the buildings under its administration shall be assessed, together with the IMI tax paid. Expenses with movable property, allocated to public purposes or to a useful social purpose shall also be assessed.
- 3 – Upon deduction of the compensation, as may be due, the credit holder is compensated with any surplus detected.

- 4 – In case of an anticipated sale, the amount thus collected shall be returned to the owner, plus interests due since the date of the sale, at the legal rate, after deducting the expenses referred to in paragraphs (1) and (2) above.

CHAPTER IV Data and information exchange. Protection

Article 19 Data and information exchange

The exchange of data and information requested or provided between asset recovery offices, or with other authorities in charge of facilitating, tracing and identifying the proceeds of crime, shall take place in accordance with the law.

Article 20 Data protection

Personal data are protected under the provisions of the Data Protection Act, as adopted by Law no. 67/98, of 26 October. Data transmission shall comply with the regime prescribed by law.

CHAPTER V Final provisions

Article 21 Subsidiary provisions

The financial and patrimonial investigation and the evaluation, use, management and disposal of seized property or of property confiscated to the State that are not covered by this law shall take place in accordance with the general law.

Article 22 Transparency and monitoring

- 1 – The offices set out by this law shall jointly prepare, until 31 March of the following year a report on the previous exercise in terms to be defined by joint order of the Members of Government responsible for the areas of Finance and Justice.
- 2 – The report referred to in paragraph (1) above shall be submitted to the Ministry of Justice.
- 3 – After a period of five years, the activity of the offices set out by this law shall be subject to evaluation.

Article 23 Application of the law *ratione tempore*

- 1 – The provisions of this law shall apply to proceedings started from the date when this law entered into force.
- 2 – Without prejudice of the provisions of paragraph (1) above, in the circumstances of Article 4 (2), the Prosecutor General of the Republic or, upon delegation, the District Deputy Prosecutors General, may require the GRA to carry out a financial or patrimonial investigation in proceedings started before the entry into force of this law.
- 3 – In the cases referred to in paragraph (2) above, the GRA or the judicial authorities may request the intervention of the GAB, under the provisions of Article 11.

Romania



ROMANIAN CONSTITUTION

Right of private property

Article 44

- (1) The right of property, as well as the debts incurring on the State are guaranteed. The content and limitations of these rights shall be established by law.
- (2) Private property shall be equally guaranteed and protected by the law, irrespective of its owner. Foreign citizens and stateless persons shall only acquire the right to private property of land under the terms resulting from Romania's accession to the European Union and other international treaties Romania is a party to, on a mutual basis, under the terms stipulated by an organic law, as well as a result of lawful inheritance.
- (3) No one shall be expropriated, except on grounds of public utility, established according to the law, against just compensation paid in advance.
- (4) The nationalization or any other measures of forcible transfer of assets to public property based on the owners' social, ethnic, religious, political, or other discriminatory features.
- (5) For projects of general interest, the public authorities are entitled to use the subsoil of any real estate with the obligation to pay compensation to its owner for the damages caused to the soil, plantations or buildings, as well as for other damages imputable to these authorities.
- (6) Compensation provided under paragraphs (3) and (5) shall be agreed upon with the owner, or by the decision of the court when a settlement cannot be reached.
- (7) The right of property compels to the observance of duties relating to environmental protection and ensurance of neighbourliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom.
- (8) Legally acquired assets shall not be confiscated. Legality of acquirement shall be presumed.
- (9) Any goods intended for, used or resulting from a criminal or minor offence may be confiscated only in accordance with the provisions of the law.

Criminal code

Article 118 - Special confiscation.

- (1) The following are subject to special confiscation:
 - a) the assets resulted from committing of deeds provided by the criminal law;

- b) the assets that were used, in any way, to the committing of an offence, if they are of the offender or if, belonging to the other person, that knew the purpose of their use. This measure cannot be disposed in case of the offences committed through press;
 - c) the assets produced, modified or adapted with the purpose of committing of an offence, if they were used to its committing and if they belong to the offender. When the assets belong to the other person, the confiscation is disposed if the production, modification or adaptation has been performed by the owner or by the offender, with the owner's understanding (knowing).
 - d) the assets which were given in order to determine the committing of a deed or for rewarding the perpetrator;
 - e) the assets obtained through the committing of the deed provided by the criminal law, if they are not restituted to the injured person and to the extent to which they do not serve to the injured person's compensation;
 - f) the assets whose possession is prohibited by the law.
- (2) In case provided in the para. 1 letter b), if the value of the assets subject to confiscation is disproportionate compared to the nature and seriousness of the offence, the confiscation in part, through money equivalent, is disposed, taking into consideration the consequences of the offence and the contribution of the asset to its committing.
- (3) In cases provided by para. 1 letters b) and c), if the assets cannot be confiscated, as they not belong to the offender, and the person to whom they belong did not know the purpose of their use, their equivalent in money shall be confiscated.
- (4) If the objects subject to confiscation are not found, money and goods up to their value shall be confiscated.
- (5) Assets and money obtained from the exploitation or use of assets subject to confiscation, except the assets provided in the para. 1 lets, b) and c), shall also be confiscated.
- (6) The court may not dispose the confiscation of the asset if this is part of the existence means, is for everyday use or for exercising the offender's profession or it belongs to the person upon whom the measure of special confiscation can be applied.

Article 1182 - Extended confiscation

- (1) The assets of a person, others than the ones mentioned at art. 118 shall also be subject to the confiscation in the situation in which a person is convicted for having committing one of the following criminal offences, if the deed could bring a material benefit to that person and the law stipulates the imprisonment punishment of 5 years or more.
- a) procurement
 - b) criminal offences on drug and precursors trafficking;
 - c) criminal offences on trafficking in persons;
 - d) criminal offences on the regime of the Romanian state border;

- e) money laundering;
 - f) criminal offences within the legislation on preventing and fighting pornography;
 - g) criminal offences within the legislation on preventing and fighting terrorism;
 - h) association for committing criminal offences;
 - i) initiating or setting up an organized criminal group or joining or supporting in any form such group;
 - j) criminal offences against the patrimony;
 - k) criminal offences on non compliance with the regime of weapons, munitions, nuclear materials or other radioactive materials and explosive materials;
 - l) counterfeiting of coins or other values
 - m) disclosing the economic secret, unfair competitiveness, non compliance with the provisions on import and export; embezzlement; non complying with the provisions on the import of wastes and residues;
 - n) criminal offences on organizing and exploiting gambling games;
 - o) trafficking in migrants;
 - p) corruption criminal offences, criminal offences assimilated to the corruption offences; criminal offences connected to the corruption offences; criminal offences against the financial interests of the European Union;
 - q) criminal offences on tax evasion;
 - r) criminal offences on the customs regime ;
 - s) fraudulent bankruptcy
 - t) criminal offences committed through IT systems and electronic payment means;
 - u) trafficking in organs, tissues or cells of human origin.
- (2) The extended confiscation shall be ordered if the following conditions are cumulatively met:
- a) the value of the assets acquired by the convicted person, during a period of 5 years before, and as the case may be, after the moment of committing the criminal offence until the date of the issuing of the indicting document is obviously exceeding the licit incomes obtained by that person;
 - b) the court has the conviction that those assets are coming from criminal activities similar with the ones at para (1).
- (3) For the application of the provisions of para (2), the value of the assets which have been transferred by the convicted person or by a third party to a family member, to the persons with whom the convicted person has established similar relations to the ones between spouses or between the parents and children, in the situation in which they are living with the convicted person, to the legal persons upon which the convicted person has the control shall also be taken into consideration.

- (4) The “assets”, according to this article, shall also include the amounts of money.
- (5) When establishing the difference between the licit incomes and the value of the acquired assets the value of the assets at the date of their acquiring and the expenditure made by the convicted person and the persons stipulated at para (3) shall be taken into consideration.
- (6) If the assets subject to confiscation shall not be found, than money and other assets up to the value of the assets subject to confiscation shall be confiscated
- (7) The assets and money coming from exploiting or using the assets subject to confiscation shall also be confiscated.
- (8) The confiscation shall not outrun the value of the assets acquired during the period mentioned at para (2) exceeding the level of the licit incomes of the convicted person.

Law no.39/2003 regarding the preventing and combating of organized crime

CHAPTER V International cooperation

Article 24 –

- (1) The Ministry of Internal Affairs, the Ministry of Justice and the Public Ministry shall cooperate directly within the specifications of the law, and while abiding by the obligations issuing from the international juridical instruments to which Romania is part, with the institutions having similar prerogatives from other states, as well as with international organizations specialized in this domain.
- (2) The cooperation, organized and carried out according to paragraph (1) to the purpose of preventing and combating transnational offenses committed by organized criminal groups may have as subject, as the case requires, international judicial assistance in matters of Criminal Law, extradition, identification, blocking, laying distraint and seizure of the products and instruments of the offense, developing joint investigations, information exchange, technical or other kind of assistance for gathering and analyzing information, training specialized personnel, as well as other similar activities.

Article 25 –

- (1) Within international cooperation in the field of seizure, the authorities qualified according to the law shall take measures for:
 - a) the receipt, transmission and execution of seizure decisions of the qualified foreign authorities, upon their request, uttered according to the law;
 - b) the ordering of seizure of goods according to the present law, in case there is a request to this respect from a qualified foreign authority;

- (2) The Court may order the transmission of seized goods according to the present article, to the qualified foreign authority that has uttered a request according to the stipulations of paragraph (1), if the following conditions are met:
- a) there is a request uttered in this respect by the qualified foreign authority and
 - b) the goods to be transmitted to this authority are destined to be returned to the injured persons or to serve the justified payment of damage to these persons.

Law no. 302/2004 on International Judicial Cooperation in criminal matters

SECTION 5

Provisions referring to the cooperation with the Member States of the European Union in enforcing Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

Paragraph 1 General provisions

Article 248 Definitions

- (1) *Confiscation order* shall mean a final penalty or measure imposed by a court following proceedings in relation to a criminal offence or offences, resulting in the definitive deprivation of property.
- (2) *Property* shall mean property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the court in the issuing State has decided:
- a) is the proceeds of an offence, or equivalent to either the full value or part of the value of such proceeds; or
 - b) constitutes the instrumentalities of such an offence.
- (3) The *proceeds of an offence* shall mean any economic advantage derived from criminal offences. It may consist of any form of property having arisen as a result of the offence being committed.
- (4) *Instrumentalities of an offence* shall mean any property used or intended to be used, in any manner, wholly or in part, to commit an offence or offences.
- (5) *Cultural objects forming part of the national cultural heritage* shall mean the property defined under Article 63 of Law no. 182/2000 on the protection of the movable national cultural heritage, republished, as subsequently amended and supplemented, transposing Article 1 (1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.
- (6) Where the criminal proceedings leading to a confiscation order involve a predicate offence as well as money laundering, the offence mentioned in Article 262 (1) (f) shall mean the predicate offence.

- (7) *Issuing State* shall mean the Member State in which a court has issued a confiscation order within the framework of criminal proceedings.
- (8) *Executing State* shall mean the Member State to which a confiscation order has been transmitted for the purpose of execution.
- (9) *Framework Decision* shall mean Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, published in Official Journal of the European Union no. L 328 of 24 November 2006.

Article 249 Confiscation order and certificate

- (1) A confiscation order shall be issued in the form and in observance of the law of the issuing State and shall be accompanied by the certificate provided for in paragraph (3).
- (2) According to Romanian law, a *confiscation order* shall mean the decision whereby the court imposed the precautionary measure of special confiscation, with the final mention or operative part of such decision containing the confiscation order.
- (3) The certificate shall be prepared in accordance with the standard form provided for in Annex no. 4 and shall be signed and sealed by the judicial authority having ordered the confiscation. The contents of the certificate shall also be certified by the issuing judicial authority.

Article 250 Competent Romanian authorities

- (1) The Romanian authorities competent to issue a confiscation order shall be the courts of law.
- (2) In case of a confiscation order issued by a judicial authority of a Member State, the execution competence shall lie with the tribunal under whose jurisdiction the property subject to confiscation is located. If the confiscation order related to:
- a) several items of movable property located under the jurisdiction of different tribunals, the competence shall lie with the Tribunal of Bucharest;
 - b) several items of movable property and one item of immovable property, the competence shall lie with the tribunal under whose jurisdiction the immovable property is located;
 - c) several items of immovable property, located under the jurisdiction of different tribunals, the competence shall lie with the tribunal under whose jurisdiction the item of immovable property with the highest value is located.
- (3) In the case of multiple confiscation orders, transmitted by several issuing Member States, for the same items of property, the competence shall lie with the tribunal that was notified first.

- (4) The central Romanian authority in enforcing Article 3 (2) of the Framework Decision shall be the Ministry of Justice, having the role to assist the courts of law and to transmit and receive the confiscation orders where direct contact is impossible.

Article 251 Scope

- (1) If the acts giving rise to the confiscation order constitute one or more of the following offences, irrespective of the name specified in the law of the issuing State, and are punishable in the issuing State by a custodial sentence of a maximum of at least three years, the confiscation order shall give rise to execution without verification of the double criminality of the acts:

- participation in a criminal organization,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorized entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organized or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

- (2) For offences other than those covered by paragraph (1), recognition and execution of the confiscation order is subject to the condition that the acts giving rise to the confiscation order constitute an offence which permits confiscation under the Romanian law, irrespective of its constituent elements and the legal classification in the issuing State and irrespective of the description of such offence in the law of such State.

Article 252 Amnesty, pardon and review of confiscation orders

- (1) Amnesty and pardon may be granted by the issuing State and also by the executing State.
- (2) Only the issuing State may determine any application for review of the confiscation order.

Paragraph 2 Procedure for the Romanian authorities transmitting confiscation orders and the certificate

Article 253 Transmission of confiscation orders and the certificate

- (1) A confiscation order, together with the certificate provided for in Article 249, together with the translation into the official language or official languages of the executing Member State or in another language accepted by the latter, shall be transmitted by the issuing judicial authority directly to the competent authority of the executing State, by any means producing a written record and under conditions allowing the competent authority of the executing State to establish authenticity thereof. The translation shall be made at the expense of the issuing judicial authority.
- (2) The original of the confiscation order and the original of the certificate shall be transmitted to the executing State, upon request.
- (3) If the issuing judicial authority does not know the authority competent to recognize and execute the confiscation order, the latter shall request the executing State, through Romania's contact points to the European Judicial Network, to provide information in that respect.
- (4) The direct transmission stipulated in paragraph (1) is not allowed where a Member State appointed a central authority for the transmission or receipt of confiscation orders.
- (5) All communications relating to the recognition and execution of the confiscation order shall be made directly between the issuing authority and the competent authority of the executing State, subject to the provisions of paragraph (4).

Article 254 Determination of the Member State competent to execute the confiscation order

- (1) The confiscation order and the certificate referred to in 249 may be transmitted:
 - a) if the confiscation order refers to the confiscation of a sum of money, to the competent authority of the Member State where the issuing judicial authority has reasonable grounds to believe that the natural or legal person against which the confiscation was imposed holds property or income;

- b) if the confiscation order refers to the confiscation of certain parts of property, to the competent authority of the Member State where the issuing judicial authority has reasonable grounds to believe that the property subject to confiscation is located.
- (2) If there are no reasonable grounds which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, the confiscation order may be transmitted to the competent authority of the Member State where the natural or legal person against whom the confiscation order has been issued is normally resident or has its registered seat respectively.

Article 255 Transmission of a confiscation order to one or more executing States

- (1) The confiscation order may be transmitted to only one executing State, save for the cases mentioned in paragraphs (2) and (3).
- (2) The confiscation order concerning specific items of property may be transmitted to more than one executing State, at the same time, in cases where:
- a) the issuing judicial authority has reasonable grounds to believe that different items of property covered by the confiscation order are located in several different executing States;
 - b) the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State or the issuing judicial authority has reasonable grounds to believe that a specific item of property covered by the confiscation order is located in one or two or more specified executing States.
- (3) A confiscation order concerning an amount of money may be transmitted to more than one executing State, at the same time, where the issuing judicial authority deems there is specific need to do so, for example, where the property concerned has not been frozen under Council Framework Decision 2003/577/JHA or the value of the property which may be confiscated in Romania, as issuing State, and in any one executing States is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

Article 256 Consequences of transmission of confiscation orders

- (1) The transmission of a confiscation order to one or more executing States does not restrict the right of the Romanian judicial authority to order the execution of the confiscation, in accordance with the Romanian Code of Penal Procedure.
- (2) In the case of transmission of a confiscation order concerning an amount of money to one or more executing States, the value derived from its execution may not exceed the maximum amount specified in the confiscation order.
- (3) The issuing judicial authority shall immediately inform the competent authority of any executing State:
- a) if it considers, for instance, on the basis of information notified to it by each of the executing States, that there is a risk that execution beyond the maximum amount specified in the confiscation order may occur. If the issuing judicial authority was

informed that the execution of the confiscation order was postponed, the latter shall immediately inform the competent authority of the executing State whether the risk referred has ceased to exist;

- b) if all or part of the confiscation order has been executed in Romania or in one of the executing States. In the case of partial confiscation, the issuing judicial authority shall specify the amount for which the confiscation order has not yet been executed;
 - c) if, after transmission of a confiscation order, a Romanian authority receives any sum of money which the person concerned in the confiscation order paid voluntarily in respect of such confiscation order. If the proceeds of the offence were confiscated, any part of the amount shall be deducted from the amount that has to be confiscated in the executing State. In this case, the issuing judicial authority shall specify the amount for which the confiscation order has not yet been executed.
- (4) If, following the execution of a confiscation order issued by a Romanian judicial authority, the executing authority indemnified any person concerned, including good-faith third parties, the Romanian State shall reimburse to the executing State the amount of such compensation.
- (5) If the executing authority informs that the execution of the confiscation order involves large or excessive expenses, the issuing Romanian judicial authority may take into consideration the proposal to share expenses based on a detailed payment specifications submitted by the executing authority.

Article 257 Termination of execution of the confiscation

The issuing Romanian judicial authority shall forthwith inform the competent authority of the executing State, by any means capable of producing a written record, of any decision or measure as a result of which the confiscation order ceases to be enforceable or shall be withdrawn, for any reason.

Paragraph 3 Procedure for the Romanian authorities executing the confiscation orders

Article 258 Preliminary measures

- (1) When the court receives a confiscation order, it shall verify within no more than 24 hours after the receipt, whether the order is accompanied by a Romanian translation.
- (2) If the confiscation order is not translated, the court shall request the competent authority of the issuing State to deliver a translation, within no more than 5 days.
- (3) The distribution of the case shall be made in accordance with the relevant legal provisions applicable in this area, to a panel consisting of only one judge, and the court hearing date shall not be later than 5 days.
- (4) If the court deems that it does not hold the competence required to recognize and to take the measures necessary for executing the confiscation order, it shall forward the confiscation order, *ex officio*, to the court competent to recognize and to execute the same

and shall inform the competent authority of the issuing State in such respect. If the confiscation order does not contain information sufficient for establishing competence, the court may request the competent authority of the issuing State to provide additional information or the certificate specified in Article 249, if the latter has not been initially transmitted, and shall set a deadline of no more than 5 days for the competent authority of the issuing State to provide such documents.

Article 259 Rules for the recognition and execution of confiscation orders

- (1) The confiscation order issued by a competent authority of a Member State shall be recognized without further formality, unless one of the non-recognition reasons specified in Article 262 is applicable.
- (2) The confiscation order issued by a competent authority of a Member State, recognized by the court of law, shall be executed without delay, save where one of the reasons for postponement specified in Article 263 is applicable.
- (3) In case of refusal to recognize a confiscation order, the court shall analyze the possibility to consult with the competent authority of the issuing State, prior to delivering a decision to that effect. If the refusal is based on the grounds indicated in Article 262 (1) (a), (b), (e), (f) or (g), consultation is mandatory. In addition, consultation is mandatory in the case stipulated in Article 262 (1) (d), if the competent authority of the issuing State was not informed in accordance with Article 267 (3).
- (4) If the person against whom the confiscation order was rendered may evidence confiscation, in whole or in part, in any State, the court shall consult the competent authority of the executing State. In case the proceeds of the offence are confiscated, any part of the amount that is recovered in accordance with the confiscation order from any States, other than the Romanian State, shall be fully deducted from the amount to be confiscated by the court of law.
- (5) The court may only order alternative measures to the confiscation order, including imprisonment or other custodial sentences, if the competent authority of the issuing State expressed its written consent in this respect.
- (6) If the confiscation order concerns an amount of money, the court shall, if necessary, convert the amount to be confiscated into the national currency at the rate of exchange valid on the date when the confiscation order was issued.
- (7) If the execution of the confiscation order gives rise to large or excessive expenses, the executing Romanian judicial authority may inform the competent authority of the issuing State in such respect and propose to share such expenses based on a detailed payment specifications prepared to such effect.

Article 260 Governing law

The execution of confiscation orders shall be governed by the Romanian law, the Romanian authorities being the only ones competent to decide on the execution of the confiscation, including in relation to the measures to be adopted in this respect.

Article 261 Confiscation in special cases

- (1) Where a confiscation order refers to a certain item of property, provided that the issuing authority consents and that such a possibility is allowed by the law of both States, the court may order confiscation by money equivalent corresponding to the value of the property covered by the confiscation order.
- (2) Where the confiscation order concerns an amount of money, if such amount of money cannot be fully retrieved, the court may order confiscation of any item of available property.

Article 262 Reasons for non-recognition and non-execution

- (1) Save for the case referred to in Article 251 (2), recognition and execution of the confiscation order may be refused if:
 - a) the certificate referred to in Article 249 is not enclosed therein, is incomplete or manifestly does not correspond to the confiscation order;
 - b) the execution of the confiscation order would be contrary to the principle of *non bis in idem*;
 - c) the Romanian law provides immunity or privilege rendering execution of the confiscation order impossible;
 - d) the rights of any interested party, including the rights of good-faith third parties, make it impossible to execute the confiscation order, including where this is a consequence of the application of the provisions stipulated for the legal protection of rights in accordance with Article 267;
 - e) the certificate attached to the confiscation order reveals that the person against whom the confiscation was imposed did not appear personally and was not represented by a legal counsel in the proceedings resulting in the confiscation order, unless the certificate states that the person was informed personally or via his/her representative, competent according to national law, of the court proceedings, in accordance with the law of the issuing State, or that the person has indicated that he or she does not challenge the confiscation order;
 - f) the confiscation order is based on criminal proceedings in respect of offences which:
 - under the Romanian law, are regarded as having been committed, wholly or partly, within the territory of the Romanian State; or
 - were committed outside the territory of the issuing State, and the Romanian law does not permit legal proceedings to be taken in respect of such offences where they are committed outside the Romanian territory;
 - g) the execution of the confiscation order may infringe the principles of the Constitution;
 - h) the execution of the confiscation order is barred by statutory time limitations under the Romanian law, provided that the acts fall within the jurisdiction of Romanian authorities under the domestic criminal law.

- (2) In the case referred to in paragraph (1) (a), the court may establish a time limit for the delivery or supplementation or rectification of the certificate.
- (3) Any decision to refuse the recognition or execution shall be made and notified forthwith to the competent authorities of the issuing State.
- (4) If, in practice, it is impossible to execute the confiscation order for the reason that the property to be confiscated has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the court shall immediately inform the competent authority of the issuing State in such respect.

Article 263 Postponement of execution of the confiscation order

- (1) The court may postpone the execution of a confiscation order transmitted:
 - a) if, in the case of a confiscation order concerning an amount of money, the former deems that there is a risk that the total value derived from its execution may exceed the amount specified in the confiscation order because of simultaneous execution of the confiscation order in more than one Member State;
 - b) in the case of legal remedies referred to in Article 267;
 - c) where the former deems that the immediate execution of the confiscation order might damage ongoing criminal proceedings; the postponement shall be ordered until such time when the execution becomes possible;
 - d) where the property forming the object of the confiscation order has already been the subject of confiscation in proceedings according to national criminal laws.
- (2) The court shall, for the duration of the postponement, take all the measures it would take in a similar domestic case to prevent the property from no longer being available for the purpose of execution of the confiscation order.
- (3) In the case of postponement in accordance with paragraph (1) (a), the court shall inform the competent authority of the issuing State, immediately by any means capable of producing a written record.
- (4) In the cases referred to in paragraph (1) (b) and (c), the court shall prepare a report on the grounds for the postponement, including, if possible, the expected duration of the postponement, report to be delivered to the competent authority of the issuing State.
- (5) As soon as the grounds for postponement have ceased to exist, the court shall forthwith take the necessary measures for the execution of the confiscation order and inform the competent authority of the issuing State.

Article 264 Multiple confiscation orders

If the court is processing:

- a) two or more confiscation orders concerning an amount of money, which have been issued against the same natural or legal person, and the person concerned does not have sufficient means in Romania to enable all orders to be executed; or
- b) two or more confiscation orders concerning the same specific item of property, the former shall take into account all the circumstances, including the involvement of frozen assets, the seriousness and the place of the offence, the dates when such orders were issued and the date when they were transmitted, in order to decide which of the confiscation orders is or are to be executed.

Article 265 Disposal of confiscated property

- (1) The Romanian State, through its competent bodies, shall dispose of the money obtained from the execution of a confiscation orders as follows:
 - a) if the amount of money obtained from the execution of a confiscation order is below EUR 10,000 euro or the RON equivalent of that amount, the amount shall accrue to the State budget;
 - b) in all other cases, 50% of the amount which has been obtained from the execution of a confiscation order shall be transferred to the issuing State.
- (2) For property other than money, confiscation shall be executed in one of the following methods:
 - a) the confiscated property may be sold, in accordance with the legal provisions, and in this case, the proceeds of the sale shall be disposed of in accordance with the provisions of paragraph (1); or
 - b) the confiscated property may be transferred to the issuing State. If the confiscation order covers a part of the value of the order, the property may only be transferred to the issuing State, if the competent authority of such State gives its consent in this respect;
 - c) when it is not possible to apply the provisions of letters (a) or (b), the confiscated property may be disposed of in any other way, in accordance with the provisions of Romanian law.
- (3) Cultural objects forming part of the national cultural heritage subject to confiscation may not be sold or transferred.
- (4) The provisions of paragraph (1)–(3) shall apply unless otherwise agreed between the Romanian State and the issuing State.

Article 266 Information on the result of the execution

The executing authority shall inform the competent authority of the issuing State, without delay:

- a) of the transmission of a confiscation order to the competent Romanian court, in accordance with Article 258 (4);

- b) of any decision not to recognize the confiscation order, together with the reasons for the decision;
- c) of the total or partial non-execution of the order for the reasons referred to in Article 252, Article 259 (3), Articles 260 and 264;
- d) as soon as the execution of the order has been completed;
- e) of the application of alternative measures to the confiscation order, according to Article 259 (5).

Article 267 Compensation

- (1) Any interested party, including good-faith third parties, has the right to receive compensation, under the conditions of the law, in case of violation of his/her rights by the recognition or execution of a confiscation order.
- (2) The substantial grounds having underlain the issuance of the confiscation order may not be challenged before the executing Romanian court.
- (3) If legal remedy proceedings are initiated before the Romanian court, the latter shall inform the competent authority of the issuing State.

Article 268 Reimbursement

- (1) Without prejudice to the provisions of Article 267 (2), where the Romanian State is responsible for injury caused to one of the interested parties, including good-faith third parties, by the execution of a confiscation order transmitted to a Romanian judicial authority in order to be executed, the former shall claim from the issuing State any amount of money paid as compensation to the person concerned, save where and to the extent that the injury or any part of it is exclusively due to the conduct of the Romanian authorities.
- (2) The provisions of paragraph (1) shall not prejudice the national legal provisions on claims by natural or legal persons for compensation or damage.

Slovenia



FORFEITURE OF ASSETS OF ILLEGAL ORIGIN ACT (ZOPNI)

I. INTRODUCTORY PROVISIONS

Contents

Article 1

This Act shall lay down the terms and conditions, the procedure and the responsible authorities for financial investigation, the provision of temporary security of the forfeited assets, the secure storage, management and forfeiture of assets of illegal origin, the responsibilities of the Republic of Slovenia, and the manner in which international cooperation is to be carried out under the procedures of this Act.

Purpose of the Act

Article 2

- (1) The purpose of this Act is to prevent the acquisition and use of assets of illegal origin in order to protect the legal acquisition of assets and the economic, social and environmental impact of property resulting from the acquisition of assets in compliance with regulations.
- (2) The purpose of this Act referred to in the preceding paragraph shall be achieved by forfeiting the illegally acquired assets of persons who acquire these assets or to whom the assets are transferred free of charge or for consideration that is disproportionate to the actual value of the assets in question, or by forfeiting the illegally acquired assets of persons who are aware or should have been aware of the illegal origin of the assets transferred to them.

Commencement of the procedure

Article 3

Financial investigations under this Act shall be carried out in the event that there are grounds for suspicion in pre-trial or trial proceedings that a person has assets of illegal origin in his possession with a total value exceeding EUR 50,000.

Definitions

Article 4

For the purposes of this Act, the following definitions shall apply:

1. "Assets" shall mean objects and rights that may be subject to enforcement, particularly immovable and financial property as well as all other assets with monetary value, and assets that are directly or indirectly derived from such assets, into which they have been converted or with which they have been blended.

2. "Financial Assets" shall mean cash, accounts receivable, debt securities, shares and interests in the equity of legal entities and other financial instruments.
3. "Suspect", "Accused Person" and "Convicted Person" shall have the same meaning as in the act governing criminal proceedings.
4. "Testator" shall mean a deceased person against whom pre-trial or trial proceedings could not be commenced or have been stopped, but there remain grounds for suspicion that he has committed a criminal offence, or shall mean a person against whom pre-trial or trial proceedings have been stopped due to his death, or for whom there are grounds for suspicion that he has committed a criminal offence.
5. "Legal Successor" shall mean a person who has inherited assets of illegal origin from a Suspect, an Accused Person, a Convicted Person, a Testator or their heirs, if such person is aware or should have been aware that the assets in question had been acquired illegally.
6. "Related Party" shall mean a closely related party, an immediate family member or other natural or legal entity to whom or to which assets of illegal origin have been transferred free of charge or for a consideration that is disproportionate to the actual value of the assets in question, or to whom or to which assets of illegal origin have been transferred fictitiously or blended with its assets.
7. "Closely related party" shall mean a legal entity in which a Suspect, an Accused Person, a Convicted Person, a Testator or a Legal Successor has an equity interest, or a right to an equity interest of at least 25% of the value of the total equity interests, or a right in the form of a voting right or a power of decision to the aforementioned extent, or has a controlling interest in the legal entity on the basis of a contract or by holding a dominant position in the management or control of the legal entity, or for which the conditions for transfer differ from those established among unrelated parties under the same or comparable circumstances.
8. "Immediate family member" shall mean a spouse or person with whom a Suspect, an Accused Person, a Convicted Person, a Testator or a Legal Successor lives in a common law marriage or in a registered same-sex civil partnership, or who is a direct or collateral relative of these persons up to the third degree of kindred, or who is connected with these persons by marriage up to the second degree of kindred, or who is their adoptive parent, guardian, ward or another person with whom they live in a shared household.
9. "Owner" shall mean a Suspect, an Accused Person, a Convicted Person, a Testator or a Legal Successor or a Related Party who possesses assets of illegal origin.
10. "Criminal offence" shall mean a criminal offence defined by the Criminal Code (hereinafter: KZ-1):
 - terrorism (Article 108 of KZ-1);
 - terrorist financing (Article 109 of KZ-1);

- establishing slavery relations (Article 112 of KZ-1);
- human trafficking (Article 113 of KZ-1);
- exploitation through prostitution (Article 175 of KZ-1);
- the presentation, production, holding and transmitting of pornographic material (paragraphs (2), (3) and (4) of Article 176 of KZ-1);
- the manufacture and trade of harmful remedies (paragraphs (1), (2) (4) and (5) of Article 183 of KZ-1);
- the manufacture and trade of tainted foodstuffs and other products (paragraphs (1), (2) (4) and (5) of Article 184 of KZ-1);
- the production and trafficking of illicit drugs, illicit drugs used in sport, and precursors for the manufacture of illicit drugs (Article 186 of KZ-1);
- rendering an opportunity for the consumption of narcotic drugs or illicit drugs used in sport (Article 187 of KZ-1);
- the organisation of pyramid schemes and illegal gambling (Article 212 of KZ-1);
- an offence against the economy (Chapter 24 of KZ-1) which may be punishable by imprisonment of up to two years or more;
- the acceptance of bribes (Article 261 of KZ-1);
- giving bribes (Article 262 of KZ-1);
- the acceptance of benefits for illegal intermediation (Article 263 of KZ-1);
- giving gifts for illegal intermediation (Article 264 of KZ-1);
- criminal association (Article 294 of KZ-1);
- the manufacture and acquisition of weapons and instruments intended for the commission of a criminal offence;
- illegal manufacturing and trafficking in arms or explosives (Article 307 of KZ-1);
- other criminal offences committed in a criminal organisation; or
- other premeditated criminal offences punishable by five years or more in prison if they are the source of assets of illegal origin.

Assets of illegal origin

Article 5

- (1) The assets of a Suspect, an Accused Person, a Convicted Person or a Testator shall be deemed to be of illegal origin if there are reasonable grounds to suspect that they have committed a listed criminal offence, unless it has been demonstrated that such assets have been acquired from lawful income, i.e. in a lawful manner.
- (2) Assets shall be presumed not to have been acquired from legal sources of income, that is in a lawful manner, if there is a gross disproportion between the amount of assets and income less taxes and contributions paid by the persons referred to in the preceding paragraph over the period of time in which the assets have been acquired.

- (3) The value of the total assets which are owned, possessed, used, enjoyed, held or transferred to related parties by the persons referred to in the preceding paragraph or which have been blended together with the assets of such related parties or which have been passed to the aforementioned persons' legal successors shall be taken into account in determining this disproportion.

Presumption of a gratuitous transfer of assets

Article 6

Assets of illegal origin shall be presumed to have been transferred free of charge or for consideration that is disproportionate to the assets' actual value if such assets have been transferred to closely related parties or immediate family members.

Competent authorities

Article 7

- (1) Financial investigation proceedings shall be conducted by the public prosecution office, which is responsible for commencing pre-trial or trial proceedings for listed criminal offences.
- (2) Decisions in the proceedings of temporary security for the temporary forfeiture and permanent forfeiture of assets of illegal origin shall be made by the court having jurisdiction to decide in the pre-trial or trial proceedings referred to in the preceding paragraph.
- (3) Ljubljana District Court shall have the jurisdiction to determine the proceedings for the forfeiture of assets of illegal origin.

Cooperation and provision of information

Article 8

- (1) State authorities, holders of public authority, banks and other financial institutions shall provide the required free-of-charge assistance to the competent authorities referred to in Article 7 of this Act and to authorities having the competence to enforce decisions under this Act.
- (2) Administrators of official records, registers, public registers and other protected data, information and documents required for the purpose of exercising the powers under this Act shall provide the competent authorities with information free of charge at their request. A request for data, information and documents made by a competent authority shall include the type of information requested, the full name, the date and the place of birth or the personal registration number and information on the place of residence of the owners for whom the information is required, the unique identification number assigned to the case, as well as the appropriate time limit within which the information is to be provided; moreover, it shall also include a notice that the person to whom the information relates shall not be made aware of the disclosure of such information.

- (3) The obligation to protect confidential information, trade, bank and professional secrecy shall not apply to the court, state prosecutor's office, other state authorities, holders of public authority, notaries public, banks and other financial institutions and their employees in the provision of the data, information and documents referred to in the preceding paragraph.

Mutatis mutandis application of other regulations

Article 9

- (1) The provisions of the act governing criminal proceedings shall apply, mutatis mutandis, to the financial investigation procedure, temporary security for the forfeiture and temporary forfeiture of assets of illegal origin.
- (2) The provisions of the act governing civil procedure shall apply, mutatis mutandis, to the forfeiture proceedings relating to assets of illegal origin unless otherwise provided by this Act.
- (3) The provisions of the Penal Code (KZ-1) concerning the forfeiture of proceeds of crime or proceeds associated with crime shall apply, mutatis mutandis, to the transfer of assets free of charge or for consideration that is disproportionate to the actual value of the assets, and to the presumption of a gratuitous transfer of assets unless otherwise provided by this Act.

II FINANCIAL INVESTIGATION

Investigation launch

Article 10

- (1) The state prosecutor shall order a financial investigation once the following conditions have been met:
1. during pre-trial or trial proceedings it is established that there are grounds for suspicion that a Suspect, an Accused Person or a Testator has committed a listed criminal offence;
 2. the persons referred to in the preceding point own, possesses, use or enjoy assets in respect of which there are grounds to suspect that these assets are of illegal origin or that they have been held or have been passed to such persons' legal successors or transferred to their related parties or have been blended with the assets of these persons, which shall be indicated in the police criminal information which also must include substantiated reasons for the suspicion stated in the criminal information; and
 3. the assets referred to in the preceding point do not relate to the proceeds of crime or proceeds associated with a crime.
- (2) The state prosecutor may, under the conditions referred to in point 2 of the preceding paragraph, order a financial investigation to be carried out against the Accused Person for having committed a listed criminal offence no later than within one year of the date when the judgement of conviction becomes final.

- (3) The state prosecutor shall issue an order that the person in question be investigated and the period covered by the investigation. The financial investigation may be carried out for a maximum period of five years preceding the year in which the criminal offence was committed.
- (4) If grounds for the suspicion of a transfer or passing of assets to related parties arise in the course of the financial investigation, the state prosecutor shall order the investigation to be extended to such related parties as well.

Purpose and scope of financial investigation

Article 11

- (1) The purpose of financial investigation is to gather the evidence and information required to decide on the temporary security for the forfeiture and temporary forfeiture of assets of illegal origin and to determine whether and against whom the procedure for the forfeiting assets of illegal origin should be commenced.
- (2) The following data shall be gathered for the financial investigation purposes:
 - data on the amount of assets held by a Suspect, an Accused Person, a Convicted Person or a Testator in proportion to their income less taxes and contributions paid and the amount of assets owned, used, enjoyed or held by such persons in the period covered by the financial investigation;
 - the data on the amount of assets referred to in the preceding item that are transferred to related parties or passed on to legal successors in the period covered by the financial investigation and the method of transfer;
 - other data which may prove useful for the proceedings or whose acquisition would be appropriate with regard to the circumstances of the case in order to determine the origin, amount and transfer of the assets.

Financial investigation actions

Article 12

- (1) Financial investigation may be carried out with measures that are permitted under the act governing criminal proceedings in order to obtain the data and evidence necessary to secure the request for the forfeiture of the proceeds of crime or proceeds associated with crime.
- (2) A search of the owner's residential and other premises and a personal search of the owner may be performed provided there are the reasonable grounds for suspicion referred to in Article 10 of this Act and that there is a likelihood of discovering assets of illegal origin or traces, objects and evidence that are relevant for the proceedings under this Act during the investigation. A house and personal search may be carried out only by order of the court.
- (3) Assets and objects found during the search referred to in the preceding paragraph and assets and objects which are surrendered by the owner himself or which may serve as evidence or be the subject of forfeiture shall be forfeited in accordance with the provisions

of the act governing criminal proceedings. The assets that may become the subject of forfeiture shall be placed in the temporary custody of the Customs Administration of the Republic of Slovenia (hereinafter: CURS).

- (4) In cases where no forfeiture of assets of illegal origin has yet been ordered, the state prosecutor shall, within eight days of the forfeiture of the assets referred to in the preceding paragraph, request the court issue an order for the temporary security or temporary forfeiture of assets; otherwise the assets shall be returned to the owner.

Directing the financial investigation

Article 13

During the financial investigation, the state prosecutor may direct the work of the police, the Tax Administration of the Republic of Slovenia (hereinafter: DURS), CURS, the Office of the Republic of Slovenia for the Prevention of Money Laundering, and other competent state bodies by giving them compulsory instructions, professional opinions and suggestions for gathering intelligence and the performance of other measures within their competence with a view to identifying assets of illegal origin, determining their value and gathering the information required to issue a decision on temporary security of forfeiture, temporary and permanent forfeiture of assets of illegal origin.

Financial investigation team

Article 14

- (1) For financial investigation purposes, the head of the competent state prosecutor's office shall establish a financial investigation team ex officio upon the written proposal of the police, DURS, CURS and the Office of the Republic of Slovenia for the Prevention of Money Laundering.
- (2) At the end of the financial investigation, the head of the team referred to in the preceding paragraph shall prepare a written report and send it, together with the information gathered, to the head of the competent state prosecutor's office. The report shall include detailed information and evidence gathered on the assets for which there are grounds for suspicion that they may be of illegal origin, on the transfers of such assets to related parties, on the related parties' assets, and on the reasons for any temporary security of forfeiture or temporary forfeiture of assets of illegal origin.
- (3) The provisions of the act governing claim enforcement and protection and the communication of data on the list of debtor's assets shall apply, mutatis mutandis, to the definition of asset details.
- (4) The provisions on specialised investigation teams of the act governing criminal proceedings shall apply, mutatis mutandis, to the establishment, structure, management and direction of the financial investigation team.
- (5) When no financial investigation team is established for investigation purposes, an investigation report written in accordance with paragraphs (2) and (3) of this Article shall be prepared by the competent state prosecutor.

Use of evidence and data

Article 15

- (1) Other materials obtained for financial investigation purposes during the pre-trial or trial proceedings for a listed criminal offence and data from personal databases whose contents may only be acquired by the state prosecutor's office may also be used as evidence.
- (2) The evidence and other materials obtained during the financial investigation under this Act shall not be used in pre-trial or trial proceedings.

Data confidentiality

Article 16

- (1) The data obtained during a financial investigation shall be confidential.
- (2) Officials participating in the proceedings shall call the attention of all persons involved to the duty to keep the data confidential.

Duration of the financial investigation

Article 17

- (1) The competent authorities shall proceed promptly with the financial investigation process.
- (2) A financial investigation may be carried out for no longer than one year. This period may be extended, for objective reasons, by no more than six months by a decision of the competent state prosecutor's office.

Suspension of financial investigation

Article 18

- (1) If the state prosecutor proposes no temporary security for the forfeiture of assets of illegal origin to the court and brings no action for the forfeiture of such assets within the time limit specified in paragraph (2) of Article 17 of this Act, the financial investigation shall be suspended by order.
- (2) The state prosecutor shall notify DURS and CURS of the suspension of the financial investigation.
- (3) DURS shall examine the data gathered within three months of receipt of the notification referred to in the preceding paragraph. The state prosecutor may extend the time limit referred to in the preceding paragraph by no more than one year at the request of DURS. The data may be used by DURS as evidence in the tax procedure. In the event that the data prove the suspicion of a criminal offence, DURS shall notify ex officio the state office thereof which may then use the data in pre-trial and trial proceedings against the perpetrators of such criminal offences.
- (4) If the data are not used by DURS as evidence in the tax procedure or if the suspicion of a criminal offence is not notified to the state prosecutor's office, CURS and the state

prosecutor shall return the forfeited assets and objects to the entitled persons on the expiry of the longest of the time limits referred to in the preceding paragraph.

- (5) Other data gathered within the framework of the suspended financial investigation shall be destroyed within one month of the expiry of the time limit referred to in paragraph (3) of this Article under the supervision of the investigating judge and subject to the application of the provisions of paragraph (2) of Article 154 of the Criminal Procedure Act (Official Gazette of the Republic of Slovenia (Uradni list RS) no. 32/07 – Official Consolidated Text, 102/07 – ZSKZDČEU, 23/08 – ZBPP-B, 68/08, 77/09 in 29/10 – Constitutional Court Decision).

International cooperation

Article 19

- (1) Where materials need to be obtained from other countries for financial investigation purposes under this Act, the state prosecutor may request such materials directly from the competent authorities of other countries on the basis of an international treaty or on the principle of reciprocity.
- (2) The state prosecutor may also use the data received from the competent authorities of other countries for financial investigation purposes without prior request unless this is contrary to an international treaty. The state prosecutor may send the data obtained during the financial investigation to a competent authority of a foreign country without prior request by such authority.

III. TEMPORARY SECURITY OF THE PERMANENT FORFEITURE AND TEMPORARY FORFEITURE OF ASSETS OF ILLEGAL ORIGIN

Conditions for temporary security of forfeiture

Article 20

- (1) The court shall order temporary security for the forfeiture of assets of illegal origin on the proposal of the state prosecutor provided that the following conditions have been satisfied:
- that there are reasonable grounds to suspect that a Suspect, an Accused Person, a Convicted Person or a Testator has committed a listed criminal offence;
 - the data and evidence gathered for the period under financial investigation show a clear discrepancy between the income less taxes and contributions paid by a Suspect, an Accused Person, a Convicted Person or a Testator and the value of assets owned, used, enjoyed or held and transferred to related parties by such persons or passed by such persons to their respective successors;
 - that there is a risk of the owner using these assets for criminal purposes, either alone or through other persons, or there is a risk of the owner hiding, disposing, destroying or otherwise holding these assets with a view to preventing or making the forfeiture of these assets more difficult; and

- that the assets which are the subject of the application for temporary security under this Act are not the subject of the security or forfeiture of the proceeds from or relating to a listed criminal offence in accordance with the provisions of the act governing criminal proceedings.
- (2) The subject of security under this Act may also be the assets for which temporary security of the forfeiture of the proceeds has been ordered and subsequently revoked if a change to or cancellation of the provisional security ordered in the trial proceedings has remained in force due to a procedure planned to be introduced by the competent tax authority.

Order for temporary security

Article 21

- (1) Temporary security shall be ordered for a Suspect, an Accused Person, a Convicted Person or a Testator for which there are reasonable grounds to suspect that they hold assets of illegal origin, or for a Legal Successor or a Related Party provided there are reasonable grounds to suspect that the assets of illegal origin have been transferred to such persons.
- (2) The court order shall include data on the owner, a description of the acts serving as evidence of a listed criminal offence, the time and place of its commission, and the statutory definition of such criminal offence, the assets that are the subject of security and the method and duration of security. The decision shall be substantiated.
- (3) The court shall establish the amount of assets of illegal origin and order security to be provided on the basis of the evidence submitted by the state prosecutor. The court shall not enter into an assessment of the legality of the bases for the acquisition of assets, but shall restrict itself only to an assessment of proportionality on the basis of the data submitted.
- (4) If the decision on temporary security cannot be served on the owner of the assets since his address is unknown or cannot be ascertained, the court shall designate ex officio a proxy for the temporary security procedure.

Provision of legal and social security

Article 22

- (1) If necessary, the court shall allow the person for whom it has ordered temporary security to hold a proportion of assets required for the payment of legal aid costs associated with the proceedings carried out under this Act and which is necessary to provide social security to the person itself and its dependants.
- (2) The payment of the costs referred to in the preceding paragraph shall be decided by the court's decision on the proposal of the person for whom the temporary security has been ordered.
- (3) The payment of legal aid costs shall be subject, mutatis mutandis, to the provisions on lawyer fees for ex officio representation in criminal proceedings, and the provision of

social security to the provisions on the funds necessary to meet the minimum cost of living requirements.

Duration and termination of temporary security

Article 23

- (1) The temporary security under this Act shall be terminated if the state prosecutor of the Specialised State Prosecutor's Office of the Republic of Slovenia fails to submit evidence that he has lodged an action for the forfeiture of assets of illegal origin and proposed an extension of the temporary security in civil procedure.
- (2) The time limit referred to in the preceding paragraph may be extended on the proposal of the state prosecutor by no longer than one month if no action to forfeit the assets could be brought and no proposal for extending the temporary security could be made within the time limit specified in the preceding paragraph.
- (3) If the state prosecutor lodges an action to forfeit the assets within the time limit specified in the preceding paragraphs and simultaneously requests an extension of the temporary security in civil proceedings, the temporary security shall be extended until the court decides on this request.
- (4) If the state prosecutor lodges no action and request to extend the temporary security for the forfeiture of assets of illegal origin in the civil procedure, the court that ordered the temporary security shall issue a decision terminating the security and deliver it to the state prosecutor, the owner and its proxy, authorities responsible for the implementation of security, DURS and CURS.
- (5) The decision to terminate the security shall not be implemented until after one month of the date of service of the decision referred to in the preceding paragraph on DURS.

Temporary forfeiture of assets of illegal origin

Article 24

- (1) At the request of the state prosecutor, the court may also order a temporary forfeiture of all or part of assets of illegal origin in the following cases:
 - if there is a serious risk that the value of the owner's assets will be reduced;
 - if the risk that the owner could use the assets for the purpose of criminal activity by himself or through other persons cannot be eliminated without accepting the assets in secure storage or management or
 - if the risk of the owner using the assets by himself or through other persons in a manner that could prevent forfeiture or make it more difficult cannot be eliminated merely by providing temporary security under this Act.
- (2) The state prosecutor may also request a temporary forfeiture of assets of illegal origin after the temporary forfeiture decision has been issued if the reasons referred to in the preceding paragraph only then become evident.

- (3) The court shall issue a decision specifying the assets to be temporarily forfeited and to which competent authority the assets are to be entrusted for secure storage and management. This decision shall also take into account the value and type of the assets, the temporary forfeiture requested, and the costs and the risk of temporary forfeiture, secure storage and management.
- (4) Unless otherwise provided in this Article, the provisions of this Act relating to the temporary security of forfeiture shall apply, mutatis mutandis, to the temporary forfeiture of assets of illegal origin.

Mutatis mutandis application of regulations

Article 25

Unless otherwise provided by this Act, the provisions of the act governing criminal proceedings for the provision of temporary security for the forfeiture of criminal proceeds shall apply, mutatis mutandis, to the temporary security and temporary forfeiture of assets of illegal origin.

IV. PROCEDURE FOR THE FORFEITURE OF ASSETS OF ILLEGAL ORIGIN

Commencement of the procedure

Article 26

- (1) The civil proceedings for the forfeiture of assets of illegal origin shall commence by a lawsuit brought against the owner by a member of the Specialised State Prosecutor's Office of the Republic of Slovenia.
- (2) The lawsuit shall include all elements under the act governing civil procedure. The lawsuit shall be accompanied by a written financial investigation report and court decisions on temporary security for the permanent forfeiture or temporary forfeiture of assets of illegal origin issued in accordance with this Act.

Burden of proof

Article 27

- (1) During the civil proceedings, the plaintiff shall state the facts and submit the evidence that give rise to the suspicion of the illegal origin of the defendant's assets in accordance with the provisions of this Act.
- (2) If the assets of illegal origin have been transferred to a related party, the plaintiff shall also state in the civil proceedings the facts and submit evidence of the transfer carried out free of charge or of consideration that is disproportionate to the actual value of the assets and, in the case of a closely related party or an immediate family member, the facts and evidence that give rise to the presumption of a gratuitous transfer of assets.
- (3) The defendant may challenge the presumption referred to in paragraph (2) of Article 5 of this Act if he proves that it is likely that the assets are not of illegal origin, and may

challenge the presumption referred to in Article 6 of this Act if he proves that it is likely that he has paid the actual value of the assets.

Temporary security and temporary forfeiture of assets of illegal origin

Article 28

- (1) If the state prosecutor requests an order for the temporary security or temporary forfeiture of assets or an extension thereof in civil proceedings, the court shall decide on such request within eight business days of receipt. The same time limit shall apply to the court's decision on the means of redress.
- (2) The procedure for temporary security and temporary forfeiture referred to in this Chapter shall be subject to the application, *mutatis mutandis*, of the provisions of the preceding Chapter of this Act and of the act governing claim enforcement and protection.

Promptness of the proceedings

Article 29

- (1) The civil proceedings for the forfeiture of assets of illegal origin shall be deemed urgent and treated as a priority.
- (2) The court shall schedule a pre-trial or main hearing by no later than within three months of receipt of the response to the lawsuit or of the deadline for filing a response to the lawsuit.

Protection of beneficiaries

Article 30

- (1) The forfeiture of assets of illegal origin shall have no impact on the rights to this property enjoyed by third parties unless, during the acquisition of such rights, they were aware or should have been aware of the illegal origin of the assets in question.
- (2) The court shall verify *ex officio* whether the proceedings involve all third parties who have been identified and whose rights or legal benefits, for which no final judicial decision has yet been made, could be affected by the court's decision. The court shall invite the third parties not involved in the proceedings to submit a statement on entering into the proceedings in accordance with the act governing civil proceedings and a statement on co-defendants and the participation of other persons in the proceedings within one month of receipt of the invitation and shall draw the attention of such third parties to the legal consequences referred to in Article 32 of this Act and the right referred to in paragraph (4) of Article 33 of this Act.
- (3) Under the circumstances defined by KZ-1 for the protection of injured parties in the forfeiture of proceeds of crime or proceeds associated with crime, the injured party exercising a claim for indemnification against a Suspect, an Accused Person, a Convicted Person or a Testator in criminal proceedings for a listed criminal offence shall also be deemed a third party referred to in the preceding paragraphs.

- (4) In accordance with the provisions of the preceding paragraphs, third party rights to forfeited assets which are established in civil proceedings and which do not preclude the forfeiture of assets of illegal origin shall be exercised in accordance with paragraph (4) of Article 33 of this Act.

Announcement of the commencement of the proceedings

Article 31

- (1) Immediately upon receipt of the lawsuit for the forfeiture of assets of illegal origin, the court shall notify the unknown third parties referred to in paragraph (1) of Article 30 of the commencement of the forfeiture proceedings.
- (2) The notification referred to in the preceding paragraph shall include the following:
1. data on the court conducting the proceedings, the reference number of the case and the assets that are the subject of the proceedings;
 2. the operative part of the decision on temporary security for the forfeiture and temporary forfeiture of assets;
 3. a call on third parties to submit a statement on the co-defendants and other persons involved in the proceedings within three months of the announcement;
 4. a reminder of the legal consequences referred to in Article 32 of this Act and an instruction regarding the right referred to in paragraph (4) of Article 33 of this Act;
 5. the date of publication of the announcement.
- (3) The announcement shall be published in Uradni list Republike Slovenije and posted on the notice board at the court; however, it may be ordered that the announcement be made through other media as well.

The consequences of missing the deadline

Article 32

If the persons referred to in Article 30 or 31 of this Act fail to meet the deadline for the submission of a statement on entering into the proceedings, they shall lose this right as well as the right relating to the property whose origin has been found to be illegal, and the right to challenge the civil effects of a valid court decision on their rights or legal benefits that have not yet been validly decided.

Effect on other proceedings

Article 33

- (1) No tax, enforcement, security, bankruptcy or winding-up proceedings or proceedings for the deletion of a legal entity from the companies register without winding-up or dissolution under summary proceedings shall be commenced for the assets that are the subject of a civil claim after the commencement of the legal proceedings for the forfeiture

- of assets of illegal origin in order to repay validly established claims to the owner of the assets.
- (2) The initiated proceedings for the assets referred to in the preceding paragraph that are the subject of a civil claim under this Act shall be suspended until the court has rendered its final judgment on the forfeiture suit.
 - (3) From the beginning of the lawsuit until the final court decision, the limitation periods and statutory deadlines for the performance of acts in the proceedings referred to in paragraphs (1) and (2) of this Act shall be suspended.
 - (4) The creditors who have initiated the proceedings referred to in paragraph (2) of this Article and the persons whose claims against the owner of the assets or rights to a certain level of repayment from the forfeited assets have been validly established may, within two months of the finality of the judgment on the forfeiture of assets of illegal origin, request the State Prosecutor's Office of the Republic of Slovenia make a repayment from the forfeited assets unless they were or should have been aware of the illegal origin of the assets at the time of acquisition of the entitlement.
 - (5) If the total amount of claims referred to in the preceding paragraph exceeds the amount of the forfeited assets, the State Prosecutor's Office of the Republic of Slovenia shall, in the course of the proceedings it conducts under the act governing state prosecution, offer repayment in accordance with the rules on the repayment of creditors in bankruptcy proceedings. If the state prosecutor's offer is not accepted, the State Prosecutor's Office of the Republic of Slovenia shall ex officio request the court commence bankruptcy proceedings for the forfeited assets in accordance with the provisions of the act governing financial operations, insolvency proceedings and compulsory winding-up.

Judgment

Article 34

- (1) The court shall deliver a judgment granting the claim and establishing that particular assets are of illegal origin, whereupon these assets shall be forfeited and shall become property of the Republic of Slovenia.
- (2) If the court refuses the claim, the court shall not abolish temporary security and return the temporarily forfeited assets prior to the expiry of one month after the date of valid service of the decision on DURS.

IMPLEMENTATION OF THE PROVISIONS ON TEMPORARY SECURITY, TEMPORARY FORFEITURE AND THE FORFEITURE OF ASSETS OF ILLEGAL ORIGIN

General provision

Article 35

- (1) In addition to the provisions of this Act, temporary security for the forfeiture, temporary forfeiture, secure storage and management of temporarily forfeited assets, and the

forfeiture of assets of illegal origin shall also be governed by the provisions of the acts in accordance with which the competent authorities shall perform their duties with regard to the type of assets for which security, secure storage, management and forfeiture has been ordered.

- (2) Unless otherwise provided by this Act or any other act, the provisions of the act governing claim enforcement and protection shall apply, *mutatis mutandis*, to the implementation of the provisions referred to in the preceding paragraph.
- (3) If this Act or any other act contains no provision on the responsibility and competence for the implementation of the provisions of paragraph (1) of this Article, this responsibility shall rest with CURS.

Enforcement of the temporary security decision

Article 36

- (1) A court decision prohibiting the free disposal of assets, which is entered into a register or records, shall be carried out by the authority responsible for keeping such register or records.
- (2) The court decision prohibiting the fulfilment of obligations shall be carried out by serving it on the person who is prohibited from complying with its obligations.
- (3) The court decision permitting temporary security for movable property by placing such property in secure storage shall be carried out by CURS.
- (4) Other decisions shall be enforced in the manner determined by the court with due regard to the purpose of the temporary security.

Responsibility for secure storage and management

Article 37

The secure storage and management of temporarily secured, temporarily forfeited and permanently forfeited assets of illegal origin shall be the responsibility of the following bodies:

1. the Capital Asset Management Agency of the Republic of Slovenia – for equity securities under the act governing the financial instruments market and equity holdings in companies;
2. The ministry responsible for finance – for other financial assets;
3. CURS, which may also authorise external secure storage service providers – for movable property;
4. the Farmland and Forest Fund of the Republic of Slovenia – for agricultural areas and forests;
5. the Public Real Estate Fund of the Republic of Slovenia – for other real estate.

Secure storage and management of temporarily secured and temporarily forfeited assets

Article 38

- (1) Competent authorities shall manage the temporarily secured and temporarily forfeited assets with due care and diligence.
- (2) If the secure storage or management referred to in the preceding paragraph is associated with disproportionate costs or if the value of assets or objects decreases, the state prosecutor may, on the proposal from a body responsible for the secure storage or management of such assets, request the court to order the assets to be sold, destroyed or donated for the public benefit.
- (3) Prior to making the decision referred to in the preceding paragraph, the court shall obtain the opinion of the owner of the assets. If the owner is unknown or cannot be served with a summons to provide his opinion, the summons will be posted on the court's notice board and shall be deemed to have been served within eight days thereof. If the owner fails to deliver his opinion within eight days of service of the summons, he shall be deemed to have consented to the property or objects being sold, destroyed or donated.

Management of forfeited assets of illegal origin

Article 39

- (1) The management of financial assets shall be subject to the provisions of the act governing public finance and of the act governing capital investments.
- (2) The management of physical assets shall be subject to the provisions of the act governing physical assets of the state.
- (3) The management of agricultural land, farms and forests shall be subject to the provisions of the act governing the fund of agricultural areas and forests.

Sale of forfeited assets

Article 40

- (1) The assets forfeited by a valid court decision shall be sold unless otherwise decided by the Government of the Republic of Slovenia at the request of the asset administrator.
- (2) Assets shall be sold in accordance with the act governing public finance, the act governing capital investments, the act governing the physical assets of the state and the act governing the fund of agricultural areas and forests.

Costs and revenues

Article 41

- (1) Funds for covering the costs of security, secure storage, management and sale of the assets that are the subject of temporary security, temporary forfeiture or forfeiture shall be provided from the budget of the Republic of Slovenia.
- (2) The proceeds from the sale of the assets referred to in the preceding paragraph shall be budget revenues of the Republic of Slovenia.

Implementing regulation

Article 42

The procedure for the secure storage, management and sale of temporarily secured, temporarily forfeited and permanently forfeited assets of illegal origin under this Act shall be determined in greater detail by the Government of the Republic of Slovenia.

VI. RECORDS

Keeping of records of temporarily secured and forfeited assets of illegal origin

Article 43

- (1) The body responsible for the secure storage and management of temporarily secured and temporarily forfeited assets shall keep a record of the temporarily secured and temporarily forfeited assets of illegal origin.
- (2) The body responsible for the management of the forfeited assets shall keep a record of the forfeited assets.
- (3) CURS shall keep the central records that combine the records referred to in paragraphs (1) and (2) of this Article. The bodies referred to in paragraphs (1) and (2) of this Article shall send CURS the data from the records kept in accordance with this Article.
- (4) CURS shall send the data referred to in the preceding paragraph to the competent state prosecutor on his request.
- (5) The form, contents and method of keeping the records shall be determined in greater detail by the Government of the Republic of Slovenia.

Content of records

Article 44

- (1) The records referred to in Article 43 of this Act shall include the data on the assets that are the subject of security and forfeiture, the data on the owners and holders of other rights to these assets and the data on the decisions issued in accordance with this Act as well as on the type, duration and method of asset security and forfeiture.

(2) The records referred to in Article 43 of this Act shall include the following data on the owners and holders of other rights to the assets that are the subject of security or forfeiture:

- full name and alias, if any;
- date and place of birth;
- residence data;
- personal registration number (EMŠO);
- the tax identification number;
- data on the legal representative.

VII. RESPONSIBILITIES OF THE REPUBLIC OF SLOVENIA

Basis for responsibility

Article 45

- (1) The owner for whom a temporary security or a temporary forfeiture of assets has been ordered but whose assets have not subsequently been forfeited shall be entitled to a restitution of the assets and to a compensation for the damage caused by unlawful action or violation of due diligence in the exercise of the powers of the relevant bodies under this Act.
- (2) Compensation for damage and the restitution of property shall be the responsibility of the Republic of Slovenia.

Rules of restitution

Article 46

- (1) In the case referred to in Article 45 of this Act, the Republic of Slovenia shall also relinquish crops and any other benefits generated through the management of the temporarily forfeited assets to the asset owner on the restitution of the assets and shall also pay him default interest in accordance with the act governing contractual obligations concerning unjust enrichment.
- (2) If the assets or a part thereof are sold during the temporary security or temporary forfeiture period, the Republic of Slovenia shall surrender to the owner the proceeds received from this sale plus accrued interest at the average rate of interest paid by the banks for sight deposits in the owner's place of residence.
- (3) The competent authority that kept, managed and sold the assets shall comply with the obligation referred to in the preceding paragraphs within fifteen days of the deadline referred to in paragraph (2) of Article 34 of this Act.

Claims for compensation

Article 47

The owner shall lodge a claim for compensation referred to in paragraph (1) of Article 45 of this Act by no later than within three months of the date of restitution of the assets; otherwise, the owner shall lose this right.

VIII. INTERNATIONAL COOPERATION

General provision

Article 48

- (1) International cooperation for the purposes of this Act shall be carried out in accordance with international agreements. If there is no international agreement that governs this area or resolves any open issues, international cooperation shall be carried out in accordance with the provisions of this Act.
- (2) International cooperation within the meaning of the provisions of this Act shall include the provision of assistance in the identification, temporary security and forfeiture of assets of illegal origin.
- (3) The powers of the State Prosecutor's Office or the court with regard to international cooperation shall be determined in accordance with the regulations on international legal assistance in criminal matters.

Terms and conditions

Article 49

Assistance to the competent authority of a foreign country shall be provided under the following terms and conditions:

1. the requested measure shall not be contrary to the fundamental principles of internal legal order;
2. the implementation of the requested measures shall not harm the sovereignty, legal order or other interests of the Republic of Slovenia;
3. the standards of fair trial shall be applied to asset forfeiture proceedings conducted in a foreign country.

Transmission of requests for international cooperation

Article 50

- (1) Depending on the nature of the measure required, requests made by foreign authorities for international cooperation shall be forwarded to the Office of the State Prosecutor General of the Republic of Slovenia or to Ljubljana District Court, which have sole competence for international cooperation matters under this Act.

- (2) Depending on the nature of the measure required, the cooperation request by the competent state prosecutor's office or by the court shall be forwarded to the competent authority of a foreign country through the Office of the State Prosecutor General of the Republic of Slovenia or Ljubljana District Court.

The contents of the request

Article 51

- (1) A request for international cooperation shall include the following:
1. the name of the body requesting cooperation;
 2. data on the person to whom the request relates (full name, date and place of birth, nationality and place of residence) and data on the company and its registered office in the case of a legal entity;
 3. data on the assets for which cooperation is requested and their relationship to the person referred to in the preceding point;
 4. specific measures to be carried out and the legal framework of the host country as the basis for the exercise of its powers.
- (2) In addition to the data referred to in the preceding paragraph, a request for the temporary security of assets of illegal origin shall also specify the circumstances that give rise to valid reasons for a suspicion that the assets are of illegal origin and that pre-trial or trial proceedings have been launched for a listed criminal offence or that a person has been convicted of such criminal offence. The request shall be accompanied by the documents, applications and decisions that gave rise to such circumstances.
- (3) A request for the enforcement of a valid court decision to forfeit assets of illegal origin shall be accompanied by a copy of the valid court decision.

Procedure

Article 52

- (1) The state prosecutor's office shall verify compliance with all terms and conditions under this Act upon receipt of a request to do so. If the request lacks all the necessary details, the competent authority of a foreign country shall be invited to provide the missing components within a time limit of no less than three months; otherwise, the request shall be rejected.
- (2) If the existence and whereabouts of the assets of the person for whom temporary security has been requested need to be determined in order to grant a request, the state prosecutor shall act in accordance with the financial investigation provisions of this Act.
- (3) If the granting of the request is subject to the performance of a procedural act which, under this Act, falls within the competence of the court on the state prosecutor's proposal, the request shall be referred to the Specialised State Prosecutor's Office of the Republic of Slovenia. The proposed measure shall be decided on by Ljubljana District Court.

Temporary security of forfeiture of assets of illegal origin

Article 53

- (1) The court shall either grant or reject the request of the competent authority of a foreign country for temporary security for the forfeiture of assets of illegal origin.
- (2) The provisions of this Act shall apply, *mutatis mutandis*, to the decision-making procedure on the request and provision of temporary security.
- (3) Temporary security for the forfeiture of assets shall be in force until the valid conclusion of criminal proceedings in the host country or until the conclusion of the proceedings for the forfeiture of assets of illegal origin.
- (4) If the proceedings referred to in paragraph (2) of this Article are not completed within two years of the date of the temporary security decision, the temporary security shall be cancelled. The court shall notify the competent body of a foreign country of its intention to return the assets within six months of the expiry of the aforementioned deadline. The court may exceptionally extend the security by no more than two years, provided that the competent authority of a foreign country submits additional evidence. The costs of temporary security of assets shall be borne by the host country.

Implementation of the provision on the forfeiture of assets of illegal origin

Article 54

- (1) Assets of illegal origin shall be forfeited when the competent authority of a foreign country submits to the court evidence that the proceedings for the forfeiture of assets of illegal origin have been validly concluded in its respective country.
- (2) The provisions of the act governing the recognition and enforcement of foreign court decisions in civil matters shall apply to the recognition and enforcement procedure.
- (3) Forfeited assets of illegal origin shall be treated in accordance with the provisions of this Act unless otherwise provided by an international agreement.

IX. TRANSITIONAL AND FINAL PROVISIONS

Implementing regulations

Article 55

- (1) The Government of the Republic of Slovenia shall adopt the regulation referred to in Article 42 and paragraph (5) of Article 43 of this Act within three months of the effective date of this Act.
- (2) The body which has legal authority to harmonise the provisions of the State Prosecutor's Rules and internal regulations with the provisions of this Act shall do so within three months of the effective date of this Act.

Exercise of jurisdiction

Article 56

- (1) Until Specialised State Prosecutor's Office of the Republic of Slovenia is established, the duties that fall within its competence shall be carried out by the Group of State Prosecutors for the Prosecution of Organised Crime at the Office of the State Prosecutor General of the Republic of Slovenia.
- (2) The provision of paragraph (4) of Article 192 of the State Attorney Act (Uradni list RS), no. 58/11 on the exclusive jurisdiction of the Specialised State Prosecutor's Office shall apply to the bringing and representing of an action in proceedings for the forfeiture of assets of illegal origin in accordance with the law.
- (3) Until the Public Real Estate Fund of the Republic of Slovenia becomes operational, immovable property shall be managed in accordance with this act by the ministry responsible for public administration.

Application of the act

Article 57

- (1) This Act shall also apply to the matters in which pre-trial or trial proceedings are initiated prior to its effective date, i.e. after 1 January 1990.
- (2) This Act shall also apply to matters in which the final judgment for a listed criminal offence is issued prior to its effective date, i.e. after 1 January 1990.

Final Provision

Article 58

This Act shall enter into force on the fifteenth day following the day of its publication in Uradni list Republike Slovenije and shall begin to apply six months after its entry into force.

Slovak Republic



CRIMINAL CODE NO. 300/2005 COLL.

Article 83 Confiscation of Items

- (1) If the punishment of the forfeiture of items referred to in Art. 60 Subsection 1 was not imposed, the court shall impose the confiscation of items if
 - a) it belongs to a person who may not be prosecuted or convicted,
 - b) it belongs to an offender whose punishment the court waived or to an offender against whom criminal prosecution was terminated or to an offender against whom criminal prosecution was conditionally suspended or to an offender against whom criminal prosecution was terminated due to the approval of a settlement,
 - c) it is in regard to goods without control stamps or without other technical control measures required by generally binding legal regulations for its identification for tax purposes,
 - d) the circumstances of the case justify the assumption that the matter could be a source of financing terrorism, or
 - e) the safety of persons or assets, or another similar public interest requires it.
- (2) The State becomes the owner of the confiscated item, unless the court decides otherwise, based on a declared international treaty by which the Slovak Republic is bound.
- (3) The provisions of Subsection 1 shall not apply, if
 - a) the victim incurred an entitlement to damages, the satisfaction of which would be obstructed by the confiscation of items, or
 - b) the value of the items is clearly disproportionate to the gravity of the offence.
- (4) If an item referred to in Subsection 1 is unattainable or unidentifiable, or is merged with the offender's assets or with the assets of another person obtained in compliance with the law, the court may impose the confiscation of an item with a value that corresponds to the value of such item.

Article 60 Forfeiture of Items

- (1) The court shall impose the forfeiture of items,
 - a) that were used to commit the criminal offence,
 - b) that were intended for the commission of a criminal offence,
 - c) which the offender acquired through a criminal offence or as a reward for it, or
 - d) which the offender acquired for an item referred to in Paragraph c).

- (2) If an item referred to in Subsection 1 is unattainable or unidentifiable, or is merged with the offender's assets or with the assets of another person obtained in compliance with the law, the court may impose the forfeiture of an item of a value that corresponds to the value of such item.
- (3) An unattainable item means an item that is destroyed, damaged, lost, stolen, rendered useless, consumed, concealed, transferred to another person with the aim of excluding it from the scope of the law enforcement authorities or otherwise removed or the costs saved.
- (4) An item under Subsection 1 also means the proceeds from a criminal offence, as well as profits, interests and other rewards deriving from those income or items.
- (5) The court may impose the forfeiture of items only if such is an item belonging to the offender.
- (6) The State becomes the owner of the forfeited item unless the court decides otherwise based on a declared international treaty by which the Slovak Republic is bound.
- (7) The provisions of Subsection 1 shall not apply, if
 - a) the victim incurred an entitlement to damages, the satisfaction of which would be obstructed by the forfeiture of items,
 - b) the value of the items is clearly disproportionate to the gravity of the offence, or
 - c) the court waived the punishment of the offender.

Article 83a Confiscation of a Monetary Sum

- (1) The court may impose the confiscation of the monetary sum upon a legal entity if a criminal offence was committed, even at the stage of an attempt or if there was participation in a criminal offence in connection
 - a) with the performance of an authorisation to represent such legal entity,
 - b) with the performance of an authorisation to make decisions on behalf of such legal entity,
 - c) with the performance of an authorisation to perform a control within such legal entity, or
 - d) with the negligence of the supervision or due diligence within such legal entity.
- (2) The protective measure under Subsection 1 may not be imposed upon a legal entity whose financial circumstances as a debtor cannot be settled under a special regulation governing insolvency proceedings, or if the enforcement of the protective measures would affect the assets of the State or the European Union, upon foreign State authorities and international organisations of public law. It may not even be imposed if the expiry of the criminal liability of the act referred to in Subsection 1 occurred by the limitation of the criminal prosecution or on the basis of effective remorse.

- (3) The court may impose the confiscation of a monetary sum from EUR 800 to EUR 1,660,000. In determining the amount of the confiscated monetary sum, the court shall take into account the seriousness of the committed criminal offence, the extent of the act, obtained benefits, the damage caused, the circumstances of the commission of the criminal offence and the consequences for the legal entity. The court shall not impose the confiscation of the monetary sum if it imposes a protective measure of confiscation of assets upon the legal entity under Article 83b.
- (4) In the case of the merger, fusion or division of a legal entity, the court shall impose a protective measure upon the legal representative of the defunct legal entity under Subsection 1.
- (5) The paid or enforced monetary amount shall belong to the State, unless the court decides otherwise, based on a declared international treaty by which the Slovak Republic is bound.

Article 83b Confiscation of Assets

- (1) The court may impose the confiscation of assets upon a legal entity if a criminal offence was committed, even at the stage of an attempt or if there was participation in a criminal offence referred to in Section 58 Subsection 2 or 3, and if the legal entity acquired assets or a part thereof through criminal activity or from the proceeds of criminal activity, in connection
 - a) with the performance of an authorisation to represent such legal entity,
 - b) with the performance of an authorisation to make decisions on behalf of such legal entity,
 - c) with the performance of an authorisation to perform a control within such legal entity, or
 - d) with the negligence of the supervision or due diligence within such legal entity.
- (2) The protective measure under Subsection 1 may not be imposed upon a legal entity whose financial circumstances as a debtor cannot be settled under a special regulation governing insolvency proceedings, or if the enforcement of the protective measures would affect the assets of the State or the European Union, foreign State authorities and international public law organisations. It may not even be imposed if the criminal liability of an act referred to in Subsection 1 occurred by the limitation of the criminal prosecution or on the basis of effective remorse.
- (3) The court may not impose the protective measures under Subsection 1 if, given the seriousness of the committed criminal offence, the extent of the act, the obtained benefits, the damage caused, the circumstances of the criminal offence, the consequences for the legal entity or an important public interest, it is possible to ensure the protection of society without the confiscation of assets of the legal entity. If the court does not impose the confiscation of assets, it shall impose a protective measure of the confiscation of a monetary sum to the legal entity under Article 83a.

- (4) The confiscation of assets affects the extent of which belongs to the legal entity during the execution of the protective measure of confiscation of assets after the completion of bankruptcy proceedings,
 - a) the proceeds from the liquidation of assets,
 - b) assets excluded from inventory elements,
 - c) assets that are subject to the bankruptcy proceedings, if asset liquidation did not occur.
- (5) In the case of the merger, fusion or division of a legal entity, the court shall impose a protective measure upon the legal representative of the defunct legal entity under Subsection 1.
- (6) The confiscated assets shall belong to the State, unless the court decides otherwise, based on a declared international treaty by which the Slovak Republic is bound.

CODE OF CRIMINAL PROCEDURE NO. 301/2005 COLL.

Article 515 Foreign Decision

- (1) The decision of the court of another State in a criminal matter (hereinafter referred to as “foreign decision”) only has legal effects in the territory of the Slovak Republic if it is stipulated in an international treaty or law. A foreign decision by which a punishment was imposed may be executed in the territory of the Slovak Republic only if it is recognised by the Slovak court.
- (2) A foreign decision may be recognised in a statement by which
 - a) a guilt was pronounced, but the imposition of the punishment was conditionally deferred,
 - b) a prison sentence or a conditional prison sentence was imposed,
 - c) a monetary penalty or punishment by disqualification was imposed,
 - d) a conditional punishment or a monetary penalty was converted to a prison sentence, or
 - e) a forfeiture of assets or any part thereof, or items or their confiscation was pronounced, provided they are located in the territory of the Slovak Republic (hereinafter referred to as “foreign assets decision”).
- (3) A foreign decision by which the already recognised decision was changed in the statement on guilt has an effect in the Slovak Republic without recognition.
- (4) In relation to a legal entity, a foreign decision may only be executed in the territory of the Slovak Republic if they were imposed a monetary sanction by a foreign decision, or their assets were forfeited. The enforcement of such foreign decision against a legal entity shall be performed without its recognition by the Slovak court, unless the special regulation or an international treaty stipulates otherwise.

Finland



CHAPTER 10 – FORFEITURE (875/2001)

Section 1 — General prerequisites of forfeiture (875/2001)

- (1) A prerequisite for a forfeiture order is an act criminalised by law (*offence*).
- (2) A forfeiture order may be based on an act criminalised by law also (1) where the person committing the act has not attained the age of fifteen years at the material time, or is without criminal capacity; (2) where the person committing the act is free from criminal liability by virtue of chapter 3, section 9, 10 or 10a, or for a comparable reason; or (*NB. By Act 515/2003, section 1(2)(2) is to be replaced by the following new paragraph as of 1 January 2004:*) (2) where the person committing the act is exempt from criminal liability pursuant to chapter 4, section 2, 4(2), 5(2), 6(3) or chapter 45, section 26b(2); or (515/2003; enters into force on 1 January 2003) (3) where a corporation can be sentenced to a punishment in accordance with chapter 9 even if the individual committing the offence cannot be identified or sentenced to a punishment for some other reason.

Section 2 — Forfeiture of the proceeds of crime (875/2001)

- (1) The proceeds of crime shall be ordered forfeit to the State. The forfeiture shall be ordered on the offender, a participant or a person on whose behalf or to whose advantage the offence has been committed, where these have benefited from the offence.
- (2) If there is no evidence as to the amount of the proceeds of crime, or if such evidence is difficult to present, the proceeds shall be estimated, taking into account the nature of the offence, the extent of the criminal activity and the other circumstances.
- (3) Forfeiture of the proceeds of crime shall not be ordered in so far as they have been returned to the injured party, or in so far as they have been or will be ordered to be reimbursed to the injured party by way of compensation or restitution. If a claim for compensation or restitution has not been filed or if the claim has not been decided when the request for forfeiture is being decided, the forfeiture shall be ordered.

Section 3 — Extended forfeiture of the proceeds of crime (875/2001)

- (1) A full or partial forfeiture of property to the State may be ordered (1) on a person who is found guilty of an offence which carries a possible penalty of imprisonment for at least four years, a punishable attempt of such an offence, or an offence referred to in chapter 32, sections 1 or 6, chapter 46, section 4, chapter 50, sections 1 or 4, of this Code, or in section 82 of the Alcohol Act (459/1968), and (2) on a participant in an offence referred to in paragraph (1) above and on a person on whose behalf or to whose advantage the said offence has been committed, provided that the nature of the offence is such that it may result in considerable financial proceeds and that there is reason to believe that the

property is fully or partially derived from criminal activity that is not to be considered insignificant. (61/2003)

- (2) Moreover, a full or partial forfeiture of property, referred to in paragraph (1), to the State may be ordered (1) on a person whose relationship to a person referred to in paragraph (1) is one covered by section 3(1) of the Act on the Recovery of Assets to Bankruptcy Estates (758/1991) (*close person*) and (2) on a private entrepreneur, a company, another corporation or foundation whose relationship to a person referred to in paragraph (1) or a close person of his/hers is one covered by section 3(2)(1) or 3(2)(2) of the Act on the Recovery of Assets to Bankruptcy Estates, if there is reason to believe that the property has been conveyed to the same in order to avoid forfeiture or liability.
- (3) A forfeiture referred to in paragraph (2) shall not be ordered if the property has been conveyed more than five years before the commission of the offence referred to in paragraph (1).
- (4) If the same forfeiture is ordered on several persons, their liability is joint and several.

Section 4 — Forfeiture of an instrument of crime (875/2001)

- (1) The following instruments shall be ordered forfeit to the State, when used in the commission of an offence: (1) a firearm, edged weapon or another similar lethal instrument, and (2) any other object or property the possession of which is punishable.
- (2) Also the following may be ordered forfeit to the State: (1) an object or property that has been used in the commission of a deliberate offence, and (2) an object or property that is closely connected to a deliberate offence under trial, where it has been obtained or prepared solely or mainly for the deliberate offence or where its characteristics make it especially suitable as an instrument of a deliberate offence.
- (3) In the assessment of the need for forfeiture, specific note shall be taken of the prevention of further offences.

Section 5 — Forfeiture of certain other property (875/2001)

- (1) An object or property which has been produced, manufactured or brought about by way of an offence, or to which an offence has been directed, shall be ordered forfeit to the State if its possession is punishable.
- (2) An object or property which has been produced, manufactured or brought about by way of an offence, or to which an offence has been directed, may be ordered fully or partially forfeit, if forfeiture is necessary: (1) owing to the object or property being hazardous to health or the environment; (2) in order to prevent further offences, where the object or property is especially suitable as a target of an offence or as an instrument of crime; (3) in order to achieve the objective of provisions or orders pertaining to economic regulation, import or export; or (4) in order to achieve the objective of provisions or orders for the protection of nature and the environment.

- (3) A container, packaging or other material used for the storage of an object or property that is to be ordered forfeit may likewise be ordered forfeit, if the forfeiture of the object or property cannot otherwise be enforced without undue inconvenience.

Section 6 — Restrictions on forfeiture (875/2001)

- (1) An object or property referred to in section 4 or 5 shall not be ordered forfeit if it belongs in full or in part to someone else than the offender, a participant or a person on whose behalf or with whose consent the offence has been committed. However, the object or property may be ordered forfeit from a person to whom it has been conveyed after the commission of the offence, if, when receiving it, he/she knew or had justifiable reason to believe that the object or property was linked to an offence, or if he/she has received it as a gift or otherwise free of charge.
- (2) Regardless of ownership, an object or property shall be ordered forfeit if also the owner would commit an offence by having the object or property in his/her possession.

Section 7 — Lapse of forfeiture (875/2001)

- (1) Upon deciding a request for forfeiture, the court may on the consent of the defendant order that the forfeiture is to lapse if the object or property referred to in section 4 or 5 is within a given period altered as specified in the judgment, or other measures specified in the judgment are carried out thereon, with the result that the forfeiture becomes unnecessary thereby.
- (2) An enforcement officer shall monitor compliance with the specifications in the judgment and decide whether the forfeiture is to lapse. The person subject to the forfeiture has standing to appeal against the decision in accordance with the procedure on enforcement appeals. For a special reason, the enforcement officer may extend the period referred to in paragraph (1). The Legal Register Centre shall be notified of a lapse of forfeiture.
- (3) The person subject to the forfeiture is liable for the costs of alteration and the other enforcement of the judgment.

Section 8 — Forfeiture of value (875/2001)

- (1) If an object or property referred to in section 4 or 5 cannot be ordered forfeit owing to a restriction referred to in section 6(1), or because the object or property has been hidden or is otherwise inaccessible, a full or partial forfeiture of the value of the object or property may be ordered on the offender, a participant or a person on whose behalf or with whose consent the offence has been committed. In addition, the forfeiture of value may be ordered on a person to whom the object or property has been conveyed, if, when receiving it, he/she knew or had justifiable reason to believe that the object or property was linked to an offence, or if he/she has received it as a gift or otherwise free of charge.
- (2) However, the forfeiture of value shall not be ordered if the person referred to in paragraph (1) shows that the object or property has probably been destroyed or consumed.

- (3) If the forfeiture of the value of the same object or property is ordered on several persons, their liability is joint and several. However, a person on whom the forfeiture of value has not been ordered in full, is liable only to the amount mentioned in the judgment.

Section 9 — Request for forfeiture (875/2001)

- (1) Forfeiture shall be ordered on the request of a prosecutor or an official referred to in section 3 of the Act on Penal Order Procedure (692/1993). Also an injured party may make a request for forfeiture when prosecuting a charge on his or her own in accordance with chapter 7 of the Criminal Procedure Act (689/1997).
- (2) Chapter 1, section 8b, of the Criminal Procedure Act contains provisions on the grounds on which a prosecutor may decline to make a request for forfeiture. (650/2003)

Section 10 — Adjustment of forfeiture (875/2001)

- (1) Forfeiture need not be ordered, if: (1) the proceeds of crime are, or the value of the object or property is, insignificant; (2) the punishment of the offender is waived in accordance with chapter 3, section 5(3) or (4), or another corresponding provision; or (3) the forfeiture would be unreasonable in view of the nature of the offence and the object or property, the financial standing of the defendant, and the other circumstances.
- (2) On the conditions referred to in paragraph (1), the forfeiture may be ordered on value instead of the object or property, or only a part of the object, property or value. Likewise, a partial forfeiture of the object or property and a partial forfeiture of the value may be ordered. A partial forfeiture of the proceeds of crime may also be ordered.

Section 11 — Miscellaneous provisions (875/2001)

- (1) When the forfeiture liability of someone else than the suspect or the defendant is being looked into in a pre-trial investigation or in a trial, the procedural provisions on the suspect or the defendant apply to that person in so far as appropriate.
- (2) If compensation or restitution has been paid or ordered to be paid after the issue of the decision referred to in section 2(3), the forfeiture may be enforced to a correspondingly reduced amount. If the forfeiture has already been enforced, the amount may be ordered to be paid from State funds. An action to this effect shall be brought in the District Court of the plaintiff's domicile or the District Court of Helsinki within five years from the date when the judgment containing the forfeiture order became final. The State, represented by the Legal Register Centre, is the defendant in such a case.
- (3) A person who in good faith has obtained a mortgage, a lien or a right of retention to an object or property referred to in section 4 or 5 and ordered forfeit may foreclose on the same regardless of whether the underlying receivable has become due. An action to this effect shall be brought as provided in paragraph (2). Failing this, the mortgage, lien or right of retention expires.

Sweden



EXTRACT FROM THE SWEDISH PENAL LAW

Chapter 36

On Forfeiture of Property, Corporate Fines and Other Special Legal Effects of Crime

Section 1

The proceeds of a crime as defined in this Code shall be declared forfeited unless this is manifestly unreasonable. The same shall apply to anything a person has received as payment for costs incurred in conjunction with a crime, provided that such receipt constitutes a crime under this Code. The value of the article received may be declared forfeited instead of the article itself.

Unless otherwise prescribed by law the said shall also apply to proceeds of crime and payments for costs in connection with offences under other penal legislation if the offence is sanctioned by imprisonment for one year or more. (law 2008:370)

Section 1 a

In determining whether it would be manifestly unreasonable to declare the proceeds of a crime forfeited, consideration shall be given inter alia, to whether there is reason to believe that liability to pay damages in consequence of the crime will be imposed or otherwise discharged. (law 2008:370)

Section 1b

If someone is convicted for an offence sanctioned by imprisonment for six years or more and the crime committed has been such that it may have been possibility to gain proceeds from it, assets shall, also in cases other than those mentioned in section 1, be declared forfeited, if it appears clearly more probable that (the assets) are the proceeds from criminal activity than that it is not.

If the offence has been such that it may have been possibility to gain proceeds from it, what is said above also applies when someone is convicted for;

1. Trafficking in human beings according to chapter 4 section 1a third subsection, procuring, usury considered aggravated, illegal handling of forged money considered aggravated, or aggravated (illegal) gambling.
2. Narcotics crime according to section 1 in the Act on narcotics or illegal possession of narcotics precursors according to section 3 b first subsection in said act.
3. Offences concerning illegal substances for improving physical abilities according to section 3 in the Act on the prohibition of particular substances.
4. Smuggling of narcotics according section 6 in the Act on smuggling or

5. Smuggling of human beings according to chapter 20 section 8 first subsection, in the Act on Foreigner or Organisation of smuggling of human beings according to chapter 20 section 9 first subsection in the same act.

What is stated about forfeiture in first and second subsections does also apply when someone is convicted for attempt, preparation or conspiracy to commit offences referred to.

Forfeiture according to this section may not be decided on if it would be unreasonable. (law 2009:370)

Section 1 c

As proceeds of a crime or a criminal activity is also regarded assets that has replaced the (initial) proceed, any yields from the proceeds, or yields from what has replaced the proceed. (law 2008:370)

Section 2

Property which has been used as an auxiliary means in the commission of a crime under this Code or which is the product of such a crime may be declared forfeited if this is called for in order to prevent crime or for other special reasons. This also applies to property held with the intention to use it as auxiliary means for the commission for an offence which constitutes a crime under this Code, if the offence has been completed or if a punishable attempt, preparation or conspiracy to commit an offence has been committed.

What is stated in first subsection does also apply to property that has been manufactured by an offence under this Code or when the use of the property is such an offence and when property is otherwise used in a manner which constitutes such a crime.

The value of property may be declared forfeited instead of the property itself. (Law 1968:165)

Unless otherwise prescribed by law subsection one and three shall also apply to property used or held with the intention to use it as auxiliary means in the commission of a crime under other penal legislation if the offence is sanctioned by imprisonment for one year or more. (law 2005:283)

Section 3

Forfeiture may also be decided on in cases other than those described in Section 2 in respect of objects which:

1. by reason of their special nature and other circumstances, give rise to a fear that they may be put to criminal use,
2. are intended for use as a weapon in a crime against human life or health and which have been discovered in circumstances which give rise to a fear that they would be put to such use, or
3. are intended for use as an auxiliary aid in a crime entailing damage to property and have been discovered in circumstances which clearly give rise to a fear that they would be put to such use. (Law 1989:136)

Section 4

If, as a result of a crime committed in the course of business, the entrepreneur has derived financial advantages, the value thereof shall be declared forfeited, even if this is not so provided for in Section 1 or 2 or otherwise specially provided for.

The provisions of the first paragraph shall not apply if forfeiture is unreasonable. In assessing whether such is the case, consideration shall be given inter alia to whether there is reason to believe that some other obligation to pay a sum corresponding to the financial gain derived from the crime will be imposed upon the entrepreneur or will be otherwise discharged by him.

If proof of what is to be declared forfeited cannot, or can only with difficulty, be presented, the value may be estimated to be an amount that is reasonable in view of the circumstances.

(Law1986:1007)

Section 5

Forfeiture of property or its worth according to section 1 and 2-4, may, if no provision is otherwise made, be exacted of:

- a) the offender or an accomplice in the crime,
- b) the person whose position was occupied by the offender or an accomplice,
- c) the person who profited from the crime or the entrepreneur described in Section 4,
- d) any person who after the crime acquired the property through the division of jointly held marital property, or through inheritance, will or gift, or who after the crime acquired the property in some other manner and, in so doing, knew or had reasonable grounds to suspect that the property was connected with the crime.

If the property at the time of the crime did not belong to any of the persons in the categories a) - c) in the first paragraph, it may not be declared forfeited. Property that according to section 1 c shall be regarded as proceed of crime may however be forfeited if the property that the forfeited property replace, at the time of the crime, belonged to someone mentioned in a) -c)

Section 5 b

Any special right to property that has been declared forfeited remains if the special right is not also declared to be forfeited.

Such a right gained by distraint or security for payment ceases if the property is declared forfeited unless for some special reason it is ordered that the right shall remain. (Law 1987:791)

Section 6

Instead of forfeiture, the court may prescribe a measure for the prevention of misuse. (Law 1986:118)

Corporate fines

Section 7

For a crime committed in the exercise of business activities the entrepreneur shall, at the instance of a public prosecutor, be ordered to pay a corporate fine if:

1. the crime has entailed gross disregard for the special obligations associated with the business activities or is otherwise of a serious kind, and
2. the entrepreneur has not done what could reasonably be required of him for prevention of the crime.

The provisions of the first paragraph shall not apply if the crime was directed against the entrepreneur or if it would otherwise be manifestly unreasonable to impose a corporate fine. (Law 1986:1007) Ds 1999:36 165

Section 8

A corporate fine shall consist of at least ten thousand Swedish crowns and at most three million Swedish crowns. (Law 1986:118)

Section 9

In determining the amount of a corporate fine, special consideration shall be given to the nature and extent of the crime and to its relation to the business activity. (Law 1986:118)

Section 10

A corporate fine may be remitted or set at less than it should have been under the provisions of Section 9:

1. if a sanction for the crime is imposed on the entrepreneur or a representative of the entrepreneur,
2. if the crime involves some other payment liability or a special legal effect for the entrepreneur,
3. if this is otherwise called for on special grounds. (Law 1986:118)

Common provisions

Section 11

The provisions of an act or statutory instrument concerning a special legal effect arising from the fact that someone is sentenced to punishment shall also apply when some other sanction stated in Chapter 1, Section 3, is imposed. In the application of the first paragraph, a conditional sentence and probation, and also, unless the sentence otherwise states, committal for special care, shall be considered equivalent to imprisonment. In that connection, if so ordered, probation and committal for special care shall be considered as corresponding to imprisonment for at least six months. (Law 1986:118) 166 Ds 1999:36

Section 12

If sentencing someone to a sanction is a prerequisite for the forfeiture of property or other special legal effect which may follow upon crime, the court may, if the sanction for the crime is remitted, order, insofar as circumstances give cause, that such legal effect shall ensue. (Law 1986:118)

Section 13

If a crime has been committed by someone who has not attained fifteen years of age or who has acted under the influence of serious mental disturbance, the court may order forfeiture of property or other special legal effect that may follow upon the crime only if, and to the extent that, this may be regarded as reasonable having regard to his mental state, the nature of the act, and other circumstances. (Law 1986:118)

Section 14

If a sanction can no longer be imposed because of the death of the offender or for other cause, property may be declared forfeited or a corporate fine imposed by reason of the crime or a measure be prescribed to avert misuse only if, in proceedings pertaining thereto, a summons has been served within five years from the time when the crime was committed. In such a case the prosecutor may institute proceedings only if called for in the public interest. In a case falling under the present description the provisions of Chapter 35, Section 3 shall be correspondingly applicable. (Law 1986:118) Ds 1999:36 167

Section 15

A decision concerning forfeiture or measure to avert misuse or concerning a corporate fine is null and void if its implementation has not occurred within ten years from the date when the decision acquired final legal force. (Law 1986:118)

Section 16

If an act or statutory instrument prescribes that a declaration be made concerning forfeiture or other special legal consequence of a crime, the declaration may nevertheless be dispensed with if such a legal consequence is manifestly unreasonable. (Law 1986:1007)

Section 17

Forfeited property and corporate fines accrue to the State unless otherwise prescribed.

If the proceeds of crime described in Section 1, corresponding to the damage occasioned to an individual, are declared forfeited from some person, the State shall in that person's stead pay compensation to the injured party to an amount corresponding to the value that has accrued to the State as a consequence of the decision on forfeiture. In the enforcement of this decision, the party subject to the forfeiture shall be entitled to make a deduction for any amount he shows himself to have already paid in compensation to the injured party. (Law 1986:1007) 168 Ds 1999:36

United Kingdom



THE PROCEEDS OF CRIME ACT 2002

PART 5 GIVING EFFECT IN THE UNITED KINGDOM TO EXTERNAL ORDERS BY MEANS OF CIVIL RECOVERY

CHAPTER 1 INTRODUCTION

Action to give effect to an order

142.—

- (1) The Secretary of State may forward an external order to the enforcement authority.
- (2) This Part has effect for the purpose of enabling the enforcement authority to realise recoverable property (within the meaning of article 202) in civil proceedings before the High Court or Court of Session for the purpose of giving effect to an external order.
- (3) The powers conferred by this Part are exercisable in relation to any property whether or not proceedings have been brought in the country from which the external order was sent for criminal conduct (within the meaning of section 447(8) of the Act) in connection with the property.

CHAPTER 2 CIVIL RECOVERY IN THE HIGH COURT OR COURT OF SESSION

Proceedings for recovery orders Proceedings for recovery orders in England and Wales or Northern Ireland

143.—

- (1) Proceedings for a recovery order, pursuant to the registration of an external order may be taken by the enforcement authority in the High Court against any person who the authority thinks holds recoverable property.
- (2) The enforcement authority must serve the claim form—
 - (a) on the respondent, and
 - (b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order, wherever domiciled, resident or present.

- (3) In the case of an external order which is for the recovery of property other than a sum of money which is specified in the external order (“the specified property”), that property must also be specified in the claim form.
- (4) Paragraph (5) applies in the case of an external order which is for the recovery of a specified sum of money.
- (5) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the claim form, it must be described in the form in general terms and the form must state whether it is alleged to be recoverable property or associated property.
- (6) The references above to the claim form include the particulars of claim, where they are served subsequently.

Proceedings for recovery orders in Scotland

144.—

- (1) Proceedings for a recovery order pursuant to the registration of an external order may be taken by the enforcement authority in the Court of Session against any person who the authority thinks holds recoverable property.
- (2) The enforcement authority must serve the application—
 - (a) on the respondent, and 71
 - (b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the authority wishes to be subject to a recovery order, wherever domiciled, resident or present.
- (3) In the case of an external order which is for the recovery of property other than a sum of money which is specified in the external order (“the specified property”), the property must also be specified in the application.
- (4) Paragraph (5) applies in the case of an external order which is for the recovery of a specified sum of money.
- (5) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the application it must be described in the application in general terms; and the application must state whether it is alleged to be recoverable property or associated property.

Sums in a currency other than sterling

145.—

- (1) This article applies where the external order in respect of which proceedings for a recovery order are taken specifies a sum of money.
- (2) If the sum of money which is specified in an external order is expressed in a currency other than sterling, the sum of money to be recovered is to be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of day on which the external order was made.

- (3) This amount must be specified—
- (a) in England and Wales or Northern Ireland, in the claim form or the particulars of claim where they are served subsequently, or
 - (b) in Scotland, in the application.

“Associated property”

146.—

- (1) “Associated property” means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—
- (a) any interest in the recoverable property,
 - (b) any other interest in the property in which the recoverable property subsists,
 - (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,
 - (d) if (in Scotland) the recoverable property is owned in common, the interest of the other owner,
 - (e) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.
- (2) References to property being associated with recoverable property are to be read accordingly.
- (3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme (within the meaning of articles 184 to 186).

Property freezing orders (England and Wales and Northern Ireland)

Application for property freezing order

147.—

- (1) Where the enforcement authority may take proceedings for a recovery order pursuant to the registration of an external order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).
- (2) A property freezing order is an order that—
- (a) specifies or describes the property to which it applies, and 72
 - (b) subject to any exclusions (see article 149(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with property.
- (3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

- (4) The court may make a property freezing order on an application if it is satisfied that the condition in paragraph (5) is met and, where applicable, that the condition in paragraph (6) is met.
- (5) The first condition is that there is a good arguable case—
 - (a) that the property to which the application for the order relates is or includes recoverable property, and
 - (b) that, if any of it is not recoverable property, it is associated property
- (6) The second condition is that, if—
 - (a) the property to which the application for the order relates includes property alleged to be associated property, and
 - (b) the enforcement authority has not established the identity of the person who holds it, the authority has taken all reasonable steps to do so.

Variation and setting aside of property freezing order

148.—

- (1) The court may at any time vary or set aside a property freezing order.
- (2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.
- (3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.
- (4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising the power to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (6) Paragraph (5) does not apply where the court is acting as required by paragraph (2) or (3).

Property freezing orders: exclusions

149.—

- (1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows—
 - (a) power to exclude property from the order, and
 - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet his reasonable living expenses. or
 - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—73
 - (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
 - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
 - (c) is made subject to the required conditions (see article 198) in addition to any conditions imposed under paragraph (4).
- (6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—
 - (a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and
 - (b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded by the Legal Services Commission or the Northern Ireland Legal Services Commission.
- (7) If excluded property is not specified in the order it must be described in the order in general terms.
- (8) The power to make exclusions must, subject to paragraph (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property which satisfies the tests in article 202(1) and (2) is not unduly prejudiced.
- (9) Paragraph (8) does not apply where the court is acting as required by article 148(3) or (4).

Property freezing orders: restrictions on proceedings and remedies

150.—

- (1) While a property freezing order has effect—

- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and
 - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.
- (2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.
- (4) Before exercising any power conferred by this article, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

Interim receiving orders (England and Wales and Northern Ireland)

Application for interim receiving order

151.—

- (1) Where the enforcement authority may take proceedings for a recovery order pursuant to the registration of an external order in the High Court, the authority may apply to the court for an interim receiving order (whether before or after starting the proceedings).
- (2) An interim receiving order is an order for—
- (a) the detention, custody or preservation of property, and
 - (b) the appointment of an interim receiver. 74
- (3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make an interim receiving order on the application if it is satisfied that the conditions in paragraphs (5) and, where applicable, (6) are met.
- (5) The first condition is that there is a good arguable case—
- (a) that the property to which the application for the order relates is or includes recoverable property, and
 - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—

- (a) the property to which the application for the order relates includes property alleged to be associated property, and
 - (b) the enforcement authority has not established the identity of the person who holds it, the authority has taken all reasonable steps to do so.
- (7) In its application for an interim receiving order, the enforcement authority must nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of the staff of the Agency.
- (8) The extent of the power to make an interim receiving order is not limited by articles 152 to 160.

Functions of interim receiver

152.—

- (1) An interim receiving order may authorise or require the interim receiver—
- (a) to exercise any of the powers mentioned in Schedule 2,
 - (b) to take any other steps the court thinks appropriate, for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under paragraph (2).
- (2) An interim receiving order—
- (a) must require the interim receiver to take any steps which the court thinks necessary to establish whether or not the property to which the order applies is recoverable property or associated property, and
 - (b) may require him to take any steps which the court thinks necessary to establish whether or not any other property is recoverable property (which satisfies the tests in article 202(1) and (2) or 203) and, if it is, who holds it.
- (3) If—
- (a) the interim receiver deals with any property which is not property to which the order applies, and
 - (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order, the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by negligence.

Property freezing orders and interim receiving orders: registration

Registration of property freezing orders and interim receiving orders

153.—

- (1) The registration Acts—
 - (a) apply in relation to property freezing orders, and in relation to interim receiving orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances, 75
 - (b) apply in relation to applications for property freezing orders and in relation to applications for interim receiving orders as they apply in relation to other pending land actions.
- (2) The registration Acts are—
 - (a) the Land Charges Act 1972(a), and
 - (b) the Land Registration Act 2002(b).
- (3) But no notice may be entered in the register of title under the Land Registration Act 2002 in respect of a property freezing order or an interim receiving order.

Registration (Northern Ireland) of such orders**154.—**

- (1) A person applying for a property freezing order or an interim receiving order must be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970(c) (cautions) as a person interested in relation to any registered land to which—
 - (a) the application relates, or
 - (b) a property freezing order or an interim receiving order made in pursuance of the application relates.
- (2) Upon being served with a copy of a property freezing order, the Registrar must, in respect of any registered land to which a property freezing order or an application for a property freezing order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (3) Upon being served with a copy of an interim receiving order, the Registrar must, in respect of any registered land to which an interim receiving order or an application for an interim receiving order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (4) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under paragraph (2) or (3) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.
- (5) Where a property freezing order or an interim receiving order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the

Registration of Deeds Acts, an order setting aside the property freezing order or interim receiving order may require that entry to be vacated.

- (6) In this article—“Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970; and “Registration of Deeds Acts” has the meaning given by section 46(2) of the Interpretation Act (Northern Ireland) 1954(d).

Interim receiving orders: further provisions

Interim receiving orders: duties of respondent etc.

155.—

- (1) An interim receiving order may require any person to whose property the order applies—
- (a) to bring the property to a place (in England and Wales or, as the case may be, Northern Ireland) specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, he is able to do so), (a) 1972 c.61 (b) 2002 c.9.(c) 1970 c.18 (N.I).(d) 1954 c.33 N.I.).76
 - (b) to do anything he is reasonably required to do by the interim receiver for the preservation of the property.
- (2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in England and Wales, or, as the case may be, Northern Ireland) specified by the interim receiver or to place them in the custody of the interim receiver. “Document” means anything in which information of any description is recorded.

Supervision of interim receiver and variation of order

156.—

- (1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver’s functions.
- (2) Before giving any directions under paragraph (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.
- (3) The court may at any time vary or set aside an interim receiving order.
- (4) Before exercising any power to vary or set aside an interim receiving order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be affected by the court’s decision.

Interim receiving orders: restrictions on dealing etc. with property**157.—**

- (1) An interim receiving order must, subject to any exclusions made in accordance with this article, prohibit any person to whose property the order applies from dealing with the property.
- (2) Exclusions may be made when the interim receiving order is made or on an application to vary the order.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet his reasonable living expenses, or
 - (b) to carry on any trade, business, profession or occupation,
 - (c) and may be made subject to conditions.
- (4) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
 - (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
 - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
 - (c) is made subject to the required conditions (see article 198) in addition to any conditions imposed under paragraph (3).
- (5) The court, in deciding whether to make an exclusion for the purposes of enabling a person to meet legal expenses of his in respect of proceedings under this Part—
 - (a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and
 - (b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded by the Legal Services Commission or the Northern Ireland Legal Services Commission.⁷⁷
- (6) If the excluded property is not specified in the order it must be described in the order in general terms.
- (7) The power to make exclusions must, subject to paragraph (5), be exercised with a view to ensuring so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through conduct which satisfies the test in article 202(2) is not unduly prejudiced.

Interim receiving orders: restriction on proceedings and remedies

158.—

- (1) While an interim receiving order has effect—
 - (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies,
 - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.
- (2) If a court (whether the High Co Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.
- (4) Before exercising any power conferred by this article, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim receiver (if appointed) and any person who may be affected by the court's decision.

Exclusion of property which is not recoverable etc. under interim receiving order

159.—

- (1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.
- (2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property which satisfies the tests in article 202(1) and (2) will not be prejudiced.
- (3) The court may exclude any property within paragraph (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

Reporting under interim receiving order

160.—

- (1) An interim receiving order must require the interim receiver to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—

- (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,
 - (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,
 - (c) any property to which the order does not apply is recoverable property (which satisfies the tests in article 202(1) and (2)) or associated property, or
 - (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it, or if he thinks that there has been any other material change of circumstances.⁷⁸
- (2) An interim receiving order must require the interim receiver—
- (a) to report his findings to the court,
 - (b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Prohibitory property orders (Scotland)

Application for prohibitory property order

161.—

- (1) Where the enforcement authority may take proceedings for a recovery order pursuant to the registration of an external order in the Court of Session, the authority may apply to the court for a prohibitory property order (whether before or after starting the proceedings).
- (2) A prohibitory property order is an order that—
- (a) specifies or describes the property to which it applies, and
 - (b) subject to any exclusions (see article 163(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a prohibitory property order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make a prohibitory property order on an application if it is satisfied that the condition in paragraph (5) is met and, where applicable, that the condition in paragraph (6) is met.
- (5) The first condition is that there is a good arguable case—
- (a) that the property to which the application for the order relates is or includes recoverable property, and
 - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—

- (a) the property to which the application for the order relates includes property alleged to be associated property, and
- (b) the enforcement authority has not established the identity of the person who holds it, the authority has taken all reasonable steps to so.

Variation and recall of prohibitory property order

162.—

- (1) The court may at any time vary or recall a prohibitory property order.
- (2) If the court makes an interim administration order that applies to all of the property to which a prohibitory property order applies, it must recall the prohibitory property order.
- (3) If the court makes an interim administration order that applies to some but not all of the property to which a prohibitory property order applies, it must vary the prohibitory property order so as to exclude any property to which the interim administration order applies.
- (4) If the court decides that any property to which a prohibitory property order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising power under this Chapter to vary or recall a prohibitory property order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (6) Paragraph (5) does not apply where the court is acting as required by paragraph (2) or (3).

Prohibitory property orders: exclusions

163.—

- (1) The power to vary a prohibitory property order includes (in particular) power to make exclusion as follows—
 - (a) power to exclude property from the order, and 79
 - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet his reasonable living expenses, or
 - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.

- (5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.
- (6) If excluded property is not specified in the order it must be described in the order in general terms.
- (7) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property which satisfies the tests in article 202(1) and (2) is not unduly prejudiced.
- (8) Paragraph (7) does not apply where the court is acting as required by article 162(3) or (4).

Prohibitory property orders: restriction on proceedings and remedies

164.—

- (1) While a prohibitory property order has effect the court may sist any action, execution or other legal process in respect of the property to which the order applies.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a prohibitory property order has been applied for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by this article, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

Arrestment of property affected by prohibitory property order

165.—

- (1) On the application of the enforcement authority the Court of Session may, in relation to moveable recoverable property to which a prohibitory property order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.
- (2) An application under paragraph (1) may be made at the same time as the application for the prohibitory property order or at any time thereafter.
- (3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.
- (4) A warrant under paragraph (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly.
- (5) An arrestment executed under this article ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property to which the warrant for arrestment was granted.
- (6) If an arrestment ceases to have effect to any extent by virtue of paragraph (5) the enforcement authority must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.⁸⁰

Inhibition of property affected by prohibitory property order

166.—

- (1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in paragraph (2), grant warrant for inhibition against any person specified in a prohibitory property order.
- (2) That property is heritable property situated in Scotland to which the prohibitory property order applies (whether generally or to such of it as is specified in the application).
- (3) The warrant for inhibition—
 - (a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and
 - (b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibition and adjudications.
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868(a) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under paragraph (1) as it applies to an inhibition by separate letters or contained in a summons.
- (5) An inhibition executed under this article ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (6) If an inhibition ceases to have effect to any extent by virtue of paragraph (5) the enforcement authority must—
 - (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
 - (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

Interim administration orders (Scotland)

Application for interim administration order

167.—

- (1) Where the enforcement authority may take proceedings for a recovery order pursuant to the registration of an external order in the Court of Session, the authority may apply to the court for an interim administration order (whether before or after starting the proceedings).
- (2) An interim administration order is an order for—
 - (a) the detention, custody or preservation of property, and
 - (b) the appointment of an interim administrator.

- (3) An application for an interim administration order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make an interim administration order on the application if it is satisfied that the conditions in paragraphs (5) and, where applicable, (6) are met.
- (5) The first condition is that there is a *probabilis causa litigandi*—
 - (a) that the property to which the application for the order relates is or includes recoverable property, and
 - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
 - (a) the property to which the application for the order relates includes property alleged to be associated property, and
 - (b) the enforcement authority has not established the identity of the person who holds it, (a) 1868 c.101.81 the authority has taken all reasonable steps to do so.
- (7) In its application for an interim administration order, the enforcement authority must nominate a suitably qualified person for appointment as interim administrator, but the nominee may not be a member of the staff of the Scottish Administration.
- (8) The extent of the power to make an interim administration order is not limited by articles 168 to 175.

Functions of interim administrator

168.—

- (1) An interim administrator order may authorise or require the interim administrator—
 - (a) to exercise any of the powers mentioned in Schedule 2,
 - (b) to take any other steps the court thinks appropriate, for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under paragraph (2).
- (2) An interim administration order must require the interim administrator to take any steps which the court thinks necessary to establish—
 - (a) whether or not the property to which the order applies is recoverable property or associated property,
 - (b) whether or not any other property is recoverable property (which satisfies the tests in article 202(1) and (2) or 203), and, if it is, who holds it.

- (3) If—
- (a) the interim administrator deals with any property which is not property to which the order applies, and
 - (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order, the interim administrator is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Inhibition of property affected by order

169.—

- (1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in paragraph (2), grant warrant for inhibition against any person specified in an interim administration order.
- (2) That property is heritable property situated in Scotland to which the interim administration order applies (whether generally or such of it as is specified in the application).
- (3) The warrant for inhibition—
 - (a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and
 - (b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868(a) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under paragraph (1) as it applies to an inhibition by separate letters or contained in a summons.
- (5) The execution of an inhibition under this article in respect of property does not prejudice the exercise of an interim administrator's powers under or for the purposes of this Part in respect of that property.(a) 1868 c.101.82
- (6) An inhibition under this article ceases to have effect when, or in so far as, the interim administration order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (7) If an inhibition ceases to have effect to any extent by virtue of paragraph (6) the enforcement authority must—
 - (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
 - (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

Interim administration orders: duties of respondent etc.**170.—**

- (1) An interim administration order may require any person to whose property the order applies—
 - (a) to bring the property to a place (in Scotland) specified by the interim administrator or place it in the custody of the interim administrator (if, in either case, he is able to do so),
 - (b) to do anything he is reasonably required to do by the interim administrator for the preservation of the property.
- (2) An interim administration order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place (in Scotland) specified by the interim administrator or to place them in the custody of the interim administrator. “Document” means anything in which information of any description is recorded.

Supervision of interim administrator and variation of order**171.—**

- (1) The interim administrator, any party to the proceedings and any person affected by an action taken by the interim administrator, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim administrator’s functions.
- (2) Before giving any directions under paragraph (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be interested in the application.
- (3) The court may at any time vary or recall an interim administration order.
- (4) Before exercising any power to vary or set aside an interim administration order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim administrator and to any person who may be affected by the court’s decision.

Interim administration orders: restrictions on dealing etc. with property**172.—**

- (1) An interim administration order must, subject to any exclusions made in accordance with this article, prohibit any person to whose property the order applies from dealing with the property.
- (2) Exclusions may be made when the interim administration order is made or on an application to vary the order.

- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet his reasonable living expenses, or
 - (b) to carry on any trade, business, profession or occupation, and may be made subject to conditions.
- (4) But an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.83
- (5) If the excluded property is not specified in the order it must be described in the order in general terms.
- (6) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through conduct which satisfies the test in article 202(2) is not unduly prejudiced.

Interim administration orders: restrictions on proceedings and remedies

173.—

- (1) While an interim administration order has effect, the court may sist any action, execution or other legal process in respect of the property to which the order applies.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that an interim administration order has been applied for or made in respect of the property, the court may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by this article, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim administrator (if appointed) and any person who may be affected by the court's decision.

Exclusion of property which is not recoverable etc. under interim administration order

174.—

- (1) If the court decides that any property to which an interim administration order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.
- (2) The court may vary an interim administration order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property which satisfies the tests in article 202(1) and (2) will not be prejudiced.

- (3) The court may exclude any property within paragraph (2) on any terms or conditions, applying while the interim administration order has effect, which the court thinks necessary or expedient.

Reporting under interim administration order

175.—

- (1) An interim administration order must require the interim administrator to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—
- (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,
 - (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,
 - (c) any property to which the order does not apply is recoverable property (which satisfies the tests in article 202(1) and (2)) or associated property, or
 - (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it, or if he thinks that there has been any other material change of circumstances.
- (2) An interim administration order must require the interim administrator—
- (a) to report his findings to the court,
 - (b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Arrestment of property affected by interim administration order

176.—

- (1) On the application of the enforcement authority or the interim administrator the Court of Session may, in relation to moveable recoverable property to which an interim administration order applies (whether generally or such of it as is specified in the application), grant warrant for arrestment.
- (2) An application by the enforcement authority under paragraph (1) may be made at the same time as the application for the interim administration order or at any time thereafter.
- (3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.
- (4) A warrant under paragraph (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority or, as the case may be, the interim

administrator against the person and may be executed, recalled, loosed or restricted accordingly.

- (5) The execution of an arrestment under this article in respect of property does not prejudice the exercise of an interim administrator's powers under or for the purposes of this Part in respect of that property.
- (6) An arrestment executed under this article ceases to have effect when, or in so far as, the interim administration order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.
- (7) If an arrestment ceases to have effect to any extent by virtue of paragraph (6) the enforcement authority or, as the case may be, the interim administrator must apply to the Court of Session for an order recalling or, as the case may be, restrict the arrestment.

Vesting and realisation of recoverable property

Recovery orders

177.—

- (1) The court must decide to give effect to an external order which falls within the meaning of section 447(2) of the Act by registering it and making a recovery order if it determines that any property or sum of money which is specified in it is recoverable property.
- (2) In making such a determination the court must have regard to—
 - (a) the definitions in subsections (2), (4), (5), (6), (8) and (10) of section 447 of the Act, and
 - (b) articles 202 to 207.
- (3) The recovery order must vest the recoverable property in the trustee for civil recovery.
- (4) But the court may not make in a recovery order—
 - (a) any provision in respect of any recoverable property if each of the conditions in paragraph (5) or (as the case may be) (6) is met and it would not be just and equitable to do so, or
 - (b) any provision which is incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998(a)).
- (5) In relation to a court in England and Wales or Northern Ireland, the conditions referred to in paragraph (4)(a) are that—
 - (a) the respondent obtained the recoverable property in good faith,
 - (b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,

- (c) when he took the steps, he had no notice that the property was recoverable,
 - (d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.
- (6) (6) In relation to a court in Scotland, the conditions referred to in paragraph (4)(a) are that—
- (a) the respondent obtained the recoverable property in good faith, (a) 1998 c.42. 85
 - (b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,
 - (c) when he took steps, he had no reasonable grounds for believing that the property was recoverable,
 - (d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.
- (7) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in paragraph (5) or (as the case may be) (6) are met, the court must have regard to—
- (a) the degree of detriment that would be suffered by the respondent if the provision were made,
 - (b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.
- (8) A recovery order may sever any property.
- (9) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.
- (10) A recovery order made by a court in England and Wales or Northern Ireland may provide for payment under article 191 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
- (a) the proceedings under this Part in which the order is made, or
 - (b) any related proceedings under this Part.
- (11) If regulations under article 199 apply to an item of expenditure, a sum in respect of the item is not payable under article 199 in pursuance of provision under paragraph (10) unless—
- (a) the enforcement authority agrees to its payment, or
 - (b) the court has assessed the amount allowed by the regulations in respect of that item and the sum is paid in respect of the assessed amount.
- (12) This article is subject to articles 181 to 189.

Functions of the trustee for civil recovery

178.—

- (1) The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.
- (2) The enforcement authority must nominate a suitably qualified person for appointment as the trustee.
- (3) The functions of the trustee are—
 - (a) to secure the detention, custody or preservation of any property vested in him by the recovery order,
 - (b) in the case of property other than money, to realise the value of the property for the benefit of the enforcement authority, and
 - (c) to perform any other functions conferred on him by virtue of this Chapter.
- (4) In performing his functions, the trustee acts on behalf of the enforcement authority and must comply with any directions given by the authority.
- (5) The trustee is to realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the enforcement authority.
- (6) The trustee has the powers mentioned in Schedule 3.
- (7) References in this article to a recovery order include an order under article E46 and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under article 187.86

Recording of recovery order (Scotland)

179.—

- (1) The clerk of the court must immediately after the making of a recovery order which relates to heritable property situated in Scotland send a certified copy of it to the keeper of the register of inhibitions and adjudications for recording in that register.
- (2) Recording under paragraph (1) is to have the effect as from the date of the recovery order, of an inhibition at the instance of the trustee for civil recovery against the person in whom the heritable property was vest prior to that date.

Rights of pre-emption etc.

180.—

- (1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.
- (2) A right of pre-emption, right of irritancy, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order. A right of return means any right under a provision for the return or reversion of property in specified circumstances.
- (3) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.
- (4) References to rights in paragraphs (2) and (3) do not include any rights in respect of which the recovery order was made.
- (5) This article applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

Associated and joint property

181.—

- (1) Articles 182 and 183 apply if the court makes a recovery order in respect of any recoverable property in a case within paragraph (2) or (3).
- (2) A case is within this paragraph if—
 - (a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the claim form or (in Scotland) application, and
 - (b) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the court has dispensed with service.
- (3) A case is within this paragraph if—
 - (a) the recoverable property belongs to joint tenants, and
 - (b) one of the tenants is an excepted joint owner.
- (4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him; and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.
- (5) Paragraphs (3) and (4) do not extend to Scotland.

Agreements about associated and joint property

182.—

- (1) Where—
 - (a) this article applies, and
 - (b) the enforcement authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree, 87 the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.
- (2) A recovery order which makes any requirement under paragraph (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating, or extinguishing any interest in property.
- (3) The amount of the payment is to be the amount which the enforcement authority and that person agree represents—
 - (a) in a case within article 181(2), the value of the recoverable property,
 - (b) in a case within article 181(3), the value of the recoverable property less the value of the excepted joint owner's share.
- (4) But if—
 - (a) a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order applied at any time to the associated property or joint tenancy, and
 - (b) the enforcement authority agrees that the person has suffered loss as a result of the order mentioned in sub-paragraph (a), the amount of the payment may be reduced by any amount the enforcement authority and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.
- (5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the enforcement authority.
- (6) A recovery order which makes any requirement under paragraph (1) must make provision for any recoverable property to cease to be recoverable.

Associated and joint property: default of agreement

183.—

- (1) Where this article applies, the court may make the following provision if—
 - (a) there is no agreement under article 182, and

- (b) the court thinks it just and equitable to do so.
- (2) The recovery order may provide—
- (a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner's interest to be extinguished, or
 - (b) in the case of an excepted joint owner, for the severance of his interest.
- (3) A recovery order making any provision by virtue of paragraph (2)(a) may provide—
- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner, or
 - (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee, or for both.
- (4) In making any provision in a recovery order by virtue of paragraph (2) or (3), the court must have regard to—
- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share (including any value which cannot be assessed in terms of money),
 - (b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.
- (5) If—88
- (a) a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order applied at any time to the associated property or joint tenancy, and
 - (b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the order mentioned in subparagraph (a), a recovery order making any provision by virtue of paragraph (2) or (3) may require the enforcement authority to pay compensation to that person.
- (6) The amount of compensation to be paid under paragraph (5) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

Payments in respect of rights under pension schemes

184.—

- (1) This article applies to recoverable property consisting of rights under a pension scheme.
- (2) A recovery order in respect of the property must, instead of vesting the property in the trustee for civil recovery, require the trustees or managers of the pension scheme—

- (a) to pay to the trustee for civil recovery within the period determined in accordance with paragraph 5 of Schedule 4 (“the prescribed period”) the amount determined by the trustees or managers to be equal to the value of the rights, and
 - (b) to give effect to any other provision made by virtue of this article and the two following articles in respect of the scheme. This paragraph is subject to articles 187 to 189.
- (3) A recovery order made by virtue of paragraph (2) overrides the provisions of the pension scheme to the extent that they conflict with the provisions of the order.
- (4) A recovery order made by virtue of paragraph (2) may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay to the trustee for civil recovery or otherwise) of costs incurred by them in—
- (a) complying with the recovery order, or
 - (b) providing information, before the order was made, to the enforcement authority, interim receiver or interim administrator.
- (5) None of the following provisions applies to a court making a recovery order by virtue of paragraph (2)—
- (a) any provision of section 159 of the Pension Schemes Act 1993(a), section 155 of the Pension Schemes (Northern Ireland) Act 1993(b), section 91 of the Pensions Act 1995(c) or Article 89 of the Pensions (Northern Ireland) Order 1995(d) (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
 - (b) any provision of any enactment (whenever passed or made) corresponding to any of the provisions mentioned in sub-paragraph (a),
 - (c) any provision of the pension scheme in question corresponding to any to those provisions.

Consequential adjustment of liabilities under pension schemes

185.—

- (1) A recovery order made by virtue of article 184(2) must require the trustees or managers of the pension scheme to make such reduction in the liabilities of the scheme as they think necessary in consequence of the payment made in pursuance of that paragraph.
- (a) 1993 c.48
 - (b) 1993 c.49
 - (c) 1995 c.26
 - (d) S.I. 1995/3213 (N.I. 22). 89

- (2) Accordingly, the order must require the trustees or managers to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which article 184 applies to cease.
- (3) So far as the trustees or managers are required by the recovery order to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which article 184 applies to cease, their powers include (in particular) power to reduce the amount of—
 - (a) any benefit or future benefit to which the respondent may be entitled under the scheme,
 - (b) any future benefit to which any other person may be entitled under the scheme in respect of that property.

Pension schemes: supplementary

186.—

- (1) Schedule 4 has effect for the purposes of the exercise by trustees or managers of their powers under articles 184 and 185, including provision about the calculation and verification of the value at any time of rights and liabilities.
- (2) A pension scheme means an occupational pension scheme or a personal pension scheme; and those expressions have the same meaning as in the Pension Schemes Act 1993 or, in relation to Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993.
- (3) In relation to an occupational pension scheme or a personal pension scheme, the trustees or managers means—
 - (a) in the case of a scheme established under a trust, the trustees,
 - (b) in any other case, the managers.
- (4) References to a pension scheme include—
 - (a) a retirement annuity contract (within the meaning of Part 3 of the Welfare Reform and Pensions Act 1999(a) or, in relation to Northern Ireland, Part 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999(b)),
 - (b) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal scheme,
 - (c) an annuity purchased, or entered into, for the purpose of discharging any liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or, in relation to Northern Ireland, Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.
- (5) References to the trustees or managers—

- (a) in relation to a retirement annuity contract or other annuity, are to the provider of the annuity,
 - (b) in relation to an insurance policy, are to the insurer.
- (6) Paragraphs (2) to (5) have effect for the purposes of this group of articles (that is, articles 184, 185 and this article).

Consent orders

187.—

- (1) The court may make an order staying (in Scotland, sisting) any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.
- (2) An order under paragraph (1) may, as well as staying (or sisting) the proceedings on terms—
- (a) make provision for any property which may be recoverable property to cease to be recoverable, (a) 1999 c.30. (b) S.I. 1999/3147 (N.I. 11). 90
 - (b) make any further provision which the court thinks appropriate.
- (3) Article 191 applies to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as it applies to property vested in him by a recovery order or money paid under article 182.

Consent orders: pensions

188.—

- (1) This article applies where recoverable property to which proceedings under this Chapter relate includes rights under a pension scheme.
- (2) An order made under article 187—
- (a) may not stay (in Scotland, sist) the proceedings on terms that the rights are vested in any other person, but
 - (b) may include provision imposing the following requirement, if the trustees or managers of the scheme are parties to the agreement by virtue of which the order is made.
- (3) The requirement is that the trustees or managers of the pension scheme—
- (a) make a payment in accordance with the agreement, and
 - (b) give effect to any other provision made by virtue of this article in respect of the scheme.

- (4) The trustees or managers of the pension scheme have power to enter into an agreement in respect of the proceedings on any terms on which an order made under article 187 may stay (in Scotland, sist) the proceedings.
- (5) The following provisions apply in respect of an order under article 187, so far as it includes the requirement mentioned in paragraph (3).
- (6) The order overrides the provisions of the pension scheme to the extent that they conflict with the requirement.
- (7) The order may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay in pursuance of the agreement or otherwise) of costs incurred by them in—
 - (a) complying with the order, or
 - (b) providing information, before the order was made, to the enforcement authority, interim receiver or interim administrator.
- (8) Articles 184(5) and 185 (read with article 186) apply as if the requirement were included in an order made by virtue of article 184(2).
- (9) Paragraphs (4) to (7) of article 186 have effect for the purposes of this article.

Limit on recovery

189.—

- (1) This article applies if the enforcement authority seeks a recovery order—
 - (a) in respect of both property which is or represents property which satisfies the tests in article 202(1) or (2) and related property, or
 - (b) in respect of property which is or represents property which satisfies those tests where such an order, or an order under article 187, has previously been made in respect of related property.
- (2) For the purposes of this article—
 - (a) the original property means the property specified in the external order or a sum of money so specified,
 - (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.
- (3) The court is not to make a recovery order if it thinks that the enforcement authority's right to recover the original property has been satisfied by a previous recovery order or order under article 187.91
- (4) Subject to paragraph (3), the court may act under paragraph (5) if it thinks that—

- (a) a recovery order may be made in respect of two or more related items of recoverable property, but
 - (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the enforcement authority's right to recover the original property.
- (5) The court may in order to satisfy that right to the extent required make a recovery order in respect of—
 - (a) only some of the related items of property, or
 - (b) only a part of any of the related items of property, or both.
- (6) Where the court may make a recovery order in respect of any property, this article does not prevent the recovery of any profits which have accrued in respect of the property.
- (7) If—
 - (a) an order is made under section 298 of the Act for the forfeiture of recoverable property, and
 - (b) the enforcement authority subsequently seeks a recovery order in respect of related property, the order under section 298 is to be treated, for the purposes of this article as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property.
- (8) If—
 - (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the claimant has obtained property from the defendant ("the judgment property"),
 - (b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct within the meaning of section 242 of the Act, and
 - (c) the enforcement authority subsequently seeks a recovery order in respect of property which is related to the judgment property, the judgment is to be treated for the purposes of this article as if it were a recovery order obtained by the enforcement authority in respect of the judgment property. In relation to Scotland, "claimant" and "defendant" are to be read as "pursuer" and "defender".
- (9) If—
 - (a) property has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, and
 - (b) the enforcement authority subsequently seeks a recovery order in respect of related property, the confiscation order is to be treated for the purposes of this article as if it were a recovery order obtained by the enforcement authority in respect of the property referred to in sub-paragraph (a).

- (10) In paragraph (9), a confiscation order means—
- (a) an order under section 6, 92 or 156 of the Act or an external order registered under Parts 2, 3 or 4 of this Order,
 - (b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act, and, in relation to an order mentioned in sub-paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.⁹²

Article 189: supplementary

190.—

- (1) Paragraphs (2) and (3) give examples of the satisfaction of the enforcement authority's right to recover the original property.
- (2) If—
- (a) there is a disposal, other than a part disposal, of the original property, and
 - (b) other property (the representative property) is obtained in its place, the enforcement authority's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.
- (3) If—
- (a) there is a part disposal of the original property, and
 - (b) other property (the representative property) is obtained in place of the property disposed of, the enforcement authority's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.
- (4) In this article—
- (a) a part disposal means a disposal to which article 211(1) applies,
 - (b) the original property has the same meaning as in article 189.

Applying realised proceeds

191.—

- (1) This article applies to—
- (a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which he obtained in pursuance of a recovery order,

- (b) sums vested in the trustee by a recovery order or obtained by him in pursuance of a recovery order.
- (2) The trustee is to make out of the sums—
- (a) first, any payment required to be made by him by virtue of article 183,
 - (b) next, any payment of legal expenses which, after giving effect to article 177(11), are payable under this paragraph in pursuance of provision under article 177(10) contained in the recovery order,
 - (c) next, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this paragraph by virtue of article 3(10), and any sum which remains is to be paid to the enforcement authority.
- (3) The Director may apply a sum received by him under paragraph (2) in making payment of the remuneration and expenses of—
- (a) the trustee, or
 - (b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.
- (4) Paragraph (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the Agency. 93

Exemptions etc.

Victims of theft etc.

192.—

- (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this article.
- (2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.
- (3) The condition is that—
- (a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct within the meaning of section 241 of the Act,
 - (b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and
 - (c) the property he claims belongs to him.
- (4) Property to which a declaration under this article applies is not recoverable property.

Other exemptions

193.—

- (1) Proceedings for a recovery order may not be taken against the Financial Services Authority in respect of any recoverable property held by the authority.
- (2) Proceedings for a recovery order may not be taken in respect of any property which is subject to any of the following charges—
 - (a) a collateral security charge, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(a),
 - (b) a market charge, within the meaning of Part 7 of the Companies Act 1989(b),
 - (c) a money market charge, within the meaning of the Financial Markets and Insolvency (Money Market) Regulations 1995(c),
 - (d) a system charge, within the meaning of the Financial Markets and Insolvency Regulations 1996(d) or the Financial Markets and Insolvency Regulations (Northern Ireland) 1996(e).
- (3) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which he holds by reason of his acting or having acted, as an insolvency practitioner. Acting as an insolvency practitioner has the same meaning as in article 4.

Miscellaneous

Compensation

194.—

- (1) If, in the case of any property to which a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order has at any time applied, the court does not in the course of the proceedings, decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation.
- (2) Paragraph (1) does not apply if the court—
 - (a) has made a declaration in respect of the property by virtue of article 192, or
 - (b) makes an order under article 187. (a) S.I. 1999/2979. (b) 1989 c.40. (c) S.I. 1995/2049. (d) S.I. 1996/1469. (e) S.R. (N.I.) 1996/252. 94
- (3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of three months beginning—
 - (a) in relation to a decision of the High Court in England and Wales, with the date of the decision or, if any application is made for leave to appeal, with the date on which the

- application is withdrawn or refused or (if the application is granted) on which any proceedings on appeal are finally concluded,
- (b) in relation to a decision of the Court of Session or of the High Court in Northern Ireland, with the date of the decision or, if there an appeal against the decision, with the date on which any proceedings on appeal are finally concluded.
- (4) If, in England and Wales or Northern Ireland, the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of three months beginning with the discontinuance.
- (5) If the court is satisfied that the applicant has suffered loss as a result of the order mentioned in paragraph (1), it may require the enforcement authority to pay compensation to him.
- (6) If, but for article 180(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.
- (7) The application for compensation under paragraph (6) must be made within the period of three months beginning with the vesting referred to in article 180(2).
- (8) If the court is satisfied that, in consequence of the operation of article 180, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by him, it may require the enforcement authority to pay compensation to him.
- (9) The amount of compensation to be paid under this article is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

Payment of interim administrator or trustee (Scotland)

195.—

- (1) Any fees or expenses incurred by an interim administrator, or a trustee for civil recovery appointed by the Court of Session, in the exercise of his functions are to be reimbursed by the Scottish Ministers as soon as is practicable after they have been incurred.
- (2) The Scottish Ministers may apply a sum received by them under article 191(2) in making payment of such fees or expenses.
- (3) Paragraph (2) does not apply in relation to the fees of a trustee for civil recovery if the trustee is a member of their staff.

Effect on diligence of recovery order (Scotland)

196.—

- (1) An arrestment or pouding of any recoverable property executed on or after the appointment of the trustee for civil recovery is ineffectual in a question with the trustee.

- (2) Any recoverable property so arrested or poinded, or (if the property has been sold) the proceeds of sale, must be handed over to the trustee for civil recovery.
- (3) A poinding of the ground in respect of recoverable property on or after such an appointment is ineffectual in a question with the trustee for civil recovery except for the interest mentioned in paragraph (4).
- (4) That interest is—
 - (a) interest on the debt of a secured creditor for the current half yearly term, and
 - (b) arrears of interest on that debt for one year immediately before the commencement of that term.
- (5) On and after such appointment no other person may raise or insist in an adjudication against recoverable property or be confirmed as an executor-creditor on that property.
- (6) An inhibition on recoverable property shall cease to have effect in relation to any heritable property comprised in the recoverable property on such appointment. 95
- (7) The provision of this article apply in relation to—
 - (a) an action of maills and duties, and
 - (b) an action for sequestration of rent, as they apply in relation to an arrestment or poinding.

Scope of powers (Scotland)

197.—

- (1) Orders under this Chapter may be made by the Court of Session in respect of a person wherever domiciled, resident or present.
- (2) But such an order in respect of a person's moveable property may not be made by the Court of Session where—
 - (a) the person is not domiciled, resident or present in Scotland, and
 - (b) the property is not situated in Scotland, unless the conduct which satisfies the test in article 202(2) took place in Scotland.

Legal expenses excluded from freezing: required conditions

198.—

- (1) The Lord Chancellor may by regulations specify the required conditions for the purposes of article 149(5) or 157(4).
- (2) A required condition may (in particular)—

- (a) restrict who may receive sums released in pursuance of the exclusion (by, for example, requiring released sums to be paid to professional legal advisers), or
 - (b) be made for the purpose of controlling the amount of any sum released in pursuance of the exclusion in respect of an item of expenditure.
- (3) A required condition made for the purpose mentioned in paragraph (2)(b) may (for example)—
- (a) provide for sums to be released only with the agreement of the enforcement authority;
 - (b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under article 199 in respect of that item and the sum is released for payment of the assessed amount;
 - (c) provide for a sum to be released in respect of an item of expenditure only if—
 - (i) the enforcement authority agrees to its release, or
 - (ii) the court has assessed the amount allowed by regulations under article 199 in respect of that item and the sum is released for payment of the assessed amount.
- (4) Before making regulations under this article, the Lord Chancellor must consult such persons as he considers appropriate.

Legal expenses: regulations for purposes of article 177(11) or 198(3)

199.—

- (1) The Lord Chancellor may by regulations—
- (a) make provision for the purposes of article 177(11);
 - (b) make provision for the purposes of required conditions that make provision of the kind mentioned in article 198(3)(b) or (c).
- (2) Regulations under this article may (in particular)—
- (a) limit the amount of remuneration allowable to representatives for a unit of time worked;
 - (b) limit the total amount of remuneration allowable to representatives for work done in connection with proceedings or a step in proceedings; 96
 - (c) limit the amount allowable in respect of an item of expense incurred by a representative or incurred, otherwise than in respect of the remuneration of a representative, by a party to proceedings.
- (3) Before making regulations under this article, the Lord Chancellor must consult such persons as he considers appropriate.

Financial threshold

200.—

- (1) The enforcement authority may not start proceedings for a recovery order unless the authority reasonably believes that the aggregate value of the recoverable property which the authority wishes to be subject to a recovery order is not less than £10,000.
- (2) If the authority applies for a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order before starting the proceedings, paragraph (1) applies to the application instead of to the start of the proceedings.
- (3) This article does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order which has been properly applied for.

Limitation

201.—

- (1) After section 27A of the Limitation Act 1980(a) there is inserted— “27B Actions for recovery of property for purposes of an external order (1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).
- (2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director’s cause of action accrued.
- (3) Proceedings under that Chapter are brought when—
 - (a) a claim form is issued, or
 - (b) an application is made for a property freezing order, or
 - (c) an application is made for an interim receiving order, whichever is earliest.
- (4) The Director’s cause of action accrues in respect of any recoverable property—
 - (a) in the case of proceedings for a recovery order in respect of property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct, when the property is so obtained,
 - (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct which it represents is so obtained.

- (5) If—
- (a) a person would (but for the preceding provisions of this Act) have a cause of action in respect of the conversion of a chattel, and
 - (b) proceedings are started under that Chapter for a recovery order in respect of the chattel, (a) 1980 c.58; section 27A was inserted by section 288(1) of the Proceeds of Crime Act 2002. 97
 - (c) section 3(2) of this Act does not prevent his asserting on an application under article 192 of that Order that the property belongs to him, or the court making a declaration in his favour under that article.
- (6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by section 3(2) of this Act.
- (7) In this section—
- (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and
 - (b) expressions used in this section which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this section as in that Part.”.
- (2) After section 19B of the Prescription and Limitation (Scotland) Act 1973(a) there is inserted—“19C Actions for recovery of property for the purposes of an external order (1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).
- (2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be commenced after the expiration of the period of twelve years from the date on which the Scottish Ministers’ right of action accrued.
- (3) Proceedings under that Chapter are commenced when—
- (a) the proceedings are served,
 - (b) an application is made for a prohibitory property order, or
 - (c) an application is made for an interim administration order, whichever is the earliest.
- (4) The Scottish Ministers’ right of action accrues in respect of any recoverable property—
- (a) in the case of proceedings for a recovery order in respect of property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct, when the property is so obtained,

- (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct which it represents is so obtained.
- (5) In this section—
 - (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and
 - (b) expressions used in this section which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this section as in that Part.”.
- (3) After Article 72A of the Limitation (Northern Ireland) Order 1989(b) there is inserted—

“72B Actions for recovery of property for purposes of an external order (1) None of the time limits fixed by Parts 2 and 3 of this Order applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order). (a) 1973 c.52; section 19B was inserted by section 288(2) of the Proceeds of Crime Act 2002. (b) S.I. 1989/1339 (N.I. 11); Article 72A was inserted by section 288(3) of the Proceeds of Crime Act 2002. 98
- (2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director’s cause of action accrued.
- (3) Proceedings under that Chapter are brought when—
 - (a) a claim form is issued, or
 - (b) an application is made for a property freezing order, or
 - (c) an application is made for an interim receiving order, whichever is earliest.
- (4) The Director’s cause of action accrues in respect of any recoverable property—
 - (a) in the case of proceedings for a recovery order in respect of property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct, when the property is so obtained,
 - (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct which it represents is so obtained.
- (5) If—
 - (a) a person would (but for a time limit fixed by this Order) have a cause of action in respect of the conversion of a chattel, and
 - (b) proceedings are started under that Chapter for a recovery order in respect of the chattel, Article 17(2) of this Order does not prevent his asserting on an application

under article 192 of that Order that the property belongs to him, or the court making a declaration in his favour under that article.

- (6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by Article 17(2) of this Order.
- (7) In this Article—
- (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and
- (b) expressions used in this Article which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this Article as in that Part.”

CHAPTER 3 GENERAL

Recoverable property

Recoverable property: property or sum of money specified in the external order

202.—

- (1) Property or a sum of money is recoverable property if it is specified in an external order (within the meaning of section 447(2) of the Act).
- (2) Accordingly, the property (including money) must have been found to have been obtained as a result of or in connection with criminal conduct (within the meaning of section 447(8) of the Act) or must have been believed to have been so obtained.
- (3) But if property (including money) which is specified in the external order has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.
- (4) Recoverable property specified in an external order may be followed into the hands of a person obtaining it on a disposal by—
- (a) the person who through the conduct obtained the property, or
- (b) a person into whose hands it may (by virtue of this paragraph) be followed. 99
- (5) Where an external order specifies property other than a sum of money, only that property is recoverable property.

Tracing property, etc.

203.—

- (1) This article applies only where an external order specifies a sum of money.

- (2) Where property which satisfies the tests in article 202(1) and (2) (“the original property”) is or has been recoverable, property which represents the original property is also recoverable property.
- (3) If a person enters into a transaction by which—
 - (a) he disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and
 - (b) he obtains other property in place of it, the other property represents the original property.
- (4) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

Mixing property

204.—

- (1) This article applies only where an external order specifies a sum of money.
- (2) Paragraph (3) applies if a person’s recoverable property is mixed with other property (whether his property or another’s).
- (3) The portion of the mixed property which is attributable to the recoverable property represents the property which satisfies the tests in article 202(1) and (2).
- (4) Recoverable property is mixed with other property if (for example) it is used—
 - (a) to increase funds held in a bank account,
 - (b) in part payment for the acquisition of an asset,
 - (c) for the restoration or improvement of land,
 - (d) by a person holding a leasehold interest in the property to acquire the freehold.

Recoverable property: general exceptions

205.—

- (1) If—
 - (a) a person disposes of recoverable property, and
 - (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property, the property may not be followed into that person’s hands and, accordingly, it ceases to be recoverable.
- (2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.

- (3) If—
- (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,
 - (b) the claimant's claim is based on any conduct by the defendant which satisfies the test in article 202(2), and
 - (c) apart from this paragraph, the sum received, or the property obtained, by the claimant would be recoverable property, 100 the property ceases to be recoverable. In relation to Scotland, "claimant" and "defendant" are to be read as "pursuer" and "defender".
- (4) If—
- (a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994(a), section 249 of the Criminal Procedure (Scotland) Act 1995(b) or section 130 of the Powers of Criminal Court (Sentencing) Act 2000(c), and
 - (b) apart from this paragraph, the sum received would be recoverable property, the property ceases to be recoverable.
- (5) If—
- (a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969(d) or section 148(2) of the Powers of Criminal Courts (Sentencing) Act 2000 or a person otherwise obtains any property in pursuance of such an order, and
 - (b) apart from this paragraph, the sum received, or the property obtained, would be recoverable property, the property ceases to be recoverable.
- (6) If—
- (a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000 (restitution orders)(e), an amount is paid to or distributed among any persons in accordance with the court's directions, and
 - (b) apart from this paragraph, the sum received by them would be recoverable property, the property ceases to be recoverable.
- (7) If—
- (a) in pursuance of a requirement of the Financial Services Authority under section 384(5) of the Financial Services and Markets Act 2000 (power of authority to pursue restitution), an amount is paid to or distributed among any persons and
 - (b) apart from this paragraph, the sum received by them would be recoverable property, the property ceases to be recoverable.

- (8) Property is not recoverable while a restraint order applies to it, that is—
- (a) an order under section 41, 120 or 190 of the Act or article 8, 58 or 95 of this Order, or
 - (b) an order under any corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act.
- (9) Property is not recoverable if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, that is—
- (a) an order under section 6, 92 or 156 of the Act or an external order registered under Part 2, 3 or 4 of this Order, or
 - (b) an order under a corresponding provision of an enactment mentioned in section 8(7)(a) to (g) of the Act, and, in relation to an order mentioned in sub-paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question. (a) S.I. 1994/2795 (N.I. 15). (b) 1995 c.46. (c) 2000 c.6. (d) 1969 c.16 (N.I.). (e) 2000 c.8.
- 101
- (10) Where—
- (a) a person enters into a transaction to which article 203(3) applies, and
 - (b) the disposal is one to which paragraph (1) or (2) applies, this article does not affect the recoverability (by virtue of article 203(3)) of any property obtained on the transaction in place of the property disposed of.

Other exemptions

206.—

- (1) Property, which apart from this article, would be recoverable property and is—
- (a) forfeited in pursuance of powers conferred by the customs and excise Acts, as defined by section 1(1) of the Customs and Excise Management Act 1979(a), or
 - (b) disposed of in pursuance of an enactment prescribed in Schedule 5, is not recoverable or (as the case may be) associated property.
- (2) But where particular circumstances are prescribed in Schedule 5 in relation to an enactment, paragraph (1)(b) applies only in those circumstances.

Granting interests

207.—

- (1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.
- (2) Accordingly, on his granting an interest in the property (“the property in question”)—
 - (a) where the property in question is property which satisfies the tests in article 202(1) and (2), the interest is also to be treated as satisfying those tests,
 - (b) where the property in question represents in his hands property which satisfies the tests in article 202(1) and (2), the interest is also to be treated as representing in his hands property which satisfies those tests.

Insolvency

Insolvency

208.—

- (1) Proceedings for a recovery order may not be taken or continued in respect of property to which paragraph (2) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.
- (2) This paragraph applies to recoverable property, or property associated with it, if—
 - (a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,
 - (b) it is an asset of a company and a voluntary arrangement under Part 1 of the 1986 Act or Part 2 of the 1989 Order, has effect in relation to the company,
 - (c) an order under section 2 of the 1985 Act, section 286 of the 1986 Act or Article 259 of the 1989 Order (appointment of interim trustee or interim receiver) has effect in relation to the property,
 - (d) it is an asset comprised in the estate of an individual who has been adjudged bankrupt or, in relation to Scotland, of a person whose estate has been sequestrated,
 - (e) it is an asset of an individual and a voluntary arrangement under Part 8 of the 1986 Act, or Part 8 of the 1989 Order, has effect in relation to him, or (a) 1979 c.2. 102
 - (f) in relation to Scotland, it is property comprised in the estate of a person who has granted a trust deed within the meaning of the 1985 Act.
- (3) An application under this article, or under any provision of the 1986 Act or the 1989 Order, for leave to take proceedings for a recovery order may be made without notice to any person.

- (4) Paragraph (3) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).
- (5) References to the provisions of the 1986 Act in sections 420 and 421 of that Act, or to the provisions of the 1989 Order in Articles 364 or 365 of that Order, (insolvent partnerships and estates of deceased persons) include paragraphs (1) and (2) above.
- (6) In this article—
- (a) the 1985 Act means the Bankruptcy (Scotland) Act 1985(a),
 - (b) the 1986 Act means the Insolvency Act 1986(b),
 - (c) the 1989 Order means the Insolvency (Northern Ireland) Order 1989(c), and in paragraph (7) “the applicable enactment” means whichever enactment mentioned in subparagraphs (a) to (c) is relevant to the resolution, arrangement, order or trust deed mentioned in paragraph (2).
- (7) In this article—
- (a) an asset means any property within the meaning of the applicable enactment or, where the 1985 Act is the applicable enactment, any property comprised in an estate to which the 1985 Act applies,
 - (b) the appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in paragraph (2), is the court for the purposes of the applicable enactment or, in relation to Northern Ireland, the High Court,
 - (c) acting as an insolvency practitioner has the same meaning as in article 4,
 - (d) other expressions used in this article and in the applicable enactment have the same meaning as in that enactment.

Delegation of enforcement functions

Performance of functions of Scottish Ministers by constables in Scotland

209.—

- (1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in subsection (2), on behalf of the Scottish Ministers.
- (2) The specified functions are the functions conferred on the Scottish Ministers by—
- (a) articles 144(1) and (2) and 167(1) and (7) (proceedings in the Court of Session),
 - (b) article 178(2) (trustee for civil recovery),
 - (c) articles 182(3) and (4) and 183(5) (agreements about associated and joint property),

- (d) article 186(3) (pension schemes),
- (e) article 193(1) (exemptions),
- (f) article 194(5) and (8) (compensation),
- (g) article 200(2) (financial threshold). (a) 1985 c.66. (b) 1986 c.45. (c) S.I. 1989/2405 (N.I. 19).103

Restriction on performance of Director's functions by police

210.—

- (1) In spite of section 1(6) of the Act, nothing which the Director is authorised or required to do for the purposes of this Part may be done by—
 - (a) a member of a police force,
 - (b) a member of the Police Service of Northern Ireland,
 - (c) a person appointed as a police member of the National Criminal Intelligence Service under section 9(1)(b) of the Police Act 1997(a),
 - (d) a person appointed as a police member of the National Crime Squad under section 55(1)(b) of that Act.
- (2) In this article—
 - (a) “member of a police force” has the same meaning as in the Police Act 1996(b) and includes a person who would be a member of a police force but for section 97(3) of that Act (police officers engaged on service outside their force),
 - (b) “member of the Police Service of Northern Ireland” includes a person who would be a member of the Police Service of Northern Ireland but for section 27(3) of the Police (Northern Ireland) Act 1998(c) (members of that service engaged on other police service).

Interpretation

Obtaining and disposing of property

211. —

- (1) References to a person disposing of his property include a reference—
 - (a) to his disposing of a part of it, or
 - (b) to his granting an interest in it, (or to both), and references to the property disposed of are to any property obtained on the disposal.
- (2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

- (3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.
- (4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

Northern Ireland courts

212. In relation to the practice and procedure of courts in Northern Ireland, expressions used in this Part are to be read in accordance with rules of court.

General interpretation

213.—

- (1) In this Part—

“associated property” has the meaning given by article 146,

“constable”, in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000(d),

“the court” except in articles 158(2) and (3) and 173(2) and (3) means the High Court or (in relation to proceedings in Scotland) the Court of Session, (a) 1997 c.50; sections 9 and 55 are prospectively repealed by Schedule 17 to the Serious Organised Crime and Police Act 2005. (b) 1996 c.16. (c) 1998 c.32. (d) 2000 c.32. 104

“dealing” with property includes disposing of it, taking possession of it or removing it from the United Kingdom,

“Director” means Director of the Agency, “enforcement authority”—

(a) in relation to England and Wales and Northern Ireland, means the Director,

(b) in relation to Scotland, means the Scottish Ministers,

“excepted joint owner” has the meaning given by article 181(4),

“interest”, in relation to land—

(a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power,

(b) in the case of land in Scotland, means any estate, interest, servitude or other heritable right in or over land, including a heritable security,

“interest”, in relation to property other than land, includes any right (including a right to possession of the property),

“interim administration order” has the meaning given by article 167(2),

“interim receiving order” has the meaning given by article 151(2),

“part”, in relation to property, includes a portion,

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984(a),

“prohibitory property order” has the meaning given in article 171(2),

“property freezing order” has the meaning given in article 147(2),

“recoverable property” is to be read in accordance with articles 202 to 207,

“recovery order” means an order made under article 177,

“respondent” means—

- (a) where proceedings are brought by the enforcement authority, the person against whom the proceedings are brought,
- (b) where no such proceedings have been brought but the enforcement authority has applied for a property freezing order, an interim receiving order, a prohibitory property order or an interim administration order, the person against whom he intends to bring such proceedings,

“share”, in relation to an excepted joint owner, has the meaning given by article 181(4),

“specified property” means property other than a sum of money that is specified in an external order, “value” means market value.

- (2) The following provisions apply for the purposes of this Part.
- (3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.
- (4) Property is all property wherever situated and includes—
 - (a) money,
 - (b) all forms of property, real or personal, heritable or moveable,
 - (c) things in action and other intangible or incorporeal property.
- (5) Any reference to a person’s property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
- (6) In relation to land, it is a reference to any interest which he holds in the land. (a) 1984 c.60. 105
- (7) In relation to property other than land, it is a reference—
 - (a) to the property (if it belongs to him), or
 - (b) to any other interest which he holds in the property.
- (8) References to the satisfaction of the enforcement authority’s right to recover any property which satisfies the tests in article 202(1) and (2) are to read in accordance with article 189.